

As Reported by the Senate Ways and Means Committee

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S. B. No. 226

Senator Bacon

**Cosponsors: Senators Eklund, LaRose, Yuko, Oelslager, Manning, Hottinger,
Lehner, Terhar, Beagle, Hackett, Wilson**

A BILL

To amend sections 5739.02, 5739.03, and 5739.05 of
the Revised Code to provide for a permanent
three-day sales tax "holiday" each August during
which sales of clothing and school supplies are
exempt from sales and use tax.

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

Section 1. That sections 5739.02, 5739.03, and 5739.05 of
the Revised Code be amended to read as follows:

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

(A) (1) The tax shall be collected as provided in section 19
5739.025 of the Revised Code. The rate of the tax shall be five 20
and three-fourths per cent. The tax applies and is collectible 21
when the sale is made, regardless of the time when the price is 22
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24
of more than thirty days or an indefinite term with a minimum 25
period of more than thirty days, of any motor vehicles designed 26
by the manufacturer to carry a load of not more than one ton, 27
watercraft, outboard motor, or aircraft, or of any tangible 28
personal property, other than motor vehicles designed by the 29
manufacturer to carry a load of more than one ton, to be used by 30
the lessee or renter primarily for business purposes, the tax 31
shall be collected by the vendor at the time the lease or rental 32
is consummated and shall be calculated by the vendor on the 33
basis of the total amount to be paid by the lessee or renter 34
under the lease agreement. If the total amount of the 35
consideration for the lease or rental includes amounts that are 36
not calculated at the time the lease or rental is executed, the 37
tax shall be calculated and collected by the vendor at the time 38
such amounts are billed to the lessee or renter. In the case of 39
an open-end lease or rental, the tax shall be calculated by the 40
vendor on the basis of the total amount to be paid during the 41
initial fixed term of the lease or rental, and for each 42
subsequent renewal period as it comes due. As used in this 43
division, "motor vehicle" has the same meaning as in section 44
4501.01 of the Revised Code, and "watercraft" includes an 45
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or 47
similar provision that applies if the renewal clause is not 48
exercised is presumed to be a sham transaction. In such a case, 49

the tax shall be calculated and paid on the basis of the entire 50
length of the lease period, including any renewal periods, until 51
the termination penalty or similar provision no longer applies. 52
The taxpayer shall bear the burden, by a preponderance of the 53
evidence, that the transaction or series of transactions is not 54
a sham transaction. 55

(3) Except as provided in division (A) (2) of this section, 56
in the case of a sale, the price of which consists in whole or 57
in part of the lease or rental of tangible personal property, 58
the tax shall be measured by the installments of that lease or 59
rental. 60

(4) In the case of a sale of a physical fitness facility 61
service or recreation and sports club service, the price of 62
which consists in whole or in part of a membership for the 63
receipt of the benefit of the service, the tax applicable to the 64
sale shall be measured by the installments thereof. 65

(B) The tax does not apply to the following: 66

(1) Sales to the state or any of its political 67
subdivisions, or to any other state or its political 68
subdivisions if the laws of that state exempt from taxation 69
sales made to this state and its political subdivisions; 70

(2) Sales of food for human consumption off the premises 71
where sold; 72

(3) Sales of food sold to students only in a cafeteria, 73
dormitory, fraternity, or sorority maintained in a private, 74
public, or parochial school, college, or university; 75

(4) Sales of newspapers and sales or transfers of 76
magazines distributed as controlled circulation publications; 77

(5) The furnishing, preparing, or serving of meals without 78
charge by an employer to an employee provided the employer 79
records the meals as part compensation for services performed or 80
work done; 81

(6) Sales of motor fuel upon receipt, use, distribution, 82
or sale of which in this state a tax is imposed by the law of 83
this state, but this exemption shall not apply to the sale of 84
motor fuel on which a refund of the tax is allowable under 85
division (A) of section 5735.14 of the Revised Code; and the tax 86
commissioner may deduct the amount of tax levied by this section 87
applicable to the price of motor fuel when granting a refund of 88
motor fuel tax pursuant to division (A) of section 5735.14 of 89
the Revised Code and shall cause the amount deducted to be paid 90
into the general revenue fund of this state; 91

(7) Sales of natural gas by a natural gas company or 92
municipal gas utility, of water by a water-works company, or of 93
steam by a heating company, if in each case the thing sold is 94
delivered to consumers through pipes or conduits, and all sales 95
of communications services by a telegraph company, all terms as 96
defined in section 5727.01 of the Revised Code, and sales of 97
electricity delivered through wires; 98

(8) Casual sales by a person, or auctioneer employed 99
directly by the person to conduct such sales, except as to such 100
sales of motor vehicles, watercraft or outboard motors required 101
to be titled under section 1548.06 of the Revised Code, 102
watercraft documented with the United States coast guard, 103
snowmobiles, and all-purpose vehicles as defined in section 104
4519.01 of the Revised Code; 105

(9) (a) Sales of services or tangible personal property, 106
other than motor vehicles, mobile homes, and manufactured homes, 107

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

(b) The limitation on the number of days on which tax- 122
exempt sales may be made by a church or organization under 123
division (B)(9)(a) of this section does not apply to sales made 124
by student clubs and other groups of students of a primary or 125
secondary school, or a parent-teacher association, booster 126
group, or similar organization that raises money to support or 127
fund curricular or extracurricular activities of a primary or 128
secondary school. 129

(c) Divisions (B)(9)(a) and (b) of this section do not 130
apply to sales by a noncommercial educational radio or 131
television broadcasting station. 132

(10) Sales not within the taxing power of this state under 133
the Constitution or laws of the United States or the 134
Constitution of this state; 135

(11) Except for transactions that are sales under division 136
(B)(3)(r) of section 5739.01 of the Revised Code, the 137

transportation of persons or property, unless the transportation 138
is by a private investigation and security service; 139

(12) Sales of tangible personal property or services to 140
churches, to organizations exempt from taxation under section 141
501(c)(3) of the Internal Revenue Code of 1986, and to any other 142
nonprofit organizations operated exclusively for charitable 143
purposes in this state, no part of the net income of which 144
inures to the benefit of any private shareholder or individual, 145
and no substantial part of the activities of which consists of 146
carrying on propaganda or otherwise attempting to influence 147
legislation; sales to offices administering one or more homes 148
for the aged or one or more hospital facilities exempt under 149
section 140.08 of the Revised Code; and sales to organizations 150
described in division (D) of section 5709.12 of the Revised 151
Code. 152

"Charitable purposes" means the relief of poverty; the 153
improvement of health through the alleviation of illness, 154
disease, or injury; the operation of an organization exclusively 155
for the provision of professional, laundry, printing, and 156
purchasing services to hospitals or charitable institutions; the 157
operation of a home for the aged, as defined in section 5701.13 158
of the Revised Code; the operation of a radio or television 159
broadcasting station that is licensed by the federal 160
communications commission as a noncommercial educational radio 161
or television station; the operation of a nonprofit animal 162
adoption service or a county humane society; the promotion of 163
education by an institution of learning that maintains a faculty 164
of qualified instructors, teaches regular continuous courses of 165
study, and confers a recognized diploma upon completion of a 166
specific curriculum; the operation of a parent-teacher 167
association, booster group, or similar organization primarily 168

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

Nothing in this division shall be deemed to exempt sales 179
to any organization for use in the operation or carrying on of a 180
trade or business, or sales to a home for the aged for use in 181
the operation of independent living facilities as defined in 182
division (A) of section 5709.12 of the Revised Code. 183

(13) Building and construction materials and services sold 184
to construction contractors for incorporation into a structure 185
or improvement to real property under a construction contract 186
with this state or a political subdivision of this state, or 187
with the United States government or any of its agencies; 188
building and construction materials and services sold to 189
construction contractors for incorporation into a structure or 190
improvement to real property that are accepted for ownership by 191
this state or any of its political subdivisions, or by the 192
United States government or any of its agencies at the time of 193
completion of the structures or improvements; building and 194
construction materials sold to construction contractors for 195
incorporation into a horticulture structure or livestock 196
structure for a person engaged in the business of horticulture 197
or producing livestock; building materials and services sold to 198
a construction contractor for incorporation into a house of 199

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

(14) Sales of ships or vessels or rail rolling stock used 226
or to be used principally in interstate or foreign commerce, and 227
repairs, alterations, fuel, and lubricants for such ships or 228
vessels or rail rolling stock; 229

(15) Sales to persons primarily engaged in any of the 230

activities mentioned in division (B)(42)(a), (g), or (h) of this 231
section, to persons engaged in making retail sales, or to 232
persons who purchase for sale from a manufacturer tangible 233
personal property that was produced by the manufacturer in 234
accordance with specific designs provided by the purchaser, of 235
packages, including material, labels, and parts for packages, 236
and of machinery, equipment, and material for use primarily in 237
packaging tangible personal property produced for sale, 238
including any machinery, equipment, and supplies used to make 239
labels or packages, to prepare packages or products for 240
labeling, or to label packages or products, by or on the order 241
of the person doing the packaging, or sold at retail. "Packages" 242
includes bags, baskets, cartons, crates, boxes, cans, bottles, 243
bindings, wrappings, and other similar devices and containers, 244
but does not include motor vehicles or bulk tanks, trailers, or 245
similar devices attached to motor vehicles. "Packaging" means 246
placing in a package. Division (B)(15) of this section does not 247
apply to persons engaged in highway transportation for hire. 248

(16) Sales of food to persons using supplemental nutrition 249
assistance program benefits to purchase the food. As used in 250
this division, "food" has the same meaning as in 7 U.S.C. 2012 251
and federal regulations adopted pursuant to the Food and 252
Nutrition Act of 2008. 253

(17) Sales to persons engaged in farming, agriculture, 254
horticulture, or floriculture, of tangible personal property for 255
use or consumption primarily in the production by farming, 256
agriculture, horticulture, or floriculture of other tangible 257
personal property for use or consumption primarily in the 258
production of tangible personal property for sale by farming, 259
agriculture, horticulture, or floriculture; or material and 260
parts for incorporation into any such tangible personal property 261

for use or consumption in production; and of tangible personal 262
property for such use or consumption in the conditioning or 263
holding of products produced by and for such use, consumption, 264
or sale by persons engaged in farming, agriculture, 265
horticulture, or floriculture, except where such property is 266
incorporated into real property; 267

(18) Sales of drugs for a human being that may be 268
dispensed only pursuant to a prescription; insulin as recognized 269
in the official United States pharmacopoeia; urine and blood 270
testing materials when used by diabetics or persons with 271
hypoglycemia to test for glucose or acetone; hypodermic syringes 272
and needles when used by diabetics for insulin injections; 273
epoetin alfa when purchased for use in the treatment of persons 274
with medical disease; hospital beds when purchased by hospitals, 275
nursing homes, or other medical facilities; and medical oxygen 276
and medical oxygen-dispensing equipment when purchased by 277
hospitals, nursing homes, or other medical facilities; 278

(19) Sales of prosthetic devices, durable medical 279
equipment for home use, or mobility enhancing equipment, when 280
made pursuant to a prescription and when such devices or 281
equipment are for use by a human being. 282

(20) Sales of emergency and fire protection vehicles and 283
equipment to nonprofit organizations for use solely in providing 284
fire protection and emergency services, including trauma care 285
and emergency medical services, for political subdivisions of 286
the state; 287

(21) Sales of tangible personal property manufactured in 288
this state, if sold by the manufacturer in this state to a 289
retailer for use in the retail business of the retailer outside 290
of this state and if possession is taken from the manufacturer 291

by the purchaser within this state for the sole purpose of 292
immediately removing the same from this state in a vehicle owned 293
by the purchaser; 294

(22) Sales of services provided by the state or any of its 295
political subdivisions, agencies, instrumentalities, 296
institutions, or authorities, or by governmental entities of the 297
state or any of its political subdivisions, agencies, 298
instrumentalities, institutions, or authorities; 299

(23) Sales of motor vehicles to nonresidents of this state 300
under the circumstances described in division (B) of section 301
5739.029 of the Revised Code; 302

(24) Sales to persons engaged in the preparation of eggs 303
for sale of tangible personal property used or consumed directly 304
in such preparation, including such tangible personal property 305
used for cleaning, sanitizing, preserving, grading, sorting, and 306
classifying by size; packages, including material and parts for 307
packages, and machinery, equipment, and material for use in 308
packaging eggs for sale; and handling and transportation 309
equipment and parts therefor, except motor vehicles licensed to 310
operate on public highways, used in intraplant or interplant 311
transfers or shipment of eggs in the process of preparation for 312
sale, when the plant or plants within or between which such 313
transfers or shipments occur are operated by the same person. 314
"Packages" includes containers, cases, baskets, flats, fillers, 315
filler flats, cartons, closure materials, labels, and labeling 316
materials, and "packaging" means placing therein. 317

(25) (a) Sales of water to a consumer for residential use; 318

(b) Sales of water by a nonprofit corporation engaged 319
exclusively in the treatment, distribution, and sale of water to 320

consumers, if such water is delivered to consumers through pipes 321
or tubing. 322

(26) Fees charged for inspection or reinspection of motor 323
vehicles under section 3704.14 of the Revised Code; 324

(27) Sales to persons licensed to conduct a food service 325
operation pursuant to section 3717.43 of the Revised Code, of 326
tangible personal property primarily used directly for the 327
following: 328

(a) To prepare food for human consumption for sale; 329

(b) To preserve food that has been or will be prepared for 330
human consumption for sale by the food service operator, not 331
including tangible personal property used to display food for 332
selection by the consumer; 333

(c) To clean tangible personal property used to prepare or 334
serve food for human consumption for sale. 335

(28) Sales of animals by nonprofit animal adoption 336
services or county humane societies; 337

(29) Sales of services to a corporation described in 338
division (A) of section 5709.72 of the Revised Code, and sales 339
of tangible personal property that qualifies for exemption from 340
taxation under section 5709.72 of the Revised Code; 341

(30) Sales and installation of agricultural land tile, as 342
defined in division (B) (5) (a) of section 5739.01 of the Revised 343
Code; 344

(31) Sales and erection or installation of portable grain 345
bins, as defined in division (B) (5) (b) of section 5739.01 of the 346
Revised Code; 347

(32) The sale, lease, repair, and maintenance of, parts 348
for, or items attached to or incorporated in, motor vehicles 349
that are primarily used for transporting tangible personal 350
property belonging to others by a person engaged in highway 351
transportation for hire, except for packages and packaging used 352
for the transportation of tangible personal property; 353

(33) Sales to the state headquarters of any veterans' 354
organization in this state that is either incorporated and 355
issued a charter by the congress of the United States or is 356
recognized by the United States veterans administration, for use 357
by the headquarters; 358

(34) Sales to a telecommunications service vendor, mobile 359
telecommunications service vendor, or satellite broadcasting 360
service vendor of tangible personal property and services used 361
directly and primarily in transmitting, receiving, switching, or 362
recording any interactive, one- or two-way electromagnetic 363
communications, including voice, image, data, and information, 364
through the use of any medium, including, but not limited to, 365
poles, wires, cables, switching equipment, computers, and record 366
storage devices and media, and component parts for the tangible 367
personal property. The exemption provided in this division shall 368
be in lieu of all other exemptions under division (B) (42) (a) or 369
(n) of this section to which the vendor may otherwise be 370
entitled, based upon the use of the thing purchased in providing 371
the telecommunications, mobile telecommunications, or satellite 372
broadcasting service. 373

(35) (a) Sales where the purpose of the consumer is to use 374
or consume the things transferred in making retail sales and 375
consisting of newspaper inserts, catalogues, coupons, flyers, 376
gift certificates, or other advertising material that prices and 377

describes tangible personal property offered for retail sale. 378

(b) Sales to direct marketing vendors of preliminary 379
materials such as photographs, artwork, and typesetting that 380
will be used in printing advertising material; and of printed 381
matter that offers free merchandise or chances to win sweepstake 382
prizes and that is mailed to potential customers with 383
advertising material described in division (B) (35) (a) of this 384
section; 385

(c) Sales of equipment such as telephones, computers, 386
facsimile machines, and similar tangible personal property 387
primarily used to accept orders for direct marketing retail 388
sales. 389

(d) Sales of automatic food vending machines that preserve 390
food with a shelf life of forty-five days or less by 391
refrigeration and dispense it to the consumer. 392

For purposes of division (B) (35) of this section, "direct 393
marketing" means the method of selling where consumers order 394
tangible personal property by United States mail, delivery 395
service, or telecommunication and the vendor delivers or ships 396
the tangible personal property sold to the consumer from a 397
warehouse, catalogue distribution center, or similar fulfillment 398
facility by means of the United States mail, delivery service, 399
or common carrier. 400

(36) Sales to a person engaged in the business of 401
horticulture or producing livestock of materials to be 402
incorporated into a horticulture structure or livestock 403
structure; 404

(37) Sales of personal computers, computer monitors, 405
computer keyboards, modems, and other peripheral computer 406

equipment to an individual who is licensed or certified to teach 407
in an elementary or a secondary school in this state for use by 408
that individual in preparation for teaching elementary or 409
secondary school students; 410

(38) Sales to a professional racing team of any of the 411
following: 412

(a) Motor racing vehicles; 413

(b) Repair services for motor racing vehicles; 414

(c) Items of property that are attached to or incorporated 415
in motor racing vehicles, including engines, chassis, and all 416
other components of the vehicles, and all spare, replacement, 417
and rebuilt parts or components of the vehicles; except not 418
including tires, consumable fluids, paint, and accessories 419
consisting of instrumentation sensors and related items added to 420
the vehicle to collect and transmit data by means of telemetry 421
and other forms of communication. 422

(39) Sales of used manufactured homes and used mobile 423
homes, as defined in section 5739.0210 of the Revised Code, made 424
on or after January 1, 2000; 425

(40) Sales of tangible personal property and services to a 426
provider of electricity used or consumed directly and primarily 427
in generating, transmitting, or distributing electricity for use 428
by others, including property that is or is to be incorporated 429
into and will become a part of the consumer's production, 430
transmission, or distribution system and that retains its 431
classification as tangible personal property after 432
incorporation; fuel or power used in the production, 433
transmission, or distribution of electricity; energy conversion 434
equipment as defined in section 5727.01 of the Revised Code; and 435

tangible personal property and services used in the repair and 436
maintenance of the production, transmission, or distribution 437
system, including only those motor vehicles as are specially 438
designed and equipped for such use. The exemption provided in 439
this division shall be in lieu of all other exemptions in 440
division (B) (42) (a) or (n) of this section to which a provider 441
of electricity may otherwise be entitled based on the use of the 442
tangible personal property or service purchased in generating, 443
transmitting, or distributing electricity. 444

(41) Sales to a person providing services under division 445
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 446
personal property and services used directly and primarily in 447
providing taxable services under that section. 448

(42) Sales where the purpose of the purchaser is to do any 449
of the following: 450

(a) To incorporate the thing transferred as a material or 451
a part into tangible personal property to be produced for sale 452
by manufacturing, assembling, processing, or refining; or to use 453
or consume the thing transferred directly in producing tangible 454
personal property for sale by mining, including, without 455
limitation, the extraction from the earth of all substances that 456
are classed geologically as minerals, production of crude oil 457
and natural gas, or directly in the rendition of a public 458
utility service, except that the sales tax levied by this 459
section shall be collected upon all meals, drinks, and food for 460
human consumption sold when transporting persons. Persons 461
engaged in rendering services in the exploration for, and 462
production of, crude oil and natural gas for others are deemed 463
engaged directly in the exploration for, and production of, 464
crude oil and natural gas. This paragraph does not exempt from 465

"retail sale" or "sales at retail" the sale of tangible personal 466
property that is to be incorporated into a structure or 467
improvement to real property. 468

(b) To hold the thing transferred as security for the 469
performance of an obligation of the vendor; 470

(c) To resell, hold, use, or consume the thing transferred 471
as evidence of a contract of insurance; 472

(d) To use or consume the thing directly in commercial 473
fishing; 474

(e) To incorporate the thing transferred as a material or 475
a part into, or to use or consume the thing transferred directly 476
in the production of, magazines distributed as controlled 477
circulation publications; 478

(f) To use or consume the thing transferred in the 479
production and preparation in suitable condition for market and 480
sale of printed, imprinted, overprinted, lithographic, 481
multilithic, blueprinted, photostatic, or other productions or 482
reproductions of written or graphic matter; 483

(g) To use the thing transferred, as described in section 484
5739.011 of the Revised Code, primarily in a manufacturing 485
operation to produce tangible personal property for sale; 486

(h) To use the benefit of a warranty, maintenance or 487
service contract, or similar agreement, as described in division 488
(B) (7) of section 5739.01 of the Revised Code, to repair or 489
maintain tangible personal property, if all of the property that 490
is the subject of the warranty, contract, or agreement would not 491
be subject to the tax imposed by this section; 492

(i) To use the thing transferred as qualified research and 493

development equipment; 494

(j) To use or consume the thing transferred primarily in 495
storing, transporting, mailing, or otherwise handling purchased 496
sales inventory in a warehouse, distribution center, or similar 497
facility when the inventory is primarily distributed outside 498
this state to retail stores of the person who owns or controls 499
the warehouse, distribution center, or similar facility, to 500
retail stores of an affiliated group of which that person is a 501
member, or by means of direct marketing. This division does not 502
apply to motor vehicles registered for operation on the public 503
highways. As used in this division, "affiliated group" has the 504
same meaning as in division (B) (3) (e) of section 5739.01 of the 505
Revised Code and "direct marketing" has the same meaning as in 506
division (B) (35) of this section. 507

(k) To use or consume the thing transferred to fulfill a 508
contractual obligation incurred by a warrantor pursuant to a 509
warranty provided as a part of the price of the tangible 510
personal property sold or by a vendor of a warranty, maintenance 511
or service contract, or similar agreement the provision of which 512
is defined as a sale under division (B) (7) of section 5739.01 of 513
the Revised Code; 514

(l) To use or consume the thing transferred in the 515
production of a newspaper for distribution to the public; 516

(m) To use tangible personal property to perform a service 517
listed in division (B) (3) of section 5739.01 of the Revised 518
Code, if the property is or is to be permanently transferred to 519
the consumer of the service as an integral part of the 520
performance of the service; 521

(n) To use or consume the thing transferred primarily in 522

producing tangible personal property for sale by farming, 523
agriculture, horticulture, or floriculture. Persons engaged in 524
rendering farming, agriculture, horticulture, or floriculture 525
services for others are deemed engaged primarily in farming, 526
agriculture, horticulture, or floriculture. This paragraph does 527
not exempt from "retail sale" or "sales at retail" the sale of 528
tangible personal property that is to be incorporated into a 529
structure or improvement to real property. 530

(o) To use or consume the thing transferred in acquiring, 531
formatting, editing, storing, and disseminating data or 532
information by electronic publishing; 533

(p) To provide the thing transferred to the owner or 534
lessee of a motor vehicle that is being repaired or serviced, if 535
the thing transferred is a rented motor vehicle and the 536
purchaser is reimbursed for the cost of the rented motor vehicle 537
by a manufacturer, warrantor, or provider of a maintenance, 538
service, or other similar contract or agreement, with respect to 539
the motor vehicle that is being repaired or serviced. 540

As used in division (B) (42) of this section, "thing" 541
includes all transactions included in divisions (B) (3) (a), (b), 542
and (e) of section 5739.01 of the Revised Code. 543

(43) Sales conducted through a coin operated device that 544
activates vacuum equipment or equipment that dispenses water, 545
whether or not in combination with soap or other cleaning agents 546
or wax, to the consumer for the consumer's use on the premises 547
in washing, cleaning, or waxing a motor vehicle, provided no 548
other personal property or personal service is provided as part 549
of the transaction. 550

(44) Sales of replacement and modification parts for 551

engines, airframes, instruments, and interiors in, and paint 552
for, aircraft used primarily in a fractional aircraft ownership 553
program, and sales of services for the repair, modification, and 554
maintenance of such aircraft, and machinery, equipment, and 555
supplies primarily used to provide those services. 556

(45) Sales of telecommunications service that is used 557
directly and primarily to perform the functions of a call 558
center. As used in this division, "call center" means any 559
physical location where telephone calls are placed or received 560
in high volume for the purpose of making sales, marketing, 561
customer service, technical support, or other specialized 562
business activity, and that employs at least fifty individuals 563
that engage in call center activities on a full-time basis, or 564
sufficient individuals to fill fifty full-time equivalent 565
positions. 566

(46) Sales by a telecommunications service vendor of 900 567
service to a subscriber. This division does not apply to 568
information services, as defined in division (FF) of section 569
5739.01 of the Revised Code. 570

(47) Sales of value-added non-voice data service. This 571
division does not apply to any similar service that is not 572
otherwise a telecommunications service. 573

(48) (a) Sales of machinery, equipment, and software to a 574
qualified direct selling entity for use in a warehouse or 575
distribution center primarily for storing, transporting, or 576
otherwise handling inventory that is held for sale to 577
independent salespersons who operate as direct sellers and that 578
is held primarily for distribution outside this state; 579

(b) As used in division (B) (48) (a) of this section: 580

(i) "Direct seller" means a person selling consumer 581
products to individuals for personal or household use and not 582
from a fixed retail location, including selling such product at 583
in-home product demonstrations, parties, and other one-on-one 584
selling. 585

(ii) "Qualified direct selling entity" means an entity 586
selling to direct sellers at the time the entity enters into a 587
tax credit agreement with the tax credit authority pursuant to 588
section 122.17 of the Revised Code, provided that the agreement 589
was entered into on or after January 1, 2007. Neither 590
contingencies relevant to the granting of, nor later 591
developments with respect to, the tax credit shall impair the 592
status of the qualified direct selling entity under division (B) 593
(48) of this section after execution of the tax credit agreement 594
by the tax credit authority. 595

(c) Division (B) (48) of this section is limited to 596
machinery, equipment, and software first stored, used, or 597
consumed in this state within the period commencing June 24, 598
2008, and ending on the date that is five years after that date. 599

(49) Sales of materials, parts, equipment, or engines used 600
in the repair or maintenance of aircraft or avionics systems of 601
such aircraft, and sales of repair, remodeling, replacement, or 602
maintenance services in this state performed on aircraft or on 603
an aircraft's avionics, engine, or component materials or parts. 604
As used in division (B) (49) of this section, "aircraft" means 605
aircraft of more than six thousand pounds maximum certified 606
takeoff weight or used exclusively in general aviation. 607

(50) Sales of full flight simulators that are used for 608
pilot or flight-crew training, sales of repair or replacement 609
parts or components, and sales of repair or maintenance services 610

for such full flight simulators. "Full flight simulator" means a 611
replica of a specific type, or make, model, and series of 612
aircraft cockpit. It includes the assemblage of equipment and 613
computer programs necessary to represent aircraft operations in 614
ground and flight conditions, a visual system providing an out- 615
of-the-cockpit view, and a system that provides cues at least 616
equivalent to those of a three-degree-of-freedom motion system, 617
and has the full range of capabilities of the systems installed 618
in the device as described in appendices A and B of part 60 of 619
chapter 1 of title 14 of the Code of Federal Regulations. 620

(51) Any transfer or lease of tangible personal property 621
between the state and JobsOhio in accordance with section 622
4313.02 of the Revised Code. 623

(52) (a) Sales to a qualifying corporation. 624

(b) As used in division (B) (52) of this section: 625

(i) "Qualifying corporation" means a nonprofit corporation 626
organized in this state that leases from an eligible county 627
land, buildings, structures, fixtures, and improvements to the 628
land that are part of or used in a public recreational facility 629
used by a major league professional athletic team or a class A 630
to class AAA minor league affiliate of a major league 631
professional athletic team for a significant portion of the 632
team's home schedule, provided the following apply: 633

(I) The facility is leased from the eligible county 634
pursuant to a lease that requires substantially all of the 635
revenue from the operation of the business or activity conducted 636
by the nonprofit corporation at the facility in excess of 637
operating costs, capital expenditures, and reserves to be paid 638
to the eligible county at least once per calendar year. 639

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

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

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

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

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

(a) Accepts direct payments to operate;

(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section;

(c) Operates exclusively for the purpose of playing 669
digital audio works in a commercial establishment. 670

(56) (a) Sales of the following occurring on the first 671
Friday of August and the following Saturday and Sunday of each 672
year, beginning in 2018: 673

(i) An item of clothing, the price of which is seventy- 674
five dollars or less; 675

(ii) An item of school supplies, the price of which is 676
twenty dollars or less; 677

(iii) An item of school instructional material, the price 678
of which is twenty dollars or less. 679

(b) As used in division (B) (56) of this section: 680

(i) "Clothing" means all human wearing apparel suitable 681
for general use. "Clothing" includes, but is not limited to, 682
aprons, household and shop; athletic supporters; baby receiving 683
blankets; bathing suits and caps; beach capes and coats; belts 684
and suspenders; boots; coats and jackets; costumes; diapers, 685
children and adult, including disposable diapers; ear muffs; 686
footlets; formal wear; garters and garter belts; girdles; gloves 687
and mittens for general use; hats and caps; hosiery; insoles for 688
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 689
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 690
sneakers; socks and stockings; steel-toed shoes; underwear; 691
uniforms, athletic and nonathletic; and wedding apparel. 692
"Clothing" does not include items purchased for use in a trade 693
or business; clothing accessories or equipment; protective 694
equipment; sports or recreational equipment; belt buckles sold 695
separately; costume masks sold separately; patches and emblems 696
sold separately; sewing equipment and supplies including, but 697

not limited to, knitting needles, patterns, pins, scissors, 698
sewing machines, sewing needles, tape measures, and thimbles; 699
and sewing materials that become part of "clothing" including, 700
but not limited to, buttons, fabric, lace, thread, yarn, and 701
zippers. 702

(ii) "School supplies" means items commonly used by a 703
student in a course of study. "School supplies" includes only 704
the following items: binders; book bags; calculators; cellophane 705
tape; blackboard chalk; compasses; composition books; crayons; 706
erasers; folders, expandable, pocket, plastic, and manila; glue, 707
paste, and paste sticks; highlighters; index cards; index card 708
boxes; legal pads; lunch boxes; markers; notebooks; paper, 709
loose-leaf ruled notebook paper, copy paper, graph paper, 710
tracing paper, manila paper, colored paper, poster board, and 711
construction paper; pencil boxes and other school supply boxes; 712
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 713
and writing tablets. "School supplies" does not include any item 714
purchased for use in a trade or business. 715

(iii) "School instructional material" means written 716
material commonly used by a student in a course of study as a 717
reference and to learn the subject being taught. "School 718
instructional material" includes only the following items: 719
reference books, reference maps and globes, textbooks, and 720
workbooks. "School instructional material" does not include any 721
material purchased for use in a trade or business. 722

(C) For the purpose of the proper administration of this 723
chapter, and to prevent the evasion of the tax, it is presumed 724
that all sales made in this state are subject to the tax until 725
the contrary is established. 726

(D) The levy of this tax on retail sales of recreation and 727

sports club service shall not prevent a municipal corporation 728
from levying any tax on recreation and sports club dues or on 729
any income generated by recreation and sports club dues. 730

(E) The tax collected by the vendor from the consumer 731
under this chapter is not part of the price, but is a tax 732
collection for the benefit of the state, and of counties levying 733
an additional sales tax pursuant to section 5739.021 or 5739.026 734
of the Revised Code and of transit authorities levying an 735
additional sales tax pursuant to section 5739.023 of the Revised 736
Code. Except for the discount authorized under section 5739.12 737
of the Revised Code and the effects of any rounding pursuant to 738
section 5703.055 of the Revised Code, no person other than the 739
state or such a county or transit authority shall derive any 740
benefit from the collection or payment of the tax levied by this 741
section or section 5739.021, 5739.023, or 5739.026 of the 742
Revised Code. 743

Sec. 5739.03. (A) Except as provided in section 5739.05 or 744
section 5739.051 of the Revised Code, the tax imposed by or 745
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 746
the Revised Code shall be paid by the consumer to the vendor, 747
and each vendor shall collect from the consumer, as a trustee 748
for the state of Ohio, the full and exact amount of the tax 749
payable on each taxable sale, in the manner and at the times 750
provided as follows: 751

(1) If the price is, at or prior to the provision of the 752
service or the delivery of possession of the thing sold to the 753
consumer, paid in currency passed from hand to hand by the 754
consumer or the consumer's agent to the vendor or the vendor's 755
agent, the vendor or the vendor's agent shall collect the tax 756
with and at the same time as the price; 757

(2) If the price is otherwise paid or to be paid, the
vendor or the vendor's agent shall, at or prior to the provision
of the service or the delivery of possession of the thing sold
to the consumer, charge the tax imposed by or pursuant to
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised
Code to the account of the consumer, which amount shall be
collected by the vendor from the consumer in addition to the
price. Such sale shall be reported on and the amount of the tax
applicable thereto shall be remitted with the return for the
period in which the sale is made, and the amount of the tax
shall become a legal charge in favor of the vendor and against
the consumer.

(B) (1) (a) If any sale is claimed to be exempt under
division (E) of section 5739.01 of the Revised Code or under
section 5739.02 of the Revised Code, with the exception of
divisions (B) (1) to (11) ~~or, (28), or (56)~~ of section 5739.02 of
the Revised Code, or if the consumer claims the transaction is
not a taxable sale due to one or more of the exclusions provided
under divisions (JJ) (1) to (5) of section 5739.01 of the Revised
Code, the consumer must provide to the vendor, and the vendor
must obtain from the consumer, a certificate specifying the
reason that the sale is not legally subject to the tax. The
certificate shall be in such form, and shall be provided either
in a hard copy form or electronic form, as the tax commissioner
prescribes.

(b) A vendor that obtains a fully completed exemption
certificate from a consumer is relieved of liability for
collecting and remitting tax on any sale covered by that
certificate. If it is determined the exemption was improperly
claimed, the consumer shall be liable for any tax due on that
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or

Chapter 5741. of the Revised Code. Relief under this division 789
from liability does not apply to any of the following: 790

(i) A vendor that fraudulently fails to collect tax; 791

(ii) A vendor that solicits consumers to participate in 792
the unlawful claim of an exemption; 793

(iii) A vendor that accepts an exemption certificate from 794
a consumer that claims an exemption based on who purchases or 795
who sells property or a service, when the subject of the 796
transaction sought to be covered by the exemption certificate is 797
actually received by the consumer at a location operated by the 798
vendor in this state, and this state has posted to its web site 799
an exemption certificate form that clearly and affirmatively 800
indicates that the claimed exemption is not available in this 801
state; 802

(iv) A vendor that accepts an exemption certificate from a 803
consumer who claims a multiple points of use exemption under 804
division (D) of section 5739.033 of the Revised Code, if the 805
item purchased is tangible personal property, other than 806
prewritten computer software. 807

(2) The vendor shall maintain records, including exemption 808
certificates, of all sales on which a consumer has claimed an 809
exemption, and provide them to the tax commissioner on request. 810

(3) The tax commissioner may establish an identification 811
system whereby the commissioner issues an identification number 812
to a consumer that is exempt from payment of the tax. The 813
consumer must present the number to the vendor, if any sale is 814
claimed to be exempt as provided in this section. 815

(4) If no certificate is provided or obtained within 816
ninety days after the date on which such sale is consummated, it 817

shall be presumed that the tax applies. Failure to have so 818
provided or obtained a certificate shall not preclude a vendor, 819
within one hundred twenty days after the tax commissioner gives 820
written notice of intent to levy an assessment, from either 821
establishing that the sale is not subject to the tax, or 822
obtaining, in good faith, a fully completed exemption 823
certificate. 824

(5) Certificates need not be obtained nor provided where 825
the identity of the consumer is such that the transaction is 826
never subject to the tax imposed or where the item of tangible 827
personal property sold or the service provided is never subject 828
to the tax imposed, regardless of use, or when the sale is in 829
interstate commerce. 830

(6) If a transaction is claimed to be exempt under 831
division (B) (13) of section 5739.02 of the Revised Code, the 832
contractor shall obtain certification of the claimed exemption 833
from the contractee. This certification shall be in addition to 834
an exemption certificate provided by the contractor to the 835
vendor. A contractee that provides a certification under this 836
division shall be deemed to be the consumer of all items 837
purchased by the contractor under the claim of exemption, if it 838
is subsequently determined that the exemption is not properly 839
claimed. The certification shall be in such form as the tax 840
commissioner prescribes. 841

(C) As used in this division, "contractee" means a person 842
who seeks to enter or enters into a contract or agreement with a 843
contractor or vendor for the construction of real property or 844
for the sale and installation onto real property of tangible 845
personal property. 846

Any contractor or vendor may request from any contractee a 847

certification of what portion of the property to be transferred 848
under such contract or agreement is to be incorporated into the 849
realty and what portion will retain its status as tangible 850
personal property after installation is completed. The 851
contractor or vendor shall request the certification by 852
certified mail delivered to the contractee, return receipt 853
requested. Upon receipt of such request and prior to entering 854
into the contract or agreement, the contractee shall provide to 855
the contractor or vendor a certification sufficiently detailed 856
to enable the contractor or vendor to ascertain the resulting 857
classification of all materials purchased or fabricated by the 858
contractor or vendor and transferred to the contractee. This 859
requirement applies to a contractee regardless of whether the 860
contractee holds a direct payment permit under section 5739.031 861
of the Revised Code or provides to the contractor or vendor an 862
exemption certificate as provided under this section. 863

For the purposes of the taxes levied by this chapter and 864
Chapter 5741. of the Revised Code, the contractor or vendor may 865
in good faith rely on the contractee's certification. 866
Notwithstanding division (B) of section 5739.01 of the Revised 867
Code, if the tax commissioner determines that certain property 868
certified by the contractee as tangible personal property 869
pursuant to this division is, in fact, real property, the 870
contractee shall be considered to be the consumer of all 871
materials so incorporated into that real property and shall be 872
liable for the applicable tax, and the contractor or vendor 873
shall be excused from any liability on those materials. 874

If a contractee fails to provide such certification upon 875
the request of the contractor or vendor, the contractor or 876
vendor shall comply with the provisions of this chapter and 877
Chapter 5741. of the Revised Code without the certification. If 878

the tax commissioner determines that such compliance has been 879
performed in good faith and that certain property treated as 880
tangible personal property by the contractor or vendor is, in 881
fact, real property, the contractee shall be considered to be 882
the consumer of all materials so incorporated into that real 883
property and shall be liable for the applicable tax, and the 884
construction contractor or vendor shall be excused from any 885
liability on those materials. 886

This division does not apply to any contract or agreement 887
where the tax commissioner determines as a fact that a 888
certification under this division was made solely on the 889
decision or advice of the contractor or vendor. 890

(D) Notwithstanding division (B) of section 5739.01 of the 891
Revised Code, whenever the total rate of tax imposed under this 892
chapter is increased after the date after a construction 893
contract is entered into, the contractee shall reimburse the 894
construction contractor for any additional tax paid on tangible 895
property consumed or services received pursuant to the contract. 896

(E) A vendor who files a petition for reassessment 897
contesting the assessment of tax on sales for which the vendor 898
obtained no valid exemption certificates and for which the 899
vendor failed to establish that the sales were properly not 900
subject to the tax during the one-hundred-twenty-day period 901
allowed under division (B) of this section, may present to the 902
tax commissioner additional evidence to prove that the sales 903
were properly subject to a claim of exception or exemption. The 904
vendor shall file such evidence within ninety days of the 905
receipt by the vendor of the notice of assessment, except that, 906
upon application and for reasonable cause, the period for 907
submitting such evidence shall be extended thirty days. 908

The commissioner shall consider such additional evidence 909
in reaching the final determination on the assessment and 910
petition for reassessment. 911

(F) Whenever a vendor refunds the price, minus any 912
separately stated delivery charge, of an item of tangible 913
personal property on which the tax imposed under this chapter 914
has been paid, the vendor shall also refund the amount of tax 915
paid, minus the amount of tax attributable to the delivery 916
charge. 917

Sec. 5739.05. (A) (1) The tax commissioner shall enforce 918
and administer sections 5739.01 to 5739.31 of the Revised Code, 919
which are hereby declared to be sections which the commissioner 920
is required to administer within the meaning of sections 5703.17 921
to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. 922
The commissioner may adopt and promulgate, in accordance with 923
sections 119.01 to 119.13 of the Revised Code, such rules as the 924
commissioner deems necessary to administer sections 5739.01 to 925
5739.31 of the Revised Code. 926

(2) On or before the first day of May of each year, the 927
commissioner shall make available to vendors a notice explaining 928
the three-day exemption period required under division (B) (56) 929
of section 5739.02 of the Revised Code. 930

(B) Upon application, the commissioner may authorize a 931
vendor to pay on a predetermined basis the tax levied by or 932
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 933
the Revised Code upon sales of things produced or distributed or 934
services provided by such vendor, and the commissioner may waive 935
the collection of the tax from the consumer. The commissioner 936
shall not grant such authority unless the commissioner finds 937
that the granting of the authority would improve compliance and 938

increase the efficiency of the administration of the tax. The 939
person to whom such authority is granted shall post a notice, if 940
required by the commissioner, at the location where the product 941
is offered for sale that the tax is included in the selling 942
price. The commissioner may adopt rules to administer this 943
division. 944

(C) Upon application, the commissioner may authorize a 945
vendor to remit, on the basis of a prearranged agreement under 946
this division, the tax levied by section 5739.02 or pursuant to 947
section 5739.021, 5739.023, or 5739.026 of the Revised Code. The 948
proportions and ratios in a prearranged agreement shall be 949
determined either by a test check conducted by the commissioner 950
under terms and conditions agreed to by the commissioner and the 951
vendor or by any other method agreed upon by the vendor and the 952
commissioner. If the parties are unable to agree to the terms 953
and conditions of the test check or other method, the 954
application shall be denied. 955

If used, the test check shall determine the proportion 956
that taxable retail sales bear to all of the vendor's retail 957
sales and the ratio which the tax required to be collected under 958
sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 959
Revised Code bears to the receipts from the vendor's taxable 960
retail sales. 961

The vendor's liability for remitting the tax shall be 962
based solely upon the proportions and ratios established in the 963
agreement until such time that the vendor or the commissioner 964
believes that the nature of the vendor's business has so changed 965
as to make the agreement no longer representative. The 966
commissioner may give notice to the vendor at any time that the 967
authorization is revoked or the vendor may notify the 968

commissioner that the vendor no longer elects to report under 969
the authorization. Such notice shall be delivered to the other 970
party personally or by registered mail. The revocation or 971
cancellation is effective the last day of the month in which the 972
vendor or the commissioner receives the notice. 973

Section 2. That existing sections 5739.02, 5739.03, and 974
5739.05 of the Revised Code are hereby repealed. 975