

As Reported by the House Ways and Means Committee

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Sub. H. B. No. 117

REPRESENTATIVES Willamowski, Metelsky, Grendell, Calvert, Callender,
Seitz, Ogg, Jones, Allen, Redfern, Britton, Jerse, Lendrum, Barrett, Hollister,
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Niehaus, Latta, Gilb

A BILL

To amend section 5739.02 of the Revised Code to exempt 1
from the sales and use tax items used to assist 2
handicapped persons in accessing or operating motor 3
vehicles or to modify motor vehicles for the 4
transportation of wheelchairs. 5

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

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

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

(A) The tax shall be collected pursuant to the schedules in 18
section 5739.025 of the Revised Code. 19

The tax applies and is collectible when the sale is made, 20
regardless of the time when the price is paid or delivered. 21

In the case of a sale, the price of which consists in whole 22
or in part of rentals for the use of the thing transferred, the 23
tax, as regards such rentals, shall be measured by the 24
installments thereof. 25

In the case of a sale of a service defined under division 26
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 27
which consists in whole or in part of a membership for the receipt 28
of the benefit of the service, the tax applicable to the sale 29
shall be measured by the installments thereof. 30

(B) The tax does not apply to the following: 31

(1) Sales to the state or any of its political subdivisions, 32
or to any other state or its political subdivisions if the laws of 33
that state exempt from taxation sales made to this state and its 34
political subdivisions; 35

(2) Sales of food for human consumption off the premises 36
where sold; 37

(3) Sales of food sold to students only in a cafeteria, 38
dormitory, fraternity, or sorority maintained in a private, 39
public, or parochial school, college, or university; 40

(4) Sales of newspapers, and of magazine subscriptions 41
shipped by second class mail, and sales or transfers of magazines 42
distributed as controlled circulation publications; 43

(5) The furnishing, preparing, or serving of meals without 44
charge by an employer to an employee provided the employer records 45
the meals as part compensation for services performed or work 46
done; 47

(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 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 section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(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 telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(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;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the

church or organization shall be considered to be engaged in
business and all subsequent sales by it shall be subject to the
tax. In counting the number of days, all sales by groups within a
church or within an organization shall be considered to be sales
of that church or organization, except that sales made by separate
student clubs and other groups of students of a primary or
secondary school, and sales made by a parent-teacher association,
booster group, or similar organization that raises money to
support or fund curricular or extracurricular activities of a
primary or secondary school, shall not be considered to be sales
of such school, and sales by each such club, group, association,
or organization shall be counted separately for purposes of the
six-day limitation. This division does not apply to sales by a
noncommercial educational radio or television broadcasting
station.

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(10) Sales not within the taxing power of this state under
the Constitution of the United States;

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(11) The transportation of persons or property, unless the
transportation is by a private investigation and security service;

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

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"Charitable purposes" means the relief of poverty; the

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improvement of health through the alleviation of illness, disease, 112
or injury; the operation of an organization exclusively for the 113
provision of professional, laundry, printing, and purchasing 114
services to hospitals or charitable institutions; the operation of 115
a home for the aged, as defined in section 5701.13 of the Revised 116
Code; the operation of a radio or television broadcasting station 117
that is licensed by the federal communications commission as a 118
noncommercial educational radio or television station; the 119
operation of a nonprofit animal adoption service or a county 120
humane society; the promotion of education by an institution of 121
learning that maintains a faculty of qualified instructors, 122
teaches regular continuous courses of study, and confers a 123
recognized diploma upon completion of a specific curriculum; the 124
operation of a parent-teacher association, booster group, or 125
similar organization primarily engaged in the promotion and 126
support of the curricular or extracurricular activities of a 127
primary or secondary school; the operation of a community or area 128
center in which presentations in music, dramatics, the arts, and 129
related fields are made in order to foster public interest and 130
education therein; the production of performances in music, 131
dramatics, and the arts; or the promotion of education by an 132
organization engaged in carrying on research in, or the 133
dissemination of, scientific and technological knowledge and 134
information primarily for the public. 135

Nothing in this division shall be deemed to exempt sales to 136
any organization for use in the operation or carrying on of a 137
trade or business, or sales to a home for the aged for use in the 138
operation of independent living facilities as defined in division 139
(A) of section 5709.12 of the Revised Code. 140

(13) Building and construction materials and services sold to 141
construction contractors for incorporation into a structure or 142
improvement to real property under a construction contract with 143

this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

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

vessels or rail rolling stock; 176

(15) Sales to persons engaged in any of the activities 177
mentioned in division (E)(2) or (9) of section 5739.01 of the 178
Revised Code, to persons engaged in making retail sales, or to 179
persons who purchase for sale from a manufacturer tangible 180
personal property that was produced by the manufacturer in 181
accordance with specific designs provided by the purchaser, of 182
packages, including material, labels, and parts for packages, and 183
of machinery, equipment, and material for use primarily in 184
packaging tangible personal property produced for sale, including 185
any machinery, equipment, and supplies used to make labels or 186
packages, to prepare packages or products for labeling, or to 187
label packages or products, by or on the order of the person doing 188
the packaging, or sold at retail. "Packages" includes bags, 189
baskets, cartons, crates, boxes, cans, bottles, bindings, 190
wrappings, and other similar devices and containers, and 191
"packaging" means placing therein. 192

(16) Sales of food to persons using food stamp coupons to 193
purchase the food. As used in division (B)(16) of this section, 194
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 195
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 196
adopted pursuant to that act. 197

(17) Sales to persons engaged in farming, agriculture, 198
horticulture, or floriculture, of tangible personal property for 199
use or consumption directly in the production by farming, 200
agriculture, horticulture, or floriculture of other tangible 201
personal property for use or consumption directly in the 202
production of tangible personal property for sale by farming, 203
agriculture, horticulture, or floriculture; or material and parts 204
for incorporation into any such tangible personal property for use 205
or consumption in production; and of tangible personal property 206
for such use or consumption in the conditioning or holding of 207

products produced by and for such use, consumption, or sale by 208
persons engaged in farming, agriculture, horticulture, or 209
floriculture, except where such property is incorporated into real 210
property; 211

(18) Sales of drugs dispensed by a licensed pharmacist upon 212
the order of a licensed health professional authorized to 213
prescribe drugs to a human being, as the term "licensed health 214
professional authorized to prescribe drugs" is defined in section 215
4729.01 of the Revised Code; insulin as recognized in the official 216
United States pharmacopoeia; urine and blood testing materials 217
when used by diabetics or persons with hypoglycemia to test for 218
glucose or acetone; hypodermic syringes and needles when used by 219
diabetics for insulin injections; epoetin alfa when purchased for 220
use in the treatment of persons with end-stage renal disease; 221
hospital beds when purchased for use by persons with medical 222
problems for medical purposes; and oxygen and oxygen-dispensing 223
equipment when purchased for use by persons with medical problems 224
for medical purposes; 225

(19)(a) Sales of artificial limbs or portion thereof, breast 226
prostheses, and other prosthetic devices for humans; braces or 227
other devices for supporting weakened or nonfunctioning parts of 228
the human body; ~~wheelchairs; devices used to lift wheelchairs into~~ 229
~~motor vehicles and parts and accessories to such devices;~~ crutches 230
or other devices to aid human perambulation; and items of tangible 231
personal property used to supplement impaired functions of the 232
human body such as respiration, hearing, or elimination; 233

(b) Sales of wheelchairs; items incorporated into or used in 234
conjunction with a motor vehicle for the purpose of transporting 235
wheelchairs, other than transportation conducted in connection 236
with the sale or delivery of wheelchairs; and items incorporated 237
into or used in conjunction with a motor vehicle that are 238
specifically designed to assist a person with a disability to 239

access or operate the motor vehicle. As used in this division, 240
"person with a disability" means any person who has lost the use 241
of one or both legs or one or both arms, who is blind, deaf, or 242
disabled to the extent that the person is unable to move about 243
without the aid of crutches or a wheelchair, or whose mobility is 244
restricted by a permanent cardiovascular, pulmonary, or other 245
disabling condition. No 246

(c) No exemption under this division shall be allowed for 247
nonprescription drugs, medicines, or remedies; items or devices 248
used to supplement vision; items or devices whose function is 249
solely or primarily cosmetic; or physical fitness equipment. This 250
division does not apply to sales to a physician or medical 251
facility for use in the treatment of a patient. 252

(20) Sales of emergency and fire protection vehicles and 253
equipment to nonprofit organizations for use solely in providing 254
fire protection and emergency services, including trauma care and 255
emergency medical services, for political subdivisions of the 256
state; 257

(21) Sales of tangible personal property manufactured in this 258
state, if sold by the manufacturer in this state to a retailer for 259
use in the retail business of the retailer outside of this state 260
and if possession is taken from the manufacturer by the purchaser 261
within this state for the sole purpose of immediately removing the 262
same from this state in a vehicle owned by the purchaser; 263

(22) Sales of services provided by the state or any of its 265
political subdivisions, agencies, instrumentalities, institutions, 266
or authorities, or by governmental entities of the state or any of 267
its political subdivisions, agencies, instrumentalities, 268
institutions, or authorities; 269

(23) Sales of motor vehicles to nonresidents of this state 270

upon the presentation of an affidavit executed in this state by 271
the nonresident purchaser affirming that the purchaser is a 272
nonresident of this state, that possession of the motor vehicle is 273
taken in this state for the sole purpose of immediately removing 274
it from this state, that the motor vehicle will be permanently 275
titled and registered in another state, and that the motor vehicle 276
will not be used in this state; 277

(24) Sales to persons engaged in the preparation of eggs for 278
sale of tangible personal property used or consumed directly in 279
such preparation, including such tangible personal property used 280
for cleaning, sanitizing, preserving, grading, sorting, and 281
classifying by size; packages, including material and parts for 282
packages, and machinery, equipment, and material for use in 283
packaging eggs for sale; and handling and transportation equipment 284
and parts therefor, except motor vehicles licensed to operate on 285
public highways, used in intraplant or interplant transfers or 286
shipment of eggs in the process of preparation for sale, when the 287
plant or plants within or between which such transfers or 288
shipments occur are operated by the same person. "Packages" 289
includes containers, cases, baskets, flats, fillers, filler flats, 290
cartons, closure materials, labels, and labeling materials, and 291
"packaging" means placing therein. 292

(25)(a) Sales of water to a consumer for residential use, 293
except the sale of bottled water, distilled water, mineral water, 294
carbonated water, or ice; 295

(b) Sales of water by a nonprofit corporation engaged 296
exclusively in the treatment, distribution, and sale of water to 297
consumers, if such water is delivered to consumers through pipes 298
or tubing. 299

(26) Fees charged for inspection or reinspection of motor 300
vehicles under section 3704.14 of the Revised Code; 301

(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:	302 303 304 305
(a) To prepare food for human consumption for sale;	306
(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;	307 308 309 310
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	311 312
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	313 314
(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;	315 316 317 318
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	319 320 321
(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;	322 323 324
(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 by a person engaged in highway transportation for hire;	325 326 327 328
(33) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by	329 330 331

the United States veterans administration, for use by the 332
headquarters; 333

(34) Sales to a telecommunications service vendor of tangible 334
personal property and services used directly and primarily in 335
transmitting, receiving, switching, or recording any interactive, 336
two-way electromagnetic communications, including voice, image, 337
data, and information, through the use of any medium, including, 338
but not limited to, poles, wires, cables, switching equipment, 339
computers, and record storage devices and media, and component 340
parts for the tangible personal property. The exemption provided 341
in division (B)(34) of this section shall be in lieu of all other 342
exceptions under division (E)(2) of section 5739.01 of the Revised 343
Code to which a telecommunications service vendor may otherwise be 344
entitled based upon the use of the thing purchased in providing 345
the telecommunications service. 346

(35) Sales of investment metal bullion and investment coins. 347
"Investment metal bullion" means any elementary precious metal 348
that has been put through a process of smelting or refining, 349
including, but not limited to, gold, silver, platinum, and 350
palladium, and which is in such state or condition that its value 351
depends upon its content and not upon its form. "Investment metal 352
bullion" does not include fabricated precious metal that has been 353
processed or manufactured for one or more specific and customary 354
industrial, professional, or artistic uses. "Investment coins" 355
means numismatic coins or other forms of money and legal tender 356
manufactured of gold, silver, platinum, palladium, or other metal 357
under the laws of the United States or any foreign nation with a 358
fair market value greater than any statutory or nominal value of 359
such coins. 360

(36)(a) Sales where the purpose of the consumer is to use or 361
consume the things transferred in making retail sales and 362
consisting of newspaper inserts, catalogues, coupons, flyers, gift 363

certificates, or other advertising material that prices and 364
describes tangible personal property offered for retail sale. 365

(b) Sales to direct marketing vendors of preliminary 366
materials such as photographs, artwork, and typesetting that will 367
be used in printing advertising material; of printed matter that 368
offers free merchandise or chances to win sweepstake prizes and 369
that is mailed to potential customers with advertising material 370
described in division (B)(36)(a) of this section; and of equipment 371
such as telephones, computers, facsimile machines, and similar 372
tangible personal property primarily used to accept orders for 373
direct marketing retail sales. 374

(c) Sales of automatic food vending machines that preserve 375
food with a shelf life of forty-five days or less by refrigeration 376
and dispense it to the consumer. 377

For purposes of division (B)(36) of this section, "direct 378
marketing" means the method of selling where consumers order 379
tangible personal property by United States mail, delivery 380
service, or telecommunication and the vendor delivers or ships the 381
tangible personal property sold to the consumer from a warehouse, 382
catalogue distribution center, or similar fulfillment facility by 383
means of the United States mail, delivery service, or common 384
carrier. 385

(37) Sales to a person engaged in the business of 386
horticulture or producing livestock of materials to be 387
incorporated into a horticulture structure or livestock structure; 388

(38) The sale of a motor vehicle that is used exclusively for 389
a vanpool ridesharing arrangement to persons participating in the 390
vanpool ridesharing arrangement when the vendor is selling the 391
vehicle pursuant to a contract between the vendor and the 392
department of transportation; 393

(39) Sales of personal computers, computer monitors, computer 394

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

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(40) Sales to a professional racing team of any of the following:

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(a) Motor racing vehicles;

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(b) Repair services for motor racing vehicles;

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

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

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(42) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially

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designed and equipped for such use. The exemption provided in this 426
division shall be in lieu of all other exceptions in division 427
(E)(2) of section 5739.01 of the Revised Code to which a provider 428
of electricity may otherwise be entitled based on the use of the 429
tangible personal property or service purchased in generating, 430
transmitting, or distributing electricity. 431

For the purpose of the proper administration of this chapter, 432
and to prevent the evasion of the tax, it is presumed that all 433
sales made in this state are subject to the tax until the contrary 434
is established. 435

As used in this section, except in division (B)(16) of this 436
section, "food" includes cereals and cereal products, milk and 437
milk products including ice cream, meat and meat products, fish 438
and fish products, eggs and egg products, vegetables and vegetable 439
products, fruits, fruit products, and pure fruit juices, 440
condiments, sugar and sugar products, coffee and coffee 441
substitutes, tea, and cocoa and cocoa products. It does not 442
include: spirituous or malt liquors; soft drinks; sodas and 443
beverages that are ordinarily dispensed at bars and soda fountains 444
or in connection therewith, other than coffee, tea, and cocoa; 445
root beer and root beer extracts; malt and malt extracts; mineral 446
oils, cod liver oils, and halibut liver oil; medicines, including 447
tonics, vitamin preparations, and other products sold primarily 448
for their medicinal properties; and water, including mineral, 449
bottled, and carbonated waters, and ice. 450

(C) The levy of an excise tax on transactions by which 451
lodging by a hotel is or is to be furnished to transient guests 452
pursuant to this section and division (B) of section 5739.01 of 453
the Revised Code does not prevent any of the following: 454

(1) A municipal corporation or township from levying an 455
excise tax for any lawful purpose not to exceed three per cent on 456
transactions by which lodging by a hotel is or is to be furnished 457

to transient guests in addition to the tax levied by this section. 458
If a municipal corporation or township repeals a tax imposed under 459
division (C)(1) of this section and a county in which the 460
municipal corporation or township has territory has a tax imposed 461
under division (C) of section 5739.024 of the Revised Code in 462
effect, the municipal corporation or township may not reimpose its 463
tax as long as that county tax remains in effect. A municipal 464
corporation or township in which a tax is levied under division 465
(B)(2) of section 351.021 of the Revised Code may not increase the 466
rate of its tax levied under division (C)(1) of this section to 467
any rate that would cause the total taxes levied under both of 468
those divisions to exceed three per cent on any lodging 469
transaction within the municipal corporation or township. 470

(2) A municipal corporation or a township from levying an 471
additional excise tax not to exceed three per cent on such 472
transactions pursuant to division (B) of section 5739.024 of the 473
Revised Code. Such tax is in addition to any tax imposed under 474
division (C)(1) of this section. 475

(3) A county from levying an excise tax pursuant to division 476
(A) of section 5739.024 of the Revised Code. 477

(4) A county from levying an excise tax not to exceed three 478
per cent of such transactions pursuant to division (C) of section 479
5739.024 of the Revised Code. Such a tax is in addition to any tax 480
imposed under division (C)(3) of this section. 481

(5) A convention facilities authority, as defined in division 482
(A) of section 351.01 of the Revised Code, from levying the excise 483
taxes provided for in division (B) of section 351.021 of the 484
Revised Code. 485

(6) A county from levying an excise tax not to exceed one and 486
one-half per cent of such transactions pursuant to division (D) of 487
section 5739.024 of the Revised Code. Such tax is in addition to 488

any tax imposed under division (C)(3) or (4) of this section. 489
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(7) A county from levying an excise tax not to exceed one and 491
one-half per cent of such transactions pursuant to division (E) of 492
section 5739.024 of the Revised Code. Such a tax is in addition to 493
any tax imposed under division (C)(3), (4), or (6) of this 494
section. 495

(D) The levy of this tax on retail sales of recreation and 496
sports club service shall not prevent a municipal corporation from 497
levying any tax on recreation and sports club dues or on any 498
income generated by recreation and sports club dues. 499

Section 2. That existing section 5739.02 of the Revised Code 500
is hereby repealed. 501

Section 3. Section 5739.02 of the Revised Code is presented 502
in this act as a composite of the section as amended by Am. Sub. 503
H.B. 138, H.B. 612, and Am. Sub. H.B. 640 all of the 123rd General 504
Assembly. This is in recognition of the principle stated in 505
division (B) of section 1.52 of the Revised Code that such 506
amendments are to be harmonized where not substantively 507
irreconcilable and constitutes a legislative finding that such is 508
the resulting version in effect prior to the effective date of 509
this act. 510