

**As Reported by the House Ways and Means Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Am. H. B. No. 390**

**Representatives Schaffer, Retherford**

**Cosponsors: Representatives Amstutz, Cera, Rogers**

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**A BILL**

To amend sections 5739.01 and 5739.02 of the 1  
Revised Code to exempt the sale of natural gas 2  
by a municipal gas company from the sales and 3  
use tax and to permit, for a limited time, the 4  
abatement of unpaid property taxes, penalties, 5  
and interest owed on property owned by a 6  
metropolitan housing authority that would have 7  
been tax-exempt except that certain tax- 8  
exemption procedures were not completed. 9

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

**Section 1.** That sections 5739.01 and 5739.02 of the 10  
Revised Code be amended to read as follows: 11

**Sec. 5739.01.** As used in this chapter: 12

(A) "Person" includes individuals, receivers, assignees, 13  
trustees in bankruptcy, estates, firms, partnerships, 14  
associations, joint-stock companies, joint ventures, clubs, 15  
societies, corporations, the state and its political 16  
subdivisions, and combinations of individuals of any form. 17

(B) "Sale" and "selling" include all of the following 18

transactions for a consideration in any manner, whether 19  
absolutely or conditionally, whether for a price or rental, in 20  
money or by exchange, and by any means whatsoever: 21

(1) All transactions by which title or possession, or 22  
both, of tangible personal property, is or is to be transferred, 23  
or a license to use or consume tangible personal property is or 24  
is to be granted; 25

(2) All transactions by which lodging by a hotel is or is 26  
to be furnished to transient guests; 27

(3) All transactions by which: 28

(a) An item of tangible personal property is or is to be 29  
repaired, except property, the purchase of which would not be 30  
subject to the tax imposed by section 5739.02 of the Revised 31  
Code; 32

(b) An item of tangible personal property is or is to be 33  
installed, except property, the purchase of which would not be 34  
subject to the tax imposed by section 5739.02 of the Revised 35  
Code or property that is or is to be incorporated into and will 36  
become a part of a production, transmission, transportation, or 37  
distribution system for the delivery of a public utility 38  
service; 39

(c) The service of washing, cleaning, waxing, polishing, 40  
or painting a motor vehicle is or is to be furnished; 41

(d) Until August 1, 2003, industrial laundry cleaning 42  
services are or are to be provided and, on and after August 1, 43  
2003, laundry and dry cleaning services are or are to be 44  
provided; 45

(e) Automatic data processing, computer services, or 46

electronic information services are or are to be provided for 47  
use in business when the true object of the transaction is the 48  
receipt by the consumer of automatic data processing, computer 49  
services, or electronic information services rather than the 50  
receipt of personal or professional services to which automatic 51  
data processing, computer services, or electronic information 52  
services are incidental or supplemental. Notwithstanding any 53  
other provision of this chapter, such transactions that occur 54  
between members of an affiliated group are not sales. An 55  
"affiliated group" means two or more persons related in such a 56  
way that one person owns or controls the business operation of 57  
another member of the group. In the case of corporations with 58  
stock, one corporation owns or controls another if it owns more 59  
than fifty per cent of the other corporation's common stock with 60  
voting rights. 61

(f) Telecommunications service, including prepaid calling 62  
service, prepaid wireless calling service, or ancillary service, 63  
is or is to be provided, but not including coin-operated 64  
telephone service; 65

(g) Landscaping and lawn care service is or is to be 66  
provided; 67

(h) Private investigation and security service is or is to 68  
be provided; 69

(i) Information services or tangible personal property is 70  
provided or ordered by means of a nine hundred telephone call; 71

(j) Building maintenance and janitorial service is or is 72  
to be provided; 73

(k) Employment service is or is to be provided; 74

(l) Employment placement service is or is to be provided; 75

(m) Exterminating service is or is to be provided;	76
(n) Physical fitness facility service is or is to be provided;	77 78
(o) Recreation and sports club service is or is to be provided;	79 80
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	81 82
(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.	83 84 85 86 87 88 89 90 91
(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;	92 93 94 95 96 97 98 99
(s) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.	100 101 102 103
(t) On and after August 1, 2003, snow removal service is	104

or is to be provided. As used in this division, "snow removal 105  
service" means the removal of snow by any mechanized means, but 106  
does not include the providing of such service by a person that 107  
has less than five thousand dollars in sales of such service 108  
during the calendar year. 109

(u) Electronic publishing service is or is to be provided 110  
to a consumer for use in business, except that such transactions 111  
occurring between members of an affiliated group, as defined in 112  
division (B) (3) (e) of this section, are not sales. 113

(4) All transactions by which printed, imprinted, 114  
overprinted, lithographic, multilithic, blueprinted, 115  
photostatic, or other productions or reproductions of written or 116  
graphic matter are or are to be furnished or transferred; 117

(5) The production or fabrication of tangible personal 118  
property for a consideration for consumers who furnish either 119  
directly or indirectly the materials used in the production of 120  
fabrication work; and include the furnishing, preparing, or 121  
serving for a consideration of any tangible personal property 122  
consumed on the premises of the person furnishing, preparing, or 123  
serving such tangible personal property. Except as provided in 124  
section 5739.03 of the Revised Code, a construction contract 125  
pursuant to which tangible personal property is or is to be 126  
incorporated into a structure or improvement on and becoming a 127  
part of real property is not a sale of such tangible personal 128  
property. The construction contractor is the consumer of such 129  
tangible personal property, provided that the sale and 130  
installation of carpeting, the sale and installation of 131  
agricultural land tile, the sale and erection or installation of 132  
portable grain bins, or the provision of landscaping and lawn 133  
care service and the transfer of property as part of such 134

service is never a construction contract. 135

As used in division (B) (5) of this section: 136

(a) "Agricultural land tile" means fired clay or concrete 137  
tile, or flexible or rigid perforated plastic pipe or tubing, 138  
incorporated or to be incorporated into a subsurface drainage 139  
system appurtenant to land used or to be used primarily in 140  
production by farming, agriculture, horticulture, or 141  
floriculture. The term does not include such materials when they 142  
are or are to be incorporated into a drainage system appurtenant 143  
to a building or structure even if the building or structure is 144  
used or to be used in such production. 145

(b) "Portable grain bin" means a structure that is used or 146  
to be used by a person engaged in farming or agriculture to 147  
shelter the person's grain and that is designed to be 148  
disassembled without significant damage to its component parts. 149

(6) All transactions in which all of the shares of stock 150  
of a closely held corporation are transferred, or an ownership 151  
interest in a pass-through entity, as defined in section 5733.04 152  
of the Revised Code, is transferred, if the corporation or pass- 153  
through entity is not engaging in business and its entire assets 154  
consist of boats, planes, motor vehicles, or other tangible 155  
personal property operated primarily for the use and enjoyment 156  
of the shareholders or owners; 157

(7) All transactions in which a warranty, maintenance or 158  
service contract, or similar agreement by which the vendor of 159  
the warranty, contract, or agreement agrees to repair or 160  
maintain the tangible personal property of the consumer is or is 161  
to be provided; 162

(8) The transfer of copyrighted motion picture films used 163

solely for advertising purposes, except that the transfer of 164  
such films for exhibition purposes is not a sale; 165

(9) On and after August 1, 2003, all transactions by which 166  
tangible personal property is or is to be stored, except such 167  
property that the consumer of the storage holds for sale in the 168  
regular course of business; 169

(10) All transactions in which "guaranteed auto 170  
protection" is provided whereby a person promises to pay to the 171  
consumer the difference between the amount the consumer receives 172  
from motor vehicle insurance and the amount the consumer owes to 173  
a person holding title to or a lien on the consumer's motor 174  
vehicle in the event the consumer's motor vehicle suffers a 175  
total loss under the terms of the motor vehicle insurance policy 176  
or is stolen and not recovered, if the protection and its price 177  
are included in the purchase or lease agreement; 178

(11) (a) Except as provided in division (B) (11) (b) of this 179  
section, on and after October 1, 2009, all transactions by which 180  
health care services are paid for, reimbursed, provided, 181  
delivered, arranged for, or otherwise made available by a 182  
medicaid health insuring corporation pursuant to the 183  
corporation's contract with the state. 184

(b) If the centers for medicare and medicaid services of 185  
the United States department of health and human services 186  
determines that the taxation of transactions described in 187  
division (B) (11) (a) of this section constitutes an impermissible 188  
health care-related tax under the "Social Security Act," section 189  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 190  
the medicaid director shall notify the tax commissioner of that 191  
determination. Beginning with the first day of the month 192  
following that notification, the transactions described in 193

division (B) (11) (a) of this section are not sales for the 194  
purposes of this chapter or Chapter 5741. of the Revised Code. 195  
The tax commissioner shall order that the collection of taxes 196  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 197  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 198  
for transactions occurring on or after that date. 199

(12) All transactions by which a specified digital product 200  
is provided for permanent use or less than permanent use, 201  
regardless of whether continued payment is required. 202

Except as provided in this section, "sale" and "selling" 203  
do not include transfers of interest in leased property where 204  
the original lessee and the terms of the original lease 205  
agreement remain unchanged, or professional, insurance, or 206  
personal service transactions that involve the transfer of 207  
tangible personal property as an inconsequential element, for 208  
which no separate charges are made. 209

(C) "Vendor" means the person providing the service or by 210  
whom the transfer effected or license given by a sale is or is 211  
to be made or given and, for sales described in division (B) (3) 212  
(i) of this section, the telecommunications service vendor that 213  
provides the nine hundred telephone service; if two or more 214  
persons are engaged in business at the same place of business 215  
under a single trade name in which all collections on account of 216  
sales by each are made, such persons shall constitute a single 217  
vendor. 218

Physicians, dentists, hospitals, and veterinarians who are 219  
engaged in selling tangible personal property as received from 220  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 221  
articles, are vendors. Veterinarians who are engaged in 222  
transferring to others for a consideration drugs, the dispensing 223



of which does not require an order of a licensed veterinarian or 224  
physician under federal law, are vendors. 225

(D) (1) "Consumer" means the person for whom the service is 226  
provided, to whom the transfer effected or license given by a 227  
sale is or is to be made or given, to whom the service described 228  
in division (B) (3) (f) or (i) of this section is charged, or to 229  
whom the admission is granted. 230

(2) Physicians, dentists, hospitals, and blood banks 231  
operated by nonprofit institutions and persons licensed to 232  
practice veterinary medicine, surgery, and dentistry are 233  
consumers of all tangible personal property and services 234  
purchased by them in connection with the practice of medicine, 235  
dentistry, the rendition of hospital or blood bank service, or 236  
the practice of veterinary medicine, surgery, and dentistry. In 237  
addition to being consumers of drugs administered by them or by 238  
their assistants according to their direction, veterinarians 239  
also are consumers of drugs that under federal law may be 240  
dispensed only by or upon the order of a licensed veterinarian 241  
or physician, when transferred by them to others for a 242  
consideration to provide treatment to animals as directed by the 243  
veterinarian. 244

(3) A person who performs a facility management, or 245  
similar service contract for a contractee is a consumer of all 246  
tangible personal property and services purchased for use in 247  
connection with the performance of such contract, regardless of 248  
whether title to any such property vests in the contractee. The 249  
purchase of such property and services is not subject to the 250  
exception for resale under division (E) (1) of this section. 251

(4) (a) In the case of a person who purchases printed 252  
matter for the purpose of distributing it or having it 253

distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B) (42) (f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B) (3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E) (1) of this section.

(6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by that person and used in performing the service, except for packaging materials sold by such person in a transaction separate from the service.

(7) In the case of a transaction for health care services 283  
under division (B) (11) of this section, a medicaid health 284  
insuring corporation is the consumer of such services. The 285  
purchase of such services by a medicaid health insuring 286  
corporation is not subject to the exception for resale under 287  
division (E) (1) of this section or to the exemptions provided 288  
under divisions (B) (12), (18), (19), and (22) of section 5739.02 289  
of the Revised Code. 290

(E) "Retail sale" and "sales at retail" include all sales, 291  
except those in which the purpose of the consumer is to resell 292  
the thing transferred or benefit of the service provided, by a 293  
person engaging in business, in the form in which the same is, 294  
or is to be, received by the person. 295

(F) "Business" includes any activity engaged in by any 296  
person with the object of gain, benefit, or advantage, either 297  
direct or indirect. "Business" does not include the activity of 298  
a person in managing and investing the person's own funds. 299

(G) "Engaging in business" means commencing, conducting, 300  
or continuing in business, and liquidating a business when the 301  
liquidator thereof holds itself out to the public as conducting 302  
such business. Making a casual sale is not engaging in business. 303

(H) (1) (a) "Price," except as provided in divisions (H) (2), 304  
(3), and (4) of this section, means the total amount of 305  
consideration, including cash, credit, property, and services, 306  
for which tangible personal property or services are sold, 307  
leased, or rented, valued in money, whether received in money or 308  
otherwise, without any deduction for any of the following: 309

(i) The vendor's cost of the property sold; 310

(ii) The cost of materials used, labor or service costs, 311

interest, losses, all costs of transportation to the vendor, all	312
taxes imposed on the vendor, including the tax imposed under	313
Chapter 5751. of the Revised Code, and any other expense of the	314
vendor;	315
(iii) Charges by the vendor for any services necessary to	316
complete the sale;	317
(iv) On and after August 1, 2003, delivery charges. As	318
used in this division, "delivery charges" means charges by the	319
vendor for preparation and delivery to a location designated by	320
the consumer of tangible personal property or a service,	321
including transportation, shipping, postage, handling, crating,	322
and packing.	323
(v) Installation charges;	324
(vi) Credit for any trade-in.	325
(b) "Price" includes consideration received by the vendor	326
from a third party, if the vendor actually receives the	327
consideration from a party other than the consumer, and the	328
consideration is directly related to a price reduction or	329
discount on the sale; the vendor has an obligation to pass the	330
price reduction or discount through to the consumer; the amount	331
of the consideration attributable to the sale is fixed and	332
determinable by the vendor at the time of the sale of the item	333
to the consumer; and one of the following criteria is met:	334
(i) The consumer presents a coupon, certificate, or other	335
document to the vendor to claim a price reduction or discount	336
where the coupon, certificate, or document is authorized,	337
distributed, or granted by a third party with the understanding	338
that the third party will reimburse any vendor to whom the	339
coupon, certificate, or document is presented;	340

(ii) The consumer identifies the consumer's self to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group or organization.

(iii) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the consumer, or on a coupon, certificate, or other document presented by the consumer.

(c) "Price" does not include any of the following:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.

(v) The dollar value of a gift card that is not sold by a

vendor or purchased by a consumer and that is redeemed by the 370  
consumer in purchasing tangible personal property or services if 371  
the vendor is not reimbursed and does not receive compensation 372  
from a third party to cover all or part of the gift card value. 373  
For the purposes of this division, a gift card is not sold by a 374  
vendor or purchased by a consumer if it is distributed pursuant 375  
to an awards, loyalty, or promotional program. Past and present 376  
purchases of tangible personal property or services by the 377  
consumer shall not be treated as consideration exchanged for a 378  
gift card. 379

(2) In the case of a sale of any new motor vehicle by a 380  
new motor vehicle dealer, as defined in section 4517.01 of the 381  
Revised Code, in which another motor vehicle is accepted by the 382  
dealer as part of the consideration received, "price" has the 383  
same meaning as in division (H)(1) of this section, reduced by 384  
the credit afforded the consumer by the dealer for the motor 385  
vehicle received in trade. 386

(3) In the case of a sale of any watercraft or outboard 387  
motor by a watercraft dealer licensed in accordance with section 388  
1547.543 of the Revised Code, in which another watercraft, 389  
watercraft and trailer, or outboard motor is accepted by the 390  
dealer as part of the consideration received, "price" has the 391  
same meaning as in division (H)(1) of this section, reduced by 392  
the credit afforded the consumer by the dealer for the 393  
watercraft, watercraft and trailer, or outboard motor received 394  
in trade. As used in this division, "watercraft" includes an 395  
outdrive unit attached to the watercraft. 396

(4) In the case of transactions for health care services 397  
under division (B)(11) of this section, "price" means the amount 398  
of managed care premiums received each month by a medicaid 399

health insuring corporation. 400

(I) "Receipts" means the total amount of the prices of the 401  
sales of vendors, provided that the dollar value of gift cards 402  
distributed pursuant to an awards, loyalty, or promotional 403  
program, and cash discounts allowed and taken on sales at the 404  
time they are consummated are not included, minus any amount 405  
deducted as a bad debt pursuant to section 5739.121 of the 406  
Revised Code. "Receipts" does not include the sale price of 407  
property returned or services rejected by consumers when the 408  
full sale price and tax are refunded either in cash or by 409  
credit. 410

(J) "Place of business" means any location at which a 411  
person engages in business. 412

(K) "Premises" includes any real property or portion 413  
thereof upon which any person engages in selling tangible 414  
personal property at retail or making retail sales and also 415  
includes any real property or portion thereof designated for, or 416  
devoted to, use in conjunction with the business engaged in by 417  
such person. 418

(L) "Casual sale" means a sale of an item of tangible 419  
personal property that was obtained by the person making the 420  
sale, through purchase or otherwise, for the person's own use 421  
and was previously subject to any state's taxing jurisdiction on 422  
its sale or use, and includes such items acquired for the 423  
seller's use that are sold by an auctioneer employed directly by 424  
the person for such purpose, provided the location of such sales 425  
is not the auctioneer's permanent place of business. As used in 426  
this division, "permanent place of business" includes any 427  
location where such auctioneer has conducted more than two 428  
auctions during the year. 429

(M) "Hotel" means every establishment kept, used, 430  
maintained, advertised, or held out to the public to be a place 431  
where sleeping accommodations are offered to guests, in which 432  
five or more rooms are used for the accommodation of such 433  
guests, whether the rooms are in one or several structures, 434  
except as otherwise provided in division (G) of section 5739.09 435  
of the Revised Code. 436

(N) "Transient guests" means persons occupying a room or 437  
rooms for sleeping accommodations for less than thirty 438  
consecutive days. 439

(O) "Making retail sales" means the effecting of 440  
transactions wherein one party is obligated to pay the price and 441  
the other party is obligated to provide a service or to transfer 442  
title to or possession of the item sold. "Making retail sales" 443  
does not include the preliminary acts of promoting or soliciting 444  
the retail sales, other than the distribution of printed matter 445  
which displays or describes and prices the item offered for 446  
sale, nor does it include delivery of a predetermined quantity 447  
of tangible personal property or transportation of property or 448  
personnel to or from a place where a service is performed. 449

(P) "Used directly in the rendition of a public utility 450  
service" means that property that is to be incorporated into and 451  
will become a part of the consumer's production, transmission, 452  
transportation, or distribution system and that retains its 453  
classification as tangible personal property after such 454  
incorporation; fuel or power used in the production, 455  
transmission, transportation, or distribution system; and 456  
tangible personal property used in the repair and maintenance of 457  
the production, transmission, transportation, or distribution 458  
system, including only such motor vehicles as are specially 459



designed and equipped for such use. Tangible personal property 460  
and services used primarily in providing highway transportation 461  
for hire are not used directly in the rendition of a public 462  
utility service. In this definition, "public utility" includes a 463  
citizen of the United States holding, and required to hold, a 464  
certificate of public convenience and necessity issued under 49 465  
U.S.C. 41102. 466

(Q) "Refining" means removing or separating a desirable 467  
product from raw or contaminated materials by distillation or 468  
physical, mechanical, or chemical processes. 469

(R) "Assembly" and "assembling" mean attaching or fitting 470  
together parts to form a product, but do not include packaging a 471  
product. 472

(S) "Manufacturing operation" means a process in which 473  
materials are changed, converted, or transformed into a 474  
different state or form from which they previously existed and 475  
includes refining materials, assembling parts, and preparing raw 476  
materials and parts by mixing, measuring, blending, or otherwise 477  
committing such materials or parts to the manufacturing process. 478  
"Manufacturing operation" does not include packaging. 479

(T) "Fiscal officer" means, with respect to a regional 480  
transit authority, the secretary-treasurer thereof, and with 481  
respect to a county that is a transit authority, the fiscal 482  
officer of the county transit board if one is appointed pursuant 483  
to section 306.03 of the Revised Code or the county auditor if 484  
the board of county commissioners operates the county transit 485  
system. 486

(U) "Transit authority" means a regional transit authority 487  
created pursuant to section 306.31 of the Revised Code or a 488

county in which a county transit system is created pursuant to 489  
section 306.01 of the Revised Code. For the purposes of this 490  
chapter, a transit authority must extend to at least the entire 491  
area of a single county. A transit authority that includes 492  
territory in more than one county must include all the area of 493  
the most populous county that is a part of such transit 494  
authority. County population shall be measured by the most 495  
recent census taken by the United States census bureau. 496

(V) "Legislative authority" means, with respect to a 497  
regional transit authority, the board of trustees thereof, and 498  
with respect to a county that is a transit authority, the board 499  
of county commissioners. 500

(W) "Territory of the transit authority" means all of the 501  
area included within the territorial boundaries of a transit 502  
authority as they from time to time exist. Such territorial 503  
boundaries must at all times include all the area of a single 504  
county or all the area of the most populous county that is a 505  
part of such transit authority. County population shall be 506  
measured by the most recent census taken by the United States 507  
census bureau. 508

(X) "Providing a service" means providing or furnishing 509  
anything described in division (B) (3) of this section for 510  
consideration. 511

(Y) (1) (a) "Automatic data processing" means processing of 512  
others' data, including keypunching or similar data entry 513  
services together with verification thereof, or providing access 514  
to computer equipment for the purpose of processing data. 515

(b) "Computer services" means providing services 516  
consisting of specifying computer hardware configurations and 517

evaluating technical processing characteristics, computer 518  
programming, and training of computer programmers and operators, 519  
provided in conjunction with and to support the sale, lease, or 520  
operation of taxable computer equipment or systems. 521

(c) "Electronic information services" means providing 522  
access to computer equipment by means of telecommunications 523  
equipment for the purpose of either of the following: 524

(i) Examining or acquiring data stored in or accessible to 525  
the computer equipment; 526

(ii) Placing data into the computer equipment to be 527  
retrieved by designated recipients with access to the computer 528  
equipment. 529

For transactions occurring on or after the effective date 530  
of the amendment of this section by H.B. 157 of the 127th 531  
general assembly, December 21, 2007, "electronic information 532  
services" does not include electronic publishing as defined in 533  
division (LLL) of this section. 534

(d) "Automatic data processing, computer services, or 535  
electronic information services" shall not include personal or 536  
professional services. 537

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 538  
section, "personal and professional services" means all services 539  
other than automatic data processing, computer services, or 540  
electronic information services, including but not limited to: 541

(a) Accounting and legal services such as advice on tax 542  
matters, asset management, budgetary matters, quality control, 543  
information security, and auditing and any other situation where 544  
the service provider receives data or information and studies, 545  
alters, analyzes, interprets, or adjusts such material; 546

(b) Analyzing business policies and procedures;	547
(c) Identifying management information needs;	548
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	549 550 551
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	552 553 554 555 556
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	557 558 559
(g) Testing of business procedures;	560
(h) Training personnel in business procedure applications;	561
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	562 563 564 565 566 567 568
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	569 570
The services listed in divisions (Y) (2) (a) to (j) of this section are not automatic data processing or computer services.	571 572
(Z) "Highway transportation for hire" means the	573

transportation of personal property belonging to others for 574  
consideration by any of the following: 575

(1) The holder of a permit or certificate issued by this 576  
state or the United States authorizing the holder to engage in 577  
transportation of personal property belonging to others for 578  
consideration over or on highways, roadways, streets, or any 579  
similar public thoroughfare; 580

(2) A person who engages in the transportation of personal 581  
property belonging to others for consideration over or on 582  
highways, roadways, streets, or any similar public thoroughfare 583  
but who could not have engaged in such transportation on 584  
December 11, 1985, unless the person was the holder of a permit 585  
or certificate of the types described in division (Z)(1) of this 586  
section; 587

(3) A person who leases a motor vehicle to and operates it 588  
for a person described by division (Z)(1) or (2) of this 589  
section. 590

(AA) (1) "Telecommunications service" means the electronic 591  
transmission, conveyance, or routing of voice, data, audio, 592  
video, or any other information or signals to a point, or 593  
between or among points. "Telecommunications service" includes 594  
such transmission, conveyance, or routing in which computer 595  
processing applications are used to act on the form, code, or 596  
protocol of the content for purposes of transmission, 597  
conveyance, or routing without regard to whether the service is 598  
referred to as voice-over internet protocol service or is 599  
classified by the federal communications commission as enhanced 600  
or value-added. "Telecommunications service" does not include 601  
any of the following: 602

(a) Data processing and information services that allow 603  
data to be generated, acquired, stored, processed, or retrieved 604  
and delivered by an electronic transmission to a consumer where 605  
the consumer's primary purpose for the underlying transaction is 606  
the processed data or information; 607

(b) Installation or maintenance of wiring or equipment on 608  
a customer's premises; 609

(c) Tangible personal property; 610

(d) Advertising, including directory advertising; 611

(e) Billing and collection services provided to third 612  
parties; 613

(f) Internet access service; 614

(g) Radio and television audio and video programming 615  
services, regardless of the medium, including the furnishing of 616  
transmission, conveyance, and routing of such services by the 617  
programming service provider. Radio and television audio and 618  
video programming services include, but are not limited to, 619  
cable service, as defined in 47 U.S.C. 522(6), and audio and 620  
video programming services delivered by commercial mobile radio 621  
service providers, as defined in 47 C.F.R. 20.3; 622

(h) Ancillary service; 623

(i) Digital products delivered electronically, including 624  
software, music, video, reading materials, or ring tones. 625

(2) "Ancillary service" means a service that is associated 626  
with or incidental to the provision of telecommunications 627  
service, including conference bridging service, detailed 628  
telecommunications billing service, directory assistance, 629  
vertical service, and voice mail service. As used in this 630

division: 631

(a) "Conference bridging service" means an ancillary 632  
service that links two or more participants of an audio or video 633  
conference call, including providing a telephone number. 634  
"Conference bridging service" does not include 635  
telecommunications services used to reach the conference bridge. 636

(b) "Detailed telecommunications billing service" means an 637  
ancillary service of separately stating information pertaining 638  
to individual calls on a customer's billing statement. 639

(c) "Directory assistance" means an ancillary service of 640  
providing telephone number or address information. 641

(d) "Vertical service" means an ancillary service that is 642  
offered in connection with one or more telecommunications 643  
services, which offers advanced calling features that allow 644  
customers to identify callers and manage multiple calls and call 645  
connections, including conference bridging service. 646

(e) "Voice mail service" means an ancillary service that 647  
enables the customer to store, send, or receive recorded 648  
messages. "Voice mail service" does not include any vertical 649  
services that the customer may be required to have in order to 650  
utilize the voice mail service. 651

(3) "900 service" means an inbound toll telecommunications 652  
service purchased by a subscriber that allows the subscriber's 653  
customers to call in to the subscriber's prerecorded 654  
announcement or live service, and which is typically marketed 655  
under the name "900 service" and any subsequent numbers 656  
designated by the federal communications commission. "900 657  
service" does not include the charge for collection services 658  
provided by the seller of the telecommunications service to the 659

subscriber, or services or products sold by the subscriber to 660  
the subscriber's customer. 661

(4) "Prepaid calling service" means the right to access 662  
exclusively telecommunications services, which must be paid for 663  
in advance and which enables the origination of calls using an 664  
access number or authorization code, whether manually or 665  
electronically dialed, and that is sold in predetermined units 666  
or dollars of which the number declines with use in a known 667  
amount. 668

(5) "Prepaid wireless calling service" means a 669  
telecommunications service that provides the right to utilize 670  
mobile telecommunications service as well as other non- 671  
telecommunications services, including the download of digital 672  
products delivered electronically, and content and ancillary 673  
services, that must be paid for in advance and that is sold in 674  
predetermined units or dollars of which the number declines with 675  
use in a known amount. 676

(6) "Value-added non-voice data service" means a 677  
telecommunications service in which computer processing 678  
applications are used to act on the form, content, code, or 679  
protocol of the information or data primarily for a purpose 680  
other than transmission, conveyance, or routing. 681

(7) "Coin-operated telephone service" means a 682  
telecommunications service paid for by inserting money into a 683  
telephone accepting direct deposits of money to operate. 684

(8) "Customer" has the same meaning as in section 5739.034 685  
of the Revised Code. 686

(BB) "Laundry and dry cleaning services" means removing 687  
soil or dirt from towels, linens, articles of clothing, or other 688



fabric items that belong to others and supplying towels, linens, 689  
articles of clothing, or other fabric items. "Laundry and dry 690  
cleaning services" does not include the provision of self- 691  
service facilities for use by consumers to remove soil or dirt 692  
from towels, linens, articles of clothing, or other fabric 693  
items. 694

(CC) "Magazines distributed as controlled circulation 695  
publications" means magazines containing at least twenty-four 696  
pages, at least twenty-five per cent editorial content, issued 697  
at regular intervals four or more times a year, and circulated 698  
without charge to the recipient, provided that such magazines 699  
are not owned or controlled by individuals or business concerns 700  
which conduct such publications as an auxiliary to, and 701  
essentially for the advancement of the main business or calling 702  
of, those who own or control them. 703

(DD) "Landscaping and lawn care service" means the 704  
services of planting, seeding, sodding, removing, cutting, 705  
trimming, pruning, mulching, aerating, applying chemicals, 706  
watering, fertilizing, and providing similar services to 707  
establish, promote, or control the growth of trees, shrubs, 708  
flowers, grass, ground cover, and other flora, or otherwise 709  
maintaining a lawn or landscape grown or maintained by the owner 710  
for ornamentation or other nonagricultural purpose. However, 711  
"landscaping and lawn care service" does not include the 712  
providing of such services by a person who has less than five 713  
thousand dollars in sales of such services during the calendar 714  
year. 715

(EE) "Private investigation and security service" means 716  
the performance of any activity for which the provider of such 717  
service is required to be licensed pursuant to Chapter 4749. of 718

the Revised Code, or would be required to be so licensed in 719  
performing such services in this state, and also includes the 720  
services of conducting polygraph examinations and of monitoring 721  
or overseeing the activities on or in, or the condition of, the 722  
consumer's home, business, or other facility by means of 723  
electronic or similar monitoring devices. "Private investigation 724  
and security service" does not include special duty services 725  
provided by off-duty police officers, deputy sheriffs, and other 726  
peace officers regularly employed by the state or a political 727  
subdivision. 728

(FF) "Information services" means providing conversation, 729  
giving consultation or advice, playing or making a voice or 730  
other recording, making or keeping a record of the number of 731  
callers, and any other service provided to a consumer by means 732  
of a nine hundred telephone call, except when the nine hundred 733  
telephone call is the means by which the consumer makes a 734  
contribution to a recognized charity. 735

(GG) "Research and development" means designing, creating, 736  
or formulating new or enhanced products, equipment, or 737  
manufacturing processes, and also means conducting scientific or 738  
technological inquiry and experimentation in the physical 739  
sciences with the goal of increasing scientific knowledge which 740  
may reveal the bases for new or enhanced products, equipment, or 741  
manufacturing processes. 742

(HH) "Qualified research and development equipment" means 743  
capitalized tangible personal property, and leased personal 744  
property that would be capitalized if purchased, used by a 745  
person primarily to perform research and development. Tangible 746  
personal property primarily used in testing, as defined in 747  
division (A) (4) of section 5739.011 of the Revised Code, or used 748

for recording or storing test results, is not qualified research 749  
and development equipment unless such property is primarily used 750  
by the consumer in testing the product, equipment, or 751  
manufacturing process being created, designed, or formulated by 752  
the consumer in the research and development activity or in 753  
recording or storing such test results. 754

(II) "Building maintenance and janitorial service" means 755  
cleaning the interior or exterior of a building and any tangible 756  
personal property located therein or thereon, including any 757  
services incidental to such cleaning for which no separate 758  
charge is made. However, "building maintenance and janitorial 759  
service" does not include the providing of such service by a 760  
person who has less than five thousand dollars in sales of such 761  
service during the calendar year. As used in this division, 762  
"cleaning" does not include sanitation services necessary for an 763  
establishment described in 21 U.S.C. 608 to comply with rules 764  
and regulations adopted pursuant to that section. 765

(JJ) "Employment service" means providing or supplying 766  
personnel, on a temporary or long-term basis, to perform work or 767  
labor under the supervision or control of another, when the 768  
personnel so provided or supplied receive their wages, salary, 769  
or other compensation from the provider or supplier of the 770  
employment service or from a third party that provided or 771  
supplied the personnel to the provider or supplier. "Employment 772  
service" does not include: 773

(1) Acting as a contractor or subcontractor, where the 774  
personnel performing the work are not under the direct control 775  
of the purchaser. 776

(2) Medical and health care services. 777

(3) Supplying personnel to a purchaser pursuant to a 778  
contract of at least one year between the service provider and 779  
the purchaser that specifies that each employee covered under 780  
the contract is assigned to the purchaser on a permanent basis. 781

(4) Transactions between members of an affiliated group, 782  
as defined in division (B) (3) (e) of this section. 783

(5) Transactions where the personnel so provided or 784  
supplied by a provider or supplier to a purchaser of an 785  
employment service are then provided or supplied by that 786  
purchaser to a third party as an employment service, except 787  
"employment service" does include the transaction between that 788  
purchaser and the third party. 789

(KK) "Employment placement service" means locating or 790  
finding employment for a person or finding or locating an 791  
employee to fill an available position. 792

(LL) "Exterminating service" means eradicating or 793  
attempting to eradicate vermin infestations from a building or 794  
structure, or the area surrounding a building or structure, and 795  
includes activities to inspect, detect, or prevent vermin 796  
infestation of a building or structure. 797

(MM) "Physical fitness facility service" means all 798  
transactions by which a membership is granted, maintained, or 799  
renewed, including initiation fees, membership dues, renewal 800  
fees, monthly minimum fees, and other similar fees and dues, by 801  
a physical fitness facility such as an athletic club, health 802  
spa, or gymnasium, which entitles the member to use the facility 803  
for physical exercise. 804

(NN) "Recreation and sports club service" means all 805  
transactions by which a membership is granted, maintained, or 806

renewed, including initiation fees, membership dues, renewal 807  
fees, monthly minimum fees, and other similar fees and dues, by 808  
a recreation and sports club, which entitles the member to use 809  
the facilities of the organization. "Recreation and sports club" 810  
means an organization that has ownership of, or controls or 811  
leases on a continuing, long-term basis, the facilities used by 812  
its members and includes an aviation club, gun or shooting club, 813  
yacht club, card club, swimming club, tennis club, golf club, 814  
country club, riding club, amateur sports club, or similar 815  
organization. 816

(OO) "Livestock" means farm animals commonly raised for 817  
food, food production, or other agricultural purposes, 818  
including, but not limited to, cattle, sheep, goats, swine, 819  
poultry, and captive deer. "Livestock" does not include 820  
invertebrates, amphibians, reptiles, domestic pets, animals for 821  
use in laboratories or for exhibition, or other animals not 822  
commonly raised for food or food production. 823

(PP) "Livestock structure" means a building or structure 824  
used exclusively for the housing, raising, feeding, or 825  
sheltering of livestock, and includes feed storage or handling 826  
structures and structures for livestock waste handling. 827

(QQ) "Horticulture" means the growing, cultivation, and 828  
production of flowers, fruits, herbs, vegetables, sod, 829  
mushrooms, and nursery stock. As used in this division, "nursery 830  
stock" has the same meaning as in section 927.51 of the Revised 831  
Code. 832

(RR) "Horticulture structure" means a building or 833  
structure used exclusively for the commercial growing, raising, 834  
or overwintering of horticultural products, and includes the 835  
area used for stocking, storing, and packing horticultural 836

products when done in conjunction with the production of those 837  
products. 838

(SS) "Newspaper" means an unbound publication bearing a 839  
title or name that is regularly published, at least as 840  
frequently as biweekly, and distributed from a fixed place of 841  
business to the public in a specific geographic area, and that 842  
contains a substantial amount of news matter of international, 843  
national, or local events of interest to the general public. 844

(TT) "Professional racing team" means a person that 845  
employs at least twenty full-time employees for the purpose of 846  
conducting a motor vehicle racing business for profit. The 847  
person must conduct the business with the purpose of racing one 848  
or more motor racing vehicles in at least ten competitive 849  
professional racing events each year that comprise all or part 850  
of a motor racing series sanctioned by one or more motor racing 851  
sanctioning organizations. A "motor racing vehicle" means a 852  
vehicle for which the chassis, engine, and parts are designed 853  
exclusively for motor racing, and does not include a stock or 854  
production model vehicle that may be modified for use in racing. 855  
For the purposes of this division: 856

(1) A "competitive professional racing event" is a motor 857  
vehicle racing event sanctioned by one or more motor racing 858  
sanctioning organizations, at which aggregate cash prizes in 859  
excess of eight hundred thousand dollars are awarded to the 860  
competitors. 861

(2) "Full-time employee" means an individual who is 862  
employed for consideration for thirty-five or more hours a week, 863  
or who renders any other standard of service generally accepted 864  
by custom or specified by contract as full-time employment. 865

(UU) (1) "Lease" or "rental" means any transfer of the 866  
possession or control of tangible personal property for a fixed 867  
or indefinite term, for consideration. "Lease" or "rental" 868  
includes future options to purchase or extend, and agreements 869  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 870  
trailers where the amount of consideration may be increased or 871  
decreased by reference to the amount realized upon the sale or 872  
disposition of the property. "Lease" or "rental" does not 873  
include: 874

(a) A transfer of possession or control of tangible 875  
personal property under a security agreement or a deferred 876  
payment plan that requires the transfer of title upon completion 877  
of the required payments; 878

(b) A transfer of possession or control of tangible 879  
personal property under an agreement that requires the transfer 880  
of title upon completion of required payments and payment of an 881  
option price that does not exceed the greater of one hundred 882  
dollars or one per cent of the total required payments; 883

(c) Providing tangible personal property along with an 884  
operator for a fixed or indefinite period of time, if the 885  
operator is necessary for the property to perform as designed. 886  
For purposes of this division, the operator must do more than 887  
maintain, inspect, or set up the tangible personal property. 888

(2) "Lease" and "rental," as defined in division (UU) of 889  
this section, shall not apply to leases or rentals that exist 890  
before June 26, 2003. 891

(3) "Lease" and "rental" have the same meaning as in 892  
division (UU) (1) of this section regardless of whether a 893  
transaction is characterized as a lease or rental under 894

generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws. 895  
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(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. 898  
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(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 906  
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(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service. 908  
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(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software. 918  
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(ZZ) "Direct mail" means printed material delivered or 924  
distributed by United States mail or other delivery service to a 925  
mass audience or to addressees on a mailing list provided by the 926  
consumer or at the direction of the consumer when the cost of 927  
the items are not billed directly to the recipients. "Direct 928  
mail" includes tangible personal property supplied directly or 929  
indirectly by the consumer to the direct mail vendor for 930  
inclusion in the package containing the printed material. 931  
"Direct mail" does not include multiple items of printed 932  
material delivered to a single address. 933

(AAA) "Computer" means an electronic device that accepts 934  
information in digital or similar form and manipulates it for a 935  
result based on a sequence of instructions. 936

(BBB) "Computer software" means a set of coded 937  
instructions designed to cause a computer or automatic data 938  
processing equipment to perform a task. 939

(CCC) "Delivered electronically" means delivery of 940  
computer software from the seller to the purchaser by means 941  
other than tangible storage media. 942

(DDD) "Prewritten computer software" means computer 943  
software, including prewritten upgrades, that is not designed 944  
and developed by the author or other creator to the 945  
specifications of a specific purchaser. The combining of two or 946  
more prewritten computer software programs or prewritten 947  
portions thereof does not cause the combination to be other than 948  
prewritten computer software. "Prewritten computer software" 949  
includes software designed and developed by the author or other 950  
creator to the specifications of a specific purchaser when it is 951  
sold to a person other than the purchaser. If a person modifies 952  
or enhances computer software of which the person is not the 953

author or creator, the person shall be deemed to be the author 954  
or creator only of such person's modifications or enhancements. 955  
Prewritten computer software or a prewritten portion thereof 956  
that is modified or enhanced to any degree, where such 957  
modification or enhancement is designed and developed to the 958  
specifications of a specific purchaser, remains prewritten 959  
computer software; provided, however, that where there is a 960  
reasonable, separately stated charge or an invoice or other 961  
statement of the price given to the purchaser for the 962  
modification or enhancement, the modification or enhancement 963  
shall not constitute prewritten computer software. 964

(EEE) (1) "Food" means substances, whether in liquid, 965  
concentrated, solid, frozen, dried, or dehydrated form, that are 966  
sold for ingestion or chewing by humans and are consumed for 967  
their taste or nutritional value. "Food" does not include 968  
alcoholic beverages, dietary supplements, soft drinks, or 969  
tobacco. 970

(2) As used in division (EEE) (1) of this section: 971

(a) "Alcoholic beverages" means beverages that are 972  
suitable for human consumption and contain one-half of one per 973  
cent or more of alcohol by volume. 974

(b) "Dietary supplements" means any product, other than 975  
tobacco, that is intended to supplement the diet and that is 976  
intended for ingestion in tablet, capsule, powder, softgel, 977  
gelcap, or liquid form, or, if not intended for ingestion in 978  
such a form, is not represented as conventional food for use as 979  
a sole item of a meal or of the diet; that is required to be 980  
labeled as a dietary supplement, identifiable by the "supplement 981  
facts" box found on the label, as required by 21 C.F.R. 101.36; 982  
and that contains one or more of the following dietary 983

ingredients:	984
(i) A vitamin;	985
(ii) A mineral;	986
(iii) An herb or other botanical;	987
(iv) An amino acid;	988
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	989 990
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section.	991 992 993
(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	994 995 996 997 998
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	999 1000
(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	1001 1002 1003 1004 1005 1006 1007 1008 1009
(GGG) "Prescription" means an order, formula, or recipe	1010

issued in any form of oral, written, electronic, or other means 1011  
of transmission by a duly licensed practitioner authorized by 1012  
the laws of this state to issue a prescription. 1013

(HHH) "Durable medical equipment" means equipment, 1014  
including repair and replacement parts for such equipment, that 1015  
can withstand repeated use, is primarily and customarily used to 1016  
serve a medical purpose, generally is not useful to a person in 1017  
the absence of illness or injury, and is not worn in or on the 1018  
body. "Durable medical equipment" does not include mobility 1019  
enhancing equipment. 1020

(III) "Mobility enhancing equipment" means equipment, 1021  
including repair and replacement parts for such equipment, that 1022  
is primarily and customarily used to provide or increase the 1023  
ability to move from one place to another and is appropriate for 1024  
use either in a home or a motor vehicle, that is not generally 1025  
used by persons with normal mobility, and that does not include 1026  
any motor vehicle or equipment on a motor vehicle normally 1027  
provided by a motor vehicle manufacturer. "Mobility enhancing 1028  
equipment" does not include durable medical equipment. 1029

(JJJ) "Prosthetic device" means a replacement, corrective, 1030  
or supportive device, including repair and replacement parts for 1031  
the device, worn on or in the human body to artificially replace 1032  
a missing portion of the body, prevent or correct physical 1033  
deformity or malfunction, or support a weak or deformed portion 1034  
of the body. As used in this division, "prosthetic device" does 1035  
not include corrective eyeglasses, contact lenses, or dental 1036  
prosthesis. 1037

(KKK) (1) "Fractional aircraft ownership program" means a 1038  
program in which persons within an affiliated group sell and 1039  
manage fractional ownership program aircraft, provided that at 1040

least one hundred airworthy aircraft are operated in the program	1041
and the program meets all of the following criteria:	1042
(a) Management services are provided by at least one	1043
program manager within an affiliated group on behalf of the	1044
fractional owners.	1045
(b) Each program aircraft is owned or possessed by at	1046
least one fractional owner.	1047
(c) Each fractional owner owns or possesses at least a	1048
one-sixteenth interest in at least one fixed-wing program	1049
aircraft.	1050
(d) A dry-lease aircraft interchange arrangement is in	1051
effect among all of the fractional owners.	1052
(e) Multi-year program agreements are in effect regarding	1053
the fractional ownership, management services, and dry-lease	1054
aircraft interchange arrangement aspects of the program.	1055
(2) As used in division (KKK)(1) of this section:	1056
(a) "Affiliated group" has the same meaning as in division	1057
(B)(3)(e) of this section.	1058
(b) "Fractional owner" means a person that owns or	1059
possesses at least a one-sixteenth interest in a program	1060
aircraft and has entered into the agreements described in	1061
division (KKK)(1)(e) of this section.	1062
(c) "Fractional ownership program aircraft" or "program	1063
aircraft" means a turbojet aircraft that is owned or possessed	1064
by a fractional owner and that has been included in a dry-lease	1065
aircraft interchange arrangement and agreement under divisions	1066
(KKK)(1)(d) and (e) of this section, or an aircraft a program	1067
manager owns or possesses primarily for use in a fractional	1068

aircraft ownership program. 1069

(d) "Management services" means administrative and 1070  
aviation support services furnished under a fractional aircraft 1071  
ownership program in accordance with a management services 1072  
agreement under division (KKK) (1) (e) of this section, and 1073  
offered by the program manager to the fractional owners, 1074  
including, at a minimum, the establishment and implementation of 1075  
safety guidelines; the coordination of the scheduling of the 1076  
program aircraft and crews; program aircraft maintenance; 1077  
program aircraft insurance; crew training for crews employed, 1078  
furnished, or contracted by the program manager or the 1079  
fractional owner; the satisfaction of record-keeping 1080  
requirements; and the development and use of an operations 1081  
manual and a maintenance manual for the fractional aircraft 1082  
ownership program. 1083

(e) "Program manager" means the person that offers 1084  
management services to fractional owners pursuant to a 1085  
management services agreement under division (KKK) (1) (e) of this 1086  
section. 1087

(LLL) "Electronic publishing" means providing access to 1088  
one or more of the following primarily for business customers, 1089  
including the federal government or a state government or a 1090  
political subdivision thereof, to conduct research: news; 1091  
business, financial, legal, consumer, or credit materials; 1092  
editorials, columns, reader commentary, or features; photos or 1093  
images; archival or research material; legal notices, identity 1094  
verification, or public records; scientific, educational, 1095  
instructional, technical, professional, trade, or other literary 1096  
materials; or other similar information which has been gathered 1097  
and made available by the provider to the consumer in an 1098

electronic format. Providing electronic publishing includes the 1099  
functions necessary for the acquisition, formatting, editing, 1100  
storage, and dissemination of data or information that is the 1101  
subject of a sale. 1102

(MMM) "Medicaid health insuring corporation" means a 1103  
health insuring corporation that holds a certificate of 1104  
authority under Chapter 1751. of the Revised Code and is under 1105  
contract with the department of job and family services pursuant 1106  
to section 5111.17 of the Revised Code. 1107

(NNN) "Managed care premium" means any premium, 1108  
capitation, or other payment a medicaid health insuring 1109  
corporation receives for providing or arranging for the 1110  
provision of health care services to its members or enrollees 1111  
residing in this state. 1112

(OOO) "Captive deer" means deer and other cervidae that 1113  
have been legally acquired, or their offspring, that are 1114  
privately owned for agricultural or farming purposes. 1115

(PPP) "Gift card" means a document, card, certificate, or 1116  
other record, whether tangible or intangible, that may be 1117  
redeemed by a consumer for a dollar value when making a purchase 1118  
of tangible personal property or services. 1119

(QQQ) "Specified digital product" means an electronically 1120  
transferred digital audiovisual work, digital audio work, or 1121  
digital book. 1122

As used in division (QQQ) of this section: 1123

(1) "Digital audiovisual work" means a series of related 1124  
images that, when shown in succession, impart an impression of 1125  
motion, together with accompanying sounds, if any. 1126

(2) "Digital audio work" means a work that results from 1127  
the fixation of a series of musical, spoken, or other sounds, 1128  
including digitized sound files that are downloaded onto a 1129  
device and that may be used to alert the customer with respect 1130  
to a communication. 1131

(3) "Digital book" means a work that is generally 1132  
recognized in the ordinary and usual sense as a book. 1133

(4) "Electronically transferred" means obtained by the 1134  
purchaser by means other than tangible storage media. 1135

(RRR) "Municipal gas utility" means a municipal 1136  
corporation that owns or operates a system for the distribution 1137  
of natural gas. 1138

**Sec. 5739.02.** For the purpose of providing revenue with 1139  
which to meet the needs of the state, for the use of the general 1140  
revenue fund of the state, for the purpose of securing a 1141  
thorough and efficient system of common schools throughout the 1142  
state, for the purpose of affording revenues, in addition to 1143  
those from general property taxes, permitted under 1144  
constitutional limitations, and from other sources, for the 1145  
support of local governmental functions, and for the purpose of 1146  
reimbursing the state for the expense of administering this 1147  
chapter, an excise tax is hereby levied on each retail sale made 1148  
in this state. 1149

(A) (1) The tax shall be collected as provided in section 1150  
5739.025 of the Revised Code. The rate of the tax shall be five 1151  
and three-fourths per cent. The tax applies and is collectible 1152  
when the sale is made, regardless of the time when the price is 1153  
paid or delivered. 1154

(2) In the case of the lease or rental, with a fixed term 1155



of more than thirty days or an indefinite term with a minimum 1156  
period of more than thirty days, of any motor vehicles designed 1157  
by the manufacturer to carry a load of not more than one ton, 1158  
watercraft, outboard motor, or aircraft, or of any tangible 1159  
personal property, other than motor vehicles designed by the 1160  
manufacturer to carry a load of more than one ton, to be used by 1161  
the lessee or renter primarily for business purposes, the tax 1162  
shall be collected by the vendor at the time the lease or rental 1163  
is consummated and shall be calculated by the vendor on the 1164  
basis of the total amount to be paid by the lessee or renter 1165  
under the lease agreement. If the total amount of the 1166  
consideration for the lease or rental includes amounts that are 1167  
not calculated at the time the lease or rental is executed, the 1168  
tax shall be calculated and collected by the vendor at the time 1169  
such amounts are billed to the lessee or renter. In the case of 1170  
an open-end lease or rental, the tax shall be calculated by the 1171  
vendor on the basis of the total amount to be paid during the 1172  
initial fixed term of the lease or rental, and for each 1173  
subsequent renewal period as it comes due. As used in this 1174  
division, "motor vehicle" has the same meaning as in section 1175  
4501.01 of the Revised Code, and "watercraft" includes an 1176  
outdrive unit attached to the watercraft. 1177

A lease with a renewal clause and a termination penalty or 1178  
similar provision that applies if the renewal clause is not 1179  
exercised is presumed to be a sham transaction. In such a case, 1180  
the tax shall be calculated and paid on the basis of the entire 1181  
length of the lease period, including any renewal periods, until 1182  
the termination penalty or similar provision no longer applies. 1183  
The taxpayer shall bear the burden, by a preponderance of the 1184  
evidence, that the transaction or series of transactions is not 1185  
a sham transaction. 1186

(3) Except as provided in division (A) (2) of this section, 1187  
in the case of a sale, the price of which consists in whole or 1188  
in part of the lease or rental of tangible personal property, 1189  
the tax shall be measured by the installments of that lease or 1190  
rental. 1191

(4) In the case of a sale of a physical fitness facility 1192  
service or recreation and sports club service, the price of 1193  
which consists in whole or in part of a membership for the 1194  
receipt of the benefit of the service, the tax applicable to the 1195  
sale shall be measured by the installments thereof. 1196

(B) The tax does not apply to the following: 1197

(1) Sales to the state or any of its political 1198  
subdivisions, or to any other state or its political 1199  
subdivisions if the laws of that state exempt from taxation 1200  
sales made to this state and its political subdivisions; 1201

(2) Sales of food for human consumption off the premises 1202  
where sold; 1203

(3) Sales of food sold to students only in a cafeteria, 1204  
dormitory, fraternity, or sorority maintained in a private, 1205  
public, or parochial school, college, or university; 1206

(4) Sales of newspapers and sales or transfers of 1207  
magazines distributed as controlled circulation publications; 1208

(5) The furnishing, preparing, or serving of meals without 1209  
charge by an employer to an employee provided the employer 1210  
records the meals as part compensation for services performed or 1211  
work done; 1212

(6) Sales of motor fuel upon receipt, use, distribution, 1213  
or sale of which in this state a tax is imposed by the law of 1214

this state, but this exemption shall not apply to the sale of 1215  
motor fuel on which a refund of the tax is allowable under 1216  
division (A) of section 5735.14 of the Revised Code; and the tax 1217  
commissioner may deduct the amount of tax levied by this section 1218  
applicable to the price of motor fuel when granting a refund of 1219  
motor fuel tax pursuant to division (A) of section 5735.14 of 1220  
the Revised Code and shall cause the amount deducted to be paid 1221  
into the general revenue fund of this state; 1222

(7) Sales of natural gas by a natural gas company or 1223  
municipal gas utility, of water by a water-works company, or of 1224  
steam by a heating company, if in each case the thing sold is 1225  
delivered to consumers through pipes or conduits, and all sales 1226  
of communications services by a telegraph company, all terms as 1227  
defined in section 5727.01 of the Revised Code, and sales of 1228  
electricity delivered through wires; 1229

(8) Casual sales by a person, or auctioneer employed 1230  
directly by the person to conduct such sales, except as to such 1231  
sales of motor vehicles, watercraft or outboard motors required 1232  
to be titled under section 1548.06 of the Revised Code, 1233  
watercraft documented with the United States coast guard, 1234  
snowmobiles, and all-purpose vehicles as defined in section 1235  
4519.01 of the Revised Code; 1236

(9) (a) Sales of services or tangible personal property, 1237  
other than motor vehicles, mobile homes, and manufactured homes, 1238  
by churches, organizations exempt from taxation under section 1239  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1240  
organizations operated exclusively for charitable purposes as 1241  
defined in division (B) (12) of this section, provided that the 1242  
number of days on which such tangible personal property or 1243  
services, other than items never subject to the tax, are sold 1244

does not exceed six in any calendar year, except as otherwise 1245  
provided in division (B) (9) (b) of this section. If the number of 1246  
days on which such sales are made exceeds six in any calendar 1247  
year, the church or organization shall be considered to be 1248  
engaged in business and all subsequent sales by it shall be 1249  
subject to the tax. In counting the number of days, all sales by 1250  
groups within a church or within an organization shall be 1251  
considered to be sales of that church or organization. 1252

(b) The limitation on the number of days on which tax- 1253  
exempt sales may be made by a church or organization under 1254  
division (B) (9) (a) of this section does not apply to sales made 1255  
by student clubs and other groups of students of a primary or 1256  
secondary school, or a parent-teacher association, booster 1257  
group, or similar organization that raises money to support or 1258  
fund curricular or extracurricular activities of a primary or 1259  
secondary school. 1260

(c) Divisions (B) (9) (a) and (b) of this section do not 1261  
apply to sales by a noncommercial educational radio or 1262  
television broadcasting station. 1263

(10) Sales not within the taxing power of this state under 1264  
the Constitution or laws of the United States or the 1265  
Constitution of this state; 1266

(11) Except for transactions that are sales under division 1267  
(B) (3) (r) of section 5739.01 of the Revised Code, the 1268  
transportation of persons or property, unless the transportation 1269  
is by a private investigation and security service; 1270

(12) Sales of tangible personal property or services to 1271  
churches, to organizations exempt from taxation under section 1272  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1273

nonprofit organizations operated exclusively for charitable 1274  
purposes in this state, no part of the net income of which 1275  
inures to the benefit of any private shareholder or individual, 1276  
and no substantial part of the activities of which consists of 1277  
carrying on propaganda or otherwise attempting to influence 1278  
legislation; sales to offices administering one or more homes 1279  
for the aged or one or more hospital facilities exempt under 1280  
section 140.08 of the Revised Code; and sales to organizations 1281  
described in division (D) of section 5709.12 of the Revised 1282  
Code. 1283

"Charitable purposes" means the relief of poverty; the 1284  
improvement of health through the alleviation of illness, 1285  
disease, or injury; the operation of an organization exclusively 1286  
for the provision of professional, laundry, printing, and 1287  
purchasing services to hospitals or charitable institutions; the 1288  
operation of a home for the aged, as defined in section 5701.13 1289  
of the Revised Code; the operation of a radio or television 1290  
broadcasting station that is licensed by the federal 1291  
communications commission as a noncommercial educational radio 1292  
or television station; the operation of a nonprofit animal 1293  
adoption service or a county humane society; the promotion of 1294  
education by an institution of learning that maintains a faculty 1295  
of qualified instructors, teaches regular continuous courses of 1296  
study, and confers a recognized diploma upon completion of a 1297  
specific curriculum; the operation of a parent-teacher 1298  
association, booster group, or similar organization primarily 1299  
engaged in the promotion and support of the curricular or 1300  
extracurricular activities of a primary or secondary school; the 1301  
operation of a community or area center in which presentations 1302  
in music, dramatics, the arts, and related fields are made in 1303  
order to foster public interest and education therein; the 1304

production of performances in music, dramatics, and the arts; or 1305  
the promotion of education by an organization engaged in 1306  
carrying on research in, or the dissemination of, scientific and 1307  
technological knowledge and information primarily for the 1308  
public. 1309

Nothing in this division shall be deemed to exempt sales 1310  
to any organization for use in the operation or carrying on of a 1311  
trade or business, or sales to a home for the aged for use in 1312  
the operation of independent living facilities as defined in 1313  
division (A) of section 5709.12 of the Revised Code. 1314

(13) Building and construction materials and services sold 1315  
to construction contractors for incorporation into a structure 1316  
or improvement to real property under a construction contract 1317  
with this state or a political subdivision of this state, or 1318  
with the United States government or any of its agencies; 1319  
building and construction materials and services sold to 1320  
construction contractors for incorporation into a structure or 1321  
improvement to real property that are accepted for ownership by 1322  
this state or any of its political subdivisions, or by the 1323  
United States government or any of its agencies at the time of 1324  
completion of the structures or improvements; building and 1325  
construction materials sold to construction contractors for 1326  
incorporation into a horticulture structure or livestock 1327  
structure for a person engaged in the business of horticulture 1328  
or producing livestock; building materials and services sold to 1329  
a construction contractor for incorporation into a house of 1330  
public worship or religious education, or a building used 1331  
exclusively for charitable purposes under a construction 1332  
contract with an organization whose purpose is as described in 1333  
division (B) (12) of this section; building materials and 1334  
services sold to a construction contractor for incorporation 1335

into a building under a construction contract with an 1336  
organization exempt from taxation under section 501(c)(3) of the 1337  
Internal Revenue Code of 1986 when the building is to be used 1338  
exclusively for the organization's exempt purposes; building and 1339  
construction materials sold for incorporation into the original 1340  
construction of a sports facility under section 307.696 of the 1341  
Revised Code; building and construction materials and services 1342  
sold to a construction contractor for incorporation into real 1343  
property outside this state if such materials and services, when 1344  
sold to a construction contractor in the state in which the real 1345  
property is located for incorporation into real property in that 1346  
state, would be exempt from a tax on sales levied by that state; 1347  
building and construction materials for incorporation into a 1348  
transportation facility pursuant to a public-private agreement 1349  
entered into under sections 5501.70 to 5501.83 of the Revised 1350  
Code; and, until one calendar year after the construction of a 1351  
convention center that qualifies for property tax exemption 1352  
under section 5709.084 of the Revised Code is completed, 1353  
building and construction materials and services sold to a 1354  
construction contractor for incorporation into the real property 1355  
comprising that convention center; 1356

(14) Sales of ships or vessels or rail rolling stock used 1357  
or to be used principally in interstate or foreign commerce, and 1358  
repairs, alterations, fuel, and lubricants for such ships or 1359  
vessels or rail rolling stock; 1360

(15) Sales to persons primarily engaged in any of the 1361  
activities mentioned in division (B)(42)(a), (g), or (h) of this 1362  
section, to persons engaged in making retail sales, or to 1363  
persons who purchase for sale from a manufacturer tangible 1364  
personal property that was produced by the manufacturer in 1365  
accordance with specific designs provided by the purchaser, of 1366

packages, including material, labels, and parts for packages, 1367  
and of machinery, equipment, and material for use primarily in 1368  
packaging tangible personal property produced for sale, 1369  
including any machinery, equipment, and supplies used to make 1370  
labels or packages, to prepare packages or products for 1371  
labeling, or to label packages or products, by or on the order 1372  
of the person doing the packaging, or sold at retail. "Packages" 1373  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1374  
bindings, wrappings, and other similar devices and containers, 1375  
but does not include motor vehicles or bulk tanks, trailers, or 1376  
similar devices attached to motor vehicles. "Packaging" means 1377  
placing in a package. Division (B) (15) of this section does not 1378  
apply to persons engaged in highway transportation for hire. 1379

(16) Sales of food to persons using supplemental nutrition 1380  
assistance program benefits to purchase the food. As used in 1381  
this division, "food" has the same meaning as in 7 U.S.C. 2012 1382  
and federal regulations adopted pursuant to the Food and 1383  
Nutrition Act of 2008. 1384

(17) Sales to persons engaged in farming, agriculture, 1385  
horticulture, or floriculture, of tangible personal property for 1386  
use or consumption primarily in the production by farming, 1387  
agriculture, horticulture, or floriculture of other tangible 1388  
personal property for use or consumption primarily in the 1389  
production of tangible personal property for sale by farming, 1390  
agriculture, horticulture, or floriculture; or material and 1391  
parts for incorporation into any such tangible personal property 1392  
for use or consumption in production; and of tangible personal 1393  
property for such use or consumption in the conditioning or 1394  
holding of products produced by and for such use, consumption, 1395  
or sale by persons engaged in farming, agriculture, 1396  
horticulture, or floriculture, except where such property is 1397



incorporated into real property;	1398
(18) Sales of drugs for a human being that may be	1399
dispensed only pursuant to a prescription; insulin as recognized	1400
in the official United States pharmacopoeia; urine and blood	1401
testing materials when used by diabetics or persons with	1402
hypoglycemia to test for glucose or acetone; hypodermic syringes	1403
and needles when used by diabetics for insulin injections;	1404
epoetin alfa when purchased for use in the treatment of persons	1405
with medical disease; hospital beds when purchased by hospitals,	1406
nursing homes, or other medical facilities; and medical oxygen	1407
and medical oxygen-dispensing equipment when purchased by	1408
hospitals, nursing homes, or other medical facilities;	1409
(19) Sales of prosthetic devices, durable medical	1410
equipment for home use, or mobility enhancing equipment, when	1411
made pursuant to a prescription and when such devices or	1412
equipment are for use by a human being.	1413
(20) Sales of emergency and fire protection vehicles and	1414
equipment to nonprofit organizations for use solely in providing	1415
fire protection and emergency services, including trauma care	1416
and emergency medical services, for political subdivisions of	1417
the state;	1418
(21) Sales of tangible personal property manufactured in	1419
this state, if sold by the manufacturer in this state to a	1420
retailer for use in the retail business of the retailer outside	1421
of this state and if possession is taken from the manufacturer	1422
by the purchaser within this state for the sole purpose of	1423
immediately removing the same from this state in a vehicle owned	1424
by the purchaser;	1425
(22) Sales of services provided by the state or any of its	1426

political subdivisions, agencies, instrumentalities,	1427
institutions, or authorities, or by governmental entities of the	1428
state or any of its political subdivisions, agencies,	1429
instrumentalities, institutions, or authorities;	1430
(23) Sales of motor vehicles to nonresidents of this state	1431
under the circumstances described in division (B) of section	1432
5739.029 of the Revised Code;	1433
(24) Sales to persons engaged in the preparation of eggs	1434
for sale of tangible personal property used or consumed directly	1435
in such preparation, including such tangible personal property	1436
used for cleaning, sanitizing, preserving, grading, sorting, and	1437
classifying by size; packages, including material and parts for	1438
packages, and machinery, equipment, and material for use in	1439
packaging eggs for sale; and handling and transportation	1440
equipment and parts therefor, except motor vehicles licensed to	1441
operate on public highways, used in intraplant or interplant	1442
transfers or shipment of eggs in the process of preparation for	1443
sale, when the plant or plants within or between which such	1444
transfers or shipments occur are operated by the same person.	1445
"Packages" includes containers, cases, baskets, flats, fillers,	1446
filler flats, cartons, closure materials, labels, and labeling	1447
materials, and "packaging" means placing therein.	1448
(25) (a) Sales of water to a consumer for residential use;	1449
(b) Sales of water by a nonprofit corporation engaged	1450
exclusively in the treatment, distribution, and sale of water to	1451
consumers, if such water is delivered to consumers through pipes	1452
or tubing.	1453
(26) Fees charged for inspection or reinspection of motor	1454
vehicles under section 3704.14 of the Revised Code;	1455

(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:	1456 1457 1458 1459
(a) To prepare food for human consumption for sale;	1460
(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;	1461 1462 1463 1464
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1465 1466
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1467 1468
(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;	1469 1470 1471 1472
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	1473 1474 1475
(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;	1476 1477 1478
(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 property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used	1479 1480 1481 1482 1483

for the transportation of tangible personal property; 1484

(33) Sales to the state headquarters of any veterans' 1485  
organization in this state that is either incorporated and 1486  
issued a charter by the congress of the United States or is 1487  
recognized by the United States veterans administration, for use 1488  
by the headquarters; 1489

(34) Sales to a telecommunications service vendor, mobile 1490  
telecommunications service vendor, or satellite broadcasting 1491  
service vendor of tangible personal property and services used 1492  
directly and primarily in transmitting, receiving, switching, or 1493  
recording any interactive, one- or two-way electromagnetic 1494  
communications, including voice, image, data, and information, 1495  
through the use of any medium, including, but not limited to, 1496  
poles, wires, cables, switching equipment, computers, and record 1497  
storage devices and media, and component parts for the tangible 1498  
personal property. The exemption provided in this division shall 1499  
be in lieu of all other exemptions under division (B) (42) (a) or 1500  
(n) of this section to which the vendor may otherwise be 1501  
entitled, based upon the use of the thing purchased in providing 1502  
the telecommunications, mobile telecommunications, or satellite 1503  
broadcasting service. 1504

(35) (a) Sales where the purpose of the consumer is to use 1505  
or consume the things transferred in making retail sales and 1506  
consisting of newspaper inserts, catalogues, coupons, flyers, 1507  
gift certificates, or other advertising material that prices and 1508  
describes tangible personal property offered for retail sale. 1509

(b) Sales to direct marketing vendors of preliminary 1510  
materials such as photographs, artwork, and typesetting that 1511  
will be used in printing advertising material; and of printed 1512  
matter that offers free merchandise or chances to win sweepstake 1513

prizes and that is mailed to potential customers with 1514  
advertising material described in division (B) (35) (a) of this 1515  
section; 1516

(c) Sales of equipment such as telephones, computers, 1517  
facsimile machines, and similar tangible personal property 1518  
primarily used to accept orders for direct marketing retail 1519  
sales. 1520

(d) Sales of automatic food vending machines that preserve 1521  
food with a shelf life of forty-five days or less by 1522  
refrigeration and dispense it to the consumer. 1523

For purposes of division (B) (35) of this section, "direct 1524  
marketing" means the method of selling where consumers order 1525  
tangible personal property by United States mail, delivery 1526  
service, or telecommunication and the vendor delivers or ships 1527  
the tangible personal property sold to the consumer from a 1528  
warehouse, catalogue distribution center, or similar fulfillment 1529  
facility by means of the United States mail, delivery service, 1530  
or common carrier. 1531

(36) Sales to a person engaged in the business of 1532  
horticulture or producing livestock of materials to be 1533  
incorporated into a horticulture structure or livestock 1534  
structure; 1535

(37) Sales of personal computers, computer monitors, 1536  
computer keyboards, modems, and other peripheral computer 1537  
equipment to an individual who is licensed or certified to teach 1538  
in an elementary or a secondary school in this state for use by 1539  
that individual in preparation for teaching elementary or 1540  
secondary school students; 1541

(38) Sales to a professional racing team of any of the 1542

following:	1543
(a) Motor racing vehicles;	1544
(b) Repair services for motor racing vehicles;	1545
(c) Items of property that are attached to or incorporated	1546
in motor racing vehicles, including engines, chassis, and all	1547
other components of the vehicles, and all spare, replacement,	1548
and rebuilt parts or components of the vehicles; except not	1549
including tires, consumable fluids, paint, and accessories	1550
consisting of instrumentation sensors and related items added to	1551
the vehicle to collect and transmit data by means of telemetry	1552
and other forms of communication.	1553
(39) Sales of used manufactured homes and used mobile	1554
homes, as defined in section 5739.0210 of the Revised Code, made	1555
on or after January 1, 2000;	1556
(40) Sales of tangible personal property and services to a	1557
provider of electricity used or consumed directly and primarily	1558
in generating, transmitting, or distributing electricity for use	1559
by others, including property that is or is to be incorporated	1560
into and will become a part of the consumer's production,	1561
transmission, or distribution system and that retains its	1562
classification as tangible personal property after	1563
incorporation; fuel or power used in the production,	1564
transmission, or distribution of electricity; energy conversion	1565
equipment as defined in section 5727.01 of the Revised Code; and	1566
tangible personal property and services used in the repair and	1567
maintenance of the production, transmission, or distribution	1568
system, including only those motor vehicles as are specially	1569
designed and equipped for such use. The exemption provided in	1570
this division shall be in lieu of all other exemptions in	1571

division (B) (42) (a) or (n) of this section to which a provider 1572  
of electricity may otherwise be entitled based on the use of the 1573  
tangible personal property or service purchased in generating, 1574  
transmitting, or distributing electricity. 1575

(41) Sales to a person providing services under division 1576  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 1577  
personal property and services used directly and primarily in 1578  
providing taxable services under that section. 1579

(42) Sales where the purpose of the purchaser is to do any 1580  
of the following: 1581

(a) To incorporate the thing transferred as a material or 1582  
a part into tangible personal property to be produced for sale 1583  
by manufacturing, assembling, processing, or refining; or to use 1584  
or consume the thing transferred directly in producing tangible 1585  
personal property for sale by mining, including, without 1586  
limitation, the extraction from the earth of all substances that 1587  
are classed geologically as minerals, production of crude oil 1588  
and natural gas, or directly in the rendition of a public 1589  
utility service, except that the sales tax levied by this 1590  
section shall be collected upon all meals, drinks, and food for 1591  
human consumption sold when transporting persons. Persons 1592  
engaged in rendering services in the exploration for, and 1593  
production of, crude oil and natural gas for others are deemed 1594  
engaged directly in the exploration for, and production of, 1595  
crude oil and natural gas. This paragraph does not exempt from 1596  
"retail sale" or "sales at retail" the sale of tangible personal 1597  
property that is to be incorporated into a structure or 1598  
improvement to real property. 1599

(b) To hold the thing transferred as security for the 1600  
performance of an obligation of the vendor; 1601

(c) To resell, hold, use, or consume the thing transferred	1602
as evidence of a contract of insurance;	1603
(d) To use or consume the thing directly in commercial	1604
fishing;	1605
(e) To incorporate the thing transferred as a material or	1606
a part into, or to use or consume the thing transferred directly	1607
in the production of, magazines distributed as controlled	1608
circulation publications;	1609
(f) To use or consume the thing transferred in the	1610
production and preparation in suitable condition for market and	1611
sale of printed, imprinted, overprinted, lithographic,	1612
multilithic, blueprinted, photostatic, or other productions or	1613
reproductions of written or graphic matter;	1614
(g) To use the thing transferred, as described in section	1615
5739.011 of the Revised Code, primarily in a manufacturing	1616
operation to produce tangible personal property for sale;	1617
(h) To use the benefit of a warranty, maintenance or	1618
service contract, or similar agreement, as described in division	1619
(B) (7) of section 5739.01 of the Revised Code, to repair or	1620
maintain tangible personal property, if all of the property that	1621
is the subject of the warranty, contract, or agreement would not	1622
be subject to the tax imposed by this section;	1623
(i) To use the thing transferred as qualified research and	1624
development equipment;	1625
(j) To use or consume the thing transferred primarily in	1626
storing, transporting, mailing, or otherwise handling purchased	1627
sales inventory in a warehouse, distribution center, or similar	1628
facility when the inventory is primarily distributed outside	1629
this state to retail stores of the person who owns or controls	1630



the warehouse, distribution center, or similar facility, to 1631  
retail stores of an affiliated group of which that person is a 1632  
member, or by means of direct marketing. This division does not 1633  
apply to motor vehicles registered for operation on the public 1634  
highways. As used in this division, "affiliated group" has the 1635  
same meaning as in division (B) (3) (e) of section 5739.01 of the 1636  
Revised Code and "direct marketing" has the same meaning as in 1637  
division (B) (35) of this section. 1638

(k) To use or consume the thing transferred to fulfill a 1639  
contractual obligation incurred by a warrantor pursuant to a 1640  
warranty provided as a part of the price of the tangible 1641  
personal property sold or by a vendor of a warranty, maintenance 1642  
or service contract, or similar agreement the provision of which 1643  
is defined as a sale under division (B) (7) of section 5739.01 of 1644  
the Revised Code; 1645

(l) To use or consume the thing transferred in the 1646  
production of a newspaper for distribution to the public; 1647

(m) To use tangible personal property to perform a service 1648  
listed in division (B) (3) of section 5739.01 of the Revised 1649  
Code, if the property is or is to be permanently transferred to 1650  
the consumer of the service as an integral part of the 1651  
performance of the service; 1652

(n) To use or consume the thing transferred primarily in 1653  
producing tangible personal property for sale by farming, 1654  
agriculture, horticulture, or floriculture. Persons engaged in 1655  
rendering farming, agriculture, horticulture, or floriculture 1656  
services for others are deemed engaged primarily in farming, 1657  
agriculture, horticulture, or floriculture. This paragraph does 1658  
not exempt from "retail sale" or "sales at retail" the sale of 1659  
tangible personal property that is to be incorporated into a 1660

structure or improvement to real property. 1661

(o) To use or consume the thing transferred in acquiring, 1662  
formatting, editing, storing, and disseminating data or 1663  
information by electronic publishing; 1664

(p) To provide the thing transferred to the owner or 1665  
lessee of a motor vehicle that is being repaired or serviced, if 1666  
the thing transferred is a rented motor vehicle and the 1667  
purchaser is reimbursed for the cost of the rented motor vehicle 1668  
by a manufacturer, warrantor, or provider of a maintenance, 1669  
service, or other similar contract or agreement, with respect to 1670  
the motor vehicle that is being repaired or serviced. 1671

As used in division (B) (42) of this section, "thing" 1672  
includes all transactions included in divisions (B) (3) (a), (b), 1673  
and (e) of section 5739.01 of the Revised Code. 1674

(43) Sales conducted through a coin operated device that 1675  
activates vacuum equipment or equipment that dispenses water, 1676  
whether or not in combination with soap or other cleaning agents 1677  
or wax, to the consumer for the consumer's use on the premises 1678  
in washing, cleaning, or waxing a motor vehicle, provided no 1679  
other personal property or personal service is provided as part 1680  
of the transaction. 1681

(44) Sales of replacement and modification parts for 1682  
engines, airframes, instruments, and interiors in, and paint 1683  
for, aircraft used primarily in a fractional aircraft ownership 1684  
program, and sales of services for the repair, modification, and 1685  
maintenance of such aircraft, and machinery, equipment, and 1686  
supplies primarily used to provide those services. 1687

(45) Sales of telecommunications service that is used 1688  
directly and primarily to perform the functions of a call 1689

center. As used in this division, "call center" means any 1690  
physical location where telephone calls are placed or received 1691  
in high volume for the purpose of making sales, marketing, 1692  
customer service, technical support, or other specialized 1693  
business activity, and that employs at least fifty individuals 1694  
that engage in call center activities on a full-time basis, or 1695  
sufficient individuals to fill fifty full-time equivalent 1696  
positions. 1697

(46) Sales by a telecommunications service vendor of 900 1698  
service to a subscriber. This division does not apply to 1699  
information services, as defined in division (FF) of section 1700  
5739.01 of the Revised Code. 1701

(47) Sales of value-added non-voice data service. This 1702  
division does not apply to any similar service that is not 1703  
otherwise a telecommunications service. 1704

(48) (a) Sales of machinery, equipment, and software to a 1705  
qualified direct selling entity for use in a warehouse or 1706  
distribution center primarily for storing, transporting, or 1707  
otherwise handling inventory that is held for sale to 1708  
independent salespersons who operate as direct sellers and that 1709  
is held primarily for distribution outside this state; 1710

(b) As used in division (B) (48) (a) of this section: 1711

(i) "Direct seller" means a person selling consumer 1712  
products to individuals for personal or household use and not 1713  
from a fixed retail location, including selling such product at 1714  
in-home product demonstrations, parties, and other one-on-one 1715  
selling. 1716

(ii) "Qualified direct selling entity" means an entity 1717  
selling to direct sellers at the time the entity enters into a 1718

tax credit agreement with the tax credit authority pursuant to 1719  
section 122.17 of the Revised Code, provided that the agreement 1720  
was entered into on or after January 1, 2007. Neither 1721  
contingencies relevant to the granting of, nor later 1722  
developments with respect to, the tax credit shall impair the 1723  
status of the qualified direct selling entity under division (B) 1724  
(48) of this section after execution of the tax credit agreement 1725  
by the tax credit authority. 1726

(c) Division (B) (48) of this section is limited to 1727  
machinery, equipment, and software first stored, used, or 1728  
consumed in this state within the period commencing June 24, 1729  
2008, and ending on the date that is five years after that date. 1730

(49) Sales of materials, parts, equipment, or engines used 1731  
in the repair or maintenance of aircraft or avionics systems of 1732  
such aircraft, and sales of repair, remodeling, replacement, or 1733  
maintenance services in this state performed on aircraft or on 1734  
an aircraft's avionics, engine, or component materials or parts. 1735  
As used in division (B) (49) of this section, "aircraft" means 1736  
aircraft of more than six thousand pounds maximum certified 1737  
takeoff weight or used exclusively in general aviation. 1738

(50) Sales of full flight simulators that are used for 1739  
pilot or flight-crew training, sales of repair or replacement 1740  
parts or components, and sales of repair or maintenance services 1741  
for such full flight simulators. "Full flight simulator" means a 1742  
replica of a specific type, or make, model, and series of 1743  
aircraft cockpit. It includes the assemblage of equipment and 1744  
computer programs necessary to represent aircraft operations in 1745  
ground and flight conditions, a visual system providing an out- 1746  
of-the-cockpit view, and a system that provides cues at least 1747  
equivalent to those of a three-degree-of-freedom motion system, 1748

and has the full range of capabilities of the systems installed 1749  
in the device as described in appendices A and B of part 60 of 1750  
chapter 1 of title 14 of the Code of Federal Regulations. 1751

(51) Any transfer or lease of tangible personal property 1752  
between the state and JobsOhio in accordance with section 1753  
4313.02 of the Revised Code. 1754

(52) (a) Sales to a qualifying corporation. 1755

(b) As used in division (B) (52) of this section: 1756

(i) "Qualifying corporation" means a nonprofit corporation 1757  
organized in this state that leases from an eligible county 1758  
land, buildings, structures, fixtures, and improvements to the 1759  
land that are part of or used in a public recreational facility 1760  
used by a major league professional athletic team or a class A 1761  
to class AAA minor league affiliate of a major league 1762  
professional athletic team for a significant portion of the 1763  
team's home schedule, provided the following apply: 1764

(I) The facility is leased from the eligible county 1765  
pursuant to a lease that requires substantially all of the 1766  
revenue from the operation of the business or activity conducted 1767  
by the nonprofit corporation at the facility in excess of 1768  
operating costs, capital expenditures, and reserves to be paid 1769  
to the eligible county at least once per calendar year. 1770

(II) Upon dissolution and liquidation of the nonprofit 1771  
corporation, all of its net assets are distributable to the 1772  
board of commissioners of the eligible county from which the 1773  
corporation leases the facility. 1774

(ii) "Eligible county" has the same meaning as in section 1775  
307.695 of the Revised Code. 1776

(53) Sales to or by a cable service provider, video 1777  
service provider, or radio or television broadcast station 1778  
regulated by the federal government of cable service or 1779  
programming, video service or programming, audio service or 1780  
programming, or electronically transferred digital audiovisual 1781  
or audio work. As used in division (B) (53) of this section, 1782  
"cable service" and "cable service provider" have the same 1783  
meanings as in section 1332.01 of the Revised Code, and "video 1784  
service," "video service provider," and "video programming" have 1785  
the same meanings as in section 1332.21 of the Revised Code. 1786

(C) For the purpose of the proper administration of this 1787  
chapter, and to prevent the evasion of the tax, it is presumed 1788  
that all sales made in this state are subject to the tax until 1789  
the contrary is established. 1790

(D) The levy of this tax on retail sales of recreation and 1791  
sports club service shall not prevent a municipal corporation 1792  
from levying any tax on recreation and sports club dues or on 1793  
any income generated by recreation and sports club dues. 1794

(E) The tax collected by the vendor from the consumer 1795  
under this chapter is not part of the price, but is a tax 1796  
collection for the benefit of the state, and of counties levying 1797  
an additional sales tax pursuant to section 5739.021 or 5739.026 1798  
of the Revised Code and of transit authorities levying an 1799  
additional sales tax pursuant to section 5739.023 of the Revised 1800  
Code. Except for the discount authorized under section 5739.12 1801  
of the Revised Code and the effects of any rounding pursuant to 1802  
section 5703.055 of the Revised Code, no person other than the 1803  
state or such a county or transit authority shall derive any 1804  
benefit from the collection or payment of the tax levied by this 1805  
section or section 5739.021, 5739.023, or 5739.026 of the 1806

Revised Code. 1807

**Section 2.** That existing sections 5739.01 and 5739.02 of 1808  
the Revised Code are hereby repealed. 1809

**Section 3.** As used in this section, "qualified property" 1810  
means real property owned by a housing authority that satisfies 1811  
the qualifications for tax exemption under sections 3735.34 and 1812  
5709.10 of the Revised Code. 1813

Notwithstanding section 5713.081 of the Revised Code, when 1814  
qualified property has not received tax exemption due to a 1815  
failure to comply with Chapter 5713. or section 5715.27 of the 1816  
Revised Code, the current owner of the property, at any time on 1817  
or before twelve months after the effective date of this 1818  
section, may file with the Tax Commissioner an application 1819  
requesting that the property be placed on the tax-exempt list 1820  
and that all unpaid taxes, penalties, and interest on the 1821  
property be abated. 1822

The application shall be made on the form prescribed by 1823  
the Commissioner under section 5715.27 of the Revised Code and 1824  
shall list the name of the county in which the property is 1825  
located; the property's parcel number or legal description; its 1826  
assessed value; the amount in dollars of the unpaid taxes, 1827  
penalties, and interest; and any other information required by 1828  
the Commissioner. The county auditor shall supply the required 1829  
information upon request of the applicant. 1830

After receiving and considering the application, the 1831  
Commissioner shall determine if the applicant meets the 1832  
qualifications set forth in this section. If so, the 1833  
Commissioner shall issue an order directing that the property be 1834  
placed on the tax-exempt list of the county and that all unpaid 1835

taxes, penalties, and interest be abated. If the Commissioner 1836  
finds that the property is not now being used for an exempt 1837  
purpose or is otherwise ineligible for abatement of taxes, 1838  
penalties, and interest under this section, the Commissioner 1839  
shall issue an order denying the application. 1840

If the Commissioner finds that the property is not 1841  
entitled to tax exemption and to the abatement of unpaid taxes, 1842  
penalties, and interest, the Commissioner shall order the county 1843  
treasurer of the county in which the property is located to 1844  
collect all taxes, penalties, and interest due on the property 1845  
for those years in accordance with law. 1846

The Commissioner may apply this section to any qualified 1847  
property that is the subject of an application for exemption 1848  
pending before the Commissioner on the effective date of this 1849  
section without requiring the property owner to file an 1850  
additional application. 1851

**Section 4.** The amendment by this act of sections 5739.01 1852  
and 5739.02 of the Revised Code is intended to be remedial in 1853  
nature and shall apply to all sales made before, on, or after 1854  
the effective date of this act. 1855