

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**S. B. No. 113**

**Senator Eklund**

**Cosponsors: Senators Williams, Rulli, Hackett**

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**A BILL**

To amend section 5739.02 of the Revised Code to  
exempt the sale of incontinence products to  
Medicaid recipients from sales tax.

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

**Section 1.** That section 5739.02 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  
5739.025 of the Revised Code. The rate of the tax shall be five

and three-fourths per cent. The tax applies and is collectible 19  
when the sale is made, regardless of the time when the price is 20  
paid or delivered. 21

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

A lease with a renewal clause and a termination penalty or 45  
similar provision that applies if the renewal clause is not 46  
exercised is presumed to be a sham transaction. In such a case, 47  
the tax shall be calculated and paid on the basis of the entire 48  
length of the lease period, including any renewal periods, until 49

the termination penalty or similar provision no longer applies. 50  
The taxpayer shall bear the burden, by a preponderance of the 51  
evidence, that the transaction or series of transactions is not 52  
a sham transaction. 53

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without 76  
charge by an employer to an employee provided the employer 77

records the meals as part compensation for services performed or 78  
work done; 79

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

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

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

(9) (a) Sales of services or tangible personal property, 104  
other than motor vehicles, mobile homes, and manufactured homes, 105  
by churches, organizations exempt from taxation under section 106  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 107

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

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

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

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

(11) Except for transactions that are sales under division 134  
(B) (3) (r) of section 5739.01 of the Revised Code, the 135  
transportation of persons or property, unless the transportation 136  
is by a private investigation and security service; 137

(12) Sales of tangible personal property or services to 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 169  
in music, dramatics, the arts, and related fields are made in 170  
order to foster public interest and education therein; the 171  
production of performances in music, dramatics, and the arts; or 172  
the promotion of education by an organization engaged in 173  
carrying on research in, or the dissemination of, scientific and 174  
technological knowledge and information primarily for the 175  
public. 176

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

(13) Building and construction materials and services sold 182  
to construction contractors for incorporation into a structure 183  
or improvement to real property under a construction contract 184  
with this state or a political subdivision of this state, or 185  
with the United States government or any of its agencies; 186  
building and construction materials and services sold to 187  
construction contractors for incorporation into a structure or 188  
improvement to real property that are accepted for ownership by 189  
this state or any of its political subdivisions, or by the 190  
United States government or any of its agencies at the time of 191  
completion of the structures or improvements; building and 192  
construction materials sold to construction contractors for 193  
incorporation into a horticulture structure or livestock 194  
structure for a person engaged in the business of horticulture 195  
or producing livestock; building materials and services sold to 196  
a construction contractor for incorporation into a house of 197  
public worship or religious education, or a building used 198  
exclusively for charitable purposes under a construction 199

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

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

(15) Sales to persons primarily engaged in any of the 228  
activities mentioned in division (B) (42) (a), (g), or (h) of this 229  
section, to persons engaged in making retail sales, or to 230



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

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

(17) Sales to persons engaged in farming, agriculture, 252  
horticulture, or floriculture, of tangible personal property for 253  
use or consumption primarily in the production by farming, 254  
agriculture, horticulture, or floriculture of other tangible 255  
personal property for use or consumption primarily in the 256  
production of tangible personal property for sale by farming, 257  
agriculture, horticulture, or floriculture; or material and 258  
parts for incorporation into any such tangible personal property 259  
for use or consumption in production; and of tangible personal 260  
property for such use or consumption in the conditioning or 261

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

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

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

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

(21) Sales of tangible personal property manufactured in 286  
this state, if sold by the manufacturer in this state to a 287  
retailer for use in the retail business of the retailer outside 288  
of this state and if possession is taken from the manufacturer 289  
by the purchaser within this state for the sole purpose of 290  
immediately removing the same from this state in a vehicle owned 291

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| by the purchaser;  | 292 |
| (22) Sales of services provided by the state or any of its       | 293 |
| political subdivisions, agencies, instrumentalities,             | 294 |
| institutions, or authorities, or by governmental entities of the | 295 |
| state or any of its political subdivisions, agencies,            | 296 |
| instrumentalities, institutions, or authorities;                 | 297 |
| (23) Sales of motor vehicles to nonresidents of this state       | 298 |
| under the circumstances described in division (B) of section     | 299 |
| 5739.029 of the Revised Code;                                    | 300 |
| (24) Sales to persons engaged in the preparation of eggs         | 301 |
| for sale of tangible personal property used or consumed directly | 302 |
| in such preparation, including such tangible personal property   | 303 |
| used for cleaning, sanitizing, preserving, grading, sorting, and | 304 |
| classifying by size; packages, including material and parts for  | 305 |
| packages, and machinery, equipment, and material for use in      | 306 |
| packaging eggs for sale; and handling and transportation         | 307 |
| equipment and parts therefor, except motor vehicles licensed to  | 308 |
| operate on public highways, used in intraplant or interplant     | 309 |
| transfers or shipment of eggs in the process of preparation for  | 310 |
| sale, when the plant or plants within or between which such      | 311 |
| transfers or shipments occur are operated by the same person.    | 312 |
| "Packages" includes containers, cases, baskets, flats, fillers,  | 313 |
| filler flats, cartons, closure materials, labels, and labeling   | 314 |
| materials, and "packaging" means placing therein.                | 315 |
| (25) (a) Sales of water to a consumer for residential use;       | 316 |
| (b) Sales of water by a nonprofit corporation engaged            | 317 |
| exclusively in the treatment, distribution, and sale of water to | 318 |
| consumers, if such water is delivered to consumers through pipes | 319 |
| or tubing.   | 320 |

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|---|--------------------------|
| (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;   | 321<br>322               |
| (27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:  | 323<br>324<br>325<br>326 |
| (a) To prepare food for human consumption for sale;   | 327                      |
| (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;                        | 328<br>329<br>330<br>331 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale.   | 332<br>333               |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies;   | 334<br>335               |
| (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code; | 336<br>337<br>338<br>339 |
| (30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;   | 340<br>341<br>342        |
| (31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;  | 343<br>344<br>345        |
| (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   | 346<br>347<br>348        |

property belonging to others by a person engaged in highway 349  
transportation for hire, except for packages and packaging used 350  
for the transportation of tangible personal property; 351

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

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

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

(b) Sales to direct marketing vendors of preliminary 377  
materials such as photographs, artwork, and typesetting that 378

will be used in printing advertising material; and of printed 379  
matter that offers free merchandise or chances to win sweepstake 380  
prizes and that is mailed to potential customers with 381  
advertising material described in division (B) (35) (a) of this 382  
section; 383

(c) Sales of equipment such as telephones, computers, 384  
facsimile machines, and similar tangible personal property 385  
primarily used to accept orders for direct marketing retail 386  
sales. 387

(d) Sales of automatic food vending machines that preserve 388  
food with a shelf life of forty-five days or less by 389  
refrigeration and dispense it to the consumer. 390

For purposes of division (B) (35) of this section, "direct 391  
marketing" means the method of selling where consumers order 392  
tangible personal property by United States mail, delivery 393  
service, or telecommunication and the vendor delivers or ships 394  
the tangible personal property sold to the consumer from a 395  
warehouse, catalogue distribution center, or similar fulfillment 396  
facility by means of the United States mail, delivery service, 397  
or common carrier. 398

(36) Sales to a person engaged in the business of 399  
horticulture or producing livestock of materials to be 400  
incorporated into a horticulture structure or livestock 401  
structure; 402

(37) Sales of personal computers, computer monitors, 403  
computer keyboards, modems, and other peripheral computer 404  
equipment to an individual who is licensed or certified to teach 405  
in an elementary or a secondary school in this state for use by 406  
that individual in preparation for teaching elementary or 407

secondary school students; 408

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

(a) Motor racing vehicles; 411

(b) Repair services for motor racing vehicles; 412

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

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

(40) Sales of tangible personal property and services to a 424  
provider of electricity used or consumed directly and primarily 425  
in generating, transmitting, or distributing electricity for use 426  
by others, including property that is or is to be incorporated 427  
into and will become a part of the consumer's production, 428  
transmission, or distribution system and that retains its 429  
classification as tangible personal property after 430  
incorporation; fuel or power used in the production, 431  
transmission, or distribution of electricity; energy conversion 432  
equipment as defined in section 5727.01 of the Revised Code; and 433  
tangible personal property and services used in the repair and 434  
maintenance of the production, transmission, or distribution 435  
system, including only those motor vehicles as are specially 436

designed and equipped for such use. The exemption provided in 437  
this division shall be in lieu of all other exemptions in 438  
division (B) (42) (a) or (n) of this section to which a provider 439  
of electricity may otherwise be entitled based on the use of the 440  
tangible personal property or service purchased in generating, 441  
transmitting, or distributing electricity. 442

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

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

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

(b) To hold the thing transferred as security for the 463  
performance of an obligation of the vendor; 464

(c) To resell, hold, use, or consume the thing transferred 465



as evidence of a contract of insurance; 466

(d) To use or consume the thing directly in commercial 467  
fishing; 468

(e) To incorporate the thing transferred as a material or 469  
a part into, or to use or consume the thing transferred directly 470  
in the production of, magazines distributed as controlled 471  
circulation publications; 472

(f) To use or consume the thing transferred in the 473  
production and preparation in suitable condition for market and 474  
sale of printed, imprinted, overprinted, lithographic, 475  
multilithic, blueprinted, photostatic, or other productions or 476  
reproductions of written or graphic matter; 477

(g) To use the thing transferred, as described in section 478  
5739.011 of the Revised Code, primarily in a manufacturing 479  
operation to produce tangible personal property for sale; 480

(h) To use the benefit of a warranty, maintenance or 481  
service contract, or similar agreement, as described in division 482  
(B) (7) of section 5739.01 of the Revised Code, to repair or 483  
maintain tangible personal property, if all of the property that 484  
is the subject of the warranty, contract, or agreement would not 485  
be subject to the tax imposed by this section; 486

(i) To use the thing transferred as qualified research and 487  
development equipment; 488

(j) To use or consume the thing transferred primarily in 489  
storing, transporting, mailing, or otherwise handling purchased 490  
sales inventory in a warehouse, distribution center, or similar 491  
facility when the inventory is primarily distributed outside 492  
this state to retail stores of the person who owns or controls 493  
the warehouse, distribution center, or similar facility, to 494

retail stores of an affiliated group of which that person is a 495  
member, or by means of direct marketing. This division does not 496  
apply to motor vehicles registered for operation on the public 497  
highways. As used in this division, "affiliated group" has the 498  
same meaning as in division (B) (3) (e) of section 5739.01 of the 499  
Revised Code and "direct marketing" has the same meaning as in 500  
division (B) (35) of this section. 501

(k) To use or consume the thing transferred to fulfill a 502  
contractual obligation incurred by a warrantor pursuant to a 503  
warranty provided as a part of the price of the tangible 504  
personal property sold or by a vendor of a warranty, maintenance 505  
or service contract, or similar agreement the provision of which 506  
is defined as a sale under division (B) (7) of section 5739.01 of 507  
the Revised Code; 508

(l) To use or consume the thing transferred in the 509  
production of a newspaper for distribution to the public; 510

(m) To use tangible personal property to perform a service 511  
listed in division (B) (3) of section 5739.01 of the Revised 512  
Code, if the property is or is to be permanently transferred to 513  
the consumer of the service as an integral part of the 514  
performance of the service; 515

(n) To use or consume the thing transferred primarily in 516  
producing tangible personal property for sale by farming, 517  
agriculture, horticulture, or floriculture. Persons engaged in 518  
rendering farming, agriculture, horticulture, or floriculture 519  
services for others are deemed engaged primarily in farming, 520  
agriculture, horticulture, or floriculture. This paragraph does 521  
not exempt from "retail sale" or "sales at retail" the sale of 522  
tangible personal property that is to be incorporated into a 523  
structure or improvement to real property. 524

(o) To use or consume the thing transferred in acquiring, 525  
formatting, editing, storing, and disseminating data or 526  
information by electronic publishing; 527

(p) To provide the thing transferred to the owner or 528  
lessee of a motor vehicle that is being repaired or serviced, if 529  
the thing transferred is a rented motor vehicle and the 530  
purchaser is reimbursed for the cost of the rented motor vehicle 531  
by a manufacturer, warrantor, or provider of a maintenance, 532  
service, or other similar contract or agreement, with respect to 533  
the motor vehicle that is being repaired or serviced; 534

(q) To use or consume the thing transferred directly in 535  
production of crude oil and natural gas for sale. Persons 536  
engaged in rendering production services for others are deemed 537  
engaged in production. 538

As used in division (B) (42) (q) of this section, 539  
"production" means operations and tangible personal property 540  
directly used to expose and evaluate an underground reservoir 541  
that may contain hydrocarbon resources, prepare the wellbore for 542  
production, and lift and control all substances yielded by the 543  
reservoir to the surface of the earth. 544

(i) For the purposes of division (B) (42) (q) of this 545  
section, the "thing transferred" includes, but is not limited 546  
to, any of the following: 547

(I) Services provided in the construction of permanent 548  
access roads, services provided in the construction of the well 549  
site, and services provided in the construction of temporary 550  
impoundments; 551

(II) Equipment and rigging used for the specific purpose 552  
of creating with integrity a wellbore pathway to underground 553

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| reservoirs;  | 554 |
| (III) Drilling and workover services used to work within a       | 555 |
| subsurface wellbore, and tangible personal property directly     | 556 |
| used in providing such services;                                 | 557 |
| (IV) Casing, tubulars, and float and centralizing                | 558 |
| equipment;   | 559 |
| (V) Trailers to which production equipment is attached;          | 560 |
| (VI) Well completion services, including cementing of            | 561 |
| casing, and tangible personal property directly used in          | 562 |
| providing such services;   | 563 |
| (VII) Wireline evaluation, mud logging, and perforation          | 564 |
| services, and tangible personal property directly used in        | 565 |
| providing such services;   | 566 |
| (VIII) Reservoir stimulation, hydraulic fracturing, and          | 567 |
| acidizing services, and tangible personal property directly used | 568 |
| in providing such services, including all material pumped        | 569 |
| downhole;  | 570 |
| (IX) Pressure pumping equipment;                                 | 571 |
| (X) Artificial lift systems equipment;                           | 572 |
| (XI) Wellhead equipment and well site equipment used to          | 573 |
| separate, stabilize, and control hydrocarbon phases and produced | 574 |
| water;   | 575 |
| (XII) Tangible personal property directly used to control        | 576 |
| production equipment.  | 577 |
| (ii) For the purposes of division (B) (42) (q) of this           | 578 |
| section, the "thing transferred" does not include any of the     | 579 |
| following:   | 580 |

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| (I) Tangible personal property used primarily in the             | 581 |
| exploration and production of any mineral resource regulated     | 582 |
| under Chapter 1509. of the Revised Code other than oil or gas;   | 583 |
| (II) Tangible personal property used primarily in storing,       | 584 |
| holding, or delivering solutions or chemicals used in well       | 585 |
| stimulation as defined in section 1509.01 of the Revised Code;   | 586 |
| (III) Tangible personal property used primarily in               | 587 |
| preparing, installing, or reclaiming foundations for drilling or | 588 |
| pumping equipment or well stimulation material tanks;            | 589 |
| (IV) Tangible personal property used primarily in                | 590 |
| transporting, delivering, or removing equipment to or from the   | 591 |
| well site or storing such equipment before its use at the well   | 592 |
| site;  | 593 |
| (V) Tangible personal property used primarily in gathering       | 594 |
| operations occurring off the well site, including gathering      | 595 |
| pipelines transporting hydrocarbon gas or liquids away from a    | 596 |
| crude oil or natural gas production facility;                    | 597 |
| (VI) Tangible personal property that is to be incorporated       | 598 |
| into a structure or improvement to real property;                | 599 |
| (VII) Well site fencing, lighting, or security systems;          | 600 |
| (VIII) Communication devices or services;                        | 601 |
| (IX) Office supplies;  | 602 |
| (X) Trailers used as offices or lodging;                         | 603 |
| (XI) Motor vehicles of any kind;                                 | 604 |
| (XII) Tangible personal property used primarily for the          | 605 |
| storage of drilling byproducts and fuel not used for production; | 606 |
| (XIII) Tangible personal property used primarily as a            | 607 |

safety device; 608

(XIV) Data collection or monitoring devices; 609

(XV) Access ladders, stairs, or platforms attached to 610  
storage tanks. 611

The enumeration of tangible personal property in division 612  
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 613  
and any tangible personal property not so enumerated shall not 614  
necessarily be construed to be a "thing transferred" for the 615  
purposes of division (B) (42) (q) of this section. 616

The commissioner shall adopt and promulgate rules under 617  
sections 119.01 to 119.13 of the Revised Code that the 618  
commissioner deems necessary to administer division (B) (42) (q) 619  
of this section. 620

As used in division (B) (42) of this section, "thing" 621  
includes all transactions included in divisions (B) (3) (a), (b), 622  
and (e) of section 5739.01 of the Revised Code. 623

(43) Sales conducted through a coin operated device that 624  
activates vacuum equipment or equipment that dispenses water, 625  
whether or not in combination with soap or other cleaning agents 626  
or wax, to the consumer for the consumer's use on the premises 627  
in washing, cleaning, or waxing a motor vehicle, provided no 628  
other personal property or personal service is provided as part 629  
of the transaction. 630

(44) Sales of replacement and modification parts for 631  
engines, airframes, instruments, and interiors in, and paint 632  
for, aircraft used primarily in a fractional aircraft ownership 633  
program, and sales of services for the repair, modification, and 634  
maintenance of such aircraft, and machinery, equipment, and 635  
supplies primarily used to provide those services. 636

(45) Sales of telecommunications service that is used 637  
directly and primarily to perform the functions of a call 638  
center. As used in this division, "call center" means any 639  
physical location where telephone calls are placed or received 640  
in high volume for the purpose of making sales, marketing, 641  
customer service, technical support, or other specialized 642  
business activity, and that employs at least fifty individuals 643  
that engage in call center activities on a full-time basis, or 644  
sufficient individuals to fill fifty full-time equivalent 645  
positions. 646

(46) Sales by a telecommunications service vendor of 900 647  
service to a subscriber. This division does not apply to 648  
information services, as defined in division (FF) of section 649  
5739.01 of the Revised Code. 650

(47) Sales of value-added non-voice data service. This 651  
division does not apply to any similar service that is not 652  
otherwise a telecommunications service. 653

(48) (a) Sales of machinery, equipment, and software to a 654  
qualified direct selling entity for use in a warehouse or 655  
distribution center primarily for storing, transporting, or 656  
otherwise handling inventory that is held for sale to 657  
independent salespersons who operate as direct sellers and that 658  
is held primarily for distribution outside this state; 659

(b) As used in division (B) (48) (a) of this section: 660

(i) "Direct seller" means a person selling consumer 661  
products to individuals for personal or household use and not 662  
from a fixed retail location, including selling such product at 663  
in-home product demonstrations, parties, and other one-on-one 664  
selling. 665

(ii) "Qualified direct selling entity" means an entity 666  
selling to direct sellers at the time the entity enters into a 667  
tax credit agreement with the tax credit authority pursuant to 668  
section 122.17 of the Revised Code, provided that the agreement 669  
was entered into on or after January 1, 2007. Neither 670  
contingencies relevant to the granting of, nor later 671  
developments with respect to, the tax credit shall impair the 672  
status of the qualified direct selling entity under division (B) 673  
(48) of this section after execution of the tax credit agreement 674  
by the tax credit authority. 675

(c) Division (B) (48) of this section is limited to 676  
machinery, equipment, and software first stored, used, or 677  
consumed in this state within the period commencing June 24, 678  
2008, and ending on the date that is five years after that date. 679

(49) Sales of materials, parts, equipment, or engines used 680  
in the repair or maintenance of aircraft or avionics systems of 681  
such aircraft, and sales of repair, remodeling, replacement, or 682  
maintenance services in this state performed on aircraft or on 683  
an aircraft's avionics, engine, or component materials or parts. 684  
As used in division (B) (49) of this section, "aircraft" means 685  
aircraft of more than six thousand pounds maximum certified 686  
takeoff weight or used exclusively in general aviation. 687

(50) Sales of full flight simulators that are used for 688  
pilot or flight-crew training, sales of repair or replacement 689  
parts or components, and sales of repair or maintenance services 690  
for such full flight simulators. "Full flight simulator" means a 691  
replica of a specific type, or make, model, and series of 692  
aircraft cockpit. It includes the assemblage of equipment and 693  
computer programs necessary to represent aircraft operations in 694  
ground and flight conditions, a visual system providing an out- 695



of-the-cockpit view, and a system that provides cues at least 696  
equivalent to those of a three-degree-of-freedom motion system, 697  
and has the full range of capabilities of the systems installed 698  
in the device as described in appendices A and B of part 60 of 699  
chapter 1 of title 14 of the Code of Federal Regulations. 700

(51) Any transfer or lease of tangible personal property 701  
between the state and JobsOhio in accordance with section 702  
4313.02 of the Revised Code. 703

(52) (a) Sales to a qualifying corporation. 704

(b) As used in division (B) (52) of this section: 705

(i) "Qualifying corporation" means a nonprofit corporation 706  
organized in this state that leases from an eligible county 707  
land, buildings, structures, fixtures, and improvements to the 708  
land that are part of or used in a public recreational facility 709  
used by a major league professional athletic team or a class A 710  
to class AAA minor league affiliate of a major league 711  
professional athletic team for a significant portion of the 712  
team's home schedule, provided the following apply: 713

(I) The facility is leased from the eligible county 714  
pursuant to a lease that requires substantially all of the 715  
revenue from the operation of the business or activity conducted 716  
by the nonprofit corporation at the facility in excess of 717  
operating costs, capital expenditures, and reserves to be paid 718  
to the eligible county at least once per calendar year. 719

(II) Upon dissolution and liquidation of the nonprofit 720  
corporation, all of its net assets are distributable to the 721  
board of commissioners of the eligible county from which the 722  
corporation leases the facility. 723

(ii) "Eligible county" has the same meaning as in section 724

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| 307.695 of the Revised Code.                                       | 725 |
| (53) Sales to or by a cable service provider, video                | 726 |
| service provider, or radio or television broadcast station         | 727 |
| regulated by the federal government of cable service or            | 728 |
| programming, video service or programming, audio service or        | 729 |
| programming, or electronically transferred digital audiovisual     | 730 |
| or audio work. As used in division (B) (53) of this section,       | 731 |
| "cable service" and "cable service provider" have the same         | 732 |
| meanings as in section 1332.01 of the Revised Code, and "video     | 733 |
| service," "video service provider," and "video programming" have   | 734 |
| the same meanings as in section 1332.21 of the Revised Code.       | 735 |
| (54) Sales of investment metal bullion and investment              | 736 |
| coins. "Investment metal bullion" means any bullion described in   | 737 |
| section 408(m) (3) (B) of the Internal Revenue Code, regardless of | 738 |
| whether that bullion is in the physical possession of a trustee.   | 739 |
| "Investment coin" means any coin composed primarily of gold,       | 740 |
| silver, platinum, or palladium.                                    | 741 |
| (55) Sales of a digital audio work electronically                  | 742 |
| transferred for delivery through use of a machine, such as a       | 743 |
| juke box, that does all of the following:                          | 744 |
| (a) Accepts direct payments to operate;                            | 745 |
| (b) Automatically plays a selected digital audio work for          | 746 |
| a single play upon receipt of a payment described in division      | 747 |
| (B) (55) (a) of this section;                                      | 748 |
| (c) Operates exclusively for the purpose of playing                | 749 |
| digital audio works in a commercial establishment.                 | 750 |
| (56) (a) Sales of the following occurring on the first             | 751 |
| Friday of August and the following Saturday and Sunday of each     | 752 |
| year, beginning in 2018:   | 753 |

(i) An item of clothing, the price of which is seventy- 754  
five dollars or less; 755

(ii) An item of school supplies, the price of which is 756  
twenty dollars or less; 757

(iii) An item of school instructional material, the price 758  
of which is twenty dollars or less. 759

(b) As used in division (B) (56) of this section: 760

(i) "Clothing" means all human wearing apparel suitable 761  
for general use. "Clothing" includes, but is not limited to, 762  
aprons, household and shop; athletic supporters; baby receiving 763  
blankets; bathing suits and caps; beach capes and coats; belts 764  
and suspenders; boots; coats and jackets; costumes; diapers, 765  
children and adult, including disposable diapers; earmuffs; 766  
footlets; formal wear; garters and garter belts; girdles; gloves 767  
and mittens for general use; hats and caps; hosiery; insoles for 768  
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 769  
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 770  
sneakers; socks and stockings; steel-toed shoes; underwear; 771  
uniforms, athletic and nonathletic; and wedding apparel. 772

"Clothing" does not include items purchased for use in a trade 773  
or business; clothing accessories or equipment; protective 774  
equipment; sports or recreational equipment; belt buckles sold 775  
separately; costume masks sold separately; patches and emblems 776  
sold separately; sewing equipment and supplies including, but 777  
not limited to, knitting needles, patterns, pins, scissors, 778  
sewing machines, sewing needles, tape measures, and thimbles; 779  
and sewing materials that become part of "clothing" including, 780  
but not limited to, buttons, fabric, lace, thread, yarn, and 781  
zippers. 782

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

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

(57) Sales of tangible personal property that is not required to be registered or licensed under the laws of this state to a citizen of a foreign nation that is not a citizen of the United States, provided the property is delivered to a person in this state that is not a related member of the purchaser, is physically present in this state for the sole purpose of temporary storage and package consolidation, and is subsequently delivered to the purchaser at a delivery address in a foreign nation. As used in division (B)(56) of this section, "related member" has the same meaning as in section 5733.042 of the Revised Code, and "temporary storage" means the storage of

tangible personal property for a period of not more than sixty 814  
days. 815

(58) Sales of incontinence products, provided that the 816  
products are sold pursuant to a prescription for the benefit of 817  
a medicaid recipient with a diagnosis of incontinence, and 818  
provided that the medicaid program covers the products as an 819  
incontinence garment. As used in this division, "incontinence 820  
products" includes washable or disposable diapers, pull-ups, 821  
underpads, or liners. 822

(C) For the purpose of the proper administration of this 823  
chapter, and to prevent the evasion of the tax, it is presumed 824  
that all sales made in this state are subject to the tax until 825  
the contrary is established. 826

(D) The levy of this tax on retail sales of recreation and 827  
sports club service shall not prevent a municipal corporation 828  
from levying any tax on recreation and sports club dues or on 829  
any income generated by recreation and sports club dues. 830

(E) The tax collected by the vendor from the consumer 831  
under this chapter is not part of the price, but is a tax 832  
collection for the benefit of the state, and of counties levying 833  
an additional sales tax pursuant to section 5739.021 or 5739.026 834  
of the Revised Code and of transit authorities levying an 835  
additional sales tax pursuant to section 5739.023 of the Revised 836  
Code. Except for the discount authorized under section 5739.12 837  
of the Revised Code and the effects of any rounding pursuant to 838  
section 5703.055 of the Revised Code, no person other than the 839  
state or such a county or transit authority shall derive any 840  
benefit from the collection or payment of the tax levied by this 841  
section or section 5739.021, 5739.023, or 5739.026 of the 842  
Revised Code. 843

**Section 2.** That existing section 5739.02 of the Revised 844  
Code is hereby repealed. 845

**Section 3.** The amendment by this act of section 5739.02 of 846  
the Revised Code applies on and after the first day of the first 847  
month beginning after the effective date of this act. 848