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Representative Schaffer

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

A BILL

To amend sections 5709.20 and 5739.02 of the 1
Revised Code to expand the scope of a sales and 2
use tax exemption for certain kinds of property 3
used in the production of oil and gas. 4

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

Section 1. That sections 5709.20 and 5739.02 of the 5
Revised Code be amended to read as follows: 6

Sec. 5709.20. As used in sections 5709.20 to 5709.27 of 7
the Revised Code: 8

(A) "Air contaminant" means particulate matter, dust, 9
fumes, gas, mist, smoke, vapor, or odorous substances, or any 10
combination thereof. 11

(B) "Air pollution control facility" means any property 12
designed, constructed, or installed for the primary purpose of 13
eliminating or reducing the emission of, or ground level 14
concentration of, air contaminants generated at an industrial or 15

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

(C) "Energy conversion" means the conversion of fuel or 22
power usage and consumption from natural gas to an alternate 23
fuel or power source other than propane, butane, naphtha, or 24
fuel oil; or the conversion of fuel or power usage and 25
consumption from fuel oil to an alternate fuel or power source 26
other than natural gas, propane, butane, or naphtha. 27

(D) "Energy conversion facility" means any additional 28
property or equipment designed, constructed, or installed after 29
December 31, 1974, for use at an industrial or commercial plant 30
or site for the primary purpose of energy conversion. 31

(E) "Exempt facility" means any of the facilities defined 32
in division (B), (D), (F), (I), (K), or (L) of this section for 33
which an exempt facility certificate is issued pursuant to 34
section 5709.21 or for which a certificate remains valid under 35
section 5709.201 of the Revised Code. 36

(F) "Noise pollution control facility" means any property 37
designed, constructed, or installed for use at an industrial or 38
commercial plant or site for the primary purpose of eliminating 39
or reducing, at that plant or site, the emission of sound which 40
is harmful or inimical to persons or property, or materially 41
reduces the quality of the environment, as shall be determined 42
by the director of environmental protection within such 43
standards for noise pollution control facilities and standards 44
for environmental noise necessary to protect public health and 45

welfare as may be promulgated by the United States environmental 46
protection agency. In the absence of such United States 47
environmental protection agency standards, the determination 48
shall be made in accordance with generally accepted current 49
standards of good engineering practice in environmental noise 50
control. 51

(G) "Solid waste" means such unwanted residual solid or 52
semi-solid material as results from industrial operations, 53
including those of public utility companies, and commercial, 54
distribution, research, agricultural, and community operations, 55
including garbage, combustible or noncombustible, street dirt, 56
and debris. 57

(H) "Solid waste energy conversion" means the conversion 58
of solid waste into energy and the utilization of such energy 59
for some useful purpose. 60

(I) "Solid waste energy conversion facility" means any 61
property or equipment designed, constructed, or installed after 62
December 31, 1974, for use at an industrial or a commercial 63
plant or site for the primary purpose of solid waste energy 64
conversion. 65

(J) "Thermal efficiency improvement" means the recovery 66
and use of waste heat or waste steam produced incidental to 67
electric power generation, industrial process heat generation, 68
lighting, refrigeration, or space heating. 69

(K) "Thermal efficiency improvement facility" means any 70
property or equipment designed, constructed, or installed after 71
December 31, 1974, for use at an industrial or a commercial 72
plant or site for the primary purpose of thermal efficiency 73
improvement. 74

(L) "Industrial water pollution control facility" means 75
any property designed, constructed, or installed for the primary 76
purpose of collecting or conducting industrial waste to a point 77
of disposal or treatment; reducing, controlling, or eliminating 78
water pollution caused by industrial waste; or reducing, 79
controlling, or eliminating the discharge into a disposal system 80
of industrial waste or what would be industrial waste if 81
discharged into the waters of this state. This division applies 82
only to property related to an industrial water pollution 83
control facility placed into operation or initially capable of 84
operation after December 31, 1965, and installed pursuant to the 85
approval of the environmental protection agency, department of 86
natural resources, or any other governmental agency having 87
authority to approve the installation of industrial water 88
pollution control facilities. The definitions in section 6111.01 89
of the Revised Code, as applicable, apply to the terms used in 90
this division. 91

(M) Property designed, constructed, installed, used, or 92
placed in operation primarily for the safety, health, 93
protection, or benefit, or any combination thereof, of personnel 94
of a business, or primarily for a business's own benefit, is not 95
an "exempt facility." 96

Sec. 5739.02. For the purpose of providing revenue with 97
which to meet the needs of the state, for the use of the general 98
revenue fund of the state, for the purpose of securing a 99
thorough and efficient system of common schools throughout the 100
state, for the purpose of affording revenues, in addition to 101
those from general property taxes, permitted under 102
constitutional limitations, and from other sources, for the 103
support of local governmental functions, and for the purpose of 104
reimbursing the state for the expense of administering this 105

chapter, an excise tax is hereby levied on each retail sale made 106
in this state. 107

(A) (1) The tax shall be collected as provided in section 108
5739.025 of the Revised Code. The rate of the tax shall be five 109
and three-fourths per cent. The tax applies and is collectible 110
when the sale is made, regardless of the time when the price is 111
paid or delivered. 112

(2) In the case of the lease or rental, with a fixed term 113
of more than thirty days or an indefinite term with a minimum 114
period of more than thirty days, of any motor vehicles designed 115
by the manufacturer to carry a load of not more than one ton, 116
watercraft, outboard motor, or aircraft, or of any tangible 117
personal property, other than motor vehicles designed by the 118
manufacturer to carry a load of more than one ton, to be used by 119
the lessee or renter primarily for business purposes, the tax 120
shall be collected by the vendor at the time the lease or rental 121
is consummated and shall be calculated by the vendor on the 122
basis of the total amount to be paid by the lessee or renter 123
under the lease agreement. If the total amount of the 124
consideration for the lease or rental includes amounts that are 125
not calculated at the time the lease or rental is executed, the 126
tax shall be calculated and collected by the vendor at the time 127
such amounts are billed to the lessee or renter. In the case of 128
an open-end lease or rental, the tax shall be calculated by the 129
vendor on the basis of the total amount to be paid during the 130
initial fixed term of the lease or rental, and for each 131
subsequent renewal period as it comes due. As used in this 132
division, "motor vehicle" has the same meaning as in section 133
4501.01 of the Revised Code, and "watercraft" includes an 134
outdrive unit attached to the watercraft. 135

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

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

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

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

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

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

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

(4) Sales of newspapers and sales or transfers of	165
magazines distributed as controlled circulation publications;	166
(5) The furnishing, preparing, or serving of meals without	167
charge by an employer to an employee provided the employer	168
records the meals as part compensation for services performed or	169
work done;	170
(6) Sales of motor fuel upon receipt, use, distribution,	171
or sale of which in this state a tax is imposed by the law of	172
this state, but this exemption shall not apply to the sale of	173
motor fuel on which a refund of the tax is allowable under	174
division (A) of section 5735.14 of the Revised Code; and the tax	175
commissioner may deduct the amount of tax levied by this section	176
applicable to the price of motor fuel when granting a refund of	177
motor fuel tax pursuant to division (A) of section 5735.14 of	178
the Revised Code and shall cause the amount deducted to be paid	179
into the general revenue fund of this state;	180
(7) Sales of natural gas by a natural gas company or	181
municipal gas utility, of water by a water-works company, or of	182
steam by a heating company, if in each case the thing sold is	183
delivered to consumers through pipes or conduits, and all sales	184
of communications services by a telegraph company, all terms as	185
defined in section 5727.01 of the Revised Code, and sales of	186
electricity delivered through wires;	187
(8) Casual sales by a person, or auctioneer employed	188
directly by the person to conduct such sales, except as to such	189
sales of motor vehicles, watercraft or outboard motors required	190
to be titled under section 1548.06 of the Revised Code,	191
watercraft documented with the United States coast guard,	192
snowmobiles, and all-purpose vehicles as defined in section	193
4519.01 of the Revised Code;	194

(9) (a) Sales of services or tangible personal property, 195
other than motor vehicles, mobile homes, and manufactured homes, 196
by churches, organizations exempt from taxation under section 197
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 198
organizations operated exclusively for charitable purposes as 199
defined in division (B) (12) of this section, provided that the 200
number of days on which such tangible personal property or 201
services, other than items never subject to the tax, are sold 202
does not exceed six in any calendar year, except as otherwise 203
provided in division (B) (9) (b) of this section. If the number of 204
days on which such sales are made exceeds six in any calendar 205
year, the church or organization shall be considered to be 206
engaged in business and all subsequent sales by it shall be 207
subject to the tax. In counting the number of days, all sales by 208
groups within a church or within an organization shall be 209
considered to be sales of that church or organization. 210

(b) The limitation on the number of days on which tax- 211
exempt sales may be made by a church or organization under 212
division (B) (9) (a) of this section does not apply to sales made 213
by student clubs and other groups of students of a primary or 214
secondary school, or a parent-teacher association, booster 215
group, or similar organization that raises money to support or 216
fund curricular or extracurricular activities of a primary or 217
secondary school. 218

(c) Divisions (B) (9) (a) and (b) of this section do not 219
apply to sales by a noncommercial educational radio or 220
television broadcasting station. 221

(10) Sales not within the taxing power of this state under 222
the Constitution or laws of the United States or the 223
Constitution of this state; 224

(11) Except for transactions that are sales under division 225
(B) (3) (r) of section 5739.01 of the Revised Code, the 226
transportation of persons or property, unless the transportation 227
is by a private investigation and security service; 228

(12) Sales of tangible personal property or services to 229
churches, to organizations exempt from taxation under section 230
501(c) (3) of the Internal Revenue Code of 1986, and to any other 231
nonprofit organizations operated exclusively for charitable 232
purposes in this state, no part of the net income of which 233
inures to the benefit of any private shareholder or individual, 234
and no substantial part of the activities of which consists of 235
carrying on propaganda or otherwise attempting to influence 236
legislation; sales to offices administering one or more homes 237
for the aged or one or more hospital facilities exempt under 238
section 140.08 of the Revised Code; and sales to organizations 239
described in division (D) of section 5709.12 of the Revised 240
Code. 241

"Charitable purposes" means the relief of poverty; the 242
improvement of health through the alleviation of illness, 243
disease, or injury; the operation of an organization exclusively 244
for the provision of professional, laundry, printing, and 245
purchasing services to hospitals or charitable institutions; the 246
operation of a home for the aged, as defined in section 5701.13 247
of the Revised Code; the operation of a radio or television 248
broadcasting station that is licensed by the federal 249
communications commission as a noncommercial educational radio 250
or television station; the operation of a nonprofit animal 251
adoption service or a county humane society; the promotion of 252
education by an institution of learning that maintains a faculty 253
of qualified instructors, teaches regular continuous courses of 254
study, and confers a recognized diploma upon completion of a 255

specific curriculum; the operation of a parent-teacher 256
association, booster group, or similar organization primarily 257
engaged in the promotion and support of the curricular or 258
extracurricular activities of a primary or secondary school; the 259
operation of a community or area center in which presentations 260
in music, dramatics, the arts, and related fields are made in 261
order to foster public interest and education therein; the 262
production of performances in music, dramatics, and the arts; or 263
the promotion of education by an organization engaged in 264
carrying on research in, or the dissemination of, scientific and 265
technological knowledge and information primarily for the 266
public. 267

Nothing in this division shall be deemed to exempt sales 268
to any organization for use in the operation or carrying on of a 269
trade or business, or sales to a home for the aged for use in 270
the operation of independent living facilities as defined in 271
division (A) of section 5709.12 of the Revised Code. 272

(13) Building and construction materials and services sold 273
to construction contractors for incorporation into a structure 274
or improvement to real property under a construction contract 275
with this state or a political subdivision of this state, or 276
with the United States government or any of its agencies; 277
building and construction materials and services sold to 278
construction contractors for incorporation into a structure or 279
improvement to real property that are accepted for ownership by 280
this state or any of its political subdivisions, or by the 281
United States government or any of its agencies at the time of 282
completion of the structures or improvements; building and 283
construction materials sold to construction contractors for 284
incorporation into a horticulture structure or livestock 285
structure for a person engaged in the business of horticulture 286

or producing livestock; building materials and services sold to 287
a construction contractor for incorporation into a house of 288
public worship or religious education, or a building used 289
exclusively for charitable purposes under a construction 290
contract with an organization whose purpose is as described in 291
division (B) (12) of this section; building materials and 292
services sold to a construction contractor for incorporation 293
into a building under a construction contract with an 294
organization exempt from taxation under section 501(c) (3) of the 295
Internal Revenue Code of 1986 when the building is to be used 296
exclusively for the organization's exempt purposes; building and 297
construction materials sold for incorporation into the original 298
construction of a sports facility under section 307.696 of the 299
Revised Code; building and construction materials and services 300
sold to a construction contractor for incorporation into real 301
property outside this state if such materials and services, when 302
sold to a construction contractor in the state in which the real 303
property is located for incorporation into real property in that 304
state, would be exempt from a tax on sales levied by that state; 305
building and construction materials for incorporation into a 306
transportation facility pursuant to a public-private agreement 307
entered into under sections 5501.70 to 5501.83 of the Revised 308
Code; and, until one calendar year after the construction of a 309
convention center that qualifies for property tax exemption 310
under section 5709.084 of the Revised Code is completed, 311
building and construction materials and services sold to a 312
construction contractor for incorporation into the real property 313
comprising that convention center; 314

(14) Sales of ships or vessels or rail rolling stock used 315
or to be used principally in interstate or foreign commerce, and 316
repairs, alterations, fuel, and lubricants for such ships or 317

vessels or rail rolling stock; 318

(15) Sales to persons primarily engaged in any of the 319
activities mentioned in division (B) (42) (a), (g), or (h) of this 320
section, to persons engaged in making retail sales, or to 321
persons who purchase for sale from a manufacturer tangible 322
personal property that was produced by the manufacturer in 323
accordance with specific designs provided by the purchaser, of 324
packages, including material, labels, and parts for packages, 325
and of machinery, equipment, and material for use primarily in 326
packaging tangible personal property produced for sale, 327
including any machinery, equipment, and supplies used to make 328
labels or packages, to prepare packages or products for 329
labeling, or to label packages or products, by or on the order 330
of the person doing the packaging, or sold at retail. "Packages" 331
includes bags, baskets, cartons, crates, boxes, cans, bottles, 332
bindings, wrappings, and other similar devices and containers, 333
but does not include motor vehicles or bulk tanks, trailers, or 334
similar devices attached to motor vehicles. "Packaging" means 335
placing in a package. Division (B) (15) of this section does not 336
apply to persons engaged in highway transportation for hire. 337

(16) Sales of food to persons using supplemental nutrition 338
assistance program benefits to purchase the food. As used in 339
this division, "food" has the same meaning as in 7 U.S.C. 2012 340
and federal regulations adopted pursuant to the Food and 341
Nutrition Act of 2008. 342

(17) Sales to persons engaged in farming, agriculture, 343
horticulture, or floriculture, of tangible personal property for 344
use or consumption primarily in the production by farming, 345
agriculture, horticulture, or floriculture of other tangible 346
personal property for use or consumption primarily in the 347

production of tangible personal property for sale by farming, 348
agriculture, horticulture, or floriculture; or material and 349
parts for incorporation into any such tangible personal property 350
for use or consumption in production; and of tangible personal 351
property for such use or consumption in the conditioning or 352
holding of products produced by and for such use, consumption, 353
or sale by persons engaged in farming, agriculture, 354
horticulture, or floriculture, except where such property is 355
incorporated into real property; 356

(18) Sales of drugs for a human being that may be 357
dispensed only pursuant to a prescription; insulin as recognized 358
in the official United States pharmacopoeia; urine and blood 359
testing materials when used by diabetics or persons with 360
hypoglycemia to test for glucose or acetone; hypodermic syringes 361
and needles when used by diabetics for insulin injections; 362
epoetin alfa when purchased for use in the treatment of persons 363
with medical disease; hospital beds when purchased by hospitals, 364
nursing homes, or other medical facilities; and medical oxygen 365
and medical oxygen-dispensing equipment when purchased by 366
hospitals, nursing homes, or other medical facilities; 367

(19) Sales of prosthetic devices, durable medical 368
equipment for home use, or mobility enhancing equipment, when 369
made pursuant to a prescription and when such devices or 370
equipment are for use by a human being. 371

(20) Sales of emergency and fire protection vehicles and 372
equipment to nonprofit organizations for use solely in providing 373
fire protection and emergency services, including trauma care 374
and emergency medical services, for political subdivisions of 375
the state; 376

(21) Sales of tangible personal property manufactured in 377

this state, if sold by the manufacturer in this state to a 378
retailer for use in the retail business of the retailer outside 379
of this state and if possession is taken from the manufacturer 380
by the purchaser within this state for the sole purpose of 381
immediately removing the same from this state in a vehicle owned 382
by the purchaser; 383

(22) Sales of services provided by the state or any of its 384
political subdivisions, agencies, instrumentalities, 385
institutions, or authorities, or by governmental entities of the 386
state or any of its political subdivisions, agencies, 387
instrumentalities, institutions, or authorities; 388

(23) Sales of motor vehicles to nonresidents of this state 389
under the circumstances described in division (B) of section 390
5739.029 of the Revised Code; 391

(24) Sales to persons engaged in the preparation of eggs 392
for sale of tangible personal property used or consumed directly 393
in such preparation, including such tangible personal property 394
used for cleaning, sanitizing, preserving, grading, sorting, and 395
classifying by size; packages, including material and parts for 396
packages, and machinery, equipment, and material for use in 397
packaging eggs for sale; and handling and transportation 398
equipment and parts therefor, except motor vehicles licensed to 399
operate on public highways, used in intraplant or interplant 400
transfers or shipment of eggs in the process of preparation for 401
sale, when the plant or plants within or between which such 402
transfers or shipments occur are operated by the same person. 403
"Packages" includes containers, cases, baskets, flats, fillers, 404
filler flats, cartons, closure materials, labels, and labeling 405
materials, and "packaging" means placing therein. 406

(25) (a) Sales of water to a consumer for residential use; 407

(b) Sales of water by a nonprofit corporation engaged 408
exclusively in the treatment, distribution, and sale of water to 409
consumers, if such water is delivered to consumers through pipes 410
or tubing. 411

(26) Fees charged for inspection or reinspection of motor 412
vehicles under section 3704.14 of the Revised Code; 413

(27) Sales to persons licensed to conduct a food service 414
operation pursuant to section 3717.43 of the Revised Code, of 415
tangible personal property primarily used directly for the 416
following: 417

(a) To prepare food for human consumption for sale; 418

(b) To preserve food that has been or will be prepared for 419
human consumption for sale by the food service operator, not 420
including tangible personal property used to display food for 421
selection by the consumer; 422

(c) To clean tangible personal property used to prepare or 423
serve food for human consumption for sale. 424

(28) Sales of animals by nonprofit animal adoption 425
services or county humane societies; 426

(29) Sales of services to a corporation described in 427
division (A) of section 5709.72 of the Revised Code, and sales 428
of tangible personal property that qualifies for exemption from 429
taxation under section 5709.72 of the Revised Code; 430

(30) Sales and installation of agricultural land tile, as 431
defined in division (B) (5) (a) of section 5739.01 of the Revised 432
Code; 433

(31) Sales and erection or installation of portable grain 434
bins, as defined in division (B) (5) (b) of section 5739.01 of the 435

Revised Code; 436

(32) The sale, lease, repair, and maintenance of, parts 437
for, or items attached to or incorporated in, motor vehicles 438
that are primarily used for transporting tangible personal 439
property belonging to others by a person engaged in highway 440
transportation for hire, except for packages and packaging used 441
for the transportation of tangible personal property; 442

(33) Sales to the state headquarters of any veterans' 443
organization in this state that is either incorporated and 444
issued a charter by the congress of the United States or is 445
recognized by the United States veterans administration, for use 446
by the headquarters; 447

(34) Sales to a telecommunications service vendor, mobile 448
telecommunications service vendor, or satellite broadcasting 449
service vendor of tangible personal property and services used 450
directly and primarily in transmitting, receiving, switching, or 451
recording any interactive, one- or two-way electromagnetic 452
communications, including voice, image, data, and information, 453
through the use of any medium, including, but not limited to, 454
poles, wires, cables, switching equipment, computers, and record 455
storage devices and media, and component parts for the tangible 456
personal property. The exemption provided in this division shall 457
be in lieu of all other exemptions under division (B) (42) (a) or 458
(n) of this section to which the vendor may otherwise be 459
entitled, based upon the use of the thing purchased in providing 460
the telecommunications, mobile telecommunications, or satellite 461
broadcasting service. 462

(35) (a) Sales where the purpose of the consumer is to use 463
or consume the things transferred in making retail sales and 464
consisting of newspaper inserts, catalogues, coupons, flyers, 465

gift certificates, or other advertising material that prices and 466
describes tangible personal property offered for retail sale. 467

(b) Sales to direct marketing vendors of preliminary 468
materials such as photographs, artwork, and typesetting that 469
will be used in printing advertising material; and of printed 470
matter that offers free merchandise or chances to win sweepstake 471
prizes and that is mailed to potential customers with 472
advertising material described in division (B) (35) (a) of this 473
section; 474

(c) Sales of equipment such as telephones, computers, 475
facsimile machines, and similar tangible personal property 476
primarily used to accept orders for direct marketing retail 477
sales. 478

(d) Sales of automatic food vending machines that preserve 479
food with a shelf life of forty-five days or less by 480
refrigeration and dispense it to the consumer. 481

For purposes of division (B) (35) of this section, "direct 482
marketing" means the method of selling where consumers order 483
tangible personal property by United States mail, delivery 484
service, or telecommunication and the vendor delivers or ships 485
the tangible personal property sold to the consumer from a 486
warehouse, catalogue distribution center, or similar fulfillment 487
facility by means of the United States mail, delivery service, 488
or common carrier. 489

(36) Sales to a person engaged in the business of 490
horticulture or producing livestock of materials to be 491
incorporated into a horticulture structure or livestock 492
structure; 493

(37) Sales of personal computers, computer monitors, 494

computer keyboards, modems, and other peripheral computer 495
equipment to an individual who is licensed or certified to teach 496
in an elementary or a secondary school in this state for use by 497
that individual in preparation for teaching elementary or 498
secondary school students; 499

(38) Sales to a professional racing team of any of the 500
following: 501

(a) Motor racing vehicles; 502

(b) Repair services for motor racing vehicles; 503

(c) Items of property that are attached to or incorporated 504
in motor racing vehicles, including engines, chassis, and all 505
other components of the vehicles, and all spare, replacement, 506
and rebuilt parts or components of the vehicles; except not 507
including tires, consumable fluids, paint, and accessories 508
consisting of instrumentation sensors and related items added to 509
the vehicle to collect and transmit data by means of telemetry 510
and other forms of communication. 511

(39) Sales of used manufactured homes and used mobile 512
homes, as defined in section 5739.0210 of the Revised Code, made 513
on or after January 1, 2000; 514

(40) Sales of tangible personal property and services to a 515
provider of electricity used or consumed directly and primarily 516
in generating, transmitting, or distributing electricity for use 517
by others, including property that is or is to be incorporated 518
into and will become a part of the consumer's production, 519
transmission, or distribution system and that retains its 520
classification as tangible personal property after 521
incorporation; fuel or power used in the production, 522
transmission, or distribution of electricity; energy conversion 523

equipment as defined in section 5727.01 of the Revised Code; and 524
tangible personal property and services used in the repair and 525
maintenance of the production, transmission, or distribution 526
system, including only those motor vehicles as are specially 527
designed and equipped for such use. The exemption provided in 528
this division shall be in lieu of all other exemptions in 529
division (B) (42) (a) or (n) of this section to which a provider 530
of electricity may otherwise be entitled based on the use of the 531
tangible personal property or service purchased in generating, 532
transmitting, or distributing electricity. 533

(41) Sales to a person providing services under division 534
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 535
personal property and services used directly and primarily in 536
providing taxable services under that section. 537

(42) Sales where the purpose of the purchaser is to do any 538
of the following: 539

(a) To incorporate the thing transferred as a material or 540
a part into tangible personal property to be produced for sale 541
by manufacturing, assembling, processing, or refining; or to use 542
or consume the thing transferred directly in producing tangible 543
personal property for sale by mining, including, without 544
limitation, the extraction from the earth of all substances that 545
are classed geologically as minerals, ~~production of crude oil~~ 546
~~and natural gas~~, or directly in the rendition of a public 547
utility service, except that the sales tax levied by this 548
section shall be collected upon all meals, drinks, and food for 549
human consumption sold when transporting persons. ~~Persons~~ 550
~~engaged in rendering services in the exploration for, and~~ 551
~~production of, crude oil and natural gas for others are deemed~~ 552
~~engaged directly in the exploration for, and production of,~~ 553

~~crude oil and natural gas.~~ This paragraph does not exempt from 554
"retail sale" or "sales at retail" the sale of tangible personal 555
property that is to be incorporated into a structure or 556
improvement to real property. 557

(b) To hold the thing transferred as security for the 558
performance of an obligation of the vendor; 559

(c) To resell, hold, use, or consume the thing transferred 560
as evidence of a contract of insurance; 561

(d) To use or consume the thing directly in commercial 562
fishing; 563

(e) To incorporate the thing transferred as a material or 564
a part into, or to use or consume the thing transferred directly 565
in the production of, magazines distributed as controlled 566
circulation publications; 567

(f) To use or consume the thing transferred in the 568
production and preparation in suitable condition for market and 569
sale of printed, imprinted, overprinted, lithographic, 570
multilithic, blueprinted, photostatic, or other productions or 571
reproductions of written or graphic matter; 572

(g) To use the thing transferred, as described in section 573
5739.011 of the Revised Code, primarily in a manufacturing 574
operation to produce tangible personal property for sale; 575

(h) To use the benefit of a warranty, maintenance or 576
service contract, or similar agreement, as described in division 577
(B) (7) of section 5739.01 of the Revised Code, to repair or 578
maintain tangible personal property, if all of the property that 579
is the subject of the warranty, contract, or agreement would not 580
be subject to the tax imposed by this section; 581

(i) To use the thing transferred as qualified research and 582
development equipment; 583

(j) To use or consume the thing transferred primarily in 584
storing, transporting, mailing, or otherwise handling purchased 585
sales inventory in a warehouse, distribution center, or similar 586
facility when the inventory is primarily distributed outside 587
this state to retail stores of the person who owns or controls 588
the warehouse, distribution center, or similar facility, to 589
retail stores of an affiliated group of which that person is a 590
member, or by means of direct marketing. This division does not 591
apply to motor vehicles registered for operation on the public 592
highways. As used in this division, "affiliated group" has the 593
same meaning as in division (B) (3) (e) of section 5739.01 of the 594
Revised Code and "direct marketing" has the same meaning as in 595
division (B) (35) of this section. 596

(k) To use or consume the thing transferred to fulfill a 597
contractual obligation incurred by a warrantor pursuant to a 598
warranty provided as a part of the price of the tangible 599
personal property sold or by a vendor of a warranty, maintenance 600
or service contract, or similar agreement the provision of which 601
is defined as a sale under division (B) (7) of section 5739.01 of 602
the Revised Code; 603

(l) To use or consume the thing transferred in the 604
production of a newspaper for distribution to the public; 605

(m) To use tangible personal property to perform a service 606
listed in division (B) (3) of section 5739.01 of the Revised 607
Code, if the property is or is to be permanently transferred to 608
the consumer of the service as an integral part of the 609
performance of the service; 610

(n) To use or consume the thing transferred primarily in 611
producing tangible personal property for sale by farming, 612
agriculture, horticulture, or floriculture. Persons engaged in 613
rendering farming, agriculture, horticulture, or floriculture 614
services for others are deemed engaged primarily in farming, 615
agriculture, horticulture, or floriculture. This paragraph does 616
not exempt from "retail sale" or "sales at retail" the sale of 617
tangible personal property that is to be incorporated into a 618
structure or improvement to real property. 619

(o) To use or consume the thing transferred in acquiring, 620
formatting, editing, storing, and disseminating data or 621
information by electronic publishing; 622

(p) To provide the thing transferred to the owner or 623
lessee of a motor vehicle that is being repaired or serviced, if 624
the thing transferred is a rented motor vehicle and the 625
purchaser is reimbursed for the cost of the rented motor vehicle 626
by a manufacturer, warrantor, or provider of a maintenance, 627
service, or other similar contract or agreement, with respect to 628
the motor vehicle that is being repaired or serviced. 629

(q) To use or consume the thing transferred in a 630
production operation to produce crude oil and natural gas for 631
sale. Persons engaged in rendering production operation services 632
for others are deemed engaged in a production operation. 633
Division (B) (42) (q) of this section does not exempt from "retail 634
sale" or "sales at retail" the sale of tangible personal 635
property that is to be incorporated into a structure or 636
improvement to real property. 637

As used in division (B) (42) (q) of this section, 638
"production operation" has the same meaning as in section 639
1509.01 of the Revised Code, but does not include any of the 640

following operations, activities, or equipment: 641

(i) Operations, activities, or equipment used in or 642
associated with the exploration and production of any mineral 643
resource regulated under Chapter 1509. of the Revised Code other 644
than oil or gas; 645

(ii) Storing, holding, or blending solutions or chemicals 646
used in well stimulation as defined in section 1509.01 of the 647
Revised Code; 648

(iii) Preparing, installing, or reclaiming foundations for 649
drilling or pumping equipment or well stimulation material 650
tanks; 651

(iv) Transporting, delivering, or removing equipment to or 652
from the well site or storing such equipment before its use at 653
the well site; 654

(v) Gathering operations occurring off the well site, 655
including gathering pipelines transporting hydrocarbon gas or 656
liquids away from a crude oil or natural gas production 657
facility. 658

As used in division (B) (42) of this section, "thing" 659
includes all transactions included in divisions (B) (3) (a), (b), 660
and (e) of section 5739.01 of the Revised Code. 661

(43) Sales conducted through a coin operated device that 662
activates vacuum equipment or equipment that dispenses water, 663
whether or not in combination with soap or other cleaning agents 664
or wax, to the consumer for the consumer's use on the premises 665
in washing, cleaning, or waxing a motor vehicle, provided no 666
other personal property or personal service is provided as part 667
of the transaction. 668

(44) Sales of replacement and modification parts for 669
engines, airframes, instruments, and interiors in, and paint 670
for, aircraft used primarily in a fractional aircraft ownership 671
program, and sales of services for the repair, modification, and 672
maintenance of such aircraft, and machinery, equipment, and 673
supplies primarily used to provide those services. 674

(45) Sales of telecommunications service that is used 675
directly and primarily to perform the functions of a call 676
center. As used in this division, "call center" means any 677
physical location where telephone calls are placed or received 678
in high volume for the purpose of making sales, marketing, 679
customer service, technical support, or other specialized 680
business activity, and that employs at least fifty individuals 681
that engage in call center activities on a full-time basis, or 682
sufficient individuals to fill fifty full-time equivalent 683
positions. 684

(46) Sales by a telecommunications service vendor of 900 685
service to a subscriber. This division does not apply to 686
information services, as defined in division (FF) of section 687
5739.01 of the Revised Code. 688

(47) Sales of value-added non-voice data service. This 689
division does not apply to any similar service that is not 690
otherwise a telecommunications service. 691

(48) (a) Sales of machinery, equipment, and software to a 692
qualified direct selling entity for use in a warehouse or 693
distribution center primarily for storing, transporting, or 694
otherwise handling inventory that is held for sale to 695
independent salespersons who operate as direct sellers and that 696
is held primarily for distribution outside this state; 697

(b) As used in division (B) (48) (a) of this section: 698

(i) "Direct seller" means a person selling consumer 699
products to individuals for personal or household use and not 700
from a fixed retail location, including selling such product at 701
in-home product demonstrations, parties, and other one-on-one 702
selling. 703

(ii) "Qualified direct selling entity" means an entity 704
selling to direct sellers at the time the entity enters into a 705
tax credit agreement with the tax credit authority pursuant to 706
section 122.17 of the Revised Code, provided that the agreement 707
was entered into on or after January 1, 2007. Neither 708
contingencies relevant to the granting of, nor later 709
developments with respect to, the tax credit shall impair the 710
status of the qualified direct selling entity under division (B) 711
(48) of this section after execution of the tax credit agreement 712
by the tax credit authority. 713

(c) Division (B) (48) of this section is limited to 714
machinery, equipment, and software first stored, used, or 715
consumed in this state within the period commencing June 24, 716
2008, and ending on the date that is five years after that date. 717

(49) Sales of materials, parts, equipment, or engines used 718
in the repair or maintenance of aircraft or avionics systems of 719
such aircraft, and sales of repair, remodeling, replacement, or 720
maintenance services in this state performed on aircraft or on 721
an aircraft's avionics, engine, or component materials or parts. 722
As used in division (B) (49) of this section, "aircraft" means 723
aircraft of more than six thousand pounds maximum certified 724
takeoff weight or used exclusively in general aviation. 725

(50) Sales of full flight simulators that are used for 726

pilot or flight-crew training, sales of repair or replacement 727
parts or components, and sales of repair or maintenance services 728
for such full flight simulators. "Full flight simulator" means a 729
replica of a specific type, or make, model, and series of 730
aircraft cockpit. It includes the assemblage of equipment and 731
computer programs necessary to represent aircraft operations in 732
ground and flight conditions, a visual system providing an out- 733
of-the-cockpit view, and a system that provides cues at least 734
equivalent to those of a three-degree-of-freedom motion system, 735
and has the full range of capabilities of the systems installed 736
in the device as described in appendices A and B of part 60 of 737
chapter 1 of title 14 of the Code of Federal Regulations. 738

(51) Any transfer or lease of tangible personal property 739
between the state and JobsOhio in accordance with section 740
4313.02 of the Revised Code. 741

(52) (a) Sales to a qualifying corporation. 742

(b) As used in division (B) (52) of this section: 743

(i) "Qualifying corporation" means a nonprofit corporation 744
organized in this state that leases from an eligible county 745
land, buildings, structures, fixtures, and improvements to the 746
land that are part of or used in a public recreational facility 747
used by a major league professional athletic team or a class A 748
to class AAA minor league affiliate of a major league 749
professional athletic team for a significant portion of the 750
team's home schedule, provided the following apply: 751

(I) The facility is leased from the eligible county 752
pursuant to a lease that requires substantially all of the 753
revenue from the operation of the business or activity conducted 754
by the nonprofit corporation at the facility in excess of 755

operating costs, capital expenditures, and reserves to be paid 756
to the eligible county at least once per calendar year. 757

(II) Upon dissolution and liquidation of the nonprofit 758
corporation, all of its net assets are distributable to the 759
board of commissioners of the eligible county from which the 760
corporation leases the facility. 761

(ii) "Eligible county" has the same meaning as in section 762
307.695 of the Revised Code. 763

(53) Sales to or by a cable service provider, video 764
service provider, or radio or television broadcast station 765
regulated by the federal government of cable service or 766
programming, video service or programming, audio service or 767
programming, or electronically transferred digital audiovisual 768
or audio work. As used in division (B) (53) of this section, 769
"cable service" and "cable service provider" have the same 770
meanings as in section 1332.01 of the Revised Code, and "video 771
service," "video service provider," and "video programming" have 772
the same meanings as in section 1332.21 of the Revised Code. 773

(54) Sales of investment metal bullion and investment 774
coins. "Investment metal bullion" means any bullion described in 775
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 776
whether that bullion is in the physical possession of a trustee. 777
"Investment coin" means any coin composed primarily of gold, 778
silver, platinum, or palladium. 779

(C) For the purpose of the proper administration of this 780
chapter, and to prevent the evasion of the tax, it is presumed 781
that all sales made in this state are subject to the tax until 782
the contrary is established. 783

(D) The levy of this tax on retail sales of recreation and 784

sports club service shall not prevent a municipal corporation 785
from levying any tax on recreation and sports club dues or on 786
any income generated by recreation and sports club dues. 787

(E) The tax collected by the vendor from the consumer 788
under this chapter is not part of the price, but is a tax 789
collection for the benefit of the state, and of counties levying 790
an additional sales tax pursuant to section 5739.021 or 5739.026 791
of the Revised Code and of transit authorities levying an 792
additional sales tax pursuant to section 5739.023 of the Revised 793
Code. Except for the discount authorized under section 5739.12 794
of the Revised Code and the effects of any rounding pursuant to 795
section 5703.055 of the Revised Code, no person other than the 796
state or such a county or transit authority shall derive any 797
benefit from the collection or payment of the tax levied by this 798
section or section 5739.021, 5739.023, or 5739.026 of the 799
Revised Code. 800

Section 2. That existing sections 5709.20 and 5739.02 of 801
the Revised Code are hereby repealed. 802

Section 3. The amendment by this act of sections 5709.20 803
and 5739.02 of the Revised Code is a remedial measure intended 804
to clarify existing law. The General Assembly intends those 805
amendments to be applied retrospectively to all cases pending on 806
or transactions occurring after the effective date of section 807
1509.01 of the Revised Code as amended by Sub. S.B. 165 of the 808
128th General Assembly. 809

Section 4. Section 5739.02 of the Revised Code is 810
presented in this act as a composite of the section as amended 811
by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of 812
the 131st General Assembly. The General Assembly, applying the 813
principle stated in division (B) of section 1.52 of the Revised 814

Code that amendments are to be harmonized if reasonably capable	815
of simultaneous operation, finds that the composite is the	816
resulting version of the section in effect prior to the	817
effective date of the section as presented in this act.	818