

As Introduced

**125th General Assembly
Regular Session
2003-2004**

S. B. No. 37

Senator Blessing

A BILL

To amend sections 165.09, 902.11, 2915.01, 4505.06, 1
4981.20, 5739.01, 5739.02, 5739.03, 5739.11, and 2
5741.02 of the Revised Code to clarify who pays 3
the sales or use tax on packaging material used in 4
highway transportation for hire and to clarify 5
when the transfer of motion picture films is a 6
sale. 7

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

Section 1. That sections 165.09, 902.11, 2915.01, 4505.06, 8
4981.20, 5739.01, 5739.02, 5739.03, 5739.11, and 5741.02 of the 9
Revised Code be amended to read as follows: 10

Sec. 165.09. Any real or personal property, or both, of an 11
issuer ~~which~~ that is acquired, constructed, reconstructed, 12
enlarged, improved, furnished or equipped, or any combination 13
thereof, and leased or subleased under authority of either Chapter 14
165. or 761. of the Revised Code shall be subject to ad valorem, 15
sales, use, and franchise taxes and to zoning, planning, and 16
building regulations and fees, to the same extent and in the same 17
manner as if the lessee-user or sublessee-user thereof, rather 18
than the issuer, had acquired, constructed, reconstructed, 19
enlarged, improved, furnished, or equipped, or any combination 20

thereof, such real or personal property, and title thereto was in 21
the name of such lessee-user or sublessee-user. 22

The transfer of tangible personal property by lease or 23
sublease under authority of either Chapter 165. or 761. of the 24
Revised Code is not a sale as used in Chapter 5739. of the Revised 25
Code. The exemptions provided in divisions (B)(1) and (B)(~~14~~)(12) 26
of section 5739.02 of the Revised Code shall not be applicable to 27
purchases for a project under either Chapters 165. or 761. of the 28
Revised Code. 29

An issuer shall be exempt from all taxes on its real or 30
personal property, or both, ~~which~~ that has been acquired, 31
constructed, reconstructed, enlarged, improved, furnished, or 32
equipped, or any combination thereof, under Chapter 165. or 761. 33
of the Revised Code, so long as such property is used by the 34
issuer for purposes ~~which~~ that would otherwise exempt such 35
property; has ceased to be used by a former lessee-user or 36
sublessee-user and is not occupied or used; or has been acquired 37
by the issuer, but development has not yet commenced. The 38
exemption shall be effective as of the date the exempt use begins. 39
All taxes on the exempt real or personal property for the year 40
should be prorated and the taxes for the exempt portion of the 41
year shall be remitted by the county auditor. 42

Sec. 902.11. (A) Any real or personal property, or both, of 43
an issuer ~~which~~ that is acquired, constructed, reconstructed, 44
enlarged, improved, furnished, or equipped, or any combination 45
thereof, and leased or subleased under authority of this chapter 46
shall be subject to ad valorem, sales, use, and franchise taxes 47
and to zoning, planning, and building regulations and fees, to the 48
same extent and in the same manner as if the lessee-user or 49
sublessee-user thereof, rather than the issuer, had acquired, 50
constructed, reconstructed, enlarged, improved, furnished, or 51

uipped, or any combination thereof, such real or personal 52
property, and title thereto was in the name of such lessee-user or 53
sublessee-user. 54

The transfer of tangible personal property by lease or 55
sublease under authority of this chapter is not a sale as used in 56
Chapter 5739. of the Revised Code. The exemptions provided in 57
divisions (B)(1) and ~~(14)~~(12) of section 5739.02 of the Revised 58
Code shall not be applicable to purchases for a project under this 59
chapter. 60

An issuer shall be exempt from all taxes on its real or 61
personal property, or both, ~~which~~ that has been acquired, 62
constructed, reconstructed, enlarged, improved, furnished, or 63
equipped, or any combination thereof, under this chapter so long 64
as such property is used by the issuer for purposes ~~which~~ that 65
would otherwise exempt such property; has ceased to be used by a 66
former lessee-user or sublessee-user and is not occupied or used; 67
or has been acquired by the issuer, but development has not yet 68
commenced. The exemption shall be effective as of the date the 69
exempt use begins. All taxes on the exempt real or personal 70
property for the year should be prorated and the taxes for the 71
exempt portion of the year shall be remitted by the county 72
auditor. 73

(B) Bonds issued under this chapter, the transfer thereof, 74
and the interest and other income from the bonds, including any 75
profit made on the sale thereof, are free from taxation within the 76
state. 77

Sec. 2915.01. As used in this chapter: 78

(A) "Bookmaking" means the business of receiving or paying 79
off bets. 80

(B) "Bet" means the hazarding of anything of value upon the 81

result of an event, undertaking, or contingency, but does not 82
include a bona fide business risk. 83

(C) "Scheme of chance" means a lottery, numbers game, pool, 84
or other scheme in which a participant gives a valuable 85
consideration for a chance to win a prize. 86

(D) "Game of chance" means poker, craps, roulette, a slot 87
machine, a punch board, or other game in which a player gives 88
anything of value in the hope of gain, the outcome of which is 89
determined largely or wholly by chance. 90

(E) "Scheme or game of chance conducted for profit" means any 91
scheme or game of chance designed to produce income for the person 92
who conducts or operates the scheme or game of chance, but does 93
not include a charitable bingo game. 94

(F) "Gambling device" means: 95

(1) A book, totalizer, or other equipment for recording bets; 96

(2) A ticket, token, or other device representing a chance, 97
share, or interest in a scheme of chance, except a charitable 98
bingo game, or evidencing a bet; 99

(3) A deck of cards, dice, gaming table, roulette wheel, slot 100
machine, punch board, or other apparatus designed for use in 101
connection with a game of chance; 102

(4) Any equipment, device, apparatus, or paraphernalia 103
specially designed for gambling purposes. 104

(G) "Gambling offense" means any of the following: 105

(1) A violation of section 2915.02, 2915.03, 2915.04, 106
2915.05, 2915.07, 2915.08, 2915.09, 2915.10, or 2915.11 of the 107
Revised Code; 108

(2) A violation of an existing or former municipal ordinance 109
or law of this or any other state or the United States 110
substantially equivalent to any section listed in division (G) (1) 111

of this section or a violation of section 2915.06 of the Revised 112
Code as it existed prior to ~~the effective date of this amendment~~ 113
July 1, 1996; 114

(3) An offense under an existing or former municipal 115
ordinance or law of this or any other state or the United States, 116
of which gambling is an element; 117

(4) A conspiracy or attempt to commit, or complicity in 118
committing any offense under division (G)(1), (2), or (3) of this 119
section. 120

(H) "Charitable organization" means any tax exempt religious, 121
educational, veteran's, fraternal, service, nonprofit medical, 122
volunteer rescue service, volunteer fire fighter's, senior 123
citizen's, youth athletic, amateur athletic, or youth athletic 124
park organization. An organization is tax exempt if the 125
organization is, and has received from the internal revenue 126
service a determination letter that currently is in effect stating 127
that the organization is, exempt from federal income taxation 128
under subsection 501(a) and described in subsection 501(c)(3), 129
501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal 130
Revenue Code. To qualify as a charitable organization, an 131
organization, except a volunteer rescue service or volunteer fire 132
fighter's organization, shall have been in continuous existence as 133
such in this state for a period of two years immediately preceding 134
either the making of an application for a bingo license under 135
section 2915.08 of the Revised Code or the conducting of any 136
scheme of chance or game of chance as provided in division (C) of 137
section 2915.02 of the Revised Code. 138

(I) "Religious organization" means any church, body of 139
communicants, or group that is not organized or operated for 140
profit and that gathers in common membership for regular worship 141
and religious observances. 142

(J) "Educational organization" means any organization within 143
this state that is not organized for profit, the primary purpose 144
of which is to educate and develop the capabilities of individuals 145
through instruction, and that operates or contributes to the 146
support of a school, academy, college, or university. 147

(K) "Veteran's organization" means any individual post of a 148
national veteran's association or an auxiliary unit of any 149
individual post of a national veteran's association, which post or 150
auxiliary unit has been incorporated as a nonprofit corporation 151
for at least two years and has received a letter from the state 152
headquarters of the national veteran's association indicating that 153
the individual post or auxiliary unit is in good standing with the 154
national veteran's association. As used in this division, 155
"national veteran's association" means any veteran's association 156
that has been in continuous existence as such for a period of at 157
least ten years and either is incorporated by an act of the United 158
States congress or has a national dues-paying membership of at 159
least five thousand persons. 160

(L) "Volunteer fire fighter's organization" means any 161
organization of volunteer fire fighters, as defined in section 162
146.01 of the Revised Code, that is organized and operated 163
exclusively to provide financial support for a volunteer fire 164
department or a volunteer fire company. 165

(M) "Fraternal organization" means any society, order, or 166
association within this state, except a college or high school 167
fraternity, that is not organized for profit, that is a branch, 168
lodge, or chapter of a national or state organization, that exists 169
exclusively for the common business or sodality of its members, 170
and that has been in continuous existence in this state for a 171
period of five years. 172

(N) "Volunteer rescue service organization" means any 173

organization of volunteers organized to function as an emergency 174
medical service organization as defined in section 4765.01 of the 175
Revised Code. 176

(O) "Service organization" means any organization, not 177
organized for profit, that is organized and operated exclusively 178
to provide, or to contribute to the support of organizations or 179
institutions organized and operated exclusively to provide, 180
medical and therapeutic services for persons who are crippled, 181
born with birth defects, or have any other mental or physical 182
defect or those organized and operated exclusively to protect, or 183
to contribute to the support of organizations or institutions 184
organized and operated exclusively to protect, animals from 185
inhumane treatment. 186

(P) "Nonprofit medical organization" means any organization 187
that has been incorporated as a nonprofit corporation for at least 188
five years and that has continuously operated and will be operated 189
exclusively to provide, or to contribute to the support of 190
organizations or institutions organized and operated exclusively 191
to provide, hospital, medical, research, or therapeutic services 192
for the public. 193

(Q) "Senior citizen's organization" means any private 194
organization, not organized for profit, that is organized and 195
operated exclusively to provide recreational or social services 196
for persons who are fifty-five years of age or older and that is 197
described and qualified under subsection 501(c)(3) of the Internal 198
Revenue Code. 199

(R) "Charitable bingo game" means any bingo game that is 200
conducted by a charitable organization that has obtained a bingo 201
license pursuant to section 2915.08 of the Revised Code and the 202
proceeds of which are used for a charitable purpose. 203

(S) "Bingo" means: 204

(1) A game with all of the following characteristics:	205
(a) The participants use bingo cards that are divided into	206
twenty-five spaces arranged in five horizontal and five vertical	207
rows of spaces, with each space, except the central space, being	208
designated by a combination of a letter and a number and with the	209
central space being designated as a free space.	210
(b) The participants cover the spaces on the bingo cards that	211
correspond to combinations of letters and numbers that are	212
announced by a bingo game operator.	213
(c) A bingo game operator announces combinations of letters	214
and numbers that appear on objects that a bingo game operator	215
selects by chance, either manually or mechanically, from a	216
receptacle that contains seventy-five objects at the beginning of	217
each game, each object marked by a different combination of a	218
letter and a number that corresponds to one of the seventy-five	219
possible combinations of a letter and a number that can appear on	220
the bingo cards.	221
(d) The winner of the bingo game includes any participant who	222
properly announces during the interval between the announcements	223
of letters and numbers as described in division (S)(1)(c) of this	224
section, that a predetermined and preannounced pattern of spaces	225
has been covered on a bingo card being used by the participant.	226
(2) Any scheme or game other than a game as defined in	227
division (S)(1) of this section with the following	228
characteristics:	229
(a) The participants use cards, sheets, or other devices that	230
are divided into spaces arranged in horizontal, vertical, or	231
diagonal rows of spaces, with each space, except free spaces,	232
being designated by a single letter, number, or symbol; by a	233
combination of letters, numbers, or symbols; by a combination of a	234
letter and a number, a letter and a symbol, or a number and a	235

symbol; or by any combination of letters, numbers, and symbols, 236
with some or none of the spaces being designated as a free, 237
complimentary, or similar space. 238

(b) The participants cover the spaces on the cards, sheets, 239
or devices that correspond to letters, numbers, symbols, or 240
combinations of such that are announced by a bingo game operator 241
or otherwise transmitted to the participants. 242

(c) A bingo game operator announces, or otherwise transmits 243
to the participants, letters, numbers, symbols, or any combination 244
of such as set forth in division (S)(2)(a) of this section that 245
appear on objects that a bingo game operator selects by chance 246
that correspond to one of the possible letters, numbers, symbols, 247
or combinations of such that can appear on the bingo cards, 248
sheets, or devices. 249

(d) The winner of the bingo game is any participant who 250
properly announces that a predetermined and preannounced pattern 251
of spaces has been covered on a card, sheet, or device being used 252
by the participant. 253

(T) "Conduct" means to back, promote, organize, manage, carry 254
on, or prepare for the operation of a scheme or game of chance, 255
but does not include any act performed by a bingo game operator. 256

(U) "Bingo game operator" means any person, except security 257
personnel, who performs work or labor at the site of a bingo game 258
including, but not limited to, collecting money from participants, 259
handing out bingo cards or objects to cover spaces on the bingo 260
cards, selecting from a receptacle the objects that contain the 261
combination of letters and numbers that appear on the bingo cards, 262
calling out the combinations of letters and numbers, distributing 263
prizes to the winner of the bingo game, and preparing, selling, 264
and serving food or beverages. 265

(V) "Participant" means any person who plays bingo by 266

covering the spaces on a bingo card that correspond to 267
combinations of letters and numbers that are announced by a bingo 268
game operator. 269

(W) "Bingo session" means a period, not to exceed five 270
continuous hours, during which a person conducts one or more bingo 271
games. 272

(X) "Gross receipts" means all money or assets, including 273
admission fees, that a person receives from a bingo session that 274
the person conducts without the deduction of any amounts for 275
prizes paid out during the session or for the expenses of 276
conducting the bingo session. "Gross receipts" does not include 277
any money directly taken in from the sale of food or beverages by 278
a charitable organization conducting a bingo session, or by a bona 279
fide auxiliary unit or society of a charitable organization, at a 280
bingo session conducted by the charitable organization, provided 281
all of the following apply: 282

(1) The auxiliary unit or society has been in existence as a 283
bona fide auxiliary unit or society of the charitable organization 284
for at least two years prior to the bingo session. 285

(2) The person who purchases the food or beverage receives 286
nothing of value except the food or beverage and items customarily 287
received with the purchase of that food or beverage. 288

(3) The food and beverages are sold at customary and 289
reasonable prices. 290

(4) No person preparing, selling, or serving the food or 291
beverages at the site of the bingo game receives directly or 292
indirectly any form of compensation for the preparation, sale, or 293
service of the food or beverages. 294

(Y) "Security personnel" includes any person who either is a 295
sheriff, deputy sheriff, marshal, deputy marshal, township 296
constable, or member of an organized police department of a 297

municipal corporation or has successfully completed a peace 298
officer's training course pursuant to sections 109.71 to 109.79 of 299
the Revised Code and who is hired to provide security for the 300
premises on which a bingo game is conducted. 301

(Z) "To use gross receipts for a charitable purpose" means 302
that the proceeds of the bingo game are used by, or given, 303
donated, or otherwise transferred to, any organization that is 304
described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the 305
Internal Revenue Code and is either a governmental unit or an 306
organization that is tax exempt under subsection 501(a) and 307
described in subsection 501(c)(3) of the Internal Revenue Code; 308
that the proceeds of the bingo game are used by, or given, 309
donated, or otherwise transferred to a veteran's organization, as 310
defined in division (K) of this section, that is a post, chapter, 311
or organization of war veterans, or an auxiliary unit or society 312
of, or a trust or foundation for, any such post, chapter, or 313
organization organized in the United States or any of its 314
possessions, at least seventy-five per cent of the members of 315
which are war veterans and substantially all of the other members 316
of which are individuals who are veterans (but not war veterans) 317
or are cadets, or are spouses, widows or widowers of war veterans, 318
or such individuals, provided that no part of the net earnings of 319
such post or organization inures to the benefit of any private 320
shareholder or individual, and further provided that the bingo 321
game proceeds are used by the post or organization for the 322
charitable purposes set forth in division (B)~~(12)~~(11) of section 323
5739.02 of the Revised Code, are used for awarding scholarships to 324
or for attendance at an institution mentioned in division 325
(B)~~(12)~~(11) of section 5739.02 of the Revised Code, are donated to 326
a governmental agency, or are used for nonprofit youth activities, 327
the purchase of United States or Ohio flags that are donated to 328
schools, youth groups, or other bona fide nonprofit organizations, 329
promotion of patriotism, or disaster relief; that the proceeds of 330

the bingo game are used by, or given, donated, or otherwise 331
transferred to a fraternal organization that has been in 332
continuous existence in this state for fifteen years for use 333
exclusively for religious, charitable, scientific, literary, or 334
educational purposes, or for the prevention of cruelty to children 335
or animals and contributions for such use would qualify as a 336
deductible charitable contribution under subsection 170 of the 337
Internal Revenue Code; or that the proceeds of the bingo game are 338
used by a volunteer fire fighter's organization and are used by 339
the organization for the purposes set forth in division (L) of 340
this section. 341

(AA) "Internal Revenue Code" means the "Internal Revenue Code 342
of 1986," 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter 343
amended. 344

(BB) "Youth athletic organization" means any organization, 345
not organized for profit, that is organized and operated 346
exclusively to provide financial support to, or to operate, 347
athletic activities for persons who are twenty-one years of age or 348
younger by means of sponsoring, organizing, operating, or 349
contributing to the support of an athletic team, club, league, or 350
association. 351

(CC) "Youth athletic park organization" means any 352
organization, not organized for profit, that satisfies both of the 353
following: 354

(1) It owns, operates, and maintains playing fields that 355
satisfy both of the following: 356

(a) The playing fields are used at least one hundred days per 357
year for athletic activities by one or more organizations, not 358
organized for profit, each of which is organized and operated 359
exclusively to provide financial support to, or to operate, 360
athletic activities for persons who are eighteen years of age or 361

younger by means of sponsoring, organizing, operating, or 362
contributing to the support of an athletic team, club, league, or 363
association. 364

(b) The playing fields are not used for any profit-making 365
activity at any time during the year. 366

(2) It uses the proceeds of the bingo games it conducts 367
exclusively for the operation, maintenance, and improvement of its 368
playing fields of the type described in division (CC)(1) of this 369
section. 370

(DD) "Amateur athletic organization" means any organization, 371
not organized for profit, that is organized and operated 372
exclusively to provide financial support to, or to operate, 373
athletic activities for persons who are training for amateur 374
athletic competition that is sanctioned by a national governing 375
body as defined in the "Amateur Sports Act of 1978," 90 Stat. 376
3045, 36 U.S.C.A. 373. 377

Sec. 4505.06. (A)(1) Application for a certificate of title 378
shall be made in a form prescribed by the registrar of motor 379
vehicles and shall be sworn to before a notary public or other 380
officer empowered to administer oaths. The application shall be 381
filed with the clerk of any court of common pleas. An application 382
for a certificate of title may be filed electronically by any 383
electronic means approved by the registrar in any county with the 384
clerk of the court of common pleas of that county. Any payments 385
required by this chapter shall be considered as accompanying any 386
electronically transmitted application when payment actually is 387
received by the clerk. Payment of any fee or taxes may be made by 388
electronic transfer of funds. 389

(2) The application for a certificate of title shall be 390
accompanied by the fee prescribed in section 4505.09 of the 391
Revised Code. The fee shall be retained by the clerk who issues 392

the certificate of title and shall be distributed in accordance 393
with that section. If a clerk of a court of common pleas, other 394
than the clerk of the court of common pleas of an applicant's 395
county of residence, issues a certificate of title to the 396
applicant, the clerk shall transmit data related to the 397
transaction to the automated title processing system. 398

(3) If a certificate of title previously has been issued for 399
a motor vehicle in this state, the application for a certificate 400
of title also shall be accompanied by that certificate of title 401
duly assigned, unless otherwise provided in this chapter. If a 402
certificate of title previously has not been issued for the motor 403
vehicle in this state, the application, unless otherwise provided 404
in this chapter, shall be accompanied by a manufacturer's or 405
importer's certificate or by a certificate of title of another 406
state from which the motor vehicle was brought into this state. If 407
the application refers to a motor vehicle last previously 408
registered in another state, the application also shall be 409
accompanied by the physical inspection certificate required by 410
section 4505.061 of the Revised Code. If the application is made 411
by two persons regarding a motor vehicle in which they wish to 412
establish joint ownership with right of survivorship, they may do 413
so as provided in section 2131.12 of the Revised Code. If the 414
applicant requests a designation of the motor vehicle in 415
beneficiary form so that upon the death of the owner of the motor 416
vehicle, ownership of the motor vehicle will pass to a designated 417
transfer-on-death beneficiary or beneficiaries, the applicant may 418
do so as provided in section 2131.13 of the Revised Code. A person 419
who establishes ownership of a motor vehicle that is transferable 420
on death in accordance with section 2131.13 of the Revised Code 421
may terminate that type of ownership or change the designation of 422
the transfer-on-death beneficiary or beneficiaries by applying for 423
a certificate of title pursuant to this section. The clerk shall 424
retain the evidence of title presented by the applicant and on 425

which the certificate of title is issued, except that, if an 426
application for a certificate of title is filed electronically by 427
an electronic motor vehicle dealer on behalf of the purchaser of a 428
motor vehicle, the clerk shall retain the completed electronic 429
record to which the dealer converted the certificate of title 430
application and other required documents. The electronic motor 431
vehicle dealer shall forward the actual application and all other 432
documents relating to the sale of the motor vehicle to any clerk 433
within thirty days after the certificate of title is issued. The 434
registrar, after consultation with the attorney general, shall 435
adopt rules that govern the location at which, and the manner in 436
which, are stored the actual application and all other documents 437
relating to the sale of a motor vehicle when an electronic motor 438
vehicle dealer files the application for a certificate of title 439
electronically on behalf of the purchaser. 440

The clerk shall use reasonable diligence in ascertaining 441
whether or not the facts in the application for a certificate of 442
title are true by checking the application and documents 443
accompanying it or the electronic record to which a dealer 444
converted the application and accompanying documents with the 445
records of motor vehicles in the clerk's office. If the clerk is 446
satisfied that the applicant is the owner of the motor vehicle and 447
that the application is in the proper form, the clerk, within five 448
business days after the application is filed, shall issue a 449
physical certificate of title over the clerk's signature and 450
sealed with the clerk's seal, unless the applicant specifically 451
requests the clerk not to issue a physical certificate of title 452
and instead to issue an electronic certificate of title. For 453
purposes of the transfer of a certificate of title, if the clerk 454
is satisfied that the secured party has duly discharged a lien 455
notation but has not canceled the lien notation with a clerk, the 456
clerk may cancel the lien notation on the automated title 457
processing system and notify the clerk of the county of origin. 458

(4) In the case of the sale of a motor vehicle to a general 459
buyer or user by a dealer, by a motor vehicle leasing dealer 460
selling the motor vehicle to the lessee or, in a case in which the 461
leasing dealer subleased the motor vehicle, the sublessee, at the 462
end of the lease agreement or sublease agreement, or by a 463
manufactured home broker, the certificate of title shall be 464
obtained in the name of the buyer by the dealer, leasing dealer, 465
or manufactured home broker, as the case may be, upon application 466
signed by the buyer. The certificate of title shall be issued, or 467
the process of entering the certificate of title application 468
information into the automated title processing system if a 469
physical certificate of title is not to be issued shall be 470
completed, within five business days after the application for 471
title is filed with the clerk. If the buyer of the motor vehicle 472
previously leased the motor vehicle and is buying the motor 473
vehicle at the end of the lease pursuant to that lease, the 474
certificate of title shall be obtained in the name of the buyer by 475
the motor vehicle leasing dealer who previously leased the motor 476
vehicle to the buyer or by the motor vehicle leasing dealer who 477
subleased the motor vehicle to the buyer under a sublease 478
agreement. 479

In all other cases, except as provided in section 4505.032 480
and division (D)(2) of section 4505.11 of the Revised Code, such 481
certificates shall be obtained by the buyer. 482

(5)(a)(i) If the certificate of title is being obtained in 483
the name of the buyer by a motor vehicle dealer or motor vehicle 484
leasing dealer and there is a security interest to be noted on the 485
certificate of title, the dealer or leasing dealer shall submit 486
the application for the certificate of title and payment of the 487
applicable tax to a clerk within seven business days after the 488
later of the delivery of the motor vehicle to the buyer or the 489
date the dealer or leasing dealer obtains the manufacturer's or 490

importer's certificate, or certificate of title issued in the name 491
of the dealer or leasing dealer, for the motor vehicle. Submission 492
of the application for the certificate of title and payment of the 493
applicable tax within the required seven business days may be 494
indicated by postmark or receipt by a clerk within that period. 495

(ii) Upon receipt of the certificate of title with the 496
security interest noted on its face, the dealer or leasing dealer 497
shall forward the certificate of title to the secured party at the 498
location noted in the financing documents or otherwise specified 499
by the secured party. 500

(iii) A motor vehicle dealer or motor vehicle leasing dealer 501
is liable to a secured party for a late fee of ten dollars per day 502
for each certificate of title application and payment of the 503
applicable tax that is submitted to a clerk more than seven 504
business days but less than twenty-one days after the later of the 505
delivery of the motor vehicle to the buyer or the date the dealer 506
or leasing dealer obtains the manufacturer's or importer's 507
certificate, or certificate of title issued in the name of the 508
dealer or leasing dealer, for the motor vehicle and, from then on, 509
twenty-five dollars per day until the application and applicable 510
tax are submitted to a clerk. 511

(b) In all cases of transfer of a motor vehicle, the 512
application for certificate of title shall be filed within thirty 513
days after the assignment or delivery of the motor vehicle. If an 514
application for a certificate of title is not filed within the 515
period specified in division (A)(5)(b) of this section, the clerk 516
shall collect a fee of five dollars for the issuance of the 517
certificate, except that no such fee shall be required from a 518
motor vehicle salvage dealer, as defined in division (A) of 519
section 4738.01 of the Revised Code, who immediately surrenders 520
the certificate of title for cancellation. The fee shall be in 521
addition to all other fees established by this chapter, and shall 522

be retained by the clerk. The registrar shall provide, on the 523
certificate of title form prescribed by section 4505.07 of the 524
Revised Code, language necessary to give evidence of the date on 525
which the assignment or delivery of the motor vehicle was made. 526

(6) As used in division (A) of this section, "lease 527
agreement," "lessee," and "sublease agreement" have the same 528
meanings as in section 4505.04 of the Revised Code. 529

(B) The clerk, except as provided in this section, shall 530
refuse to accept for filing any application for a certificate of 531
title and shall refuse to issue a certificate of title unless the 532
dealer or manufactured home broker or the applicant, in cases in 533
which the certificate shall be obtained by the buyer, submits with 534
the application payment of the tax levied by or pursuant to 535
Chapters 5739. and 5741. of the Revised Code based on the 536
purchaser's county of residence. Upon payment of the tax in 537
accordance with division (E) of this section, the clerk shall 538
issue a receipt prescribed by the registrar and agreed upon by the 539
tax commissioner showing payment of the tax or a receipt issued by 540
the commissioner showing the payment of the tax. When submitting 541
payment of the tax to the clerk, a dealer shall retain any 542
discount to which the dealer is entitled under section 5739.12 of 543
the Revised Code. 544

For receiving and disbursing such taxes paid to the clerk by 545
a resident of the clerk's county, the clerk may retain a poundage 546
fee of one and one one-hundredth per cent, and the clerk shall pay 547
the poundage fee into the certificate of title administration fund 548
created by section 325.33 of the Revised Code. The clerk shall not 549
retain a poundage fee from payments of taxes by persons who do not 550
reside in the clerk's county. 551

A clerk, however, may retain from the taxes paid to the clerk 552
an amount equal to the poundage fees associated with certificates 553
of title issued by other clerks of courts of common pleas to 554

plicants who reside in the first clerk's county. The registrar, in 555
consultation with the tax commissioner and the clerks of the 556
courts of common pleas, shall develop a report from the automated 557
title processing system that informs each clerk of the amount of 558
the poundage fees that the clerk is permitted to retain from those 559
taxes because of certificates of title issued by the clerks of 560
other counties to applicants who reside in the first clerk's 561
county. 562

In the case of casual sales of motor vehicles, as defined in 563
section 4517.01 of the Revised Code, the price for the purpose of 564
determining the tax shall be the purchase price on the assigned 565
certificate of title executed by the seller and filed with the 566
clerk by the buyer on a form to be prescribed by the registrar, 567
which shall be prima-facie evidence of the amount for the 568
determination of the tax. 569

(C)(1) If the transferor indicates on the certificate of 570
title that the odometer reflects mileage in excess of the designed 571
mechanical limit of the odometer, the clerk shall enter the phrase 572
"exceeds mechanical limits" following the mileage designation. If 573
the transferor indicates on the certificate of title that the 574
odometer reading is not the actual mileage, the clerk shall enter 575
the phrase "nonactual: warning - odometer discrepancy" following 576
the mileage designation. The clerk shall use reasonable care in 577
transferring the information supplied by the transferor, but is 578
not liable for any errors or omissions of the clerk or those of 579
the clerk's deputies in the performance of the clerk's duties 580
created by this chapter. 581

The registrar shall prescribe an affidavit in which the 582
transferor shall swear to the true selling price and, except as 583
provided in this division, the true odometer reading of the motor 584
vehicle. The registrar may prescribe an affidavit in which the 585
seller and buyer provide information pertaining to the odometer 586

reading of the motor vehicle in addition to that required by this 587
section, as such information may be required by the United States 588
secretary of transportation by rule prescribed under authority of 589
subchapter IV of the "Motor Vehicle Information and Cost Savings 590
Act," 86 Stat. 961 (1972), 15 U.S.C. 1981. 591

(2) Division (C)(1) of this section does not require the 592
giving of information concerning the odometer and odometer reading 593
of a motor vehicle when ownership of a motor vehicle is being 594
transferred as a result of a bequest, under the laws of intestate 595
succession, to a survivor pursuant to section 2106.18, 2131.12, or 596
4505.10 of the Revised Code, to a transfer-on-death beneficiary or 597
beneficiaries pursuant to section 2131.13 of the Revised Code, or 598
in connection with the creation of a security interest. 599

(D) When the transfer to the applicant was made in some other 600
state or in interstate commerce, the clerk, except as provided in 601
this section, shall refuse to issue any certificate of title 602
unless the tax imposed by or pursuant to Chapter 5741. of the 603
Revised Code based on the purchaser's county of residence has been 604
paid as evidenced by a receipt issued by the tax commissioner, or 605
unless the applicant submits with the application payment of the 606
tax. Upon payment of the tax in accordance with division (E) of 607
this section, the clerk shall issue a receipt prescribed by the 608
registrar and agreed upon by the tax commissioner, showing payment 609
of the tax. 610

For receiving and disbursing such taxes paid to the clerk by 611
a resident of the clerk's county, the clerk may retain a poundage 612
fee of one and one one-hundredth per cent. The clerk shall not 613
retain a poundage fee from payments of taxes by persons who do not 614
reside in the clerk's county. 615

A clerk, however, may retain from the taxes paid to the clerk 616
an amount equal to the poundage fees associated with certificates 617
of title issued by other clerks of courts of common pleas to 618

cants who reside in the first clerk's county. The registrar, in 619
consultation with the tax commissioner and the clerks of the 620
courts of common pleas, shall develop a report from the automated 621
title processing system that informs each clerk of the amount of 622
the poundage fees that the clerk is permitted to retain from those 623
taxes because of certificates of title issued by the clerks of 624
other counties to applicants who reside in the first clerk's 625
county. 626

When the vendor is not regularly engaged in the business of 627
selling motor vehicles, the vendor shall not be required to 628
purchase a vendor's license or make reports concerning those 629
sales. 630

(E) The clerk shall accept any payment of a tax in cash, or 631
by cashier's check, certified check, draft, money order, or teller 632
check issued by any insured financial institution payable to the 633
clerk and submitted with an application for a certificate of title 634
under division (B) or (D) of this section. The clerk also may 635
accept payment of the tax by corporate, business, or personal 636
check, credit card, electronic transfer or wire transfer, debit 637
card, or any other accepted form of payment made payable to the 638
clerk. The clerk may require bonds, guarantees, or letters of 639
credit to ensure the collection of corporate, business, or 640
personal checks. Any service fee charged by a third party to a 641
clerk for the use of any form of payment may be paid by the clerk 642
from the certificate of title administration fund created in 643
section 325.33 of the Revised Code, or may be assessed by the 644
clerk upon the applicant as an additional fee. Upon collection, 645
the additional fees shall be paid by the clerk into that 646
certificate of title administration fund. 647

The clerk shall make a good faith effort to collect any 648
payment of taxes due but not made because the payment was returned 649
or dishonored, but the clerk is not personally liable for the 650

payment of uncollected taxes or uncollected fees. The clerk shall 651
notify the tax commissioner of any such payment of taxes that is 652
due but not made and shall furnish the information to the 653
commissioner that the commissioner requires. The clerk shall 654
deduct the amount of taxes due but not paid from the clerk's 655
periodic remittance of tax payments, in accordance with procedures 656
agreed upon by the tax commissioner. The commissioner may collect 657
taxes due by assessment in the manner provided in section 5739.13 658
of the Revised Code. 659

Any person who presents payment that is returned or 660
dishonored for any reason is liable to the clerk for payment of a 661
penalty over and above the amount of the taxes due. The clerk 662
shall determine the amount of the penalty, and the penalty shall 663
be no greater than that amount necessary to compensate the clerk 664
for banking charges, legal fees, or other expenses incurred by the 665
clerk in collecting the returned or dishonored payment. The 666
remedies and procedures provided in this section are in addition 667
to any other available civil or criminal remedies. Subsequently 668
collected penalties, poundage fees, and title fees, less any title 669
fee due the state, from returned or dishonored payments collected 670
by the clerk shall be paid into the certificate of title 671
administration fund. Subsequently collected taxes, less poundage 672
fees, shall be sent by the clerk to the treasurer of state at the 673
next scheduled periodic remittance of tax payments, with 674
information as the commissioner may require. The clerk may abate 675
all or any part of any penalty assessed under this division. 676

(F) In the following cases, the clerk shall accept for filing 677
an application and shall issue a certificate of title without 678
requiring payment or evidence of payment of the tax: 679

(1) When the purchaser is this state or any of its political 680
subdivisions, a church, or an organization whose purchases are 681
exempted by section 5739.02 of the Revised Code; 682

(2) When the transaction in this state is not a retail sale 683
as defined by section 5739.01 of the Revised Code; 684

(3) When the purchase is outside this state or in interstate 685
commerce and the purpose of the purchaser is not to use, store, or 686
consume within the meaning of section 5741.01 of the Revised Code; 687

(4) When the purchaser is the federal government; 688

(5) When the motor vehicle was purchased outside this state 689
for use outside this state; 690

(6) When the motor vehicle is purchased by a nonresident of 691
this state for immediate removal from this state, and will be 692
permanently titled and registered in another state, as provided by 693
division (B)~~(23)~~(22) of section 5739.02 of the Revised Code, and 694
upon presentation of a copy of the affidavit provided by that 695
section, and a copy of the exemption certificate provided by 696
section 5739.03 of the Revised Code. 697

The clerk shall forward all payments of taxes, less poundage 698
fees, to the treasurer of state in a manner to be prescribed by 699
the tax commissioner and shall furnish information to the 700
commissioner as the commissioner requires. 701

(G) An application, as prescribed by the registrar and agreed 702
to by the tax commissioner, shall be filled out and sworn to by 703
the buyer of a motor vehicle in a casual sale. The application 704
shall contain the following notice in bold lettering: "WARNING TO 705
TRANSFEROR AND TRANSFEREE (SELLER AND BUYER): You are required by 706
law to state the true selling price. A false statement is in 707
violation of section 2921.13 of the Revised Code and is punishable 708
by six months' imprisonment or a fine of up to one thousand 709
dollars, or both. All transfers are audited by the department of 710
taxation. The seller and buyer must provide any information 711
requested by the department of taxation. The buyer may be assessed 712
any additional tax found to be due." 713

(H) For sales of manufactured homes or mobile homes occurring 714
on or after January 1, 2000, the clerk shall accept for filing, 715
pursuant to Chapter 5739. of the Revised Code, an application for 716
a certificate of title for a manufactured home or mobile home 717
without requiring payment of any tax pursuant to section 5739.02, 718
5741.021, 5741.022, or 5741.023 of the Revised Code, or a receipt 719
issued by the tax commissioner showing payment of the tax. For 720
sales of manufactured homes or mobile homes occurring on or after 721
January 1, 2000, the applicant shall pay to the clerk an 722
additional fee of five dollars for each certificate of title 723
issued by the clerk for a manufactured or mobile home pursuant to 724
division (H) of section 4505.11 of the Revised Code and for each 725
certificate of title issued upon transfer of ownership of the 726
home. The clerk shall credit the fee to the county certificate of 727
title administration fund, and the fee shall be used to pay the 728
expenses of archiving those certificates pursuant to division (A) 729
of section 4505.08 and division (H)(3) of section 4505.11 of the 730
Revised Code. The tax commissioner shall administer any tax on a 731
manufactured or mobile home pursuant to Chapters 5739. and 5741. 732
of the Revised Code. 733

(I) Every clerk shall have the capability to transact by 734
electronic means all procedures and transactions relating to the 735
issuance of motor vehicle certificates of title that are described 736
in the Revised Code as being accomplished by electronic means. 737
738

Sec. 4981.20. (A) Any real or personal property, or both, of 739
the Ohio rail development commission that is acquired, 740
constructed, reconstructed, enlarged, improved, furnished, or 741
equipped, or any combination thereof, and leased or subleased 742
under authority of sections 4981.11 to 4981.26 of the Revised Code 743
shall be subject to ad valorem, sales, use, and franchise taxes 744

and to zoning, planning, and building regulations and fees, to the 745
same extent and in the same manner as if the lessee-user or 746
sublessee-user thereof, rather than the issuer, had acquired, 747
constructed, reconstructed, enlarged, improved, furnished, or 748
equipped, or any combination thereof, such real or personal 749
property, and title thereto was in the name of such lessee-user or 750
sublessee-user. 751

The transfer of tangible personal property by lease or 752
sublease under authority of sections 4981.11 to 4981.26 of the 753
Revised Code is not a sale as used in Chapter 5739. of the Revised 754
Code. The exemptions provided in divisions (B)(1) and ~~(14)~~(12) of 755
section 5739.02 of the Revised Code shall not be applicable to 756
purchases for a project under sections 4981.11 to 4981.26 of the 757
Revised Code. 758

The issuer shall be exempt from all taxes on its real or 759
personal property, or both, which has been acquired, constructed, 760
reconstructed, enlarged, improved, furnished, or equipped, or any 761
combination thereof, under sections 4981.11 to 4981.26 of the 762
Revised Code so long as such property is used by the issuer for 763
purposes ~~which~~ that would otherwise exempt such property; has 764
ceased to be used by a former lessee-user or sublessee-user and is 765
not occupied or used; or has been acquired by the issuer but 766
development has not yet commenced. The exemption shall be 767
effective as of the date the exempt use begins. All taxes on the 768
exempt real or personal property for the year should be prorated 769
and the taxes for the exempt portion of the year shall be remitted 770
by the county auditor. 771

(B) Bonds issued under sections 4981.11 to 4981.26 of the 772
Revised Code, the transfer thereof, and the interest and other 773
income from the bonds, including any profit made on the sale 774
thereof, are free from taxation within the state. 775

Sec. 5739.01. As used in this chapter:	776
(A) "Person" includes individuals, receivers, assignees,	777
trustees in bankruptcy, estates, firms, partnerships,	778
associations, joint-stock companies, joint ventures, clubs,	779
societies, corporations, the state and its political subdivisions,	780
and combinations of individuals of any form.	781
(B) "Sale" and "selling" include all of the following	782
transactions for a consideration in any manner, whether absolutely	783
or conditionally, whether for a price or rental, in money or by	784
exchange, and by any means whatsoever:	785
(1) All transactions by which title or possession, or both,	786
of tangible personal property, is or is to be transferred, or a	787
license to use or consume tangible personal property is or is to	788
be granted;	789
(2) All transactions by which lodging by a hotel is or is to	790
be furnished to transient guests;	791
(3) All transactions by which:	792
(a) An item of tangible personal property is or is to be	793
repaired, except property, the purchase of which would not be	794
subject to the tax imposed by section 5739.02 of the Revised Code;	795
(b) An item of tangible personal property is or is to be	796
installed, except property, the purchase of which would not be	797
subject to the tax imposed by section 5739.02 of the Revised Code	798
or property that is or is to be incorporated into and will become	799
a part of a production, transmission, transportation, or	800
distribution system for the delivery of a public utility service;	801
(c) The service of washing, cleaning, waxing, polishing, or	802
painting a motor vehicle is or is to be furnished;	803
(d) Industrial laundry cleaning services are or are to be	804

provided; 805

(e) Automatic data processing, computer services, or 806
electronic information services are or are to be provided for use 807
in business when the true object of the transaction is the receipt 808
by the consumer of automatic data processing, computer services, 809
or electronic information services rather than the receipt of 810
personal or professional services to which automatic data 811
processing, computer services, or electronic information services 812
are incidental or supplemental. Notwithstanding any other 813
provision of this chapter, such transactions that occur between 814
members of an affiliated group are not sales. An affiliated group 815
means two or more persons related in such a way that one person 816
owns or controls the business operation of another member of the 817
group. In the case of corporations with stock, one corporation 818
owns or controls another if it owns more than fifty per cent of 819
the other corporation's common stock with voting rights. 820

(f) Telecommunications service, other than mobile 821
telecommunications service after July 31, 2002, is or is to be 822
provided that originates or terminates in this state and is 823
charged in the records of the telecommunications service vendor to 824
the consumer's telephone number or account in this state, or that 825
both originates and terminates in this state; but does not include 826
transactions by which telecommunications service is paid for by 827
using a prepaid authorization number or prepaid telephone calling 828
card, or by which local telecommunications service is obtained 829
from a coin-operated telephone and paid for by using coin; 830

(g) Landscaping and lawn care service is or is to be 831
provided; 832

(h) Private investigation and security service is or is to be 833
provided; 834

(i) Information services or tangible personal property is 835

provided or ordered by means of a nine hundred telephone call; 836

(j) Building maintenance and janitorial service is or is to 837
be provided; 838

(k) Employment service is or is to be provided; 839

(l) Employment placement service is or is to be provided; 840

(m) Exterminating service is or is to be provided; 841

(n) Physical fitness facility service is or is to be 842
provided; 843

(o) Recreation and sports club service is or is to be 844
provided. 845

(p) After July 31, 2002, mobile telecommunications service is 846
or is to be provided ~~in this state~~ when that service is sitused to 847
this state pursuant to the "Mobile Telecommunications Sourcing 848
Act," P- Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 849
U.S.C.A. 116 to 126, as amended. 850

(4) All transactions by which printed, imprinted, 851
overprinted, lithographic, multilithic, blueprinted, photostatic, 852
or other productions or reproductions of written or graphic matter 853
are or are to be furnished or transferred; 854

(5) The production or fabrication of tangible personal 855
property for a consideration for consumers who furnish either 856
directly or indirectly the materials used in the production of 857
fabrication work; and include the furnishing, preparing, or 858
serving for a consideration of any tangible personal property 859
consumed on the premises of the person furnishing, preparing, or 860
serving such tangible personal property. Except as provided in 861
section 5739.03 of the Revised Code, a construction contract 862
pursuant to which tangible personal property is or is to be 863
incorporated into a structure or improvement on and becoming a 864
part of real property is not a sale of such tangible personal 865

property. The construction contractor is the consumer of such 866
tangible personal property, provided that the sale and 867
installation of carpeting, the sale and installation of 868
agricultural land tile, the sale and erection or installation of 869
portable grain bins, or the provision of landscaping and lawn care 870
service and the transfer of property as part of such service is 871
never a construction contract. ~~The transfer of copyrighted motion 872
picture films for exhibition purposes is not a sale, except such 873
films as are used solely for advertising purposes. Other than as 874
provided in this section, "sale" and "selling" do not include 875
transfers of interest in leased property where the original lessee 876
and the terms of the original lease agreement remain unchanged, or 877
professional, insurance, or personal service transactions that 878
involve the transfer of tangible personal property as an 879
inconsequential element, for which no separate charges are made. 880~~

As used in division (B)(5) of this section: 881

(a) "Agricultural land tile" means fired clay or concrete 882
tile, or flexible or rigid perforated plastic pipe or tubing, 883
incorporated or to be incorporated into a subsurface drainage 884
system appurtenant to land used or to be used directly in 885
production by farming, agriculture, horticulture, or floriculture. 886
The term does not include such materials when they are or are to 887
be incorporated into a drainage system appurtenant to a building 888
or structure even if the building or structure is used or to be 889
used in such production. 890

(b) "Portable grain bin" means a structure that is used or to 891
be used by a person engaged in farming or agriculture to shelter 892
the person's grain and that is designed to be disassembled without 893
significant damage to its component parts. 894

(6) All transactions in which all of the shares of stock of a 895
closely held corporation are transferred, if the corporation is 896
not engaging in business and its entire assets consist of boats, 897

planes, motor vehicles, or other tangible personal property 898
operated primarily for the use and enjoyment of the shareholders; 899

(7) All transactions in which a warranty, maintenance or 900
service contract, or similar agreement by which the vendor of the 901
warranty, contract, or agreement agrees to repair or maintain the 902
tangible personal property of the consumer is or is to be 903
provided; 904

(8) All transactions by which a prepaid authorization number 905
or a prepaid telephone calling card is or is to be transferred; 906

(9) The transfer of copyrighted motion picture films used 907
solely for advertising purposes, except that the transfer of such 908
films for exhibition purposes is not a sale. 909

Other than as provided in this section, "sale" and "selling" 910
do not include transfers of interest in leased property where the 911
original lessee and the terms of the original lease agreement 912
remain unchanged; the transportation of persons or property, 913
unless the transportation is by a private investigation and 914
security service; or professional, insurance, or personal service 915
transactions that involve the transfer of tangible personal 916
property as an inconsequential element, for which no separate 917
charges are made. 918

(C) "Vendor" means the person providing the service or by 919
whom the transfer effected or license given by a sale is or is to 920
be made or given and, for sales described in division (B)(3)(i) of 921
this section, the telecommunications service vendor that provides 922
the nine hundred telephone service; if two or more persons are 923
engaged in business at the same place of business under a single 924
trade name in which all collections on account of sales by each 925
are made, such persons shall constitute a single vendor. 926

Physicians, dentists, hospitals, and veterinarians who are 927
engaged in selling tangible personal property as received from 928

others, such as eyeglasses, mouthwashes, dentifrices, or similar 929
articles, are vendors. Veterinarians who are engaged in 930
transferring to others for a consideration drugs, the dispensing 931
of which does not require an order of a licensed veterinarian or 932
physician under federal law, are vendors. 933

(D)(1) "Consumer" means the person for whom the service is 934
provided, to whom the transfer effected or license given by a sale 935
is or is to be made or given, to whom the service described in 936
division (B)(3)(f) or (i) of this section is charged, or to whom 937
the admission is granted. 938

(2) Physicians, dentists, hospitals, and blood banks operated 939
by nonprofit institutions and persons licensed to practice 940
veterinary medicine, surgery, and dentistry are consumers of all 941
tangible personal property and services purchased by them in 942
connection with the practice of medicine, dentistry, the rendition 943
of hospital or blood bank service, or the practice of veterinary 944
medicine, surgery, and dentistry. In addition to being consumers 945
of drugs administered by them or by their assistants according to 946
their direction, veterinarians also are consumers of drugs that 947
under federal law may be dispensed only by or upon the order of a 948
licensed veterinarian or physician, when transferred by them to 949
others for a consideration to provide treatment to animals as 950
directed by the veterinarian. 951

(3) A person who performs a facility management, or similar 952
service contract for a contractee is a consumer of all tangible 953
personal property and services purchased for use in connection 954
with the performance of such contract, regardless of whether title 955
to any such property vests in the contractee. The purchase of such 956
property and services is not subject to the exception for resale 957
under division (E)(1) of this section. 958

(4)(a) In the case of a person who purchases printed matter 959
for the purpose of distributing it or having it distributed to the 960

public or to a designated segment of the public, free of charge, 961
that person is the consumer of that printed matter, and the 962
purchase of that printed matter for that purpose is a sale. 963

(b) In the case of a person who produces, rather than 964
purchases, printed matter for the purpose of distributing it or 965
having it distributed to the public or to a designated segment of 966
the public, free of charge, that person is the consumer of all 967
tangible personal property and services purchased for use or 968
consumption in the production of that printed matter. That person 969
is not entitled to claim exception under division (E)(8) of this 970
section for any material incorporated into the printed matter or 971
any equipment, supplies, or services primarily used to produce the 972
printed matter. 973

(c) The distribution of printed matter to the public or to a 974
designated segment of the public, free of charge, is not a sale to 975
the members of the public to whom the printed matter is 976
distributed or to any persons who purchase space in the printed 977
matter for advertising or other purposes. 978

(5) A person who makes sales of any of the services listed in 979
division (B)(3) of this section is the consumer of any tangible 980
personal property used in performing the service. The purchase of 981
that property is not subject to the resale exception under 982
division (E)(1) of this section. 983

(6) A person who engages in highway transportation for hire 984
is the consumer of all packaging materials purchased by that 985
person used in performing the service, except for packaging 986
materials sold by such person in a transaction separate from the 987
service. 988

(E) "Retail sale" and "sales at retail" include all sales 989
except those in which the purpose of the consumer is: 990

(1) To resell the thing transferred or benefit of the service 991

provided, by a person engaging in business, in the form in which 992
the same is, or is to be, received by the person; 993

(2) To incorporate the thing transferred as a material or a 994
part, into tangible personal property to be produced for sale by 995
manufacturing, assembling, processing, or refining, or to use or 996
consume the thing transferred directly in producing a product for 997
sale by mining, including without limitation the extraction from 998
the earth of all substances that are classed geologically as 999
minerals, production of crude oil and natural gas, farming, 1000
agriculture, horticulture, or floriculture, and persons engaged in 1001
rendering farming, agricultural, horticultural, or floricultural 1002
services, and services in the exploration for, and production of, 1003
crude oil and natural gas, for others are deemed engaged directly 1004
in farming, agriculture, horticulture, and floriculture, or 1005
exploration for, and production of, crude oil and natural gas; 1006
directly in the rendition of a public utility service, except that 1007
the sales tax levied by section 5739.02 of the Revised Code shall 1008
be collected upon all meals, drinks, and food for human 1009
consumption sold upon Pullman and railroad coaches. This paragraph 1010
does not exempt or except from "retail sale" or "sales at retail" 1011
the sale of tangible personal property that is to be incorporated 1012
into a structure or improvement to real property. 1013

(3) To hold the thing transferred as security for the 1014
performance of an obligation of the vendor; 1015

(4) To use or consume the thing transferred in the process of 1016
reclamation as required by Chapters 1513. and 1514. of the Revised 1017
Code; 1018

(5) To resell, hold, use, or consume the thing transferred as 1019
evidence of a contract of insurance; 1020

(6) To use or consume the thing directly in commercial 1021
fishing; 1022

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

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

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

(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;

(11) To use the thing transferred as qualified research and development equipment;

(12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. Division (E)(12) of this section does not apply to motor vehicles registered for operation on the public highways. As used in division (E)(12) of this section, "affiliated group" has the same meaning as in division (B)(3)(e)

of this section and "direct marketing" has the same meaning as in 1054
division (B)~~(36)~~(35) of section 5739.02 of the Revised Code. 1055

(13) To use or consume the thing transferred to fulfill a 1056
contractual obligation incurred by a warrantor pursuant to a 1057
warranty provided as a part of the price of the tangible personal 1058
property sold or by a vendor of a warranty, maintenance or service 1059
contract, or similar agreement the provision of which is defined 1060
as a sale under division (B)(7) of this section; 1061

(14) To use or consume the thing transferred in the 1062
production of a newspaper for distribution to the public; 1063

(15) To use tangible personal property to perform a service 1064
listed in division (B)(3) of this section, if the property is or 1065
is to be permanently transferred to the consumer of the service as 1066
an integral part of the performance of the service. 1067

As used in division (E) of this section, "thing" includes all 1068
transactions included in divisions (B)(3)(a), (b), and (e) of this 1069
section. 1070

Sales conducted through a coin-operated device that activates 1071
vacuum equipment or equipment that dispenses water, whether or not 1072
in combination with soap or other cleaning agents or wax, to the 1073
consumer for the consumer's use on the premises in washing, 1074
cleaning, or waxing a motor vehicle, provided no other personal 1075
property or personal service is provided as part of the 1076
transaction, are not retail sales or sales at retail. 1077

(F) "Business" includes any activity engaged in by any person 1078
with the object of gain, benefit, or advantage, either direct or 1079
indirect. "Business" does not include the activity of a person in 1080
managing and investing the person's own funds. 1081

(G) "Engaging in business" means commencing, conducting, or 1082
continuing in business, and liquidating a business when the 1083
liquidator thereof holds itself out to the public as conducting 1084

such business. Making a casual sale is not engaging in business. 1085

(H)(1) "Price," except as provided in divisions (H)(2) and 1086
(3) of this section, means the aggregate value in money of 1087
anything paid or delivered, or promised to be paid or delivered, 1088
in the complete performance of a retail sale, without any 1089
deduction on account of the cost of the property sold, cost of 1090
materials used, labor or service cost, interest, discount paid or 1091
allowed after the sale is consummated, or any other expense. If 1092
the retail sale consists of the rental or lease of tangible 1093
personal property, "price" means the aggregate value in money of 1094
anything paid or delivered, or promised to be paid or delivered, 1095
in the complete performance of the rental or lease, without any 1096
deduction for tax, interest, labor or service charge, damage 1097
liability waiver, termination or damage charge, discount paid or 1098
allowed after the lease is consummated, or any other expense. 1099
Except as provided in division (H)(4) of this section, the sales 1100
tax shall be calculated and collected by the lessor on each 1101
payment made by the lessee. "Price" does not include the 1102
consideration received as a deposit refundable to the consumer 1103
upon return of a beverage container, the consideration received as 1104
a deposit on a carton or case that is used for such returnable 1105
containers, or the consideration received as a refundable security 1106
deposit for the use of tangible personal property to the extent 1107
that it actually is refunded, if the consideration for such 1108
refundable deposit is separately stated from the consideration 1109
received or to be received for the tangible personal property 1110
transferred in the retail sale. Such separation must appear in the 1111
sales agreement or on the initial invoice or initial billing 1112
rendered by the vendor to the consumer. "Price" also does not 1113
include delivery charges that are separately stated on the initial 1114
invoice or initial billing rendered by the vendor. Price is the 1115
amount received inclusive of the tax, provided the vendor 1116
establishes to the satisfaction of the tax commissioner that the 1117

tax was added to the price. When the price includes both a charge 1118
for tangible personal property and a charge for providing a 1119
service and the sale of the property and the charge for the 1120
service are separately taxable, or have a separately determinable 1121
tax status, the price shall be separately stated for each such 1122
charge so the tax can be correctly computed and charged. 1123

The tax collected by the vendor from the consumer under this 1124
chapter is not part of the price, but is a tax collection for the 1125
benefit of the state and of counties levying an additional sales 1126
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 1127
and of transit authorities levying an additional sales tax 1128
pursuant to section 5739.023 of the Revised Code. Except for the 1129
discount authorized in section 5739.12 of the Revised Code and the 1130
effects of any rounding pursuant to section 5703.055 of the 1131
Revised Code, no person other than the state or such a county or 1132
transit authority shall derive any benefit from the collection or 1133
payment of such tax. 1134

As used in division (H)(1) of this section, "delivery 1135
charges" means charges by the vendor for preparation and delivery 1136
to a location designated by the consumer of tangible personal 1137
property or a service, including transportation, shipping, 1138
postage, handling, crating, and packing. 1139

(2) In the case of a sale of any new motor vehicle by a new 1140
motor vehicle dealer, as defined in section 4517.01 of the Revised 1141
Code, in which another motor vehicle is accepted by the dealer as 1142
part of the consideration received, "price" has the same meaning 1143
as in division (H)(1) of this section, reduced by the credit 1144
afforded the consumer by the dealer for the motor vehicle received 1145
in trade. 1146

(3) In the case of a sale of any watercraft or outboard motor 1147
by a watercraft dealer licensed in accordance with section 1148
1547.543 of the Revised Code, in which another watercraft, 1149

watercraft and trailer, or outboard motor is accepted by the 1150
dealer as part of the consideration received, "price" has the same 1151
meaning as in division (H)(1) of this section, reduced by the 1152
credit afforded the consumer by the dealer for the watercraft, 1153
watercraft and trailer, or outboard motor received in trade. 1154

(4) In the case of the lease of any motor vehicle designed by 1155
the manufacturer to carry a load of not more than one ton, 1156
watercraft, outboard motor, or aircraft, or the lease of any 1157
tangible personal property, other than motor vehicles designed by 1158
the manufacturer to carry a load of more than one ton, to be used 1159
by the lessee primarily for business purposes, the sales tax shall 1160
be collected by the vendor at the time the lease is consummated 1161
and shall be calculated by the vendor on the basis of the total 1162
amount to be paid by the lessee under the lease agreement. If the 1163
total amount of the consideration for the lease includes amounts 1164
that are not calculated at the time the lease is executed, the tax 1165
shall be calculated and collected by the vendor at the time such 1166
amounts are billed to the lessee. In the case of an open-end 1167
lease, the sales tax shall be calculated by the vendor on the 1168
basis of the total amount to be paid during the initial fixed term 1169
of the lease, and then for each subsequent renewal period as it 1170
comes due. 1171

As used in divisions (H)(3) and (4) of this section, "motor 1172
vehicle" has the same meaning as in section 4501.01 of the Revised 1173
Code, and "watercraft" includes an outdrive unit attached to the 1174
watercraft. 1175

(I) "Receipts" means the total amount of the prices of the 1176
sales of vendors, provided that cash discounts allowed and taken 1177
on sales at the time they are consummated are not included, minus 1178
any amount deducted as a bad debt pursuant to section 5739.121 of 1179
the Revised Code. "Receipts" does not include the sale price of 1180
property returned or services rejected by consumers when the full 1181

sale price and tax are refunded either in cash or by credit.	1182
(J) "Place of business" means any location at which a person engages in business.	1183 1184
(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.	1185 1186 1187 1188 1189
(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.	1190 1191 1192 1193 1194 1195 1196 1197 1198 1199 1200
(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures.	1201 1202 1203 1204 1205
(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.	1206 1207 1208
(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not	1209 1210 1211 1212

include the preliminary acts of promoting or soliciting the retail 1213
sales, other than the distribution of printed matter which 1214
displays or describes and prices the item offered for sale, nor 1215
does it include delivery of a predetermined quantity of tangible 1216
personal property or transportation of property or personnel to or 1217
from a place where a service is performed, regardless of whether 1218
the vendor is a delivery vendor. 1219

(P) "Used directly in the rendition of a public utility 1220
service" means that property which is to be incorporated into and 1221
will become a part of the consumer's production, transmission, 1222
transportation, or distribution system and that retains its 1223
classification as tangible personal property after such 1224
incorporation; fuel or power used in the production, transmission, 1225
transportation, or distribution system; and tangible personal 1226
property used in the repair and maintenance of the production, 1227
transmission, transportation, or distribution system, including 1228
only such motor vehicles as are specially designed and equipped 1229
for such use. Tangible personal property and services used 1230
primarily in providing highway transportation for hire are not 1231
used in providing a public utility service as defined in this 1232
division. 1233

(Q) "Refining" means removing or separating a desirable 1234
product from raw or contaminated materials by distillation or 1235
physical, mechanical, or chemical processes. 1236

(R) "Assembly" and "assembling" mean attaching or fitting 1237
together parts to form a product, but do not include packaging a 1238
product. 1239

(S) "Manufacturing operation" means a process in which 1240
materials are changed, converted, or transformed into a different 1241
state or form from which they previously existed and includes 1242
refining materials, assembling parts, and preparing raw materials 1243
and parts by mixing, measuring, blending, or otherwise committing 1244

such materials or parts to the manufacturing process. 1245

"Manufacturing operation" does not include packaging. 1246

(T) "Fiscal officer" means, with respect to a regional 1247
transit authority, the secretary-treasurer thereof, and with 1248
respect to a county that is a transit authority, the fiscal 1249
officer of the county transit board if one is appointed pursuant 1250
to section 306.03 of the Revised Code or the county auditor if the 1251
board of county commissioners operates the county transit system. 1252

(U) "Transit authority" means a regional transit authority 1253
created pursuant to section 306.31 of the Revised Code or a county 1254
in which a county transit system is created pursuant to section 1255
306.01 of the Revised Code. For the purposes of this chapter, a 1256
transit authority must extend to at least the entire area of a 1257
single county. A transit authority that includes territory in more 1258
than one county must include all the area of the most populous 1259
county that is a part of such transit authority. County population 1260
shall be measured by the most recent census taken by the United 1261
States census bureau. 1262

(V) "Legislative authority" means, with respect to a regional 1263
transit authority, the board of trustees thereof, and with respect 1264
to a county that is a transit authority, the board of county 1265
commissioners. 1266

(W) "Territory of the transit authority" means all of the 1267
area included within the territorial boundaries of a transit 1268
authority as they from time to time exist. Such territorial 1269
boundaries must at all times include all the area of a single 1270
county or all the area of the most populous county that is a part 1271
of such transit authority. County population shall be measured by 1272
the most recent census taken by the United States census bureau. 1273

(X) "Providing a service" means providing or furnishing 1274
anything described in division (B)(3) of this section for 1275

consideration. 1276

(Y)(1)(a) "Automatic data processing" means processing of 1277
others' data, including keypunching or similar data entry services 1278
together with verification thereof, or providing access to 1279
computer equipment for the purpose of processing data. 1280

(b) "Computer services" means providing services consisting 1281
of specifying computer hardware configurations and evaluating 1282
technical processing characteristics, computer programming, and 1283
training of computer programmers and operators, provided in 1284
conjunction with and to support the sale, lease, or operation of 1285
taxable computer equipment or systems. 1286

(c) "Electronic information services" means providing access 1287
to computer equipment by means of telecommunications equipment for 1288
the purpose of either of the following: 1289

(i) Examining or acquiring data stored in or accessible to 1290
the computer equipment; 1291

(ii) Placing data into the computer equipment to be retrieved 1292
by designated recipients with access to the computer equipment. 1293

(d) "Automatic data processing, computer services, or 1294
electronic information services" shall not include personal or 1295
professional services. 1296

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 1297
section, "personal and professional services" means all services 1298
other than automatic data processing, computer services, or 1299
electronic information services, including but not limited to: 1300

(a) Accounting and legal services such as advice on tax 1301
matters, asset management, budgetary matters, quality control, 1302
information security, and auditing and any other situation where 1303
the service provider receives data or information and studies, 1304
alters, analyzes, interprets, or adjusts such material; 1305

(b) Analyzing business policies and procedures;	1306
(c) Identifying management information needs;	1307
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	1308 1309 1310
(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;	1311 1312 1313 1314
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	1315 1316 1317
(g) Testing of business procedures;	1318
(h) Training personnel in business procedure applications;	1319
(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;	1320 1321 1322 1323 1324 1325
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	1326 1327
The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.	1328 1329
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	1330 1331 1332
(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in	1333 1334

transportation of personal property belonging to others for 1335
consideration over or on highways, roadways, streets, or any 1336
similar public thoroughfare; 1337

(2) A person who engages in the transportation of personal 1338
property belonging to others for consideration over or on 1339
highways, roadways, streets, or any similar public thoroughfare 1340
but who could not have engaged in such transportation on December 1341
11, 1985, unless the person was the holder of a permit or 1342
certificate of the types described in division (Z)(1) of this 1343
section; 1344

(3) A person who leases a motor vehicle to and operates it 1345
for a person described by division (Z)(1) or (2) of this section. 1346

(AA) "Telecommunications service" means the transmission of 1347
any interactive, two-way electromagnetic communications, including 1348
voice, image, data, and information, through the use of any medium 1349
such as wires, cables, microwaves, cellular radio, radio waves, 1350
light waves, or any combination of those or similar media. 1351
"Telecommunications service" includes message toll service even 1352
though the vendor provides the message toll service by means of 1353
wide area transmission type service or private communications 1354
service purchased from another telecommunications service 1355
provider, but does not include any of the following: 1356

(1) Sales of incoming or outgoing wide area transmission 1357
service or wide area transmission type service, including eight 1358
hundred or eight-hundred-type service, to the person contracting 1359
for the receipt of that service; 1360

(2) Sales of private communications service to the person 1361
contracting for the receipt of that service that entitles the 1362
purchaser to exclusive or priority use of a communications channel 1363
or group of channels between exchanges; 1364

(3) Sales of telecommunications service by companies subject 1365

to the excise tax imposed by Chapter 5727. of the Revised Code;	1366
(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;	1367 1368 1369
(5) Value-added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;	1370 1371 1372
(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code;	1373 1374 1375
(7) After July 31, 2002, mobile telecommunications service.	1376
(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.	1377 1378 1379 1380
(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.	1381 1382 1383 1384 1385 1386 1387 1388 1389
(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or	1390 1391 1392 1393 1394 1395 1396

other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

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

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

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person

primarily to perform research and development. Tangible personal 1429
property primarily used in testing, as defined in division (A)(4) 1430
of section 5739.011 of the Revised Code, or used for recording or 1431
storing test results, is not qualified research and development 1432
equipment unless such property is primarily used by the consumer 1433
in testing the product, equipment, or manufacturing process being 1434
created, designed, or formulated by the consumer in the research 1435
and development activity or in recording or storing such test 1436
results. 1437

(II) "Building maintenance and janitorial service" means 1438
cleaning the interior or exterior of a building and any tangible 1439
personal property located therein or thereon, including any 1440
services incidental to such cleaning for which no separate charge 1441
is made. However, "building maintenance and janitorial service" 1442
does not include the providing of such service by a person who has 1443
less than five thousand dollars in sales of such service during 1444
the calendar year. 1445

(JJ) "Employment service" means providing or supplying 1446
personnel, on a temporary or long-term basis, to perform work or 1447
labor under the supervision or control of another, when the 1448
personnel so supplied receive their wages, salary, or other 1449
compensation from the provider of the service. "Employment 1450
service" does not include: 1451

(1) Acting as a contractor or subcontractor, where the 1452
personnel performing the work are not under the direct control of 1453
the purchaser. 1454

(2) Medical and health care services. 1455

(3) Supplying personnel to a purchaser pursuant to a contract 1456
of at least one year between the service provider and the 1457
purchaser that specifies that each employee covered under the 1458
contract is assigned to the purchaser on a permanent basis. 1459

(4) Transactions between members of an affiliated group, as 1460
defined in division (B)(3)(e) of this section. 1461

(KK) "Employment placement service" means locating or finding 1462
employment for a person or finding or locating an employee to fill 1463
an available position. 1464

(LL) "Exterminating service" means eradicating or attempting 1465
to eradicate vermin infestations from a building or structure, or 1466
the area surrounding a building or structure, and includes 1467
activities to inspect, detect, or prevent vermin infestation of a 1468
building or structure. 1469

(MM) "Physical fitness facility service" means all 1470
transactions by which a membership is granted, maintained, or 1471
renewed, including initiation fees, membership dues, renewal fees, 1472
monthly minimum fees, and other similar fees and dues, by a 1473
physical fitness facility such as an athletic club, health spa, or 1474
gymnasium, which entitles the member to use the facility for 1475
physical exercise. 1476

(NN) "Recreation and sports club service" means all 1477
transactions by which a membership is granted, maintained, or 1478
renewed, including initiation fees, membership dues, renewal fees, 1479
monthly minimum fees, and other similar fees and dues, by a 1480
recreation and sports club, which entitles the member to use the 1481
facilities of the organization. "Recreation and sports club" means 1482
an organization that has ownership of, or controls or leases on a 1483
continuing, long-term basis, the facilities used by its members 1484
and includes an aviation club, gun or shooting club, yacht club, 1485
card club, swimming club, tennis club, golf club, country club, 1486
riding club, amateur sports club, or similar organization. 1487

(OO) "Livestock" means farm animals commonly raised for food 1488
or food production, and includes but is not limited to cattle, 1489
sheep, goats, swine, and poultry. "Livestock" does not include 1490

invertebrates, fish, amphibians, reptiles, horses, domestic pets, 1491
animals for use in laboratories or for exhibition, or other 1492
animals not commonly raised for food or food production. 1493

(PP) "Livestock structure" means a building or structure used 1494
exclusively for the housing, raising, feeding, or sheltering of 1495
livestock, and includes feed storage or handling structures and 1496
structures for livestock waste handling. 1497

(QQ) "Horticulture" means the growing, cultivation, and 1498
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 1499
and nursery stock. As used in this division, "nursery stock" has 1500
the same meaning as in section 927.51 of the Revised Code. 1501

(RR) "Horticulture structure" means a building or structure 1502
used exclusively for the commercial growing, raising, or 1503
overwintering of horticultural products, and includes the area 1504
used for stocking, storing, and packing horticultural products 1505
when done in conjunction with the production of those products. 1506

(SS) "Newspaper" means an unbound publication bearing a title 1507
or name that is regularly published, at least as frequently as 1508
biweekly, and distributed from a fixed place of business to the 1509
public in a specific geographic area, and that contains a 1510
substantial amount of news matter of international, national, or 1511
local events of interest to the general public. 1512

(TT) "Professional racing team" means a person that employs 1513
at least twenty full-time employees for the purpose of conducting 1514
a motor vehicle racing business for profit. The person must 1515
conduct the business with the purpose of racing one or more motor 1516
racing vehicles in at least ten competitive professional racing 1517
events each year that comprise all or part of a motor racing 1518
series sanctioned by one or more motor racing sanctioning 1519
organizations. A "motor racing vehicle" means a vehicle for which 1520
the chassis, engine, and parts are designed exclusively for motor 1521

racing, and does not include a stock or production model vehicle 1522
that may be modified for use in racing. For the purposes of this 1523
division: 1524

(1) A "competitive professional racing event" is a motor 1525
vehicle racing event sanctioned by one or more motor racing 1526
sanctioning organizations, at which aggregate cash prizes in 1527
excess of eight hundred thousand dollars are awarded to the 1528
competitors. 1529

(2) "Full-time employee" means an individual who is employed 1530
for consideration for thirty-five or more hours a week, or who 1531
renders any other standard of service generally accepted by custom 1532
or specified by contract as full-time employment. 1533

(UU)(1) "Prepaid authorization number" means a numeric or 1534
alphanumeric combination that represents a prepaid account that 1535
can be used by the account holder solely to obtain 1536
telecommunications service, and includes any renewals or increases 1537
in the prepaid account. 1538

(2) "Prepaid telephone calling card" means a tangible item 1539
that contains a prepaid authorization number that can be used 1540
solely to obtain telecommunications service, and includes any 1541
renewals or increases in the prepaid account. 1542

(VV) "Lease" means any transfer for a consideration of the 1543
possession of and right to use, but not title to, tangible 1544
personal property for a fixed period of time greater than thirty 1545
days or for an open-ended period of time with a minimum fixed 1546
period of more than thirty days. 1547

(WW) "Mobile telecommunications service" has the same meaning 1548
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 1549
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended. 1550

(XX) "Certified service provider" has the same meaning as in 1551
section 5740.01 of the Revised Code. 1552

Sec. 5739.02. For the purpose of providing revenue with which 1553
to meet the needs of the state, for the use of the general revenue 1554
fund of the state, for the purpose of securing a thorough and 1555
efficient system of common schools throughout the state, for the 1556
purpose of affording revenues, in addition to those from general 1557
property taxes, permitted under constitutional limitations, and 1558
from other sources, for the support of local governmental 1559
functions, and for the purpose of reimbursing the state for the 1560
expense of administering this chapter, an excise tax is hereby 1561
levied on each retail sale made in this state. 1562

(A) The tax shall be collected pursuant to the schedules in 1563
section 5739.025 of the Revised Code. 1564

The tax applies and is collectible when the sale is made, 1565
regardless of the time when the price is paid or delivered. 1566

In the case of a sale, the price of which consists in whole 1567
or in part of rentals for the use of the thing transferred, the 1568
tax, as regards those rentals, shall be measured by the 1569
installments of those rentals. 1570

In the case of a sale of a service defined under division 1571
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 1572
which consists in whole or in part of a membership for the receipt 1573
of the benefit of the service, the tax applicable to the sale 1574
shall be measured by the installments thereof. 1575

(B) The tax does not apply to the following: 1576

(1) Sales to the state or any of its political subdivisions, 1577
or to any other state or its political subdivisions if the laws of 1578
that state exempt from taxation sales made to this state and its 1579
political subdivisions; 1580

(2) Sales of food for human consumption off the premises 1581
where sold; 1582

(3) Sales of food sold to students only in a cafeteria,	1583
dormitory, fraternity, or sorority maintained in a private,	1584
public, or parochial school, college, or university;	1585
(4) Sales of newspapers and of magazine subscriptions and	1586
sales or transfers of magazines distributed as controlled	1587
circulation publications;	1588
(5) The furnishing, preparing, or serving of meals without	1589
charge by an employer to an employee provided the employer records	1590
the meals as part compensation for services performed or work	1591
done;	1592
(6) Sales of motor fuel upon receipt, use, distribution, or	1593
sale of which in this state a tax is imposed by the law of this	1594
state, but this exemption shall not apply to the sale of motor	1595
fuel on which a refund of the tax is allowable under section	1596
5735.14 of the Revised Code; and the tax commissioner may deduct	1597
the amount of tax levied by this section applicable to the price	1598
of motor fuel when granting a refund of motor fuel tax pursuant to	1599
section 5735.14 of the Revised Code and shall cause the amount	1600
deducted to be paid into the general revenue fund of this state;	1601
(7) Sales of natural gas by a natural gas company, of water	1602
by a water-works company, or of steam by a heating company, if in	1603
each case the thing sold is delivered to consumers through pipes	1604
or conduits, and all sales of communications services by a	1605
telephone or telegraph company, all terms as defined in section	1606
5727.01 of the Revised Code;	1607
(8) Casual sales by a person, or auctioneer employed directly	1608
by the person to conduct such sales, except as to such sales of	1609
motor vehicles, watercraft or outboard motors required to be	1610
titled under section 1548.06 of the Revised Code, watercraft	1611
documented with the United States coast guard, snowmobiles, and	1612
all-purpose vehicles as defined in section 4519.01 of the Revised	1613

Code;	1614
(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.	1615 1616 1617 1618 1619 1620 1621 1622 1623 1624 1625 1626 1627 1628 1629 1630 1631 1632 1633 1634 1635 1636 1637 1638 1639
(10) Sales not within the taxing power of this state under the Constitution of the United States;	1640 1641
(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;	1642 1643
(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section	1644 1645

501(c)(3) of the Internal Revenue Code of 1986, and to any other 1646
nonprofit organizations operated exclusively for charitable 1647
purposes in this state, no part of the net income of which inures 1648
to the benefit of any private shareholder or individual, and no 1649
substantial part of the activities of which consists of carrying 1650
on propaganda or otherwise attempting to influence legislation; 1651
sales to offices administering one or more homes for the aged or 1652
one or more hospital facilities exempt under section 140.08 of the 1653
Revised Code; and sales to organizations described in division (D) 1654
of section 5709.12 of the Revised Code. 1655

"Charitable purposes" means the relief of poverty; the 1656
improvement of health through the alleviation of illness, disease, 1657
or injury; the operation of an organization exclusively for the 1658
provision of professional, laundry, printing, and purchasing 1659
services to hospitals or charitable institutions; the operation of 1660
a home for the aged, as defined in section 5701.13 of the Revised 1661
Code; the operation of a radio or television broadcasting station 1662
that is licensed by the federal communications commission as a 1663
noncommercial educational radio or television station; the 1664
operation of a nonprofit animal adoption service or a county 1665
humane society; the promotion of education by an institution of 1666
learning that maintains a faculty of qualified instructors, 1667
teaches regular continuous courses of study, and confers a 1668
recognized diploma upon completion of a specific curriculum; the 1669
operation of a parent-teacher association, booster group, or 1670
similar organization primarily engaged in the promotion and 1671
support of the curricular or extracurricular activities of a 1672
primary or secondary school; the operation of a community or area 1673
center in which presentations in music, dramatics, the arts, and 1674
related fields are made in order to foster public interest and 1675
education therein; the production of performances in music, 1676
dramatics, and the arts; or the promotion of education by an 1677
organization engaged in carrying on research in, or the 1678

dissemination of, scientific and technological knowledge and 1679
information primarily for the public. 1680

Nothing in this division shall be deemed to exempt sales to 1681
any organization for use in the operation or carrying on of a 1682
trade or business, or sales to a home for the aged for use in the 1683
operation of independent living facilities as defined in division 1684
(A) of section 5709.12 of the Revised Code. 1685

~~(13)~~(12) Building and construction materials and services 1686
sold to construction contractors for incorporation into a 1687
structure or improvement to real property under a construction 1688
contract with this state or a political subdivision of this state, 1689
or with the United States government or any of its agencies; 1690
building and construction materials and services sold to 1691
construction contractors for incorporation into a structure or 1692
improvement to real property that are accepted for ownership by 1693
this state or any of its political subdivisions, or by the United 1694
States government or any of its agencies at the time of completion 1695
of the structures or improvements; building and construction 1696
materials sold to construction contractors for incorporation into 1697
a horticulture structure or livestock structure for a person 1698
engaged in the business of horticulture or producing livestock; 1699
building materials and services sold to a construction contractor 1700
for incorporation into a house of public worship or religious 1701
education, or a building used exclusively for charitable purposes 1702
under a construction contract with an organization whose purpose 1703
is as described in division (B)~~(12)~~(11) of this section; building 1704
materials and services sold to a construction contractor for 1705
incorporation into a building under a construction contract with 1706
an organization exempt from taxation under section 501(c)(3) of 1707
the Internal Revenue Code of 1986 when the building is to be used 1708
exclusively for the organization's exempt purposes; building and 1709
construction materials sold for incorporation into the original 1710

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)~~(13) 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;

~~(15)~~(14) Sales to persons primarily engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, ~~and~~ "packaging" but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing therein in a package. Division (B)(14) of this section does not apply to persons engaged in highway transportation for hire.

~~(16)~~(15) Sales of food to persons using food stamp benefits

to purchase the food. As used in division (B)~~(16)~~(15) of this 1743
section, "food" has the same meaning as in the "Food Stamp Act of 1744
1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal 1745
regulations adopted pursuant to that act. 1746

~~(17)~~(16) Sales to persons engaged in farming, agriculture, 1747
horticulture, or floriculture, of tangible personal property for 1748
use or consumption directly in the production by farming, 1749
agriculture, horticulture, or floriculture of other tangible 1750
personal property for use or consumption directly in the 1751
production of tangible personal property for sale by farming, 1752
agriculture, horticulture, or floriculture; or material and parts 1753
for incorporation into any such tangible personal property for use 1754
or consumption in production; and of tangible personal property 1755
for such use or consumption in the conditioning or holding of 1756
products produced by and for such use, consumption, or sale by 1757
persons engaged in farming, agriculture, horticulture, or 1758
floriculture, except where such property is incorporated into real 1759
property; 1760

~~(18)~~(17) Sales of drugs dispensed by a licensed pharmacist 1761
upon the order of a licensed health professional authorized to 1762
prescribe drugs to a human being, as the term "licensed health 1763
professional authorized to prescribe drugs" is defined in section 1764
4729.01 of the Revised Code; insulin as recognized in the official 1765
United States pharmacopoeia; urine and blood testing materials 1766
when used by diabetics or persons with hypoglycemia to test for 1767
glucose or acetone; hypodermic syringes and needles when used by 1768
diabetics for insulin injections; epoetin alfa when purchased for 1769
use in the treatment of persons with end-stage renal disease; 1770
hospital beds when purchased for use by persons with medical 1771
problems for medical purposes; and oxygen and oxygen-dispensing 1772
equipment when purchased for use by persons with medical problems 1773
for medical purposes; 1774

~~(19)~~(18)(a) Sales of artificial limbs or portion thereof, 1775
breast prostheses, and other prosthetic devices for humans; braces 1776
or other devices for supporting weakened or nonfunctioning parts 1777
of the human body; crutches or other devices to aid human 1778
perambulation; and items of tangible personal property used to 1779
supplement impaired functions of the human body such as 1780
respiration, hearing, or elimination; 1781

(b) Sales of wheelchairs; items incorporated into or used in 1782
conjunction with a motor vehicle for the purpose of transporting 1783
wheelchairs, other than transportation conducted in connection 1784
with the sale or delivery of wheelchairs; and items incorporated 1785
into or used in conjunction with a motor vehicle that are 1786
specifically designed to assist a person with a disability to 1787
access or operate the motor vehicle. As used in this division, 1788
"person with a disability" means any person who has lost the use 1789
of one or both legs or one or both arms, who is blind, deaf, or 1790
disabled to the extent that the person is unable to move about 1791
without the aid of crutches or a wheelchair, or whose mobility is 1792
restricted by a permanent cardiovascular, pulmonary, or other 1793
disabling condition. 1794

(c) No exemption under this division shall be allowed for 1795
nonprescription drugs, medicines, or remedies; items or devices 1796
used to supplement vision; items or devices whose function is 1797
solely or primarily cosmetic; or physical fitness equipment. This 1798
division does not apply to sales to a physician or medical 1799
facility for use in the treatment of a patient. 1800

~~(20)~~(19) Sales of emergency and fire protection vehicles and 1801
equipment to nonprofit organizations for use solely in providing 1802
fire protection and emergency services, including trauma care and 1803
emergency medical services, for political subdivisions of the 1804
state; 1805

~~(21)~~(20) Sales of tangible personal property manufactured in 1806
this state, if sold by the manufacturer in this state to a 1807
retailer for use in the retail business of the retailer outside of 1808
this state and if possession is taken from the manufacturer by the 1809
purchaser within this state for the sole purpose of immediately 1810
removing the same from this state in a vehicle owned by the 1811
purchaser; 1812

~~(22)~~(21) Sales of services provided by the state or any of 1813
its political subdivisions, agencies, instrumentalities, 1814
institutions, or authorities, or by governmental entities of the 1815
state or any of its political subdivisions, agencies, 1816
instrumentalities, institutions, or authorities; 1817

~~(23)~~(22) Sales of motor vehicles to nonresidents of this 1818
state upon the presentation of an affidavit executed in this state 1819
by the nonresident purchaser affirming that the purchaser is a 1820
nonresident of this state, that possession of the motor vehicle is 1821
taken in this state for the sole purpose of immediately removing 1822
it from this state, that the motor vehicle will be permanently 1823
titled and registered in another state, and that the motor vehicle 1824
will not be used in this state; 1825

~~(24)~~(23) Sales to persons engaged in the preparation of eggs 1826
for sale of tangible personal property used or consumed directly 1827
in such preparation, including such tangible personal property 1828
used for cleaning, sanitizing, preserving, grading, sorting, and 1829
classifying by size; packages, including material and parts for 1830
packages, and machinery, equipment, and material for use in 1831
packaging eggs for sale; and handling and transportation equipment 1832
and parts therefor, except motor vehicles licensed to operate on 1833
public highways, used in intraplant or interplant transfers or 1834
shipment of eggs in the process of preparation for sale, when the 1835
plant or plants within or between which such transfers or 1836
shipments occur are operated by the same person. "Packages" 1837

includes containers, cases, baskets, flats, fillers, filler flats, 1838
cartons, closure materials, labels, and labeling materials, and 1839
"packaging" means placing therein. 1840

~~(25)~~(24)(a) Sales of water to a consumer for residential use, 1841
except the sale of bottled water, distilled water, mineral water, 1842
carbonated water, or ice; 1843

(b) Sales of water by a nonprofit corporation engaged 1844
exclusively in the treatment, distribution, and sale of water to 1845
consumers, if such water is delivered to consumers through pipes 1846
or tubing. 1847

~~(26)~~(25) Fees charged for inspection or reinspection of motor 1848
vehicles under section 3704.14 of the Revised Code; 1849

~~(27)~~(26) Sales to persons licensed to conduct a food service 1850
operation pursuant to section 3717.43 of the Revised Code, of 1851
tangible personal property primarily used directly for the 1852
following: 1853

(a) To prepare food for human consumption for sale; 1854

(b) To preserve food that has been or will be prepared for 1855
human consumption for sale by the food service operator, not 1856
including tangible personal property used to display food for 1857
selection by the consumer; 1858

(c) To clean tangible personal property used to prepare or 1859
serve food for human consumption for sale. 1860

~~(28)~~(27) Sales of animals by nonprofit animal adoption 1861
services or county humane societies; 1862

~~(29)~~(28) Sales of services to a corporation described in 1863
division (A) of section 5709.72 of the Revised Code, and sales of 1864
tangible personal property that qualifies for exemption from 1865
taxation under section 5709.72 of the Revised Code; 1866

~~(30)~~(29) Sales and installation of agricultural land tile, as 1867

defined in division (B)(5)(a) of section 5739.01 of the Revised Code; 1868
1869

~~(31)~~(30) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code; 1870
1871
1872

~~(32)~~(31) 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 for the transportation of tangible personal property; 1873
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~~(33)~~(32) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters; 1879
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~~(34)~~(33) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)~~(34)~~(33) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service. 1884
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~~(35)~~(34) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious 1897
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metal that has been put through a process of smelting or refining, 1899
including, but not limited to, gold, silver, platinum, and 1900
palladium, and which is in such state or condition that its value 1901
depends upon its content and not upon its form. "Investment metal 1902
bullion" does not include fabricated precious metal that has been 1903
processed or manufactured for one or more specific and customary 1904
industrial, professional, or artistic uses. "Investment coins" 1905
means numismatic coins or other forms of money and legal tender 1906
manufactured of gold, silver, platinum, palladium, or other metal 1907
under the laws of the United States or any foreign nation with a 1908
fair market value greater than any statutory or nominal value of 1909
such coins. 1910

~~(36)~~(35)(a) Sales where the purpose of the consumer is to use 1911
or consume the things transferred in making retail sales and 1912
consisting of newspaper inserts, catalogues, coupons, flyers, gift 1913
certificates, or other advertising material that prices and 1914
describes tangible personal property offered for retail sale. 1915

(b) Sales to direct marketing vendors of preliminary 1916
materials such as photographs, artwork, and typesetting that will 1917
be used in printing advertising material; of printed matter that 1918
offers free merchandise or chances to win sweepstake prizes and 1919
that is mailed to potential customers with advertising material 1920
described in division (B)~~(36)~~(35)(a) of this section; and of 1921
equipment such as telephones, computers, facsimile machines, and 1922
similar tangible personal property primarily used to accept orders 1923
for direct marketing retail sales. 1924

(c) Sales of automatic food vending machines that preserve 1925
food with a shelf life of forty-five days or less by refrigeration 1926
and dispense it to the consumer. 1927

For purposes of division (B)~~(36)~~(35) of this section, "direct 1928
marketing" means the method of selling where consumers order 1929
tangible personal property by United States mail, delivery 1930

service, or telecommunication and the vendor delivers or ships the 1931
tangible personal property sold to the consumer from a warehouse, 1932
catalogue distribution center, or similar fulfillment facility by 1933
means of the United States mail, delivery service, or common 1934
carrier. 1935

~~(37)~~(36) Sales to a person engaged in the business of 1936
horticulture or producing livestock of materials to be 1937
incorporated into a horticulture structure or livestock structure; 1938

~~(38)~~(37) The sale of a motor vehicle that is used exclusively 1939
for a vanpool ridesharing arrangement to persons participating in 1940
the vanpool ridesharing arrangement when the vendor is selling the 1941
vehicle pursuant to a contract between the vendor and the 1942
department of transportation; 1943

~~(39)~~(38) Sales of personal computers, computer monitors, 1944
computer keyboards, modems, and other peripheral computer 1945
equipment to an individual who is licensed or certified to teach 1946
in an elementary or a secondary school in this state for use by 1947
that individual in preparation for teaching elementary or 1948
secondary school students; 1949

~~(40)~~(39) Sales to a professional racing team of any of the 1950
following: 1951

(a) Motor racing vehicles; 1952

(b) Repair services for motor racing vehicles; 1953

(c) Items of property that are attached to or incorporated in 1954
motor racing vehicles, including engines, chassis, and all other 1955
components of the vehicles, and all spare, replacement, and 1956
rebuilt parts or components of the vehicles; except not including 1957
tires, consumable fluids, paint, and accessories consisting of 1958
instrumentation sensors and related items added to the vehicle to 1959
collect and transmit data by means of telemetry and other forms of 1960
communication. 1961

~~(41)~~(40) 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; 1962
1963
1964

~~(42)~~(41) 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 designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exceptions in division (E)(2) of section 5739.01 of the Revised Code to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity. 1965
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(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established. 1983
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1986

(D) As used in this section, except in division (B)~~(16)~~(15) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not 1987
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include: spirituous liquors, wine, mixed beverages, or beer; soft 1994
drinks; sodas and beverages that are ordinarily dispensed at or in 1995
connection with bars and soda fountains, other than coffee, tea, 1996
and cocoa; root beer and root beer extracts; malt and malt 1997
extracts; mineral oils, cod liver oils, and halibut liver oil; 1998
medicines, including tonics, vitamin preparations, and other 1999
products sold primarily for their medicinal properties; and water, 2000
including mineral, bottled, and carbonated waters, and ice. 2001

~~(C)~~(E) The levy of this tax on retail sales of recreation and 2002
sports club service shall not prevent a municipal corporation from 2003
levying any tax on recreation and sports club dues or on any 2004
income generated by recreation and sports club dues. 2005

Sec. 5739.03. (A) Except as provided in section 5739.05 of 2006
the Revised Code, the tax imposed by or pursuant to section 2007
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall 2008
be paid by the consumer to the vendor, and each vendor shall 2009
collect from the consumer, as a trustee for the state of Ohio, the 2010
full and exact amount of the tax payable on each taxable sale, in 2011
the manner and at the times provided as follows: 2012

(1) If the price is, at or prior to the provision of the 2013
service or the delivery of possession of the thing sold to the 2014
consumer, paid in currency passed from hand to hand by the 2015
consumer or the consumer's agent to the vendor or the vendor's 2016
agent, the vendor or the vendor's agent shall collect the tax with 2017
and at the same time as the price; 2018

(2) If the price is otherwise paid or to be paid, the vendor 2019
or the vendor's agent shall, at or prior to the provision of the 2020
service or the delivery of possession of the thing sold to the 2021
consumer, charge the tax imposed by or pursuant to section 2022
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 2023
the account of the consumer, which amount shall be collected by 2024

the vendor from the consumer in addition to the price. Such sale 2025
shall be reported on and the amount of the tax applicable thereto 2026
shall be remitted with the return for the period in which the sale 2027
is made, and the amount of the tax shall become a legal charge in 2028
favor of the vendor and against the consumer. 2029

(B)(1) If any sale is claimed to be exempt under division (E) 2030
of section 5739.01 of the Revised Code or under section 5739.02 of 2031
the Revised Code, with the exception of divisions (B)(1) to 2032
~~(11)~~(10) or ~~(28)~~(27) of section 5739.02 of the Revised Code, the 2033
consumer must provide to the vendor, and the vendor must obtain 2034
from the consumer, a certificate specifying the reason that the 2035
sale is not legally subject to the tax. The certificate shall be 2036
provided either in a hard copy form or electronic form, as 2037
prescribed by the tax commissioner. If the transaction is claimed 2038
to be exempt under division (B)~~(13)~~(12) of section 5739.02 of the 2039
Revised Code, the exemption certificate shall be provided by both 2040
the contractor and the contractee. Such contractee shall be deemed 2041
to be the consumer of all items purchased under such claim of 2042
exemption, if it is subsequently determined that the exemption is 2043
not properly claimed. The certificate shall be in such form as the 2044
tax commissioner by regulation prescribes. 2045

(2) The vendor shall maintain records, including exemption 2046
certificates, of all sales on which a consumer has claimed an 2047
exemption, and provide them to the tax commissioner on request. 2048

(3) The tax commissioner may establish an identification 2049
system whereby the commissioner issues an identification number to 2050
a consumer that is exempt from payment of the tax. The consumer 2051
must present the number to the vendor, if any sale is claimed to 2052
be exempt as provided in this section. 2053

(4) If no certificate is provided or obtained within the 2054
period for filing the return for the period in which such sale is 2055
consummated, it shall be presumed that the tax applies. Failure to 2056

have so provided, or ~~to have so~~ obtained, a certificate shall not 2057
prevent a vendor or consumer from establishing that the sale is 2058
not subject to the tax within one hundred twenty days of the 2059
giving of notice by the commissioner of intention to levy an 2060
assessment, in which event the tax shall not apply. 2061

(5) Certificates need not be obtained nor provided where the 2062
identity of the consumer is such that the transaction is never 2063
subject to the tax imposed or where the item of tangible personal 2064
property sold or the service provided is never subject to the tax 2065
imposed, regardless of use, or when the sale is in interstate 2066
commerce. 2067

(C) As used in this division, "contractee" means a person who 2068
seeks to enter or enters into a contract or agreement with a 2069
contractor or vendor for the construction of real property or for 2070
the sale and installation onto real property of tangible personal 2071
property. 2072

Any contractor or vendor may request from any contractee a 2073
certification of what portion of the property to be transferred 2074
under such contract or agreement is to be incorporated into the 2075
realty and what portion will retain its status as tangible 2076
personal property after installation is completed. The contractor 2077
or vendor shall request the certification by certified mail 2078
delivered to the contractee, return receipt requested. Upon 2079
receipt of such request and prior to entering into the contract or 2080
agreement, the contractee shall provide to the contractor or 2081
vendor a certification sufficiently detailed to enable the 2082
contractor or vendor to ascertain the resulting classification of 2083
all materials purchased or fabricated by the contractor or vendor 2084
and transferred to the contractee. This requirement applies to a 2085
contractee regardless of whether the contractee holds a direct 2086
payment permit under section 5739.031 of the Revised Code or 2087
provides to the contractor or vendor an exemption certificate as 2088

provided under this section. 2089

For the purposes of the taxes levied by this chapter and 2090
Chapter 5741. of the Revised Code, the contractor or vendor may in 2091
good faith rely on the contractee's certification. Notwithstanding 2092
division (B) of section 5739.01 of the Revised Code, if the tax 2093
commissioner determines that certain property certified by the 2094
contractee as tangible personal property pursuant to this division 2095
is, in fact, real property, the contractee shall be considered to 2096
be the consumer of all materials so incorporated into that real 2097
property and shall be liable for the applicable tax, and the 2098
contractor or vendor shall be excused from any liability on those 2099
materials. 2100

If a contractee fails to provide such certification upon the 2101
request of the contractor or vendor, the contractor or vendor 2102
shall comply with the provisions of this chapter and Chapter 5741. 2103
of the Revised Code without the certification. If the tax 2104
commissioner determines that such compliance has been performed in 2105
good faith and that certain property treated as tangible personal 2106
property by the contractor or vendor is, in fact, real property, 2107
the contractee shall be considered to be the consumer of all 2108
materials so incorporated into that real property and shall be 2109
liable for the applicable tax, and the construction contractor or 2110
vendor shall be excused from any liability on those materials. 2111

This division does not apply to any contract or agreement 2112
where the tax commissioner determines as a fact that a 2113
certification under this division was made solely on the decision 2114
or advice of the contractor or vendor. 2115

(D) Notwithstanding division (B) of section 5739.01 of the 2116
Revised Code, whenever the total rate of tax imposed under this 2117
chapter is increased after the date after a construction contract 2118
is entered into, the contractee shall reimburse the construction 2119
contractor for any additional tax paid on tangible property 2120

consumed or services received pursuant to the contract. 2121

(E) A vendor who files a petition for reassessment contesting 2122
the assessment of tax on sales for which the vendor obtained no 2123
valid exemption certificates and for which the vendor failed to 2124
establish that the sales were properly not subject to the tax 2125
during the one-hundred-twenty-day period allowed under division 2126
(B) of this section, may present to the tax commissioner 2127
additional evidence to prove that the sales were properly subject 2128
to a claim of exception or exemption. The vendor shall file such 2129
evidence within ninety days of the receipt by the vendor of the 2130
notice of assessment, except that, upon application and for 2131
reasonable cause, the period for submitting such evidence shall be 2132
extended thirty days. 2133

The commissioner shall consider such additional evidence in 2134
reaching the final determination on the assessment and petition 2135
for reassessment. 2136

(F) Whenever a vendor refunds to the consumer the full price 2137
of an item of tangible personal property on which the tax imposed 2138
under this chapter has been paid, the vendor shall also refund the 2139
full amount of the tax paid. 2140

Sec. 5739.11. As used in this section, "food service 2141
operator" means a vendor who conducts a food service operation 2142
under Chapter 3717. of the Revised Code. 2143

Each vendor shall keep complete and accurate records of 2144
sales, together with a record of the tax collected on the sales, 2145
which shall be the amount due under sections 5739.01 to 5739.31 of 2146
the Revised Code, and shall keep all invoices, bills of lading, 2147
and other such pertinent documents. Alternatively, any food 2148
service operator who has not been convicted under section 5739.99 2149
of the Revised Code, with respect to the vendor's food service 2150
operation, may keep a sample of primary sales records. Such sample 2151

shall consist of all sales invoices, guest checks, cash register 2152
tapes, and other such documents for each of fourteen days in every 2153
calendar quarter. The specific days to be included in the sample 2154
shall be determined by the tax commissioner and entered in the 2155
commissioner's journal within ten days after the close of every 2156
calendar quarter. The tax commissioner shall notify each such 2157
operator registered pursuant to section 5739.17 of the Revised 2158
Code who requests such notification of the days to be included in 2159
each sample by the last day of the month following the close of 2160
each calendar quarter. The notice also shall contain a statement 2161
that destruction of primary records for time periods other than 2162
the specified sample period is optional, and that some operators 2163
may wish to keep all such records for four full years so as to be 2164
able to clearly demonstrate that they have fully complied with 2165
this chapter and Chapter 5741. of the Revised Code. The tax 2166
commissioner shall further make such determination known through a 2167
general news release. 2168

Each vendor shall keep exemption certificates required to be 2169
obtained under section 5739.03 of the Revised Code. If the vendor 2170
makes sales not subject to the tax and not required to be 2171
evidenced by an exemption certificate, the vendor's records shall 2172
show the identity of the purchaser, if the sale was exempted by 2173
reason of such identity, or the nature of the transaction, if 2174
exempted for any other reason. Vendors are not required to 2175
differentiate in record-keeping between sales that are exempt from 2176
taxation under division (B)(2) of section 5739.02 of the Revised 2177
Code and those that are exempt under division (B)~~(16)~~(15) of that 2178
section. Such records and other documents required to be kept by 2179
this section shall be open during business hours to the inspection 2180
of the tax commissioner, and shall be preserved for a period of 2181
four years, unless the commissioner, in writing, consents to their 2182
destruction within that period, or by order requires that they be 2183
kept longer. 2184

Sec. 5741.02. (A) For the use of the general revenue fund of 2185
the state, an excise tax is hereby levied on the storage, use, or 2186
other consumption in this state of tangible personal property or 2187
the benefit realized in this state of any service provided. The 2188
tax shall be collected pursuant to the schedules in section 2189
5739.025 of the Revised Code. 2190

(B) Each consumer, storing, using, or otherwise consuming in 2191
this state tangible personal property or realizing in this state 2192
the benefit of any service provided, shall be liable for the tax, 2193
and such liability shall not be extinguished until the tax has 2194
been paid to this state; provided, that the consumer shall be 2195
relieved from further liability for the tax if the tax has been 2196
paid to a seller in accordance with section 5741.04 of the Revised 2197
Code or prepaid by the seller in accordance with section 5741.06 2198
of the Revised Code. 2199

(C) The tax does not apply to the storage, use, or 2200
consumption in this state of the following described tangible 2201
personal property or services, nor to the storage, use, or 2202
consumption or benefit in this state of tangible personal property 2203
or services purchased under the following described circumstances: 2204

(1) When the sale of property or service in this state is 2205
subject to the excise tax imposed by sections 5739.01 to 5739.31 2206
of the Revised Code, provided said tax has been paid; 2207

(2) Except as provided in division (D) of this section, 2208
tangible personal property or services, the acquisition of which, 2209
if made in Ohio, would be a sale not subject to the tax imposed by 2210
sections 5739.01 to 5739.31 of the Revised Code; 2211

(3) Property or services, the storage, use, or other 2212
consumption of or benefit from which this state is prohibited from 2213
taxing by the Constitution of the United States, laws of the 2214

United States, or the Constitution of this state. This exemption 2215
shall not exempt from the application of the tax imposed by this 2216
section the storage, use, or consumption of tangible personal 2217
property that was purchased in interstate commerce, but that has 2218
come to rest in this state, provided that fuel to be used or 2219
transported in carrying on interstate commerce that is stopped 2220
within this state pending transfer from one conveyance to another 2221
is exempt from the excise tax imposed by this section and section 2222
5739.02 of the Revised Code; 2223

(4) Transient use of tangible personal property in this state 2224
by a nonresident tourist or vacationer, or a non-business use 2225
within this state by a nonresident of this state, if the property 2226
so used was purchased outside this state for use outside this 2227
state and is not required to be registered or licensed under the 2228
laws of this state; 2229

(5) Tangible personal property or services rendered, upon 2230
which taxes have been paid to another jurisdiction to the extent 2231
of the amount of the tax paid to such other jurisdiction. Where 2232
the amount of the tax imposed by this section and imposed pursuant 2233
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 2234
exceeds the amount paid to another jurisdiction, the difference 2235
shall be allocated between the tax imposed by this section and any 2236
tax imposed by a county or a transit authority pursuant to section 2237
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 2238
to the respective rates of such taxes. 2239

As used in this subdivision, "taxes paid to another 2240
jurisdiction" means the total amount of retail sales or use tax or 2241
similar tax based upon the sale, purchase, or use of tangible 2242
personal property or services rendered legally, levied by and paid 2243
to another state or political subdivision thereof, or to the 2244
District of Columbia, where the payment of such tax does not 2245
entitle the taxpayer to any refund or credit for such payment. 2246

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E)(1) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to ~~(11)~~(10) or ~~(28)~~(27) of section 5739.02 of the Revised Code, the consumer shall provide to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. The certificate shall be provided either in a hard copy form or electronic form, as prescribed by the tax commissioner. If the transaction is claimed to be exempt under division (B)~~(13)~~(12) of section 5739.02 of the Revised Code, the exemption certificate shall be provided by both the contractor and contractee. Such contractee shall be deemed to be the consumer of all items purchased under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. The seller shall maintain records, including exemption

certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.

(2) If no certificate is provided or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be presumed that the tax applies. The failure to have so provided or obtained a certificate shall not preclude a seller or consumer from establishing, within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, that the transaction is not subject to the tax.

(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates, and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section, may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

Section 2. That existing sections 165.09, 902.11, 2915.01, 4505.06, 4981.20, 5739.01, 5739.02, 5739.03, 5739.11, and 5741.02 of the Revised Code are hereby repealed.

Section 3. Section 5739.01 of the Revised Code was amended by 2309
Am. Sub. H.B. 524, Am. Sub. S.B. 143, and Sub. S.B. 200, all of 2310
the 124th General Assembly. Comparison of these amendments in 2311
pursuance of section 1.52 of the Revised Code discloses that while 2312
certain of the amendments of these acts are reconcilable, certain 2313
other of the amendments are substantively irreconcilable. Am. Sub. 2314
H.B. 524 was passed on March 21, 2002; Am. Sub. S.B. 143 was 2315
passed on January 30, 2002; Sub. S.B. 200 was passed on March 13, 2316
2002. Section 5739.01 of the Revised Code is therefore presented 2317
in this act as it results from Am. Sub. H.B. 524 and Sub. S.B. 200 2318
and such of the amendments of Am. Sub. S.B. 143 as are not in 2319
conflict with the amendments of Sub. S.B. 200. The General 2320
Assembly, applying the principle stated in division (B) of section 2321
1.52 of the Revised Code that amendments are to be harmonized if 2322
reasonably capable of simultaneous operation, finds that the 2323
composite is the resulting version of the section in effect prior 2324
to the effective date of the section as presented in this act. 2325