

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**S. B. No. 52**

**Senator Gavarone**

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**A BILL**

To amend section 5739.02 of the Revised Code to 1  
exempt sales of United States and Ohio flags 2  
from sales and use tax. 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 evidence, that the transaction or series of transactions is not a sham transaction.

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or

work done;	79
(6) (a) Sales of motor fuel upon receipt, use,	80
distribution, or sale of which in this state a tax is imposed by	81
the law of this state, but this exemption shall not apply to the	82
sale of motor fuel on which a refund of the tax is allowable	83
under division (A) of section 5735.14 of the Revised Code; and	84
the tax commissioner may deduct the amount of tax levied by this	85
section applicable to the price of motor fuel when granting a	86
refund of motor fuel tax pursuant to division (A) of section	87
5735.14 of the Revised Code and shall cause the amount deducted	88
to be paid into the general revenue fund of this state;	89
(b) Sales of motor fuel other than that described in	90
division (B) (6) (a) of this section and used for powering a	91
refrigeration unit on a vehicle other than one used primarily to	92
provide comfort to the operator or occupants of the vehicle.	93
(7) Sales of natural gas by a natural gas company or	94
municipal gas utility, of water by a water-works company, or of	95
steam by a heating company, if in each case the thing sold is	96
delivered to consumers through pipes or conduits, and all sales	97
of communications services by a telegraph company, all terms as	98
defined in section 5727.01 of the Revised Code, and sales of	99
electricity delivered through wires;	100
(8) Casual sales by a person, or auctioneer employed	101
directly by the person to conduct such sales, except as to such	102
sales of motor vehicles, watercraft or outboard motors required	103
to be titled under section 1548.06 of the Revised Code,	104
watercraft documented with the United States coast guard,	105
snowmobiles, and all-purpose vehicles as defined in section	106
4519.01 of the Revised Code;	107

(9) (a) Sales of services or tangible personal property, 108  
other than motor vehicles, mobile homes, and manufactured homes, 109  
by churches, organizations exempt from taxation under section 110  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 111  
organizations operated exclusively for charitable purposes as 112  
defined in division (B) (12) of this section, provided that the 113  
number of days on which such tangible personal property or 114  
services, other than items never subject to the tax, are sold 115  
does not exceed six in any calendar year, except as otherwise 116  
provided in division (B) (9) (b) of this section. If the number of 117  
days on which such sales are made exceeds six in any calendar 118  
year, the church or organization shall be considered to be 119  
engaged in business and all subsequent sales by it shall be 120  
subject to the tax. In counting the number of days, all sales by 121  
groups within a church or within an organization shall be 122  
considered to be sales of that church or organization. 123

(b) The limitation on the number of days on which tax- 124  
exempt sales may be made by a church or organization under 125  
division (B) (9) (a) of this section does not apply to sales made 126  
by student clubs and other groups of students of a primary or 127  
secondary school, or a parent-teacher association, booster 128  
group, or similar organization that raises money to support or 129  
fund curricular or extracurricular activities of a primary or 130  
secondary school. 131

(c) Divisions (B) (9) (a) and (b) of this section do not 132  
apply to sales by a noncommercial educational radio or 133  
television broadcasting station. 134

(10) Sales not within the taxing power of this state under 135  
the Constitution or laws of the United States or the 136  
Constitution of this state; 137

(11) Except for transactions that are sales under division 138  
(B) (3) (p) of section 5739.01 of the Revised Code, the 139  
transportation of persons or property, unless the transportation 140  
is by a private investigation and security service; 141

(12) Sales of tangible personal property or services to 142  
churches, to organizations exempt from taxation under section 143  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 144  
nonprofit organizations operated exclusively for charitable 145  
purposes in this state, no part of the net income of which 146  
inures to the benefit of any private shareholder or individual, 147  
and no substantial part of the activities of which consists of 148  
carrying on propaganda or otherwise attempting to influence 149  
legislation; sales to offices administering one or more homes 150  
for the aged or one or more hospital facilities exempt under 151  
section 140.08 of the Revised Code; and sales to organizations 152  
described in division (D) of section 5709.12 of the Revised 153  
Code. 154

"Charitable purposes" means the relief of poverty; the 155  
improvement of health through the alleviation of illness, 156  
disease, or injury; the operation of an organization exclusively 157  
for the provision of professional, laundry, printing, and 158  
purchasing services to hospitals or charitable institutions; the 159  
operation of a home for the aged, as defined in section 5701.13 160  
of the Revised Code; the operation of a radio or television 161  
broadcasting station that is licensed by the federal 162  
communications commission as a noncommercial educational radio 163  
or television station; the operation of a nonprofit animal 164  
adoption service or a county humane society; the promotion of 165  
education by an institution of learning that maintains a faculty 166  
of qualified instructors, teaches regular continuous courses of 167  
study, and confers a recognized diploma upon completion of a 168

specific curriculum; the operation of a parent-teacher 169  
association, booster group, or similar organization primarily 170  
engaged in the promotion and support of the curricular or 171  
extracurricular activities of a primary or secondary school; the 172  
operation of a community or area center in which presentations 173  
in music, dramatics, the arts, and related fields are made in 174  
order to foster public interest and education therein; the 175  
production of performances in music, dramatics, and the arts; or 176  
the promotion of education by an organization engaged in 177  
carrying on research in, or the dissemination of, scientific and 178  
technological knowledge and information primarily for the 179  
public. 180

Nothing in this division shall be deemed to exempt sales 181  
to any organization for use in the operation or carrying on of a 182  
trade or business, or sales to a home for the aged for use in 183  
the operation of independent living facilities as defined in 184  
division (A) of section 5709.12 of the Revised Code. 185

(13) Building and construction materials and services sold 186  
to construction contractors for incorporation into a structure 187  
or improvement to real property under a construction contract 188  
with this state or a political subdivision of this state, or 189  
with the United States government or any of its agencies; 190  
building and construction materials and services sold to 191  
construction contractors for incorporation into a structure or 192  
improvement to real property that are accepted for ownership by 193  
this state or any of its political subdivisions, or by the 194  
United States government or any of its agencies at the time of 195  
completion of the structures or improvements; building and 196  
construction materials sold to construction contractors for 197  
incorporation into a horticulture structure or livestock 198  
structure for a person engaged in the business of horticulture 199

or producing livestock; building materials and services sold to 200  
a construction contractor for incorporation into a house of 201  
public worship or religious education, or a building used 202  
exclusively for charitable purposes under a construction 203  
contract with an organization whose purpose is as described in 204  
division (B) (12) of this section; building materials and 205  
services sold to a construction contractor for incorporation 206  
into a building under a construction contract with an 207  
organization exempt from taxation under section 501(c) (3) of the 208  
Internal Revenue Code of 1986 when the building is to be used 209  
exclusively for the organization's exempt purposes; building and 210  
construction materials sold for incorporation into the original 211  
construction of a sports facility under section 307.696 of the 212  
Revised Code; building and construction materials and services 213  
sold to a construction contractor for incorporation into real 214  
property outside this state if such materials and services, when 215  
sold to a construction contractor in the state in which the real 216  
property is located for incorporation into real property in that 217  
state, would be exempt from a tax on sales levied by that state; 218  
building and construction materials for incorporation into a 219  
transportation facility pursuant to a public-private agreement 220  
entered into under sections 5501.70 to 5501.83 of the Revised 221  
Code; until one calendar year after the construction of a 222  
convention center that qualifies for property tax exemption 223  
under section 5709.084 of the Revised Code is completed, 224  
building and construction materials and services sold to a 225  
construction contractor for incorporation into the real property 226  
comprising that convention center; and building and construction 227  
materials sold for incorporation into a structure or improvement 228  
to real property that is used primarily as, or primarily in 229  
support of, a manufacturing facility or research and development 230  
facility and that is to be owned by a megaproject operator upon 231



completion and located at the site of a megaproject that 232  
satisfies the criteria described in division (A) (11) (a) (ii) of 233  
section 122.17 of the Revised Code, provided that the sale 234  
occurs during the period that the megaproject operator has an 235  
agreement for such megaproject with the tax credit authority 236  
under division (D) of section 122.17 of the Revised Code that 237  
remains in effect and has not expired or been terminated. 238

(14) Sales of ships or vessels or rail rolling stock used 239  
or to be used principally in interstate or foreign commerce, and 240  
repairs, alterations, fuel, and lubricants for such ships or 241  
vessels or rail rolling stock; 242

(15) Sales to persons primarily engaged in any of the 243  
activities mentioned in division (B) (42) (a), (g), or (h) of this 244  
section, to persons engaged in making retail sales, or to 245  
persons who purchase for sale from a manufacturer tangible 246  
personal property that was produced by the manufacturer in 247  
accordance with specific designs provided by the purchaser, of 248  
packages, including material, labels, and parts for packages, 249  
and of machinery, equipment, and material for use primarily in 250  
packaging tangible personal property produced for sale, 251  
including any machinery, equipment, and supplies used to make 252  
labels or packages, to prepare packages or products for 253  
labeling, or to label packages or products, by or on the order 254  
of the person doing the packaging, or sold at retail. "Packages" 255  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 256  
bindings, wrappings, and other similar devices and containers, 257  
but does not include motor vehicles or bulk tanks, trailers, or 258  
similar devices attached to motor vehicles. "Packaging" means 259  
placing in a package. Division (B) (15) of this section does not 260  
apply to persons engaged in highway transportation for hire. 261

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

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

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

(19) Sales of prosthetic devices, durable medical	292
equipment for home use, or mobility enhancing equipment, when	293
made pursuant to a prescription and when such devices or	294
equipment are for use by a human being.	295
(20) Sales of emergency and fire protection vehicles and	296
equipment to nonprofit organizations for use solely in providing	297
fire protection and emergency services, including trauma care	298
and emergency medical services, for political subdivisions of	299
the state;	300
(21) Sales of tangible personal property manufactured in	301
this state, if sold by the manufacturer in this state to a	302
retailer for use in the retail business of the retailer outside	303
of this state and if possession is taken from the manufacturer	304
by the purchaser within this state for the sole purpose of	305
immediately removing the same from this state in a vehicle owned	306
by the purchaser;	307
(22) Sales of services provided by the state or any of its	308
political subdivisions, agencies, instrumentalities,	309
institutions, or authorities, or by governmental entities of the	310
state or any of its political subdivisions, agencies,	311
instrumentalities, institutions, or authorities;	312
(23) Sales of motor vehicles to nonresidents of this state	313
under the circumstances described in division (B) of section	314
5739.029 of the Revised Code;	315
(24) Sales to persons engaged in the preparation of eggs	316
for sale of tangible personal property used or consumed directly	317
in such preparation, including such tangible personal property	318
used for cleaning, sanitizing, preserving, grading, sorting, and	319
classifying by size; packages, including material and parts for	320

packages, and machinery, equipment, and material for use in	321
packaging eggs for sale; and handling and transportation	322
equipment and parts therefor, except motor vehicles licensed to	323
operate on public highways, used in intraplant or interplant	324
transfers or shipment of eggs in the process of preparation for	325
sale, when the plant or plants within or between which such	326
transfers or shipments occur are operated by the same person.	327
"Packages" includes containers, cases, baskets, flats, fillers,	328
filler flats, cartons, closure materials, labels, and labeling	329
materials, and "packaging" means placing therein.	330
(25) (a) Sales of water to a consumer for residential use;	331
(b) Sales of water by a nonprofit corporation engaged	332
exclusively in the treatment, distribution, and sale of water to	333
consumers, if such water is delivered to consumers through pipes	334
or tubing.	335
(26) Fees charged for inspection or reinspection of motor	336
vehicles under section 3704.14 of the Revised Code;	337
(27) Sales to persons licensed to conduct a food service	338
operation pursuant to section 3717.43 of the Revised Code, of	339
tangible personal property primarily used directly for the	340
following:	341
(a) To prepare food for human consumption for sale;	342
(b) To preserve food that has been or will be prepared for	343
human consumption for sale by the food service operator, not	344
including tangible personal property used to display food for	345
selection by the consumer;	346
(c) To clean tangible personal property used to prepare or	347
serve food for human consumption for sale.	348

(28) Sales of animals by nonprofit animal adoption	349
services or county humane societies;	350
(29) Sales of services to a corporation described in	351
division (A) of section 5709.72 of the Revised Code, and sales	352
of tangible personal property that qualifies for exemption from	353
taxation under section 5709.72 of the Revised Code;	354
(30) Sales and installation of agricultural land tile, as	355
defined in division (B) (5) (a) of section 5739.01 of the Revised	356
Code;	357
(31) Sales and erection or installation of portable grain	358
bins, as defined in division (B) (5) (b) of section 5739.01 of the	359
Revised Code;	360
(32) The sale, lease, repair, and maintenance of, parts	361
for, or items attached to or incorporated in, motor vehicles	362
that are primarily used for transporting tangible personal	363
property belonging to others by a person engaged in highway	364
transportation for hire, except for packages and packaging used	365
for the transportation of tangible personal property;	366
(33) Sales to the state headquarters of any veterans'	367
organization in this state that is either incorporated and	368
issued a charter by the congress of the United States or is	369
recognized by the United States veterans administration, for use	370
by the headquarters;	371
(34) Sales to a telecommunications service vendor, mobile	372
telecommunications service vendor, or satellite broadcasting	373
service vendor of tangible personal property and services used	374
directly and primarily in transmitting, receiving, switching, or	375
recording any interactive, one- or two-way electromagnetic	376
communications, including voice, image, data, and information,	377

through the use of any medium, including, but not limited to, 378  
poles, wires, cables, switching equipment, computers, and record 379  
storage devices and media, and component parts for the tangible 380  
personal property. The exemption provided in this division shall 381  
be in lieu of all other exemptions under division (B) (42) (a) or 382  
(n) of this section to which the vendor may otherwise be 383  
entitled, based upon the use of the thing purchased in providing 384  
the telecommunications, mobile telecommunications, or satellite 385  
broadcasting service. 386

(35) (a) Sales where the purpose of the consumer is to use 387  
or consume the things transferred in making retail sales and 388  
consisting of newspaper inserts, catalogues, coupons, flyers, 389  
gift certificates, or other advertising material that prices and 390  
describes tangible personal property offered for retail sale. 391

(b) Sales to direct marketing vendors of preliminary 392  
materials such as photographs, artwork, and typesetting that 393  
will be used in printing advertising material; and of printed 394  
matter that offers free merchandise or chances to win sweepstake 395  
prizes and that is mailed to potential customers with 396  
advertising material described in division (B) (35) (a) of this 397  
section; 398

(c) Sales of equipment such as telephones, computers, 399  
facsimile machines, and similar tangible personal property 400  
primarily used to accept orders for direct marketing retail 401  
sales. 402

(d) Sales of automatic food vending machines that preserve 403  
food with a shelf life of forty-five days or less by 404  
refrigeration and dispense it to the consumer. 405

For purposes of division (B) (35) of this section, "direct 406

marketing" means the method of selling where consumers order 407  
tangible personal property by United States mail, delivery 408  
service, or telecommunication and the vendor delivers or ships 409  
the tangible personal property sold to the consumer from a 410  
warehouse, catalogue distribution center, or similar fulfillment 411  
facility by means of the United States mail, delivery service, 412  
or common carrier. 413

(36) Sales to a person engaged in the business of 414  
horticulture or producing livestock of materials to be 415  
incorporated into a horticulture structure or livestock 416  
structure; 417

(37) Sales of personal computers, computer monitors, 418  
computer keyboards, modems, and other peripheral computer 419  
equipment to an individual who is licensed or certified to teach 420  
in an elementary or a secondary school in this state for use by 421  
that individual in preparation for teaching elementary or 422  
secondary school students; 423

(38) Sales of tangible personal property that is not 424  
required to be registered or licensed under the laws of this 425  
state to a citizen of a foreign nation that is not a citizen of 426  
the United States, provided the property is delivered to a 427  
person in this state that is not a related member of the 428  
purchaser, is physically present in this state for the sole 429  
purpose of temporary storage and package consolidation, and is 430  
subsequently delivered to the purchaser at a delivery address in 431  
a foreign nation. As used in division (B)(38) of this section, 432  
"related member" has the same meaning as in section 5733.042 of 433  
the Revised Code, and "temporary storage" means the storage of 434  
tangible personal property for a period of not more than sixty 435  
days. 436

(39) Sales of used manufactured homes and used mobile 437  
homes, as defined in section 5739.0210 of the Revised Code, made 438  
on or after January 1, 2000; 439

(40) Sales of tangible personal property and services to a 440  
provider of electricity used or consumed directly and primarily 441  
in generating, transmitting, or distributing electricity for use 442  
by others, including property that is or is to be incorporated 443  
into and will become a part of the consumer's production, 444  
transmission, or distribution system and that retains its 445  
classification as tangible personal property after 446  
incorporation; fuel or power used in the production, 447  
transmission, or distribution of electricity; energy conversion 448  
equipment as defined in section 5727.01 of the Revised Code; and 449  
tangible personal property and services used in the repair and 450  
maintenance of the production, transmission, or distribution 451  
system, including only those motor vehicles as are specially 452  
designed and equipped for such use. The exemption provided in 453  
this division shall be in lieu of all other exemptions in 454  
division (B) (42) (a) or (n) of this section to which a provider 455  
of electricity may otherwise be entitled based on the use of the 456  
tangible personal property or service purchased in generating, 457  
transmitting, or distributing electricity. 458

(41) Sales to a person providing services under division 459  
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 460  
personal property and services used directly and primarily in 461  
providing taxable services under that section. 462

(42) Sales where the purpose of the purchaser is to do any 463  
of the following: 464

(a) To incorporate the thing transferred as a material or 465  
a part into tangible personal property to be produced for sale 466



by manufacturing, assembling, processing, or refining; or to use 467  
or consume the thing transferred directly in producing tangible 468  
personal property for sale by mining, including, without 469  
limitation, the extraction from the earth of all substances that 470  
are classed geologically as minerals, or directly in the 471  
rendition of a public utility service, except that the sales tax 472  
levied by this section shall be collected upon all meals, 473  
drinks, and food for human consumption sold when transporting 474  
persons. This paragraph does not exempt from "retail sale" or 475  
"sales at retail" the sale of tangible personal property that is 476  
to be incorporated into a structure or improvement to real 477  
property. 478

(b) To hold the thing transferred as security for the 479  
performance of an obligation of the vendor; 480

(c) To resell, hold, use, or consume the thing transferred 481  
as evidence of a contract of insurance; 482

(d) To use or consume the thing directly in commercial 483  
fishing; 484

(e) To incorporate the thing transferred as a material or 485  
a part into, or to use or consume the thing transferred directly 486  
in the production of, magazines distributed as controlled 487  
circulation publications; 488

(f) To use or consume the thing transferred in the 489  
production and preparation in suitable condition for market and 490  
sale of printed, imprinted, overprinted, lithographic, 491  
multilithic, blueprinted, photostatic, or other productions or 492  
reproductions of written or graphic matter; 493

(g) To use the thing transferred, as described in section 494  
5739.011 of the Revised Code, primarily in a manufacturing 495

operation to produce tangible personal property for sale;	496
(h) To use the benefit of a warranty, maintenance or	497
service contract, or similar agreement, as described in division	498
(B) (7) of section 5739.01 of the Revised Code, to repair or	499
maintain tangible personal property, if all of the property that	500
is the subject of the warranty, contract, or agreement would not	501
be subject to the tax imposed by this section;	502
(i) To use the thing transferred as qualified research and	503
development equipment;	504
(j) To use or consume the thing transferred primarily in	505
storing, transporting, mailing, or otherwise handling purchased	506
sales inventory in a warehouse, distribution center, or similar	507
facility when the inventory is primarily distributed outside	508
this state to retail stores of the person who owns or controls	509
the warehouse, distribution center, or similar facility, to	510
retail stores of an affiliated group of which that person is a	511
member, or by means of direct marketing. This division does not	512
apply to motor vehicles registered for operation on the public	513
highways. As used in this division, "affiliated group" has the	514
same meaning as in division (B) (3) (e) of section 5739.01 of the	515
Revised Code and "direct marketing" has the same meaning as in	516
division (B) (35) of this section.	517
(k) To use or consume the thing transferred to fulfill a	518
contractual obligation incurred by a warrantor pursuant to a	519
warranty provided as a part of the price of the tangible	520
personal property sold or by a vendor of a warranty, maintenance	521
or service contract, or similar agreement the provision of which	522
is defined as a sale under division (B) (7) of section 5739.01 of	523
the Revised Code;	524

(l) To use or consume the thing transferred in the	525
production of a newspaper for distribution to the public;	526
(m) To use tangible personal property to perform a service	527
listed in division (B)(3) of section 5739.01 of the Revised	528
Code, if the property is or is to be permanently transferred to	529
the consumer of the service as an integral part of the	530
performance of the service;	531
(n) To use or consume the thing transferred primarily in	532
producing tangible personal property for sale by farming,	533
agriculture, horticulture, or floriculture. Persons engaged in	534
rendering farming, agriculture, horticulture, or floriculture	535
services for others are deemed engaged primarily in farming,	536
agriculture, horticulture, or floriculture. This paragraph does	537
not exempt from "retail sale" or "sales at retail" the sale of	538
tangible personal property that is to be incorporated into a	539
structure or improvement to real property.	540
(o) To use or consume the thing transferred in acquiring,	541
formatting, editing, storing, and disseminating data or	542
information by electronic publishing;	543
(p) To provide the thing transferred to the owner or	544
lessee of a motor vehicle that is being repaired or serviced, if	545
the thing transferred is a rented motor vehicle and the	546
purchaser is reimbursed for the cost of the rented motor vehicle	547
by a manufacturer, warrantor, or provider of a maintenance,	548
service, or other similar contract or agreement, with respect to	549
the motor vehicle that is being repaired or serviced;	550
(q) To use or consume the thing transferred directly in	551
production of crude oil and natural gas for sale. Persons	552
engaged in rendering production services for others are deemed	553

engaged in production.	554
As used in division (B) (42) (q) of this section,	555
"production" means operations and tangible personal property	556
directly used to expose and evaluate an underground reservoir	557
that may contain hydrocarbon resources, prepare the wellbore for	558
production, and lift and control all substances yielded by the	559
reservoir to the surface of the earth.	560
(i) For the purposes of division (B) (42) (q) of this	561
section, the "thing transferred" includes, but is not limited	562
to, any of the following:	563
(I) Services provided in the construction of permanent	564
access roads, services provided in the construction of the well	565
site, and services provided in the construction of temporary	566
impoundments;	567
(II) Equipment and rigging used for the specific purpose	568
of creating with integrity a wellbore pathway to underground	569
reservoirs;	570
(III) Drilling and workover services used to work within a	571
subsurface wellbore, and tangible personal property directly	572
used in providing such services;	573
(IV) Casing, tubulars, and float and centralizing	574
equipment;	575
(V) Trailers to which production equipment is attached;	576
(VI) Well completion services, including cementing of	577
casing, and tangible personal property directly used in	578
providing such services;	579
(VII) Wireline evaluation, mud logging, and perforation	580
services, and tangible personal property directly used in	581

providing such services;	582
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	583 584 585 586
(IX) Pressure pumping equipment;	587
(X) Artificial lift systems equipment;	588
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	589 590 591
(XII) Tangible personal property directly used to control production equipment.	592 593
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	594 595 596
(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;	597 598 599
(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;	600 601 602
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	603 604 605
(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	606 607 608

site;	609
(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;	610 611 612 613
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	614 615
(VII) Well site fencing, lighting, or security systems;	616
(VIII) Communication devices or services;	617
(IX) Office supplies;	618
(X) Trailers used as offices or lodging;	619
(XI) Motor vehicles of any kind;	620
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	621 622
(XIII) Tangible personal property used primarily as a safety device;	623 624
(XIV) Data collection or monitoring devices;	625
(XV) Access ladders, stairs, or platforms attached to storage tanks.	626 627
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.	628 629 630 631 632
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the	633 634

commissioner deems necessary to administer division (B) (42) (q) 635  
of this section. 636

As used in division (B) (42) of this section, "thing" 637  
includes all transactions included in divisions (B) (3) (a), (b), 638  
and (e) of section 5739.01 of the Revised Code. 639

(43) Sales conducted through a coin operated device that 640  
activates vacuum equipment or equipment that dispenses water, 641  
whether or not in combination with soap or other cleaning agents 642  
or wax, to the consumer for the consumer's use on the premises 643  
in washing, cleaning, or waxing a motor vehicle, provided no 644  
other personal property or personal service is provided as part 645  
of the transaction. 646

(44) Sales of replacement and modification parts for 647  
engines, airframes, instruments, and interiors in, and paint 648  
for, aircraft used primarily in a fractional aircraft ownership 649  
program, and sales of services for the repair, modification, and 650  
maintenance of such aircraft, and machinery, equipment, and 651  
supplies primarily used to provide those services. 652

(45) Sales of telecommunications service that is used 653  
directly and primarily to perform the functions of a call 654  
center. As used in this division, "call center" means any 655  
physical location where telephone calls are placed or received 656  
in high volume for the purpose of making sales, marketing, 657  
customer service, technical support, or other specialized 658  
business activity, and that employs at least fifty individuals 659  
that engage in call center activities on a full-time basis, or 660  
sufficient individuals to fill fifty full-time equivalent 661  
positions. 662

(46) Sales by a telecommunications service vendor of 900 663

service to a subscriber. This division does not apply to 664  
information services. 665

(47) Sales of value-added non-voice data service. This 666  
division does not apply to any similar service that is not 667  
otherwise a telecommunications service. 668

(48) Sales of feminine hygiene products. 669

(49) Sales of materials, parts, equipment, or engines used 670  
in the repair or maintenance of aircraft or avionics systems of 671  
such aircraft, and sales of repair, remodeling, replacement, or 672  
maintenance services in this state performed on aircraft or on 673  
an aircraft's avionics, engine, or component materials or parts. 674  
As used in division (B) (49) of this section, "aircraft" means 675  
aircraft of more than six thousand pounds maximum certified 676  
takeoff weight or used exclusively in general aviation. 677

(50) Sales of full flight simulators that are used for 678  
pilot or flight-crew training, sales of repair or replacement 679  
parts or components, and sales of repair or maintenance services 680  
for such full flight simulators. "Full flight simulator" means a 681  
replica of a specific type, or make, model, and series of 682  
aircraft cockpit. It includes the assemblage of equipment and 683  
computer programs necessary to represent aircraft operations in 684  
ground and flight conditions, a visual system providing an out- 685  
of-the-cockpit view, and a system that provides cues at least 686  
equivalent to those of a three-degree-of-freedom motion system, 687  
and has the full range of capabilities of the systems installed 688  
in the device as described in appendices A and B of part 60 of 689  
chapter 1 of title 14 of the Code of Federal Regulations. 690

(51) Any transfer or lease of tangible personal property 691  
between the state and JobsOhio in accordance with section 692



4313.02 of the Revised Code.	693
(52) (a) Sales to a qualifying corporation.	694
(b) As used in division (B) (52) of this section:	695
(i) "Qualifying corporation" means a nonprofit corporation	696
organized in this state that leases from an eligible county	697
land, buildings, structures, fixtures, and improvements to the	698
land that are part of or used in a public recreational facility	699
used by a major league professional athletic team or a class A	700
to class AAA minor league affiliate of a major league	701
professional athletic team for a significant portion of the	702
team's home schedule, provided the following apply:	703
(I) The facility is leased from the eligible county	704
pursuant to a lease that requires substantially all of the	705
revenue from the operation of the business or activity conducted	706
by the nonprofit corporation at the facility in excess of	707
operating costs, capital expenditures, and reserves to be paid	708
to the eligible county at least once per calendar year.	709
(II) Upon dissolution and liquidation of the nonprofit	710
corporation, all of its net assets are distributable to the	711
board of commissioners of the eligible county from which the	712
corporation leases the facility.	713
(ii) "Eligible county" has the same meaning as in section	714
307.695 of the Revised Code.	715
(53) Sales to or by a cable service provider, video	716
service provider, or radio or television broadcast station	717
regulated by the federal government of cable service or	718
programming, video service or programming, audio service or	719
programming, or electronically transferred digital audiovisual	720
or audio work. As used in division (B) (53) of this section,	721

"cable service" and "cable service provider" have the same 722  
meanings as in section 1332.01 of the Revised Code, and "video 723  
service," "video service provider," and "video programming" have 724  
the same meanings as in section 1332.21 of the Revised Code. 725

(54) Sales of a digital audio work electronically 726  
transferred for delivery through use of a machine, such as a 727  
juke box, that does all of the following: 728

(a) Accepts direct payments to operate; 729

(b) Automatically plays a selected digital audio work for 730  
a single play upon receipt of a payment described in division 731  
(B) (54) (a) of this section; 732

(c) Operates exclusively for the purpose of playing 733  
digital audio works in a commercial establishment. 734

(55) (a) Sales of the following occurring on the first 735  
Friday of August and the following Saturday and Sunday of each 736  
year, beginning in 2018: 737

(i) An item of clothing, the price of which is seventy- 738  
five dollars or less; 739

(ii) An item of school supplies, the price of which is 740  
twenty dollars or less; 741

(iii) An item of school instructional material, the price 742  
of which is twenty dollars or less. 743

(b) As used in division (B) (55) of this section: 744

(i) "Clothing" means all human wearing apparel suitable 745  
for general use. "Clothing" includes, but is not limited to, 746  
aprons, household and shop; athletic supporters; baby receiving 747  
blankets; bathing suits and caps; beach capes and coats; belts 748

and suspenders; boots; coats and jackets; costumes; diapers, 749  
children and adult, including disposable diapers; earmuffs; 750  
footlets; formal wear; garters and garter belts; girdles; gloves 751  
and mittens for general use; hats and caps; hosiery; insoles for 752  
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 753  
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 754  
sneakers; socks and stockings; steel-toed shoes; underwear; 755  
uniforms, athletic and nonathletic; and wedding apparel. 756  
"Clothing" does not include items purchased for use in a trade 757  
or business; clothing accessories or equipment; protective 758  
equipment; sports or recreational equipment; belt buckles sold 759  
separately; costume masks sold separately; patches and emblems 760  
sold separately; sewing equipment and supplies including, but 761  
not limited to, knitting needles, patterns, pins, scissors, 762  
sewing machines, sewing needles, tape measures, and thimbles; 763  
and sewing materials that become part of "clothing" including, 764  
but not limited to, buttons, fabric, lace, thread, yarn, and 765  
zippers. 766

(ii) "School supplies" means items commonly used by a 767  
student in a course of study. "School supplies" includes only 768  
the following items: binders; book bags; calculators; cellophane 769  
tape; blackboard chalk; compasses; composition books; crayons; 770  
erasers; folders, expandable, pocket, plastic, and manila; glue, 771  
paste, and paste sticks; highlighters; index cards; index card 772  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 773  
loose-leaf ruled notebook paper, copy paper, graph paper, 774  
tracing paper, manila paper, colored paper, poster board, and 775  
construction paper; pencil boxes and other school supply boxes; 776  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 777  
and writing tablets. "School supplies" does not include any item 778  
purchased for use in a trade or business. 779

(iii) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. "School instructional material" includes only the following items: reference books, reference maps and globes, textbooks, and workbooks. "School instructional material" does not include any material purchased for use in a trade or business.

(56) (a) Sales of diapers or incontinence underpads sold pursuant to a prescription, for the benefit of a medicaid recipient with a diagnosis of incontinence, and by a medicaid provider that maintains a valid provider agreement under section 5164.30 of the Revised Code with the department of medicaid, provided that the medicaid program covers diapers or incontinence underpads as an incontinence garment.

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

(i) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

(ii) "Incontinence underpad" means an absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.

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

(58) Sales of tangible personal property used primarily

for any of the following purposes by a megaproject operator at 809  
the site of a megaproject that satisfies the criteria described 810  
in division (A) (11) (a) (ii) of section 122.17 of the Revised 811  
Code, provided that the sale occurs during the period that the 812  
megaproject operator has an agreement for such megaproject with 813  
the tax credit authority under division (D) of section 122.17 of 814  
the Revised Code that remains in effect and has not expired or 815  
been terminated: 816

(a) To store, transmit, convey, distribute, recycle, 817  
circulate, or clean water, steam, or other gases used in or 818  
produced as a result of manufacturing activity, including items 819  
that support or aid in the operation of such property; 820

(b) To clean or prepare inventory, at any stage of storage 821  
or production, or equipment used in a manufacturing activity, 822  
including chemicals, solvents, catalysts, soaps, and other items 823  
that support or aid in the operation of property; 824

(c) To regulate, treat, filter, condition, improve, clean, 825  
maintain, or monitor environmental conditions within areas where 826  
manufacturing activities take place; 827

(d) To handle, transport, or convey inventory during 828  
production or manufacturing. 829

(59) Documentary services charges imposed pursuant to 830  
section 4517.261 or 4781.24 of the Revised Code; 831

(60) Sales of the flag of the United States and the flag 832  
of Ohio. As used in division (B) (60) of this section, "flag" 833  
means a light, flexible material bearing one or more symbols or 834  
designs. 835

(C) For the purpose of the proper administration of this 836  
chapter, and to prevent the evasion of the tax, it is presumed 837

that all sales made in this state are subject to the tax until 838  
the contrary is established. 839

(D) The tax collected by the vendor from the consumer 840  
under this chapter is not part of the price, but is a tax 841  
collection for the benefit of the state, and of counties levying 842  
an additional sales tax pursuant to section 5739.021 or 5739.026 843  
of the Revised Code and of transit authorities levying an 844  
additional sales tax pursuant to section 5739.023 of the Revised 845  
Code. Except for the discount authorized under section 5739.12 846  
of the Revised Code and the effects of any rounding pursuant to 847  
section 5703.055 of the Revised Code, no person other than the 848  
state or such a county or transit authority shall derive any 849  
benefit from the collection or payment of the tax levied by this 850  
section or section 5739.021, 5739.023, or 5739.026 of the 851  
Revised Code. 852

**Section 2.** That existing section 5739.02 of the Revised 853  
Code is hereby repealed. 854

**Section 3.** The amendment by this act of section 5739.02 of 855  
the Revised Code applies on and after the first day of the first 856  
month that begins after the effective date of this section. 857