

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 57

Representatives Patterson, Cera

Cosponsors: Representatives Rogers, Vitale, Becker, Riedel, O'Brien

A BILL

To amend sections 131.44, 131.51, and 5739.02 and 1
to enact sections 5739.212 and 5741.033 of the 2
Revised Code to exempt certain heating sources 3
from sales taxation and to hold local 4
governments and libraries harmless from the 5
revenue effect. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 131.44, 131.51, and 5739.02 be 7
amended and sections 5739.212 and 5741.033 of the Revised Code 8
be enacted to read as follows: 9

Sec. 131.44. (A) As used in this section: 10

(1) "Surplus revenue" means the excess, if any, of the 11
total fund balance over the required year-end balance. 12

(2) "Total fund balance" means the sum of the unencumbered 13
balance in the general revenue fund on the last day of the 14
preceding fiscal year plus the balance in the budget 15
stabilization fund. 16

(3) "Required year-end balance" means the sum of the 17

following:	18
(a) Eight and one-half per cent of the general revenue fund revenues for the preceding fiscal year;	19 20
(b) "Ending fund balance," which means one-half of one per cent of general revenue fund revenues for the preceding fiscal year;	21 22 23
(c) "Carryover balance," which means, with respect to a fiscal biennium, the excess, if any, of the estimated general revenue fund appropriation and transfer requirement for the second fiscal year of the biennium over the estimated general revenue fund revenue for that fiscal year;	24 25 26 27 28
(d) "Capital appropriation reserve," which means the amount, if any, of general revenue fund capital appropriations made for the current biennium that the director of budget and management has determined will be encumbered or disbursed;	29 30 31 32
(e) "Income tax reduction impact reserve," which means an amount equal to the reduction projected by the director of budget and management in income tax revenue in the current fiscal year attributable to the previous reduction in the income tax rate made by the tax commissioner pursuant to division (B) of section 5747.02 of the Revised Code.	33 34 35 36 37 38
(4) "Estimated general revenue fund appropriation and transfer requirement" means the most recent adjusted appropriations made by the general assembly from the general revenue fund and includes both of the following:	39 40 41 42
(a) Appropriations made and transfers of appropriations from the first fiscal year to the second fiscal year of the biennium in provisions of acts of the general assembly signed by the governor but not yet effective;	43 44 45 46

(b) Transfers of appropriations from the first fiscal year 47
to the second fiscal year of the biennium approved by the 48
controlling board. 49

(5) "Estimated general revenue fund revenue" means the 50
most recent such estimate available to the director of budget 51
and management. 52

(B) (1) Not later than the thirty-first day of July each 53
year, the director of budget and management shall determine the 54
surplus revenue that existed on the preceding thirtieth day of 55
June and transfer from the general revenue fund, to the extent 56
of the unobligated, unencumbered balance on the preceding 57
thirtieth day of June in excess of one-half of one per cent of 58
the general revenue fund revenues in the preceding fiscal year, 59
the following: 60

(a) First, to the budget stabilization fund, any amount 61
necessary for the balance of the budget stabilization fund to 62
equal eight and one-half per cent of the general revenue fund 63
revenues of the preceding fiscal year; 64

(b) Then, to the income tax reduction fund, which is 65
hereby created in the state treasury, an amount equal to the 66
surplus revenue. 67

(2) Not later than the thirty-first day of July each year, 68
the director shall determine the percentage that the balance in 69
the income tax reduction fund is of the amount of revenue that 70
the director estimates will be received from the tax levied 71
under section 5747.02 of the Revised Code in the current fiscal 72
year without regard to any reduction under division (B) of that 73
section. If that percentage exceeds thirty-five one hundredths 74
of one per cent, the director shall certify the percentage to 75

the tax commissioner not later than the thirty-first day of 76
July. 77

(C) The director of budget and management shall transfer 78
money in the income tax reduction fund to the general revenue 79
fund, the local government fund, and the public library fund as 80
necessary to offset revenue reductions resulting from the 81
reductions in taxes required under division (B) of section 82
5747.02 of the Revised Code in the respective amounts and 83
percentages prescribed by division (A) of section 5747.03 and 84
divisions ~~(A) and (B)~~ and (C) of section 131.51 of the Revised 85
Code as if the amount transferred had been collected as taxes 86
under Chapter 5747. of the Revised Code. If no reductions in 87
taxes are made under that division that affect revenue received 88
in the current fiscal year, the director shall not transfer 89
money from the income tax reduction fund to the general revenue 90
fund, the local government fund, and the public library fund. 91

Sec. 131.51. (A) As used in this section, "supplemental 92
distribution" means the difference obtained by subtracting the 93
total tax revenue credited to the general revenue fund during 94
the preceding month from the amount of such revenue the tax 95
commissioner estimates would have been credited to that fund 96
during that month if the exemption in division (B) (58) of 97
section 5739.02 of the Revised Code had not been enacted. 98

(B) On or before the seventh day of each month, the 99
director of budget and management shall credit to the local 100
government fund one and sixty-six one-hundredths per cent of the 101
sum of the total tax revenue credited to the general revenue 102
fund during the preceding month plus the supplemental 103
distribution. In determining the total tax revenue credited to 104
the general revenue fund during the preceding month, the 105

director shall include amounts transferred from the fund during 106
the preceding month under this division and division ~~(B)~~ (C) of 107
this section. Money shall be distributed from the local 108
government fund as required under sections 5747.50 and 5747.503 109
of the Revised Code during the same month in which it is 110
credited to the fund. 111

~~(B)~~ (C) On or before the seventh day of each month, the 112
director of budget and management shall credit to the public 113
library fund one and sixty-six one-hundredths per cent of the 114
sum of the total tax revenue credited to the general revenue 115
fund during the preceding month plus the supplemental 116
distribution. In determining the total tax revenue credited to 117
the general revenue fund during the preceding month, the 118
director shall include amounts transferred from the fund during 119
the preceding month under this division and division ~~(A)~~ (B) of 120
this section. Money shall be distributed from the public library 121
fund as required under section 5747.47 of the Revised Code 122
during the same month in which it is credited to the fund. 123

~~(C)~~ (D) The director of budget and management shall 124
develop a schedule identifying the specific tax revenue sources 125
to be used to make the monthly transfers required under 126
divisions ~~(A) and (B)~~ and (C) of this section. The director may, 127
from time to time, revise the schedule as the director considers 128
necessary. 129

Sec. 5739.02. For the purpose of providing revenue with 130
which to meet the needs of the state, for the use of the general 131
revenue fund of the state, for the purpose of securing a 132
thorough and efficient system of common schools throughout the 133
state, for the purpose of affording revenues, in addition to 134
those from general property taxes, permitted under 135

constitutional limitations, and from other sources, for the 136
support of local governmental functions, and for the purpose of 137
reimbursing the state for the expense of administering this 138
chapter, an excise tax is hereby levied on each retail sale made 139
in this state. 140

(A) (1) The tax shall be collected as provided in section 141
5739.025 of the Revised Code. The rate of the tax shall be five 142
and three-fourths per cent. The tax applies and is collectible 143
when the sale is made, regardless of the time when the price is 144
paid or delivered. 145

(2) In the case of the lease or rental, with a fixed term 146
of more than thirty days or an indefinite term with a minimum 147
period of more than thirty days, of any motor vehicles designed 148
by the manufacturer to carry a load of not more than one ton, 149
watercraft, outboard motor, or aircraft, or of any tangible 150
personal property, other than motor vehicles designed by the 151
manufacturer to carry a load of more than one ton, to be used by 152
the lessee or renter primarily for business purposes, the tax 153
shall be collected by the vendor at the time the lease or rental 154
is consummated and shall be calculated by the vendor on the 155
basis of the total amount to be paid by the lessee or renter 156
under the lease agreement. If the total amount of the 157
consideration for the lease or rental includes amounts that are 158
not calculated at the time the lease or rental is executed, the 159
tax shall be calculated and collected by the vendor at the time 160
such amounts are billed to the lessee or renter. In the case of 161
an open-end lease or rental, the tax shall be calculated by the 162
vendor on the basis of the total amount to be paid during the 163
initial fixed term of the lease or rental, and for each 164
subsequent renewal period as it comes due. As used in this 165
division, "motor vehicle" has the same meaning as in section 166

4501.01 of the Revised Code, and "watercraft" includes an 167
outdrive unit attached to the watercraft. 168

A lease with a renewal clause and a termination penalty or 169
similar provision that applies if the renewal clause is not 170
exercised is presumed to be a sham transaction. In such a case, 171
the tax shall be calculated and paid on the basis of the entire 172
length of the lease period, including any renewal periods, until 173
the termination penalty or similar provision no longer applies. 174
The taxpayer shall bear the burden, by a preponderance of the 175
evidence, that the transaction or series of transactions is not 176
a sham transaction. 177

(3) Except as provided in division (A) (2) of this section, 178
in the case of a sale, the price of which consists in whole or 179
in part of the lease or rental of tangible personal property, 180
the tax shall be measured by the installments of that lease or 181
rental. 182

(4) In the case of a sale of a physical fitness facility 183
service or recreation and sports club service, the price of 184
which consists in whole or in part of a membership for the 185
receipt of the benefit of the service, the tax applicable to the 186
sale shall be measured by the installments thereof. 187

(B) The tax does not apply to the following: 188

(1) Sales to the state or any of its political 189
subdivisions, or to any other state or its political 190
subdivisions if the laws of that state exempt from taxation 191
sales made to this state and its political subdivisions; 192

(2) Sales of food for human consumption off the premises 193
where sold; 194

(3) Sales of food sold to students only in a cafeteria, 195

dormitory, fraternity, or sorority maintained in a private,	196
public, or parochial school, college, or university;	197
(4) Sales of newspapers and sales or transfers of	198
magazines distributed as controlled circulation publications;	199
(5) The furnishing, preparing, or serving of meals without	200
charge by an employer to an employee provided the employer	201
records the meals as part compensation for services performed or	202
work done;	203
(6) Sales of motor fuel upon receipt, use, distribution,	204
or sale of which in this state a tax is imposed by the law of	205
this state, but this exemption shall not apply to the sale of	206
motor fuel on which a refund of the tax is allowable under	207
division (A) of section 5735.14 of the Revised Code; and the tax	208
commissioner may deduct the amount of tax levied by this section	209
applicable to the price of motor fuel when granting a refund of	210
motor fuel tax pursuant to division (A) of section 5735.14 of	211
the Revised Code and shall cause the amount deducted to be paid	212
into the general revenue fund of this state;	213
(7) Sales of natural gas by a natural gas company or	214
municipal gas utility, of water by a water-works company, or of	215
steam by a heating company, if in each case the thing sold is	216
delivered to consumers through pipes or conduits, and all sales	217
of communications services by a telegraph company, all terms as	218
defined in section 5727.01 of the Revised Code, and sales of	219
electricity delivered through wires;	220
(8) Casual sales by a person, or auctioneer employed	221
directly by the person to conduct such sales, except as to such	222
sales of motor vehicles, watercraft or outboard motors required	223
to be titled under section 1548.06 of the Revised Code,	224

watercraft documented with the United States coast guard, 225
snowmobiles, and all-purpose vehicles as defined in section 226
4519.01 of the Revised Code; 227

(9) (a) Sales of services or tangible personal property, 228
other than motor vehicles, mobile homes, and manufactured homes, 229
by churches, organizations exempt from taxation under section 230
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 231
organizations operated exclusively for charitable purposes as 232
defined in division (B) (12) of this section, provided that the 233
number of days on which such tangible personal property or 234
services, other than items never subject to the tax, are sold 235
does not exceed six in any calendar year, except as otherwise 236
provided in division (B) (9) (b) of this section. If the number of 237
days on which such sales are made exceeds six in any calendar 238
year, the church or organization shall be considered to be 239
engaged in business and all subsequent sales by it shall be 240
subject to the tax. In counting the number of days, all sales by 241
groups within a church or within an organization shall be 242
considered to be sales of that church or organization. 243

(b) The limitation on the number of days on which tax- 244
exempt sales may be made by a church or organization under 245
division (B) (9) (a) of this section does not apply to sales made 246
by student clubs and other groups of students of a primary or 247
secondary school, or a parent-teacher association, booster 248
group, or similar organization that raises money to support or 249
fund curricular or extracurricular activities of a primary or 250
secondary school. 251

(c) Divisions (B) (9) (a) and (b) of this section do not 252
apply to sales by a noncommercial educational radio or 253
television broadcasting station. 254

(10) Sales not within the taxing power of this state under the Constitution or laws of the United States or the Constitution of this state;	255 256 257
(11) Except for transactions that are sales under division (B) (3) (r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;	258 259 260 261
(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c) (3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.	262 263 264 265 266 267 268 269 270 271 272 273 274
"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal	275 276 277 278 279 280 281 282 283 284

adoption service or a county humane society; the promotion of 285
education by an institution of learning that maintains a faculty 286
of qualified instructors, teaches regular continuous courses of 287
study, and confers a recognized diploma upon completion of a 288
specific curriculum; the operation of a parent-teacher 289
association, booster group, or similar organization primarily 290
engaged in the promotion and support of the curricular or 291
extracurricular activities of a primary or secondary school; the 292
operation of a community or area center in which presentations 293
in music, dramatics, the arts, and related fields are made in 294
order to foster public interest and education therein; the 295
production of performances in music, dramatics, and the arts; or 296
the promotion of education by an organization engaged in 297
carrying on research in, or the dissemination of, scientific and 298
technological knowledge and information primarily for the 299
public. 300

Nothing in this division shall be deemed to exempt sales 301
to any organization for use in the operation or carrying on of a 302
trade or business, or sales to a home for the aged for use in 303
the operation of independent living facilities as defined in 304
division (A) of section 5709.12 of the Revised Code. 305

(13) Building and construction materials and services sold 306
to construction contractors for incorporation into a structure 307
or improvement to real property under a construction contract 308
with this state or a political subdivision of this state, or 309
with the United States government or any of its agencies; 310
building and construction materials and services sold to 311
construction contractors for incorporation into a structure or 312
improvement to real property that are accepted for ownership by 313
this state or any of its political subdivisions, or by the 314
United States government or any of its agencies at the time of 315

completion of the structures or improvements; building and 316
construction materials sold to construction contractors for 317
incorporation into a horticulture structure or livestock 318
structure for a person engaged in the business of horticulture 319
or producing livestock; building materials and services sold to 320
a construction contractor for incorporation into a house of 321
public worship or religious education, or a building used 322
exclusively for charitable purposes under a construction 323
contract with an organization whose purpose is as described in 324
division (B) (12) of this section; building materials and 325
services sold to a construction contractor for incorporation 326
into a building under a construction contract with an 327
organization exempt from taxation under section 501(c) (3) of the 328
Internal Revenue Code of 1986 when the building is to be used 329
exclusively for the organization's exempt purposes; building and 330
construction materials sold for incorporation into the original 331
construction of a sports facility under section 307.696 of the 332
Revised Code; building and construction materials and services 333
sold to a construction contractor for incorporation into real 334
property outside this state if such materials and services, when 335
sold to a construction contractor in the state in which the real 336
property is located for incorporation into real property in that 337
state, would be exempt from a tax on sales levied by that state; 338
building and construction materials for incorporation into a 339
transportation facility pursuant to a public-private agreement 340
entered into under sections 5501.70 to 5501.83 of the Revised 341
Code; and, until one calendar year after the construction of a 342
convention center that qualifies for property tax exemption 343
under section 5709.084 of the Revised Code is completed, 344
building and construction materials and services sold to a 345
construction contractor for incorporation into the real property 346
comprising that convention center; 347

(14) Sales of ships or vessels or rail rolling stock used 348
or to be used principally in interstate or foreign commerce, and 349
repairs, alterations, fuel, and lubricants for such ships or 350
vessels or rail rolling stock; 351

(15) Sales to persons primarily engaged in any of the 352
activities mentioned in division (B)(42)(a), (g), or (h) of this 353
section, to persons engaged in making retail sales, or to 354
persons who purchase for sale from a manufacturer tangible 355
personal property that was produced by the manufacturer in 356
accordance with specific designs provided by the purchaser, of 357
packages, including material, labels, and parts for packages, 358
and of machinery, equipment, and material for use primarily in 359
packaging tangible personal property produced for sale, 360
including any machinery, equipment, and supplies used to make 361
labels or packages, to prepare packages or products for 362
labeling, or to label packages or products, by or on the order 363
of the person doing the packaging, or sold at retail. "Packages" 364
includes bags, baskets, cartons, crates, boxes, cans, bottles, 365
bindings, wrappings, and other similar devices and containers, 366
but does not include motor vehicles or bulk tanks, trailers, or 367
similar devices attached to motor vehicles. "Packaging" means 368
placing in a package. Division (B)(15) of this section does not 369
apply to persons engaged in highway transportation for hire. 370

(16) Sales of food to persons using supplemental nutrition 371
assistance program benefits to purchase the food. As used in 372
this division, "food" has the same meaning as in 7 U.S.C. 2012 373
and federal regulations adopted pursuant to the Food and 374
Nutrition Act of 2008. 375

(17) Sales to persons engaged in farming, agriculture, 376
horticulture, or floriculture, of tangible personal property for 377

use or consumption primarily in the production by farming, 378
agriculture, horticulture, or floriculture of other tangible 379
personal property for use or consumption primarily in the 380
production of tangible personal property for sale by farming, 381
agriculture, horticulture, or floriculture; or material and 382
parts for incorporation into any such tangible personal property 383
for use or consumption in production; and of tangible personal 384
property for such use or consumption in the conditioning or 385
holding of products produced by and for such use, consumption, 386
or sale by persons engaged in farming, agriculture, 387
horticulture, or floriculture, except where such property is 388
incorporated into real property; 389

(18) Sales of drugs for a human being that may be 390
dispensed only pursuant to a prescription; insulin as recognized 391
in the official United States pharmacopoeia; urine and blood 392
testing materials when used by diabetics or persons with 393
hypoglycemia to test for glucose or acetone; hypodermic syringes 394
and needles when used by diabetics for insulin injections; 395
epoetin alfa when purchased for use in the treatment of persons 396
with medical disease; hospital beds when purchased by hospitals, 397
nursing homes, or other medical facilities; and medical oxygen 398
and medical oxygen-dispensing equipment when purchased by 399
hospitals, nursing homes, or other medical facilities; 400

(19) Sales of prosthetic devices, durable medical 401
equipment for home use, or mobility enhancing equipment, when 402
made pursuant to a prescription and when such devices or 403
equipment are for use by a human being. 404

(20) Sales of emergency and fire protection vehicles and 405
equipment to nonprofit organizations for use solely in providing 406
fire protection and emergency services, including trauma care 407

and emergency medical services, for political subdivisions of 408
the state; 409

(21) Sales of tangible personal property manufactured in 410
this state, if sold by the manufacturer in this state to a 411
retailer for use in the retail business of the retailer outside 412
of this state and if possession is taken from the manufacturer 413
by the purchaser within this state for the sole purpose of 414
immediately removing the same from this state in a vehicle owned 415
by the purchaser; 416

(22) Sales of services provided by the state or any of its 417
political subdivisions, agencies, instrumentalities, 418
institutions, or authorities, or by governmental entities of the 419
state or any of its political subdivisions, agencies, 420
instrumentalities, institutions, or authorities; 421

(23) Sales of motor vehicles to nonresidents of this state 422
under the circumstances described in division (B) of section 423
5739.029 of the Revised Code; 424

(24) Sales to persons engaged in the preparation of eggs 425
for sale of tangible personal property used or consumed directly 426
in such preparation, including such tangible personal property 427
used for cleaning, sanitizing, preserving, grading, sorting, and 428
classifying by size; packages, including material and parts for 429
packages, and machinery, equipment, and material for use in 430
packaging eggs for sale; and handling and transportation 431
equipment and parts therefor, except motor vehicles licensed to 432
operate on public highways, used in intraplant or interplant 433
transfers or shipment of eggs in the process of preparation for 434
sale, when the plant or plants within or between which such 435
transfers or shipments occur are operated by the same person. 436
"Packages" includes containers, cases, baskets, flats, fillers, 437

filler flats, cartons, closure materials, labels, and labeling	438
materials, and "packaging" means placing therein.	439
(25) (a) Sales of water to a consumer for residential use;	440
(b) Sales of water by a nonprofit corporation engaged	441
exclusively in the treatment, distribution, and sale of water to	442
consumers, if such water is delivered to consumers through pipes	443
or tubing.	444
(26) Fees charged for inspection or reinspection of motor	445
vehicles under section 3704.14 of the Revised Code;	446
(27) Sales to persons licensed to conduct a food service	447
operation pursuant to section 3717.43 of the Revised Code, of	448
tangible personal property primarily used directly for the	449
following:	450
(a) To prepare food for human consumption for sale;	451
(b) To preserve food that has been or will be prepared for	452
human consumption for sale by the food service operator, not	453
including tangible personal property used to display food for	454
selection by the consumer;	455
(c) To clean tangible personal property used to prepare or	456
serve food for human consumption for sale.	457
(28) Sales of animals by nonprofit animal adoption	458
services or county humane societies;	459
(29) Sales of services to a corporation described in	460
division (A) of section 5709.72 of the Revised Code, and sales	461
of tangible personal property that qualifies for exemption from	462
taxation under section 5709.72 of the Revised Code;	463
(30) Sales and installation of agricultural land tile, as	464

defined in division (B) (5) (a) of section 5739.01 of the Revised Code; 465
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(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code; 467
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(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property; 470
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(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters; 476
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(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B) (42) (a) or (n) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite 481
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broadcasting service.	495
(35) (a) Sales where the purpose of the consumer is to use	496
or consume the things transferred in making retail sales and	497
consisting of newspaper inserts, catalogues, coupons, flyers,	498
gift certificates, or other advertising material that prices and	499
describes tangible personal property offered for retail sale.	500
(b) Sales to direct marketing vendors of preliminary	501
materials such as photographs, artwork, and typesetting that	502
will be used in printing advertising material; and of printed	503
matter that offers free merchandise or chances to win sweepstake	504
prizes and that is mailed to potential customers with	505
advertising material described in division (B) (35) (a) of this	506
section;	507
(c) Sales of equipment such as telephones, computers,	508
facsimile machines, and similar tangible personal property	509
primarily used to accept orders for direct marketing retail	510
sales.	511
(d) Sales of automatic food vending machines that preserve	512
food with a shelf life of forty-five days or less by	513
refrigeration and dispense it to the consumer.	514
For purposes of division (B) (35) of this section, "direct	515
marketing" means the method of selling where consumers order	516
tangible personal property by United States mail, delivery	517
service, or telecommunication and the vendor delivers or ships	518
the tangible personal property sold to the consumer from a	519
warehouse, catalogue distribution center, or similar fulfillment	520
facility by means of the United States mail, delivery service,	521
or common carrier.	522
(36) Sales to a person engaged in the business of	523

horticulture or producing livestock of materials to be	524
incorporated into a horticulture structure or livestock	525
structure;	526
(37) Sales of personal computers, computer monitors,	527
computer keyboards, modems, and other peripheral computer	528
equipment to an individual who is licensed or certified to teach	529
in an elementary or a secondary school in this state for use by	530
that individual in preparation for teaching elementary or	531
secondary school students;	532
(38) Sales to a professional racing team of any of the	533
following:	534
(a) Motor racing vehicles;	535
(b) Repair services for motor racing vehicles;	536
(c) Items of property that are attached to or incorporated	537
in motor racing vehicles, including engines, chassis, and all	538
other components of the vehicles, and all spare, replacement,	539
and rebuilt parts or components of the vehicles; except not	540
including tires, consumable fluids, paint, and accessories	541
consisting of instrumentation sensors and related items added to	542
the vehicle to collect and transmit data by means of telemetry	543
and other forms of communication.	544
(39) Sales of used manufactured homes and used mobile	545
homes, as defined in section 5739.0210 of the Revised Code, made	546
on or after January 1, 2000;	547
(40) Sales of tangible personal property and services to a	548
provider of electricity used or consumed directly and primarily	549
in generating, transmitting, or distributing electricity for use	550
by others, including property that is or is to be incorporated	551
into and will become a part of the consumer's production,	552

transmission, or distribution system and that retains its 553
classification as tangible personal property after 554
incorporation; fuel or power used in the production, 555
transmission, or distribution of electricity; energy conversion 556
equipment as defined in section 5727.01 of the Revised Code; and 557
tangible personal property and services used in the repair and 558
maintenance of the production, transmission, or distribution 559
system, including only those motor vehicles as are specially 560
designed and equipped for such use. The exemption provided in 561
this division shall be in lieu of all other exemptions in 562
division (B) (42) (a) or (n) of this section to which a provider 563
of electricity may otherwise be entitled based on the use of the 564
tangible personal property or service purchased in generating, 565
transmitting, or distributing electricity. 566

(41) Sales to a person providing services under division 567
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 568
personal property and services used directly and primarily in 569
providing taxable services under that section. 570

(42) Sales where the purpose of the purchaser is to do any 571
of the following: 572

(a) To incorporate the thing transferred as a material or 573
a part into tangible personal property to be produced for sale 574
by manufacturing, assembling, processing, or refining; or to use 575
or consume the thing transferred directly in producing tangible 576
personal property for sale by mining, including, without 577
limitation, the extraction from the earth of all substances that 578
are classed geologically as minerals, or directly in the 579
rendition of a public utility service, except that the sales tax 580
levied by this section shall be collected upon all meals, 581
drinks, and food for human consumption sold when transporting 582

persons. This paragraph does not exempt from "retail sale" or 583
"sales at retail" the sale of tangible personal property that is 584
to be incorporated into a structure or improvement to real 585
property. 586

(b) To hold the thing transferred as security for the 587
performance of an obligation of the vendor; 588

(c) To resell, hold, use, or consume the thing transferred 589
as evidence of a contract of insurance; 590

(d) To use or consume the thing directly in commercial 591
fishing; 592

(e) To incorporate the thing transferred as a material or 593
a part into, or to use or consume the thing transferred directly 594
in the production of, magazines distributed as controlled 595
circulation publications; 596

(f) To use or consume the thing transferred in the 597
production and preparation in suitable condition for market and 598
sale of printed, imprinted, overprinted, lithographic, 599
multilithic, blueprinted, photostatic, or other productions or 600
reproductions of written or graphic matter; 601

(g) To use the thing transferred, as described in section 602
5739.011 of the Revised Code, primarily in a manufacturing 603
operation to produce tangible personal property for sale; 604

(h) To use the benefit of a warranty, maintenance or 605
service contract, or similar agreement, as described in division 606
(B) (7) of section 5739.01 of the Revised Code, to repair or 607
maintain tangible personal property, if all of the property that 608
is the subject of the warranty, contract, or agreement would not 609
be subject to the tax imposed by this section; 610

(i) To use the thing transferred as qualified research and development equipment; 611
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(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section. 613
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(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B) (7) of section 5739.01 of the Revised Code; 626
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(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public; 633
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(m) To use tangible personal property to perform a service listed in division (B) (3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service; 635
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(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(p) To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced;

(q) To use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production.

As used in division (B) (42) (q) of this section, "production" means operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth.

(i) For the purposes of division (B) (42) (q) of this section, the "thing transferred" includes, but is not limited to, any of the following:

(I) Services provided in the construction of permanent access roads, services provided in the construction of the well site, and services provided in the construction of temporary impoundments;

(II) Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs;

(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;

(IV) Casing, tubulars, and float and centralizing equipment;

(V) Trailers to which production equipment is attached;

(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;

(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;

(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;

(IX) Pressure pumping equipment;

(X) Artificial lift systems equipment;	696
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon <u>hydrocarbon</u> phases and produced water;	697 698 699
(XII) Tangible personal property directly used to control production equipment.	700 701
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	702 703 704
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	705 706 707
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	708 709 710
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	711 712 713
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	714 715 716 717
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	718 719 720 721
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	722 723

(VII) Well site fencing, lighting, or security systems;	724
(VIII) Communication devices or services;	725
(IX) Office supplies;	726
(X) Trailers used as offices or lodging;	727
(XI) Motor vehicles of any kind;	728
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	729 730
(XIII) Tangible personal property used primarily as a safety device;	731 732
(XIV) Data collection or monitoring devices;	733
(XV) Access ladders, stairs, or platforms attached to storage tanks.	734 735
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	736 737 738 739 740
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section.	741 742 743 744
As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.	745 746 747
(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents	748 749 750

or wax, to the consumer for the consumer's use on the premises 751
in washing, cleaning, or waxing a motor vehicle, provided no 752
other personal property or personal service is provided as part 753
of the transaction. 754

(44) Sales of replacement and modification parts for 755
engines, airframes, instruments, and interiors in, and paint 756
for, aircraft used primarily in a fractional aircraft ownership 757
program, and sales of services for the repair, modification, and 758
maintenance of such aircraft, and machinery, equipment, and 759
supplies primarily used to provide those services. 760

(45) Sales of telecommunications service that is used 761
directly and primarily to perform the functions of a call 762
center. As used in this division, "call center" means any 763
physical location where telephone calls are placed or received 764
in high volume for the purpose of making sales, marketing, 765
customer service, technical support, or other specialized 766
business activity, and that employs at least fifty individuals 767
that engage in call center activities on a full-time basis, or 768
sufficient individuals to fill fifty full-time equivalent 769
positions. 770

(46) Sales by a telecommunications service vendor of 900 771
service to a subscriber. This division does not apply to 772
information services, as defined in division (FF) of section 773
5739.01 of the Revised Code. 774

(47) Sales of value-added non-voice data service. This 775
division does not apply to any similar service that is not 776
otherwise a telecommunications service. 777

(48) (a) Sales of machinery, equipment, and software to a 778
qualified direct selling entity for use in a warehouse or 779

distribution center primarily for storing, transporting, or 780
otherwise handling inventory that is held for sale to 781
independent salespersons who operate as direct sellers and that 782
is held primarily for distribution outside this state; 783

(b) As used in division (B) (48) (a) of this section: 784

(i) "Direct seller" means a person selling consumer 785
products to individuals for personal or household use and not 786
from a fixed retail location, including selling such product at 787
in-home product demonstrations, parties, and other one-on-one 788
selling. 789

(ii) "Qualified direct selling entity" means an entity 790
selling to direct sellers at the time the entity enters into a 791
tax credit agreement with the tax credit authority pursuant to 792
section 122.17 of the Revised Code, provided that the agreement 793
was entered into on or after January 1, 2007. Neither 794
contingencies relevant to the granting of, nor later 795
developments with respect to, the tax credit shall impair the 796
status of the qualified direct selling entity under division (B) 797
(48) of this section after execution of the tax credit agreement 798
by the tax credit authority. 799

(c) Division (B) (48) of this section is limited to 800
machinery, equipment, and software first stored, used, or 801
consumed in this state within the period commencing June 24, 802
2008, and ending on the date that is five years after that date. 803

(49) Sales of materials, parts, equipment, or engines used 804
in the repair or maintenance of aircraft or avionics systems of 805
such aircraft, and sales of repair, remodeling, replacement, or 806
maintenance services in this state performed on aircraft or on 807
an aircraft's avionics, engine, or component materials or parts. 808

As used in division (B) (49) of this section, "aircraft" means 809
aircraft of more than six thousand pounds maximum certified 810
takeoff weight or used exclusively in general aviation. 811

(50) Sales of full flight simulators that are used for 812
pilot or flight-crew training, sales of repair or replacement 813
parts or components, and sales of repair or maintenance services 814
for such full flight simulators. "Full flight simulator" means a 815
replica of a specific type, or make, model, and series of 816
aircraft cockpit. It includes the assemblage of equipment and 817
computer programs necessary to represent aircraft operations in 818
ground and flight conditions, a visual system providing an out- 819
of-the-cockpit view, and a system that provides cues at least 820
equivalent to those of a three-degree-of-freedom motion system, 821
and has the full range of capabilities of the systems installed 822
in the device as described in appendices A and B of part 60 of 823
chapter 1 of title 14 of the Code of Federal Regulations. 824

(51) Any transfer or lease of tangible personal property 825
between the state and JobsOhio in accordance with section 826
4313.02 of the Revised Code. 827

(52) (a) Sales to a qualifying corporation. 828

(b) As used in division (B) (52) of this section: 829

(i) "Qualifying corporation" means a nonprofit corporation 830
organized in this state that leases from an eligible county 831
land, buildings, structures, fixtures, and improvements to the 832
land that are part of or used in a public recreational facility 833
used by a major league professional athletic team or a class A 834
to class AAA minor league affiliate of a major league 835
professional athletic team for a significant portion of the 836
team's home schedule, provided the following apply: 837

(I) The facility is leased from the eligible county 838
pursuant to a lease that requires substantially all of the 839
revenue from the operation of the business or activity conducted 840
by the nonprofit corporation at the facility in excess of 841
operating costs, capital expenditures, and reserves to be paid 842
to the eligible county at least once per calendar year. 843

(II) Upon dissolution and liquidation of the nonprofit 844
corporation, all of its net assets are distributable to the 845
board of commissioners of the eligible county from which the 846
corporation leases the facility. 847

(ii) "Eligible county" has the same meaning as in section 848
307.695 of the Revised Code. 849

(53) Sales to or by a cable service provider, video 850
service provider, or radio or television broadcast station 851
regulated by the federal government of cable service or 852
programming, video service or programming, audio service or 853
programming, or electronically transferred digital audiovisual 854
or audio work. As used in division (B) (53) of this section, 855
"cable service" and "cable service provider" have the same 856
meanings as in section 1332.01 of the Revised Code, and "video 857
service," "video service provider," and "video programming" have 858
the same meanings as in section 1332.21 of the Revised Code. 859

(54) Sales of investment metal bullion and investment 860
coins. "Investment metal bullion" means any bullion described in 861
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 862
whether that bullion is in the physical possession of a trustee. 863
"Investment coin" means any coin composed primarily of gold, 864
silver, platinum, or palladium. 865

(55) Sales of a digital audio work electronically 866

transferred for delivery through use of a machine, such as a juke box, that does all of the following:

- (a) Accepts direct payments to operate;
- (b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section;
- (c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.

(56) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:

- (i) An item of clothing, the price of which is seventy-five dollars or less;
- (ii) An item of school supplies, the price of which is twenty dollars or less;
- (iii) An item of school instructional material, the price of which is twenty dollars or less.

(b) As used in division (B) (56) of this section:

- (i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers;

sneakers; socks and stockings; steel-toed shoes; underwear; 895
uniforms, athletic and nonathletic; and wedding apparel. 896
"Clothing" does not include items purchased for use in a trade 897
or business; clothing accessories or equipment; protective 898
equipment; sports or recreational equipment; belt buckles sold 899
separately; costume masks sold separately; patches and emblems 900
sold separately; sewing equipment and supplies including, but 901
not limited to, knitting needles, patterns, pins, scissors, 902
sewing machines, sewing needles, tape measures, and thimbles; 903
and sewing materials that become part of "clothing" including, 904
but not limited to, buttons, fabric, lace, thread, yarn, and 905
zippers. 906

(ii) "School supplies" means items commonly used by a 907
student in a course of study. "School supplies" includes only 908
the following items: binders; book bags; calculators; cellophane 909
tape; blackboard chalk; compasses; composition books; crayons; 910
erasers; folders, expandable, pocket, plastic, and manila; glue, 911
paste, and paste sticks; highlighters; index cards; index card 912
boxes; legal pads; lunch boxes; markers; notebooks; paper, 913
loose-leaf ruled notebook paper, copy paper, graph paper, 914
tracing paper, manila paper, colored paper, poster board, and 915
construction paper; pencil boxes and other school supply boxes; 916
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 917
and writing tablets. "School supplies" does not include any item 918
purchased for use in a trade or business. 919

(iii) "School instructional material" means written 920
material commonly used by a student in a course of study as a 921
reference and to learn the subject being taught. "School 922
instructional material" includes only the following items: 923
reference books, reference maps and globes, textbooks, and 924
workbooks. "School instructional material" does not include any 925

material purchased for use in a trade or business. 926

(57) Sales of tangible personal property that is not 927
required to be registered or licensed under the laws of this 928
state to a citizen of a foreign nation that is not a citizen of 929
the United States, provided the property is delivered to a 930
person in this state that is not a related member of the 931
purchaser, is physically present in this state for the sole 932
purpose of temporary storage and package consolidation, and is 933
subsequently delivered to the purchaser at a delivery address in 934
a foreign nation. As used in division (B) (56) of this section, 935
"related member" has the same meaning as in section 5733.042 of 936
the Revised Code, and "temporary storage" means the storage of 937
tangible personal property for a period of not more than sixty 938
days. 939

(58) Sales in a nonpackaged form of firewood, kerosene, 940
liquid petroleum gas, coal, or number two fuel oil that is to be 941
used for heating purposes. 942

(C) For the purpose of the proper administration of this 943
chapter, and to prevent the evasion of the tax, it is presumed 944
that all sales made in this state are subject to the tax until 945
the contrary is established. 946

(D) The levy of this tax on retail sales of recreation and 947
sports club service shall not prevent a municipal corporation 948
from levying any tax on recreation and sports club dues or on 949
any income generated by recreation and sports club dues. 950

(E) The tax collected by the vendor from the consumer 951
under this chapter is not part of the price, but is a tax 952
collection for the benefit of the state, and of counties levying 953
an additional sales tax pursuant to section 5739.021 or 5739.026 954

of the Revised Code and of transit authorities levying an 955
additional sales tax pursuant to section 5739.023 of the Revised 956
Code. Except for the discount authorized under section 5739.12 957
of the Revised Code and the effects of any rounding pursuant to 958
section 5703.055 of the Revised Code, no person other than the 959
state or such a county or transit authority shall derive any 960
benefit from the collection or payment of the tax levied by this 961
section or section 5739.021, 5739.023, or 5739.026 of the 962
Revised Code. 963

Sec. 5739.212. On or before the twentieth day of the month 964
in which a certification is made under division (B) (1) of 965
section 5739.21 of the Revised Code, the director of budget and 966
management shall pay from the general revenue fund to the county 967
treasurer of a county or fiscal officer of a transit authority 968
levying a tax or taxes pursuant to section 5739.021, 5739.023, 969
or 5739.026 of the Revised Code an amount equal to the 970
difference obtained by subtracting (a) the amount of the payment 971
provided to the county treasurer or fiscal officer under 972
division (D) of section 5739.21 of the Revised Code for the 973
applicable month from (b) the amount the tax commissioner 974
estimates would have been payable to that county treasurer or 975
fiscal officer under that division for that month if division 976
(B) (58) of section 5739.02 of the Revised Code had not been 977
enacted. A payment received by a county treasurer or fiscal 978
officer under this division shall be deposited as would revenue 979
from such tax or taxes levied by the county or transit authority 980
as required under section 5739.211 of the Revised Code 981
proportionately according to the ratio that the rate of each 982
such tax levied by the county or transit authority bears to the 983
total rate of all such taxes levied thereby. 984

Sec. 5741.033. On or before the twentieth day of the month 985

in which a certification under division (B) of section 5741.03 986
of the Revised Code is made, the director of budget and 987
management shall pay from the general revenue fund to the county 988
treasurer of a county or fiscal officer of a transit authority 989
levying a tax or taxes pursuant to section 5741.021, 5741.022, 990
or 5741.023 of the Revised Code an amount equal to the 991
difference obtained by subtracting (a) the amount of the payment 992
provided to the county treasurer or fiscal officer under 993
division (B) of section 5741.03 of the Revised Code for the 994
applicable month from (b) the amount the tax commissioner 995
estimates would have been payable to that county treasurer or 996
fiscal officer under that division for that month if division 997
(B) (58) of section 5739.02 of the Revised Code had not been 998
enacted. A payment received by a county treasurer or fiscal 999
officer under this division shall be deposited as would revenue 1000
from such tax or taxes levied by the county or transit authority 1001
as required under section 5741.031 of the Revised Code 1002
proportionately according to the ratio that the rate of each 1003
such tax levied by the county or transit authority bears to the 1004
total rate of all such taxes levied thereby. 1005

Section 2. That existing sections 131.44, 131.51, and 1006
5739.02 of the Revised Code are hereby repealed. 1007

Section 3. The amendment by this act of section 5739.02 of 1008
the Revised Code applies on and after the first day of the first 1009
month that begins after the effective date of this act. 1010