

**As Passed by the Senate**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 172**

**Senator Jordan**

**Cosponsors: Senators Seitz, Jones, Beagle, Burke, Coley, Eklund, Hite, Hottinger,  
Lehner, Patton, Peterson, Uecker**

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**A BILL**

To amend section 5739.02 of the Revised Code to 1  
exempt from sales and use taxes the sale or use 2  
of investment metal bullion and coins. 3

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

**Section 1.** That section 5739.02 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 5739.02.** For the purpose of providing revenue with 6  
which to meet the needs of the state, for the use of the general 7  
revenue fund of the state, for the purpose of securing a 8  
thorough and efficient system of common schools throughout the 9  
state, for the purpose of affording revenues, in addition to 10  
those from general property taxes, permitted under 11  
constitutional limitations, and from other sources, for the 12  
support of local governmental functions, and for the purpose of 13  
reimbursing the state for the expense of administering this 14  
chapter, an excise tax is hereby levied on each retail sale made 15  
in this state. 16

(A) (1) The tax shall be collected as provided in section 17

5739.025 of the Revised Code. The rate of the tax shall be five 18  
and three-fourths per cent. The tax applies and is collectible 19  
when the sale is made, regardless of the time when the price is 20  
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term 22  
of more than thirty days or an indefinite term with a minimum 23  
period of more than thirty days, of any motor vehicles designed 24  
by the manufacturer to carry a load of not more than one ton, 25  
watercraft, outboard motor, or aircraft, or of any tangible 26  
personal property, other than motor vehicles designed by the 27  
manufacturer to carry a load of more than one ton, to be used by 28  
the lessee or renter primarily for business purposes, the tax 29  
shall be collected by the vendor at the time the lease or rental 30  
is consummated and shall be calculated by the vendor on the 31  
basis of the total amount to be paid by the lessee or renter 32  
under the lease agreement. If the total amount of the 33  
consideration for the lease or rental includes amounts that are 34  
not calculated at the time the lease or rental is executed, the 35  
tax shall be calculated and collected by the vendor at the time 36  
such amounts are billed to the lessee or renter. In the case of 37  
an open-end lease or rental, the tax shall be calculated by the 38  
vendor on the basis of the total amount to be paid during the 39  
initial fixed term of the lease or rental, and for each 40  
subsequent renewal period as it comes due. As used in this 41  
division, "motor vehicle" has the same meaning as in section 42  
4501.01 of the Revised Code, and "watercraft" includes an 43  
outdrive unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45  
similar provision that applies if the renewal clause is not 46  
exercised is presumed to be a sham transaction. In such a case, 47  
the tax shall be calculated and paid on the basis of the entire 48

length of the lease period, including any renewal periods, until 49  
the termination penalty or similar provision no longer applies. 50  
The taxpayer shall bear the burden, by a preponderance of the 51  
evidence, that the transaction or series of transactions is not 52  
a sham transaction. 53

(3) Except as provided in division (A)(2) of this section, 54  
in the case of a sale, the price of which consists in whole or 55  
in part of the lease or rental of tangible personal property, 56  
the tax shall be measured by the installments of that lease or 57  
rental. 58

(4) In the case of a sale of a physical fitness facility 59  
service or recreation and sports club service, the price of 60  
which consists in whole or in part of a membership for the 61  
receipt of the benefit of the service, the tax applicable to the 62  
sale shall be measured by the installments thereof. 63

(B) The tax does not apply to the following: 64

(1) Sales to the state or any of its political 65  
subdivisions, or to any other state or its political 66  
subdivisions if the laws of that state exempt from taxation 67  
sales made to this state and its political subdivisions; 68

(2) Sales of food for human consumption off the premises 69  
where sold; 70

(3) Sales of food sold to students only in a cafeteria, 71  
dormitory, fraternity, or sorority maintained in a private, 72  
public, or parochial school, college, or university; 73

(4) Sales of newspapers and sales or transfers of 74  
magazines distributed as controlled circulation publications; 75

(5) The furnishing, preparing, or serving of meals without 76

charge by an employer to an employee provided the employer 77  
records the meals as part compensation for services performed or 78  
work done; 79

(6) Sales of motor fuel upon receipt, use, distribution, 80  
or sale of which in this state a tax is imposed by the law of 81  
this state, but this exemption shall not apply to the sale of 82  
motor fuel on which a refund of the tax is allowable under 83  
division (A) of section 5735.14 of the Revised Code; and the tax 84  
commissioner may deduct the amount of tax levied by this section 85  
applicable to the price of motor fuel when granting a refund of 86  
motor fuel tax pursuant to division (A) of section 5735.14 of 87  
the Revised Code and shall cause the amount deducted to be paid 88  
into the general revenue fund of this state; 89

(7) Sales of natural gas by a natural gas company, of 90  
water by a water-works company, or of steam by a heating 91  
company, if in each case the thing sold is delivered to 92  
consumers through pipes or conduits, and all sales of 93  
communications services by a telegraph company, all terms as 94  
defined in section 5727.01 of the Revised Code, and sales of 95  
electricity delivered through wires; 96

(8) Casual sales by a person, or auctioneer employed 97  
directly by the person to conduct such sales, except as to such 98  
sales of motor vehicles, watercraft or outboard motors required 99  
to be titled under section 1548.06 of the Revised Code, 100  
watercraft documented with the United States coast guard, 101  
snowmobiles, and all-purpose vehicles as defined in section 102  
4519.01 of the Revised Code; 103

(9) (a) Sales of services or tangible personal property, 104  
other than motor vehicles, mobile homes, and manufactured homes, 105  
by churches, organizations exempt from taxation under section 106

501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 107  
organizations operated exclusively for charitable purposes as 108  
defined in division (B) (12) of this section, provided that the 109  
number of days on which such tangible personal property or 110  
services, other than items never subject to the tax, are sold 111  
does not exceed six in any calendar year, except as otherwise 112  
provided in division (B) (9) (b) of this section. If the number of 113  
days on which such sales are made exceeds six in any calendar 114  
year, the church or organization shall be considered to be 115  
engaged in business and all subsequent sales by it shall be 116  
subject to the tax. In counting the number of days, all sales by 117  
groups within a church or within an organization shall be 118  
considered to be sales of that church or organization. 119

(b) The limitation on the number of days on which tax- 120  
exempt sales may be made by a church or organization under 121  
division (B) (9) (a) of this section does not apply to sales made 122  
by student clubs and other groups of students of a primary or 123  
secondary school, or a parent-teacher association, booster 124  
group, or similar organization that raises money to support or 125  
fund curricular or extracurricular activities of a primary or 126  
secondary school. 127

(c) Divisions (B) (9) (a) and (b) of this section do not 128  
apply to sales by a noncommercial educational radio or 129  
television broadcasting station. 130

(10) Sales not within the taxing power of this state under 131  
the Constitution or laws of the United States or the 132  
Constitution of this state; 133

(11) Except for transactions that are sales under division 134  
(B) (3) (r) of section 5739.01 of the Revised Code, the 135  
transportation of persons or property, unless the transportation 136

is by a private investigation and security service; 137

(12) Sales of tangible personal property or services to 138  
churches, to organizations exempt from taxation under section 139  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 140  
nonprofit organizations operated exclusively for charitable 141  
purposes in this state, no part of the net income of which 142  
inures to the benefit of any private shareholder or individual, 143  
and no substantial part of the activities of which consists of 144  
carrying on propaganda or otherwise attempting to influence 145  
legislation; sales to offices administering one or more homes 146  
for the aged or one or more hospital facilities exempt under 147  
section 140.08 of the Revised Code; and sales to organizations 148  
described in division (D) of section 5709.12 of the Revised 149  
Code. 150

"Charitable purposes" means the relief of poverty; the 151  
improvement of health through the alleviation of illness, 152  
disease, or injury; the operation of an organization exclusively 153  
for the provision of professional, laundry, printing, and 154  
purchasing services to hospitals or charitable institutions; the 155  
operation of a home for the aged, as defined in section 5701.13 156  
of the Revised Code; the operation of a radio or television 157  
broadcasting station that is licensed by the federal 158  
communications commission as a noncommercial educational radio 159  
or television station; the operation of a nonprofit animal 160  
adoption service or a county humane society; the promotion of 161  
education by an institution of learning that maintains a faculty 162  
of qualified instructors, teaches regular continuous courses of 163  
study, and confers a recognized diploma upon completion of a 164  
specific curriculum; the operation of a parent-teacher 165  
association, booster group, or similar organization primarily 166  
engaged in the promotion and support of the curricular or 167

extracurricular activities of a primary or secondary school; the 168  
operation of a community or area center in which presentations 169  
in music, dramatics, the arts, and related fields are made in 170  
order to foster public interest and education therein; the 171  
production of performances in music, dramatics, and the arts; or 172  
the promotion of education by an organization engaged in 173  
carrying on research in, or the dissemination of, scientific and 174  
technological knowledge and information primarily for the 175  
public. 176

Nothing in this division shall be deemed to exempt sales 177  
to any organization for use in the operation or carrying on of a 178  
trade or business, or sales to a home for the aged for use in 179  
the operation of independent living facilities as defined in 180  
division (A) of section 5709.12 of the Revised Code. 181

(13) Building and construction materials and services sold 182  
to construction contractors for incorporation into a structure 183  
or improvement to real property under a construction contract 184  
with this state or a political subdivision of this state, or 185  
with the United States government or any of its agencies; 186  
building and construction materials and services sold to 187  
construction contractors for incorporation into a structure or 188  
improvement to real property that are accepted for ownership by 189  
this state or any of its political subdivisions, or by the 190  
United States government or any of its agencies at the time of 191  
completion of the structures or improvements; building and 192  
construction materials sold to construction contractors for 193  
incorporation into a horticulture structure or livestock 194  
structure for a person engaged in the business of horticulture 195  
or producing livestock; building materials and services sold to 196  
a construction contractor for incorporation into a house of 197  
public worship or religious education, or a building used 198

exclusively for charitable purposes under a construction 199  
contract with an organization whose purpose is as described in 200  
division (B) (12) of this section; building materials and 201  
services sold to a construction contractor for incorporation 202  
into a building under a construction contract with an 203  
organization exempt from taxation under section 501(c) (3) of the 204  
Internal Revenue Code of 1986 when the building is to be used 205  
exclusively for the organization's exempt purposes; building and 206  
construction materials sold for incorporation into the original 207  
construction of a sports facility under section 307.696 of the 208  
Revised Code; building and construction materials and services 209  
sold to a construction contractor for incorporation into real 210  
property outside this state if such materials and services, when 211  
sold to a construction contractor in the state in which the real 212  
property is located for incorporation into real property in that 213  
state, would be exempt from a tax on sales levied by that state; 214  
building and construction materials for incorporation into a 215  
transportation facility pursuant to a public-private agreement 216  
entered into under sections 5501.70 to 5501.83 of the Revised 217  
Code; and, until one calendar year after the construction of a 218  
convention center that qualifies for property tax exemption 219  
under section 5709.084 of the Revised Code is completed, 220  
building and construction materials and services sold to a 221  
construction contractor for incorporation into the real property 222  
comprising that convention center; 223

(14) Sales of ships or vessels or rail rolling stock used 224  
or to be used principally in interstate or foreign commerce, and 225  
repairs, alterations, fuel, and lubricants for such ships or 226  
vessels or rail rolling stock; 227

(15) Sales to persons primarily engaged in any of the 228  
activities mentioned in division (B) (42) (a), (g), or (h) of this 229



section, to persons engaged in making retail sales, or to 230  
persons who purchase for sale from a manufacturer tangible 231  
personal property that was produced by the manufacturer in 232  
accordance with specific designs provided by the purchaser, of 233  
packages, including material, labels, and parts for packages, 234  
and of machinery, equipment, and material for use primarily in 235  
packaging tangible personal property produced for sale, 236  
including any machinery, equipment, and supplies used to make 237  
labels or packages, to prepare packages or products for 238  
labeling, or to label packages or products, by or on the order 239  
of the person doing the packaging, or sold at retail. "Packages" 240  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 241  
bindings, wrappings, and other similar devices and containers, 242  
but does not include motor vehicles or bulk tanks, trailers, or 243  
similar devices attached to motor vehicles. "Packaging" means 244  
placing in a package. Division (B) (15) of this section does not 245  
apply to persons engaged in highway transportation for hire. 246

(16) Sales of food to persons using supplemental nutrition 247  
assistance program benefits to purchase the food. As used in 248  
this division, "food" has the same meaning as in 7 U.S.C. 2012 249  
and federal regulations adopted pursuant to the Food and 250  
Nutrition Act of 2008. 251

(17) Sales to persons engaged in farming, agriculture, 252  
horticulture, or floriculture, of tangible personal property for 253  
use or consumption primarily in the production by farming, 254  
agriculture, horticulture, or floriculture of other tangible 255  
personal property for use or consumption primarily in the 256  
production of tangible personal property for sale by farming, 257  
agriculture, horticulture, or floriculture; or material and 258  
parts for incorporation into any such tangible personal property 259  
for use or consumption in production; and of tangible personal 260

property for such use or consumption in the conditioning or 261  
holding of products produced by and for such use, consumption, 262  
or sale by persons engaged in farming, agriculture, 263  
horticulture, or floriculture, except where such property is 264  
incorporated into real property; 265

(18) Sales of drugs for a human being that may be 266  
dispensed only pursuant to a prescription; insulin as recognized 267  
in the official United States pharmacopoeia; urine and blood 268  
testing materials when used by diabetics or persons with 269  
hypoglycemia to test for glucose or acetone; hypodermic syringes 270  
and needles when used by diabetics for insulin injections; 271  
epoetin alfa when purchased for use in the treatment of persons 272  
with medical disease; hospital beds when purchased by hospitals, 273  
nursing homes, or other medical facilities; and medical oxygen 274  
and medical oxygen-dispensing equipment when purchased by 275  
hospitals, nursing homes, or other medical facilities; 276

(19) Sales of prosthetic devices, durable medical 277  
equipment for home use, or mobility enhancing equipment, when 278  
made pursuant to a prescription and when such devices or 279  
equipment are for use by a human being. 280

(20) Sales of emergency and fire protection vehicles and 281  
equipment to nonprofit organizations for use solely in providing 282  
fire protection and emergency services, including trauma care 283  
and emergency medical services, for political subdivisions of 284  
the state; 285

(21) Sales of tangible personal property manufactured in 286  
this state, if sold by the manufacturer in this state to a 287  
retailer for use in the retail business of the retailer outside 288  
of this state and if possession is taken from the manufacturer 289  
by the purchaser within this state for the sole purpose of 290

immediately removing the same from this state in a vehicle owned	291
by the purchaser;	292
(22) Sales of services provided by the state or any of its	293
political subdivisions, agencies, instrumentalities,	294
institutions, or authorities, or by governmental entities of the	295
state or any of its political subdivisions, agencies,	296
instrumentalities, institutions, or authorities;	297
(23) Sales of motor vehicles to nonresidents of this state	298
under the circumstances described in division (B) of section	299
5739.029 of the Revised Code;	300
(24) Sales to persons engaged in the preparation of eggs	301
for sale of tangible personal property used or consumed directly	302
in such preparation, including such tangible personal property	303
used for cleaning, sanitizing, preserving, grading, sorting, and	304
classifying by size; packages, including material and parts for	305
packages, and machinery, equipment, and material for use in	306
packaging eggs for sale; and handling and transportation	307
equipment and parts therefor, except motor vehicles licensed to	308
operate on public highways, used in intraplant or interplant	309
transfers or shipment of eggs in the process of preparation for	310
sale, when the plant or plants within or between which such	311
transfers or shipments occur are operated by the same person.	312
"Packages" includes containers, cases, baskets, flats, fillers,	313
filler flats, cartons, closure materials, labels, and labeling	314
materials, and "packaging" means placing therein.	315
(25) (a) Sales of water to a consumer for residential use;	316
(b) Sales of water by a nonprofit corporation engaged	317
exclusively in the treatment, distribution, and sale of water to	318
consumers, if such water is delivered to consumers through pipes	319

or tubing.	320
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	321 322
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	323 324 325 326
(a) To prepare food for human consumption for sale;	327
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	328 329 330 331
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	332 333
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	334 335
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	336 337 338 339
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	340 341 342
(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;	343 344 345
(32) The sale, lease, repair, and maintenance of, parts	346

for, or items attached to or incorporated in, motor vehicles 347  
that are primarily used for transporting tangible personal 348  
property belonging to others by a person engaged in highway 349  
transportation for hire, except for packages and packaging used 350  
for the transportation of tangible personal property; 351

(33) Sales to the state headquarters of any veterans' 352  
organization in this state that is either incorporated and 353  
issued a charter by the congress of the United States or is 354  
recognized by the United States veterans administration, for use 355  
by the headquarters; 356

(34) Sales to a telecommunications service vendor, mobile 357  
telecommunications service vendor, or satellite broadcasting 358  
service vendor of tangible personal property and services used 359  
directly and primarily in transmitting, receiving, switching, or 360  
recording any interactive, one- or two-way electromagnetic 361  
communications, including voice, image, data, and information, 362  
through the use of any medium, including, but not limited to, 363  
poles, wires, cables, switching equipment, computers, and record 364  
storage devices and media, and component parts for the tangible 365  
personal property. The exemption provided in this division shall 366  
be in lieu of all other exemptions under division (B) (42) (a) or 367  
(n) of this section to which the vendor may otherwise be 368  
entitled, based upon the use of the thing purchased in providing 369  
the telecommunications, mobile telecommunications, or satellite 370  
broadcasting service. 371

(35) (a) Sales where the purpose of the consumer is to use 372  
or consume the things transferred in making retail sales and 373  
consisting of newspaper inserts, catalogues, coupons, flyers, 374  
gift certificates, or other advertising material that prices and 375  
describes tangible personal property offered for retail sale. 376

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B) (35) (a) of this section;

(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B) (35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach

in an elementary or a secondary school in this state for use by 406  
that individual in preparation for teaching elementary or 407  
secondary school students; 408

(38) Sales to a professional racing team of any of the 409  
following: 410

(a) Motor racing vehicles; 411

(b) Repair services for motor racing vehicles; 412

(c) Items of property that are attached to or incorporated 413  
in motor racing vehicles, including engines, chassis, and all 414  
other components of the vehicles, and all spare, replacement, 415  
and rebuilt parts or components of the vehicles; except not 416  
including tires, consumable fluids, paint, and accessories 417  
consisting of instrumentation sensors and related items added to 418  
the vehicle to collect and transmit data by means of telemetry 419  
and other forms of communication. 420

(39) Sales of used manufactured homes and used mobile 421  
homes, as defined in section 5739.0210 of the Revised Code, made 422  
on or after January 1, 2000; 423

(40) Sales of tangible personal property and services to a 424  
provider of electricity used or consumed directly and primarily 425  
in generating, transmitting, or distributing electricity for use 426  
by others, including property that is or is to be incorporated 427  
into and will become a part of the consumer's production, 428  
transmission, or distribution system and that retains its 429  
classification as tangible personal property after 430  
incorporation; fuel or power used in the production, 431  
transmission, or distribution of electricity; energy conversion 432  
equipment as defined in section 5727.01 of the Revised Code; and 433  
tangible personal property and services used in the repair and 434

maintenance of the production, transmission, or distribution 435  
system, including only those motor vehicles as are specially 436  
designed and equipped for such use. The exemption provided in 437  
this division shall be in lieu of all other exemptions in 438  
division (B) (42) (a) or (n) of this section to which a provider 439  
of electricity may otherwise be entitled based on the use of the 440  
tangible personal property or service purchased in generating, 441  
transmitting, or distributing electricity. 442

(41) Sales to a person providing services under division 443  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 444  
personal property and services used directly and primarily in 445  
providing taxable services under that section. 446

(42) Sales where the purpose of the purchaser is to do any 447  
of the following: 448

(a) To incorporate the thing transferred as a material or 449  
a part into tangible personal property to be produced for sale 450  
by manufacturing, assembling, processing, or refining; or to use 451  
or consume the thing transferred directly in producing tangible 452  
personal property for sale by mining, including, without 453  
limitation, the extraction from the earth of all substances that 454  
are classed geologically as minerals, production of crude oil 455  
and natural gas, or directly in the rendition of a public 456  
utility service, except that the sales tax levied by this 457  
section shall be collected upon all meals, drinks, and food for 458  
human consumption sold when transporting persons. Persons 459  
engaged in rendering services in the exploration for, and 460  
production of, crude oil and natural gas for others are deemed 461  
engaged directly in the exploration for, and production of, 462  
crude oil and natural gas. This paragraph does not exempt from 463  
"retail sale" or "sales at retail" the sale of tangible personal 464



property that is to be incorporated into a structure or 465  
improvement to real property. 466

(b) To hold the thing transferred as security for the 467  
performance of an obligation of the vendor; 468

(c) To resell, hold, use, or consume the thing transferred 469  
as evidence of a contract of insurance; 470

(d) To use or consume the thing directly in commercial 471  
fishing; 472

(e) To incorporate the thing transferred as a material or 473  
a part into, or to use or consume the thing transferred directly 474  
in the production of, magazines distributed as controlled 475  
circulation publications; 476

(f) To use or consume the thing transferred in the 477  
production and preparation in suitable condition for market and 478  
sale of printed, imprinted, overprinted, lithographic, 479  
multilithic, blueprinted, photostatic, or other productions or 480  
reproductions of written or graphic matter; 481

(g) To use the thing transferred, as described in section 482  
5739.011 of the Revised Code, primarily in a manufacturing 483  
operation to produce tangible personal property for sale; 484

(h) To use the benefit of a warranty, maintenance or 485  
service contract, or similar agreement, as described in division 486  
(B) (7) of section 5739.01 of the Revised Code, to repair or 487  
maintain tangible personal property, if all of the property that 488  
is the subject of the warranty, contract, or agreement would not 489  
be subject to the tax imposed by this section; 490

(i) To use the thing transferred as qualified research and 491  
development equipment; 492

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling 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.

(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;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(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;

(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 523  
services for others are deemed engaged primarily in farming, 524  
agriculture, horticulture, or floriculture. This paragraph does 525  
not exempt from "retail sale" or "sales at retail" the sale of 526  
tangible personal property that is to be incorporated into a 527  
structure or improvement to real property. 528

(o) To use or consume the thing transferred in acquiring, 529  
formatting, editing, storing, and disseminating data or 530  
information by electronic publishing. 531

As used in division (B) (42) of this section, "thing" 532  
includes all transactions included in divisions (B) (3) (a), (b), 533  
and (e) of section 5739.01 of the Revised Code. 534

(43) Sales conducted through a coin operated device that 535  
activates vacuum equipment or equipment that dispenses water, 536  
whether or not in combination with soap or other cleaning agents 537  
or wax, to the consumer for the consumer's use on the premises 538  
in washing, cleaning, or waxing a motor vehicle, provided no 539  
other personal property or personal service is provided as part 540  
of the transaction. 541

(44) Sales of replacement and modification parts for 542  
engines, airframes, instruments, and interiors in, and paint 543  
for, aircraft used primarily in a fractional aircraft ownership 544  
program, and sales of services for the repair, modification, and 545  
maintenance of such aircraft, and machinery, equipment, and 546  
supplies primarily used to provide those services. 547

(45) Sales of telecommunications service that is used 548  
directly and primarily to perform the functions of a call 549  
center. As used in this division, "call center" means any 550  
physical location where telephone calls are placed or received 551

in high volume for the purpose of making sales, marketing, 552  
customer service, technical support, or other specialized 553  
business activity, and that employs at least fifty individuals 554  
that engage in call center activities on a full-time basis, or 555  
sufficient individuals to fill fifty full-time equivalent 556  
positions. 557

(46) Sales by a telecommunications service vendor of 900 558  
service to a subscriber. This division does not apply to 559  
information services, as defined in division (FF) of section 560  
5739.01 of the Revised Code. 561

(47) Sales of value-added non-voice data service. This 562  
division does not apply to any similar service that is not 563  
otherwise a telecommunications service. 564

(48) (a) Sales of machinery, equipment, and software to a 565  
qualified direct selling entity for use in a warehouse or 566  
distribution center primarily for storing, transporting, or 567  
otherwise handling inventory that is held for sale to 568  
independent salespersons who operate as direct sellers and that 569  
is held primarily for distribution outside this state; 570

(b) As used in division (B) (48) (a) of this section: 571

(i) "Direct seller" means a person selling consumer 572  
products to individuals for personal or household use and not 573  
from a fixed retail location, including selling such product at 574  
in-home product demonstrations, parties, and other one-on-one 575  
selling. 576

(ii) "Qualified direct selling entity" means an entity 577  
selling to direct sellers at the time the entity enters into a 578  
tax credit agreement with the tax credit authority pursuant to 579  
section 122.17 of the Revised Code, provided that the agreement 580

was entered into on or after January 1, 2007. Neither 581  
contingencies relevant to the granting of, nor later 582  
developments with respect to, the tax credit shall impair the 583  
status of the qualified direct selling entity under division (B) 584  
(48) of this section after execution of the tax credit agreement 585  
by the tax credit authority. 586

(c) Division (B) (48) of this section is limited to 587  
machinery, equipment, and software first stored, used, or 588  
consumed in this state within the period commencing June 24, 589  
2008, and ending on the date that is five years after that date. 590

(49) Sales of materials, parts, equipment, or engines used 591  
in the repair or maintenance of aircraft or avionics systems of 592  
such aircraft, and sales of repair, remodeling, replacement, or 593  
maintenance services in this state performed on aircraft or on 594  
an aircraft's avionics, engine, or component materials or parts. 595  
As used in division (B) (49) of this section, "aircraft" means 596  
aircraft of more than six thousand pounds maximum certified 597  
takeoff weight or used exclusively in general aviation. 598

(50) Sales of full flight simulators that are used for 599  
pilot or flight-crew training, sales of repair or replacement 600  
parts or components, and sales of repair or maintenance services 601  
for such full flight simulators. "Full flight simulator" means a 602  
replica of a specific type, or make, model, and series of 603  
aircraft cockpit. It includes the assemblage of equipment and 604  
computer programs necessary to represent aircraft operations in 605  
ground and flight conditions, a visual system providing an out- 606  
of-the-cockpit view, and a system that provides cues at least 607  
equivalent to those of a three-degree-of-freedom motion system, 608  
and has the full range of capabilities of the systems installed 609  
in the device as described in appendices A and B of part 60 of 610

chapter 1 of title 14 of the Code of Federal Regulations. 611

(51) Any transfer or lease of tangible personal property 612  
between the state and JobsOhio in accordance with section 613  
4313.02 of the Revised Code. 614

(52) (a) Sales to a qualifying corporation. 615

(b) As used in division (B) (52) of this section: 616

(i) "Qualifying corporation" means a nonprofit corporation 617  
organized in this state that leases from an eligible county 618  
land, buildings, structures, fixtures, and improvements to the 619  
land that are part of or used in a public recreational facility 620  
used by a major league professional athletic team or a class A 621  
to class AAA minor league affiliate of a major league 622  
professional athletic team for a significant portion of the 623  
team's home schedule, provided the following apply: 624

(I) The facility is leased from the eligible county 625  
pursuant to a lease that requires substantially all of the 626  
revenue from the operation of the business or activity conducted 627  
by the nonprofit corporation at the facility in excess of 628  
operating costs, capital expenditures, and reserves to be paid 629  
to the eligible county at least once per calendar year. 630

(II) Upon dissolution and liquidation of the nonprofit 631  
corporation, all of its net assets are distributable to the 632  
board of commissioners of the eligible county from which the 633  
corporation leases the facility. 634

(ii) "Eligible county" has the same meaning as in section 635  
307.695 of the Revised Code. 636

(53) Sales to or by a cable service provider, video 637  
service provider, or radio or television broadcast station 638

regulated by the federal government of cable service or 639  
programming, video service or programming, audio service or 640  
programming, or electronically transferred digital audiovisual 641  
or audio work. As used in division (B) (53) of this section, 642  
"cable service" and "cable service provider" have the same 643  
meanings as in section 1332.01 of the Revised Code, and "video 644  
service," "video service provider," and "video programming" have 645  
the same meanings as in section 1332.21 of the Revised Code. 646

(54) Sales of investment metal bullion and investment 647  
coins. "Investment metal bullion" means any elementary precious 648  
metal that has been put through a process of smelting or 649  
refining, including, but not limited to, gold, silver, platinum, 650  
and palladium, and which is in such state or condition that its 651  
value depends upon its content and not upon its form. 652  
"Investment metal bullion" does not include fabricated precious 653  
metal that has been processed or manufactured for one or more 654  
specific and customary industrial, professional, or artistic 655  
uses. "Investment coins" means numismatic coins or other forms 656  
of money and legal tender manufactured of gold, silver, 657  
platinum, palladium, or other metal under the laws of the United 658  
States or any foreign nation with a fair market value greater 659  
than any statutory or nominal value of such coins. 660

(C) For the purpose of the proper administration of this 661  
chapter, and to prevent the evasion of the tax, it is presumed 662  
that all sales made in this state are subject to the tax until 663  
the contrary is established. 664

(D) The levy of this tax on retail sales of recreation and 665  
sports club service shall not prevent a municipal corporation 666  
from levying any tax on recreation and sports club dues or on 667  
any income generated by recreation and sports club dues. 668

(E) The tax collected by the vendor from the consumer 669  
under this chapter is not part of the price, but is a tax 670  
collection for the benefit of the state, and of counties levying 671  
an additional sales tax pursuant to section 5739.021 or 5739.026 672  
of the Revised Code and of transit authorities levying an 673  
additional sales tax pursuant to section 5739.023 of the Revised 674  
Code. Except for the discount authorized under section 5739.12 675  
of the Revised Code and the effects of any rounding pursuant to 676  
section 5703.055 of the Revised Code, no person other than the 677  
state or such a county or transit authority shall derive any 678  
benefit from the collection or payment of the tax levied by this 679  
section or section 5739.021, 5739.023, or 5739.026 of the 680  
Revised Code. 681

**Section 2.** That existing section 5739.02 of the Revised 682  
Code is hereby repealed. 683

**Section 3.** The amendment by this act of section 5739.02 of 684  
the Revised Code applies on and after the first day of the first 685  
month that begins after the effective date of this act. 686