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Representative Schaffer

**Cosponsors: Representatives Faber, Antani, Brenner, Ginter, Green, Greenspan,
Hagan, Hambley, Hill, Johnson, Landis, Lang, Merrin, Pelanda, Perales, Reineke,
Roegner, Rogers, Romanchuk, Ryan, Schuring, Slaby, Smith, R., Sprague,
Thompson, Wiggam, Young**

Senators Hackett, Beagle, Eklund

A BILL

To amend sections 5709.20, 5709.211, 5709.212, 1
5709.22, and 5739.02 of the Revised Code to 2
modify the language governing the sales and use 3
tax exemption for certain kinds of property used 4
in the production of oil and gas. 5

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

Section 1. That sections 5709.20, 5709.211, 5709.212, 6
5709.22, and 5739.02 of the Revised Code be amended to read as 7
follows: 8

Sec. 5709.20. As used in sections 5709.20 to 5709.27 of 9
the Revised Code: 10

(A) "Air contaminant" means particulate matter, dust, 11
fumes, gas, mist, smoke, vapor, or odorous substances, or any 12
combination thereof. 13

(B) "Air pollution control facility" means any property 14

designed, constructed, or installed for the primary purpose of 15
eliminating or reducing the emission of, or ground level 16
concentration of, air contaminants generated at an industrial or 17
commercial plant or site that renders air harmful or inimical to 18
the public health or to property within this state, or such 19
property installed on or after November 1, 1993, at a petroleum 20
refinery for the primary purpose of eliminating or reducing 21
substances within fuel that otherwise would create the emission 22
of air contaminants upon the combustion of fuel. 23

(C) "Energy conversion" means the conversion of fuel or 24
power usage and consumption from natural gas to an alternate 25
fuel or power source other than propane, butane, naphtha, or 26
fuel oil; or the conversion of fuel or power usage and 27
consumption from fuel oil to an alternate fuel or power source 28
other than natural gas, propane, butane, or naphtha. 29

(D) "Energy conversion facility" means any additional 30
property or equipment designed, constructed, or installed after 31
December 31, 1974, for use at an industrial or commercial plant 32
or site for the primary purpose of energy conversion. 33

(E) "Exempt facility" means any of the facilities defined 34
in division (B), (D), (F), (I), (K), or (L) of this section for 35
which an exempt facility certificate is issued pursuant to 36
section 5709.21 or for which a certificate remains valid under 37
section 5709.201 of the Revised Code. 38

(F) "Noise pollution control facility" means any property 39
designed, constructed, or installed for use at an industrial or 40
commercial plant or site for the primary purpose of eliminating 41
or reducing, at that plant or site, the emission of sound which 42
is harmful or inimical to persons or property, or materially 43
reduces the quality of the environment, as shall be determined 44

by the director of environmental protection within such 45
standards for noise pollution control facilities and standards 46
for environmental noise necessary to protect public health and 47
welfare as may be promulgated by the United States environmental 48
protection agency. In the absence of such United States 49
environmental protection agency standards, the determination 50
shall be made in accordance with generally accepted current 51
standards of good engineering practice in environmental noise 52
control. 53

(G) "Solid waste" means such unwanted residual solid or 54
semi-solid material as results from industrial operations, 55
including those of public utility companies, and commercial, 56
distribution, research, agricultural, and community operations, 57
including garbage, combustible or noncombustible, street dirt, 58
and debris. 59

(H) "Solid waste energy conversion" means the conversion 60
of solid waste into energy and the utilization of such energy 61
for some useful purpose. 62

(I) "Solid waste energy conversion facility" means any 63
property or equipment designed, constructed, or installed after 64
December 31, 1974, for use at an industrial or a commercial 65
plant or site for the primary purpose of solid waste energy 66
conversion. 67

(J) "Thermal efficiency improvement" means the recovery 68
and use of waste heat or waste steam produced incidental to 69
electric power generation, industrial process heat generation, 70
lighting, refrigeration, or space heating. 71

(K) "Thermal efficiency improvement facility" means any 72
property or equipment designed, constructed, or installed after 73

December 31, 1974, for use at an industrial or a commercial 74
plant or site for the primary purpose of thermal efficiency 75
improvement. 76

(L) "Industrial water pollution control facility" means 77
any property designed, constructed, or installed for the primary 78
purpose of collecting or conducting industrial waste to a point 79
of disposal or treatment; reducing, controlling, or eliminating 80
water pollution caused by industrial waste; or reducing, 81
controlling, or eliminating the discharge into a disposal system 82
of industrial waste or what would be industrial waste if 83
discharged into the waters of this state. This division applies 84
only to property related to an industrial water pollution 85
control facility placed into operation or initially capable of 86
operation after December 31, 1965, and installed pursuant to the 87
approval of the environmental protection agency, department of 88
natural resources, or any other governmental agency having 89
authority to approve the installation of industrial water 90
pollution control facilities. The definitions in section 6111.01 91
of the Revised Code, as applicable, apply to the terms used in 92
this division. 93

(M) Property designed, constructed, installed, used, or 94
placed in operation primarily for the safety, health, 95
protection, or benefit, or any combination thereof, of personnel 96
of a business, or primarily for a business's own benefit, is not 97
an "exempt facility." 98

Sec. 5709.211. (A) Before issuing an exempt facility 99
certificate pursuant to section 5709.21 of the Revised Code, the 100
tax commissioner shall provide a copy of a properly completed 101
application to, and obtain the opinion of, the one of the 102
following persons: 103

(1) The director of environmental protection in the case 104
of an exempt facility described in division (B) ~~, or (F), or (L)~~ 105
of section 5709.20 of the Revised Code, ~~or provide a copy of the~~ 106
~~application to, and obtain the opinion of, the, when~~ 107
applicable, division (L) of that section; 108

(2) The director of natural resources in the case of an 109
exempt facility described in division (L) of section 5709.20 of 110
the Revised Code, when applicable; 111

(3) The director of development in the case of an 112
application for an exempt facility described in division (D), 113
(I), or (K) of section 5709.20 of the Revised Code. ~~The~~ 114

The opinion shall provide the commissioner with a 115
recommendation of whether the property is primarily designed, 116
constructed, installed, and used as an exempt facility. The 117
applicant shall provide additional information upon request by 118
the tax commissioner, the director of environmental protection, 119
the director of natural resources, or the director of 120
development, and allow them to inspect the property listed in 121
the application for the purposes of sections 5709.20 to 5709.27 122
of the Revised Code. The tax commissioner shall provide to the 123
applicant a copy of the opinion issued by ~~either the director of~~ 124
environmental protection, director of natural resources, or ~~the~~ 125
director of the department of development, as applicable. 126

(B) The opinions of the director of the environmental 127
protection agency, the director of natural resources, and the 128
director of development under division (A) of this section or 129
division (C) (4) of section 5709.22 of the Revised Code are not 130
final actions or orders subject to appeal. 131

Sec. 5709.212. (A) With every application for an exempt 132

facility certificate filed pursuant to section 5709.21 of the 133
Revised Code, the applicant shall pay a fee equal to one-half of 134
one per cent of the total exempt facility project cost, not to 135
exceed two thousand dollars. If the director of environmental 136
protection is required to provide the opinion for an 137
application, the fee shall be credited to the non-Title V clean 138
air fund created in section 3704.035 of the Revised Code for use 139
in administering section 5709.211 of the Revised Code, unless 140
the application is for an industrial water pollution control 141
facility. ~~If the application is for an industrial water~~ 142
~~pollution control facility.~~ In such a case, the fee shall be 143
credited to the surface water protection fund created in section 144
6111.038 of the Revised Code for use in administering section 145
5709.211 of the Revised Code. If the director of development or 146
director of natural resources is required to provide the opinion 147
for an application, the fee for each exempt facility application 148
shall be credited to the exempt facility inspection fund, which 149
is hereby created in the state treasury, for appropriation to 150
the development services agency or department of natural 151
resources, as applicable, for use in administering section 152
5709.211 of the Revised Code. 153

An applicant is not entitled to any tax exemption under 154
section 5709.25 of the Revised Code until the fee required by 155
this section is paid. The fee required by this section is not 156
refundable, and is due with the application for an exempt 157
facility certificate even if an exempt facility certificate 158
ultimately is not issued or is withdrawn. Any application 159
submitted without payment of the fee shall be deemed incomplete 160
until the fee is paid. 161

(B) The application fee imposed under division (A) of this 162
section for a jointly owned facility shall be equal to one-half 163

of one per cent of the total exempt facility project cost, not 164
to exceed two thousand dollars for each facility that is the 165
subject of the application. 166

Sec. 5709.22. (A) After receiving an opinion from the 167
director of environmental protection, the director of natural 168
resources, or the director of development, the tax commissioner 169
shall promptly ascertain if an application filed under section 170
5709.21 of the Revised Code shall be allowed or disallowed in 171
whole or in part. The commissioner shall give written notice of 172
the proposed finding to the applicant and the county auditor of 173
the county in which the facility described in the application is 174
located. Within sixty days after sending written notice of the 175
proposed finding, the applicant or the county auditor may file a 176
request for reconsideration, in writing, to the commissioner and 177
may request that the commissioner conduct a hearing on the 178
application. If no request for reconsideration is filed, the 179
commissioner's proposed findings shall be final and, if 180
applicable, the commissioner shall issue an exempt facility 181
certificate, which shall not be subject to appeal pursuant to 182
section 5717.02 of the Revised Code. 183

(B) If a reconsideration of the tax commissioner's 184
proposed finding is requested by the applicant or the county 185
auditor, the commissioner shall notify the applicant and the 186
auditor of the time and place of the hearing, which the 187
commissioner may continue from time to time as the commissioner 188
finds necessary. The commissioner also shall notify the 189
environmental protection agency, department of natural 190
resources, or department of development, as applicable, of the 191
hearing. The environmental protection agency, department of 192
natural resources, or ~~the~~ department of development shall 193
participate in the hearing if requested in writing by the 194

commissioner, the applicant, or the county auditor. After 195
conducting the hearing, the commissioner shall issue a final 196
determination, with a copy of it served on the applicant and 197
applicable county auditors in the manner prescribed by section 198
5703.37 of the Revised Code. The final determination is subject 199
to appeal pursuant to section 5717.02 of the Revised Code. Once 200
all appeals are exhausted, the commissioner shall issue, if 201
applicable, the exempt facility certificate based on the outcome 202
of the appeal. 203

(C) The tax commissioner, on the commissioner's own 204
initiative or on complaint by the county auditor of any county 205
in which property to which the exempt facility certificate 206
relates is located, shall revoke the certificate, or modify it 207
by restricting its operation, if it appears to the commissioner 208
that any of the following has occurred: 209

(1) The certificate was obtained by fraud or 210
misrepresentation; 211

(2) The holder of the certificate has failed substantially 212
to proceed with the construction, reconstruction, installation, 213
or acquisition of an exempt facility; 214

(3) The property to which the certificate relates has 215
ceased to be used as an exempt facility; 216

(4) The tax commissioner issued the certificate in error. 217
As used in this section, "error" means any of the following: 218

(a) A clerical or mathematical mistake; 219

(b) When the commissioner agrees with an opinion from the 220
director of environmental protection, the director of natural 221
resources, or the director of development that a certificate 222
should not have been issued; 223

(c) When the tax commissioner determines that the issuance 224
of the certificate may have been improper as the result of a 225
final adjudication by the board of tax appeals, or by a court 226
with jurisdiction on appeal from that board, that is adverse to 227
the original exempt status of the facility, regardless of 228
whether the holder of the certificate was a party to such 229
adjudication. 230

(D) If the revocation or modification of a certificate 231
under division (C) (4) of this section is an action found to be 232
frivolous for the purposes of section 5703.54 of the Revised 233
Code the certificate holder may claim damages as provided under 234
division (B) of that section. 235

(E) Upon service of notice ~~certificate~~ to the holder of an 236
exempt facility certificate, in the manner provided in section 237
5703.37 of the Revised Code, of the tax commissioner's 238
revocation or modification of the certificate under division (C) 239
of this section, the certificate shall cease to be in force or 240
shall remain in force only as modified, as the case may require. 241
The notice is subject to appeal under section 5717.02 of the 242
Revised Code. Once all appeals are exhausted, the commissioner 243
shall issue a modified certificate, if applicable, and the 244
holder of the certificate shall be allowed to claim a refund 245
within one hundred eighty days, notwithstanding any other time 246
limitation provided by law of the taxes paid as a result of the 247
certificate being revoked or modified. 248

Sec. 5739.02. For the purpose of providing revenue with 249
which to meet the needs of the state, for the use of the general 250
revenue fund of the state, for the purpose of securing a 251
thorough and efficient system of common schools throughout the 252
state, for the purpose of affording revenues, in addition to 253

those from general property taxes, permitted under 254
constitutional limitations, and from other sources, for the 255
support of local governmental functions, and for the purpose of 256
reimbursing the state for the expense of administering this 257
chapter, an excise tax is hereby levied on each retail sale made 258
in this state. 259

(A) (1) The tax shall be collected as provided in section 260
5739.025 of the Revised Code. The rate of the tax shall be five 261
and three-fourths per cent. The tax applies and is collectible 262
when the sale is made, regardless of the time when the price is 263
paid or delivered. 264

(2) In the case of the lease or rental, with a fixed term 265
of more than thirty days or an indefinite term with a minimum 266
period of more than thirty days, of any motor vehicles designed 267
by the manufacturer to carry a load of not more than one ton, 268
watercraft, outboard motor, or aircraft, or of any tangible 269
personal property, other than motor vehicles designed by the 270
manufacturer to carry a load of more than one ton, to be used by 271
the lessee or renter primarily for business purposes, the tax 272
shall be collected by the vendor at the time the lease or rental 273
is consummated and shall be calculated by the vendor on the 274
basis of the total amount to be paid by the lessee or renter 275
under the lease agreement. If the total amount of the 276
consideration for the lease or rental includes amounts that are 277
not calculated at the time the lease or rental is executed, the 278
tax shall be calculated and collected by the vendor at the time 279
such amounts are billed to the lessee or renter. In the case of 280
an open-end lease or rental, the tax shall be calculated by the 281
vendor on the basis of the total amount to be paid during the 282
initial fixed term of the lease or rental, and for each 283
subsequent renewal period as it comes due. As used in this 284

division, "motor vehicle" has the same meaning as in section 285
4501.01 of the Revised Code, and "watercraft" includes an 286
outdrive unit attached to the watercraft. 287

A lease with a renewal clause and a termination penalty or 288
similar provision that applies if the renewal clause is not 289
exercised is presumed to be a sham transaction. In such a case, 290
the tax shall be calculated and paid on the basis of the entire 291
length of the lease period, including any renewal periods, until 292
the termination penalty or similar provision no longer applies. 293
The taxpayer shall bear the burden, by a preponderance of the 294
evidence, that the transaction or series of transactions is not 295
a sham transaction. 296

(3) Except as provided in division (A) (2) of this section, 297
in the case of a sale, the price of which consists in whole or 298
in part of the lease or rental of tangible personal property, 299
the tax shall be measured by the installments of that lease or 300
rental. 301

(4) In the case of a sale of a physical fitness facility 302
service or recreation and sports club service, the price of 303
which consists in whole or in part of a membership for the 304
receipt of the benefit of the service, the tax applicable to the 305
sale shall be measured by the installments thereof. 306

(B) The tax does not apply to the following: 307

(1) Sales to the state or any of its political 308
subdivisions, or to any other state or its political 309
subdivisions if the laws of that state exempt from taxation 310
sales made to this state and its political subdivisions; 311

(2) Sales of food for human consumption off the premises 312
where sold; 313

- (3) Sales of food sold to students only in a cafeteria, 314
dormitory, fraternity, or sorority maintained in a private, 315
public, or parochial school, college, or university; 316
- (4) Sales of newspapers and sales or transfers of 317
magazines distributed as controlled circulation publications; 318
- (5) The furnishing, preparing, or serving of meals without 319
charge by an employer to an employee provided the employer 320
records the meals as part compensation for services performed or 321
work done; 322
- (6) Sales of motor fuel upon receipt, use, distribution, 323
or sale of which in this state a tax is imposed by the law of 324
this state, but this exemption shall not apply to the sale of 325
motor fuel on which a refund of the tax is allowable under 326
division (A) of section 5735.14 of the Revised Code; and the tax 327
commissioner may deduct the amount of tax levied by this section 328
applicable to the price of motor fuel when granting a refund of 329
motor fuel tax pursuant to division (A) of section 5735.14 of 330
the Revised Code and shall cause the amount deducted to be paid 331
into the general revenue fund of this state; 332
- (7) Sales of natural gas by a natural gas company or 333
municipal gas utility, of water by a water-works company, or of 334
steam by a heating company, if in each case the thing sold is 335
delivered to consumers through pipes or conduits, and all sales 336
of communications services by a telegraph company, all terms as 337
defined in section 5727.01 of the Revised Code, and sales of 338
electricity delivered through wires; 339
- (8) Casual sales by a person, or auctioneer employed 340
directly by the person to conduct such sales, except as to such 341
sales of motor vehicles, watercraft or outboard motors required 342

to be titled under section 1548.06 of the Revised Code, 343
watercraft documented with the United States coast guard, 344
snowmobiles, and all-purpose vehicles as defined in section 345
4519.01 of the Revised Code; 346

(9) (a) Sales of services or tangible personal property, 347
other than motor vehicles, mobile homes, and manufactured homes, 348
by churches, organizations exempt from taxation under section 349
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 350
organizations operated exclusively for charitable purposes as 351
defined in division (B) (12) of this section, provided that the 352
number of days on which such tangible personal property or 353
services, other than items never subject to the tax, are sold 354
does not exceed six in any calendar year, except as otherwise 355
provided in division (B) (9) (b) of this section. If the number of 356
days on which such sales are made exceeds six in any calendar 357
year, the church or organization shall be considered to be 358
engaged in business and all subsequent sales by it shall be 359
subject to the tax. In counting the number of days, all sales by 360
groups within a church or within an organization shall be 361
considered to be sales of that church or organization. 362

(b) The limitation on the number of days on which tax- 363
exempt sales may be made by a church or organization under 364
division (B) (9) (a) of this section does not apply to sales made 365
by student clubs and other groups of students of a primary or 366
secondary school, or a parent-teacher association, booster 367
group, or similar organization that raises money to support or 368
fund curricular or extracurricular activities of a primary or 369
secondary school. 370

(c) Divisions (B) (9) (a) and (b) of this section do not 371
apply to sales by a noncommercial educational radio or 372

television broadcasting station. 373

(10) Sales not within the taxing power of this state under 374
the Constitution or laws of the United States or the 375
Constitution of this state; 376

(11) Except for transactions that are sales under division 377
(B) (3) (r) of section 5739.01 of the Revised Code, the 378
transportation of persons or property, unless the transportation 379
is by a private investigation and security service; 380

(12) Sales of tangible personal property or services to 381
churches, to organizations exempt from taxation under section 382
501(c) (3) of the Internal Revenue Code of 1986, and to any other 383
nonprofit organizations operated exclusively for charitable 384
purposes in this state, no part of the net income of which 385
inures to the benefit of any private shareholder or individual, 386
and no substantial part of the activities of which consists of 387
carrying on propaganda or otherwise attempting to influence 388
legislation; sales to offices administering one or more homes 389
for the aged or one or more hospital facilities exempt under 390
section 140.08 of the Revised Code; and sales to organizations 391
described in division (D) of section 5709.12 of the Revised 392
Code. 393

"Charitable purposes" means the relief of poverty; the 394
improvement of health through the alleviation of illness, 395
disease, or injury; the operation of an organization exclusively 396
for the provision of professional, laundry, printing, and 397
purchasing services to hospitals or charitable institutions; the 398
operation of a home for the aged, as defined in section 5701.13 399
of the Revised Code; the operation of a radio or television 400
broadcasting station that is licensed by the federal 401
communications commission as a noncommercial educational radio 402

or television station; the operation of a nonprofit animal 403
adoption service or a county humane society; the promotion of 404
education by an institution of learning that maintains a faculty 405
of qualified instructors, teaches regular continuous courses of 406
study, and confers a recognized diploma upon completion of a 407
specific curriculum; the operation of a parent-teacher 408
association, booster group, or similar organization primarily 409
engaged in the promotion and support of the curricular or 410
extracurricular activities of a primary or secondary school; the 411
operation of a community or area center in which presentations 412
in music, dramatics, the arts, and related fields are made in 413
order to foster public interest and education therein; the 414
production of performances in music, dramatics, and the arts; or 415
the promotion of education by an organization engaged in 416
carrying on research in, or the dissemination of, scientific and 417
technological knowledge and information primarily for the 418
public. 419

Nothing in this division shall be deemed to exempt sales 420
to any organization for use in the operation or carrying on of a 421
trade or business, or sales to a home for the aged for use in 422
the operation of independent living facilities as defined in 423
division (A) of section 5709.12 of the Revised Code. 424

(13) Building and construction materials and services sold 425
to construction contractors for incorporation into a structure 426
or improvement to real property under a construction contract 427
with this state or a political subdivision of this state, or 428
with the United States government or any of its agencies; 429
building and construction materials and services sold to 430
construction contractors for incorporation into a structure or 431
improvement to real property that are accepted for ownership by 432
this state or any of its political subdivisions, or by the 433

United States government or any of its agencies at the time of 434
completion of the structures or improvements; building and 435
construction materials sold to construction contractors for 436
incorporation into a horticulture structure or livestock 437
structure for a person engaged in the business of horticulture 438
or producing livestock; building materials and services sold to 439
a construction contractor for incorporation into a house of 440
public worship or religious education, or a building used 441
exclusively for charitable purposes under a construction 442
contract with an organization whose purpose is as described in 443
division (B) (12) of this section; building materials and 444
services sold to a construction contractor for incorporation 445
into a building under a construction contract with an 446
organization exempt from taxation under section 501(c) (3) of the 447
Internal Revenue Code of 1986 when the building is to be used 448
exclusively for the organization's exempt purposes; building and 449
construction materials sold for incorporation into the original 450
construction of a sports facility under section 307.696 of the 451
Revised Code; building and construction materials and services 452
sold to a construction contractor for incorporation into real 453
property outside this state if such materials and services, when 454
sold to a construction contractor in the state in which the real 455
property is located for incorporation into real property in that 456
state, would be exempt from a tax on sales levied by that state; 457
building and construction materials for incorporation into a 458
transportation facility pursuant to a public-private agreement 459
entered into under sections 5501.70 to 5501.83 of the Revised 460
Code; and, until one calendar year after the construction of a 461
convention center that qualifies for property tax exemption 462
under section 5709.084 of the Revised Code is completed, 463
building and construction materials and services sold to a 464
construction contractor for incorporation into the real property 465

comprising that convention center; 466

(14) Sales of ships or vessels or rail rolling stock used 467
or to be used principally in interstate or foreign commerce, and 468
repairs, alterations, fuel, and lubricants for such ships or 469
vessels or rail rolling stock; 470

(15) Sales to persons primarily engaged in any of the 471
activities mentioned in division (B) (42) (a), (g), or (h) of this 472
section, to persons engaged in making retail sales, or to 473
persons who purchase for sale from a manufacturer tangible 474
personal property that was produced by the manufacturer in 475
accordance with specific designs provided by the purchaser, of 476
packages, including material, labels, and parts for packages, 477
and of machinery, equipment, and material for use primarily in 478
packaging tangible personal property produced for sale, 479
including any machinery, equipment, and supplies used to make 480
labels or packages, to prepare packages or products for 481
labeling, or to label packages or products, by or on the order 482
of the person doing the packaging, or sold at retail. "Packages" 483
includes bags, baskets, cartons, crates, boxes, cans, bottles, 484
bindings, wrappings, and other similar devices and containers, 485
but does not include motor vehicles or bulk tanks, trailers, or 486
similar devices attached to motor vehicles. "Packaging" means 487
placing in a package. Division (B) (15) of this section does not 488
apply to persons engaged in highway transportation for hire. 489

(16) Sales of food to persons using supplemental nutrition 490
assistance program benefits to purchase the food. As used in 491
this division, "food" has the same meaning as in 7 U.S.C. 2012 492
and federal regulations adopted pursuant to the Food and 493
Nutrition Act of 2008. 494

(17) Sales to persons engaged in farming, agriculture, 495

horticulture, or floriculture, of tangible personal property for 496
use or consumption primarily in the production by farming, 497
agriculture, horticulture, or floriculture of other tangible 498
personal property for use or consumption primarily in the 499
production of tangible personal property for sale by farming, 500
agriculture, horticulture, or floriculture; or material and 501
parts for incorporation into any such tangible personal property 502
for use or consumption in production; and of tangible personal 503
property for such use or consumption in the conditioning or 504
holding of products produced by and for such use, consumption, 505
or sale by persons engaged in farming, agriculture, 506
horticulture, or floriculture, except where such property is 507
incorporated into real property; 508

(18) Sales of drugs for a human being that may be 509
dispensed only pursuant to a prescription; insulin as recognized 510
in the official United States pharmacopoeia; urine and blood 511
testing materials when used by diabetics or persons with 512
hypoglycemia to test for glucose or acetone; hypodermic syringes 513
and needles when used by diabetics for insulin injections; 514
epoetin alfa when purchased for use in the treatment of persons 515
with medical disease; hospital beds when purchased by hospitals, 516
nursing homes, or other medical facilities; and medical oxygen 517
and medical oxygen-dispensing equipment when purchased by 518
hospitals, nursing homes, or other medical facilities; 519

(19) Sales of prosthetic devices, durable medical 520
equipment for home use, or mobility enhancing equipment, when 521
made pursuant to a prescription and when such devices or 522
equipment are for use by a human being. 523

(20) Sales of emergency and fire protection vehicles and 524
equipment to nonprofit organizations for use solely in providing 525

fire protection and emergency services, including trauma care 526
and emergency medical services, for political subdivisions of 527
the state; 528

(21) Sales of tangible personal property manufactured in 529
this state, if sold by the manufacturer in this state to a 530
retailer for use in the retail business of the retailer outside 531
of this state and if possession is taken from the manufacturer 532
by the purchaser within this state for the sole purpose of 533
immediately removing the same from this state in a vehicle owned 534
by the purchaser; 535

(22) Sales of services provided by the state or any of its 536
political subdivisions, agencies, instrumentalities, 537
institutions, or authorities, or by governmental entities of the 538
state or any of its political subdivisions, agencies, 539
instrumentalities, institutions, or authorities; 540

(23) Sales of motor vehicles to nonresidents of this state 541
under the circumstances described in division (B) of section 542
5739.029 of the Revised Code; 543

(24) Sales to persons engaged in the preparation of eggs 544
for sale of tangible personal property used or consumed directly 545
in such preparation, including such tangible personal property 546
used for cleaning, sanitizing, preserving, grading, sorting, and 547
classifying by size; packages, including material and parts for 548
packages, and machinery, equipment, and material for use in 549
packaging eggs for sale; and handling and transportation 550
equipment and parts therefor, except motor vehicles licensed to 551
operate on public highways, used in intraplant or interplant 552
transfers or shipment of eggs in the process of preparation for 553
sale, when the plant or plants within or between which such 554
transfers or shipments occur are operated by the same person. 555

"Packages" includes containers, cases, baskets, flats, fillers, 556
filler flats, cartons, closure materials, labels, and labeling 557
materials, and "packaging" means placing therein. 558

(25) (a) Sales of water to a consumer for residential use; 559

(b) Sales of water by a nonprofit corporation engaged 560
exclusively in the treatment, distribution, and sale of water to 561
consumers, if such water is delivered to consumers through pipes 562
or tubing. 563

(26) Fees charged for inspection or reinspection of motor 564
vehicles under section 3704.14 of the Revised Code; 565

(27) Sales to persons licensed to conduct a food service 566
operation pursuant to section 3717.43 of the Revised Code, of 567
tangible personal property primarily used directly for the 568
following: 569

(a) To prepare food for human consumption for sale; 570

(b) To preserve food that has been or will be prepared for 571
human consumption for sale by the food service operator, not 572
including tangible personal property used to display food for 573
selection by the consumer; 574

(c) To clean tangible personal property used to prepare or 575
serve food for human consumption for sale. 576

(28) Sales of animals by nonprofit animal adoption 577
services or county humane societies; 578

(29) Sales of services to a corporation described in 579
division (A) of section 5709.72 of the Revised Code, and sales 580
of tangible personal property that qualifies for exemption from 581
taxation under section 5709.72 of the Revised Code; 582

(30) Sales and installation of agricultural land tile, as 583
defined in division (B) (5) (a) of section 5739.01 of the Revised 584
Code; 585

(31) Sales and erection or installation of portable grain 586
bins, as defined in division (B) (5) (b) of section 5739.01 of the 587
Revised Code; 588

(32) The sale, lease, repair, and maintenance of, parts 589
for, or items attached to or incorporated in, motor vehicles 590
that are primarily used for transporting tangible personal 591
property belonging to others by a person engaged in highway 592
transportation for hire, except for packages and packaging used 593
for the transportation of tangible personal property; 594

(33) Sales to the state headquarters of any veterans' 595
organization in this state that is either incorporated and 596
issued a charter by the congress of the United States or is 597
recognized by the United States veterans administration, for use 598
by the headquarters; 599

(34) Sales to a telecommunications service vendor, mobile 600
telecommunications service vendor, or satellite broadcasting 601
service vendor of tangible personal property and services used 602
directly and primarily in transmitting, receiving, switching, or 603
recording any interactive, one- or two-way electromagnetic 604
communications, including voice, image, data, and information, 605
through the use of any medium, including, but not limited to, 606
poles, wires, cables, switching equipment, computers, and record 607
storage devices and media, and component parts for the tangible 608
personal property. The exemption provided in this division shall 609
be in lieu of all other exemptions under division (B) (42) (a) or 610
(n) of this section to which the vendor may otherwise be 611
entitled, based upon the use of the thing purchased in providing 612

the telecommunications, mobile telecommunications, or satellite 613
broadcasting service. 614

(35) (a) Sales where the purpose of the consumer is to use 615
or consume the things transferred in making retail sales and 616
consisting of newspaper inserts, catalogues, coupons, flyers, 617
gift certificates, or other advertising material that prices and 618
describes tangible personal property offered for retail sale. 619

(b) Sales to direct marketing vendors of preliminary 620
materials such as photographs, artwork, and typesetting that 621
will be used in printing advertising material; and of printed 622
matter that offers free merchandise or chances to win sweepstake 623
prizes and that is mailed to potential customers with 624
advertising material described in division (B) (35) (a) of this 625
section; 626

(c) Sales of equipment such as telephones, computers, 627
facsimile machines, and similar tangible personal property 628
primarily used to accept orders for direct marketing retail 629
sales. 630

(d) Sales of automatic food vending machines that preserve 631
food with a shelf life of forty-five days or less by 632
refrigeration and dispense it to the consumer. 633

For purposes of division (B) (35) of this section, "direct 634
marketing" means the method of selling where consumers order 635
tangible personal property by United States mail, delivery 636
service, or telecommunication and the vendor delivers or ships 637
the tangible personal property sold to the consumer from a 638
warehouse, catalogue distribution center, or similar fulfillment 639
facility by means of the United States mail, delivery service, 640
or common carrier. 641

(36) Sales to a person engaged in the business of 642
horticulture or producing livestock of materials to be 643
incorporated into a horticulture structure or livestock 644
structure; 645

(37) Sales of personal computers, computer monitors, 646
computer keyboards, modems, and other peripheral computer 647
equipment to an individual who is licensed or certified to teach 648
in an elementary or a secondary school in this state for use by 649
that individual in preparation for teaching elementary or 650
secondary school students; 651

(38) Sales to a professional racing team of any of the 652
following: 653

(a) Motor racing vehicles; 654

(b) Repair services for motor racing vehicles; 655

(c) Items of property that are attached to or incorporated 656
in motor racing vehicles, including engines, chassis, and all 657
other components of the vehicles, and all spare, replacement, 658
and rebuilt parts or components of the vehicles; except not 659
including tires, consumable fluids, paint, and accessories 660
consisting of instrumentation sensors and related items added to 661
the vehicle to collect and transmit data by means of telemetry 662
and other forms of communication. 663

(39) Sales of used manufactured homes and used mobile 664
homes, as defined in section 5739.0210 of the Revised Code, made 665
on or after January 1, 2000; 666

(40) Sales of tangible personal property and services to a 667
provider of electricity used or consumed directly and primarily 668
in generating, transmitting, or distributing electricity for use 669
by others, including property that is or is to be incorporated 670

into and will become a part of the consumer's production, 671
transmission, or distribution system and that retains its 672
classification as tangible personal property after 673
incorporation; fuel or power used in the production, 674
transmission, or distribution of electricity; energy conversion 675
equipment as defined in section 5727.01 of the Revised Code; and 676
tangible personal property and services used in the repair and 677
maintenance of the production, transmission, or distribution 678
system, including only those motor vehicles as are specially 679
designed and equipped for such use. The exemption provided in 680
this division shall be in lieu of all other exemptions in 681
division (B) (42) (a) or (n) of this section to which a provider 682
of electricity may otherwise be entitled based on the use of the 683
tangible personal property or service purchased in generating, 684
transmitting, or distributing electricity. 685

(41) Sales to a person providing services under division 686
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 687
personal property and services used directly and primarily in 688
providing taxable services under that section. 689

(42) Sales where the purpose of the purchaser is to do any 690
of the following: 691

(a) To incorporate the thing transferred as a material or 692
a part into tangible personal property to be produced for sale 693
by manufacturing, assembling, processing, or refining; or to use 694
or consume the thing transferred directly in producing tangible 695
personal property for sale by mining, including, without 696
limitation, the extraction from the earth of all substances that 697
are classed geologically as minerals, ~~production of crude oil~~ 698
~~and natural gas~~, or directly in the rendition of a public 699
utility service, except that the sales tax levied by this 700

section shall be collected upon all meals, drinks, and food for 701
human consumption sold when transporting persons. ~~Persons~~ 702
~~engaged in rendering services in the exploration for, and~~ 703
~~production of, crude oil and natural gas for others are deemed~~ 704
~~engaged directly in the exploration for, and production of,~~ 705
~~crude oil and natural gas.~~ This paragraph does not exempt from 706
"retail sale" or "sales at retail" the sale of tangible personal 707
property that is to be incorporated into a structure or 708
improvement to real property. 709

(b) To hold the thing transferred as security for the 710
performance of an obligation of the vendor; 711

(c) To resell, hold, use, or consume the thing transferred 712
as evidence of a contract of insurance; 713

(d) To use or consume the thing directly in commercial 714
fishing; 715

(e) To incorporate the thing transferred as a material or 716
a part into, or to use or consume the thing transferred directly 717
in the production of, magazines distributed as controlled 718
circulation publications; 719

(f) To use or consume the thing transferred in the 720
production and preparation in suitable condition for market and 721
sale of printed, imprinted, overprinted, lithographic, 722
multilithic, blueprinted, photostatic, or other productions or 723
reproductions of written or graphic matter; 724

(g) To use the thing transferred, as described in section 725
5739.011 of the Revised Code, primarily in a manufacturing 726
operation to produce tangible personal property for sale; 727

(h) To use the benefit of a warranty, maintenance or 728
service contract, or similar agreement, as described in division 729

(B) (7) of section 5739.01 of the Revised Code, to repair or 730
maintain tangible personal property, if all of the property that 731
is the subject of the warranty, contract, or agreement would not 732
be subject to the tax imposed by this section; 733

(i) To use the thing transferred as qualified research and 734
development equipment; 735

(j) To use or consume the thing transferred primarily in 736
storing, transporting, mailing, or otherwise handling purchased 737
sales inventory in a warehouse, distribution center, or similar 738
facility when the inventory is primarily distributed outside 739
this state to retail stores of the person who owns or controls 740
the warehouse, distribution center, or similar facility, to 741
retail stores of an affiliated group of which that person is a 742
member, or by means of direct marketing. This division does not 743
apply to motor vehicles registered for operation on the public 744
highways. As used in this division, "affiliated group" has the 745
same meaning as in division (B) (3) (e) of section 5739.01 of the 746
Revised Code and "direct marketing" has the same meaning as in 747
division (B) (35) of this section. 748

(k) To use or consume the thing transferred to fulfill a 749
contractual obligation incurred by a warrantor pursuant to a 750
warranty provided as a part of the price of the tangible 751
personal property sold or by a vendor of a warranty, maintenance 752
or service contract, or similar agreement the provision of which 753
is defined as a sale under division (B) (7) of section 5739.01 of 754
the Revised Code; 755

(l) To use or consume the thing transferred in the 756
production of a newspaper for distribution to the public; 757

(m) To use tangible personal property to perform a service 758

listed in division (B) (3) of section 5739.01 of the Revised 759
Code, if the property is or is to be permanently transferred to 760
the consumer of the service as an integral part of the 761
performance of the service; 762

(n) To use or consume the thing transferred primarily in 763
producing tangible personal property for sale by farming, 764
agriculture, horticulture, or floriculture. Persons engaged in 765
rendering farming, agriculture, horticulture, or floriculture 766
services for others are deemed engaged primarily in farming, 767
agriculture, horticulture, or floriculture. This paragraph does 768
not exempt from "retail sale" or "sales at retail" the sale of 769
tangible personal property that is to be incorporated into a 770
structure or improvement to real property. 771

(o) To use or consume the thing transferred in acquiring, 772
formatting, editing, storing, and disseminating data or 773
information by electronic publishing; 774

(p) To provide the thing transferred to the owner or 775
lessee of a motor vehicle that is being repaired or serviced, if 776
the thing transferred is a rented motor vehicle and the 777
purchaser is reimbursed for the cost of the rented motor vehicle 778
by a manufacturer, warrantor, or provider of a maintenance, 779
service, or other similar contract or agreement, with respect to 780
the motor vehicle that is being repaired or serviced. 781

(q) To use or consume the thing transferred directly in 782
production of crude oil and natural gas for sale. Persons 783
engaged in rendering production services for others are deemed 784
engaged in production. 785

As used in division (B) (42) (q) of this section, 786
"production" means operations and tangible personal property 787

directly used to expose and evaluate an underground reservoir 788
that may contain hydrocarbon resources, prepare the wellbore for 789
production, and lift and control all substances yielded by the 790
reservoir to the surface of the earth. 791

(i) For the purposes of division (B) (42) (g) of this 792
section, the "thing transferred" includes, but is not limited 793
to, any of the following: 794

(I) Services provided in the construction of permanent 795
access roads, services provided in the construction of the well 796
site, and services provided in the construction of temporary 797
impoundments; 798

(II) Equipment and rigging used for the specific purpose 799
of creating with integrity a wellbore pathway to underground 800
reservoirs; 801

(III) Drilling and workover services used to work within a 802
subsurface wellbore, and tangible personal property directly 803
used in providing such services; 804

(IV) Casing, tubulars, and float and centralizing 805
equipment; 806

(V) Trailers to which production equipment is attached; 807

(VI) Well completion services, including cementing of 808
casing, and tangible personal property directly used in 809
providing such services; 810

(VII) Wireline evaluation, mud logging, and perforation 811
services, and tangible personal property directly used in 812
providing such services; 813

(VIII) Reservoir stimulation, hydraulic fracturing, and 814
acidizing services, and tangible personal property directly used 815

in providing such services, including all material pumped 816
downhole; 817

(IX) Pressure pumping equipment; 818

(X) Artificial lift systems equipment; 819

(XI) Wellhead equipment and well site equipment used to 820
separate, stabilize, and control hydrocarbon phases and produced 821
water; 822

(XII) Tangible personal property directly used to control 823
production equipment. 824

(ii) For the purposes of division (B) (42) (q) of this 825
section, the "thing transferred" does not include any of the 826
following: 827

(I) Tangible personal property used primarily in the 828
exploration and production of any mineral resource regulated 829
under Chapter 1509. of the Revised Code other than oil or gas; 830

(II) Tangible personal property used primarily in storing, 831
holding, or delivering solutions or chemicals used in well 832
stimulation as defined in section 1509.01 of the Revised Code; 833

(III) Tangible personal property used primarily in 834
preparing, installing, or reclaiming foundations for drilling or 835
pumping equipment or well stimulation material tanks; 836

(IV) Tangible personal property used primarily in 837
transporting, delivering, or removing equipment to or from the 838
well site or storing such equipment before its use at the well 839
site; 840

(V) Tangible personal property used primarily in gathering 841
operations occurring off the well site, including gathering 842

pipelines transporting hydrocarbon gas or liquids away from a 843
crude oil or natural gas production facility; 844

(VI) Tangible personal property that is to be incorporated 845
into a structure or improvement to real property; 846

(VII) Well site fencing, lighting, or security systems; 847

(VIII) Communication devices or services; 848

(IX) Office supplies; 849

(X) Trailers used as offices or lodging; 850

(XI) Motor vehicles of any kind; 851

(XII) Tangible personal property used primarily for the 852
storage of drilling byproducts and fuel not used for production; 853

(XIII) Tangible personal property used primarily as a 854
safety device; 855

(XIV) Data collection or monitoring devices; 856

(XV) Access ladders, stairs, or platforms attached to 857
storage tanks. 858

The enumeration of tangible personal property in division 859
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 860
and any tangible personal property not so enumerated shall not 861
necessarily be construed to be a "thing transferred" for the 862
purposes of division (B) (42) (q) of this section. 863

The commissioner shall adopt and promulgate rules under 864
sections 119.01 to 119.13 of the Revised Code that the 865
commissioner deems necessary to administer division (B) (42) (q) 866
of this section. 867

As used in division (B) (42) of this section, "thing" 868

includes all transactions included in divisions (B) (3) (a), (b), 869
and (e) of section 5739.01 of the Revised Code. 870

(43) Sales conducted through a coin operated device that 871
activates vacuum equipment or equipment that dispenses water, 872
whether or not in combination with soap or other cleaning agents 873
or wax, to the consumer for the consumer's use on the premises 874
in washing, cleaning, or waxing a motor vehicle, provided no 875
other personal property or personal service is provided as part 876
of the transaction. 877

(44) Sales of replacement and modification parts for 878
engines, airframes, instruments, and interiors in, and paint 879
for, aircraft used primarily in a fractional aircraft ownership 880
program, and sales of services for the repair, modification, and 881
maintenance of such aircraft, and machinery, equipment, and 882
supplies primarily used to provide those services. 883

(45) Sales of telecommunications service that is used 884
directly and primarily to perform the functions of a call 885
center. As used in this division, "call center" means any 886
physical location where telephone calls are placed or received 887
in high volume for the purpose of making sales, marketing, 888
customer service, technical support, or other specialized 889
business activity, and that employs at least fifty individuals 890
that engage in call center activities on a full-time basis, or 891
sufficient individuals to fill fifty full-time equivalent 892
positions. 893

(46) Sales by a telecommunications service vendor of 900 894
service to a subscriber. This division does not apply to 895
information services, as defined in division (FF) of section 896
5739.01 of the Revised Code. 897

(47) Sales of value-added non-voice data service. This 898
division does not apply to any similar service that is not 899
otherwise a telecommunications service. 900

(48) (a) Sales of machinery, equipment, and software to a 901
qualified direct selling entity for use in a warehouse or 902
distribution center primarily for storing, transporting, or 903
otherwise handling inventory that is held for sale to 904
independent salespersons who operate as direct sellers and that 905
is held primarily for distribution outside this state; 906

(b) As used in division (B) (48) (a) of this section: 907

(i) "Direct seller" means a person selling consumer 908
products to individuals for personal or household use and not 909
from a fixed retail location, including selling such product at 910
in-home product demonstrations, parties, and other one-on-one 911
selling. 912

(ii) "Qualified direct selling entity" means an entity 913
selling to direct sellers at the time the entity enters into a 914
tax credit agreement with the tax credit authority pursuant to 915
section 122.17 of the Revised Code, provided that the agreement 916
was entered into on or after January 1, 2007. Neither 917
contingencies relevant to the granting of, nor later 918
developments with respect to, the tax credit shall impair the 919
status of the qualified direct selling entity under division (B) 920
(48) of this section after execution of the tax credit agreement 921
by the tax credit authority. 922

(c) Division (B) (48) of this section is limited to 923
machinery, equipment, and software first stored, used, or 924
consumed in this state within the period commencing June 24, 925
2008, and ending on the date that is five years after that date. 926

(49) Sales of materials, parts, equipment, or engines used 927
in the repair or maintenance of aircraft or avionics systems of 928
such aircraft, and sales of repair, remodeling, replacement, or 929
maintenance services in this state performed on aircraft or on 930
an aircraft's avionics, engine, or component materials or parts. 931
As used in division (B) (49) of this section, "aircraft" means 932
aircraft of more than six thousand pounds maximum certified 933
takeoff weight or used exclusively in general aviation. 934

(50) Sales of full flight simulators that are used for 935
pilot or flight-crew training, sales of repair or replacement 936
parts or components, and sales of repair or maintenance services 937
for such full flight simulators. "Full flight simulator" means a 938
replica of a specific type, or make, model, and series of 939
aircraft cockpit. It includes the assemblage of equipment and 940
computer programs necessary to represent aircraft operations in 941
ground and flight conditions, a visual system providing an out- 942
of-the-cockpit view, and a system that provides cues at least 943
equivalent to those of a three-degree-of-freedom motion system, 944
and has the full range of capabilities of the systems installed 945
in the device as described in appendices A and B of part 60 of 946
chapter 1 of title 14 of the Code of Federal Regulations. 947

(51) Any transfer or lease of tangible personal property 948
between the state and JobsOhio in accordance with section 949
4313.02 of the Revised Code. 950

(52) (a) Sales to a qualifying corporation. 951

(b) As used in division (B) (52) of this section: 952

(i) "Qualifying corporation" means a nonprofit corporation 953
organized in this state that leases from an eligible county 954
land, buildings, structures, fixtures, and improvements to the 955

land that are part of or used in a public recreational facility 956
used by a major league professional athletic team or a class A 957
to class AAA minor league affiliate of a major league 958
professional athletic team for a significant portion of the 959
team's home schedule, provided the following apply: 960

(I) The facility is leased from the eligible county 961
pursuant to a lease that requires substantially all of the 962
revenue from the operation of the business or activity conducted 963
by the nonprofit corporation at the facility in excess of 964
operating costs, capital expenditures, and reserves to be paid 965
to the eligible county at least once per calendar year. 966

(II) Upon dissolution and liquidation of the nonprofit 967
corporation, all of its net assets are distributable to the 968
board of commissioners of the eligible county from which the 969
corporation leases the facility. 970

(ii) "Eligible county" has the same meaning as in section 971
307.695 of the Revised Code. 972

(53) Sales to or by a cable service provider, video 973
service provider, or radio or television broadcast station 974
regulated by the federal government of cable service or 975
programming, video service or programming, audio service or 976
programming, or electronically transferred digital audiovisual 977
or audio work. As used in division (B) (53) of this section, 978
"cable service" and "cable service provider" have the same 979
meanings as in section 1332.01 of the Revised Code, and "video 980
service," "video service provider," and "video programming" have 981
the same meanings as in section 1332.21 of the Revised Code. 982

(54) Sales of investment metal bullion and investment 983
coins. "Investment metal bullion" means any bullion described in 984

section 408(m) (3) (B) of the Internal Revenue Code, regardless of 985
whether that bullion is in the physical possession of a trustee. 986
"Investment coin" means any coin composed primarily of gold, 987
silver, platinum, or palladium. 988

(C) For the purpose of the proper administration of this 989
chapter, and to prevent the evasion of the tax, it is presumed 990
that all sales made in this state are subject to the tax until 991
the contrary is established. 992

(D) The levy of this tax on retail sales of recreation and 993
sports club service shall not prevent a municipal corporation 994
from levying any tax on recreation and sports club dues or on 995
any income generated by recreation and sports club dues. 996

(E) The tax collected by the vendor from the consumer 997
under this chapter is not part of the price, but is a tax 998
collection for the benefit of the state, and of counties levying 999
an additional sales tax pursuant to section 5739.021 or 5739.026 1000
of the Revised Code and of transit authorities levying an 1001
additional sales tax pursuant to section 5739.023 of the Revised 1002
Code. Except for the discount authorized under section 5739.12 1003
of the Revised Code and the effects of any rounding pursuant to 1004
section 5703.055 of the Revised Code, no person other than the 1005
state or such a county or transit authority shall derive any 1006
benefit from the collection or payment of the tax levied by this 1007
section or section 5739.021, 5739.023, or 5739.026 of the 1008
Revised Code. 1009

Section 2. That existing sections 5709.20, 5709.211, 1010
5709.212, 5709.22, and 5739.02 of the Revised Code are hereby 1011
repealed. 1012

Section 3. The amendment by this act of sections 5709.20, 1013

5709.211, 5709.212, 5709.22, and 5739.02 of the Revised Code is 1014
a remedial measure intended to clarify existing law and applies 1015
to all cases pending on a petition for reassessment or further 1016
appeal, or transactions subject to an audit by the Department of 1017
Taxation, on or after, May 18, 2018. 1018

Section 4. Section 5739.02 of the Revised Code is 1019
presented in this act as a composite of the section as amended 1020
by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of 1021
the 131st General Assembly. The General Assembly, applying the 1022
principle stated in division (B) of section 1.52 of the Revised 1023
Code that amendments are to be harmonized if reasonably capable 1024
of simultaneous operation, finds that the composite is the 1025
resulting version of the section in effect prior to the 1026
effective date of the section as presented in this act. 1027