

As Re-reported by the Senate Rules and Reference Committee

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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 3743.75, 5709.20, 5709.211, 1
5709.212, 5709.22, and 5739.02 of the Revised 2
Code to modify the language governing the sales 3
and use tax exemption for certain kinds of 4
property used in the production of oil and gas 5
and to extend the moratorium on new fireworks 6
manufacturer and wholesaler licenses. 7

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

Section 1. That sections 3743.75, 5709.20, 5709.211, 8
5709.212, 5709.22, and 5739.02 of the Revised Code be amended to 9
read as follows: 10

Sec. 3743.75. (A) During the period beginning on June 29, 11
2001, and ending on ~~September 15, 2018~~ December 31, 2019, the 12
state fire marshal shall not do any of the following: 13

(1) Issue a license as a manufacturer of fireworks under 14
sections 3743.02 and 3743.03 of the Revised Code to a person for 15

a particular fireworks plant unless that person possessed such a 16
license for that fireworks plant immediately prior to June 29, 17
2001; 18

(2) Issue a license as a wholesaler of fireworks under 19
sections 3743.15 and 3743.16 of the Revised Code to a person for 20
a particular location unless that person possessed such a 21
license for that location immediately prior to June 29, 2001; 22

(3) Except as provided in division (B) of this section, 23
approve the geographic transfer of a license as a manufacturer 24
or wholesaler of fireworks issued under this chapter to any 25
location other than a location for which a license was issued 26
under this chapter immediately prior to June 29, 2001. 27

(B) Division (A) (3) of this section does not apply to a 28
transfer that the state fire marshal approves under division (F) 29
of section 3743.17 of the Revised Code. 30

(C) Notwithstanding section 3743.59 of the Revised Code, 31
the prohibited activities established in divisions (A) (1) and 32
(2) of this section, geographic transfers approved pursuant to 33
division (F) of section 3743.17 of the Revised Code, and storage 34
locations allowed pursuant to division (I) of section 3743.04 of 35
the Revised Code or division (G) of section 3743.17 of the 36
Revised Code are not subject to any variance, waiver, or 37
exclusion. 38

(D) As used in division (A) of this section: 39

(1) "Person" includes any person or entity, in whatever 40
form or name, that acquires possession of a manufacturer or 41
wholesaler of fireworks license issued pursuant to this chapter 42
by transfer of possession of a license, whether that transfer 43
occurs by purchase, assignment, inheritance, bequest, stock 44

transfer, or any other type of transfer, on the condition that 45
the transfer is in accordance with division (D) of section 46
3743.04 of the Revised Code or division (D) of section 3743.17 47
of the Revised Code and is approved by the fire marshal. 48

(2) "Particular location" includes a licensed premises 49
and, regardless of when approved, any storage location approved 50
in accordance with section 3743.04 or 3743.17 of the Revised 51
Code. 52

(3) "Such a license" includes a wholesaler of fireworks 53
license that was issued in place of a manufacturer of fireworks 54
license that existed prior to June 29, 2001, and was requested 55
to be canceled by the license holder pursuant to division (D) of 56
section 3743.03 of the Revised Code. 57

Sec. 5709.20. As used in sections 5709.20 to 5709.27 of 58
the Revised Code: 59

(A) "Air contaminant" means particulate matter, dust, 60
fumes, gas, mist, smoke, vapor, or odorous substances, or any 61
combination thereof. 62

(B) "Air pollution control facility" means any property 63
designed, constructed, or installed for the primary purpose of 64
eliminating or reducing the emission of, or ground level 65
concentration of, air contaminants generated at an industrial or 66
commercial plant or site that renders air harmful or inimical to 67
the public health or to property within this state, or such 68
property installed on or after November 1, 1993, at a petroleum 69
refinery for the primary purpose of eliminating or reducing 70
substances within fuel that otherwise would create the emission 71
of air contaminants upon the combustion of fuel. 72

(C) "Energy conversion" means the conversion of fuel or 73

power usage and consumption from natural gas to an alternate 74
fuel or power source other than propane, butane, naphtha, or 75
fuel oil; or the conversion of fuel or power usage and 76
consumption from fuel oil to an alternate fuel or power source 77
other than natural gas, propane, butane, or naphtha. 78

(D) "Energy conversion facility" means any additional 79
property or equipment designed, constructed, or installed after 80
December 31, 1974, for use at an industrial or commercial plant 81
or site for the primary purpose of energy conversion. 82

(E) "Exempt facility" means any of the facilities defined 83
in division (B), (D), (F), (I), (K), or (L) of this section for 84
which an exempt facility certificate is issued pursuant to 85
section 5709.21 or for which a certificate remains valid under 86
section 5709.201 of the Revised Code. 87

(F) "Noise pollution control facility" means any property 88
designed, constructed, or installed for use at an industrial or 89
commercial plant or site for the primary purpose of eliminating 90
or reducing, at that plant or site, the emission of sound which 91
is harmful or inimical to persons or property, or materially 92
reduces the quality of the environment, as shall be determined 93
by the director of environmental protection within such 94
standards for noise pollution control facilities and standards 95
for environmental noise necessary to protect public health and 96
welfare as may be promulgated by the United States environmental 97
protection agency. In the absence of such United States 98
environmental protection agency standards, the determination 99
shall be made in accordance with generally accepted current 100
standards of good engineering practice in environmental noise 101
control. 102

(G) "Solid waste" means such unwanted residual solid or 103

semi-solid material as results from industrial operations, 104
including those of public utility companies, and commercial, 105
distribution, research, agricultural, and community operations, 106
including garbage, combustible or noncombustible, street dirt, 107
and debris. 108

(H) "Solid waste energy conversion" means the conversion 109
of solid waste into energy and the utilization of such energy 110
for some useful purpose. 111

(I) "Solid waste energy conversion facility" means any 112
property or equipment designed, constructed, or installed after 113
December 31, 1974, for use at an industrial or a commercial 114
plant or site for the primary purpose of solid waste energy 115
conversion. 116

(J) "Thermal efficiency improvement" means the recovery 117
and use of waste heat or waste steam produced incidental to 118
electric power generation, industrial process heat generation, 119
lighting, refrigeration, or space heating. 120

(K) "Thermal efficiency improvement facility" means any 121
property or equipment designed, constructed, or installed after 122
December 31, 1974, for use at an industrial or a commercial 123
plant or site for the primary purpose of thermal efficiency 124
improvement. 125

(L) "Industrial water pollution control facility" means 126
any property designed, constructed, or installed for the primary 127
purpose of collecting or conducting industrial waste to a point 128
of disposal or treatment; reducing, controlling, or eliminating 129
water pollution caused by industrial waste; or reducing, 130
controlling, or eliminating the discharge into a disposal system 131
of industrial waste or what would be industrial waste if 132

discharged into the waters of this state. This division applies 133
only to property related to an industrial water pollution 134
control facility placed into operation or initially capable of 135
operation after December 31, 1965, and installed pursuant to the 136
approval of the environmental protection agency, department of 137
natural resources, or any other governmental agency having 138
authority to approve the installation of industrial water 139
pollution control facilities. The definitions in section 6111.01 140
of the Revised Code, as applicable, apply to the terms used in 141
this division. 142

(M) Property designed, constructed, installed, used, or 143
placed in operation primarily for the safety, health, 144
protection, or benefit, or any combination thereof, of personnel 145
of a business, or primarily for a business's own benefit, is not 146
an "exempt facility." 147

Sec. 5709.211. (A) Before issuing an exempt facility 148
certificate pursuant to section 5709.21 of the Revised Code, the 149
tax commissioner shall provide a copy of a properly completed 150
application to, and obtain the opinion of, the one of the 151
following persons: 152

(1) The director of environmental protection in the case 153
of an exempt facility described in division (B) ~~7~~ or (F) ~~7~~ or (L) 154
of section 5709.20 of the Revised Code, ~~7~~ or provide a copy of the 155
application to, and obtain the opinion of, the , when 156
applicable, division (L) of that section; 157

(2) The director of natural resources in the case of an 158
exempt facility described in division (L) of section 5709.20 of 159
the Revised Code, when applicable; 160

(3) The director of development in the case of an 161

application for an exempt facility described in division (D), 162
(I), or (K) of section 5709.20 of the Revised Code. ~~The~~ 163

The opinion shall provide the commissioner with a 164
recommendation of whether the property is primarily designed, 165
constructed, installed, and used as an exempt facility. The 166
applicant shall provide additional information upon request by 167
the tax commissioner, the director of environmental protection, 168
the director of natural resources, or the director of 169
development, and allow them to inspect the property listed in 170
the application for the purposes of sections 5709.20 to 5709.27 171
of the Revised Code. The tax commissioner shall provide to the 172
applicant a copy of the opinion issued by ~~either~~ the director of 173
environmental protection, director of natural resources, or ~~the~~ 174
director of the department of development, as applicable. 175

(B) The opinions of the director of the environmental 176
protection agency, the director of natural resources, and the 177
director of development under division (A) of this section or 178
division (C) (4) of section 5709.22 of the Revised Code are not 179
final actions or orders subject to appeal. 180

Sec. 5709.212. (A) With every application for an exempt 181
facility certificate filed pursuant to section 5709.21 of the 182
Revised Code, the applicant shall pay a fee equal to one-half of 183
one per cent of the total exempt facility project cost, not to 184
exceed two thousand dollars. If the director of environmental 185
protection is required to provide the opinion for an 186
application, the fee shall be credited to the non-Title V clean 187
air fund created in section 3704.035 of the Revised Code for use 188
in administering section 5709.211 of the Revised Code, unless 189
the application is for an industrial water pollution control 190
facility. ~~If the application is for an industrial water~~ 191

~~pollution control facility.~~ In such a case, the fee shall be 192
credited to the surface water protection fund created in section 193
6111.038 of the Revised Code for use in administering section 194
5709.211 of the Revised Code. If the director of development or 195
director of natural resources is required to provide the opinion 196
for an application, the fee for each exempt facility application 197
shall be credited to the exempt facility inspection fund, which 198
is hereby created in the state treasury, for appropriation to 199
the development services agency or department of natural 200
resources, as applicable, for use in administering section 201
5709.211 of the Revised Code. 202

An applicant is not entitled to any tax exemption under 203
section 5709.25 of the Revised Code until the fee required by 204
this section is paid. The fee required by this section is not 205
refundable, and is due with the application for an exempt 206
facility certificate even if an exempt facility certificate 207
ultimately is not issued or is withdrawn. Any application 208
submitted without payment of the fee shall be deemed incomplete 209
until the fee is paid. 210

(B) The application fee imposed under division (A) of this 211
section for a jointly owned facility shall be equal to one-half 212
of one per cent of the total exempt facility project cost, not 213
to exceed two thousand dollars for each facility that is the 214
subject of the application. 215

Sec. 5709.22. (A) After receiving an opinion from the 216
director of environmental protection, the director of natural 217
resources, or the director of development, the tax commissioner 218
shall promptly ascertain if an application filed under section 219
5709.21 of the Revised Code shall be allowed or disallowed in 220
whole or in part. The commissioner shall give written notice of 221

the proposed finding to the applicant and the county auditor of 222
the county in which the facility described in the application is 223
located. Within sixty days after sending written notice of the 224
proposed finding, the applicant or the county auditor may file a 225
request for reconsideration, in writing, to the commissioner and 226
may request that the commissioner conduct a hearing on the 227
application. If no request for reconsideration is filed, the 228
commissioner's proposed findings shall be final and, if 229
applicable, the commissioner shall issue an exempt facility 230
certificate, which shall not be subject to appeal pursuant to 231
section 5717.02 of the Revised Code. 232

(B) If a reconsideration of the tax commissioner's 233
proposed finding is requested by the applicant or the county 234
auditor, the commissioner shall notify the applicant and the 235
auditor of the time and place of the hearing, which the 236
commissioner may continue from time to time as the commissioner 237
finds necessary. The commissioner also shall notify the 238
environmental protection agency, department of natural 239
resources, or department of development, as applicable, of the 240
hearing. The environmental protection agency, department of 241
natural resources, or ~~the~~ department of development shall 242
participate in the hearing if requested in writing by the 243
commissioner, the applicant, or the county auditor. After 244
conducting the hearing, the commissioner shall issue a final 245
determination, with a copy of it served on the applicant and 246
applicable county auditors in the manner prescribed by section 247
5703.37 of the Revised Code. The final determination is subject 248
to appeal pursuant to section 5717.02 of the Revised Code. Once 249
all appeals are exhausted, the commissioner shall issue, if 250
applicable, the exempt facility certificate based on the outcome 251
of the appeal. 252

(C) The tax commissioner, on the commissioner's own 253
initiative or on complaint by the county auditor of any county 254
in which property to which the exempt facility certificate 255
relates is located, shall revoke the certificate, or modify it 256
by restricting its operation, if it appears to the commissioner 257
that any of the following has occurred: 258

(1) The certificate was obtained by fraud or 259
misrepresentation; 260

(2) The holder of the certificate has failed substantially 261
to proceed with the construction, reconstruction, installation, 262
or acquisition of an exempt facility; 263

(3) The property to which the certificate relates has 264
ceased to be used as an exempt facility; 265

(4) The tax commissioner issued the certificate in error. 266
As used in this section, "error" means any of the following: 267

(a) A clerical or mathematical mistake; 268

(b) When the commissioner agrees with an opinion from the 269
director of environmental protection, the director of natural 270
resources, or the director of development that a certificate 271
should not have been issued; 272

(c) When the tax commissioner determines that the issuance 273
of the certificate may have been improper as the result of a 274
final adjudication by the board of tax appeals, or by a court 275
with jurisdiction on appeal from that board, that is adverse to 276
the original exempt status of the facility, regardless of 277
whether the holder of the certificate was a party to such 278
adjudication. 279

(D) If the revocation or modification of a certificate 280

under division (C) (4) of this section is an action found to be 281
frivolous for the purposes of section 5703.54 of the Revised 282
Code the certificate holder may claim damages as provided under 283
division (B) of that section. 284

(E) Upon service of notice ~~certificate~~ to the holder of an 285
exempt facility certificate, in the manner provided in section 286
5703.37 of the Revised Code, of the tax commissioner's 287
revocation or modification of the certificate under division (C) 288
of this section, the certificate shall cease to be in force or 289
shall remain in force only as modified, as the case may require. 290
The notice is subject to appeal under section 5717.02 of the 291
Revised Code. Once all appeals are exhausted, the commissioner 292
shall issue a modified certificate, if applicable, and the 293
holder of the certificate shall be allowed to claim a refund 294
within one hundred eighty days, notwithstanding any other time 295
limitation provided by law of the taxes paid as a result of the 296
certificate being revoked or modified. 297

Sec. 5739.02. For the purpose of providing revenue with 298
which to meet the needs of the state, for the use of the general 299
revenue fund of the state, for the purpose of securing a 300
thorough and efficient system of common schools throughout the 301
state, for the purpose of affording revenues, in addition to 302
those from general property taxes, permitted under 303
constitutional limitations, and from other sources, for the 304
support of local governmental functions, and for the purpose of 305
reimbursing the state for the expense of administering this 306
chapter, an excise tax is hereby levied on each retail sale made 307
in this state. 308

(A) (1) The tax shall be collected as provided in section 309
5739.025 of the Revised Code. The rate of the tax shall be five 310

and three-fourths per cent. The tax applies and is collectible 311
when the sale is made, regardless of the time when the price is 312
paid or delivered. 313

(2) In the case of the lease or rental, with a fixed term 314
of more than thirty days or an indefinite term with a minimum 315
period of more than thirty days, of any motor vehicles designed 316
by the manufacturer to carry a load of not more than one ton, 317
watercraft, outboard motor, or aircraft, or of any tangible 318
personal property, other than motor vehicles designed by the 319
manufacturer to carry a load of more than one ton, to be used by 320
the lessee or renter primarily for business purposes, the tax 321
shall be collected by the vendor at the time the lease or rental 322
is consummated and shall be calculated by the vendor on the 323
basis of the total amount to be paid by the lessee or renter 324
under the lease agreement. If the total amount of the 325
consideration for the lease or rental includes amounts that are 326
not calculated at the time the lease or rental is executed, the 327
tax shall be calculated and collected by the vendor at the time 328
such amounts are billed to the lessee or renter. In the case of 329
an open-end lease or rental, the tax shall be calculated by the 330
vendor on the basis of the total amount to be paid during the 331
initial fixed term of the lease or rental, and for each 332
subsequent renewal period as it comes due. As used in this 333
division, "motor vehicle" has the same meaning as in section 334
4501.01 of the Revised Code, and "watercraft" includes an 335
outdrive unit attached to the watercraft. 336

A lease with a renewal clause and a termination penalty or 337
similar provision that applies if the renewal clause is not 338
exercised is presumed to be a sham transaction. In such a case, 339
the tax shall be calculated and paid on the basis of the entire 340
length of the lease period, including any renewal periods, until 341

the termination penalty or similar provision no longer applies. 342
The taxpayer shall bear the burden, by a preponderance of the 343
evidence, that the transaction or series of transactions is not 344
a sham transaction. 345

(3) Except as provided in division (A)(2) of this section, 346
in the case of a sale, the price of which consists in whole or 347
in part of the lease or rental of tangible personal property, 348
the tax shall be measured by the installments of that lease or 349
rental. 350

(4) In the case of a sale of a physical fitness facility 351
service or recreation and sports club service, the price of 352
which consists in whole or in part of a membership for the 353
receipt of the benefit of the service, the tax applicable to the 354
sale shall be measured by the installments thereof. 355

(B) The tax does not apply to the following: 356

(1) Sales to the state or any of its political 357
subdivisions, or to any other state or its political 358
subdivisions if the laws of that state exempt from taxation 359
sales made to this state and its political subdivisions; 360

(2) Sales of food for human consumption off the premises 361
where sold; 362

(3) Sales of food sold to students only in a cafeteria, 363
dormitory, fraternity, or sorority maintained in a private, 364
public, or parochial school, college, or university; 365

(4) Sales of newspapers and sales or transfers of 366
magazines distributed as controlled circulation publications; 367

(5) The furnishing, preparing, or serving of meals without 368
charge by an employer to an employee provided the employer 369

records the meals as part compensation for services performed or 370
work done; 371

(6) Sales of motor fuel upon receipt, use, distribution, 372
or sale of which in this state a tax is imposed by the law of 373
this state, but this exemption shall not apply to the sale of 374
motor fuel on which a refund of the tax is allowable under 375
division (A) of section 5735.14 of the Revised Code; and the tax 376
commissioner may deduct the amount of tax levied by this section 377
applicable to the price of motor fuel when granting a refund of 378
motor fuel tax pursuant to division (A) of section 5735.14 of 379
the Revised Code and shall cause the amount deducted to be paid 380
into the general revenue fund of this state; 381

(7) Sales of natural gas by a natural gas company or 382
municipal gas utility, of water by a water-works company, or of 383
steam by a heating company, if in each case the thing sold is 384
delivered to consumers through pipes or conduits, and all sales 385
of communications services by a telegraph company, all terms as 386
defined in section 5727.01 of the Revised Code, and sales of 387
electricity delivered through wires; 388

(8) Casual sales by a person, or auctioneer employed 389
directly by the person to conduct such sales, except as to such 390
sales of motor vehicles, watercraft or outboard motors required 391
to be titled under section 1548.06 of the Revised Code, 392
watercraft documented with the United States coast guard, 393
snowmobiles, and all-purpose vehicles as defined in section 394
4519.01 of the Revised Code; 395

(9) (a) Sales of services or tangible personal property, 396
other than motor vehicles, mobile homes, and manufactured homes, 397
by churches, organizations exempt from taxation under section 398
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 399

organizations operated exclusively for charitable purposes as 400
defined in division (B) (12) of this section, provided that the 401
number of days on which such tangible personal property or 402
services, other than items never subject to the tax, are sold 403
does not exceed six in any calendar year, except as otherwise 404
provided in division (B) (9) (b) of this section. If the number of 405
days on which such sales are made exceeds six in any calendar 406
year, the church or organization shall be considered to be 407
engaged in business and all subsequent sales by it shall be 408
subject to the tax. In counting the number of days, all sales by 409
groups within a church or within an organization shall be 410
considered to be sales of that church or organization. 411

(b) The limitation on the number of days on which tax- 412
exempt sales may be made by a church or organization under 413
division (B) (9) (a) of this section does not apply to sales made 414
by student clubs and other groups of students of a primary or 415
secondary school, or a parent-teacher association, booster 416
group, or similar organization that raises money to support or 417
fund curricular or extracurricular activities of a primary or 418
secondary school. 419

(c) Divisions (B) (9) (a) and (b) of this section do not 420
apply to sales by a noncommercial educational radio or 421
television broadcasting station. 422

(10) Sales not within the taxing power of this state under 423
the Constitution or laws of the United States or the 424
Constitution of this state; 425

(11) Except for transactions that are sales under division 426
(B) (3) (r) of section 5739.01 of the Revised Code, the 427
transportation of persons or property, unless the transportation 428
is by a private investigation and security service; 429

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

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

operation of a community or area center in which presentations 461
in music, dramatics, the arts, and related fields are made in 462
order to foster public interest and education therein; the 463
production of performances in music, dramatics, and the arts; or 464
the promotion of education by an organization engaged in 465
carrying on research in, or the dissemination of, scientific and 466
technological knowledge and information primarily for the 467
public. 468

Nothing in this division shall be deemed to exempt sales 469
to any organization for use in the operation or carrying on of a 470
trade or business, or sales to a home for the aged for use in 471
the operation of independent living facilities as defined in 472
division (A) of section 5709.12 of the Revised Code. 473

(13) Building and construction materials and services sold 474
to construction contractors for incorporation into a structure 475
or improvement to real property under a construction contract 476
with this state or a political subdivision of this state, or 477
with the United States government or any of its agencies; 478
building and construction materials and services sold to 479
construction contractors for incorporation into a structure or 480
improvement to real property that are accepted for ownership by 481
this state or any of its political subdivisions, or by the 482
United States government or any of its agencies at the time of 483
completion of the structures or improvements; building and 484
construction materials sold to construction contractors for 485
incorporation into a horticulture structure or livestock 486
structure for a person engaged in the business of horticulture 487
or producing livestock; building materials and services sold to 488
a construction contractor for incorporation into a house of 489
public worship or religious education, or a building used 490
exclusively for charitable purposes under a construction 491

contract with an organization whose purpose is as described in 492
division (B) (12) of this section; building materials and 493
services sold to a construction contractor for incorporation 494
into a building under a construction contract with an 495
organization exempt from taxation under section 501(c) (3) of the 496
Internal Revenue Code of 1986 when the building is to be used 497
exclusively for the organization's exempt purposes; building and 498
construction materials sold for incorporation into the original 499
construction of a sports facility under section 307.696 of the 500
Revised Code; building and construction materials and services 501
sold to a construction contractor for incorporation into real 502
property outside this state if such materials and services, when 503
sold to a construction contractor in the state in which the real 504
property is located for incorporation into real property in that 505
state, would be exempt from a tax on sales levied by that state; 506
building and construction materials for incorporation into a 507
transportation facility pursuant to a public-private agreement 508
entered into under sections 5501.70 to 5501.83 of the Revised 509
Code; and, until one calendar year after the construction of a 510
convention center that qualifies for property tax exemption 511
under section 5709.084 of the Revised Code is completed, 512
building and construction materials and services sold to a 513
construction contractor for incorporation into the real property 514
comprising that convention center; 515

(14) Sales of ships or vessels or rail rolling stock used 516
or to be used principally in interstate or foreign commerce, and 517
repairs, alterations, fuel, and lubricants for such ships or 518
vessels or rail rolling stock; 519

(15) Sales to persons primarily engaged in any of the 520
activities mentioned in division (B) (42) (a), (g), or (h) of this 521
section, to persons engaged in making retail sales, or to 522

persons who purchase for sale from a manufacturer tangible 523
personal property that was produced by the manufacturer in 524
accordance with specific designs provided by the purchaser, of 525
packages, including material, labels, and parts for packages, 526
and of machinery, equipment, and material for use primarily in 527
packaging tangible personal property produced for sale, 528
including any machinery, equipment, and supplies used to make 529
labels or packages, to prepare packages or products for 530
labeling, or to label packages or products, by or on the order 531
of the person doing the packaging, or sold at retail. "Packages" 532
includes bags, baskets, cartons, crates, boxes, cans, bottles, 533
bindings, wrappings, and other similar devices and containers, 534
but does not include motor vehicles or bulk tanks, trailers, or 535
similar devices attached to motor vehicles. "Packaging" means 536
placing in a package. Division (B) (15) of this section does not 537
apply to persons engaged in highway transportation for hire. 538

(16) Sales of food to persons using supplemental nutrition 539
assistance program benefits to purchase the food. As used in 540
this division, "food" has the same meaning as in 7 U.S.C. 2012 541
and federal regulations adopted pursuant to the Food and 542
Nutrition Act of 2008. 543

(17) Sales to persons engaged in farming, agriculture, 544
horticulture, or floriculture, of tangible personal property for 545
use or consumption primarily in the production by farming, 546
agriculture, horticulture, or floriculture of other tangible 547
personal property for use or consumption primarily in the 548
production of tangible personal property for sale by farming, 549
agriculture, horticulture, or floriculture; or material and 550
parts for incorporation into any such tangible personal property 551
for use or consumption in production; and of tangible personal 552
property for such use or consumption in the conditioning or 553

holding of products produced by and for such use, consumption, 554
or sale by persons engaged in farming, agriculture, 555
horticulture, or floriculture, except where such property is 556
incorporated into real property; 557

(18) Sales of drugs for a human being that may be 558
dispensed only pursuant to a prescription; insulin as recognized 559
in the official United States pharmacopoeia; urine and blood 560
testing materials when used by diabetics or persons with 561
hypoglycemia to test for glucose or acetone; hypodermic syringes 562
and needles when used by diabetics for insulin injections; 563
epoetin alfa when purchased for use in the treatment of persons 564
with medical disease; hospital beds when purchased by hospitals, 565
nursing homes, or other medical facilities; and medical oxygen 566
and medical oxygen-dispensing equipment when purchased by 567
hospitals, nursing homes, or other medical facilities; 568

(19) Sales of prosthetic devices, durable medical 569
equipment for home use, or mobility enhancing equipment, when 570
made pursuant to a prescription and when such devices or 571
equipment are for use by a human being. 572

(20) Sales of emergency and fire protection vehicles and 573
equipment to nonprofit organizations for use solely in providing 574
fire protection and emergency services, including trauma care 575
and emergency medical services, for political subdivisions of 576
the state; 577

(21) Sales of tangible personal property manufactured in 578
this state, if sold by the manufacturer in this state to a 579
retailer for use in the retail business of the retailer outside 580
of this state and if possession is taken from the manufacturer 581
by the purchaser within this state for the sole purpose of 582
immediately removing the same from this state in a vehicle owned 583

by the purchaser; 584

(22) Sales of services provided by the state or any of its 585
political subdivisions, agencies, instrumentalities, 586
institutions, or authorities, or by governmental entities of the 587
state or any of its political subdivisions, agencies, 588
instrumentalities, institutions, or authorities; 589

(23) Sales of motor vehicles to nonresidents of this state 590
under the circumstances described in division (B) of section 591
5739.029 of the Revised Code; 592

(24) Sales to persons engaged in the preparation of eggs 593
for sale of tangible personal property used or consumed directly 594
in such preparation, including such tangible personal property 595
used for cleaning, sanitizing, preserving, grading, sorting, and 596
classifying by size; packages, including material and parts for 597
packages, and machinery, equipment, and material for use in 598
packaging eggs for sale; and handling and transportation 599
equipment and parts therefor, except motor vehicles licensed to 600
operate on public highways, used in intraplant or interplant 601
transfers or shipment of eggs in the process of preparation for 602
sale, when the plant or plants within or between which such 603
transfers or shipments occur are operated by the same person. 604
"Packages" includes containers, cases, baskets, flats, fillers, 605
filler flats, cartons, closure materials, labels, and labeling 606
materials, and "packaging" means placing therein. 607

(25) (a) Sales of water to a consumer for residential use; 608

(b) Sales of water by a nonprofit corporation engaged 609
exclusively in the treatment, distribution, and sale of water to 610
consumers, if such water is delivered to consumers through pipes 611
or tubing. 612

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	613 614
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	615 616 617 618
(a) To prepare food for human consumption for sale;	619
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	620 621 622 623
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	624 625
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	626 627
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	628 629 630 631
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	632 633 634
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;	635 636 637
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal	638 639 640

property belonging to others by a person engaged in highway 641
transportation for hire, except for packages and packaging used 642
for the transportation of tangible personal property; 643

(33) Sales to the state headquarters of any veterans' 644
organization in this state that is either incorporated and 645
issued a charter by the congress of the United States or is 646
recognized by the United States veterans administration, for use 647
by the headquarters; 648

(34) Sales to a telecommunications service vendor, mobile 649
telecommunications service vendor, or satellite broadcasting 650
service vendor of tangible personal property and services used 651
directly and primarily in transmitting, receiving, switching, or 652
recording any interactive, one- or two-way electromagnetic 653
communications, including voice, image, data, and information, 654
through the use of any medium, including, but not limited to, 655
poles, wires, cables, switching equipment, computers, and record 656
storage devices and media, and component parts for the tangible 657
personal property. The exemption provided in this division shall 658
be in lieu of all other exemptions under division (B) (42) (a) or 659
(n) of this section to which the vendor may otherwise be 660
entitled, based upon the use of the thing purchased in providing 661
the telecommunications, mobile telecommunications, or satellite 662
broadcasting service. 663

(35) (a) Sales where the purpose of the consumer is to use 664
or consume the things transferred in making retail sales and 665
consisting of newspaper inserts, catalogues, coupons, flyers, 666
gift certificates, or other advertising material that prices and 667
describes tangible personal property offered for retail sale. 668

(b) Sales to direct marketing vendors of preliminary 669
materials such as photographs, artwork, and typesetting that 670

will be used in printing advertising material; and of printed 671
matter that offers free merchandise or chances to win sweepstake 672
prizes and that is mailed to potential customers with 673
advertising material described in division (B) (35) (a) of this 674
section; 675

(c) Sales of equipment such as telephones, computers, 676
facsimile machines, and similar tangible personal property 677
primarily used to accept orders for direct marketing retail 678
sales. 679

(d) Sales of automatic food vending machines that preserve 680
food with a shelf life of forty-five days or less by 681
refrigeration and dispense it to the consumer. 682

For purposes of division (B) (35) of this section, "direct 683
marketing" means the method of selling where consumers order 684
tangible personal property by United States mail, delivery 685
service, or telecommunication and the vendor delivers or ships 686
the tangible personal property sold to the consumer from a 687
warehouse, catalogue distribution center, or similar fulfillment 688
facility by means of the United States mail, delivery service, 689
or common carrier. 690

(36) Sales to a person engaged in the business of 691
horticulture or producing livestock of materials to be 692
incorporated into a horticulture structure or livestock 693
structure; 694

(37) Sales of personal computers, computer monitors, 695
computer keyboards, modems, and other peripheral computer 696
equipment to an individual who is licensed or certified to teach 697
in an elementary or a secondary school in this state for use by 698
that individual in preparation for teaching elementary or 699

secondary school students; 700

(38) Sales to a professional racing team of any of the 701
following: 702

(a) Motor racing vehicles; 703

(b) Repair services for motor racing vehicles; 704

(c) Items of property that are attached to or incorporated 705
in motor racing vehicles, including engines, chassis, and all 706
other components of the vehicles, and all spare, replacement, 707
and rebuilt parts or components of the vehicles; except not 708
including tires, consumable fluids, paint, and accessories 709
consisting of instrumentation sensors and related items added to 710
the vehicle to collect and transmit data by means of telemetry 711
and other forms of communication. 712

(39) Sales of used manufactured homes and used mobile 713
homes, as defined in section 5739.0210 of the Revised Code, made 714
on or after January 1, 2000; 715

(40) Sales of tangible personal property and services to a 716
provider of electricity used or consumed directly and primarily 717
in generating, transmitting, or distributing electricity for use 718
by others, including property that is or is to be incorporated 719
into and will become a part of the consumer's production, 720
transmission, or distribution system and that retains its 721
classification as tangible personal property after 722
incorporation; fuel or power used in the production, 723
transmission, or distribution of electricity; energy conversion 724
equipment as defined in section 5727.01 of the Revised Code; and 725
tangible personal property and services used in the repair and 726
maintenance of the production, transmission, or distribution 727
system, including only those motor vehicles as are specially 728

designed and equipped for such use. The exemption provided in 729
this division shall be in lieu of all other exemptions in 730
division (B) (42) (a) or (n) of this section to which a provider 731
of electricity may otherwise be entitled based on the use of the 732
tangible personal property or service purchased in generating, 733
transmitting, or distributing electricity. 734

(41) Sales to a person providing services under division 735
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 736
personal property and services used directly and primarily in 737
providing taxable services under that section. 738

(42) Sales where the purpose of the purchaser is to do any 739
of the following: 740

(a) To incorporate the thing transferred as a material or 741
a part into tangible personal property to be produced for sale 742
by manufacturing, assembling, processing, or refining; or to use 743
or consume the thing transferred directly in producing tangible 744
personal property for sale by mining, including, without 745
limitation, the extraction from the earth of all substances that 746
are classed geologically as minerals, ~~production of crude oil~~ 747
~~and natural gas~~, or directly in the rendition of a public 748
utility service, except that the sales tax levied by this 749
section shall be collected upon all meals, drinks, and food for 750
human consumption sold when transporting persons. ~~Persons~~ 751
~~engaged in rendering services in the exploration for, and~~ 752
~~production of, crude oil and natural gas for others are deemed~~ 753
~~engaged directly in the exploration for, and production of,~~ 754
~~crude oil and natural gas.~~ This paragraph does not exempt from 755
"retail sale" or "sales at retail" the sale of tangible personal 756
property that is to be incorporated into a structure or 757
improvement to real property. 758

(b) To hold the thing transferred as security for the	759
performance of an obligation of the vendor;	760
(c) To resell, hold, use, or consume the thing transferred	761
as evidence of a contract of insurance;	762
(d) To use or consume the thing directly in commercial	763
fishing;	764
(e) To incorporate the thing transferred as a material or	765
a part into, or to use or consume the thing transferred directly	766
in the production of, magazines distributed as controlled	767
circulation publications;	768
(f) To use or consume the thing transferred in the	769
production and preparation in suitable condition for market and	770
sale of printed, imprinted, overprinted, lithographic,	771
multilithic, blueprinted, photostatic, or other productions or	772
reproductions of written or graphic matter;	773
(g) To use the thing transferred, as described in section	774
5739.011 of the Revised Code, primarily in a manufacturing	775
operation to produce tangible personal property for sale;	776
(h) To use the benefit of a warranty, maintenance or	777
service contract, or similar agreement, as described in division	778
(B) (7) of section 5739.01 of the Revised Code, to repair or	779
maintain tangible personal property, if all of the property that	780
is the subject of the warranty, contract, or agreement would not	781
be subject to the tax imposed by this section;	782
(i) To use the thing transferred as qualified research and	783
development equipment;	784
(j) To use or consume the thing transferred primarily in	785
storing, transporting, mailing, or otherwise handling purchased	786

sales inventory in a warehouse, distribution center, or similar 787
facility when the inventory is primarily distributed outside 788
this state to retail stores of the person who owns or controls 789
the warehouse, distribution center, or similar facility, to 790
retail stores of an affiliated group of which that person is a 791
member, or by means of direct marketing. This division does not 792
apply to motor vehicles registered for operation on the public 793
highways. As used in this division, "affiliated group" has the 794
same meaning as in division (B) (3) (e) of section 5739.01 of the 795
Revised Code and "direct marketing" has the same meaning as in 796
division (B) (35) of this section. 797

(k) To use or consume the thing transferred to fulfill a 798
contractual obligation incurred by a warrantor pursuant to a 799
warranty provided as a part of the price of the tangible 800
personal property sold or by a vendor of a warranty, maintenance 801
or service contract, or similar agreement the provision of which 802
is defined as a sale under division (B) (7) of section 5739.01 of 803
the Revised Code; 804

(l) To use or consume the thing transferred in the 805
production of a newspaper for distribution to the public; 806

(m) To use tangible personal property to perform a service 807
listed in division (B) (3) of section 5739.01 of the Revised 808
Code, if the property is or is to be permanently transferred to 809
the consumer of the service as an integral part of the 810
performance of the service; 811

(n) To use or consume the thing transferred primarily in 812
producing tangible personal property for sale by farming, 813
agriculture, horticulture, or floriculture. Persons engaged in 814
rendering farming, agriculture, horticulture, or floriculture 815
services for others are deemed engaged primarily in farming, 816

agriculture, horticulture, or floriculture. This paragraph does 817
not exempt from "retail sale" or "sales at retail" the sale of 818
tangible personal property that is to be incorporated into a 819
structure or improvement to real property. 820

(o) To use or consume the thing transferred in acquiring, 821
formatting, editing, storing, and disseminating data or 822
information by electronic publishing; 823

(p) To provide the thing transferred to the owner or 824
lessee of a motor vehicle that is being repaired or serviced, if 825
the thing transferred is a rented motor vehicle and the 826
purchaser is reimbursed for the cost of the rented motor vehicle 827
by a manufacturer, warrantor, or provider of a maintenance, 828
service, or other similar contract or agreement, with respect to 829
the motor vehicle that is being repaired or serviced. 830

(q) To use or consume the thing transferred directly in 831
production of crude oil and natural gas for sale. Persons 832
engaged in rendering production services for others are deemed 833
engaged in production. 834

As used in division (B) (42) (q) of this section, 835
"production" means operations and tangible personal property 836
directly used to expose and evaluate an underground reservoir 837
that may contain hydrocarbon resources, prepare the wellbore for 838
production, and lift and control all substances yielded by the 839
reservoir to the surface of the earth. 840

(i) For the purposes of division (B) (42) (q) of this 841
section, the "thing transferred" includes, but is not limited 842
to, any of the following: 843

(I) Services provided in the construction of permanent 844
access roads, services provided in the construction of the well 845

site, and services provided in the construction of temporary 846
impoundments; 847

(II) Equipment and rigging used for the specific purpose 848
of creating with integrity a wellbore pathway to underground 849
reservoirs; 850

(III) Drilling and workover services used to work within a 851
subsurface wellbore, and tangible personal property directly 852
used in providing such services; 853

(IV) Casing, tubulars, and float and centralizing 854
equipment; 855

(V) Trailers to which production equipment is attached; 856

(VI) Well completion services, including cementing of 857
casing, and tangible personal property directly used in 858
providing such services; 859

(VII) Wireline evaluation, mud logging, and perforation 860
services, and tangible personal property directly used in 861
providing such services; 862

(VIII) Reservoir stimulation, hydraulic fracturing, and 863
acidizing services, and tangible personal property directly used 864
in providing such services, including all material pumped 865
downhole; 866

(IX) Pressure pumping equipment; 867

(X) Artificial lift systems equipment; 868

(XI) Wellhead equipment and well site equipment used to 869
separate, stabilize, and control hydrocarbon phases and produced 870
water; 871

(XII) Tangible personal property directly used to control 872

production equipment. 873

(ii) For the purposes of division (B) (42) (q) of this 874
section, the "thing transferred" does not include any of the 875
following: 876

(I) Tangible personal property used primarily in the 877
exploration and production of any mineral resource regulated 878
under Chapter 1509. of the Revised Code other than oil or gas; 879

(II) Tangible personal property used primarily in storing, 880
holding, or delivering solutions or chemicals used in well 881
stimulation as defined in section 1509.01 of the Revised Code; 882

(III) Tangible personal property used primarily in 883
preparing, installing, or reclaiming foundations for drilling or 884
pumping equipment or well stimulation material tanks; 885

(IV) Tangible personal property used primarily in 886
transporting, delivering, or removing equipment to or from the 887
well site or storing such equipment before its use at the well 888
site; 889

(V) Tangible personal property used primarily in gathering 890
operations occurring off the well site, including gathering 891
pipelines transporting hydrocarbon gas or liquids away from a 892
crude oil or natural gas production facility; 893

(VI) Tangible personal property that is to be incorporated 894
into a structure or improvement to real property; 895

(VII) Well site fencing, lighting, or security systems; 896

(VIII) Communication devices or services; 897

(IX) Office supplies; 898

(X) Trailers used as offices or lodging; 899

<u>(XI) Motor vehicles of any kind;</u>	900
<u>(XII) Tangible personal property used primarily for the</u>	901
<u>storage of drilling byproducts and fuel not used for production;</u>	902
<u>(XIII) Tangible personal property used primarily as a</u>	903
<u>safety device;</u>	904
<u>(XIV) Data collection or monitoring devices;</u>	905
<u>(XV) Access ladders, stairs, or platforms attached to</u>	906
<u>storage tanks.</u>	907
<u>The enumeration of tangible personal property in division</u>	908
<u>(B) (42) (q) (ii) of this section is not intended to be exhaustive,</u>	909
<u>and any tangible personal property not so enumerated shall not</u>	910
<u>necessarily be construed to be a "thing transferred" for the</u>	911
<u>purposes of division (B) (42) (q) of this section.</u>	912
<u>The commissioner shall adopt and promulgate rules under</u>	913
<u>sections 119.01 to 119.13 of the Revised Code that the</u>	914
<u>commissioner deems necessary to administer division (B) (42) (q)</u>	915
<u>of this section.</u>	916
As used in division (B) (42) of this section, "thing"	917
includes all transactions included in divisions (B) (3) (a), (b),	918
and (e) of section 5739.01 of the Revised Code.	919
(43) Sales conducted through a coin operated device that	920
activates vacuum equipment or equipment that dispenses water,	921
whether or not in combination with soap or other cleaning agents	922
or wax, to the consumer for the consumer's use on the premises	923
in washing, cleaning, or waxing a motor vehicle, provided no	924
other personal property or personal service is provided as part	925
of the transaction.	926
(44) Sales of replacement and modification parts for	927

engines, airframes, instruments, and interiors in, and paint 928
for, aircraft used primarily in a fractional aircraft ownership 929
program, and sales of services for the repair, modification, and 930
maintenance of such aircraft, and machinery, equipment, and 931
supplies primarily used to provide those services. 932

(45) Sales of telecommunications service that is used 933
directly and primarily to perform the functions of a call 934
center. As used in this division, "call center" means any 935
physical location where telephone calls are placed or received 936
in high volume for the purpose of making sales, marketing, 937
customer service, technical support, or other specialized 938
business activity, and that employs at least fifty individuals 939
that engage in call center activities on a full-time basis, or 940
sufficient individuals to fill fifty full-time equivalent 941
positions. 942

(46) Sales by a telecommunications service vendor of 900 943
service to a subscriber. This division does not apply to 944
information services, as defined in division (FF) of section 945
5739.01 of the Revised Code. 946

(47) Sales of value-added non-voice data service. This 947
division does not apply to any similar service that is not 948
otherwise a telecommunications service. 949

(48) (a) Sales of machinery, equipment, and software to a 950
qualified direct selling entity for use in a warehouse or 951
distribution center primarily for storing, transporting, or 952
otherwise handling inventory that is held for sale to 953
independent salespersons who operate as direct sellers and that 954
is held primarily for distribution outside this state; 955

(b) As used in division (B) (48) (a) of this section: 956

(i) "Direct seller" means a person selling consumer 957
products to individuals for personal or household use and not 958
from a fixed retail location, including selling such product at 959
in-home product demonstrations, parties, and other one-on-one 960
selling. 961

(ii) "Qualified direct selling entity" means an entity 962
selling to direct sellers at the time the entity enters into a 963
tax credit agreement with the tax credit authority pursuant to 964
section 122.17 of the Revised Code, provided that the agreement 965
was entered into on or after January 1, 2007. Neither 966
contingencies relevant to the granting of, nor later 967
developments with respect to, the tax credit shall impair the 968
status of the qualified direct selling entity under division (B) 969
(48) of this section after execution of the tax credit agreement 970
by the tax credit authority. 971

(c) Division (B) (48) of this section is limited to 972
machinery, equipment, and software first stored, used, or 973
consumed in this state within the period commencing June 24, 974
2008, and ending on the date that is five years after that date. 975

(49) Sales of materials, parts, equipment, or engines used 976
in the repair or maintenance of aircraft or avionics systems of 977
such aircraft, and sales of repair, remodeling, replacement, or 978
maintenance services in this state performed on aircraft or on 979
an aircraft's avionics, engine, or component materials or parts. 980
As used in division (B) (49) of this section, "aircraft" means 981
aircraft of more than six thousand pounds maximum certified 982
takeoff weight or used exclusively in general aviation. 983

(50) Sales of full flight simulators that are used for 984
pilot or flight-crew training, sales of repair or replacement 985
parts or components, and sales of repair or maintenance services 986

for such full flight simulators. "Full flight simulator" means a 987
replica of a specific type, or make, model, and series of 988
aircraft cockpit. It includes the assemblage of equipment and 989
computer programs necessary to represent aircraft operations in 990
ground and flight conditions, a visual system providing an out- 991
of-the-cockpit view, and a system that provides cues at least 992
equivalent to those of a three-degree-of-freedom motion system, 993
and has the full range of capabilities of the systems installed 994
in the device as described in appendices A and B of part 60 of 995
chapter 1 of title 14 of the Code of Federal Regulations. 996

(51) Any transfer or lease of tangible personal property 997
between the state and JobsOhio in accordance with section 998
4313.02 of the Revised Code. 999

(52) (a) Sales to a qualifying corporation. 1000

(b) As used in division (B) (52) of this section: 1001

(i) "Qualifying corporation" means a nonprofit corporation 1002
organized in this state that leases from an eligible county 1003
land, buildings, structures, fixtures, and improvements to the 1004
land that are part of or used in a public recreational facility 1005
used by a major league professional athletic team or a class A 1006
to class AAA minor league affiliate of a major league 1007
professional athletic team for a significant portion of the 1008
team's home schedule, provided the following apply: 1009

(I) The facility is leased from the eligible county 1010
pursuant to a lease that requires substantially all of the 1011
revenue from the operation of the business or activity conducted 1012
by the nonprofit corporation at the facility in excess of 1013
operating costs, capital expenditures, and reserves to be paid 1014
to the eligible county at least once per calendar year. 1015

(II) Upon dissolution and liquidation of the nonprofit 1016
corporation, all of its net assets are distributable to the 1017
board of commissioners of the eligible county from which the 1018
corporation leases the facility. 1019

(ii) "Eligible county" has the same meaning as in section 1020
307.695 of the Revised Code. 1021

(53) Sales to or by a cable service provider, video 1022
service provider, or radio or television broadcast station 1023
regulated by the federal government of cable service or 1024
programming, video service or programming, audio service or 1025
programming, or electronically transferred digital audiovisual 1026
or audio work. As used in division (B) (53) of this section, 1027
"cable service" and "cable service provider" have the same 1028
meanings as in section 1332.01 of the Revised Code, and "video 1029
service," "video service provider," and "video programming" have 1030
the same meanings as in section 1332.21 of the Revised Code. 1031

(54) Sales of investment metal bullion and investment 1032
coins. "Investment metal bullion" means any bullion described in 1033
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 1034
whether that bullion is in the physical possession of a trustee. 1035
"Investment coin" means any coin composed primarily of gold, 1036
silver, platinum, or palladium. 1037

(C) For the purpose of the proper administration of this 1038
chapter, and to prevent the evasion of the tax, it is presumed 1039
that all sales made in this state are subject to the tax until 1040
the contrary is established. 1041

(D) The levy of this tax on retail sales of recreation and 1042
sports club service shall not prevent a municipal corporation 1043
from levying any tax on recreation and sports club dues or on 1044

any income generated by recreation and sports club dues. 1045

(E) The tax collected by the vendor from the consumer 1046
under this chapter is not part of the price, but is a tax 1047
collection for the benefit of the state, and of counties levying 1048
an additional sales tax pursuant to section 5739.021 or 5739.026 1049
of the Revised Code and of transit authorities levying an 1050
additional sales tax pursuant to section 5739.023 of the Revised 1051
Code. Except for the discount authorized under section 5739.12 1052
of the Revised Code and the effects of any rounding pursuant to 1053
section 5703.055 of the Revised Code, no person other than the 1054
state or such a county or transit authority shall derive any 1055
benefit from the collection or payment of the tax levied by this 1056
section or section 5739.021, 5739.023, or 5739.026 of the 1057
Revised Code. 1058

Section 2. That existing sections 3743.75, 5709.20, 1059
5709.211, 5709.212, 5709.22, and 5739.02 of the Revised Code are 1060
hereby repealed. 1061

Section 3. The amendment by this act of sections 5709.20, 1062
5709.211, 5709.212, 5709.22, and 5739.02 of the Revised Code is 1063
a remedial measure intended to clarify existing law and applies 1064
to all cases pending on a petition for reassessment or further 1065
appeal, or transactions subject to an audit by the Department of 1066
Taxation, on or after, May 18, 2018. 1067

Section 4. Section 5739.02 of the Revised Code is 1068
presented in this act as a composite of the section as amended 1069
by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of 1070
the 131st General Assembly. The General Assembly, applying the 1071
principle stated in division (B) of section 1.52 of the Revised 1072
Code that amendments are to be harmonized if reasonably capable 1073
of simultaneous operation, finds that the composite is the 1074

resulting version of the section in effect prior to the	1075
effective date of the section as presented in this act.	1076