

**As Reported by the Senate Ways and Means and Economic  
Development Committee**

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**2005-2006**

**Sub. H. B. No. 293**

**Representatives Kilbane, Miller, Trakas, McGregor, J., Wolpert, Evans, C.,  
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Strahorn, Taylor, Ujvagi, Wagoner, Webster, Williams, Woodard, Yates, Yuko**

**Senator Schuler**

—

**A B I L L**

To amend sections 135.353 and 5739.01 and to enact 1  
sections 135.804, 135.805, 135.806, and 135.807 of 2  
the Revised Code to authorize boards of county 3  
commissioners to establish property tax payment 4  
linked deposit programs to assist senior citizens 5  
and permanently and totally disabled citizens in 6  
paying property taxes on their homesteads, and to 7  
change who pays sales or use taxes when employment 8  
service personnel are supplied by the purchaser to 9  
a third party as an employment service. 10

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

**Section 1.** That sections 135.353 and 5739.01 be amended and 11

sections 135.804, 135.805, 135.806, and 135.807 of the Revised Code be enacted to read as follows:

**Sec. 135.353.** (A) In addition to the investments specified in section 135.35 of the Revised Code, the investing authority of a county may do ~~both~~ all of the following:

~~(A)(1)~~ Invest inactive or public moneys in linked deposits as authorized by resolution adopted pursuant to section 135.80 or 135.801 of the Revised Code;

~~(B)(2)~~ Invest inactive or public moneys in linked deposits as authorized by resolution adopted pursuant to section 135.805 of the Revised Code for a term considered appropriate by the investing authority, but not exceeding fifteen years, which investment may be renewed for up to two additional terms with each additional term not exceeding fifteen years.

(3) Invest inactive moneys in certificates of deposit in accordance with all of the following:

~~(1)(a)~~ The inactive moneys initially are deposited with an eligible public depository described in section 135.32 of the Revised Code and selected by the investing authority.

~~(2)(b)~~ For the investing authority depositing the inactive moneys pursuant to division ~~(B)(1)(A)(3)(a)~~ of this section, the eligible public depository selected pursuant to that division invests the inactive moneys in certificates of deposit of one or more federally insured banks or savings and loan associations, wherever located. The full amount of principal and any accrued interest of each certificate of deposit invested in pursuant to division ~~(B)(2)(A)(3)(b)~~ of this section shall be insured by federal deposit insurance.

~~(3)(c)~~ For the investing authority depositing the inactive moneys pursuant to division ~~(B)(1)(A)(3)(a)~~ of this section, the

eligible public depository selected pursuant to that division acts 42  
as custodian of the certificates of deposit described in division 43  
~~(B)(2)(A)(3)(b)~~ of this section. 44

~~(4)(d)~~ At the same time that the eligible public depository 45  
selected in accordance with division ~~(B)(1)(A)(3)(a)~~ of this 46  
section invests the deposit received pursuant to that division in 47  
the certificates of deposit described in division ~~(B)(2)(A)(3)(b)~~ 48  
of this section, and the certificates of deposit are issued by the 49  
bank or savings and loan association, the eligible public 50  
depository receives an amount of deposits from customers of other 51  
federally insured financial institutions, wherever located, that 52  
are equal to or greater than the amount initially deposited by the 53  
investing authority pursuant to division ~~(B)(1)(A)(3)(a)~~ of this 54  
section. 55

~~(C)(B)~~ Inactive moneys deposited or invested in accordance 56  
with division ~~(B)(A)(3)~~ of this section are not subject to any 57  
pledging requirements described in section 135.181 or 135.37 of 58  
the Revised Code. 59

**Sec. 135.804.** As used in sections 135.804 to 135.807 of the 60  
Revised Code: 61

(A) "Taxes" has the same meaning as in section 323.01 of the 62  
Revised Code. 63

(B) "Eligible borrower" means a person meeting all of the 64  
following: 65

(1) The person is the owner of a homestead that is not 66  
charged with more than two years' worth of certified delinquent 67  
taxes. 68

(2) The person had total income in the year prior to 69  
submitting an application for a reduced rate loan under a property 70  
tax payment linked deposit program of the lesser of fifty thousand 71

dollars or the total income limit established pursuant to section 72  
135.805 of the Revised Code by the board of county commissioners 73  
as an eligibility requirement for participation in a property tax 74  
payment linked deposit program. 75

(3) The person meets all other eligibility requirements 76  
established pursuant to section 135.805 of the Revised Code by the 77  
board of county commissioners for participation in a property tax 78  
payment linked deposit program. 79

(C) "Eligible lending institution" means a financial 80  
institution that meets all of the following: 81

(1) The financial institution is eligible to make loans to 82  
individuals that are secured by mortgages, including mortgages 83  
commonly known as reverse mortgages. 84

(2) The financial institution has an office located within 85  
the territorial limits of the county. 86

(3) The financial institution is an eligible public 87  
depository described in section 135.32 of the Revised Code into 88  
which the county's investing authority may deposit the public 89  
moneys of the county. 90

(4) The financial institution has entered into an agreement 91  
described in division (B)(4) of section 135.805 of the Revised 92  
Code with the investing authority of the county to participate in 93  
the property tax payment linked deposit program. 94

(D) "Homestead" means either of the following: 95

(1) A dwelling, including a unit in a multiple-unit dwelling 96  
and a manufactured home or mobile home taxed as real property 97  
pursuant to division (B) of section 4503.06 of the Revised Code, 98  
owned and occupied as a home by an individual whose domicile is in 99  
this state and who has not acquired ownership from a person, other 100  
than the individual's spouse, related by consanguinity or affinity 101

for the purpose of qualifying for a property tax payment linked  
deposit program.

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(2) A unit in a housing cooperative that is occupied as a  
home, but not owned, by an individual whose domicile is in this  
state.

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The homestead shall include so much of the land surrounding  
it, not exceeding one acre, as is reasonably necessary for the use  
of the dwelling or unit as a home. An owner includes a holder of  
one of the several estates in fee, a vendee in possession under a  
purchase agreement or a land contract, a mortgagor, a life tenant,  
one or more tenants with a right of survivorship, tenants in  
common, and a settlor of a revocable inter vivos trust holding the  
title to a homestead occupied by the settlor as of right under the  
trust.

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(E) "Housing cooperative" means a housing complex of at least  
two hundred fifty units that is owned and operated by a nonprofit  
corporation that issues a share of the corporation's stock to an  
individual, entitling the individual to live in a unit of the  
complex, and collects a monthly maintenance fee from the  
individual to maintain, operate, and pay the taxes of the complex.

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(F) "Investing authority" and "public moneys" have the same  
meanings as in section 135.31 of the Revised Code.

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(G) "Lien certificate" means the certificate described in  
section 135.807 of the Revised Code.

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(H) "Old age and survivors benefits received pursuant to the  
'Social Security Act'" or "tier I railroad retirement benefits  
received pursuant to the 'Railroad Retirement Act'" means:

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(1) Old age benefits payable under the social security or  
railroad retirement laws in effect on the last day of the calendar  
year prior to the year for which a reduced rate loan under a

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property tax payment linked deposit program is applied for, or, if 132  
no such benefits are payable that year, old age benefits payable 133  
the first succeeding year in which old age benefits under the 134  
social security or railroad retirement laws are payable, except in 135  
those cases where a change in social security or railroad 136  
retirement benefits results in a reduction in income. 137

(2) The lesser of: 138

(a) Survivors benefits payable under the social security or 139  
railroad retirement laws in effect on the last day of the calendar 140  
year prior to the year for which a reduced rate loan under a 141  
property tax payment linked deposit program is applied for, or, if 142  
no such benefits are payable that year, survivors benefits payable 143  
the first succeeding year in which survivors benefits are payable; 144  
or 145

(b) Old age benefits of the deceased spouse, as determined 146  
under division (H)(1) of this section, upon which the surviving 147  
spouse's survivors benefits are based under the social security or 148  
railroad retirement laws, except in those cases where a change in 149  
benefits would cause a reduction in income. 150

Survivors benefits are those described in division (H)(2)(b) 151  
of this section only if the deceased spouse received old age 152  
benefits in the year in which the deceased spouse died. If the 153  
deceased spouse did not receive old age benefits in the year in 154  
which the deceased spouse died, then survivors benefits are those 155  
described in division (H)(2)(a) of this section. 156

(I) "Permanently and totally disabled" means a person who, on 157  
the first day of January of the year that a reduced rate loan 158  
under a property tax payment linked deposit program is applied 159  
for, has some impairment in body or mind that makes the person 160  
unable to work at any substantially remunerative employment that 161  
the person reasonably is able to perform and that will, with 162

reasonable probability, continue for an indefinite period of at 163  
least twelve months without any present indication of recovery 164  
therefrom or has been certified as permanently and totally 165  
disabled by a state or federal agency having the function of so 166  
classifying persons. 167

(J) "Property tax payment linked deposit program" means a 168  
county-wide program authorized under section 135.805 of the 169  
Revised Code and established by the board of county commissioners 170  
of a county pursuant to that section. 171

(K) "Sixty-five years of age or older" means a person who has 172  
attained age sixty-four prior to the first day of January of the 173  
year of application for a reduced rate loan under a property tax 174  
payment linked deposit program. 175

(L) "Total income" means the adjusted gross income of the 176  
owner and the owner's spouse for the year preceding the year in 177  
which application for a reduced rate loan under a property tax 178  
payment linked deposit program is made, as determined under the 179  
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as 180  
amended, adjusted as follows: 181

(1) Subtract the amount of disability benefits included in 182  
adjusted gross income, but not to exceed fifty-two hundred 183  
dollars; 184

(2) Add old age and survivors benefits received pursuant to 185  
the "Social Security Act" that are not included in adjusted gross 186  
income; 187

(3) Add retirement, pension, annuity, or other retirement 188  
payments or benefits not included in adjusted gross income; 189

(4) Add tier I and tier II railroad retirement benefits 190  
received pursuant to the "Railroad Retirement Act," 50 Stat. 307, 191  
45 U.S.C.A. 228; 192

(5) Add interest on federal, state, and local government 193  
obligations; 194

(6) For a person who received a reduced rate loan under a 195  
property tax payment linked deposit program for a prior year on 196  
the basis of being permanently and totally disabled and whose 197  
current application for a reduced rate loan is made on the basis 198  
of age, subtract the following amount: 199

(a) If the person received disability benefits that were not 200  
included in adjusted gross income in the year preceding the first 201  
year in which the person applied for a reduced rate loan on the 202  
basis of age, subtract an amount equal to the disability benefits 203  
the person received in that preceding year, to the extent included 204  
in total income in the current year and not subtracted under 205  
division (L)(1) of this section in the current year; 206

(b) If the person received disability benefits that were 207  
included in adjusted gross income in the year preceding the first 208  
year in which the person applied for a reduced rate loan on the 209  
basis of age, subtract an amount equal to the amount of disability 210  
benefits that were subtracted pursuant to division (L)(1) of this 211  
section in that preceding year, to the extent included in total 212  
income in the current year and not subtracted under division 213  
(L)(1) of this section in the current year. 214

Disability benefits that are paid by the department of 215  
veterans affairs or a branch of the armed forces of the United 216  
States on account of an injury or disability shall not be included 217  
in total income. 218

**Sec. 135.805.** (A) The general assembly finds that many low to 219  
moderate income senior citizens and permanently and totally 220  
disabled citizens face financial hardship and find it difficult to 221  
timely pay property taxes on their homesteads, which can lead to 222



delinquencies, penalties, declines in tax receipts, foreclosures, 223  
a loss of stable and affordable housing, a loss of neighborhoods 224  
and communities, and a decline in property values. Accordingly, it 225  
is declared to be the public policy of the state through property 226  
tax payment linked deposit programs established by counties to 227  
provide a source of low-cost funds for lending purposes to assist 228  
these citizens in timely paying property taxes on their 229  
homesteads. 230

(B) A board of county commissioners, by resolution, may 231  
establish for the benefit of persons sixty-five years of age or 232  
older, or persons who are permanently and totally disabled, or 233  
both groups of persons, a property tax payment linked deposit 234  
program. The program shall authorize the investing authority of 235  
the county, in accordance with division (A)(2) of section 135.353 236  
of the Revised Code, to place certificates of deposit at up to 237  
three per cent below market rates with an eligible lending 238  
institution, provided that the eligible lending institution agrees 239  
to lend the value of such deposit to eligible borrowers at up to 240  
three per cent below the present borrowing rate applicable to each 241  
eligible borrower. The resolution shall include requirements, 242  
parameters, limitations, and other provisions that are consistent 243  
with sections 135.804 to 135.807 of the Revised Code and are 244  
necessary to establish and carry out the property tax payment 245  
linked deposit program, including, but not limited to, all of the 246  
following: 247

(1) Eligibility requirements for borrowers who may receive 248  
reduced rate loans under the property tax payment linked deposit 249  
program, including both of the following: 250

(a) A total income limit for a borrower to be eligible for 251  
such a loan; 252

(b) An indebtedness limit that a borrower may not exceed to 253

be eligible for such a loan, under which the sum of all recorded 254  
liens on the homestead plus the amount of the reduced rate loan 255  
cannot exceed eighty per cent of the homestead's true value as 256  
most recently determined by the county auditor. 257

(2) Application procedures for eligible borrowers and 258  
eligible lending institutions wishing to participate in the 259  
property tax payment linked deposit program; 260

(3) Review procedures for applications and criteria for 261  
acceptance or rejection of applications for reduced rate loans 262  
under the property tax payment linked deposit program; 263

(4) Necessary agreements between the eligible lending 264  
institution and the investing authority of the county to carry out 265  
the purposes of the property tax payment linked deposit program, 266  
including procedures for the payment directly to the county 267  
treasurer by the eligible lending institution of the property 268  
taxes due on the homestead and delivery by the county treasurer to 269  
the eligible lending institution of the lien certificate as 270  
provided in section 135.807 of the Revised Code; 271

(5) Annual reports regarding the operation of the property 272  
tax payment linked deposit program to be made by the investing 273  
authority to the board of county commissioners. 274

(C) A board of county commissioners may appropriate funds 275  
from the general fund of the county or any other lawfully 276  
available funds of the county for the purpose of defraying some or 277  
all of the closing costs and expenses of reduced rate loans made 278  
by eligible lending institutions to eligible borrowers pursuant to 279  
the property tax payment linked deposit program. 280

(D) The county and its investing authority and the board of 281  
county commissioners are not liable to any eligible lending 282  
institution in any manner for the payment of the principal or 283  
interest on any reduced rate loan made under the property tax 284

payment linked deposit program, and any delay in payment or 285  
default on the part of any borrower does not in any manner affect 286  
the deposit agreement between the eligible lending institution and 287  
the investing authority or board of county commissioners. 288

Sec. 135.806. Upon placement of a certificate of deposit with 289  
an eligible lending institution pursuant to an agreement described 290  
in section 135.805 of the Revised Code, the eligible lending 291  
institution shall do both of the following: 292

(A) Lend funds pursuant to the agreement to an eligible 293  
borrower; 294

(B) Comply fully with the requirements of sections 135.804 to 295  
135.807 of the Revised Code. 296

Sec. 135.807. (A) A property tax payment linked deposit 297  
program shall provide for the delivery of a lien certificate to an 298  
eligible lending institution making payment to the county 299  
treasurer, pursuant to a loan agreement between the eligible 300  
lending institution and eligible borrower, of some or all of the 301  
taxes then due on the homestead of that eligible borrower. 302

(B)(1) To ensure uniformity among all counties, the tax 303  
commissioner shall prescribe the form for a lien certificate 304  
delivered pursuant to division (A) of this section, which form 305  
shall include the identity of the homestead, the eligible 306  
borrower, the eligible lending institution, the amount of taxes 307  
paid by that eligible lending institution, and the tax year for 308  
which the taxes were paid. The tax commissioner shall distribute 309  
the forms to the county treasurers of all counties in which a 310  
property tax payment linked deposit program is established. 311

(2) A county treasurer shall use the lien certificate form 312  
prescribed by the tax commissioner, except that, prior to the time 313  
that a lien certificate form is prescribed and the forms are 314

distributed by the tax commissioner, the form shall be prepared by 315  
the county treasurer of the county, contain the information 316  
required by division (B)(1) of this section, and include the 317  
following sentence: "This lien certificate is delivered pursuant 318  
to section 135.807 of the Revised Code and vests in the eligible 319  
lending institution the first lien held previously by the state 320  
and its taxing districts for the amount of taxes paid by the 321  
eligible lending institution, together with any and all unpaid 322  
interest thereon." 323

(C)(1) The delivery of the lien certificate pursuant to 324  
division (A) of this section vests in the eligible lending 325  
institution the first lien held previously by the state and its 326  
taxing districts for the amount of the taxes paid by the eligible 327  
lending institution, together with any unpaid interest thereon 328  
from the date of delivery at the interest rate specified in the 329  
loan agreement between the eligible lending institution and the 330  
eligible borrower. The lien is superior to any subsequent tax 331  
liens. 332

(2) Subject to division (C)(3) of this section, the lien 333  
certificate delivered pursuant to division (A) of this section is 334  
superior to all other liens and encumbrances upon the homestead 335  
described in that lien certificate, and the lien continues in full 336  
force and effect until the amount of all taxes paid by the 337  
eligible lending institution, together with any unpaid interest 338  
thereon, has been repaid to the eligible lending institution. 339

(3) With respect to the priority as among first liens of the 340  
state and its taxing districts, the priority is determined by the 341  
date that the first liens of the state and its taxing districts 342  
attached pursuant to section 323.11 of the Revised Code, with 343  
first priority to the earliest attached lien and each immediately 344  
subsequent priority based upon the next earliest attached lien. 345

(D) The eligible lending institution may record the lien certificate or memorandum thereof as a mortgage on the land in the office of the county recorder of the county in which the homestead is situated. The county recorder shall record the certificate in the record of mortgages provided in division (B) of section 317.08 of the Revised Code and shall index the certificate in the indexes provided for under section 317.18 of the Revised Code. If the lien subsequently is canceled, the cancellation also shall be recorded by the county recorder. When a loan is repaid in full, the eligible financial institution shall promptly record the full payment and cancel or otherwise release the lien. On repayment of the loan in full, the lien certificate shall be null and void.

**Sec. 5739.01.** As used in this chapter: 358

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form. 359  
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(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever: 364  
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(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted; 368  
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(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests; 372  
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(3) All transactions by which: 374

(a) An item of tangible personal property is or is to be 375

repaired, except property, the purchase of which would not be	376
subject to the tax imposed by section 5739.02 of the Revised Code;	377
(b) An item of tangible personal property is or is to be	378
installed, except property, the purchase of which would not be	379
subject to the tax imposed by section 5739.02 of the Revised Code	380
or property that is or is to be incorporated into and will become	381
a part of a production, transmission, transportation, or	382
distribution system for the delivery of a public utility service;	383
(c) The service of washing, cleaning, waxing, polishing, or	384
painting a motor vehicle is or is to be furnished;	385
(d) Until August 1, 2003, industrial laundry cleaning	386
services are or are to be provided and, on and after August 1,	387
2003, laundry and dry cleaning services are or are to be provided;	388
(e) Automatic data processing, computer services, or	389
electronic information services are or are to be provided for use	390
in business when the true object of the transaction is the receipt	391
by the consumer of automatic data processing, computer services,	392
or electronic information services rather than the receipt of	393
personal or professional services to which automatic data	394
processing, computer services, or electronic information services	395
are incidental or supplemental. Notwithstanding any other	396
provision of this chapter, such transactions that occur between	397
members of an affiliated group are not sales. An affiliated group	398
means two or more persons related in such a way that one person	399
owns or controls the business operation of another member of the	400
group. In the case of corporations with stock, one corporation	401
owns or controls another if it owns more than fifty per cent of	402
the other corporation's common stock with voting rights.	403
(f) Telecommunications service, including prepaid calling	404
service, prepaid wireless calling service, or ancillary service,	405
is or is to be provided, but not including coin-operated telephone	406

service;	407
(g) Landscaping and lawn care service is or is to be provided;	408 409
(h) Private investigation and security service is or is to be provided;	410 411
(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;	412 413
(j) Building maintenance and janitorial service is or is to be provided;	414 415
(k) Employment service is or is to be provided;	416
(l) Employment placement service is or is to be provided;	417
(m) Exterminating service is or is to be provided;	418
(n) Physical fitness facility service is or is to be provided;	419 420
(o) Recreation and sports club service is or is to be provided.	421 422
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	423 424
(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.	425 426 427 428 429 430 431 432
(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for	433 434 435

transportation provided by an ambulance service, by a transit bus, 436  
as defined in section 5735.01 of the Revised Code, and 437  
transportation provided by a citizen of the United States holding 438  
a certificate of public convenience and necessity issued under 49 439  
U.S.C. 41102; 440

(s) On and after August 1, 2003, motor vehicle towing service 441  
is or is to be provided. As used in this division, "motor vehicle 442  
towing service" means the towing or conveyance of a wrecked, 443  
disabled, or illegally parked motor vehicle. 444

(t) On and after August 1, 2003, snow removal service is or 445  
is to be provided. As used in this division, "snow removal 446  
service" means the removal of snow by any mechanized means, but 447  
does not include the providing of such service by a person that 448  
has less than five thousand dollars in sales of such service 449  
during the calendar year. 450

(4) All transactions by which printed, imprinted, 451  
overprinted, lithographic, multilithic, blueprinted, photostatic, 452  
or other productions or reproductions of written or graphic matter 453  
are or are to be furnished or transferred; 454

(5) The production or fabrication of tangible personal 455  
property for a consideration for consumers who furnish either 456  
directly or indirectly the materials used in the production of 457  
fabrication work; and include the furnishing, preparing, or 458  
serving for a consideration of any tangible personal property 459  
consumed on the premises of the person furnishing, preparing, or 460  
serving such tangible personal property. Except as provided in 461  
section 5739.03 of the Revised Code, a construction contract 462  
pursuant to which tangible personal property is or is to be 463  
incorporated into a structure or improvement on and becoming a 464  
part of real property is not a sale of such tangible personal 465  
property. The construction contractor is the consumer of such 466



tangible personal property, provided that the sale and 467  
installation of carpeting, the sale and installation of 468  
agricultural land tile, the sale and erection or installation of 469  
portable grain bins, or the provision of landscaping and lawn care 470  
service and the transfer of property as part of such service is 471  
never a construction contract. 472

As used in division (B)(5) of this section: 473

(a) "Agricultural land tile" means fired clay or concrete 474  
tile, or flexible or rigid perforated plastic pipe or tubing, 475  
incorporated or to be incorporated into a subsurface drainage 476  
system appurtenant to land used or to be used directly in 477  
production by farming, agriculture, horticulture, or floriculture. 478  
The term does not include such materials when they are or are to 479  
be incorporated into a drainage system appurtenant to a building 480  
or structure even if the building or structure is used or to be 481  
used in such production. 482

(b) "Portable grain bin" means a structure that is used or to 483  
be used by a person engaged in farming or agriculture to shelter 484  
the person's grain and that is designed to be disassembled without 485  
significant damage to its component parts. 486

(6) All transactions in which all of the shares of stock of a 487  
closely held corporation are transferred, if the corporation is 488  
not engaging in business and its entire assets consist of boats, 489  
planes, motor vehicles, or other tangible personal property 490  
operated primarily for the use and enjoyment of the shareholders; 491

(7) All transactions in which a warranty, maintenance or 492  
service contract, or similar agreement by which the vendor of the 493  
warranty, contract, or agreement agrees to repair or maintain the 494  
tangible personal property of the consumer is or is to be 495  
provided; 496

(8) The transfer of copyrighted motion picture films used 497

solely for advertising purposes, except that the transfer of such 498  
films for exhibition purposes is not a sale. 499

(9) On and after August 1, 2003, all transactions by which 500  
tangible personal property is or is to be stored, except such 501  
property that the consumer of the storage holds for sale in the 502  
regular course of business. 503

Except as provided in this section, "sale" and "selling" do 504  
not include transfers of interest in leased property where the 505  
original lessee and the terms of the original lease agreement 506  
remain unchanged, or professional, insurance, or personal service 507  
transactions that involve the transfer of tangible personal 508  
property as an inconsequential element, for which no separate 509  
charges are made. 510

(C) "Vendor" means the person providing the service or by 511  
whom the transfer effected or license given by a sale is or is to 512  
be made or given and, for sales described in division (B)(3)(i) of 513  
this section, the telecommunications service vendor that provides 514  
the nine hundred telephone service; if two or more persons are 515  
engaged in business at the same place of business under a single 516  
trade name in which all collections on account of sales by each 517  
are made, such persons shall constitute a single vendor. 518

Physicians, dentists, hospitals, and veterinarians who are 519  
engaged in selling tangible personal property as received from 520  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 521  
articles, are vendors. Veterinarians who are engaged in 522  
transferring to others for a consideration drugs, the dispensing 523  
of which does not require an order of a licensed veterinarian or 524  
physician under federal law, are vendors. 525

(D)(1) "Consumer" means the person for whom the service is 526  
provided, to whom the transfer effected or license given by a sale 527  
is or is to be made or given, to whom the service described in 528

division (B)(3)(f) or (i) of this section is charged, or to whom 529  
the admission is granted. 530

(2) Physicians, dentists, hospitals, and blood banks operated 531  
by nonprofit institutions and persons licensed to practice 532  
veterinary medicine, surgery, and dentistry are consumers of all 533  
tangible personal property and services purchased by them in 534  
connection with the practice of medicine, dentistry, the rendition 535  
of hospital or blood bank service, or the practice of veterinary 536  
medicine, surgery, and dentistry. In addition to being consumers 537  
of drugs administered by them or by their assistants according to 538  
their direction, veterinarians also are consumers of drugs that 539  
under federal law may be dispensed only by or upon the order of a 540  
licensed veterinarian or physician, when transferred by them to 541  
others for a consideration to provide treatment to animals as 542  
directed by the veterinarian. 543

(3) A person who performs a facility management, or similar 544  
service contract for a contractee is a consumer of all tangible 545  
personal property and services purchased for use in connection 546  
with the performance of such contract, regardless of whether title 547  
to any such property vests in the contractee. The purchase of such 548  
property and services is not subject to the exception for resale 549  
under division (E)(1) of this section. 550

(4)(a) In the case of a person who purchases printed matter 551  
for the purpose of distributing it or having it distributed to the 552  
public or to a designated segment of the public, free of charge, 553  
that person is the consumer of that printed matter, and the 554  
purchase of that printed matter for that purpose is a sale. 555

(b) In the case of a person who produces, rather than 556  
purchases, printed matter for the purpose of distributing it or 557  
having it distributed to the public or to a designated segment of 558  
the public, free of charge, that person is the consumer of all 559

tangible personal property and services purchased for use or 560  
consumption in the production of that printed matter. That person 561  
is not entitled to claim exemption under division (B)(42)(f) of 562  
section 5739.02 of the Revised Code for any material incorporated 563  
into the printed matter or any equipment, supplies, or services 564  
primarily used to produce the printed matter. 565

(c) The distribution of printed matter to the public or to a 566  
designated segment of the public, free of charge, is not a sale to 567  
the members of the public to whom the printed matter is 568  
distributed or to any persons who purchase space in the printed 569  
matter for advertising or other purposes. 570

(5) A person who makes sales of any of the services listed in 571  
division (B)(3) of this section is the consumer of any tangible 572  
personal property used in performing the service. The purchase of 573  
that property is not subject to the resale exception under 574  
division (E)(1) of this section. 575

(6) A person who engages in highway transportation for hire 576  
is the consumer of all packaging materials purchased by that 577  
person and used in performing the service, except for packaging 578  
materials sold by such person in a transaction separate from the 579  
service. 580

(E) "Retail sale" and "sales at retail" include all sales, 581  
except those in which the purpose of the consumer is to resell the 582  
thing transferred or benefit of the service provided, by a person 583  
engaging in business, in the form in which the same is, or is to 584  
be, received by the person. 585

(F) "Business" includes any activity engaged in by any person 586  
with the object of gain, benefit, or advantage, either direct or 587  
indirect. "Business" does not include the activity of a person in 588  
managing and investing the person's own funds. 589

(G) "Engaging in business" means commencing, conducting, or 590

continuing in business, and liquidating a business when the 591  
liquidator thereof holds itself out to the public as conducting 592  
such business. Making a casual sale is not engaging in business. 593

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 594  
(3) of this section, means the total amount of consideration, 595  
including cash, credit, property, and services, for which tangible 596  
personal property or services are sold, leased, or rented, valued 597  
in money, whether received in money or otherwise, without any 598  
deduction for any of the following: 599

(i) The vendor's cost of the property sold; 600

(ii) The cost of materials used, labor or service costs, 601  
interest, losses, all costs of transportation to the vendor, all 602  
taxes imposed on the vendor, including the tax imposed under 603  
Chapter 5751. of the Revised Code, and any other expense of the 604  
vendor; 605

(iii) Charges by the vendor for any services necessary to 606  
complete the sale; 607

(iv) On and after August 1, 2003, delivery charges. As used 608  
in this division, "delivery charges" means charges by the vendor 609  
for preparation and delivery to a location designated by the 610  
consumer of tangible personal property or a service, including 611  
transportation, shipping, postage, handling, crating, and packing. 612

(v) Installation charges; 613

(vi) Credit for any trade-in. 614

(b) "Price" includes consideration received by the vendor 615  
from a third party, if the vendor actually receives the 616  
consideration from a party other than the consumer, and the 617  
consideration is directly related to a price reduction or discount 618  
on the sale; the vendor has an obligation to pass the price 619  
reduction or discount through to the consumer; the amount of the 620

consideration attributable to the sale is fixed and determinable 621  
by the vendor at the time of the sale of the item to the consumer; 622  
and one of the following criteria is met: 623

(i) The consumer presents a coupon, certificate, or other 624  
document to the vendor to claim a price reduction or discount 625  
where the coupon, certificate, or document is authorized, 626  
distributed, or granted by a third party with the understanding 627  
that the third party will reimburse any vendor to whom the coupon, 628  
certificate, or document is presented; 629

(ii) The consumer identifies the consumer's self to the 630  
seller as a member of a group or organization entitled to a price 631  
reduction or discount. A preferred customer card that is available 632  
to any patron does not constitute membership in such a group or 633  
organization. 634

(iii) The price reduction or discount is identified as a 635  
third party price reduction or discount on the invoice received by 636  
the consumer, or on a coupon, certificate, or other document 637  
presented by the consumer. 638

(c) "Price" does not include any of the following: 639

(i) Discounts, including cash, term, or coupons that are not 640  
reimbursed by a third party that are allowed by a vendor and taken 641  
by a consumer on a sale; 642

(ii) Interest, financing, and carrying charges from credit 643  
extended on the sale of tangible personal property or services, if 644  
the amount is separately stated on the invoice, bill of sale, or 645  
similar document given to the purchaser; 646

(iii) Any taxes legally imposed directly on the consumer that 647  
are separately stated on the invoice, bill of sale, or similar 648  
document given to the consumer. For the purpose of this division, 649  
the tax imposed under Chapter 5751. of the Revised Code is not a 650

tax directly on the consumer, even if the tax or a portion thereof  
is separately stated.

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

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

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

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

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(J) "Place of business" means any location at which a person

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engages in business. 682

(K) "Premises" includes any real property or portion thereof 683  
upon which any person engages in selling tangible personal 684  
property at retail or making retail sales and also includes any 685  
real property or portion thereof designated for, or devoted to, 686  
use in conjunction with the business engaged in by such person. 687

(L) "Casual sale" means a sale of an item of tangible 688  
personal property that was obtained by the person making the sale, 689  
through purchase or otherwise, for the person's own use and was 690  
previously subject to any state's taxing jurisdiction on its sale 691  
or use, and includes such items acquired for the seller's use that 692  
are sold by an auctioneer employed directly by the person for such 693  
purpose, provided the location of such sales is not the 694  
auctioneer's permanent place of business. As used in this 695  
division, "permanent place of business" includes any location 696  
where such auctioneer has conducted more than two auctions during 697  
the year. 698

(M) "Hotel" means every establishment kept, used, maintained, 699  
advertised, or held out to the public to be a place where sleeping 700  
accommodations are offered to guests, in which five or more rooms 701  
are used for the accommodation of such guests, whether the rooms 702  
are in one or several structures. 703

(N) "Transient guests" means persons occupying a room or 704  
rooms for sleeping accommodations for less than thirty consecutive 705  
days. 706

(O) "Making retail sales" means the effecting of transactions 707  
wherein one party is obligated to pay the price and the other 708  
party is obligated to provide a service or to transfer title to or 709  
possession of the item sold. "Making retail sales" does not 710  
include the preliminary acts of promoting or soliciting the retail 711  
sales, other than the distribution of printed matter which 712



displays or describes and prices the item offered for sale, nor 713  
does it include delivery of a predetermined quantity of tangible 714  
personal property or transportation of property or personnel to or 715  
from a place where a service is performed, regardless of whether 716  
the vendor is a delivery vendor. 717

(P) "Used directly in the rendition of a public utility 718  
service" means that property that is to be incorporated into and 719  
will become a part of the consumer's production, transmission, 720  
transportation, or distribution system and that retains its 721  
classification as tangible personal property after such 722  
incorporation; fuel or power used in the production, transmission, 723  
transportation, or distribution system; and tangible personal 724  
property used in the repair and maintenance of the production, 725  
transmission, transportation, or distribution system, including 726  
only such motor vehicles as are specially designed and equipped 727  
for such use. Tangible personal property and services used 728  
primarily in providing highway transportation for hire are not 729  
used directly in the rendition of a public utility service. 730

(Q) "Refining" means removing or separating a desirable 731  
product from raw or contaminated materials by distillation or 732  
physical, mechanical, or chemical processes. 733

(R) "Assembly" and "assembling" mean attaching or fitting 734  
together parts to form a product, but do not include packaging a 735  
product. 736

(S) "Manufacturing operation" means a process in which 737  
materials are changed, converted, or transformed into a different 738  
state or form from which they previously existed and includes 739  
refining materials, assembling parts, and preparing raw materials 740  
and parts by mixing, measuring, blending, or otherwise committing 741  
such materials or parts to the manufacturing process. 742  
"Manufacturing operation" does not include packaging. 743

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

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

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

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

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

(Y)(1)(a) "Automatic data processing" means processing of

others' data, including keypunching or similar data entry services 775  
together with verification thereof, or providing access to 776  
computer equipment for the purpose of processing data. 777

(b) "Computer services" means providing services consisting 778  
of specifying computer hardware configurations and evaluating 779  
technical processing characteristics, computer programming, and 780  
training of computer programmers and operators, provided in 781  
conjunction with and to support the sale, lease, or operation of 782  
taxable computer equipment or systems. 783

(c) "Electronic information services" means providing access 784  
to computer equipment by means of telecommunications equipment for 785  
the purpose of either of the following: 786

(i) Examining or acquiring data stored in or accessible to 787  
the computer equipment; 788

(ii) Placing data into the computer equipment to be retrieved 789  
by designated recipients with access to the computer equipment. 790

(d) "Automatic data processing, computer services, or 791  
electronic information services" shall not include personal or 792  
professional services. 793

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 794  
section, "personal and professional services" means all services 795  
other than automatic data processing, computer services, or 796  
electronic information services, including but not limited to: 797

(a) Accounting and legal services such as advice on tax 798  
matters, asset management, budgetary matters, quality control, 799  
information security, and auditing and any other situation where 800  
the service provider receives data or information and studies, 801  
alters, analyzes, interprets, or adjusts such material; 802

(b) Analyzing business policies and procedures; 803

(c) Identifying management information needs; 804

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

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

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

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

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

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

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

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

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

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

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

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

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

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

(c) Tangible personal property;

(d) Advertising, including directory advertising;

(e) Billing and collection services provided to third parties;	865 866
(f) Internet access service;	867
(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;	868 869 870 871 872 873 874 875
(h) Ancillary service;	876
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	877 878
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:	879 880 881 882 883
(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.	884 885 886 887 888
(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.	889 890 891
(c) "Directory assistance" means an ancillary service of providing telephone number or address information.	892 893
(d) "Vertical service" means an ancillary service that is	894

offered in connection with one or more telecommunications 895  
services, which offers advanced calling features that allow 896  
customers to identify callers and manage multiple calls and call 897  
connections, including conference bridging service. 898

(e) "Voice mail service" means an ancillary service that 899  
enables the customer to store, send, or receive recorded messages. 900  
"Voice mail service" does not include any vertical services that 901  
the customer may be required to have in order to utilize the voice 902  
mail service. 903

(3) "900 service" means an inbound toll telecommunications 904  
service purchased by a subscriber that allows the subscriber's 905  
customers to call in to the subscriber's prerecorded announcement 906  
or live service, and which is typically marketed under the name 907  
"900" service and any subsequent numbers designated by the federal 908  
communications commission. "900 service" does not include the 909  
charge for collection services provided by the seller of the 910  
telecommunications service to the subscriber, or services or 911  
products sold by the subscriber to the subscriber's customer. 912

(4) "Prepaid calling service" means the right to access 913  
exclusively telecommunications services, which must be paid for in 914  
advance and which enables the origination of calls using an access 915  
number or authorization code, whether manually or electronically 916  
dialed, and that is sold in predetermined units of dollars of 917  
which the number declines with use in a known amount. 918

(5) "Prepaid wireless calling service" means a 919  
telecommunications service that provides the right to utilize 920  
mobile telecommunications service as well as other 921  
non-telecommunications services, including the download of digital 922  
products delivered electronically, and content and ancillary 923  
services, that must be paid for in advance and that is sold in 924  
predetermined units of dollars of which the number declines with 925

use in a known amount.

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

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

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

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(BB) "Laundry and dry cleaning services" means removing soil or dirt from towels, linens, articles of clothing, or other fabric items that belong to others and supplying towels, linens, articles of clothing, or other fabric items. "Laundry and dry cleaning services" does not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items.

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

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(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote,

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or control the growth of trees, shrubs, flowers, grass, ground  
cover, and other flora, or otherwise maintaining a lawn or  
landscape grown or maintained by the owner for ornamentation or  
other nonagricultural purpose. However, "landscaping and lawn care  
service" does not include the providing of such services by a  
person who has less than five thousand dollars in sales of such  
services during the calendar year.

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

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

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

(HH) "Qualified research and development equipment" means 989  
capitalized tangible personal property, and leased personal 990  
property that would be capitalized if purchased, used by a person 991  
primarily to perform research and development. Tangible personal 992  
property primarily used in testing, as defined in division (A)(4) 993  
of section 5739.011 of the Revised Code, or used for recording or 994  
storing test results, is not qualified research and development 995  
equipment unless such property is primarily used by the consumer 996  
in testing the product, equipment, or manufacturing process being 997  
created, designed, or formulated by the consumer in the research 998  
and development activity or in recording or storing such test 999  
results. 1000

(II) "Building maintenance and janitorial service" means 1001  
cleaning the interior or exterior of a building and any tangible 1002  
personal property located therein or thereon, including any 1003  
services incidental to such cleaning for which no separate charge 1004  
is made. However, "building maintenance and janitorial service" 1005  
does not include the providing of such service by a person who has 1006  
less than five thousand dollars in sales of such service during 1007  
the calendar year. 1008

(JJ) "Employment service" means providing or supplying 1009  
personnel, on a temporary or long-term basis, to perform work or 1010  
labor under the supervision or control of another, when the 1011  
personnel so provided or supplied receive their wages, salary, or 1012  
other compensation from the provider or supplier of the employment 1013  
service or from a third party that provided or supplied the 1014  
personnel to the provider or supplier. "Employment service" does 1015  
not include: 1016

(1) Acting as a contractor or subcontractor, where the 1017  
personnel performing the work are not under the direct control of 1018  
the purchaser. 1019

(2) Medical and health care services.	1020
(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.	1021 1022 1023 1024
(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.	1025 1026
<u>(5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.</u>	1027 1028 1029 1030 1031
(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.	1032 1033 1034
(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.	1035 1036 1037 1038 1039
(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.	1040 1041 1042 1043 1044 1045 1046
(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,	1047 1048 1049

monthly minimum fees, and other similar fees and dues, by a 1050  
recreation and sports club, which entitles the member to use the 1051  
facilities of the organization. "Recreation and sports club" means 1052  
an organization that has ownership of, or controls or leases on a 1053  
continuing, long-term basis, the facilities used by its members 1054  
and includes an aviation club, gun or shooting club, yacht club, 1055  
card club, swimming club, tennis club, golf club, country club, 1056  
riding club, amateur sports club, or similar organization. 1057

(OO) "Livestock" means farm animals commonly raised for food 1058  
or food production, and includes but is not limited to cattle, 1059  
sheep, goats, swine, and poultry. "Livestock" does not include 1060  
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 1061  
animals for use in laboratories or for exhibition, or other 1062  
animals not commonly raised for food or food production. 1063

(PP) "Livestock structure" means a building or structure used 1064  
exclusively for the housing, raising, feeding, or sheltering of 1065  
livestock, and includes feed storage or handling structures and 1066  
structures for livestock waste handling. 1067

(QQ) "Horticulture" means the growing, cultivation, and 1068  
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 1069  
and nursery stock. As used in this division, "nursery stock" has 1070  
the same meaning as in section 927.51 of the Revised Code. 1071

(RR) "Horticulture structure" means a building or structure 1072  
used exclusively for the commercial growing, raising, or 1073  
overwintering of horticultural products, and includes the area 1074  
used for stocking, storing, and packing horticultural products 1075  
when done in conjunction with the production of those products. 1076

(SS) "Newspaper" means an unbound publication bearing a title 1077  
or name that is regularly published, at least as frequently as 1078  
biweekly, and distributed from a fixed place of business to the 1079  
public in a specific geographic area, and that contains a 1080

substantial amount of news matter of international, national, or 1081  
local events of interest to the general public. 1082

(TT) "Professional racing team" means a person that employs 1083  
at least twenty full-time employees for the purpose of conducting 1084  
a motor vehicle racing business for profit. The person must 1085  
conduct the business with the purpose of racing one or more motor 1086  
racing vehicles in at least ten competitive professional racing 1087  
events each year that comprise all or part of a motor racing 1088  
series sanctioned by one or more motor racing sanctioning 1089  
organizations. A "motor racing vehicle" means a vehicle for which 1090  
the chassis, engine, and parts are designed exclusively for motor 1091  
racing, and does not include a stock or production model vehicle 1092  
that may be modified for use in racing. For the purposes of this 1093  
division: 1094

(1) A "competitive professional racing event" is a motor 1095  
vehicle racing event sanctioned by one or more motor racing 1096  
sanctioning organizations, at which aggregate cash prizes in 1097  
excess of eight hundred thousand dollars are awarded to the 1098  
competitors. 1099

(2) "Full-time employee" means an individual who is employed 1100  
for consideration for thirty-five or more hours a week, or who 1101  
renders any other standard of service generally accepted by custom 1102  
or specified by contract as full-time employment. 1103

(UU)(1) "Lease" or "rental" means any transfer of the 1104  
possession or control of tangible personal property for a fixed or 1105  
indefinite term, for consideration. "Lease" or "rental" includes 1106  
future options to purchase or extend, and agreements described in 1107  
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 1108  
the amount of consideration may be increased or decreased by 1109  
reference to the amount realized upon the sale or disposition of 1110  
the property. "Lease" or "rental" does not include: 1111

(a) A transfer of possession or control of tangible personal 1112  
property under a security agreement or a deferred payment plan 1113  
that requires the transfer of title upon completion of the 1114  
required payments; 1115

(b) A transfer of possession or control of tangible personal 1116  
property under an agreement that requires the transfer of title 1117  
upon completion of required payments and payment of an option 1118  
price that does not exceed the greater of one hundred dollars or 1119  
one per cent of the total required payments; 1120

(c) Providing tangible personal property along with an 1121  
operator for a fixed or indefinite period of time, if the operator 1122  
is necessary for the property to perform as designed. For purposes 1123  
of this division, the operator must do more than maintain, 1124  
inspect, or set-up the tangible personal property. 1125

(2) "Lease" and "rental," as defined in division (UU) of this 1126  
section, shall not apply to leases or rentals that exist before 1127  
June 26, 2003. 1128

(3) "Lease" and "rental" have the same meaning as in division 1129  
(UU)(1) of this section regardless of whether a transaction is 1130  
characterized as a lease or rental under generally accepted 1131  
accounting principles, the Internal Revenue Code, Title XIII of 1132  
the Revised Code, or other federal, state, or local laws. 1133

(VV) "Mobile telecommunications service" has the same meaning 1134  
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 1135  
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, 1136  
on and after August 1, 2003, includes related fees and ancillary 1137  
services, including universal service fees, detailed billing 1138  
service, directory assistance, service initiation, voice mail 1139  
service, and vertical services, such as caller ID and three-way 1140  
calling. 1141

(WW) "Certified service provider" has the same meaning as in 1142

section 5740.01 of the Revised Code.

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(XX) "Satellite broadcasting service" means the distribution  
or broadcasting of programming or services by satellite directly  
to the subscriber's receiving equipment without the use of ground  
receiving or distribution equipment, except the subscriber's  
receiving equipment or equipment used in the uplink process to the  
satellite, and includes all service and rental charges, premium  
channels or other special services, installation and repair  
service charges, and any other charges having any connection with  
the provision of the satellite broadcasting service.

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(YY) "Tangible personal property" means personal property  
that can be seen, weighed, measured, felt, or touched, or that is  
in any other manner perceptible to the senses. For purposes of  
this chapter and Chapter 5741. of the Revised Code, "tangible  
personal property" includes motor vehicles, electricity, water,  
gas, steam, and prewritten computer software.

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(ZZ) "Direct mail" means printed material delivered or  
distributed by United States mail or other delivery service to a  
mass audience or to addressees on a mailing list provided by the  
consumer or at the direction of the consumer when the cost of the  
items are not billed directly to the recipients. "Direct mail"  
includes tangible personal property supplied directly or  
indirectly by the consumer to the direct mail vendor for inclusion  
in the package containing the printed material. "Direct mail" does  
not include multiple items of printed material delivered to a  
single address.

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

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(BBB) "Computer software" means a set of coded instructions  
designed to cause a computer or automatic data processing

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equipment to perform a task. 1174

(CCC) "Delivered electronically" means delivery of computer 1175  
software from the seller to the purchaser by means other than 1176  
tangible storage media. 1177

(DDD) "Prewritten computer software" means computer software, 1178  
including prewritten upgrades, that is not designed and developed 1179  
by the author or other creator to the specifications of a specific 1180  
purchaser. The combining of two or more prewritten computer 1181  
software programs or prewritten portions thereof does not cause 1182  
the combination to be other than prewritten computer software. 1183  
"Prewritten computer software" includes software designed and 1184  
developed by the author or other creator to the specifications of 1185  
a specific purchaser when it is sold to a person other than the 1186  
purchaser. If a person modifies or enhances computer software of 1187  
which the person is not the author or creator, the person shall be 1188  
deemed to be the author or creator only of such person's 1189  
modifications or enhancements. Prewritten computer software or a 1190  
prewritten portion thereof that is modified or enhanced to any 1191  
degree, where such modification or enhancement is designed and 1192  
developed to the specifications of a specific purchaser, remains 1193  
prewritten computer software; provided, however, that where there 1194  
is a reasonable, separately stated charge or an invoice or other 1195  
statement of the price given to the purchaser for the modification 1196  
or enhancement, the modification or enhancement shall not 1197  
constitute prewritten computer software. 1198

(EEE)(1) "Food" means substances, whether in liquid, 1199  
concentrated, solid, frozen, dried, or dehydrated form, that are 1200  
sold for ingestion or chewing by humans and are consumed for their 1201  
taste or nutritional value. "Food" does not include alcoholic 1202  
beverages, dietary supplements, soft drinks, or tobacco. 1203

(2) As used in division (EEE)(1) of this section: 1204



(a) "Alcoholic beverages" means beverages that are suitable 1205  
for human consumption and contain one-half of one per cent or more 1206  
of alcohol by volume. 1207

(b) "Dietary supplements" means any product, other than 1208  
tobacco, that is intended to supplement the diet and that is 1209  
intended for ingestion in tablet, capsule, powder, softgel, 1210  
gelcap, or liquid form, or, if not intended for ingestion in such 1211  
a form, is not represented as conventional food for use as a sole 1212  
item of a meal or of the diet; that is required to be labeled as a 1213  
dietary supplement, identifiable by the "supplement facts" box 1214  
found on the label, as required by 21 C.F.R. 101.36; and that 1215  
contains one or more of the following dietary ingredients: 1216

(i) A vitamin; 1217

(ii) A mineral; 1218

(iii) An herb or other botanical; 1219

(iv) An amino acid; 1220

(v) A dietary substance for use by humans to supplement the 1221  
diet by increasing the total dietary intake; 1222

(vi) A concentrate, metabolite, constituent, extract, or 1223  
combination of any ingredient described in divisions 1224  
(EEE)(2)(b)(i) to (v) of this section. 1225

(c) "Soft drinks" means nonalcoholic beverages that contain 1226  
natural or artificial sweeteners. "Soft drinks" does not include 1227  
beverages that contain milk or milk products, soy, rice, or 1228  
similar milk substitutes, or that contains greater than fifty per 1229  
cent vegetable or fruit juice by volume. 1230

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 1231  
tobacco, or any other item that contains tobacco. 1232

(FFF) "Drug" means a compound, substance, or preparation, and 1233  
any component of a compound, substance, or preparation, other than 1234

food, dietary supplements, or alcoholic beverages that is 1235  
recognized in the official United States pharmacopoeia, official 1236  
homeopathic pharmacopoeia of the United States, or official 1237  
national formulary, and supplements to them; is intended for use 1238  
in the diagnosis, cure, mitigation, treatment, or prevention of 1239  
disease; or is intended to affect the structure or any function of 1240  
the body. 1241

(GGG) "Prescription" means an order, formula, or recipe 1242  
issued in any form of oral, written, electronic, or other means of 1243  
transmission by a duly licensed practitioner authorized by the 1244  
laws of this state to issue a prescription. 1245

(HHH) "Durable medical equipment" means equipment, including 1246  
repair and replacement parts for such equipment, that can 1247  
withstand repeated use, is primarily and customarily used to serve 1248  
a medical purpose, generally is not useful to a person in the 1249  
absence of illness or injury, and is not worn in or on the body. 1250  
"Durable medical equipment" does not include mobility enhancing 1251  
equipment. 1252

(III) "Mobility enhancing equipment" means equipment, 1253  
including repair and replacement parts for such equipment, that is 1254  
primarily and customarily used to provide or increase the ability 1255  
to move from one place to another and is appropriate for use 1256  
either in a home or a motor vehicle, that is not generally used by 1257  
persons with normal mobility, and that does not include any motor 1258  
vehicle or equipment on a motor vehicle normally provided by a 1259  
motor vehicle manufacturer. "Mobility enhancing equipment" does 1260  
not include durable medical equipment. 1261

(JJJ) "Prosthetic device" means a replacement, corrective, or 1262  
supportive device, including repair and replacement parts for the 1263  
device, worn on or in the human body to artificially replace a 1264  
missing portion of the body, prevent or correct physical deformity 1265

or malfunction, or support a weak or deformed portion of the body. 1266  
As used in this division, "prosthetic device" does not include 1267  
corrective eyeglasses, contact lenses, or dental prosthesis. 1268

(KKK)(1) "Fractional aircraft ownership program" means a 1269  
program in which persons within an affiliated group sell and 1270  
manage fractional ownership program aircraft, provided that at 1271  
least one hundred airworthy aircraft are operated in the program 1272  
and the program meets all of the following criteria: 1273

(a) Management services are provided by at least one program 1274  
manager within an affiliated group on behalf of the fractional 1275  
owners. 1276

(b) Each program aircraft is owned or possessed by at least 1277  
one fractional owner. 1278

(c) Each fractional owner owns or possesses at least a 1279  
one-sixteenth interest in at least one fixed-wing program 1280  
aircraft. 1281

(d) A dry-lease aircraft interchange arrangement is in effect 1282  
among all of the fractional owners. 1283

(e) Multi-year program agreements are in effect regarding the 1284  
fractional ownership, management services, and dry-lease aircraft 1285  
interchange arrangement aspects of the program. 1286

(2) As used in division (KKK)(1) of this section: 1287

(a) "Affiliated group" has the same meaning as in division 1288  
(B)(3)(e) of this section. 1289

(b) "Fractional owner" means a person that owns or possesses 1290  
at least a one-sixteenth interest in a program aircraft and has 1291  
entered into the agreements described in division (KKK)(1)(e) of 1292  
this section. 1293

(c) "Fractional ownership program aircraft" or "program 1294  
aircraft" means a turbojet aircraft that is owned or possessed by 1295

a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.

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

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

**Section 2.** That existing sections 135.353 and 5739.01 of the Revised Code are hereby repealed.

**Section 3.** The amendment by this act to division (JJ) of section 5739.01 of the Revised Code is essential to the implementation of a tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, the amendment goes into effect January 1, 2007.