

As Introduced

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S. B. No. 100

**Senator Brown
Senators Sawyer, Tavares, Thomas, Yuko**

A BILL

To amend sections 5739.02 and 5739.05 of the 1
Revised Code to provide a three-day sales tax 2
"holiday" each April during which sales of 3
qualifying Energy Star products are exempt from 4
sales and use taxes. 5

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

Section 1. That sections 5739.02 and 5739.05 of the 6
Revised Code be amended to read as follows: 7

Sec. 5739.02. For the purpose of providing revenue with 8
which to meet the needs of the state, for the use of the general 9
revenue fund of the state, for the purpose of securing a 10
thorough and efficient system of common schools throughout the 11
state, for the purpose of affording revenues, in addition to 12
those from general property taxes, permitted under 13
constitutional limitations, and from other sources, for the 14
support of local governmental functions, and for the purpose of 15
reimbursing the state for the expense of administering this 16
chapter, an excise tax is hereby levied on each retail sale made 17
in this state. 18

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

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

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

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

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	78 79 80 81
(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;	82 83 84 85 86 87 88 89 90 91
(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in section 5727.01 of the Revised Code, and sales of electricity delivered through wires;	92 93 94 95 96 97 98
(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;	99 100 101 102 103 104 105
(9) (a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes,	106 107

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

consumers, if such water is delivered to consumers through pipes or tubing.	321 322
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	323 324
(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:	325 326 327 328
(a) To prepare food for human consumption for sale;	329
(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;	330 331 332 333
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	334 335
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	336 337
(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;	338 339 340 341
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	342 343 344
(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;	345 346 347

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

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

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

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

describes tangible personal property offered for retail sale. 378

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

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

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

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

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

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

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

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

(a) Motor racing vehicles; 413

(b) Repair services for motor racing vehicles; 414

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

development equipment; 494

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

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

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

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

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

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

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

As used in division (B) (42) of this section, "thing" 534
includes all transactions included in divisions (B) (3) (a), (b), 535
and (e) of section 5739.01 of the Revised Code. 536

(43) Sales conducted through a coin operated device that 537
activates vacuum equipment or equipment that dispenses water, 538
whether or not in combination with soap or other cleaning agents 539
or wax, to the consumer for the consumer's use on the premises 540
in washing, cleaning, or waxing a motor vehicle, provided no 541
other personal property or personal service is provided as part 542
of the transaction. 543

(44) Sales of replacement and modification parts for 544
engines, airframes, instruments, and interiors in, and paint 545
for, aircraft used primarily in a fractional aircraft ownership 546
program, and sales of services for the repair, modification, and 547
maintenance of such aircraft, and machinery, equipment, and 548
supplies primarily used to provide those services. 549

(45) Sales of telecommunications service that is used 550
directly and primarily to perform the functions of a call 551

center. As used in this division, "call center" means any 552
physical location where telephone calls are placed or received 553
in high volume for the purpose of making sales, marketing, 554
customer service, technical support, or other specialized 555
business activity, and that employs at least fifty individuals 556
that engage in call center activities on a full-time basis, or 557
sufficient individuals to fill fifty full-time equivalent 558
positions. 559

(46) Sales by a telecommunications service vendor of 900 560
service to a subscriber. This division does not apply to 561
information services, as defined in division (FF) of section 562
5739.01 of the Revised Code. 563

(47) Sales of value-added non-voice data service. This 564
division does not apply to any similar service that is not 565
otherwise a telecommunications service. 566

(48) (a) Sales of machinery, equipment, and software to a 567
qualified direct selling entity for use in a warehouse or 568
distribution center primarily for storing, transporting, or 569
otherwise handling inventory that is held for sale to 570
independent salespersons who operate as direct sellers and that 571
is held primarily for distribution outside this state; 572

(b) As used in division (B) (48) (a) of this section: 573

(i) "Direct seller" means a person selling consumer 574
products to individuals for personal or household use and not 575
from a fixed retail location, including selling such product at 576
in-home product demonstrations, parties, and other one-on-one 577
selling. 578

(ii) "Qualified direct selling entity" means an entity 579
selling to direct sellers at the time the entity enters into a 580

tax credit agreement with the tax credit authority pursuant to 581
section 122.17 of the Revised Code, provided that the agreement 582
was entered into on or after January 1, 2007. Neither 583
contingencies relevant to the granting of, nor later 584
developments with respect to, the tax credit shall impair the 585
status of the qualified direct selling entity under division (B) 586
(48) of this section after execution of the tax credit agreement 587
by the tax credit authority. 588

(c) Division (B) (48) of this section is limited to 589
machinery, equipment, and software first stored, used, or 590
consumed in this state within the period commencing June 24, 591
2008, and ending on the date that is five years after that date. 592

(49) Sales of materials, parts, equipment, or engines used 593
in the repair or maintenance of aircraft or avionics systems of 594
such aircraft, and sales of repair, remodeling, replacement, or 595
maintenance services in this state performed on aircraft or on 596
an aircraft's avionics, engine, or component materials or parts. 597
As used in division (B) (49) of this section, "aircraft" means 598
aircraft of more than six thousand pounds maximum certified 599
takeoff weight or used exclusively in general aviation. 600

(50) Sales of full flight simulators that are used for 601
pilot or flight-crew training, sales of repair or replacement 602
parts or components, and sales of repair or maintenance services 603
for such full flight simulators. "Full flight simulator" means a 604
replica of a specific type, or make, model, and series of 605
aircraft cockpit. It includes the assemblage of equipment and 606
computer programs necessary to represent aircraft operations in 607
ground and flight conditions, a visual system providing an out- 608
of-the-cockpit view, and a system that provides cues at least 609
equivalent to those of a three-degree-of-freedom motion system, 610

and has the full range of capabilities of the systems installed 611
in the device as described in appendices A and B of part 60 of 612
chapter 1 of title 14 of the Code of Federal Regulations. 613

(51) Any transfer or lease of tangible personal property 614
between the state and JobsOhio in accordance with section 615
4313.02 of the Revised Code. 616

(52) (a) Sales to a qualifying corporation. 617

(b) As used in division (B) (52) of this section: 618

(i) "Qualifying corporation" means a nonprofit corporation 619
organized in this state that leases from an eligible county 620
land, buildings, structures, fixtures, and improvements to the 621
land that are part of or used in a public recreational facility 622
used by a major league professional athletic team or a class A 623
to class AAA minor league affiliate of a major league 624
professional athletic team for a significant portion of the 625
team's home schedule, provided the following apply: 626

(I) The facility is leased from the eligible county 627
pursuant to a lease that requires substantially all of the 628
revenue from the operation of the business or activity conducted 629
by the nonprofit corporation at the facility in excess of 630
operating costs, capital expenditures, and reserves to be paid 631
to the eligible county at least once per calendar year. 632

(II) Upon dissolution and liquidation of the nonprofit 633
corporation, all of its net assets are distributable to the 634
board of commissioners of the eligible county from which the 635
corporation leases the facility. 636

(ii) "Eligible county" has the same meaning as in section 637
307.695 of the Revised Code. 638

(53) Sales to or by a cable service provider, video 639
service provider, or radio or television broadcast station 640
regulated by the federal government of cable service or 641
programming, video service or programming, audio service or 642
programming, or electronically transferred digital audiovisual 643
or audio work. As used in division (B) (53) of this section, 644
"cable service" and "cable service provider" have the same 645
meanings as in section 1332.01 of the Revised Code, and "video 646
service," "video service provider," and "video programming" have 647
the same meanings as in section 1332.21 of the Revised Code. 648

(54) Sales of qualifying energy star products occurring on 649
the first Friday in April and the following Saturday and Sunday 650
of each year. 651

As used in this division, "qualifying energy star product" 652
means a device that carries the energy star label indicating 653
that the device meets the energy efficiency criteria of the 654
energy star program established by the United States department 655
of energy and the United States environmental protection agency 656
and that is categorized as an appliance or as heating and 657
cooling equipment under that program. "Qualifying energy star 658
product" does not include any device that is rented, purchased 659
for use in a trade or business, or purchased by a person who 660
will affix or install the device on behalf of the ultimate 661
consumer. For the purposes of this division, a sale of a 662
qualifying energy star product is considered to "occur" during 663
the specified three-day period if, regardless of the date the 664
device is delivered, the purchaser paid for the device during 665
the specified period and did not request any delay in the 666
shipment or delivery of the device. 667

(C) For the purpose of the proper administration of this 668

chapter, and to prevent the evasion of the tax, it is presumed 669
that all sales made in this state are subject to the tax until 670
the contrary is established. 671

(D) The levy of this tax on retail sales of recreation and 672
sports club service shall not prevent a municipal corporation 673
from levying any tax on recreation and sports club dues or on 674
any income generated by recreation and sports club dues. 675

(E) The tax collected by the vendor from the consumer 676
under this chapter is not part of the price, but is a tax 677
collection for the benefit of the state, and of counties levying 678
an additional sales tax pursuant to section 5739.021 or 5739.026 679
of the Revised Code and of transit authorities levying an 680
additional sales tax pursuant to section 5739.023 of the Revised 681
Code. Except for the discount authorized under section 5739.12 682
of the Revised Code and the effects of any rounding pursuant to 683
section 5703.055 of the Revised Code, no person other than the 684
state or such a county or transit authority shall derive any 685
benefit from the collection or payment of the tax levied by this 686
section or section 5739.021, 5739.023, or 5739.026 of the 687
Revised Code. 688

Sec. 5739.05. (A) (1) The tax commissioner shall enforce 689
and administer sections 5739.01 to 5739.31 of the Revised Code, 690
which are hereby declared to be sections which the commissioner 691
is required to administer within the meaning of sections 5703.17 692
to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. 693
The commissioner may adopt and promulgate, in accordance with 694
sections 119.01 to 119.13 of the Revised Code, such rules as the 695
commissioner deems necessary to administer sections 5739.01 to 696
5739.31 of the Revised Code. 697

(2) The commissioner, in accordance with section 5703.14 698

of the Revised Code, shall adopt rules necessary to implement 699
the three-day tax exemption periods provided by division (B) (54) 700
of section 5739.02 of the Revised Code. Before each exemption 701
period required under that division, the commissioner shall make 702
available to vendors informational bulletins explaining the 703
exemption. 704

(B) Upon application, the commissioner may authorize a 705
vendor to pay on a predetermined basis the tax levied by or 706
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 707
the Revised Code upon sales of things produced or distributed or 708
services provided by such vendor, and the commissioner may waive 709
the collection of the tax from the consumer. The commissioner 710
shall not grant such authority unless the commissioner finds 711
that the granting of the authority would improve compliance and 712
increase the efficiency of the administration of the tax. The 713
person to whom such authority is granted shall post a notice, if 714
required by the commissioner, at the location where the product 715
is offered for sale that the tax is included in the selling 716
price. The commissioner may adopt rules to administer this 717
division. 718

(C) Upon application, the commissioner may authorize a 719
vendor to remit, on the basis of a prearranged agreement under 720
this division, the tax levied by section 5739.02 or pursuant to 721
section 5739.021, 5739.023, or 5739.026 of the Revised Code. The 722
proportions and ratios in a prearranged agreement shall be 723
determined either by a test check conducted by the commissioner 724
under terms and conditions agreed to by the commissioner and the 725
vendor or by any other method agreed upon by the vendor and the 726
commissioner. If the parties are unable to agree to the terms 727
and conditions of the test check or other method, the 728
application shall be denied. 729

If used, the test check shall determine the proportion 730
that taxable retail sales bear to all of the vendor's retail 731
sales and the ratio which the tax required to be collected under 732
sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 733
Revised Code bears to the receipts from the vendor's taxable 734
retail sales. 735

The vendor's liability for remitting the tax shall be 736
based solely upon the proportions and ratios established in the 737
agreement until such time that the vendor or the commissioner 738
believes that the nature of the vendor's business has so changed 739
as to make the agreement no longer representative. The 740
commissioner may give notice to the vendor at any time that the 741
authorization is revoked or the vendor may notify the 742
commissioner that the vendor no longer elects to report under 743
the authorization. Such notice shall be delivered to the other 744
party personally or by registered mail. The revocation or 745
cancellation is effective the last day of the month in which the 746
vendor or the commissioner receives the notice. 747

Section 2. That existing sections 5739.02 and 5739.05 of 748
the Revised Code are hereby repealed. 749