

As Reported by the House Ways and Means Committee

125th General Assembly

Regular Session

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Sub. S. B. No. 37

Senator Blessing

Representatives Kilbane, Latta, Carano, McGregor

A B I L L

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) of 26
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
equipped, 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) of section 5739.02 of the Revised Code 58
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 result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a slot machine, lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo.

(D) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

(E) "Game of chance conducted for profit" means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(F) "Gambling device" means any of the following:

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

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

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

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

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

(1) A violation of section 2915.02, 2915.03, 2915.04, 2915.05, 2915.07, 2915.08, 2915.081, 2915.082, 2915.09, 2915.091, 2915.092, 2915.10, or 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance 110
or law of this or any other state or the United States 111
substantially equivalent to any section listed in division (G)(1) 112
of this section or a violation of section 2915.06 of the Revised 113
Code as it existed prior to 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) Except as otherwise provided in this chapter, "charitable 121
organization" means any tax exempt religious, educational, 122
veteran's, fraternal, service, nonprofit medical, volunteer rescue 123
service, volunteer firefighter's, senior citizen's, youth 124
athletic, amateur athletic, or youth athletic park organization. 125
An organization is tax exempt if the organization is, and has 126
received from the internal revenue service a determination letter 127
that currently is in effect stating that the organization is, 128
exempt from federal income taxation under subsection 501(a) and 129
described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 130
501(c)(10), or 501(c)(19) of the Internal Revenue Code. To qualify 131
as a charitable organization, an organization, except a volunteer 132
rescue service or volunteer fire fighter's organization, shall 133
have been in continuous existence as such in this state for a 134
period of two years immediately preceding either the making of an 135
application for a bingo license under section 2915.08 of the 136
Revised Code or the conducting of any scheme of chance or game of 137
chance as provided in division (C) of section 2915.02 of the 138
Revised Code. A charitable organization that is exempt from 139
federal income taxation under subsection 501(a) and described in 140
subsection 501(c)(3) of the Internal Revenue Code and that is 141

created by a veteran's organization or a fraternal organization 142
does not have to have been in continuous existence as such in this 143
state for a period of two years immediately preceding either the 144
making of an application for a bingo license under section 2915.08 145
of the Revised Code or the conducting of any scheme of chance or 146
game of chance as provided in division (D) of section 2915.02 of 147
the Revised Code. 148

(I) "Religious organization" means any church, body of 149
communicants, or group that is not organized or operated for 150
profit and that gathers in common membership for regular worship 151
and religious observances. 152

(J) "Educational organization" means any organization within 153
this state that is not organized for profit, the exclusive purpose 154
of which is to educate and develop the capabilities of individuals 155
through instruction, and that operates or contributes to the 156
support of a school, academy, college, or university. 157

(K) "Veteran's organization" means any individual post of a 158
national veteran's association or an auxiliary unit of any 159
individual post of a national veteran's association, which post or 160
auxiliary unit has been incorporated as a nonprofit corporation 161
for at least two years and has received a letter from the state 162
headquarters of the national veteran's association indicating that 163
the individual post or auxiliary unit is in good standing with the 164
national veteran's association. As used in this division, 165
"national veteran's association" means any veteran's association 166
that has been in continuous existence as such for a period of at 167
least five years and either is incorporated by an act of the 168
United States congress or has a national dues-paying membership of 169
at least five thousand persons. 170

(L) "Volunteer firefighter's organization" means any 171
organization of volunteer firefighters, as defined in section 172
146.01 of the Revised Code, that is organized and operated 173

exclusively to provide financial support for a volunteer fire 174
department or a volunteer fire company and that is recognized or 175
ratified by a county, municipal corporation, or township. 176

(M) "Fraternal organization" means any society, order, or 177
association within this state, except a college or high school 178
fraternity, that is not organized for profit, that is a branch, 179
lodge, or chapter of a national or state organization, that exists 180
exclusively for the common business or sodality of its members, 181
and that has been in continuous existence in this state for a 182
period of five years. 183

(N) "Volunteer rescue service organization" means any 184
organization of volunteers organized to function as an emergency 185
medical service organization, as defined in section 4765.01 of the 186
Revised Code. 187

(O) "Service organization" means any organization, not 188
organized for profit, that is organized and operated exclusively 189
to provide, or to contribute to the support of organizations or 190
institutions organized and operated exclusively to provide, 191
medical and therapeutic services for persons who are crippled, 192
born with birth defects, or have any other mental or physical 193
defect or those organized and operated exclusively to protect, or 194
to contribute to the support of organizations or institutions 195
organized and operated exclusively to protect, animals from 196
inhumane treatment. 197

(P) "Nonprofit medical organization" means any organization 198
that has been incorporated as a nonprofit corporation for at least 199
five years and that has continuously operated and will be operated 200
exclusively to provide, or to contribute to the support of 201
organizations or institutions organized and operated exclusively 202
to provide, hospital, medical, research, or therapeutic services 203
for the public. 204

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

(R) "Charitable bingo game" means any bingo game described in division (S)(1) or (2) of this section that is conducted by a charitable organization that has obtained a license pursuant to section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(S) "Bingo" means either of the following:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

(b) The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards or sheets.

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (S)(1)(c) of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards, and raffles.

(T) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance.

(U) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

(V) "Participant" means any person who plays bingo.

(W) "Bingo session" means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (S)(1) of this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours

after the period described in division (W)(1) of this section.	266
(X) "Gross receipts" means all money or assets, including	267
admission fees, that a person receives from bingo without the	268
deduction of any amounts for prizes paid out or for the expenses	269
of conducting bingo. "Gross receipts" does not include any money	270
directly taken in from the sale of food or beverages by a	271
charitable organization conducting bingo, or by a bona fide	272
auxiliary unit or society of a charitable organization conducting	273
bingo, provided all of the following apply:	274
(1) The auxiliary unit or society has been in existence as a	275
bona fide auxiliary unit or society of the charitable organization	276
for at least two years prior to conducting bingo.	277
(2) The person who purchases the food or beverage receives	278
nothing of value except the food or beverage and items customarily	279
received with the purchase of that food or beverage.	280
(3) The food and beverages are sold at customary and	281
reasonable prices.	282
(Y) "Security personnel" includes any person who either is a	283
sheriff, deputy sheriff, marshal, deputy marshal, township	284
constable, or member of an organized police department of a	285
municipal corporation or has successfully completed a peace	286
officer's training course pursuant to sections 109.71 to 109.79 of	287
the Revised Code and who is hired to provide security for the	288
premises on which bingo is conducted.	289
(Z) "Charitable purpose" means that the net profit of bingo,	290
other than instant bingo, is used by, or is given, donated, or	291
otherwise transferred to, any of the following:	292
(1) Any organization that is described in subsection	293
509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code	294
and is either a governmental unit or an organization that is tax	295
exempt under subsection 501(a) and described in subsection	296

501(c)(3) of the Internal Revenue Code;	297
(2) A veteran's organization that is a post, chapter, or	298
organization of veterans, or an auxiliary unit or society of, or a	299
trust or foundation for, any such post, chapter, or organization	300
organized in the United States or any of its possessions, at least	301
seventy-five per cent of the members of which are veterans and	302
substantially all of the other members of which are individuals	303
who are spouses, widows, or widowers of veterans, or such	304
individuals, provided that no part of the net earnings of such	305
post, chapter, or organization inures to the benefit of any	306
private shareholder or individual, and further provided that the	307
net profit is used by the post, chapter, or organization for the	308
charitable purposes set forth in division (B)(12) of section	309
5739.02 of the Revised Code, is used for awarding scholarships to	310
or for attendance at an institution mentioned in division (B)(12)	311
of section 5739.02 of the Revised Code, is donated to a	312
governmental agency, or is used for nonprofit youth activities,	313
the purchase of United States or Ohio flags that are donated to	314
schools, youth groups, or other bona fide nonprofit organizations,	315
promotion of patriotism, or disaster relief;	316
(3) A fraternal organization that has been in continuous	317
existence in this state for fifteen years and that uses the net	318
profit exclusively for religious, charitable, scientific,	319
literary, or educational purposes, or for the prevention of	320
cruelty to children or animals, if contributions for such use	321
would qualify as a deductible charitable contribution under	322
subsection 170 of the Internal Revenue Code;	323
(4) A volunteer firefighter's organization that uses the net	324
profit for the purposes set forth in division (L) of this section.	325
(AA) "Internal Revenue Code" means the "Internal Revenue Code	326
of 1986," 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter	327
amended.	328

(BB) "Youth athletic organization" means any organization, 329
not organized for profit, that is organized and operated 330
exclusively to provide financial support to, or to operate, 331
athletic activities for persons who are twenty-one years of age or 332
younger by means of sponsoring, organizing, operating, or 333
contributing to the support of an athletic team, club, league, or 334
association. 335

(CC) "Youth athletic park organization" means any 336
organization, not organized for profit, that satisfies both of the 337
following: 338

(1) It owns, operates, and maintains playing fields that 339
satisfy both of the following: 340

(a) The playing fields are used at least one hundred days per 341
year for athletic activities by one or more organizations, not 342
organized for profit, each of which is organized and operated 343
exclusively to provide financial support to, or to operate, 344
athletic activities for persons who are eighteen years of age or 345
younger by means of sponsoring, organizing, operating, or 346
contributing to the support of an athletic team, club, league, or 347
association. 348

(b) The playing fields are not used for any profit-making 349
activity at any time during the year. 350

(2) It uses the proceeds of bingo it conducts exclusively for 351
the operation, maintenance, and improvement of its playing fields 352
of the type described in division (CC)(1) of this section. 353

(DD) "Amateur athletic organization" means any organization, 354
not organized for profit, that is organized and operated 355
exclusively to provide financial support to, or to operate, 356
athletic activities for persons who are training for amateur 357
athletic competition that is sanctioned by a national governing 358
body as defined in the "Amateur Sports Act of 1978," 90 Stat. 359

3045, 36 U.S.C.A. 373. 360

(EE) "Bingo supplies" means bingo cards or sheets; instant 361
bingo tickets or cards; electronic bingo aids; raffle tickets; 362
punch boards; seal cards; instant bingo ticket dispensers; and 363
devices for selecting or displaying the combination of bingo 364
letters and numbers or raffle tickets. Items that are "bingo 365
supplies" are not gambling devices if sold or otherwise provided, 366
and used, in accordance with this chapter. For purposes of this 367
chapter, "bingo supplies" are not to be considered equipment used 368
to conduct a bingo game. 369

(FF) "Instant bingo" means a form of bingo that uses folded 370
or banded tickets or paper cards with perforated break-open tabs, 371
a face of which is covered or otherwise hidden from view to 372
conceal a number, letter, or symbol, or set of numbers, letters, 373
or symbols, some of which have been designated in advance as prize 374
winners. "Instant bingo" includes seal cards. "Instant bingo" does 375
not include any device that is activated by the insertion of a 376
coin, currency, token, or an equivalent, and that contains as one 377
of its components a video display monitor that is capable of 378
displaying numbers, letters, symbols, or characters in winning or 379
losing combinations. 380

(GG) "Seal card" means a form of instant bingo that uses 381
instant bingo tickets in conjunction with a board or placard that 382
contains one or more seals that, when removed or opened, reveal 383
predesignated winning numbers, letters, or symbols. 384

(HH) "Raffle" means a form of bingo in which the one or more 385
prizes are won by one or more persons who have purchased a raffle 386
ticket. The one or more winners of the raffle are determined by 387
drawing a ticket stub or other detachable section from a 388
receptacle containing ticket stubs or detachable sections 389
corresponding to all tickets sold for the raffle. 390

(II) "Punch board" means a board containing a number of holes 391
or receptacles of uniform size in which are placed, mechanically 392
and randomly, serially numbered slips of paper that may be punched 393
or drawn from the hole or receptacle when used in conjunction with 394
instant bingo. A player may punch or draw the numbered slips of 395
paper from the holes or receptacles and obtain the prize 396
established for the game if the number drawn corresponds to a 397
winning number or, if the punch board includes the use of a seal 398
card, a potential winning number. 399

(JJ) "Gross profit" means gross receipts minus the amount 400
actually expended for the payment of prize awards. 401

(KK) "Net profit" means gross profit minus expenses. 402

(LL) "Expenses" means the reasonable amount of gross profit 403
actually expended for all of the following: 404

(1) The purchase or lease of bingo supplies; 405

(2) The annual license fee required under section 2915.08 of 406
the Revised Code; 407

(3) Bank fees and service charges for a bingo session or game 408
account described in section 2915.10 of the Revised Code; 409

(4) Audits and accounting services; 410

(5) Safes; 411

(6) Cash registers; 412

(7) Hiring security personnel; 413

(8) Advertising bingo; 414

(9) Renting premises in which to conduct bingo; 415

(10) Tables and chairs; 416

(11) Any other product or service directly related to the 417
conduct of bingo that is authorized in rules adopted by the 418

attorney general under division (B)(1) of section 2915.08 of the Revised Code. 419
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(MM) "Person" has the same meaning as in section 1.59 of the Revised Code and includes any firm or any other legal entity, however organized. 421
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(NN) "Revoke" means to void permanently all rights and privileges of the holder of a license issued under section 2915.08, 2915.081, or 2915.082 of the Revised Code or a charitable gaming license issued by another jurisdiction. 424
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(OO) "Suspend" means to interrupt temporarily all rights and privileges of the holder of a license issued under section 2915.08, 2915.081, or 2915.082 of the Revised Code or a charitable gaming license issued by another jurisdiction. 428
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(PP) "Distributor" means any person who purchases or obtains bingo supplies and who sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state. 432
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(QQ) "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale. 436
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(RR) "Gross annual revenues" means the annual gross receipts derived from the conduct of bingo described in division (S)(1) of this section plus the annual net profit derived from the conduct of bingo described in division (S)(2) of this section. 440
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(SS) "Instant bingo ticket dispenser" means a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics: 444
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(1) It is activated upon the insertion of United States 448

currency.	449
(2) It performs no gaming functions.	450
(3) It does not contain a video display monitor or generate noise.	451 452
(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.	453 454
(5) It does not simulate or display rolling or spinning reels.	455 456
(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or nonwinning ticket or card and requires a winning ticket or card to be paid by a bingo game operator.	457 458 459 460
(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.	461 462
(8) It is not part of an electronic network and is not interactive.	463 464
(TT)(1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:	465 466 467 468
(a) It provides a means for a participant to input numbers and letters announced by a bingo caller.	469 470
(b) It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.	471 472 473
(c) It identifies a winning bingo pattern.	474
(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.	475 476 477

(UU) "Deal of instant bingo tickets" means a single game of 478
instant bingo tickets all with the same serial number. 479

(VV) "Slot_ machine means either of the following: 480

(1) Any mechanical, electronic, video, or digital device that 481
is capable of accepting anything of value, directly or indirectly, 482
from or on behalf of a player who gives the thing of value in the 483
hope of gain, the outcome of which is determined largely or wholly 484
by chance; 485

(2) Any mechanical, electronic, video, or digital device that 486
is capable of accepting anything of value, directly or indirectly, 487
from or on behalf of a player to conduct or dispense bingo or a 488
scheme or game of chance. 489

(WW) "Net profit from the proceeds of the sale of instant 490
bingo" means gross profit minus the ordinary, necessary, and 491
reasonable expense expended for the purchase of instant bingo 492
supplies. 493

(XX) "Charitable instant bingo organization" means an 494
organization that is exempt from federal income taxation under 495
subsection 501(a) and described in subsection 501(c)(3) of the 496
Internal Revenue Code and is a charitable organization as defined 497
in this section. A "charitable instant bingo organization" does 498
not include a charitable organization that is exempt from federal 499
income taxation under subsection 501(a) and described in 500
subsection 501(c)(3) of the Internal Revenue Code and that is 501
created by a veteran's organization or a fraternal organization in 502
regards to bingo conducted or assisted by a veteran's organization 503
or a fraternal organization pursuant to section 2915.13 of the 504
Revised Code. 505

Sec. 4505.06. (A)(1) Application for a certificate of title 506
shall be made in a form prescribed by the registrar of motor 507

vehicles and shall be sworn to before a notary public or other 508
officer empowered to administer oaths. The application shall be 509
filed with the clerk of any court of common pleas. An application 510
for a certificate of title may be filed electronically by any 511
electronic means approved by the registrar in any county with the 512
clerk of the court of common pleas of that county. Any payments 513
required by this chapter shall be considered as accompanying any 514
electronically transmitted application when payment actually is 515
received by the clerk. Payment of any fee or taxes may be made by 516
electronic transfer of funds. 517

(2) The application for a certificate of title shall be 518
accompanied by the fee prescribed in section 4505.09 of the 519
Revised Code. The fee shall be retained by the clerk who issues 520
the certificate of title and shall be distributed in accordance 521
with that section. If a clerk of a court of common pleas, other 522
than the clerk of the court of common pleas of an applicant's 523
county of residence, issues a certificate of title to the 524
applicant, the clerk shall transmit data related to the 525
transaction to the automated title processing system. 526

(3) If a certificate of title previously has been issued for 527
a motor vehicle in this state, the application for a certificate 528
of title also shall be accompanied by that certificate of title 529
duly assigned, unless otherwise provided in this chapter. If a 530
certificate of title previously has not been issued for the motor 531
vehicle in this state, the application, unless otherwise provided 532
in this chapter, shall be accompanied by a manufacturer's or 533
importer's certificate or by a certificate of title of another 534
state from which the motor vehicle was brought into this state. If 535
the application refers to a motor vehicle last previously 536
registered in another state, the application also shall be 537
accompanied by the physical inspection certificate required by 538
section 4505.061 of the Revised Code. If the application is made 539

by two persons regarding a motor vehicle in which they wish to 540
establish joint ownership with right of survivorship, they may do 541
so as provided in section 2131.12 of the Revised Code. If the 542
applicant requests a designation of the motor vehicle in 543
beneficiary form so that upon the death of the owner of the motor 544
vehicle, ownership of the motor vehicle will pass to a designated 545
transfer-on-death beneficiary or beneficiaries, the applicant may 546
do so as provided in section 2131.13 of the Revised Code. A person 547
who establishes ownership of a motor vehicle that is transferable 548
on death in accordance with section 2131.13 of the Revised Code 549
may terminate that type of ownership or change the designation of 550
the transfer-on-death beneficiary or beneficiaries by applying for 551
a certificate of title pursuant to this section. The clerk shall 552
retain the evidence of title presented by the applicant and on 553
which the certificate of title is issued, except that, if an 554
application for a certificate of title is filed electronically by 555
an electronic motor vehicle dealer on behalf of the purchaser of a 556
motor vehicle, the clerk shall retain the completed electronic 557
record to which the dealer converted the certificate of title 558
application and other required documents. The electronic motor 559
vehicle dealer shall forward the actual application and all other 560
documents relating to the sale of the motor vehicle to any clerk 561
within thirty days after the certificate of title is issued. The 562
registrar, after consultation with the attorney general, shall 563
adopt rules that govern the location at which, and the manner in 564
which, are stored the actual application and all other documents 565
relating to the sale of a motor vehicle when an electronic motor 566
vehicle dealer files the application for a certificate of title 567
electronically on behalf of the purchaser. 568

The clerk shall use reasonable diligence in ascertaining 569
whether or not the facts in the application for a certificate of 570
title are true by checking the application and documents 571
accompanying it or the electronic record to which a dealer 572

converted the application and accompanying documents with the 573
records of motor vehicles in the clerk's office. If the clerk is 574
satisfied that the applicant is the owner of the motor vehicle and 575
that the application is in the proper form, the clerk, within five 576
business days after the application is filed, shall issue a 577
physical certificate of title over the clerk's signature and 578
sealed with the clerk's seal, unless the applicant specifically 579
requests the clerk not to issue a physical certificate of title 580
and instead to issue an electronic certificate of title. For 581
purposes of the transfer of a certificate of title, if the clerk 582
is satisfied that the secured party has duly discharged a lien 583
notation but has not canceled the lien notation with a clerk, the 584
clerk may cancel the lien notation on the automated title 585
processing system and notify the clerk of the county of origin. 586

(4) In the case of the sale of a motor vehicle to a general 587
buyer or user by a dealer, by a motor vehicle leasing dealer 588
selling the motor vehicle to the lessee or, in a case in which the 589
leasing dealer subleased the motor vehicle, the sublessee, at the 590
end of the lease agreement or sublease agreement, or by a 591
manufactured home broker, the certificate of title shall be 592
obtained in the name of the buyer by the dealer, leasing dealer, 593
or manufactured home broker, as the case may be, upon application 594
signed by the buyer. The certificate of title shall be issued, or 595
the process of entering the certificate of title application 596
information into the automated title processing system if a 597
physical certificate of title is not to be issued shall be 598
completed, within five business days after the application for 599
title is filed with the clerk. If the buyer of the motor vehicle 600
previously leased the motor vehicle and is buying the motor 601
vehicle at the end of the lease pursuant to that lease, the 602
certificate of title shall be obtained in the name of the buyer by 603
the motor vehicle leasing dealer who previously leased the motor 604
vehicle to the buyer or by the motor vehicle leasing dealer who 605

subleased the motor vehicle to the buyer under a sublease 606
agreement. 607

In all other cases, except as provided in section 4505.032 608
and division (D)(2) of section 4505.11 of the Revised Code, such 609
certificates shall be obtained by the buyer. 610

(5)(a)(i) If the certificate of title is being obtained in 611
the name of the buyer by a motor vehicle dealer or motor vehicle 612
leasing dealer and there is a security interest to be noted on the 613
certificate of title, the dealer or leasing dealer shall submit 614
the application for the certificate of title and payment of the 615
applicable tax to a clerk within seven business days after the 616
later of the delivery of the motor vehicle to the buyer or the 617
date the dealer or leasing dealer obtains the manufacturer's or 618
importer's certificate, or certificate of title issued in the name 619
of the dealer or leasing dealer, for the motor vehicle. Submission 620
of the application for the certificate of title and payment of the 621
applicable tax within the required seven business days may be 622
indicated by postmark or receipt by a clerk within that period. 623

(ii) Upon receipt of the certificate of title with the 624
security interest noted on its face, the dealer or leasing dealer 625
shall forward the certificate of title to the secured party at the 626
location noted in the financing documents or otherwise specified 627
by the secured party. 628

(iii) A motor vehicle dealer or motor vehicle leasing dealer 629
is liable to a secured party for a late fee of ten dollars per day 630
for each certificate of title application and payment of the 631
applicable tax that is submitted to a clerk more than seven 632
business days but less than twenty-one days after the later of the 633
delivery of the motor vehicle to the buyer or the date the dealer 634
or leasing dealer obtains the manufacturer's or importer's 635
certificate, or certificate of title issued in the name of the 636
dealer or leasing dealer, for the motor vehicle and, from then on, 637

twenty-five dollars per day until the application and applicable 638
tax are submitted to a clerk. 639

(b) In all cases of transfer of a motor vehicle, the 640
application for certificate of title shall be filed within thirty 641
days after the assignment or delivery of the motor vehicle. If an 642
application for a certificate of title is not filed within the 643
period specified in division (A)(5)(b) of this section, the clerk 644
shall collect a fee of five dollars for the issuance of the 645
certificate, except that no such fee shall be required from a 646
motor vehicle salvage dealer, as defined in division (A) of 647
section 4738.01 of the Revised Code, who immediately surrenders 648
the certificate of title for cancellation. The fee shall be in 649
addition to all other fees established by this chapter, and shall 650
be retained by the clerk. The registrar shall provide, on the 651
certificate of title form prescribed by section 4505.07 of the 652
Revised Code, language necessary to give evidence of the date on 653
which the assignment or delivery of the motor vehicle was made. 654

(6) As used in division (A) of this section, "lease 655
agreement," "lessee," and "sublease agreement" have the same 656
meanings as in section 4505.04 of the Revised Code. 657

(B) The clerk, except as provided in this section, shall 658
refuse to accept for filing any application for a certificate of 659
title and shall refuse to issue a certificate of title unless the 660
dealer or manufactured home broker or the applicant, in cases in 661
which the certificate shall be obtained by the buyer, submits with 662
the application payment of the tax levied by or pursuant to 663
Chapters 5739. and 5741. of the Revised Code based on the 664
purchaser's county of residence. Upon payment of the tax in 665
accordance with division (E) of this section, the clerk shall 666
issue a receipt prescribed by the registrar and agreed upon by the 667
tax commissioner showing payment of the tax or a receipt issued by 668
the commissioner showing the payment of the tax. When submitting 669

payment of the tax to the clerk, a dealer shall retain any 670
discount to which the dealer is entitled under section 5739.12 of 671
the Revised Code. 672

For receiving and disbursing such taxes paid to the clerk by 673
a resident of the clerk's county, the clerk may retain a poundage 674
fee of one and one one-hundredth per cent, and the clerk shall pay 675
the poundage fee into the certificate of title administration fund 676
created by section 325.33 of the Revised Code. The clerk shall not 677
retain a poundage fee from payments of taxes by persons who do not 678
reside in the clerk's county. 679

A clerk, however, may retain from the taxes paid to the clerk 680
an amount equal to the poundage fees associated with certificates 681
of title issued by other clerks of courts of common pleas to 682
applicants who reside in the first clerk's county. The registrar, 683
in consultation with the tax commissioner and the clerks of the 684
courts of common pleas, shall develop a report from the automated 685
title processing system that informs each clerk of the amount of 686
the poundage fees that the clerk is permitted to retain from those 687
taxes because of certificates of title issued by the clerks of 688
other counties to applicants who reside in the first clerk's 689
county. 690

In the case of casual sales of motor vehicles, as defined in 691
section 4517.01 of the Revised Code, the price for the purpose of 692
determining the tax shall be the purchase price on the assigned 693
certificate of title executed by the seller and filed with the 694
clerk by the buyer on a form to be prescribed by the registrar, 695
which shall be prima-facie evidence of the amount for the 696
determination of the tax. 697

(C)(1) If the transferor indicates on the certificate of 698
title that the odometer reflects mileage in excess of the designed 699
mechanical limit of the odometer, the clerk shall enter the phrase 700
"exceeds mechanical limits" following the mileage designation. If 701

the transferor indicates on the certificate of title that the 702
odometer reading is not the actual mileage, the clerk shall enter 703
the phrase "nonactual: warning - odometer discrepancy" following 704
the mileage designation. The clerk shall use reasonable care in 705
transferring the information supplied by the transferor, but is 706
not liable for any errors or omissions of the clerk or those of 707
the clerk's deputies in the performance of the clerk's duties 708
created by this chapter. 709

The registrar shall prescribe an affidavit in which the 710
transferor shall swear to the true selling price and, except as 711
provided in this division, the true odometer reading of the motor 712
vehicle. The registrar may prescribe an affidavit in which the 713
seller and buyer provide information pertaining to the odometer 714
reading of the motor vehicle in addition to that required by this 715
section, as such information may be required by the United States 716
secretary of transportation by rule prescribed under authority of 717
subchapter IV of the "Motor Vehicle Information and Cost Savings 718
Act," 86 Stat. 961 (1972), 15 U.S.C. 1981. 719

(2) Division (C)(1) of this section does not require the 720
giving of information concerning the odometer and odometer reading 721
of a motor vehicle when ownership of a motor vehicle is being 722
transferred as a result of a bequest, under the laws of intestate 723
succession, to a survivor pursuant to section 2106.18, 2131.12, or 724
4505.10 of the Revised Code, to a transfer-on-death beneficiary or 725
beneficiaries pursuant to section 2131.13 of the Revised Code, or 726
in connection with the creation of a security interest. 727

(D) When the transfer to the applicant was made in some other 728
state or in interstate commerce, the clerk, except as provided in 729
this section, shall refuse to issue any certificate of title 730
unless the tax imposed by or pursuant to Chapter 5741. of the 731
Revised Code based on the purchaser's county of residence has been 732
paid as evidenced by a receipt issued by the tax commissioner, or 733

unless the applicant submits with the application payment of the 734
tax. Upon payment of the tax in accordance with division (E) of 735
this section, the clerk shall issue a receipt prescribed by the 736
registrar and agreed upon by the tax commissioner, showing payment 737
of the tax. 738

For receiving and disbursing such taxes paid to the clerk by 739
a resident of the clerk's county, the clerk may retain a poundage 740
fee of one and one one-hundredth per cent. The clerk shall not 741
retain a poundage fee from payments of taxes by persons who do not 742
reside in the clerk's county. 743

A clerk, however, may retain from the taxes paid to the clerk 744
an amount equal to the poundage fees associated with certificates 745
of title issued by other clerks of courts of common pleas to 746
applicants who reside in the first clerk's county. The registrar, 747
in consultation with the tax commissioner and the clerks of the 748
courts of common pleas, shall develop a report from the automated 749
title processing system that informs each clerk of the amount of 750
the poundage fees that the clerk is permitted to retain from those 751
taxes because of certificates of title issued by the clerks of 752
other counties to applicants who reside in the first clerk's 753
county. 754

When the vendor is not regularly engaged in the business of 755
selling motor vehicles, the vendor shall not be required to 756
purchase a vendor's license or make reports concerning those 757
sales. 758

(E) The clerk shall accept any payment of a tax in cash, or 759
by cashier's check, certified check, draft, money order, or teller 760
check issued by any insured financial institution payable to the 761
clerk and submitted with an application for a certificate of title 762
under division (B) or (D) of this section. The clerk also may 763
accept payment of the tax by corporate, business, or personal 764
check, credit card, electronic transfer or wire transfer, debit 765

card, or any other accepted form of payment made payable to the 766
clerk. The clerk may require bonds, guarantees, or letters of 767
credit to ensure the collection of corporate, business, or 768
personal checks. Any service fee charged by a third party to a 769
clerk for the use of any form of payment may be paid by the clerk 770
from the certificate of title administration fund created in 771
section 325.33 of the Revised Code, or may be assessed by the 772
clerk upon the applicant as an additional fee. Upon collection, 773
the additional fees shall be paid by the clerk into that 774
certificate of title administration fund. 775

The clerk shall make a good faith effort to collect any 776
payment of taxes due but not made because the payment was returned 777
or dishonored, but the clerk is not personally liable for the 778
payment of uncollected taxes or uncollected fees. The clerk shall 779
notify the tax commissioner of any such payment of taxes that is 780
due but not made and shall furnish the information to the 781
commissioner that the commissioner requires. The clerk shall 782
deduct the amount of taxes due but not paid from the clerk's 783
periodic remittance of tax payments, in accordance with procedures 784
agreed upon by the tax commissioner. The commissioner may collect 785
taxes due by assessment in the manner provided in section 5739.13 786
of the Revised Code. 787

Any person who presents payment that is returned or 788
dishonored for any reason is liable to the clerk for payment of a 789
penalty over and above the amount of the taxes due. The clerk 790
shall determine the amount of the penalty, and the penalty shall 791
be no greater than that amount necessary to compensate the clerk 792
for banking charges, legal fees, or other expenses incurred by the 793
clerk in collecting the returned or dishonored payment. The 794
remedies and procedures provided in this section are in addition 795
to any other available civil or criminal remedies. Subsequently 796
collected penalties, poundage fees, and title fees, less any title 797

fee due the state, from returned or dishonored payments collected 798
by the clerk shall be paid into the certificate of title 799
administration fund. Subsequently collected taxes, less poundage 800
fees, shall be sent by the clerk to the treasurer of state at the 801
next scheduled periodic remittance of tax payments, with 802
information as the commissioner may require. The clerk may abate 803
all or any part of any penalty assessed under this division. 804

(F) In the following cases, the clerk shall accept for filing 805
an application and shall issue a certificate of title without 806
requiring payment or evidence of payment of the tax: 807

(1) When the purchaser is this state or any of its political 808
subdivisions, a church, or an organization whose purchases are 809
exempted by section 5739.02 of the Revised Code; 810

(2) When the transaction in this state is not a retail sale 811
as defined by section 5739.01 of the Revised Code; 812

(3) When the purchase is outside this state or in interstate 813
commerce and the purpose of the purchaser is not to use, store, or 814
consume within the meaning of section 5741.01 of the Revised Code; 815

(4) When the purchaser is the federal government; 816

(5) When the motor vehicle was purchased outside this state 817
for use outside this state; 818

(6) When the motor vehicle is purchased by a nonresident of 819
this state for immediate removal from this state, and will be 820
permanently titled and registered in another state, as provided by 821
division (B)(23) of section 5739.02 of the Revised Code, and upon 822
presentation of a copy of the affidavit provided by that section, 823
and a copy of the exemption certificate provided by section 824
5739.03 of the Revised Code. 825

The clerk shall forward all payments of taxes, less poundage 826
fees, to the treasurer of state in a manner to be prescribed by 827

the tax commissioner and shall furnish information to the 828
commissioner as the commissioner requires. 829

(G) An application, as prescribed by the registrar and agreed 830
to by the tax commissioner, shall be filled out and sworn to by 831
the buyer of a motor vehicle in a casual sale. The application 832
shall contain the following notice in bold lettering: "WARNING TO 833
TRANSFEROR AND TRANSFEREE (SELLER AND BUYER): You are required by 834
law to state the true selling price. A false statement is in 835
violation of section 2921.13 of the Revised Code and is punishable 836
by six months' imprisonment or a fine of up to one thousand 837
dollars, or both. All transfers are audited by the department of 838
taxation. The seller and buyer must provide any information 839
requested by the department of taxation. The buyer may be assessed 840
any additional tax found to be due." 841

(H) For sales of manufactured homes or mobile homes occurring 842
on or after January 1, 2000, the clerk shall accept for filing, 843
pursuant to Chapter 5739. of the Revised Code, an application for 844
a certificate of title for a manufactured home or mobile home 845
without requiring payment of any tax pursuant to section 5739.02, 846
5741.021, 5741.022, or 5741.023 of the Revised Code, or a receipt 847
issued by the tax commissioner showing payment of the tax. For 848
sales of manufactured homes or mobile homes occurring on or after 849
January 1, 2000, the applicant shall pay to the clerk an 850
additional fee of five dollars for each certificate of title 851
issued by the clerk for a manufactured or mobile home pursuant to 852
division (H) of section 4505.11 of the Revised Code and for each 853
certificate of title issued upon transfer of ownership of the 854
home. The clerk shall credit the fee to the county certificate of 855
title administration fund, and the fee shall be used to pay the 856
expenses of archiving those certificates pursuant to division (A) 857
of section 4505.08 and division (H)(3) of section 4505.11 of the 858
Revised Code. The tax commissioner shall administer any tax on a 859

manufactured or mobile home pursuant to Chapters 5739. and 5741. 860
of the Revised Code. 861

(I) Every clerk shall have the capability to transact by 862
electronic means all procedures and transactions relating to the 863
issuance of motor vehicle certificates of title that are described 864
in the Revised Code as being accomplished by electronic means. 865
866

Sec. 4981.20. (A) Any real or personal property, or both, of 867
the Ohio rail development commission that is acquired, 868
constructed, reconstructed, enlarged, improved, furnished, or 869
equipped, or any combination thereof, and leased or subleased 870
under authority of sections 4981.11 to 4981.26 of the Revised Code 871
shall be subject to ad valorem, sales, use, and franchise taxes 872
and to zoning, planning, and building regulations and fees, to the 873
same extent and in the same manner as if the lessee-user or 874
sublessee-user thereof, rather than the issuer, had acquired, 875
constructed, reconstructed, enlarged, improved, furnished, or 876
equipped, or any combination thereof, such real or personal 877
property, and title thereto was in the name of such lessee-user or 878
sublessee-user. 879

The transfer of tangible personal property by lease or 880
sublease under authority of sections 4981.11 to 4981.26 of the 881
Revised Code is not a sale as used in Chapter 5739. of the Revised 882
Code. The exemptions provided in divisions (B)(1) and (14) of 883
section 5739.02 of the Revised Code shall not be applicable to 884
purchases for a project under sections 4981.11 to 4981.26 of the 885
Revised Code. 886

The issuer shall be exempt from all taxes on its real or 887
personal property, or both, which has been acquired, constructed, 888
reconstructed, enlarged, improved, furnished, or equipped, or any 889
combination thereof, under sections 4981.11 to 4981.26 of the 890

Revised Code so long as such property is used by the issuer for 891
purposes ~~which~~ that would otherwise exempt such property; has 892
ceased to be used by a former lessee-user or sublessee-user and is 893
not occupied or used; or has been acquired by the issuer but 894
development has not yet commenced. The exemption shall be 895
effective as of the date the exempt use begins. All taxes on the 896
exempt real or personal property for the year should be prorated 897
and the taxes for the exempt portion of the year shall be remitted 898
by the county auditor. 899

(B) Bonds issued under sections 4981.11 to 4981.26 of the 900
Revised Code, the transfer thereof, and the interest and other 901
income from the bonds, including any profit made on the sale 902
thereof, are free from taxation within the state. 903

Sec. 5739.01. As used in this chapter: 904

(A) "Person" includes individuals, receivers, assignees, 905
trustees in bankruptcy, estates, firms, partnerships, 906
associations, joint-stock companies, joint ventures, clubs, 907
societies, corporations, the state and its political subdivisions, 908
and combinations of individuals of any form. 909

(B) "Sale" and "selling" include all of the following 910
transactions for a consideration in any manner, whether absolutely 911
or conditionally, whether for a price or rental, in money or by 912
exchange, and by any means whatsoever: 913

(1) All transactions by which title or possession, or both, 914
of tangible personal property, is or is to be transferred, or a 915
license to use or consume tangible personal property is or is to 916
be granted; 917

(2) All transactions by which lodging by a hotel is or is to 918
be furnished to transient guests; 919

(3) All transactions by which: 920

(a) An item of tangible personal property is or is to be	921
repaired, except property, the purchase of which would not be	922
subject to the tax imposed by section 5739.02 of the Revised Code;	923
(b) An item of tangible personal property is or is to be	924
installed, except property, the purchase of which would not be	925
subject to the tax imposed by section 5739.02 of the Revised Code	926
or property that is or is to be incorporated into and will become	927
a part of a production, transmission, transportation, or	928
distribution system for the delivery of a public utility service;	929
(c) The service of washing, cleaning, waxing, polishing, or	930
painting a motor vehicle is or is to be furnished;	931
(d) Industrial laundry cleaning services are or are to be	932
provided;	933
(e) Automatic data processing, computer services, or	934
electronic information services are or are to be provided for use	935
in business when the true object of the transaction is the receipt	936
by the consumer of automatic data processing, computer services,	937
or electronic information services rather than the receipt of	938
personal or professional services to which automatic data	939
processing, computer services, or electronic information services	940
are incidental or supplemental. Notwithstanding any other	941
provision of this chapter, such transactions that occur between	942
members of an affiliated group are not sales. An affiliated group	943
means two or more persons related in such a way that one person	944
owns or controls the business operation of another member of the	945
group. In the case of corporations with stock, one corporation	946
owns or controls another if it owns more than fifty per cent of	947
the other corporation's common stock with voting rights.	948
(f) Telecommunications service, other than mobile	949
telecommunications service after July 31, 2002, is or is to be	950
provided that originates or terminates in this state and is	951

charged in the records of the telecommunications service vendor to 952
the consumer's telephone number or account in this state, or that 953
both originates and terminates in this state; but does not include 954
transactions by which telecommunications service is paid for by 955
using a prepaid authorization number or prepaid telephone calling 956
card, or by which local telecommunications service is obtained 957
from a coin-operated telephone and paid for by using coin; 958

(g) Landscaping and lawn care service is or is to be 959
provided; 960

(h) Private investigation and security service is or is to be 961
provided; 962

(i) Information services or tangible personal property is 963
provided or ordered by means of a nine hundred telephone call; 964

(j) Building maintenance and janitorial service is or is to 965
be provided; 966

(k) Employment service is or is to be provided; 967

(l) Employment placement service is or is to be provided; 968

(m) Exterminating service is or is to be provided; 969

(n) Physical fitness facility service is or is to be 970
provided; 971

(o) Recreation and sports club service is or is to be 972
provided. 973

(p) After July 31, 2002, mobile telecommunications service is 974
or is to be provided ~~in this state~~ when that service is situated to 975
this state pursuant to the "Mobile Telecommunications Sourcing 976
Act," P~~r~~ Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 977
U.S.C.A. 116 to 126, as amended. 978

(4) All transactions by which printed, imprinted, 979
overprinted, lithographic, multilithic, blueprinted, photostatic, 980
or other productions or reproductions of written or graphic matter 981

are or are to be furnished or transferred; 982

(5) The production or fabrication of tangible personal 983
property for a consideration for consumers who furnish either 984
directly or indirectly the materials used in the production of 985
fabrication work; and include the furnishing, preparing, or 986
serving for a consideration of any tangible personal property 987
consumed on the premises of the person furnishing, preparing, or 988
serving such tangible personal property. Except as provided in 989
section 5739.03 of the Revised Code, a construction contract 990
pursuant to which tangible personal property is or is to be 991
incorporated into a structure or improvement on and becoming a 992
part of real property is not a sale of such tangible personal 993
property. The construction contractor is the consumer of such 994
tangible personal property, provided that the sale and 995
installation of carpeting, the sale and installation of 996
agricultural land tile, the sale and erection or installation of 997
portable grain bins, or the provision of landscaping and lawn care 998
service and the transfer of property as part of such service is 999
never a construction contract. ~~The transfer of copyrighted motion 1000
picture films for exhibition purposes is not a sale, except such 1001
films as are used solely for advertising purposes. Other than as 1002
provided in this section, "sale" and "selling" do not include 1003
transfers of interest in leased property where the original lessee 1004
and the terms of the original lease agreement remain unchanged, or 1005
professional, insurance, or personal service transactions that 1006
involve the transfer of tangible personal property as an 1007
inconsequential element, for which no separate charges are made.~~ 1008

As used in division (B)(5) of this section: 1009

(a) "Agricultural land tile" means fired clay or concrete 1010
tile, or flexible or rigid perforated plastic pipe or tubing, 1011
incorporated or to be incorporated into a subsurface drainage 1012
system appurtenant to land used or to be used directly in 1013

production by farming, agriculture, horticulture, or floriculture. 1014
The term does not include such materials when they are or are to 1015
be incorporated into a drainage system appurtenant to a building 1016
or structure even if the building or structure is used or to be 1017
used in such production. 1018

(b) "Portable grain bin" means a structure that is used or to 1019
be used by a person engaged in farming or agriculture to shelter 1020
the person's grain and that is designed to be disassembled without 1021
significant damage to its component parts. 1022

(6) All transactions in which all of the shares of stock of a 1023
closely held corporation are transferred, if the corporation is 1024
not engaging in business and its entire assets consist of boats, 1025
planes, motor vehicles, or other tangible personal property 1026
operated primarily for the use and enjoyment of the shareholders; 1027

(7) All transactions in which a warranty, maintenance or 1028
service contract, or similar agreement by which the vendor of the 1029
warranty, contract, or agreement agrees to repair or maintain the 1030
tangible personal property of the consumer is or is to be 1031
provided; 1032

(8) All transactions by which a prepaid authorization number 1033
or a prepaid telephone calling card is or is to be transferred; 1034

(9) The transfer of copyrighted motion picture films used 1035
solely for advertising purposes, except that the transfer of such 1036
films for exhibition purposes is not a sale. 1037

Other than as provided in this section, "sale" and "selling" 1038
do not include transfers of interest in leased property where the 1039
original lessee and the terms of the original lease agreement 1040
remain unchanged; or professional, insurance, or personal service 1041
transactions that involve the transfer of tangible personal 1042
property as an inconsequential element, for which no separate 1043
charges are made. 1044

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

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

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

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

directed by the veterinarian. 1077

(3) A person who performs a facility management, or similar 1078
service contract for a contractee is a consumer of all tangible 1079
personal property and services purchased for use in connection 1080
with the performance of such contract, regardless of whether title 1081
to any such property vests in the contractee. The purchase of such 1082
property and services is not subject to the exception for resale 1083
under division (E)(1) of this section. 1084

(4)(a) In the case of a person who purchases printed matter 1085
for the purpose of distributing it or having it distributed to the 1086
public or to a designated segment of the public, free of charge, 1087
that person is the consumer of that printed matter, and the 1088
purchase of that printed matter for that purpose is a sale. 1089

(b) In the case of a person who produces, rather than 1090
purchases, printed matter for the purpose of distributing it or 1091
having it distributed to the public or to a designated segment of 1092
the public, free of charge, that person is the consumer of all 1093
tangible personal property and services purchased for use or 1094
consumption in the production of that printed matter. That person 1095
is not entitled to claim exception under division (E)(8) of this 1096
section for any material incorporated into the printed matter or 1097
any equipment, supplies, or services primarily used to produce the 1098
printed matter. 1099

(c) The distribution of printed matter to the public or to a 1100
designated segment of the public, free of charge, is not a sale to 1101
the members of the public to whom the printed matter is 1102
distributed or to any persons who purchase space in the printed 1103
matter for advertising or other purposes. 1104

(5) A person who makes sales of any of the services listed in 1105
division (B)(3) of this section is the consumer of any tangible 1106
personal property used in performing the service. The purchase of 1107

that property is not subject to the resale exception under 1108
division (E)(1) of this section. 1109

(6) A person who engages in highway transportation for hire 1110
is the consumer of all packaging materials purchased by that 1111
person and used in performing the service, except for packaging 1112
materials sold by such person in a transaction separate from the 1113
service. 1114

(E) "Retail sale" and "sales at retail" include all sales 1115
except those in which the purpose of the consumer is: 1116

(1) To resell the thing transferred or benefit of the service 1117
provided, by a person engaging in business, in the form in which 1118
the same is, or is to be, received by the person; 1119

(2) To incorporate the thing transferred as a material or a 1120
part, into tangible personal property to be produced for sale by 1121
manufacturing, assembling, processing, or refining, or to use or 1122
consume the thing transferred directly in producing a product for 1123
sale by mining, including without limitation the extraction from 1124
the earth of all substances that are classed geologically as 1125
minerals, production of crude oil and natural gas, farming, 1126
agriculture, horticulture, or floriculture, and persons engaged in 1127
rendering farming, agricultural, horticultural, or floricultural 1128
services, and services in the exploration for, and production of, 1129
crude oil and natural gas, for others are deemed engaged directly 1130
in farming, agriculture, horticulture, and floriculture, or 1131
exploration for, and production of, crude oil and natural gas; 1132
directly in the rendition of a public utility service, except that 1133
the sales tax levied by section 5739.02 of the Revised Code shall 1134
be collected upon all meals, drinks, and food for human 1135
consumption sold upon Pullman and railroad coaches. This paragraph 1136
does not exempt or except from "retail sale" or "sales at retail" 1137
the sale of tangible personal property that is to be incorporated 1138
into a structure or improvement to real property. 1139

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;	1140 1141
(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised Code;	1142 1143 1144
(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	1145 1146
(6) To use or consume the thing directly in commercial fishing;	1147 1148
(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;	1149 1150 1151 1152
(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;	1153 1154 1155 1156 1157
(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;	1158 1159 1160
(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;	1161 1162 1163 1164 1165 1166
(11) To use the thing transferred as qualified research and development equipment;	1167 1168
(12) To use or consume the thing transferred primarily in	1169

storing, transporting, mailing, or otherwise handling purchased 1170
sales inventory in a warehouse, distribution center, or similar 1171
facility when the inventory is primarily distributed outside this 1172
state to retail stores of the person who owns or controls the 1173
warehouse, distribution center, or similar facility, to retail 1174
stores of an affiliated group of which that person is a member, or 1175
by means of direct marketing. Division (E)(12) of this section 1176
does not apply to motor vehicles registered for operation on the 1177
public highways. As used in division (E)(12) of this section, 1178
"affiliated group" has the same meaning as in division (B)(3)(e) 1179
of this section and "direct marketing" has the same meaning as in 1180
division (B)(36) of section 5739.02 of the Revised Code. 1181

(13) To use or consume the thing transferred to fulfill a 1182
contractual obligation incurred by a warrantor pursuant to a 1183
warranty provided as a part of the price of the tangible personal 1184
property sold or by a vendor of a warranty, maintenance or service 1185
contract, or similar agreement the provision of which is defined 1186
as a sale under division (B)(7) of this section; 1187

(14) To use or consume the thing transferred in the 1188
production of a newspaper for distribution to the public; 1189

(15) To use tangible personal property to perform a service 1190
listed in division (B)(3) of this section, if the property is or 1191
is to be permanently transferred to the consumer of the service as 1192
an integral part of the performance of the service. 1193

As used in division (E) of this section, "thing" includes all 1194
transactions included in divisions (B)(3)(a), (b), and (e) of this 1195
section. 1196

Sales conducted through a coin-operated device that activates 1197
vacuum equipment or equipment that dispenses water, whether or not 1198
in combination with soap or other cleaning agents or wax, to the 1199
consumer for the consumer's use on the premises in washing, 1200

cleaning, or waxing a motor vehicle, provided no other personal 1201
property or personal service is provided as part of the 1202
transaction, are not retail sales or sales at retail. 1203

(F) "Business" includes any activity engaged in by any person 1204
with the object of gain, benefit, or advantage, either direct or 1205
indirect. "Business" does not include the activity of a person in 1206
managing and investing the person's own funds. 1207

(G) "Engaging in business" means commencing, conducting, or 1208
continuing in business, and liquidating a business when the 1209
liquidator thereof holds itself out to the public as conducting 1210
such business. Making a casual sale is not engaging in business. 1211

(H)(1) "Price," except as provided in divisions (H)(2) and 1212
(3) of this section, means the aggregate value in money of 1213
anything paid or delivered, or promised to be paid or delivered, 1214
in the complete performance of a retail sale, without any 1215
deduction on account of the cost of the property sold, cost of 1216
materials used, labor or service cost, interest, discount paid or 1217
allowed after the sale is consummated, or any other expense. If 1218
the retail sale consists of the rental or lease of tangible 1219
personal property, "price" means the aggregate value in money of 1220
anything paid or delivered, or promised to be paid or delivered, 1221
in the complete performance of the rental or lease, without any 1222
deduction for tax, interest, labor or service charge, damage 1223
liability waiver, termination or damage charge, discount paid or 1224
allowed after the lease is consummated, or any other expense. 1225
Except as provided in division (H)(4) of this section, the sales 1226
tax shall be calculated and collected by the lessor on each 1227
payment made by the lessee. "Price" does not include the 1228
consideration received as a deposit refundable to the consumer 1229
upon return of a beverage container, the consideration received as 1230
a deposit on a carton or case that is used for such returnable 1231
containers, or the consideration received as a refundable security 1232

deposit for the use of tangible personal property to the extent 1233
that it actually is refunded, if the consideration for such 1234
refundable deposit is separately stated from the consideration 1235
received or to be received for the tangible personal property 1236
transferred in the retail sale. Such separation must appear in the 1237
sales agreement or on the initial invoice or initial billing 1238
rendered by the vendor to the consumer. "Price" also does not 1239
include delivery charges that are separately stated on the initial 1240
invoice or initial billing rendered by the vendor. Price is the 1241
amount received inclusive of the tax, provided the vendor 1242
establishes to the satisfaction of the tax commissioner that the 1243
tax was added to the price. When the price includes both a charge 1244
for tangible personal property and a charge for providing a 1245
service and the sale of the property and the charge for the 1246
service are separately taxable, or have a separately determinable 1247
tax status, the price shall be separately stated for each such 1248
charge so the tax can be correctly computed and charged. 1249

The tax collected by the vendor from the consumer under this 1250
chapter is not part of the price, but is a tax collection for the 1251
benefit of the state and of counties levying an additional sales 1252
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 1253
and of transit authorities levying an additional sales tax 1254
pursuant to section 5739.023 of the Revised Code. Except for the 1255
discount authorized in section 5739.12 of the Revised Code and the 1256
effects of any rounding pursuant to section 5703.055 of the 1257
Revised Code, no person other than the state or such a county or 1258
transit authority shall derive any benefit from the collection or 1259
payment of such tax. 1260

As used in division (H)(1) of this section, "delivery 1261
charges" means charges by the vendor for preparation and delivery 1262
to a location designated by the consumer of tangible personal 1263
property or a service, including transportation, shipping, 1264

postage, handling, crating, and packing. 1265

(2) In the case of a sale of any new motor vehicle by a new 1266
motor vehicle dealer, as defined in section 4517.01 of the Revised 1267
Code, in which another motor vehicle is accepted by the dealer as 1268
part of the consideration received, "price" has the same meaning 1269
as in division (H)(1) of this section, reduced by the credit 1270
afforded the consumer by the dealer for the motor vehicle received 1271
in trade. 1272

(3) In the case of a sale of any watercraft or outboard motor 1273
by a watercraft dealer licensed in accordance with section 1274
1547.543 of the Revised Code, in which another watercraft, 1275
watercraft and trailer, or outboard motor is accepted by the 1276
dealer as part of the consideration received, "price" has the same 1277
meaning as in division (H)(1) of this section, reduced by the 1278
credit afforded the consumer by the dealer for the watercraft, 1279
watercraft and trailer, or outboard motor received in trade. 1280

(4) In the case of the lease of any motor vehicle designed by 1281
the manufacturer to carry a load of not more than one ton, 1282
watercraft, outboard motor, or aircraft, or the lease of any 1283
tangible personal property, other than motor vehicles designed by 1284
the manufacturer to carry a load of more than one ton, to be used 1285
by the lessee primarily for business purposes, the sales tax shall 1286
be collected by the vendor at the time the lease is consummated 1287
and shall be calculated by the vendor on the basis of the total 1288
amount to be paid by the lessee under the lease agreement. If the 1289
total amount of the consideration for the lease includes amounts 1290
that are not calculated at the time the lease is executed, the tax 1291
shall be calculated and collected by the vendor at the time such 1292
amounts are billed to the lessee. In the case of an open-end 1293
lease, the sales tax shall be calculated by the vendor on the 1294
basis of the total amount to be paid during the initial fixed term 1295
of the lease, and then for each subsequent renewal period as it 1296

comes due. 1297

As used in divisions (H)(3) and (4) of this section, "motor 1298
vehicle" has the same meaning as in section 4501.01 of the Revised 1299
Code, and "watercraft" includes an outdrive unit attached to the 1300
watercraft. 1301

(I) "Receipts" means the total amount of the prices of the 1302
sales of vendors, provided that cash discounts allowed and taken 1303
on sales at the time they are consummated are not included, minus 1304
any amount deducted as a bad debt pursuant to section 5739.121 of 1305
the Revised Code. "Receipts" does not include the sale price of 1306
property returned or services rejected by consumers when the full 1307
sale price and tax are refunded either in cash or by credit. 1308

(J) "Place of business" means any location at which a person 1309
engages in business. 1310

(K) "Premises" includes any real property or portion thereof 1311
upon which any person engages in selling tangible personal 1312
property at retail or making retail sales and also includes any 1313
real property or portion thereof designated for, or devoted to, 1314
use in conjunction with the business engaged in by such person. 1315

(L) "Casual sale" means a sale of an item of tangible 1316
personal property that was obtained by the person making the sale, 1317
through purchase or otherwise, for the person's own use and was 1318
previously subject to any state's taxing jurisdiction on its sale 1319
or use, and includes such items acquired for the seller's use that 1320
are sold by an auctioneer employed directly by the person for such 1321
purpose, provided the location of such sales is not the 1322
auctioneer's permanent place of business. As used in this 1323
division, "permanent place of business" includes any location 1324
where such auctioneer has conducted more than two auctions during 1325
the year. 1326

(M) "Hotel" means every establishment kept, used, maintained, 1327

advertised, or held out to the public to be a place where sleeping 1328
accommodations are offered to guests, in which five or more rooms 1329
are used for the accommodation of such guests, whether the rooms 1330
are in one or several structures. 1331

(N) "Transient guests" means persons occupying a room or 1332
rooms for sleeping accommodations for less than thirty consecutive 1333
days. 1334

(O) "Making retail sales" means the effecting of transactions 1335
wherein one party is obligated to pay the price and the other 1336
party is obligated to provide a service or to transfer title to or 1337
possession of the item sold. "Making retail sales" does not 1338
include the preliminary acts of promoting or soliciting the retail 1339
sales, other than the distribution of printed matter which 1340
displays or describes and prices the item offered for sale, nor 1341
does it include delivery of a predetermined quantity of tangible 1342
personal property or transportation of property or personnel to or 1343
from a place where a service is performed, regardless of whether 1344
the vendor is a delivery vendor. 1345

(P) "Used directly in the rendition of a public utility 1346
service" means that property which is to be incorporated into and 1347
will become a part of the consumer's production, transmission, 1348
transportation, or distribution system and that retains its 1349
classification as tangible personal property after such 1350
incorporation; fuel or power used in the production, transmission, 1351
transportation, or distribution system; and tangible personal 1352
property used in the repair and maintenance of the production, 1353
transmission, transportation, or distribution system, including 1354
only such motor vehicles as are specially designed and equipped 1355
for such use. Tangible personal property and services used 1356
primarily in providing highway transportation for hire are not 1357
used in providing a public utility service as defined in this 1358
division. 1359

(Q) "Refining" means removing or separating a desirable 1360
product from raw or contaminated materials by distillation or 1361
physical, mechanical, or chemical processes. 1362

(R) "Assembly" and "assembling" mean attaching or fitting 1363
together parts to form a product, but do not include packaging a 1364
product. 1365

(S) "Manufacturing operation" means a process in which 1366
materials are changed, converted, or transformed into a different 1367
state or form from which they previously existed and includes 1368
refining materials, assembling parts, and preparing raw materials 1369
and parts by mixing, measuring, blending, or otherwise committing 1370
such materials or parts to the manufacturing process. 1371
"Manufacturing operation" does not include packaging. 1372

(T) "Fiscal officer" means, with respect to a regional 1373
transit authority, the secretary-treasurer thereof, and with 1374
respect to a county that is a transit authority, the fiscal 1375
officer of the county transit board if one is appointed pursuant 1376
to section 306.03 of the Revised Code or the county auditor if the 1377
board of county commissioners operates the county transit system. 1378

(U) "Transit authority" means a regional transit authority 1379
created pursuant to section 306.31 of the Revised Code or a county 1380
in which a county transit system is created pursuant to section 1381
306.01 of the Revised Code. For the purposes of this chapter, a 1382
transit authority must extend to at least the entire area of a 1383
single county. A transit authority that includes territory in more 1384
than one county must include all the area of the most populous 1385
county that is a part of such transit authority. County population 1386
shall be measured by the most recent census taken by the United 1387
States census bureau. 1388

(V) "Legislative authority" means, with respect to a regional 1389
transit authority, the board of trustees thereof, and with respect 1390

to a county that is a transit authority, the board of county
commissioners. 1391
1392

(W) "Territory of the transit authority" means all of the 1393
area included within the territorial boundaries of a transit 1394
authority as they from time to time exist. Such territorial 1395
boundaries must at all times include all the area of a single 1396
county or all the area of the most populous county that is a part 1397
of such transit authority. County population shall be measured by 1398
the most recent census taken by the United States census bureau. 1399

(X) "Providing a service" means providing or furnishing 1400
anything described in division (B)(3) of this section for 1401
consideration. 1402

(Y)(1)(a) "Automatic data processing" means processing of 1403
others' data, including keypunching or similar data entry services 1404
together with verification thereof, or providing access to 1405
computer equipment for the purpose of processing data. 1406

(b) "Computer services" means providing services consisting 1407
of specifying computer hardware configurations and evaluating 1408
technical processing characteristics, computer programming, and 1409
training of computer programmers and operators, provided in 1410
conjunction with and to support the sale, lease, or operation of 1411
taxable computer equipment or systems. 1412

(c) "Electronic information services" means providing access 1413
to computer equipment by means of telecommunications equipment for 1414
the purpose of either of the following: 1415

(i) Examining or acquiring data stored in or accessible to 1416
the computer equipment; 1417

(ii) Placing data into the computer equipment to be retrieved 1418
by designated recipients with access to the computer equipment. 1419

(d) "Automatic data processing, computer services, or 1420

electronic information services" shall not include personal or 1421
professional services. 1422

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 1423
section, "personal and professional services" means all services 1424
other than automatic data processing, computer services, or 1425
electronic information services, including but not limited to: 1426

(a) Accounting and legal services such as advice on tax 1427
matters, asset management, budgetary matters, quality control, 1428
information security, and auditing and any other situation where 1429
the service provider receives data or information and studies, 1430
alters, analyzes, interprets, or adjusts such material; 1431

(b) Analyzing business policies and procedures; 1432

(c) Identifying management information needs; 1433

(d) Feasibility studies, including economic and technical 1434
analysis of existing or potential computer hardware or software 1435
needs and alternatives; 1436

(e) Designing policies, procedures, and custom software for 1437
collecting business information, and determining how data should 1438
be summarized, sequenced, formatted, processed, controlled, and 1439
reported so that it will be meaningful to management; 1440

(f) Developing policies and procedures that document how 1441
business events and transactions are to be authorized, executed, 1442
and controlled; 1443

(g) Testing of business procedures; 1444

(h) Training personnel in business procedure applications; 1445

(i) Providing credit information to users of such information 1446
by a consumer reporting agency, as defined in the "Fair Credit 1447
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or 1448
as hereafter amended, including but not limited to gathering, 1449
organizing, analyzing, recording, and furnishing such information 1450

by any oral, written, graphic, or electronic medium; 1451

(j) Providing debt collection services by any oral, written, 1452
graphic, or electronic means. 1453

The services listed in divisions (Y)(2)(a) to (j) of this 1454
section are not automatic data processing or computer services. 1455

(Z) "Highway transportation for hire" means the 1456
transportation of personal property belonging to others for 1457
consideration by any of the following: 1458

(1) The holder of a permit or certificate issued by this 1459
state or the United States authorizing the holder to engage in 1460
transportation of personal property belonging to others for 1461
consideration over or on highways, roadways, streets, or any 1462
similar public thoroughfare; 1463

(2) A person who engages in the transportation of personal 1464
property belonging to others for consideration over or on 1465
highways, roadways, streets, or any similar public thoroughfare 1466
but who could not have engaged in such transportation on December 1467
11, 1985, unless the person was the holder of a permit or 1468
certificate of the types described in division (Z)(1) of this 1469
section; 1470

(3) A person who leases a motor vehicle to and operates it 1471
for a person described by division (Z)(1) or (2) of this section. 1472

(AA) "Telecommunications service" means the transmission of 1473
any interactive, two-way electromagnetic communications, including 1474
voice, image, data, and information, through the use of any medium 1475
such as wires, cables, microwaves, cellular radio, radio waves, 1476
light waves, or any combination of those or similar media. 1477
"Telecommunications service" includes message toll service even 1478
though the vendor provides the message toll service by means of 1479
wide area transmission type service or private communications 1480
service purchased from another telecommunications service 1481

provider, but does not include any of the following:	1482
(1) Sales of incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service, to the person contracting for the receipt of that service;	1483 1484 1485 1486
(2) Sales of private communications service to the person contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;	1487 1488 1489 1490
(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;	1491 1492
(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;	1493 1494 1495
(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;	1496 1497 1498
(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code;	1499 1500 1501
(7) After July 31, 2002, mobile telecommunications service.	1502
(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.	1503 1504 1505 1506
(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	1507 1508 1509 1510 1511

not owned or controlled by individuals or business concerns which 1512
conduct such publications as an auxiliary to, and essentially for 1513
the advancement of the main business or calling of, those who own 1514
or control them. 1515

(DD) "Landscaping and lawn care service" means the services 1516
of planting, seeding, sodding, removing, cutting, trimming, 1517
pruning, mulching, aerating, applying chemicals, watering, 1518
fertilizing, and providing similar services to establish, promote, 1519
or control the growth of trees, shrubs, flowers, grass, ground 1520
cover, and other flora, or otherwise maintaining a lawn or 1521
landscape grown or maintained by the owner for ornamentation or 1522
other nonagricultural purpose. However, "landscaping and lawn care 1523
service" does not include the providing of such services by a 1524
person who has less than five thousand dollars in sales of such 1525
services during the calendar year. 1526

(EE) "Private investigation and security service" means the 1527
performance of any activity for which the provider of such service 1528
is required to be licensed pursuant to Chapter 4749. of the 1529
Revised Code, or would be required to be so licensed in performing 1530
such services in this state, and also includes the services of 1531
conducting polygraph examinations and of monitoring or overseeing 1532
the activities on or in, or the condition of, the consumer's home, 1533
business, or other facility by means of electronic or similar 1534
monitoring devices. "Private investigation and security service" 1535
does not include special duty services provided by off-duty police 1536
officers, deputy sheriffs, and other peace officers regularly 1537
employed by the state or a political subdivision. 1538

(FF) "Information services" means providing conversation, 1539
giving consultation or advice, playing or making a voice or other 1540
recording, making or keeping a record of the number of callers, 1541
and any other service provided to a consumer by means of a nine 1542
hundred telephone call, except when the nine hundred telephone 1543

call is the means by which the consumer makes a contribution to a 1544
recognized charity. 1545

(GG) "Research and development" means designing, creating, or 1546
formulating new or enhanced products, equipment, or manufacturing 1547
processes, and also means conducting scientific or technological 1548
inquiry and experimentation in the physical sciences with the goal 1549
of increasing scientific knowledge which may reveal the bases for 1550
new or enhanced products, equipment, or manufacturing processes. 1551

(HH) "Qualified research and development equipment" means 1552
capitalized tangible personal property, and leased personal 1553
property that would be capitalized if purchased, used by a person 1554
primarily to perform research and development. Tangible personal 1555
property primarily used in testing, as defined in division (A)(4) 1556
of section 5739.011 of the Revised Code, or used for recording or 1557
storing test results, is not qualified research and development 1558
equipment unless such property is primarily used by the consumer 1559
in testing the product, equipment, or manufacturing process being 1560
created, designed, or formulated by the consumer in the research 1561
and development activity or in recording or storing such test 1562
results. 1563

(II) "Building maintenance and janitorial service" means 1564
cleaning the interior or exterior of a building and any tangible 1565
personal property located therein or thereon, including any 1566
services incidental to such cleaning for which no separate charge 1567
is made. However, "building maintenance and janitorial service" 1568
does not include the providing of such service by a person who has 1569
less than five thousand dollars in sales of such service during 1570
the calendar year. 1571

(JJ) "Employment service" means providing or supplying 1572
personnel, on a temporary or long-term basis, to perform work or 1573
labor under the supervision or control of another, when the 1574
personnel so supplied receive their wages, salary, or other 1575

compensation from the provider of the service. "Employment
service" does not include: 1576
1577

(1) Acting as a contractor or subcontractor, where the
personnel performing the work are not under the direct control of
the purchaser. 1578
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(2) Medical and health care services. 1581

(3) Supplying personnel to a purchaser pursuant to a contract
of at least one year between the service provider and the
purchaser that specifies that each employee covered under the
contract is assigned to the purchaser on a permanent basis. 1582
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(4) Transactions between members of an affiliated group, as
defined in division (B)(3)(e) of this section. 1586
1587

(KK) "Employment placement service" means locating or finding
employment for a person or finding or locating an employee to fill
an available position. 1588
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(LL) "Exterminating service" means eradicating or attempting
to eradicate vermin infestations from a building or structure, or
the area surrounding a building or structure, and includes
activities to inspect, detect, or prevent vermin infestation of a
building or structure. 1591
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(MM) "Physical fitness facility service" means all
transactions by which a membership is granted, maintained, or
renewed, including initiation fees, membership dues, renewal fees,
monthly minimum fees, and other similar fees and dues, by a
physical fitness facility such as an athletic club, health spa, or
gymnasium, which entitles the member to use the facility for
physical exercise. 1596
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(NN) "Recreation and sports club service" means all
transactions by which a membership is granted, maintained, or
renewed, including initiation fees, membership dues, renewal fees,
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monthly minimum fees, and other similar fees and dues, by a 1606
recreation and sports club, which entitles the member to use the 1607
facilities of the organization. "Recreation and sports club" means 1608
an organization that has ownership of, or controls or leases on a 1609
continuing, long-term basis, the facilities used by its members 1610
and includes an aviation club, gun or shooting club, yacht club, 1611
card club, swimming club, tennis club, golf club, country club, 1612
riding club, amateur sports club, or similar organization. 1613

(OO) "Livestock" means farm animals commonly raised for food 1614
or food production, and includes but is not limited to cattle, 1615
sheep, goats, swine, and poultry. "Livestock" does not include 1616
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 1617
animals for use in laboratories or for exhibition, or other 1618
animals not commonly raised for food or food production. 1619

(PP) "Livestock structure" means a building or structure used 1620
exclusively for the housing, raising, feeding, or sheltering of 1621
livestock, and includes feed storage or handling structures and 1622
structures for livestock waste handling. 1623

(QQ) "Horticulture" means the growing, cultivation, and 1624
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 1625
and nursery stock. As used in this division, "nursery stock" has 1626
the same meaning as in section 927.51 of the Revised Code. 1627

(RR) "Horticulture structure" means a building or structure 1628
used exclusively for the commercial growing, raising, or 1629
overwintering of horticultural products, and includes the area 1630
used for stocking, storing, and packing horticultural products 1631
when done in conjunction with the production of those products. 1632

(SS) "Newspaper" means an unbound publication bearing a title 1633
or name that is regularly published, at least as frequently as 1634
biweekly, and distributed from a fixed place of business to the 1635
public in a specific geographic area, and that contains a 1636

substantial amount of news matter of international, national, or 1637
local events of interest to the general public. 1638

(TT) "Professional racing team" means a person that employs 1639
at least twenty full-time employees for the purpose of conducting 1640
a motor vehicle racing business for profit. The person must 1641
conduct the business with the purpose of racing one or more motor 1642
racing vehicles in at least ten competitive professional racing 1643
events each year that comprise all or part of a motor racing 1644
series sanctioned by one or more motor racing sanctioning 1645
organizations. A "motor racing vehicle" means a vehicle for which 1646
the chassis, engine, and parts are designed exclusively for motor 1647
racing, and does not include a stock or production model vehicle 1648
that may be modified for use in racing. For the purposes of this 1649
division: 1650

(1) A "competitive professional racing event" is a motor 1651
vehicle racing event sanctioned by one or more motor racing 1652
sanctioning organizations, at which aggregate cash prizes in 1653
excess of eight hundred thousand dollars are awarded to the 1654
competitors. 1655

(2) "Full-time employee" means an individual who is employed 1656
for consideration for thirty-five or more hours a week, or who 1657
renders any other standard of service generally accepted by custom 1658
or specified by contract as full-time employment. 1659

(UU)(1) "Prepaid authorization number" means a numeric or 1660
alphanumeric combination that represents a prepaid account that 1661
can be used by the account holder solely to obtain 1662
telecommunications service, and includes any renewals or increases 1663
in the prepaid account. 1664

(2) "Prepaid telephone calling card" means a tangible item 1665
that contains a prepaid authorization number that can be used 1666
solely to obtain telecommunications service, and includes any 1667

renewals or increases in the prepaid account. 1668

(VV) "Lease" means any transfer for a consideration of the 1669
possession of and right to use, but not title to, tangible 1670
personal property for a fixed period of time greater than thirty 1671
days or for an open-ended period of time with a minimum fixed 1672
period of more than thirty days. 1673

(WW) "Mobile telecommunications service" has the same meaning 1674
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 1675
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended. 1676

(XX) "Certified service provider" has the same meaning as in 1677
section 5740.01 of the Revised Code. 1678

Sec. 5739.02. For the purpose of providing revenue with which 1679
to meet the needs of the state, for the use of the general revenue 1680
fund of the state, for the purpose of securing a thorough and 1681
efficient system of common schools throughout the state, for the 1682
purpose of affording revenues, in addition to those from general 1683
property taxes, permitted under constitutional limitations, and 1684
from other sources, for the support of local governmental 1685
functions, and for the purpose of reimbursing the state for the 1686
expense of administering this chapter, an excise tax is hereby 1687
levied on each retail sale made in this state. 1688

(A) The tax shall be collected pursuant to the schedules in 1689
section 5739.025 of the Revised Code. 1690

The tax applies and is collectible when the sale is made, 1691
regardless of the time when the price is paid or delivered. 1692

In the case of a sale, the price of which consists in whole 1693
or in part of rentals for the use of the thing transferred, the 1694
tax, as regards those rentals, shall be measured by the 1695
installments of those rentals. 1696

In the case of a sale of a service defined under division 1697

(MM) or (NN) of section 5739.01 of the Revised Code, the price of 1698
which consists in whole or in part of a membership for the receipt 1699
of the benefit of the service, the tax applicable to the sale 1700
shall be measured by the installments thereof. 1701

(B) The tax does not apply to the following: 1702

(1) Sales to the state or any of its political subdivisions, 1703
or to any other state or its political subdivisions if the laws of 1704
that state exempt from taxation sales made to this state and its 1705
political subdivisions; 1706

(2) Sales of food for human consumption off the premises 1707
where sold; 1708

(3) Sales of food sold to students only in a cafeteria, 1709
dormitory, fraternity, or sorority maintained in a private, 1710
public, or parochial school, college, or university; 1711

(4) Sales of newspapers and of magazine subscriptions and 1712
sales or transfers of magazines distributed as controlled 1713
circulation publications; 1714

(5) The furnishing, preparing, or serving of meals without 1715
charge by an employer to an employee provided the employer records 1716
the meals as part compensation for services performed or work 1717
done; 1718

(6) Sales of motor fuel upon receipt, use, distribution, or 1719
sale of which in this state a tax is imposed by the law of this 1720
state, but this exemption shall not apply to the sale of motor 1721
fuel on which a refund of the tax is allowable under section 1722
5735.14 of the Revised Code; and the tax commissioner may deduct 1723
the amount of tax levied by this section applicable to the price 1724
of motor fuel when granting a refund of motor fuel tax pursuant to 1725
section 5735.14 of the Revised Code and shall cause the amount 1726
deducted to be paid into the general revenue fund of this state; 1727

(7) Sales of natural gas by a natural gas company, of water 1728
by a water-works company, or of steam by a heating company, if in 1729
each case the thing sold is delivered to consumers through pipes 1730
or conduits, and all sales of communications services by a 1731
telephone or telegraph company, all terms as defined in section 1732
5727.01 of the Revised Code; 1733

(8) Casual sales by a person, or auctioneer employed directly 1734
by the person to conduct such sales, except as to such sales of 1735
motor vehicles, watercraft or outboard motors required to be 1736
titled under section 1548.06 of the Revised Code, watercraft 1737
documented with the United States coast guard, snowmobiles, and 1738
all-purpose vehicles as defined in section 4519.01 of the Revised 1739
Code; 1740

(9) Sales of services or tangible personal property, other 1741
than motor vehicles, mobile homes, and manufactured homes, by 1742
churches, organizations exempt from taxation under section 1743
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 1744
organizations operated exclusively for charitable purposes as 1745
defined in division (B)(12) of this section, provided that the 1746
number of days on which such tangible personal property or 1747
services, other than items never subject to the tax, are sold does 1748
not exceed six in any calendar year. If the number of days on 1749
which such sales are made exceeds six in any calendar year, the 1750
church or organization shall be considered to be engaged in 1751
business and all subsequent sales by it shall be subject to the 1752
tax. In counting the number of days, all sales by groups within a 1753
church or within an organization shall be considered to be sales 1754
of that church or organization, except that sales made by separate 1755
student clubs and other groups of students of a primary or 1756
secondary school, and sales made by a parent-teacher association, 1757
booster group, or similar organization that raises money to 1758
support or fund curricular or extracurricular activities of a 1759

primary or secondary school, shall not be considered to be sales 1760
of such school, and sales by each such club, group, association, 1761
or organization shall be counted separately for purposes of the 1762
six-day limitation. This division does not apply to sales by a 1763
noncommercial educational radio or television broadcasting 1764
station. 1765

(10) Sales not within the taxing power of this state under 1766
the Constitution of the United States; 1767

(11) The transportation of persons or property, unless the 1768
transportation is by a private investigation and security service; 1769

(12) Sales of tangible personal property or services to 1770
churches, to organizations exempt from taxation under section 1771
501(c)(3) of the Internal Revenue Code of 1986, and to any other 1772
nonprofit organizations operated exclusively for charitable 1773
purposes in this state, no part of the net income of which inures 1774
to the benefit of any private shareholder or individual, and no 1775
substantial part of the activities of which consists of carrying 1776
on propaganda or otherwise attempting to influence legislation; 1777
sales to offices administering one or more homes for the aged or 1778
one or more hospital facilities exempt under section 140.08 of the 1779
Revised Code; and sales to organizations described in division (D) 1780
of section 5709.12 of the Revised Code. 1781

"Charitable purposes" means the relief of poverty; the 1782
improvement of health through the alleviation of illness, disease, 1783
or injury; the operation of an organization exclusively for the 1784
provision of professional, laundry, printing, and purchasing 1785
services to hospitals or charitable institutions; the operation of 1786
a home for the aged, as defined in section 5701.13 of the Revised 1787
Code; the operation of a radio or television broadcasting station 1788
that is licensed by the federal communications commission as a 1789
noncommercial educational radio or television station; the 1790
operation of a nonprofit animal adoption service or a county 1791

humane society; the promotion of education by an institution of 1792
learning that maintains a faculty of qualified instructors, 1793
teaches regular continuous courses of study, and confers a 1794
recognized diploma upon completion of a specific curriculum; the 1795
operation of a parent-teacher association, booster group, or 1796
similar organization primarily engaged in the promotion and 1797
support of the curricular or extracurricular activities of a 1798
primary or secondary school; the operation of a community or area 1799
center in which presentations in music, dramatics, the arts, and 1800
related fields are made in order to foster public interest and 1801
education therein; the production of performances in music, 1802
dramatics, and the arts; or the promotion of education by an 1803
organization engaged in carrying on research in, or the 1804
dissemination of, scientific and technological knowledge and 1805
information primarily for the public. 1806

Nothing in this division shall be deemed to exempt sales to 1807
any organization for use in the operation or carrying on of a 1808
trade or business, or sales to a home for the aged for use in the 1809
operation of independent living facilities as defined in division 1810
(A) of section 5709.12 of the Revised Code. 1811

(13) Building and construction materials and services sold to 1812
construction contractors for incorporation into a structure or 1813
improvement to real property under a construction contract with 1814
this state or a political subdivision of this state, or with the 1815
United States government or any of its agencies; building and 1816
construction materials and services sold to construction 1817
contractors for incorporation into a structure or improvement to 1818
real property that are accepted for ownership by this state or any 1819
of its political subdivisions, or by the United States government 1820
or any of its agencies at the time of completion of the structures 1821
or improvements; building and construction materials sold to 1822
construction contractors for incorporation into a horticulture 1823

structure or livestock structure for a person engaged in the 1824
business of horticulture or producing livestock; building 1825
materials and services sold to a construction contractor for 1826
incorporation into a house of public worship or religious 1827
education, or a building used exclusively for charitable purposes 1828
under a construction contract with an organization whose purpose 1829
is as described in division (B)(12) of this section; building 1830
materials and services sold to a construction contractor for 1831
incorporation into a building under a construction contract with 1832
an organization exempt from taxation under section 501(c)(3) of 1833
the Internal Revenue Code of 1986 when the building is to be used 1834
exclusively for the organization's exempt purposes; building and 1835
construction materials sold for incorporation into the original 1836
construction of a sports facility under section 307.696 of the 1837
Revised Code; and building and construction materials and services 1838
sold to a construction contractor for incorporation into real 1839
property outside this state if such materials and services, when 1840
sold to a construction contractor in the state in which the real 1841
property is located for incorporation into real property in that 1842
state, would be exempt from a tax on sales levied by that state; 1843

(14) Sales of ships or vessels or rail rolling stock used or 1844
to be used principally in interstate or foreign commerce, and 1845
repairs, alterations, fuel, and lubricants for such ships or 1846
vessels or rail rolling stock; 1847

(15) Sales to persons primarily engaged in any of the 1848
activities mentioned in division (E)(2) or (9) of section 5739.01 1849
of the Revised Code, to persons engaged in making retail sales, or 1850
to persons who purchase for sale from a manufacturer tangible 1851
personal property that was produced by the manufacturer in 1852
accordance with specific designs provided by the purchaser, of 1853
packages, including material, labels, and parts for packages, and 1854
of machinery, equipment, and material for use primarily in 1855

packaging tangible personal property produced for sale, including 1856
any machinery, equipment, and supplies used to make labels or 1857
packages, to prepare packages or products for labeling, or to 1858
label packages or products, by or on the order of the person doing 1859
the packaging, or sold at retail. "Packages" includes bags, 1860
baskets, cartons, crates, boxes, cans, bottles, bindings, 1861
wrappings, and other similar devices and containers, ~~and~~ 1862
"packaging" but does not include motor vehicles or bulk tanks, 1863
trailers, or similar devices attached to motor vehicles. 1864
"Packaging" means placing therein in a package. Division (B)(14) 1865
of this section does not apply to persons engaged in highway 1866
transportation for hire. 1867

(16) Sales of food to persons using food stamp benefits to 1868
purchase the food. As used in division (B)(16) of this section, 1869
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 1870
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 1871
adopted pursuant to that act. 1872

(17) Sales to persons engaged in farming, agriculture, 1873
horticulture, or floriculture, of tangible personal property for 1874
use or consumption directly in the production by farming, 1875
agriculture, horticulture, or floriculture of other tangible 1876
personal property for use or consumption directly in the 1877
production of tangible personal property for sale by farming, 1878
agriculture, horticulture, or floriculture; or material and parts 1879
for incorporation into any such tangible personal property for use 1880
or consumption in production; and of tangible personal property 1881
for such use or consumption in the conditioning or holding of 1882
products produced by and for such use, consumption, or sale by 1883
persons engaged in farming, agriculture, horticulture, or 1884
floriculture, except where such property is incorporated into real 1885
property; 1886

(18) Sales of drugs dispensed by a licensed pharmacist upon 1887

the order of a licensed health professional authorized to 1888
prescribe drugs to a human being, as the term "licensed health 1889
professional authorized to prescribe drugs" is defined in section 1890
4729.01 of the Revised Code; insulin as recognized in the official 1891
United States pharmacopoeia; urine and blood testing materials 1892
when used by diabetics or persons with hypoglycemia to test for 1893
glucose or acetone; hypodermic syringes and needles when used by 1894
diabetics for insulin injections; epoetin alfa when purchased for 1895
use in the treatment of persons with end-stage renal disease; 1896
hospital beds when purchased for use by persons with medical 1897
problems for medical purposes; and oxygen and oxygen-dispensing 1898
equipment when purchased for use by persons with medical problems 1899
for medical purposes; 1900

(19)(a) Sales of artificial limbs or portion thereof, breast 1901
prostheses, and other prosthetic devices for humans; braces or 1902
other devices for supporting weakened or nonfunctioning parts of 1903
the human body; crutches or other devices to aid human 1904
perambulation; and items of tangible personal property used to 1905
supplement impaired functions of the human body such as 1906
respiration, hearing, or elimination; 1907

(b) Sales of wheelchairs; items incorporated into or used in 1908
conjunction with a motor vehicle for the purpose of transporting 1909
wheelchairs, other than transportation conducted in connection 1910
with the sale or delivery of wheelchairs; and items incorporated 1911
into or used in conjunction with a motor vehicle that are 1912
specifically designed to assist a person with a disability to 1913
access or operate the motor vehicle. As used in this division, 1914
"person with a disability" means any person who has lost the use 1915
of one or both legs or one or both arms, who is blind, deaf, or 1916
disabled to the extent that the person is unable to move about 1917
without the aid of crutches or a wheelchair, or whose mobility is 1918
restricted by a permanent cardiovascular, pulmonary, or other 1919

disabling condition.	1920
(c) No exemption under this division shall be allowed for	1921
nonprescription drugs, medicines, or remedies; items or devices	1922
used to supplement vision; items or devices whose function is	1923
solely or primarily cosmetic; or physical fitness equipment. This	1924
division does not apply to sales to a physician or medical	1925
facility for use in the treatment of a patient.	1926
(20) Sales of emergency and fire protection vehicles and	1927
equipment to nonprofit organizations for use solely in providing	1928
fire protection and emergency services, including trauma care and	1929
emergency medical services, for political subdivisions of the	1930
state;	1931
(21) Sales of tangible personal property manufactured in this	1932
state, if sold by the manufacturer in this state to a retailer for	1933
use in the retail business of the retailer outside of this state	1934
and if possession is taken from the manufacturer by the purchaser	1935
within this state for the sole purpose of immediately removing the	1936
same from this state in a vehicle owned by the purchaser;	1937
(22) Sales of services provided by the state or any of its	1938
political subdivisions, agencies, instrumentalities, institutions,	1939
or authorities, or by governmental entities of the state or any of	1940
its political subdivisions, agencies, instrumentalities,	1941
institutions, or authorities;	1942
(23) Sales of motor vehicles to nonresidents of this state	1943
upon the presentation of an affidavit executed in this state by	1944
the nonresident purchaser affirming that the purchaser is a	1945
nonresident of this state, that possession of the motor vehicle is	1946
taken in this state for the sole purpose of immediately removing	1947
it from this state, that the motor vehicle will be permanently	1948
titled and registered in another state, and that the motor vehicle	1949
will not be used in this state;	1950

(24) Sales to persons engaged in the preparation of eggs for 1951
sale of tangible personal property used or consumed directly in 1952
such preparation, including such tangible personal property used 1953
for cleaning, sanitizing, preserving, grading, sorting, and 1954
classifying by size; packages, including material and parts for 1955
packages, and machinery, equipment, and material for use in 1956
packaging eggs for sale; and handling and transportation equipment 1957
and parts therefor, except motor vehicles licensed to operate on 1958
public highways, used in intraplant or interplant transfers or 1959
shipment of eggs in the process of preparation for sale, when the 1960
plant or plants within or between which such transfers or 1961
shipments occur are operated by the same person. "Packages" 1962
includes containers, cases, baskets, flats, fillers, filler flats, 1963
cartons, closure materials, labels, and labeling materials, and 1964
"packaging" means placing therein. 1965

(25)(a) Sales of water to a consumer for residential use, 1966
except the sale of bottled water, distilled water, mineral water, 1967
carbonated water, or ice; 1968

(b) Sales of water by a nonprofit corporation engaged 1969
exclusively in the treatment, distribution, and sale of water to 1970
consumers, if such water is delivered to consumers through pipes 1971
or tubing. 1972

(26) Fees charged for inspection or reinspection of motor 1973
vehicles under section 3704.14 of the Revised Code; 1974

(27) Sales to persons licensed to conduct a food service 1975
operation pursuant to section 3717.43 of the Revised Code, of 1976
tangible personal property primarily used directly for the 1977
following: 1978

(a) To prepare food for human consumption for sale; 1979

(b) To preserve food that has been or will be prepared for 1980
human consumption for sale by the food service operator, not 1981

including tangible personal property used to display food for selection by the consumer;	1982 1983
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1984 1985
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1986 1987
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	1988 1989 1990 1991
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	1992 1993 1994
(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;	1995 1996 1997
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property <u>belonging to others</u> by a person engaged in highway transportation for hire, <u>except for packages and packaging used for the transportation of tangible personal property;</u>	1998 1999 2000 2001 2002 2003
(33) 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;	2004 2005 2006 2007 2008
(34) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive,	2009 2010 2011

two-way electromagnetic communications, including voice, image, 2012
data, and information, through the use of any medium, including, 2013
but not limited to, poles, wires, cables, switching equipment, 2014
computers, and record storage devices and media, and component 2015
parts for the tangible personal property. The exemption provided 2016
in division (B)(34) of this section shall be in lieu of all other 2017
exceptions under division (E)(2) of section 5739.01 of the Revised 2018
Code to which a telecommunications service vendor may otherwise be 2019
entitled based upon the use of the thing purchased in providing 2020
the telecommunications service. 2021

(35) Sales of investment metal bullion and investment coins. 2022
"Investment metal bullion" means any elementary precious metal 2023
that has been put through a process of smelting or refining, 2024
including, but not limited to, gold, silver, platinum, and 2025
palladium, and which is in such state or condition that its value 2026
depends upon its content and not upon its form. "Investment metal 2027
bullion" does not include fabricated precious metal that has been 2028
processed or manufactured for one or more specific and customary 2029
industrial, professional, or artistic uses. "Investment coins" 2030
means numismatic coins or other forms of money and legal tender 2031
manufactured of gold, silver, platinum, palladium, or other metal 2032
under the laws of the United States or any foreign nation with a 2033
fair market value greater than any statutory or nominal value of 2034
such coins. 2035

(36)(a) Sales where the purpose of the consumer is to use or 2036
consume the things transferred in making retail sales and 2037
consisting of newspaper inserts, catalogues, coupons, flyers, gift 2038
certificates, or other advertising material that prices and 2039
describes tangible personal property offered for retail sale. 2040

(b) Sales to direct marketing vendors of preliminary 2041
materials such as photographs, artwork, and typesetting that will 2042
be used in printing advertising material; of printed matter that 2043

offers free merchandise or chances to win sweepstake prizes and 2044
that is mailed to potential customers with advertising material 2045
described in division (B)(36)(a) of this section; and of equipment 2046
such as telephones, computers, facsimile machines, and similar 2047
tangible personal property primarily used to accept orders for 2048
direct marketing retail sales. 2049

(c) Sales of automatic food vending machines that preserve 2050
food with a shelf life of forty-five days or less by refrigeration 2051
and dispense it to the consumer. 2052

For purposes of division (B)(36) of this section, "direct 2053
marketing" means the method of selling where consumers order 2054
tangible personal property by United States mail, delivery 2055
service, or telecommunication and the vendor delivers or ships the 2056
tangible personal property sold to the consumer from a warehouse, 2057
catalogue distribution center, or similar fulfillment facility by 2058
means of the United States mail, delivery service, or common 2059
carrier. 2060

(37) Sales to a person engaged in the business of 2061
horticulture or producing livestock of materials to be 2062
incorporated into a horticulture structure or livestock structure; 2063

(38) The sale of a motor vehicle that is used exclusively for 2064
a vanpool ridesharing arrangement to persons participating in the 2065
vanpool ridesharing arrangement when the vendor is selling the 2066
vehicle pursuant to a contract between the vendor and the 2067
department of transportation; 2068

(39) Sales of personal computers, computer monitors, computer 2069
keyboards, modems, and other peripheral computer equipment to an 2070
individual who is licensed or certified to teach in an elementary 2071
or a secondary school in this state for use by that individual in 2072
preparation for teaching elementary or secondary school students; 2073

(40) Sales to a professional racing team of any of the 2074

following:	2075
(a) Motor racing vehicles;	2076
(b) Repair services for motor racing vehicles;	2077
(c) Items of property that are attached to or incorporated in	2078
motor racing vehicles, including engines, chassis, and all other	2079
components of the vehicles, and all spare, replacement, and	2080
rebuilt parts or components of the vehicles; except not including	2081
tires, consumable fluids, paint, and accessories consisting of	2082
instrumentation sensors and related items added to the vehicle to	2083
collect and transmit data by means of telemetry and other forms of	2084
communication.	2085
(41) Sales of used manufactured homes and used mobile homes,	2086
as defined in section 5739.0210 of the Revised Code, made on or	2087
after January 1, 2000;	2088
(42) Sales of tangible personal property and services to a	2089
provider of electricity used or consumed directly and primarily in	2090
generating, transmitting, or distributing electricity for use by	2091
others, including property that is or is to be incorporated into	2092
and will become a part of the consumer's production, transmission,	2093
or distribution system and that retains its classification as	2094
tangible personal property after incorporation; fuel or power used	2095
in the production, transmission, or distribution of electricity;	2096
and tangible personal property and services used in the repair and	2097
maintenance of the production, transmission, or distribution	2098
system, including only those motor vehicles as are specially	2099
designed and equipped for such use. The exemption provided in this	2100
division shall be in lieu of all other exceptions in division	2101
(E)(2) of section 5739.01 of the Revised Code to which a provider	2102
of electricity may otherwise be entitled based on the use of the	2103
tangible personal property or service purchased in generating,	2104
transmitting, or distributing electricity.	2105

(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.

(D) As used in this section, except in division (B)(16) 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 include: spirituous liquors, wine, mixed beverages, or beer; soft drinks; sodas and beverages that are ordinarily dispensed at or in connection with bars and soda fountains, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

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

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

(1) If the price is, at or prior to the provision of the

service or the delivery of possession of the thing sold to the 2137
consumer, paid in currency passed from hand to hand by the 2138
consumer or the consumer's agent to the vendor or the vendor's 2139
agent, the vendor or the vendor's agent shall collect the tax with 2140
and at the same time as the price; 2141

(2) If the price is otherwise paid or to be paid, the vendor 2142
or the vendor's agent shall, at or prior to the provision of the 2143
service or the delivery of possession of the thing sold to the 2144
consumer, charge the tax imposed by or pursuant to section 2145
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 2146
the account of the consumer, which amount shall be collected by 2147
the vendor from the consumer in addition to the price. Such sale 2148
shall be reported on and the amount of the tax applicable thereto 2149
shall be remitted with the return for the period in which the sale 2150
is made, and the amount of the tax shall become a legal charge in 2151
favor of the vendor and against the consumer. 2152

(B)(1) If any sale is claimed to be exempt under division (E) 2153
of section 5739.01 of the Revised Code or under section 5739.02 of 2154
the Revised Code, with the exception of divisions (B)(1) to (11) 2155
or (28) of section 5739.02 of the Revised Code, the consumer must 2156
provide to the vendor, and the vendor must obtain from the 2157
consumer, a certificate specifying the reason that the sale is not 2158
legally subject to the tax. The certificate shall be provided 2159
either in a hard copy form or electronic form, as prescribed by 2160
the tax commissioner. If the transaction is claimed to be exempt 2161
under division (B)(13) of section 5739.02 of the Revised Code, the 2162
exemption certificate shall be provided by both the contractor and 2163
the contractee. Such contractee shall be deemed to be the consumer 2164
of all items purchased under such claim of exemption, if it is 2165
subsequently determined that the exemption is not properly 2166
claimed. The certificate shall be in such form as the tax 2167
commissioner by regulation prescribes. 2168

(2) The vendor 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.

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

(4) If no certificate is provided or obtained within the period for filing the return for the period in which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided, or to have so obtained, a certificate shall not prevent a vendor or consumer from establishing that the sale is not subject to the tax within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, in which event the tax shall not apply.

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

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

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible

personal property after installation is completed. The contractor 2200
or vendor shall request the certification by certified mail 2201
delivered to the contractee, return receipt requested. Upon 2202
receipt of such request and prior to entering into the contract or 2203
agreement, the contractee shall provide to the contractor or 2204
vendor a certification sufficiently detailed to enable the 2205
contractor or vendor to ascertain the resulting classification of 2206
all materials purchased or fabricated by the contractor or vendor 2207
and transferred to the contractee. This requirement applies to a 2208
contractee regardless of whether the contractee holds a direct 2209
payment permit under section 5739.031 of the Revised Code or 2210
provides to the contractor or vendor an exemption certificate as 2211
provided under this section. 2212

For the purposes of the taxes levied by this chapter and 2213
Chapter 5741. of the Revised Code, the contractor or vendor may in 2214
good faith rely on the contractee's certification. Notwithstanding 2215
division (B) of section 5739.01 of the Revised Code, if the tax 2216
commissioner determines that certain property certified by the 2217
contractee as tangible personal property pursuant to this division 2218
is, in fact, real property, the contractee shall be considered to 2219
be the consumer of all materials so incorporated into that real 2220
property and shall be liable for the applicable tax, and the 2221
contractor or vendor shall be excused from any liability on those 2222
materials. 2223

If a contractee fails to provide such certification upon the 2224
request of the contractor or vendor, the contractor or vendor 2225
shall comply with the provisions of this chapter and Chapter 5741. 2226
of the Revised Code without the certification. If the tax 2227
commissioner determines that such compliance has been performed in 2228
good faith and that certain property treated as tangible personal 2229
property by the contractor or vendor is, in fact, real property, 2230
the contractee shall be considered to be the consumer of all 2231

materials so incorporated into that real property and shall be 2232
liable for the applicable tax, and the construction contractor or 2233
vendor shall be excused from any liability on those materials. 2234

This division does not apply to any contract or agreement 2235
where the tax commissioner determines as a fact that a 2236
certification under this division was made solely on the decision 2237
or advice of the contractor or vendor. 2238

(D) Notwithstanding division (B) of section 5739.01 of the 2239
Revised Code, whenever the total rate of tax imposed under this 2240
chapter is increased after the date after a construction contract 2241
is entered into, the contractee shall reimburse the construction 2242
contractor for any additional tax paid on tangible property 2243
consumed or services received pursuant to the contract. 2244

(E) A vendor who files a petition for reassessment contesting 2245
the assessment of tax on sales for which the vendor obtained no 2246
valid exemption certificates and for which the vendor failed to 2247
establish that the sales were properly not subject to the tax 2248
during the one-hundred-twenty-day period allowed under division 2249
(B) of this section, may present to the tax commissioner 2250
additional evidence to prove that the sales were properly subject 2251
to a claim of exception or exemption. The vendor shall file such 2252
evidence within ninety days of the receipt by the vendor of the 2253
notice of assessment, except that, upon application and for 2254
reasonable cause, the period for submitting such evidence shall be 2255
extended thirty days. 2256

The commissioner shall consider such additional evidence in 2257
reaching the final determination on the assessment and petition 2258
for reassessment. 2259

(F) Whenever a vendor refunds to the consumer the full price 2260
of an item of tangible personal property on which the tax imposed 2261
under this chapter has been paid, the vendor shall also refund the 2262

full amount of the tax paid. 2263

Sec. 5739.11. As used in this section, "food service 2264
operator" means a vendor who conducts a food service operation 2265
under Chapter 3717. of the Revised Code. 2266

Each vendor shall keep complete and accurate records of 2267
sales, together with a record of the tax collected on the sales, 2268
which shall be the amount due under sections 5739.01 to 5739.31 of 2269
the Revised Code, and shall keep all invoices, bills of lading, 2270
and other such pertinent documents. Alternatively, any food 2271
service operator who has not been convicted under section 5739.99 2272
of the Revised Code, with respect to the vendor's food service 2273
operation, may keep a sample of primary sales records. Such sample 2274
shall consist of all sales invoices, guest checks, cash register 2275
tapes, and other such documents for each of fourteen days in every 2276
calendar quarter. The specific days to be included in the sample 2277
shall be determined by the tax commissioner and entered in the 2278
commissioner's journal within ten days after the close of every 2279
calendar quarter. The tax commissioner shall notify each such 2280
operator registered pursuant to section 5739.17 of the Revised 2281
Code who requests such notification of the days to be included in 2282
each sample by the last day of the month following the close of 2283
each calendar quarter. The notice also shall contain a statement 2284
that destruction of primary records for time periods other than 2285
the specified sample period is optional, and that some operators 2286
may wish to keep all such records for four full years so as to be 2287
able to clearly demonstrate that they have fully complied with 2288
this chapter and Chapter 5741. of the Revised Code. The tax 2289
commissioner shall further make such determination known through a 2290
general news release. 2291

Each vendor shall keep exemption certificates required to be 2292
obtained under section 5739.03 of the Revised Code. If the vendor 2293

makes sales not subject to the tax and not required to be 2294
evidenced by an exemption certificate, the vendor's records shall 2295
show the identity of the purchaser, if the sale was exempted by 2296
reason of such identity, or the nature of the transaction, if 2297
exempted for any other reason. Vendors are not required to 2298
differentiate in record-keeping between sales that are exempt from 2299
taxation under division (B)(2) of section 5739.02 of the Revised 2300
Code and those that are exempt under division (B)(16) of that 2301
section. Such records and other documents required to be kept by 2302
this section shall be open during business hours to the inspection 2303
of the tax commissioner, and shall be preserved for a period of 2304
four years, unless the commissioner, in writing, consents to their 2305
destruction within that period, or by order requires that they be 2306
kept longer. 2307

Sec. 5741.02. (A) For the use of the general revenue fund of 2308
the state, an excise tax is hereby levied on the storage, use, or 2309
other consumption in this state of tangible personal property or 2310
the benefit realized in this state of any service provided. The 2311
tax shall be collected pursuant to the schedules in section 2312
5739.025 of the Revised Code. 2313

(B) Each consumer, storing, using, or otherwise consuming in 2314
this state tangible personal property or realizing in this state 2315
the benefit of any service provided, shall be liable for the tax, 2316
and such liability shall not be extinguished until the tax has 2317
been paid to this state; provided, that the consumer shall be 2318
relieved from further liability for the tax if the tax has been 2319
paid to a seller in accordance with section 5741.04 of the Revised 2320
Code or prepaid by the seller in accordance with section 5741.06 2321
of the Revised Code. 2322

(C) The tax does not apply to the storage, use, or 2323
consumption in this state of the following described tangible 2324

personal property or services, nor to the storage, use, or 2325
consumption or benefit in this state of tangible personal property 2326
or services purchased under the following described circumstances: 2327

(1) When the sale of property or service in this state is 2328
subject to the excise tax imposed by sections 5739.01 to 5739.31 2329
of the Revised Code, provided said tax has been paid; 2330

(2) Except as provided in division (D) of this section, 2331
tangible personal property or services, the acquisition of which, 2332
if made in Ohio, would be a sale not subject to the tax imposed by 2333
sections 5739.01 to 5739.31 of the Revised Code; 2334

(3) Property or services, the storage, use, or other 2335
consumption of or benefit from which this state is prohibited from 2336
taxing by the Constitution of the United States, laws of the 2337
United States, or the Constitution of this state. This exemption 2338
shall not exempt from the application of the tax imposed by this 2339
section the storage, use, or consumption of tangible personal 2340
property that was purchased in interstate commerce, but that has 2341
come to rest in this state, provided that fuel to be used or 2342
transported in carrying on interstate commerce that is stopped 2343
within this state pending transfer from one conveyance to another 2344
is exempt from the excise tax imposed by this section and section 2345
5739.02 of the Revised Code; 2346

(4) Transient use of tangible personal property in this state 2347
by a nonresident tourist or vacationer, or a non-business use 2348
within this state by a nonresident of this state, if the property 2349
so used was purchased outside this state for use outside this 2350
state and is not required to be registered or licensed under the 2351
laws of this state; 2352

(5) Tangible personal property or services rendered, upon 2353
which taxes have been paid to another jurisdiction to the extent 2354
of the amount of the tax paid to such other jurisdiction. Where 2355

the amount of the tax imposed by this section and imposed pursuant 2356
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 2357
exceeds the amount paid to another jurisdiction, the difference 2358
shall be allocated between the tax imposed by this section and any 2359
tax imposed by a county or a transit authority pursuant to section 2360
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 2361
to the respective rates of such taxes. 2362

As used in this subdivision, "taxes paid to another 2363
jurisdiction" means the total amount of retail sales or use tax or 2364
similar tax based upon the sale, purchase, or use of tangible 2365
personal property or services rendered legally, levied by and paid 2366
to another state or political subdivision thereof, or to the 2367
District of Columbia, where the payment of such tax does not 2368
entitle the taxpayer to any refund or credit for such payment. 2369

(6) The transfer of a used manufactured home or used mobile 2370
home, as defined by section 5739.0210 of the Revised Code, made on 2371
or after January 1, 2000; 2372

(7) Drugs that are or are intended to be distributed free of 2373
charge to a practitioner licensed to prescribe, dispense, and 2374
administer drugs to a human being in the course of a professional 2375
practice and that by law may be dispensed only by or upon the 2376
order of such a practitioner. 2377

(D) The tax applies to the storage, use, or other consumption 2378
in this state of tangible personal property or services, the 2379
acquisition of which at the time of sale was excepted under 2380
division (E)(1) of section 5739.01 of the Revised Code from the 2381
tax imposed by section 5739.02 of the Revised Code, but which has 2382
subsequently been temporarily or permanently stored, used, or 2383
otherwise consumed in a taxable manner. 2384

(E)(1) If any transaction is claimed to be exempt under 2385
division (E) of section 5739.01 of the Revised Code or under 2386

section 5739.02 of the Revised Code, with the exception of 2387
divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised 2388
Code, the consumer shall provide to the seller, and the seller 2389
shall obtain from the consumer, a certificate specifying the 2390
reason that the transaction is not subject to the tax. The 2391
certificate shall be provided either in a hard copy form or 2392
electronic form, as prescribed by the tax commissioner. If the 2393
transaction is claimed to be exempt under division (B)(13) of 2394
section 5739.02 of the Revised Code, the exemption certificate 2395
shall be provided by both the contractor and contractee. Such 2396
contractee shall be deemed to be the consumer of all items 2397
purchased under the claim of exemption, if it is subsequently 2398
determined that the exemption is not properly claimed. The 2399
certificate shall be in such form as the tax commissioner by rule 2400
prescribes. The seller shall maintain records, including exemption 2401
certificates, of all sales on which a consumer has claimed an 2402
exemption, and provide them to the tax commissioner on request. 2403

(2) If no certificate is provided or obtained within the 2404
period for filing the return for the period in which the 2405
transaction is consummated, it shall be presumed that the tax 2406
applies. The failure to have so provided or obtained a certificate 2407
shall not preclude a seller or consumer from establishing, within 2408
one hundred twenty days of the giving of notice by the 2409
commissioner of intention to levy an assessment, that the 2410
transaction is not subject to the tax. 2411

(F) A seller who files a petition for reassessment contesting 2412
the assessment of tax on transactions for which the seller 2413
obtained no valid exemption certificates, and for which the seller 2414
failed to establish that the transactions were not subject to the 2415
tax during the one-hundred-twenty-day period allowed under 2416
division (E) of this section, may present to the tax commissioner 2417
additional evidence to prove that the transactions were exempt. 2418

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