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Representative Hughes

**Cosponsors: Representatives Bupp, Schindel, Huffman, McGregor, J., Seitz, Combs, Miller, Collier, Fende, Evans, Widener, Latta, Setzer, Stebelton, Uecker, Yuko, Adams, Luckie, Gibbs, Aslanides, Bacon, Batchelder, Bolon, Book, Boyd, Brady, Brown, Budish, Coley, Distel, Domenick, Dyer, Flowers, Foley, Garrison, Gerberry, Hagan, R., Harwood, Lundy, Mandel, Oelslager, Otterman, Patton, Sayre, Stewart, D., Wachtmann, Williams, B., Zehringer
Senators Amstutz, Spada, Schaffer, Harris, Sawyer, Faber, Austria, Fedor**

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A B I L L

To amend sections 3953.33, 5701.11, 5739.01, 5739.02, 1
5739.035, and 5747.08 of the Revised Code to 2
require a box on personal income tax returns that 3
a taxpayer may check to authorize a paid tax 4
preparer to speak to the Department of Taxation 5
about certain matters concerning the return, to 6
exempt property used to provide electronic 7
publishing services from sales and use taxation, 8
to incorporate changes in the Internal Revenue 9
Code since December 28, 2006, into Ohio's tax law, 10
and to revise the date by which title insurance 11
agents or agencies must have independent reviews 12
made of certain accounts. 13

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

Section 1. That sections 3953.33, 5701.11, 5739.01, 5739.02, 14

5739.035, and 5747.08 of the Revised Code be amended to read as 15
follows: 16

Sec. 3953.33. (A) Every title insurance agent or agency that 17
handles escrow, settlement, closing, or security deposit accounts 18
shall have an ~~annual~~ independent review made of its escrow, 19
settlement, closing, and security deposit accounts ~~on a~~ 20
~~fiscal year basis within ninety days after the close of the~~ 21
~~previous fiscal year~~ each year on or before the thirty-first day 22
of December for the twelve-month period ending the preceding 23
thirty-first day of August. The title insurance agent or agency 24
shall provide proof of the annual review to each title insurance 25
company that it represents. The superintendent of insurance shall 26
promulgate rules under Chapter 119. of the Revised Code setting 27
forth the minimum threshold level at which a review is required, 28
the standards of the review, the minimum qualifications of the 29
independent party conducting the review, and the form of the 30
report that is required. The superintendent may also require title 31
insurance agents or agencies to provide a copy of their annual 32
review reports to the superintendent. The annual review required 33
by this division does not apply to interest on lawyer's trust 34
accounts established and maintained by an attorney pursuant to 35
sections 4705.09 and 4705.10 of the Revised Code. 36

(B) Title insurance agents and agencies shall allow the 37
superintendent and each and every title insurer that they 38
represent reasonable access to all of their escrow, settlement, 39
closing, and security deposit accounts and any and all supporting 40
account information in order to ascertain the safety and security 41
of the funds held by the title insurance agent or agency. 42

(C) Title insurance agents and agencies shall maintain 43
sufficient records of their affairs, including their escrow 44
operations and escrow trust accounts, so that the superintendent 45

may adequately ensure that the title insurance agent or agency is 46
in compliance of this chapter. Records kept pursuant to this 47
section shall be kept for a period of not less than ten years 48
following the transactions to which the records relate. The 49
superintendent may prescribe the specific records and documents to 50
be kept. 51

Sec. 5701.11. The effective date ~~referred to in which~~ this 52
section refers is the effective date of this section as amended by 53
H.B. ~~699~~ 157 of the ~~126th~~ 127th general assembly. 54

(A)~~(1)~~ Except as provided under division (A)(2) or (B) of 55
this section, any reference in Title LVII of the Revised Code to 56
the Internal Revenue Code, to the Internal Revenue Code "as 57
amended," to other laws of the United States, or to other laws of 58
the United States, "as amended," means the Internal Revenue Code 59
or other laws of the United States as they exist on the effective 60
date. ~~This~~ 61

(2) ~~This~~ section does not apply to any reference in Title 62
LVII of the Revised Code to the Internal Revenue Code as of a date 63
certain specifying the day, month, and year, or to other laws of 64
the United States as of a date certain specifying the day, month, 65
and year. 66

(B)(1) For purposes of applying section 5733.04, 5745.01, or 67
5747.01 of the Revised Code to a taxpayer's taxable year ending ~~in~~ 68
after December 28, 2006, and before the effective date, a taxpayer 69
may irrevocably elect to incorporate the provisions of the 70
Internal Revenue Code or other laws of the United States that are 71
in effect for federal income tax purposes for that taxable year if 72
those provisions differ from the provisions that, under division 73
(A) of this section, would otherwise ~~be incorporated into section~~ 74
~~5733.04, 5745.01, or 5747.01 of the Revised Code for that taxable~~ 75
~~year under division (A) of this section~~ apply. The filing of a 76

~~report or return~~ by the taxpayer for that taxable year 77
~~incorporating of a report or return that incorporates~~ the 78
provisions of the Internal Revenue Code or other laws of the 79
United States applicable for federal income tax purposes ~~to~~ for 80
that taxable year, ~~without~~ and that does not include any 81
adjustments to reverse the effects of any differences between 82
those provisions and the provisions that would otherwise ~~be~~ 83
~~incorporated under division (A) of this section~~ apply, constitutes 84
the making of an irrevocable election under this division for that 85
taxable year. 86

(2) Elections under prior versions of division (B)(1) of this 87
section remain in effect for the taxable years to which they 88
apply. 89

Sec. 5739.01. As used in this chapter: 90

(A) "Person" includes individuals, receivers, assignees, 91
trustees in bankruptcy, estates, firms, partnerships, 92
associations, joint-stock companies, joint ventures, clubs, 93
societies, corporations, the state and its political subdivisions, 94
and combinations of individuals of any form. 95

(B) "Sale" and "selling" include all of the following 96
transactions for a consideration in any manner, whether absolutely 97
or conditionally, whether for a price or rental, in money or by 98
exchange, and by any means whatsoever: 99

(1) All transactions by which title or possession, or both, 100
of tangible personal property, is or is to be transferred, or a 101
license to use or consume tangible personal property is or is to 102
be granted; 103

(2) All transactions by which lodging by a hotel is or is to 104
be furnished to transient guests; 105

(3) All transactions by which: 106

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;	107 108 109
(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;	110 111 112 113 114 115
(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;	116 117
(d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;	118 119 120
(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.	121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136
(f) Telecommunications service, including prepaid calling	137

service, prepaid wireless calling service, or ancillary service,	138
is or is to be provided, but not including coin-operated telephone	139
service;	140
(g) Landscaping and lawn care service is or is to be	141
provided;	142
(h) Private investigation and security service is or is to be	143
provided;	144
(i) Information services or tangible personal property is	145
provided or ordered by means of a nine hundred telephone call;	146
(j) Building maintenance and janitorial service is or is to	147
be provided;	148
(k) Employment service is or is to be provided;	149
(l) Employment placement service is or is to be provided;	150
(m) Exterminating service is or is to be provided;	151
(n) Physical fitness facility service is or is to be	152
provided;	153
(o) Recreation and sports club service is or is to be	154
provided;	155
(p) On and after August 1, 2003, satellite broadcasting	156
service is or is to be provided;	157
(q) On and after August 1, 2003, personal care service is or	158
is to be provided to an individual. As used in this division,	159
"personal care service" includes skin care, the application of	160
cosmetics, manicuring, pedicuring, hair removal, tattooing, body	161
piercing, tanning, massage, and other similar services. "Personal	162
care service" does not include a service provided by or on the	163
order of a licensed physician or licensed chiropractor, or the	164
cutting, coloring, or styling of an individual's hair.	165
(r) On and after August 1, 2003, the transportation of	166

persons by motor vehicle or aircraft is or is to be provided, when 167
the transportation is entirely within this state, except for 168
transportation provided by an ambulance service, by a transit bus, 169
as defined in section 5735.01 of the Revised Code, and 170
transportation provided by a citizen of the United States holding 171
a certificate of public convenience and necessity issued under 49 172
U.S.C. 41102; 173

(s) On and after August 1, 2003, motor vehicle towing service 174
is or is to be provided. As used in this division, "motor vehicle 175
towing service" means the towing or conveyance of a wrecked, 176
disabled, or illegally parked motor vehicle. 177

(t) On and after August 1, 2003, snow removal service is or 178
is to be provided. As used in this division, "snow removal 179
service" means the removal of snow by any mechanized means, but 180
does not include the providing of such service by a person that 181
has less than five thousand dollars in sales of such service 182
during the calendar year. 183

(u) Electronic publishing service is or is to be provided to 184
a consumer for use in business, except that such transactions 185
occurring between members of an affiliated group, as defined in 186
division (B)(3)(e) of this section, are not sales. 187

(4) All transactions by which printed, imprinted, 188
overprinted, lithographic, multilithic, blueprinted, photostatic, 189
or other productions or reproductions of written or graphic matter 190
are or are to be furnished or transferred; 191

(5) The production or fabrication of tangible personal 192
property for a consideration for consumers who furnish either 193
directly or indirectly the materials used in the production of 194
fabrication work; and include the furnishing, preparing, or 195
serving for a consideration of any tangible personal property 196
consumed on the premises of the person furnishing, preparing, or 197

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serving such tangible personal property. Except as provided in
section 5739.03 of the Revised Code, a construction contract
pursuant to which tangible personal property is or is to be
incorporated into a structure or improvement on and becoming a
part of real property is not a sale of such tangible personal
property. The construction contractor is the consumer of such
tangible personal property, provided that the sale and
installation of carpeting, the sale and installation of
agricultural land tile, the sale and erection or installation of
portable grain bins, or the provision of landscaping and lawn care
service and the transfer of property as part of such service is
never a construction contract.

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

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

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

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

(7) All transactions in which a warranty, maintenance or 229
service contract, or similar agreement by which the vendor of the 230
warranty, contract, or agreement agrees to repair or maintain the 231
tangible personal property of the consumer is or is to be 232
provided; 233

(8) The transfer of copyrighted motion picture films used 234
solely for advertising purposes, except that the transfer of such 235
films for exhibition purposes is not a sale. 236

(9) On and after August 1, 2003, all transactions by which 237
tangible personal property is or is to be stored, except such 238
property that the consumer of the storage holds for sale in the 239
regular course of business. 240

Except as provided in this section, "sale" and "selling" do 241
not include transfers of interest in leased property where the 242
original lessee and the terms of the original lease agreement 243
remain unchanged, or professional, insurance, or personal service 244
transactions that involve the transfer of tangible personal 245
property as an inconsequential element, for which no separate 246
charges are made. 247

(C) "Vendor" means the person providing the service or by 248
whom the transfer effected or license given by a sale is or is to 249
be made or given and, for sales described in division (B)(3)(i) of 250
this section, the telecommunications service vendor that provides 251
the nine hundred telephone service; if two or more persons are 252
engaged in business at the same place of business under a single 253
trade name in which all collections on account of sales by each 254
are made, such persons shall constitute a single vendor. 255

Physicians, dentists, hospitals, and veterinarians who are 256
engaged in selling tangible personal property as received from 257
others, such as eyeglasses, mouthwashes, dentifrices, or similar 258
articles, are vendors. Veterinarians who are engaged in 259

transferring to others for a consideration drugs, the dispensing 260
of which does not require an order of a licensed veterinarian or 261
physician under federal law, are vendors. 262

(D)(1) "Consumer" means the person for whom the service is 263
provided, to whom the transfer effected or license given by a sale 264
is or is to be made or given, to whom the service described in 265
division (B)(3)(f) or (i) of this section is charged, or to whom 266
the admission is granted. 267

(2) Physicians, dentists, hospitals, and blood banks operated 268
by nonprofit institutions and persons licensed to practice 269
veterinary medicine, surgery, and dentistry are consumers of all 270
tangible personal property and services purchased by them in 271
connection with the practice of medicine, dentistry, the rendition 272
of hospital or blood bank service, or the practice of veterinary 273
medicine, surgery, and dentistry. In addition to being consumers 274
of drugs administered by them or by their assistants according to 275
their direction, veterinarians also are consumers of drugs that 276
under federal law may be dispensed only by or upon the order of a 277
licensed veterinarian or physician, when transferred by them to 278
others for a consideration to provide treatment to animals as 279
directed by the veterinarian. 280

(3) A person who performs a facility management, or similar 281
service contract for a contractee is a consumer of all tangible 282
personal property and services purchased for use in connection 283
with the performance of such contract, regardless of whether title 284
to any such property vests in the contractee. The purchase of such 285
property and services is not subject to the exception for resale 286
under division (E)(1) of this section. 287

(4)(a) In the case of a person who purchases printed matter 288
for the purpose of distributing it or having it distributed to the 289
public or to a designated segment of the public, free of charge, 290
that person is the consumer of that printed matter, and the 291

purchase of that printed matter for that purpose is a sale. 292

(b) In the case of a person who produces, rather than 293
purchases, printed matter for the purpose of distributing it or 294
having it distributed to the public or to a designated segment of 295
the public, free of charge, that person is the consumer of all 296
tangible personal property and services purchased for use or 297
consumption in the production of that printed matter. That person 298
is not entitled to claim exemption under division (B)(42)(f) of 299
section 5739.02 of the Revised Code for any material incorporated 300
into the printed matter or any equipment, supplies, or services 301
primarily used to produce the printed matter. 302

(c) The distribution of printed matter to the public or to a 303
designated segment of the public, free of charge, is not a sale to 304
the members of the public to whom the printed matter is 305
distributed or to any persons who purchase space in the printed 306
matter for advertising or other purposes. 307

(5) A person who makes sales of any of the services listed in 308
division (B)(3) of this section is the consumer of any tangible 309
personal property used in performing the service. The purchase of 310
that property is not subject to the resale exception under 311
division (E)(1) of this section. 312

(6) A person who engages in highway transportation for hire 313
is the consumer of all packaging materials purchased by that 314
person and used in performing the service, except for packaging 315
materials sold by such person in a transaction separate from the 316
service. 317

(E) "Retail sale" and "sales at retail" include all sales, 318
except those in which the purpose of the consumer is to resell the 319
thing transferred or benefit of the service provided, by a person 320
engaging in business, in the form in which the same is, or is to 321
be, received by the person. 322

(F) "Business" includes any activity engaged in by any person 323
with the object of gain, benefit, or advantage, either direct or 324
indirect. "Business" does not include the activity of a person in 325
managing and investing the person's own funds. 326

(G) "Engaging in business" means commencing, conducting, or 327
continuing in business, and liquidating a business when the 328
liquidator thereof holds itself out to the public as conducting 329
such business. Making a casual sale is not engaging in business. 330

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 331
(3) of this section, means the total amount of consideration, 332
including cash, credit, property, and services, for which tangible 333
personal property or services are sold, leased, or rented, valued 334
in money, whether received in money or otherwise, without any 335
deduction for any of the following: 336

(i) The vendor's cost of the property sold; 337

(ii) The cost of materials used, labor or service costs, 338
interest, losses, all costs of transportation to the vendor, all 339
taxes imposed on the vendor, including the tax imposed under 340
Chapter 5751. of the Revised Code, and any other expense of the 341
vendor; 342

(iii) Charges by the vendor for any services necessary to 343
complete the sale; 344

(iv) On and after August 1, 2003, delivery charges. As used 345
in this division, "delivery charges" means charges by the vendor 346
for preparation and delivery to a location designated by the 347
consumer of tangible personal property or a service, including 348
transportation, shipping, postage, handling, crating, and packing. 349

(v) Installation charges; 350

(vi) Credit for any trade-in. 351

(b) "Price" includes consideration received by the vendor 352

from a third party, if the vendor actually receives the 353
consideration from a party other than the consumer, and the 354
consideration is directly related to a price reduction or discount 355
on the sale; the vendor has an obligation to pass the price 356
reduction or discount through to the consumer; the amount of the 357
consideration attributable to the sale is fixed and determinable 358
by the vendor at the time of the sale of the item to the consumer; 359
and one of the following criteria is met: 360

(i) The consumer presents a coupon, certificate, or other 361
document to the vendor to claim a price reduction or discount 362
where the coupon, certificate, or document is authorized, 363
distributed, or granted by a third party with the understanding 364
that the third party will reimburse any vendor to whom the coupon, 365
certificate, or document is presented; 366

(ii) The consumer identifies the consumer's self to the 367
seller as a member of a group or organization entitled to a price 368
reduction or discount. A preferred customer card that is available 369
to any patron does not constitute membership in such a group or 370
organization. 371

(iii) The price reduction or discount is identified as a 372
third party price reduction or discount on the invoice received by 373
the consumer, or on a coupon, certificate, or other document 374
presented by the consumer. 375

(c) "Price" does not include any of the following: 376

(i) Discounts, including cash, term, or coupons that are not 377
reimbursed by a third party that are allowed by a vendor and taken 378
by a consumer on a sale; 379

(ii) Interest, financing, and carrying charges from credit 380
extended on the sale of tangible personal property or services, if 381
the amount is separately stated on the invoice, bill of sale, or 382
similar document given to the purchaser; 383

(iii) Any taxes legally imposed directly on the consumer that 384
are separately stated on the invoice, bill of sale, or similar 385
document given to the consumer. For the purpose of this division, 386
the tax imposed under Chapter 5751. of the Revised Code is not a 387
tax directly on the consumer, even if the tax or a portion thereof 388
is separately stated. 389

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this 390
section, any discount allowed by an automobile manufacturer to its 391
employee, or to the employee of a supplier, on the purchase of a 392
new motor vehicle from a new motor vehicle dealer in this state. 393

(2) In the case of a sale of any new motor vehicle by a new 394
motor vehicle dealer, as defined in section 4517.01 of the Revised 395
Code, in which another motor vehicle is accepted by the dealer as 396
part of the consideration received, "price" has the same meaning 397
as in division (H)(1) of this section, reduced by the credit 398
afforded the consumer by the dealer for the motor vehicle received 399
in trade. 400

(3) In the case of a sale of any watercraft or outboard motor 401
by a watercraft dealer licensed in accordance with section 402
1547.543 of the Revised Code, in which another watercraft, 403
watercraft and trailer, or outboard motor is accepted by the 404
dealer as part of the consideration received, "price" has the same 405
meaning as in division (H)(1) of this section, reduced by the 406
credit afforded the consumer by the dealer for the watercraft, 407
watercraft and trailer, or outboard motor received in trade. As 408
used in this division, "watercraft" includes an outdrive unit 409
attached to the watercraft. 410

(I) "Receipts" means the total amount of the prices of the 411
sales of vendors, provided that cash discounts allowed and taken 412
on sales at the time they are consummated are not included, minus 413
any amount deducted as a bad debt pursuant to section 5739.121 of 414
the Revised Code. "Receipts" does not include the sale price of 415

property returned or services rejected by consumers when the full 416
sale price and tax are refunded either in cash or by credit. 417

(J) "Place of business" means any location at which a person 418
engages in business. 419

(K) "Premises" includes any real property or portion thereof 420
upon which any person engages in selling tangible personal 421
property at retail or making retail sales and also includes any 422
real property or portion thereof designated for, or devoted to, 423
use in conjunction with the business engaged in by such person. 424

(L) "Casual sale" means a sale of an item of tangible 425
personal property that was obtained by the person making the sale, 426
through purchase or otherwise, for the person's own use and was 427
previously subject to any state's taxing jurisdiction on its sale 428
or use, and includes such items acquired for the seller's use that 429
are sold by an auctioneer employed directly by the person for such 430
purpose, provided the location of such sales is not the 431
auctioneer's permanent place of business. As used in this 432
division, "permanent place of business" includes any location 433
where such auctioneer has conducted more than two auctions during 434
the year. 435

(M) "Hotel" means every establishment kept, used, maintained, 436
advertised, or held out to the public to be a place where sleeping 437
accommodations are offered to guests, in which five or more rooms 438
are used for the accommodation of such guests, whether the rooms 439
are in one or several structures. 440

(N) "Transient guests" means persons occupying a room or 441
rooms for sleeping accommodations for less than thirty consecutive 442
days. 443

(O) "Making retail sales" means the effecting of transactions 444
wherein one party is obligated to pay the price and the other 445
party is obligated to provide a service or to transfer title to or 446

possession of the item sold. "Making retail sales" does not 447
include the preliminary acts of promoting or soliciting the retail 448
sales, other than the distribution of printed matter which 449
displays or describes and prices the item offered for sale, nor 450
does it include delivery of a predetermined quantity of tangible 451
personal property or transportation of property or personnel to or 452
from a place where a service is performed, regardless of whether 453
the vendor is a delivery vendor. 454

(P) "Used directly in the rendition of a public utility 455
service" means that property that is to be incorporated into and 456
will become a part of the consumer's production, transmission, 457
transportation, or distribution system and that retains its 458
classification as tangible personal property after such 459
incorporation; fuel or power used in the production, transmission, 460
transportation, or distribution system; and tangible personal 461
property used in the repair and maintenance of the production, 462
transmission, transportation, or distribution system, including 463
only such motor vehicles as are specially designed and equipped 464
for such use. Tangible personal property and services used 465
primarily in providing highway transportation for hire are not 466
used directly in the rendition of a public utility service. In 467
this definition, "public utility" includes a citizen of the United 468
States holding, and required to hold, a certificate of public 469
convenience and necessity issued under 49 U.S.C. 41102. 470

(Q) "Refining" means removing or separating a desirable 471
product from raw or contaminated materials by distillation or 472
physical, mechanical, or chemical processes. 473

(R) "Assembly" and "assembling" mean attaching or fitting 474
together parts to form a product, but do not include packaging a 475
product. 476

(S) "Manufacturing operation" means a process in which 477
materials are changed, converted, or transformed into a different 478

state or form from which they previously existed and includes 479
refining materials, assembling parts, and preparing raw materials 480
and parts by mixing, measuring, blending, or otherwise committing 481
such materials or parts to the manufacturing process. 482
"Manufacturing operation" does not include packaging. 483

(T) "Fiscal officer" means, with respect to a regional 484
transit authority, the secretary-treasurer thereof, and with 485
respect to a county that is a transit authority, the fiscal 486
officer of the county transit board if one is appointed pursuant 487
to section 306.03 of the Revised Code or the county auditor if the 488
board of county commissioners operates the county transit system. 489

(U) "Transit authority" means a regional transit authority 490
created pursuant to section 306.31 of the Revised Code or a county 491
in which a county transit system is created pursuant to section 492
306.01 of the Revised Code. For the purposes of this chapter, a 493
transit authority must extend to at least the entire area of a 494
single county. A transit authority that includes territory in more 495
than one county must include all the area of the most populous 496
county that is a part of such transit authority. County population 497
shall be measured by the most recent census taken by the United 498
States census bureau. 499

(V) "Legislative authority" means, with respect to a regional 500
transit authority, the board of trustees thereof, and with respect 501
to a county that is a transit authority, the board of county 502
commissioners. 503

(W) "Territory of the transit authority" means all of the 504
area included within the territorial boundaries of a transit 505
authority as they from time to time exist. Such territorial 506
boundaries must at all times include all the area of a single 507
county or all the area of the most populous county that is a part 508
of such transit authority. County population shall be measured by 509
the most recent census taken by the United States census bureau. 510

(X) "Providing a service" means providing or furnishing 511
anything described in division (B)(3) of this section for 512
consideration. 513

(Y)(1)(a) "Automatic data processing" means processing of 514
others' data, including keypunching or similar data entry services 515
together with verification thereof, or providing access to 516
computer equipment for the purpose of processing data. 517

(b) "Computer services" means providing services consisting 518
of specifying computer hardware configurations and evaluating 519
technical processing characteristics, computer programming, and 520
training of computer programmers and operators, provided in 521
conjunction with and to support the sale, lease, or operation of 522
taxable computer equipment or systems. 523

(c) "Electronic information services" means providing access 524
to computer equipment by means of telecommunications equipment for 525
the purpose of either of the following: 526

(i) Examining or acquiring data stored in or accessible to 527
the computer equipment; 528

(ii) Placing data into the computer equipment to be retrieved 529
by designated recipients with access to the computer equipment. 530

For transactions occurring on or after the effective date of 531
the amendment of this section by H.B. 157 of the 127th general 532
assembly, "electronic information services" does not include 533
electronic publishing as defined in division (LLL) of this 534
section. 535

(d) "Automatic data processing, computer services, or 536
electronic information services" shall not include personal or 537
professional services. 538

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 539
section, "personal and professional services" means all services 540

other than automatic data processing, computer services, or	541
electronic information services, including but not limited to:	542
(a) Accounting and legal services such as advice on tax	543
matters, asset management, budgetary matters, quality control,	544
information security, and auditing and any other situation where	545
the service provider receives data or information and studies,	546
alters, analyzes, interprets, or adjusts such material;	547
(b) Analyzing business policies and procedures;	548
(c) Identifying management information needs;	549
(d) Feasibility studies, including economic and technical	550
analysis of existing or potential computer hardware or software	551
needs and alternatives;	552
(e) Designing policies, procedures, and custom software for	553
collecting business information, and determining how data should	554
be summarized, sequenced, formatted, processed, controlled, and	555
reported so that it will be meaningful to management;	556
(f) Developing policies and procedures that document how	557
business events and transactions are to be authorized, executed,	558
and controlled;	559
(g) Testing of business procedures;	560
(h) Training personnel in business procedure applications;	561
(i) Providing credit information to users of such information	562
by a consumer reporting agency, as defined in the "Fair Credit	563
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or	564
as hereafter amended, including but not limited to gathering,	565
organizing, analyzing, recording, and furnishing such information	566
by any oral, written, graphic, or electronic medium;	567
(j) Providing debt collection services by any oral, written,	568
graphic, or electronic means.	569
The services listed in divisions (Y)(2)(a) to (j) of this	570

section are not automatic data processing or computer services. 571

(Z) "Highway transportation for hire" means the 572
transportation of personal property belonging to others for 573
consideration by any of the following: 574

(1) The holder of a permit or certificate issued by this 575
state or the United States authorizing the holder to engage in 576
transportation of personal property belonging to others for 577
consideration over or on highways, roadways, streets, or any 578
similar public thoroughfare; 579

(2) A person who engages in the transportation of personal 580
property belonging to others for consideration over or on 581
highways, roadways, streets, or any similar public thoroughfare 582
but who could not have engaged in such transportation on December 583
11, 1985, unless the person was the holder of a permit or 584
certificate of the types described in division (Z)(1) of this 585
section; 586

(3) A person who leases a motor vehicle to and operates it 587
for a person described by division (Z)(1) or (2) of this section. 588

(AA)(1) "Telecommunications service" means the electronic 589
transmission, conveyance, or routing of voice, data, audio, video, 590
or any other information or signals to a point, or between or 591
among points. "Telecommunications service" includes such 592
transmission, conveyance, or routing in which computer processing 593
applications are used to act on the form, code, or protocol of the 594
content for purposes of transmission, conveyance, or routing 595
without regard to whether the service is referred to as voice-over 596
internet protocol service or is classified by the federal 597
communications commission as enhanced or value-added. 598
"Telecommunications service" does not include any of the 599
following: 600

(a) Data processing and information services that allow data 601

to be generated, acquired, stored, processed, or retrieved and 602
delivered by an electronic transmission to a consumer where the 603
consumer's primary purpose for the underlying transaction is the 604
processed data or information; 605

(b) Installation or maintenance of wiring or equipment on a 606
customer's premises; 607

(c) Tangible personal property; 608

(d) Advertising, including directory advertising; 609

(e) Billing and collection services provided to third 610
parties; 611

(f) Internet access service; 612

(g) Radio and television audio and video programming 613
services, regardless of the medium, including the furnishing of 614
transmission, conveyance, and routing of such services by the 615
programming service provider. Radio and television audio and video 616
programming services include, but are not limited to, cable 617
service, as defined in 47 U.S.C. 522(6), and audio and video 618
programming services delivered by commercial mobile radio service 619
providers, as defined in 47 C.F.R. 20.3; 620

(h) Ancillary service; 621

(i) Digital products delivered electronically, including 622
software, music, video, reading materials, or ring tones. 623

(2) "Ancillary service" means a service that is associated 624
with or incidental to the provision of telecommunications service, 625
including conference bridging service, detailed telecommunications 626
billing service, directory assistance, vertical service, and voice 627
mail service. As used in this division: 628

(a) "Conference bridging service" means an ancillary service 629
that links two or more participants of an audio or video 630
conference call, including providing a telephone number. 631

"Conference bridging service" does not include telecommunications services used to reach the conference bridge. 632
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(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. 634
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(c) "Directory assistance" means an ancillary service of providing telephone number or address information. 637
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(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service. 639
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(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. 644
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(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900" service and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer. 649
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(4) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units of dollars of 658
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which the number declines with use in a known amount. 663

(5) "Prepaid wireless calling service" means a 664
telecommunications service that provides the right to utilize 665
mobile telecommunications service as well as other 666
non-telecommunications services, including the download of digital 667
products delivered electronically, and content and ancillary 668
services, that must be paid for in advance and that is sold in 669
predetermined units of dollars of which the number declines with 670
use in a known amount. 671

(6) "Value-added non-voice data service" means a 672
telecommunications service in which computer processing 673
applications are used to act on the form, content, code, or 674
protocol of the information or data primarily for a purpose other 675
than transmission, conveyance, or routing. 676

(7) "Coin-operated telephone service" means a 677
telecommunications service paid for by inserting money into a 678
telephone accepting direct deposits of money to operate. 679

(8) "Customer" has the same meaning as in section 5739.034 of 680
the Revised Code. 681

(BB) "Laundry and dry cleaning services" means removing soil 682
or dirt from towels, linens, articles of clothing, or other fabric 683
items that belong to others and supplying towels, linens, articles 684
of clothing, or other fabric items. "Laundry and dry cleaning 685
services" does not include the provision of self-service 686
facilities for use by consumers to remove soil or dirt from 687
towels, linens, articles of clothing, or other fabric items. 688

(CC) "Magazines distributed as controlled circulation 689
publications" means magazines containing at least twenty-four 690
pages, at least twenty-five per cent editorial content, issued at 691
regular intervals four or more times a year, and circulated 692
without charge to the recipient, provided that such magazines are 693

not owned or controlled by individuals or business concerns which 694
conduct such publications as an auxiliary to, and essentially for 695
the advancement of the main business or calling of, those who own 696
or control them. 697

(DD) "Landscaping and lawn care service" means the services 698
of planting, seeding, sodding, removing, cutting, trimming, 699
pruning, mulching, aerating, applying chemicals, watering, 700
fertilizing, and providing similar services to establish, promote, 701
or control the growth of trees, shrubs, flowers, grass, ground 702
cover, and other flora, or otherwise maintaining a lawn or 703
landscape grown or maintained by the owner for ornamentation or 704
other nonagricultural purpose. However, "landscaping and lawn care 705
service" does not include the providing of such services by a 706
person who has less than five thousand dollars in sales of such 707
services during the calendar year. 708

(EE) "Private investigation and security service" means the 709
performance of any activity for which the provider of such service 710
is required to be licensed pursuant to Chapter 4749. of the 711
Revised Code, or would be required to be so licensed in performing 712
such services in this state, and also includes the services of 713
conducting polygraph examinations and of monitoring or overseeing 714
the activities on or in, or the condition of, the consumer's home, 715
business, or other facility by means of electronic or similar 716
monitoring devices. "Private investigation and security service" 717
does not include special duty services provided by off-duty police 718
officers, deputy sheriffs, and other peace officers regularly 719
employed by the state or a political subdivision. 720

(FF) "Information services" means providing conversation, 721
giving consultation or advice, playing or making a voice or other 722
recording, making or keeping a record of the number of callers, 723
and any other service provided to a consumer by means of a nine 724
hundred telephone call, except when the nine hundred telephone 725

call is the means by which the consumer makes a contribution to a 726
recognized charity. 727

(GG) "Research and development" means designing, creating, or 728
formulating new or enhanced products, equipment, or manufacturing 729
processes, and also means conducting scientific or technological 730
inquiry and experimentation in the physical sciences with the goal 731
of increasing scientific knowledge which may reveal the bases for 732
new or enhanced products, equipment, or manufacturing processes. 733

(HH) "Qualified research and development equipment" means 734
capitalized tangible personal property, and leased personal 735
property that would be capitalized if purchased, used by a person 736
primarily to perform research and development. Tangible personal 737
property primarily used in testing, as defined in division (A)(4) 738
of section 5739.011 of the Revised Code, or used for recording or 739
storing test results, is not qualified research and development 740
equipment unless such property is primarily used by the consumer 741
in testing the product, equipment, or manufacturing process being 742
created, designed, or formulated by the consumer in the research 743
and development activity or in recording or storing such test 744
results. 745

(II) "Building maintenance and janitorial service" means 746
cleaning the interior or exterior of a building and any tangible 747
personal property located therein or thereon, including any 748
services incidental to such cleaning for which no separate charge 749
is made. However, "building maintenance and janitorial service" 750
does not include the providing of such service by a person who has 751
less than five thousand dollars in sales of such service during 752
the calendar year. 753

(JJ) "Employment service" means providing or supplying 754
personnel, on a temporary or long-term basis, to perform work or 755
labor under the supervision or control of another, when the 756
personnel so provided or supplied receive their wages, salary, or 757

other compensation from the provider or supplier of the employment 758
service or from a third party that provided or supplied the 759
personnel to the provider or supplier. "Employment service" does 760
not include: 761

(1) Acting as a contractor or subcontractor, where the 762
personnel performing the work are not under the direct control of 763
the purchaser. 764

(2) Medical and health care services. 765

(3) Supplying personnel to a purchaser pursuant to a contract 766
of at least one year between the service provider and the 767
purchaser that specifies that each employee covered under the 768
contract is assigned to the purchaser on a permanent basis. 769

(4) Transactions between members of an affiliated group, as 770
defined in division (B)(3)(e) of this section. 771

(5) Transactions where the personnel so provided or supplied 772
by a provider or supplier to a purchaser of an employment service 773
are then provided or supplied by that purchaser to a third party 774
as an employment service, except "employment service" does include 775
the transaction between that purchaser and the third party. 776

(KK) "Employment placement service" means locating or finding 777
employment for a person or finding or locating an employee to fill 778
an available position. 779

(LL) "Exterminating service" means eradicating or attempting 780
to eradicate vermin infestations from a building or structure, or 781
the area surrounding a building or structure, and includes 782
activities to inspect, detect, or prevent vermin infestation of a 783
building or structure. 784

(MM) "Physical fitness facility service" means all 785
transactions by which a membership is granted, maintained, or 786
renewed, including initiation fees, membership dues, renewal fees, 787

monthly minimum fees, and other similar fees and dues, by a 788
physical fitness facility such as an athletic club, health spa, or 789
gymnasium, which entitles the member to use the facility for 790
physical exercise. 791

(NN) "Recreation and sports club service" means all 792
transactions by which a membership is granted, maintained, or 793
renewed, including initiation fees, membership dues, renewal fees, 794
monthly minimum fees, and other similar fees and dues, by a 795
recreation and sports club, which entitles the member to use the 796
facilities of the organization. "Recreation and sports club" means 797
an organization that has ownership of, or controls or leases on a 798
continuing, long-term basis, the facilities used by its members 799
and includes an aviation club, gun or shooting club, yacht club, 800
card club, swimming club, tennis club, golf club, country club, 801
riding club, amateur sports club, or similar organization. 802

(OO) "Livestock" means farm animals commonly raised for food 803
or food production, and includes but is not limited to cattle, 804
sheep, goats, swine, and poultry. "Livestock" does not include 805
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 806
animals for use in laboratories or for exhibition, or other 807
animals not commonly raised for food or food production. 808

(PP) "Livestock structure" means a building or structure used 809
exclusively for the housing, raising, feeding, or sheltering of 810
livestock, and includes feed storage or handling structures and 811
structures for livestock waste handling. 812

(QQ) "Horticulture" means the growing, cultivation, and 813
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 814
and nursery stock. As used in this division, "nursery stock" has 815
the same meaning as in section 927.51 of the Revised Code. 816

(RR) "Horticulture structure" means a building or structure 817
used exclusively for the commercial growing, raising, or 818

overwintering of horticultural products, and includes the area 819
used for stocking, storing, and packing horticultural products 820
when done in conjunction with the production of those products. 821

(SS) "Newspaper" means an unbound publication bearing a title 822
or name that is regularly published, at least as frequently as 823
biweekly, and distributed from a fixed place of business to the 824
public in a specific geographic area, and that contains a 825
substantial amount of news matter of international, national, or 826
local events of interest to the general public. 827

(TT) "Professional racing team" means a person that employs 828
at least twenty full-time employees for the purpose of conducting 829
a motor vehicle racing business for profit. The person must 830
conduct the business with the purpose of racing one or more motor 831
racing vehicles in at least ten competitive professional racing 832
events each year that comprise all or part of a motor racing 833
series sanctioned by one or more motor racing sanctioning 834
organizations. A "motor racing vehicle" means a vehicle for which 835
the chassis, engine, and parts are designed exclusively for motor 836
racing, and does not include a stock or production model vehicle 837
that may be modified for use in racing. For the purposes of this 838
division: 839

(1) A "competitive professional racing event" is a motor 840
vehicle racing event sanctioned by one or more motor racing 841
sanctioning organizations, at which aggregate cash prizes in 842
excess of eight hundred thousand dollars are awarded to the 843
competitors. 844

(2) "Full-time employee" means an individual who is employed 845
for consideration for thirty-five or more hours a week, or who 846
renders any other standard of service generally accepted by custom 847
or specified by contract as full-time employment. 848

(UU)(1) "Lease" or "rental" means any transfer of the 849

possession or control of tangible personal property for a fixed or 850
indefinite term, for consideration. "Lease" or "rental" includes 851
future options to purchase or extend, and agreements described in 852
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 853
the amount of consideration may be increased or decreased by 854
reference to the amount realized upon the sale or disposition of 855
the property. "Lease" or "rental" does not include: 856

(a) A transfer of possession or control of tangible personal 857
property under a security agreement or a deferred payment plan 858
that requires the transfer of title upon completion of the 859
required payments; 860

(b) A transfer of possession or control of tangible personal 861
property under an agreement that requires the transfer of title 862
upon completion of required payments and payment of an option 863
price that does not exceed the greater of one hundred dollars or 864
one per cent of the total required payments; 865

(c) Providing tangible personal property along with an 866
operator for a fixed or indefinite period of time, if the operator 867
is necessary for the property to perform as designed. For purposes 868
of this division, the operator must do more than maintain, 869
inspect, or set-up the tangible personal property. 870

(2) "Lease" and "rental," as defined in division (UU) of this 871
section, shall not apply to leases or rentals that exist before 872
June 26, 2003. 873

(3) "Lease" and "rental" have the same meaning as in division 874
(UU)(1) of this section regardless of whether a transaction is 875
characterized as a lease or rental under generally accepted 876
accounting principles, the Internal Revenue Code, Title XIII of 877
the Revised Code, or other federal, state, or local laws. 878

(VV) "Mobile telecommunications service" has the same meaning 879
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 880

106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, 881
on and after August 1, 2003, includes related fees and ancillary 882
services, including universal service fees, detailed billing 883
service, directory assistance, service initiation, voice mail 884
service, and vertical services, such as caller ID and three-way 885
calling. 886

(WW) "Certified service provider" has the same meaning as in 887
section 5740.01 of the Revised Code. 888

(XX) "Satellite broadcasting service" means the distribution 889
or broadcasting of programming or services by satellite directly 890
to the subscriber's receiving equipment without the use of ground 891
receiving or distribution equipment, except the subscriber's 892
receiving equipment or equipment used in the uplink process to the 893
satellite, and includes all service and rental charges, premium 894
channels or other special services, installation and repair 895
service charges, and any other charges having any connection with 896
the provision of the satellite broadcasting service. 897

(YY) "Tangible personal property" means personal property 898
that can be seen, weighed, measured, felt, or touched, or that is 899
in any other manner perceptible to the senses. For purposes of 900
this chapter and Chapter 5741. of the Revised Code, "tangible 901
personal property" includes motor vehicles, electricity, water, 902
gas, steam, and prewritten computer software. 903

(ZZ) "Direct mail" means printed material delivered or 904
distributed by United States mail or other delivery service to a 905
mass audience or to addressees on a mailing list provided by the 906
consumer or at the direction of the consumer when the cost of the 907
items are not billed directly to the recipients. "Direct mail" 908
includes tangible personal property supplied directly or 909
indirectly by the consumer to the direct mail vendor for inclusion 910
in the package containing the printed material. "Direct mail" does 911
not include multiple items of printed material delivered to a 912

single address. 913

(AAA) "Computer" means an electronic device that accepts 914
information in digital or similar form and manipulates it for a 915
result based on a sequence of instructions. 916

(BBB) "Computer software" means a set of coded instructions 917
designed to cause a computer or automatic data processing 918
equipment to perform a task. 919

(CCC) "Delivered electronically" means delivery of computer 920
software from the seller to the purchaser by means other than 921
tangible storage media. 922

(DDD) "Prewritten computer software" means computer software, 923
including prewritten upgrades, that is not designed and developed 924
by the author or other creator to the specifications of a specific 925
purchaser. The combining of two or more prewritten computer 926
software programs or prewritten portions thereof does not cause 927
the combination to be other than prewritten computer software. 928
"Prewritten computer software" includes software designed and 929
developed by the author or other creator to the specifications of 930
a specific purchaser when it is sold to a person other than the 931
purchaser. If a person modifies or enhances computer software of 932
which the person is not the author or creator, the person shall be 933
deemed to be the author or creator only of such person's 934
modifications or enhancements. Prewritten computer software or a 935
prewritten portion thereof that is modified or enhanced to any 936
degree, where such modification or enhancement is designed and 937
developed to the specifications of a specific purchaser, remains 938
prewritten computer software; provided, however, that where there 939
is a reasonable, separately stated charge or an invoice or other 940
statement of the price given to the purchaser for the modification 941
or enhancement, the modification or enhancement shall not 942
constitute prewritten computer software. 943

(EEE)(1) "Food" means substances, whether in liquid, 944
concentrated, solid, frozen, dried, or dehydrated form, that are 945
sold for ingestion or chewing by humans and are consumed for their 946
taste or nutritional value. "Food" does not include alcoholic 947
beverages, dietary supplements, soft drinks, or tobacco. 948

(2) As used in division (EEE)(1) of this section: 949

(a) "Alcoholic beverages" means beverages that are suitable 950
for human consumption and contain one-half of one per cent or more 951
of alcohol by volume. 952

(b) "Dietary supplements" means any product, other than 953
tobacco, that is intended to supplement the diet and that is 954
intended for ingestion in tablet, capsule, powder, softgel, 955
gelcap, or liquid form, or, if not intended for ingestion in such 956
a form, is not represented as conventional food for use as a sole 957
item of a meal or of the diet; that is required to be labeled as a 958
dietary supplement, identifiable by the "supplement facts" box 959
found on the label, as required by 21 C.F.R. 101.36; and that 960
contains one or more of the following dietary ingredients: 961

(i) A vitamin; 962

(ii) A mineral; 963

(iii) An herb or other botanical; 964

(iv) An amino acid; 965

(v) A dietary substance for use by humans to supplement the 966
diet by increasing the total dietary intake; 967

(vi) A concentrate, metabolite, constituent, extract, or 968
combination of any ingredient described in divisions 969
(EEE)(2)(b)(i) to (v) of this section. 970

(c) "Soft drinks" means nonalcoholic beverages that contain 971
natural or artificial sweeteners. "Soft drinks" does not include 972
beverages that contain milk or milk products, soy, rice, or 973

similar milk substitutes, or that contains greater than fifty per 974
cent vegetable or fruit juice by volume. 975

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 976
tobacco, or any other item that contains tobacco. 977

(FFF) "Drug" means a compound, substance, or preparation, and 978
any component of a compound, substance, or preparation, other than 979
food, dietary supplements, or alcoholic beverages that is 980
recognized in the official United States pharmacopoeia, official 981
homeopathic pharmacopoeia of the United States, or official 982
national formulary, and supplements to them; is intended for use 983
in the diagnosis, cure, mitigation, treatment, or prevention of 984
disease; or is intended to affect the structure or any function of 985
the body. 986

(GGG) "Prescription" means an order, formula, or recipe 987
issued in any form of oral, written, electronic, or other means of 988
transmission by a duly licensed practitioner authorized by the 989
laws of this state to issue a prescription. 990

(HHH) "Durable medical equipment" means equipment, including 991
repair and replacement parts for such equipment, that can 992
withstand repeated use, is primarily and customarily used to serve 993
a medical purpose, generally is not useful to a person in the 994
absence of illness or injury, and is not worn in or on the body. 995
"Durable medical equipment" does not include mobility enhancing 996
equipment. 997

(III) "Mobility enhancing equipment" means equipment, 998
including repair and replacement parts for such equipment, that is 999
primarily and customarily used to provide or increase the ability 1000
to move from one place to another and is appropriate for use 1001
either in a home or a motor vehicle, that is not generally used by 1002
persons with normal mobility, and that does not include any motor 1003
vehicle or equipment on a motor vehicle normally provided by a 1004

motor vehicle manufacturer. "Mobility enhancing equipment" does 1005
not include durable medical equipment. 1006

(JJJ) "Prosthetic device" means a replacement, corrective, or 1007
supportive device, including repair and replacement parts for the 1008
device, worn on or in the human body to artificially replace a 1009
missing portion of the body, prevent or correct physical deformity 1010
or malfunction, or support a weak or deformed portion of the body. 1011
As used in this division, "prosthetic device" does not include 1012
corrective eyeglasses, contact lenses, or dental prosthesis. 1013

(KKK)(1) "Fractional aircraft ownership program" means a 1014
program in which persons within an affiliated group sell and 1015
manage fractional ownership program aircraft, provided that at 1016
least one hundred airworthy aircraft are operated in the program 1017
and the program meets all of the following criteria: 1018

(a) Management services are provided by at least one program 1019
manager within an affiliated group on behalf of the fractional 1020
owners. 1021

(b) Each program aircraft is owned or possessed by at least 1022
one fractional owner. 1023

(c) Each fractional owner owns or possesses at least a 1024
one-sixteenth interest in at least one fixed-wing program 1025
aircraft. 1026

(d) A dry-lease aircraft interchange arrangement is in effect 1027
among all of the fractional owners. 1028

(e) Multi-year program agreements are in effect regarding the 1029
fractional ownership, management services, and dry-lease aircraft 1030
interchange arrangement aspects of the program. 1031

(2) As used in division (KKK)(1) of this section: 1032

(a) "Affiliated group" has the same meaning as in division 1033
(B)(3)(e) of this section. 1034

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

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

(LLL) "Electronic publishing" means providing access to one or more of the following primarily for business customers, including the federal government or a state government or a political subdivision thereof, to conduct research: news; business, financial, legal, consumer, or credit materials;

editorials, columns, reader commentary, or features; photos or 1067
images; archival or research material; legal notices, identity 1068
verification, or public records; scientific, educational, 1069
instructional, technical, professional, trade, or other literary 1070
materials; or other similar information which has been gathered 1071
and made available by the provider to the consumer in an 1072
electronic format. Providing electronic publishing includes the 1073
functions necessary for the acquisition, formatting, editing, 1074
storage, and dissemination of data or information that is the 1075
subject of a sale. 1076

Sec. 5739.02. For the purpose of providing revenue with which 1077
to meet the needs of the state, for the use of the general revenue 1078
fund of the state, for the purpose of securing a thorough and 1079
efficient system of common schools throughout the state, for the 1080
purpose of affording revenues, in addition to those from general 1081
property taxes, permitted under constitutional limitations, and 1082
from other sources, for the support of local governmental 1083
functions, and for the purpose of reimbursing the state for the 1084
expense of administering this chapter, an excise tax is hereby 1085
levied on each retail sale made in this state. 1086

(A)(1) The tax shall be collected as provided in section 1087
5739.025 of the Revised Code, provided that on and after July 1, 1088
2003, and on or before June 30, 2005, the rate of tax shall be six 1089
per cent. On and after July 1, 2005, the rate of the tax shall be 1090
five and one-half per cent. The tax applies and is collectible 1091
when the sale is made, regardless of the time when the price is 1092
paid or delivered. 1093

(2) In the case of the lease or rental, with a fixed term of 1094
more than thirty days or an indefinite term with a minimum period 1095
of more than thirty days, of any motor vehicles designed by the 1096
manufacturer to carry a load of not more than one ton, watercraft, 1097

outboard motor, or aircraft, or of any tangible personal property, 1098
other than motor vehicles designed by the manufacturer to carry a 1099
load of more than one ton, to be used by the lessee or renter 1100
primarily for business purposes, the tax shall be collected by the 1101
vendor at the time the lease or rental is consummated and shall be 1102
calculated by the vendor on the basis of the total amount to be 1103
paid by the lessee or renter under the lease agreement. If the 1104
total amount of the consideration for the lease or rental includes 1105
amounts that are not calculated at the time the lease or rental is 1106
executed, the tax shall be calculated and collected by the vendor 1107
at the time such amounts are billed to the lessee or renter. In 1108
the case of an open-end lease or rental, the tax shall be 1109
calculated by the vendor on the basis of the total amount to be 1110
paid during the initial fixed term of the lease or rental, and for 1111
each subsequent renewal period as it comes due. As used in this 1112
division, "motor vehicle" has the same meaning as in section 1113
4501.01 of the Revised Code, and "watercraft" includes an outdrive 1114
unit attached to the watercraft. 1115

A lease with a renewal clause and a termination penalty or 1116
similar provision that applies if the renewal clause is not 1117
exercised is presumed to be a sham transaction. In such a case, 1118
the tax shall be calculated and paid on the basis of the entire 1119
length of the lease period, including any renewal periods, until 1120
the termination penalty or similar provision no longer applies. 1121
The taxpayer shall bear the burden, by a preponderance of the 1122
evidence, that the transaction or series of transactions is not a 1123
sham transaction. 1124

(3) Except as provided in division (A)(2) of this section, in 1125
the case of a sale, the price of which consists in whole or in 1126
part of the lease or rental of tangible personal property, the tax 1127
shall be measured by the installments of that lease or rental. 1128

(4) In the case of a sale of a physical fitness facility 1129

service or recreation and sports club service, the price of which 1130
consists in whole or in part of a membership for the receipt of 1131
the benefit of the service, the tax applicable to the sale shall 1132
be measured by the installments thereof. 1133

(B) The tax does not apply to the following: 1134

(1) Sales to the state or any of its political subdivisions, 1135
or to any other state or its political subdivisions if the laws of 1136
that state exempt from taxation sales made to this state and its 1137
political subdivisions; 1138

(2) Sales of food for human consumption off the premises 1139
where sold; 1140

(3) Sales of food sold to students only in a cafeteria, 1141
dormitory, fraternity, or sorority maintained in a private, 1142
public, or parochial school, college, or university; 1143

(4) Sales of newspapers and of magazine subscriptions and 1144
sales or transfers of magazines distributed as controlled 1145
circulation publications; 1146

(5) The furnishing, preparing, or serving of meals without 1147
charge by an employer to an employee provided the employer records 1148
the meals as part compensation for services performed or work 1149
done; 1150

(6) Sales of motor fuel upon receipt, use, distribution, or 1151
sale of which in this state a tax is imposed by the law of this 1152
state, but this exemption shall not apply to the sale of motor 1153
fuel on which a refund of the tax is allowable under division (A) 1154
of section 5735.14 of the Revised Code; and the tax commissioner 1155
may deduct the amount of tax levied by this section applicable to 1156
the price of motor fuel when granting a refund of motor fuel tax 1157
pursuant to division (A) of section 5735.14 of the Revised Code 1158
and shall cause the amount deducted to be paid into the general 1159
revenue fund of this state; 1160

(7) Sales of natural gas by a natural gas company, of water 1161
by a water-works company, or of steam by a heating company, if in 1162
each case the thing sold is delivered to consumers through pipes 1163
or conduits, and all sales of communications services by a 1164
telegraph company, all terms as defined in section 5727.01 of the 1165
Revised Code, and sales of electricity delivered through wires; 1166

(8) Casual sales by a person, or auctioneer employed directly 1167
by the person to conduct such sales, except as to such sales of 1168
motor vehicles, watercraft or outboard motors required to be 1169
titled under section 1548.06 of the Revised Code, watercraft 1170
documented with the United States coast guard, snowmobiles, and 1171
all-purpose vehicles as defined in section 4519.01 of the Revised 1172
Code; 1173

(9)(a) Sales of services or tangible personal property, other 1174
than motor vehicles, mobile homes, and manufactured homes, by 1175
churches, organizations exempt from taxation under section 1176
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 1177
organizations operated exclusively for charitable purposes as 1178
defined in division (B)(12) of this section, provided that the 1179
number of days on which such tangible personal property or 1180
services, other than items never subject to the tax, are sold does 1181
not exceed six in any calendar year, except as otherwise provided 1182
in division (B)(9)(b) of this section. If the number of days on 1183
which such sales are made exceeds six in any calendar year, the 1184
church or organization shall be considered to be engaged in 1185
business and all subsequent sales by it shall be subject to the 1186
tax. In counting the number of days, all sales by groups within a 1187
church or within an organization shall be considered to be sales 1188
of that church or organization. 1189

(b) The limitation on the number of days on which tax-exempt 1190
sales may be made by a church or organization under division 1191
(B)(9)(a) of this section does not apply to sales made by student 1192

clubs and other groups of students of a primary or secondary 1193
school, or a parent-teacher association, booster group, or similar 1194
organization that raises money to support or fund curricular or 1195
extracurricular activities of a primary or secondary school. 1196

(c) Divisions (B)(9)(a) and (b) of this section do not apply 1197
to sales by a noncommercial educational radio or television 1198
broadcasting station. 1199

(10) Sales not within the taxing power of this state under 1200
the Constitution of the United States; 1201

(11) Except for transactions that are sales under division 1202
(B)(3)(r) of section 5739.01 of the Revised Code, the 1203
transportation of persons or property, unless the transportation 1204
is by a private investigation and security service; 1205

(12) Sales of tangible personal property or services to 1206
churches, to organizations exempt from taxation under section 1207
501(c)(3) of the Internal Revenue Code of 1986, and to any other 1208
nonprofit organizations operated exclusively for charitable 1209
purposes in this state, no part of the net income of which inures 1210
to the benefit of any private shareholder or individual, and no 1211
substantial part of the activities of which consists of carrying 1212
on propaganda or otherwise attempting to influence legislation; 1213
sales to offices administering one or more homes for the aged or 1214
one or more hospital facilities exempt under section 140.08 of the 1215
Revised Code; and sales to organizations described in division (D) 1216
of section 5709.12 of the Revised Code. 1217

"Charitable purposes" means the relief of poverty; the 1218
improvement of health through the alleviation of illness, disease, 1219
or injury; the operation of an organization exclusively for the 1220
provision of professional, laundry, printing, and purchasing 1221
services to hospitals or charitable institutions; the operation of 1222
a home for the aged, as defined in section 5701.13 of the Revised 1223

Code; the operation of a radio or television broadcasting station 1224
that is licensed by the federal communications commission as a 1225
noncommercial educational radio or television station; the 1226
operation of a nonprofit animal adoption service or a county 1227
humane society; the promotion of education by an institution of 1228
learning that maintains a faculty of qualified instructors, 1229
teaches regular continuous courses of study, and confers a 1230
recognized diploma upon completion of a specific curriculum; the 1231
operation of a parent-teacher association, booster group, or 1232
similar organization primarily engaged in the promotion and 1233
support of the curricular or extracurricular activities of a 1234
primary or secondary school; the operation of a community or area 1235
center in which presentations in music, dramatics, the arts, and 1236
related fields are made in order to foster public interest and 1237
education therein; the production of performances in music, 1238
dramatics, and the arts; or the promotion of education by an 1239
organization engaged in carrying on research in, or the 1240
dissemination of, scientific and technological knowledge and 1241
information primarily for the public. 1242

Nothing in this division shall be deemed to exempt sales to 1243
any organization for use in the operation or carrying on of a 1244
trade or business, or sales to a home for the aged for use in the 1245
operation of independent living facilities as defined in division 1246
(A) of section 5709.12 of the Revised Code. 1247

(13) Building and construction materials and services sold to 1248
construction contractors for incorporation into a structure or 1249
improvement to real property under a construction contract with 1250
this state or a political subdivision of this state, or with the 1251
United States government or any of its agencies; building and 1252
construction materials and services sold to construction 1253
contractors for incorporation into a structure or improvement to 1254
real property that are accepted for ownership by this state or any 1255

of its political subdivisions, or by the United States government 1256
or any of its agencies at the time of completion of the structures 1257
or improvements; building and construction materials sold to 1258
construction contractors for incorporation into a horticulture 1259
structure or livestock structure for a person engaged in the 1260
business of horticulture or producing livestock; building 1261
materials and services sold to a construction contractor for 1262
incorporation into a house of public worship or religious 1263
education, or a building used exclusively for charitable purposes 1264
under a construction contract with an organization whose purpose 1265
is as described in division (B)(12) of this section; building 1266
materials and services sold to a construction contractor for 1267
incorporation into a building under a construction contract with 1268
an organization exempt from taxation under section 501(c)(3) of 1269
the Internal Revenue Code of 1986 when the building is to be used 1270
exclusively for the organization's exempt purposes; building and 1271
construction materials sold for incorporation into the original 1272
construction of a sports facility under section 307.696 of the 1273
Revised Code; and building and construction materials and services 1274
sold to a construction contractor for incorporation into real 1275
property outside this state if such materials and services, when 1276
sold to a construction contractor in the state in which the real 1277
property is located for incorporation into real property in that 1278
state, would be exempt from a tax on sales levied by that state; 1279

(14) Sales of ships or vessels or rail rolling stock used or 1280
to be used principally in interstate or foreign commerce, and 1281
repairs, alterations, fuel, and lubricants for such ships or 1282
vessels or rail rolling stock; 1283

(15) Sales to persons primarily engaged in any of the 1284
activities mentioned in division (B)(42)(a) or (g) of this 1285
section, to persons engaged in making retail sales, or to persons 1286
who purchase for sale from a manufacturer tangible personal 1287

property that was produced by the manufacturer in accordance with 1288
specific designs provided by the purchaser, of packages, including 1289
material, labels, and parts for packages, and of machinery, 1290
equipment, and material for use primarily in packaging tangible 1291
personal property produced for sale, including any machinery, 1292
equipment, and supplies used to make labels or packages, to 1293
prepare packages or products for labeling, or to label packages or 1294
products, by or on the order of the person doing the packaging, or 1295
sold at retail. "Packages" includes bags, baskets, cartons, 1296
crates, boxes, cans, bottles, bindings, wrappings, and other 1297
similar devices and containers, but does not include motor 1298
vehicles or bulk tanks, trailers, or similar devices attached to 1299
motor vehicles. "Packaging" means placing in a package. Division 1300
(B)(15) of this section does not apply to persons engaged in 1301
highway transportation for hire. 1302

(16) Sales of food to persons using food stamp benefits to 1303
purchase the food. As used in this division, "food" has the same 1304
meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 1305
2012, as amended, and federal regulations adopted pursuant to that 1306
act. 1307

(17) Sales to persons engaged in farming, agriculture, 1308
horticulture, or floriculture, of tangible personal property for 1309
use or consumption directly in the production by farming, 1310
agriculture, horticulture, or floriculture of other tangible 1311
personal property for use or consumption directly in the 1312
production of tangible personal property for sale by farming, 1313
agriculture, horticulture, or floriculture; or material and parts 1314
for incorporation into any such tangible personal property for use 1315
or consumption in production; and of tangible personal property 1316
for such use or consumption in the conditioning or holding of 1317
products produced by and for such use, consumption, or sale by 1318
persons engaged in farming, agriculture, horticulture, or 1319

floriculture, except where such property is incorporated into real 1320
property; 1321

(18) Sales of drugs for a human being that may be dispensed 1322
only pursuant to a prescription; insulin as recognized in the 1323
official United States pharmacopoeia; urine and blood testing 1324
materials when used by diabetics or persons with hypoglycemia to 1325
test for glucose or acetone; hypodermic syringes and needles when 1326
used by diabetics for insulin injections; epoetin alfa when 1327
purchased for use in the treatment of persons with medical 1328
disease; hospital beds when purchased by hospitals, nursing homes, 1329
or other medical facilities; and medical oxygen and medical 1330
oxygen-dispensing equipment when purchased by hospitals, nursing 1331
homes, or other medical facilities; 1332

(19) Sales of prosthetic devices, durable medical equipment 1333
for home use, or mobility enhancing equipment, when made pursuant 1334
to a prescription and when such devices or equipment are for use 1335
by a human being. 1336

(20) Sales of emergency and fire protection vehicles and 1337
equipment to nonprofit organizations for use solely in providing 1338
fire protection and emergency services, including trauma care and 1339
emergency medical services, for political subdivisions of the 1340
state; 1341

(21) Sales of tangible personal property manufactured in this 1342
state, if sold by the manufacturer in this state to a retailer for 1343
use in the retail business of the retailer outside of this state 1344
and if possession is taken from the manufacturer by the purchaser 1345
within this state for the sole purpose of immediately removing the 1346
same from this state in a vehicle owned by the purchaser; 1347

(22) Sales of services provided by the state or any of its 1348
political subdivisions, agencies, instrumentalities, institutions, 1349
or authorities, or by governmental entities of the state or any of 1350

its political subdivisions, agencies, instrumentalities,	1351
institutions, or authorities;	1352
(23) Sales of motor vehicles to nonresidents of this state	1353
under the circumstances described in division (B) of section	1354
5739.029 of the Revised Code;	1355
(24) Sales to persons engaged in the preparation of eggs for	1356
sale of tangible personal property used or consumed directly in	1357
such preparation, including such tangible personal property used	1358
for cleaning, sanitizing, preserving, grading, sorting, and	1359
classifying by size; packages, including material and parts for	1360
packages, and machinery, equipment, and material for use in	1361
packaging eggs for sale; and handling and transportation equipment	1362
and parts therefor, except motor vehicles licensed to operate on	1363
public highways, used in intraplant or interplant transfers or	1364
shipment of eggs in the process of preparation for sale, when the	1365
plant or plants within or between which such transfers or	1366
shipments occur are operated by the same person. "Packages"	1367
includes containers, cases, baskets, flats, fillers, filler flats,	1368
cartons, closure materials, labels, and labeling materials, and	1369
"packaging" means placing therein.	1370
(25)(a) Sales of water to a consumer for residential use,	1371
except the sale of bottled water, distilled water, mineral water,	1372
carbonated water, or ice;	1373
(b) Sales of water by a nonprofit corporation engaged	1374
exclusively in the treatment, distribution, and sale of water to	1375
consumers, if such water is delivered to consumers through pipes	1376
or tubing.	1377
(26) Fees charged for inspection or reinspection of motor	1378
vehicles under section 3704.14 of the Revised Code;	1379
(27) Sales to persons licensed to conduct a food service	1380
operation pursuant to section 3717.43 of the Revised Code, of	1381

tangible personal property primarily used directly for the	1382
following:	1383
(a) To prepare food for human consumption for sale;	1384
(b) To preserve food that has been or will be prepared for	1385
human consumption for sale by the food service operator, not	1386
including tangible personal property used to display food for	1387
selection by the consumer;	1388
(c) To clean tangible personal property used to prepare or	1389
serve food for human consumption for sale.	1390
(28) Sales of animals by nonprofit animal adoption services	1391
or county humane societies;	1392
(29) Sales of services to a corporation described in division	1393
(A) of section 5709.72 of the Revised Code, and sales of tangible	1394
personal property that qualifies for exemption from taxation under	1395
section 5709.72 of the Revised Code;	1396
(30) Sales and installation of agricultural land tile, as	1397
defined in division (B)(5)(a) of section 5739.01 of the Revised	1398
Code;	1399
(31) Sales and erection or installation of portable grain	1400
bins, as defined in division (B)(5)(b) of section 5739.01 of the	1401
Revised Code;	1402
(32) The sale, lease, repair, and maintenance of, parts for,	1403
or items attached to or incorporated in, motor vehicles that are	1404
primarily used for transporting tangible personal property	1405
belonging to others by a person engaged in highway transportation	1406
for hire, except for packages and packaging used for the	1407
transportation of tangible personal property;	1408
(33) Sales to the state headquarters of any veterans'	1409
organization in this state that is either incorporated and issued	1410
a charter by the congress of the United States or is recognized by	1411

the United States veterans administration, for use by the 1412
headquarters; 1413

(34) Sales to a telecommunications service vendor, mobile 1414
telecommunications service vendor, or satellite broadcasting 1415
service vendor of tangible personal property and services used 1416
directly and primarily in transmitting, receiving, switching, or 1417
recording any interactive, one- or two-way electromagnetic 1418
communications, including voice, image, data, and information, 1419
through the use of any medium, including, but not limited to, 1420
poles, wires, cables, switching equipment, computers, and record 1421
storage devices and media, and component parts for the tangible 1422
personal property. The exemption provided in this division shall 1423
be in lieu of all other exemptions under division (B)(42)(a) of 1424
this section to which the vendor may otherwise be entitled, based 1425
upon the use of the thing purchased in providing the 1426
telecommunications, mobile telecommunications, or satellite 1427
broadcasting service. 1428

(35)(a) Sales where the purpose of the consumer is to use or 1429
consume the things transferred in making retail sales and 1430
consisting of newspaper inserts, catalogues, coupons, flyers, gift 1431
certificates, or other advertising material that prices and 1432
describes tangible personal property offered for retail sale. 1433

(b) Sales to direct marketing vendors of preliminary 1434
materials such as photographs, artwork, and typesetting that will 1435
be used in printing advertising material; of printed matter that 1436
offers free merchandise or chances to win sweepstake prizes and 1437
that is mailed to potential customers with advertising material 1438
described in division (B)(35)(a) of this section; and of equipment 1439
such as telephones, computers, facsimile machines, and similar 1440
tangible personal property primarily used to accept orders for 1441
direct marketing retail sales. 1442

(c) Sales of automatic food vending machines that preserve 1443

food with a shelf life of forty-five days or less by refrigeration 1444
and dispense it to the consumer. 1445

For purposes of division (B)(35) of this section, "direct 1446
marketing" means the method of selling where consumers order 1447
tangible personal property by United States mail, delivery 1448
service, or telecommunication and the vendor delivers or ships the 1449
tangible personal property sold to the consumer from a warehouse, 1450
catalogue distribution center, or similar fulfillment facility by 1451
means of the United States mail, delivery service, or common 1452
carrier. 1453

(36) Sales to a person engaged in the business of 1454
horticulture or producing livestock of materials to be 1455
incorporated into a horticulture structure or livestock structure; 1456

(37) Sales of personal computers, computer monitors, computer 1457
keyboards, modems, and other peripheral computer equipment to an 1458
individual who is licensed or certified to teach in an elementary 1459
or a secondary school in this state for use by that individual in 1460
preparation for teaching elementary or secondary school students; 1461

(38) Sales to a professional racing team of any of the 1462
following: 1463

(a) Motor racing vehicles; 1464

(b) Repair services for motor racing vehicles; 1465

(c) Items of property that are attached to or incorporated in 1466
motor racing vehicles, including engines, chassis, and all other 1467
components of the vehicles, and all spare, replacement, and 1468
rebuilt parts or components of the vehicles; except not including 1469
tires, consumable fluids, paint, and accessories consisting of 1470
instrumentation sensors and related items added to the vehicle to 1471
collect and transmit data by means of telemetry and other forms of 1472
communication. 1473

(39) Sales of used manufactured homes and used mobile homes, 1474
as defined in section 5739.0210 of the Revised Code, made on or 1475
after January 1, 2000; 1476

(40) Sales of tangible personal property and services to a 1477
provider of electricity used or consumed directly and primarily in 1478
generating, transmitting, or distributing electricity for use by 1479
others, including property that is or is to be incorporated into 1480
and will become a part of the consumer's production, transmission, 1481
or distribution system and that retains its classification as 1482
tangible personal property after incorporation; fuel or power used 1483
in the production, transmission, or distribution of electricity; 1484
and tangible personal property and services used in the repair and 1485
maintenance of the production, transmission, or distribution 1486
system, including only those motor vehicles as are specially 1487
designed and equipped for such use. The exemption provided in this 1488
division shall be in lieu of all other exemptions in division 1489
(B)(42)(a) of this section to which a provider of electricity may 1490
otherwise be entitled based on the use of the tangible personal 1491
property or service purchased in generating, transmitting, or 1492
distributing electricity. 1493

(41) Sales to a person providing services under division 1494
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 1495
personal property and services used directly and primarily in 1496
providing taxable services under that section. 1497

(42) Sales where the purpose of the purchaser is to do any of 1498
the following: 1499

(a) To incorporate the thing transferred as a material or a 1500
part into tangible personal property to be produced for sale by 1501
manufacturing, assembling, processing, or refining; or to use or 1502
consume the thing transferred directly in producing tangible 1503
personal property for sale by mining, including, without 1504
limitation, the extraction from the earth of all substances that 1505

are classed geologically as minerals, production of crude oil and 1506
natural gas, farming, agriculture, horticulture, or floriculture, 1507
or directly in the rendition of a public utility service, except 1508
that the sales tax levied by this section shall be collected upon 1509
all meals, drinks, and food for human consumption sold when 1510
transporting persons. Persons engaged in rendering farming, 1511
agricultural, horticultural, or floricultural services, and 1512
services in the exploration for, and production of, crude oil and 1513
natural gas, for others are deemed engaged directly in farming, 1514
agriculture, horticulture, and floriculture, or exploration for, 1515
and production of, crude oil and natural gas. This paragraph does 1516
not exempt from "retail sale" or "sales at retail" the sale of 1517
tangible personal property that is to be incorporated into a 1518
structure or improvement to real property. 1519

(b) To hold the thing transferred as security for the 1520
performance of an obligation of the vendor; 1521

(c) To resell, hold, use, or consume the thing transferred as 1522
evidence of a contract of insurance; 1523

(d) To use or consume the thing directly in commercial 1524
fishing; 1525

(e) To incorporate the thing transferred as a material or a 1526
part into, or to use or consume the thing transferred directly in 1527
the production of, magazines distributed as controlled circulation 1528
publications; 1529

(f) To use or consume the thing transferred in the production 1530
and preparation in suitable condition for market and sale of 1531
printed, imprinted, overprinted, lithographic, multilithic, 1532
blueprinted, photostatic, or other productions or reproductions of 1533
written or graphic matter; 1534

(g) To use the thing transferred, as described in section 1535
5739.011 of the Revised Code, primarily in a manufacturing 1536

operation to produce tangible personal property for sale;	1537
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	1538 1539 1540 1541 1542 1543
(i) To use the thing transferred as qualified research and development equipment;	1544 1545
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(35) of this section.	1546 1547 1548 1549 1550 1551 1552 1553 1554 1555 1556 1557 1558
(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;	1559 1560 1561 1562 1563 1564 1565
(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;	1566 1567

(m) To use tangible personal property to perform a service 1568
listed in division (B)(3) of section 5739.01 of the Revised Code, 1569
if the property is or is to be permanently transferred to the 1570
consumer of the service as an integral part of the performance of 1571
the service. 1572

(n) To use or consume the thing transferred in acquiring, 1573
formatting, editing, storing, and disseminating data or 1574
information by electronic publishing. 1575

As used in division (B)(42) of this section, "thing" includes 1576
all transactions included in divisions (B)(3)(a), (b), and (e) of 1577
section 5739.01 of the Revised Code. 1578

(43) Sales conducted through a coin operated device that 1579
activates vacuum equipment or equipment that dispenses water, 1580
whether or not in combination with soap or other cleaning agents 1581
or wax, to the consumer for the consumer's use on the premises in 1582
washing, cleaning, or waxing a motor vehicle, provided no other 1583
personal property or personal service is provided as part of the 1584
transaction. 1585

(44) Sales of replacement and modification parts for engines, 1586
airframes, instruments, and interiors in, and paint for, aircraft 1587
used primarily in a fractional aircraft ownership program, and 1588
sales of services for the repair, modification, and maintenance of 1589
such aircraft, and machinery, equipment, and supplies primarily 1590
used to provide those services. 1591

(45) Sales of telecommunications service that is used 1592
directly and primarily to perform the functions of a call center. 1593
As used in this division, "call center" means any physical 1594
location where telephone calls are placed or received in high 1595
volume for the purpose of making sales, marketing, customer 1596
service, technical support, or other specialized business 1597
activity, and that employs at least fifty individuals that engage 1598

in call center activities on a full-time basis, or sufficient 1599
individuals to fill fifty full-time equivalent positions. 1600

(46) Sales by a telecommunications service vendor of 900 1601
service to a subscriber. This division does not apply to 1602
information services, as defined in division (FF) of section 1603
5739.01 of the Revised Code. 1604

(47) Sales of value-added non-voice data service. This 1605
division does not apply to any similar service that is not 1606
otherwise a telecommunications service. 1607

(C) For the purpose of the proper administration of this 1608
chapter, and to prevent the evasion of the tax, it is presumed 1609
that all sales made in this state are subject to the tax until the 1610
contrary is established. 1611

(D) The levy of this tax on retail sales of recreation and 1612
sports club service shall not prevent a municipal corporation from 1613
levying any tax on recreation and sports club dues or on any 1614
income generated by recreation and sports club dues. 1615

(E) The tax collected by the vendor from the consumer under 1616
this chapter is not part of the price, but is a tax collection for 1617
the benefit of the state, and of counties levying an additional 1618
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 1619
Code and of transit authorities levying an additional sales tax 1620
pursuant to section 5739.023 of the Revised Code. Except for the 1621
discount authorized under section 5739.12 of the Revised Code and 1622
the effects of any rounding pursuant to section 5703.055 of the 1623
Revised Code, no person other than the state or such a county or 1624
transit authority shall derive any benefit from the collection or 1625
payment of the tax levied by this section or section 5739.021, 1626
5739.023, or 5739.026 of the Revised Code. 1627

Sec. 5739.035. This section only applies to sales that may be 1628

situated under this section pursuant to division (B) of section 1629
5739.033 of the Revised Code. 1630

(A) Except as otherwise provided in this section, the situs 1631
of all sales is the vendor's place of business. 1632

(1) If the consumer or the consumer's agent takes possession 1633
of the tangible personal property at a place of business of the 1634
vendor where the purchase contract or agreement was made, the 1635
situs of the sale is that place of business. 1636

(2) If the consumer or the consumer's agent takes possession 1637
of the tangible personal property other than at a place of 1638
business of the vendor, or takes possession at a warehouse or 1639
similar facility of the vendor, the situs of the sale is the 1640
vendor's place of business where the purchase contract or 1641
agreement was made or the purchase order was received. 1642

(3) If the vendor provides a service specified in division 1643
(B)(3)(a), (b), (c), (d), (n), (o), (q), (r), or (s) of section 1644
5739.01 or makes a sale specified in division (B)(8) of section 1645
5739.01 of the Revised Code, the situs of the sale is the vendor's 1646
place of business where the service is performed or the contract 1647
or agreement for the service was made or the purchase order was 1648
received. 1649

(B) If the vendor is a transient vendor as specified in 1650
division (B) of section 5739.17 of the Revised Code, the situs of 1651
the sale is the vendor's temporary place of business or, if the 1652
transient vendor is the lessor of titled motor vehicles, titled 1653
watercraft, or titled outboard motors, at the location where the 1654
lessee keeps the leased property. 1655

(C) If the vendor makes sales of tangible personal property 1656
from a stock of goods carried in a motor vehicle, from which the 1657
purchaser makes selection and takes possession, or from which the 1658
vendor sells tangible personal property the quantity of which has 1659

not been determined prior to the time the purchaser takes 1660
possession, the situs of the sale is the location of the motor 1661
vehicle when the sale is made. 1662

(D) If the vendor is a delivery vendor as specified in 1663
division (D) of section 5739.17 of the Revised Code, the situs of 1664
the sale is the place where the tangible personal property is 1665
delivered, where the leased property is used, or where the service 1666
is performed or received. 1667

(E) If the vendor provides a service specified in division 1668
(B)(3)(e), (g), (h), (j), (k), (l), (m), (p), ~~or (t)~~, or (u) of 1669
section 5739.01 of the Revised Code, the situs of the sale is the 1670
location of the consumer where the service is performed or 1671
received. 1672

(F) If the vendor provides lodging to transient guests as 1673
specified in division (B)(2) of section 5739.01 of the Revised 1674
Code, the situs of the sale is the location where the lodging is 1675
located. 1676

(G) If the vendor sells a warranty, maintenance or service 1677
contract, or similar agreement as specified in division (B)(7) of 1678
section 5739.01 of the Revised Code and the vendor is a delivery 1679
vendor, the situs of the sale is the location of the consumer. If 1680
the vendor is not a delivery vendor, the situs of the sale is the 1681
vendor's place of business where the contract or agreement was 1682
made, unless the warranty or contract is a component of the sale 1683
of a titled motor vehicle, titled watercraft, or titled outboard 1684
motor, in which case the situs of the sale is the county of 1685
titling. 1686

(H) Except as otherwise provided in this division, if the 1687
vendor sells a prepaid authorization number or a prepaid telephone 1688
calling card, the situs of the sale is the vendor's place of 1689
business and shall be taxed at the time of sale. If the vendor 1690

sells a prepaid authorization number or prepaid telephone calling 1691
card through a telephone call, electronic commerce, or any other 1692
form of remote commerce, the situs of the sale is the consumer's 1693
shipping address, or, if there is no item shipped, at the 1694
consumer's billing address. 1695

(I) Division (I) of this section applies only if the tax 1696
commissioner makes the certification provided under section 1697
5740.10 of the Revised Code. 1698

(1) In each delivery sale by a vendor permitted to situs its 1699
sales under this section, the vendor shall clearly indicate on the 1700
invoice or other similar document provided to the purchaser at the 1701
time of the sale that the vendor is a vendor permitted to situs 1702
its sales under this section. 1703

(2) A purchaser that receives tangible personal property or 1704
services in a delivery sale from a vendor permitted to situs its 1705
sales under this section may claim a refund of the tax the vendor 1706
collected and remitted on the sale in an amount equal to the 1707
excess of the tax collected and remitted over the tax that would 1708
have been due if the sale had been situated to the tax jurisdiction 1709
in which the purchaser received the property or service. 1710

A refund is authorized under this division only if the 1711
invoice or other similar document provided to the purchaser at the 1712
time of the sale includes the notice required under division 1713
(I)(1) of this section. 1714

Refunds shall be filed directly with the tax commissioner and 1715
claimed in the manner prescribed by section 5739.07 of the Revised 1716
Code. 1717

(3) A purchaser of tangible personal property from a vendor 1718
permitted to situs its sales under this section that removes the 1719
property from the tax jurisdiction in which the resident received 1720
the property is liable for additional tax in an amount equal to 1721

the excess of the tax that would have been due on the sale if the 1722
sale had been situated to the tax jurisdiction to which the 1723
purchaser removed the property over the tax that the vendor 1724
collected and remitted on the sale. 1725

(4) Nothing in this section relieves a person claiming to be 1726
authorized to situs sales under this section, but not so 1727
authorized, from liability for tax, penalty, interest, or 1728
additional charges imposed under this chapter for failure to 1729
collect the amount of tax lawfully due applying the situsing 1730
provisions of divisions (C) to (I) of section 5739.033 of the 1731
Revised Code. 1732

(5) For the purposes of division (I) of this section, 1733
"delivery sale" has the same meaning as in section 5739.033 of the 1734
Revised Code, and "tax jurisdiction" has the same meaning as in 1735
section 5739.24 of the Revised Code. 1736

Sec. 5747.08. An annual return with respect to the tax 1737
imposed by section 5747.02 of the Revised Code and each tax 1738
imposed under Chapter 5748. of the Revised Code shall be made by 1739
every taxpayer for any taxable year for which the taxpayer is 1740
liable for the tax imposed by that section or under that chapter, 1741
unless the total credits allowed under divisions (E), (F), and (G) 1742
of section 5747.05 of the Revised Code for the year are equal to 1743
or exceed the tax imposed by section 5747.02 of the Revised Code, 1744
in which case no return shall be required unless the taxpayer is 1745
liable for a tax imposed pursuant to Chapter 5748. of the Revised 1746
Code. 1747

(A) If an individual is deceased, any return or notice 1748
required of that individual under this chapter shall be made and 1749
filed by that decedent's executor, administrator, or other person 1750
charged with the property of that decedent. 1751

(B) If an individual is unable to make a return or notice 1752

required by this chapter, the return or notice required of that 1753
individual shall be made and filed by the individual's duly 1754
authorized agent, guardian, conservator, fiduciary, or other 1755
person charged with the care of the person or property of that 1756
individual. 1757

(C) Returns or notices required of an estate or a trust shall 1758
be made and filed by the fiduciary of the estate or trust. 1759

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 1760
of this section, any pass-through entity may file a single return 1761
on behalf of one or more of the entity's investors other than an 1762
investor that is a person subject to the tax imposed under section 1763
5733.06 of the Revised Code. The single return shall set forth the 1764
name, address, and social security number or other identifying 1765
number of each of those pass-through entity investors and shall 1766
indicate the distributive share of each of those pass-through 1767
entity investor's income taxable in this state in accordance with 1768
sections 5747.20 to 5747.231 of the Revised Code. Such 1769
pass-through entity investors for whom the pass-through entity 1770
elects to file a single return are not entitled to the exemption 1771
or credit provided for by sections 5747.02 and 5747.022 of the 1772
Revised Code; shall calculate the tax before business credits at 1773
the highest rate of tax set forth in section 5747.02 of the 1774
Revised Code for the taxable year for which the return is filed; 1775
and are entitled to only their distributive share of the business 1776
credits as defined in division (D)(2) of this section. A single 1777
check drawn by the pass-through entity shall accompany the return 1778
in full payment of the tax due, as shown on the single return, for 1779
such investors, other than investors who are persons subject to 1780
the tax imposed under section 5733.06 of the Revised Code. 1781

(b)(i) A pass-through entity shall not include in such a 1782
single return any investor that is a trust to the extent that any 1783
direct or indirect current, future, or contingent beneficiary of 1784

the trust is a person subject to the tax imposed under section 1785
5733.06 of the Revised Code. 1786

(ii) A pass-through entity shall not include in such a single 1787
return any investor that is itself a pass-through entity to the 1788
extent that any direct or indirect investor in the second 1789
pass-through entity is a person subject to the tax imposed under 1790
section 5733.06 of the Revised Code. 1791

(c) Nothing in division (D) of this section precludes the tax 1792
commissioner from requiring such investors to file the return and 1793
make the payment of taxes and related interest, penalty, and 1794
interest penalty required by this section or section 5747.02, 1795
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 1796
of this section shall be construed to provide to such an investor 1797
or pass-through entity any additional deduction or credit, other 1798
than the credit provided by division (J) of this section, solely 1799
on account of the entity's filing a return in accordance with this 1800
section. Such a pass-through entity also shall make the filing and 1801
payment of estimated taxes on behalf of the pass-through entity 1802
investors other than an investor that is a person subject to the 1803
tax imposed under section 5733.06 of the Revised Code. 1804

(2) For the purposes of this section, "business credits" 1805
means the credits listed in section 5747.98 of the Revised Code 1806
excluding the following credits: 1807

(a) The retirement credit under division (B) of section 1808
5747.055 of the Revised Code; 1809

(b) The senior citizen credit under division (C) of section 1810
5747.05 of the Revised Code; 1811

(c) The lump sum distribution credit under division (D) of 1812
section 5747.05 of the Revised Code; 1813

(d) The dependent care credit under section 5747.054 of the 1814
Revised Code; 1815

(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	1816 1817
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	1818 1819
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	1820 1821
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	1822 1823
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	1824 1825
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	1826 1827
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	1828 1829
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	1830 1831
(m) The low-income credit under section 5747.056 of the Revised Code.	1832 1833
(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.	1834 1835 1836 1837 1838 1839 1840 1841
(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds	1842 1843 1844 1845

that the single return does not reflect the correct tax due by the 1846
pass-through entity investors covered by that return. Nothing in 1847
this division shall be construed to limit or alter the liability, 1848
if any, imposed on pass-through entity investors for unpaid or 1849
underpaid taxes, interest, interest penalty, or penalties as a 1850
result of the pass-through entity's making the election provided 1851
for under division (D) of this section. For the purposes of 1852
division (D) of this section, "correct tax due" means the tax that 1853
would have been paid by the pass-through entity had the single 1854
return been filed in a manner reflecting the tax commissioner's 1855
findings. Nothing in division (D) of this section shall be 1856
construed to make or hold a pass-through entity liable for tax 1857
attributable to a pass-through entity investor's income from a 1858
source other than the pass-through entity electing to file the 1859
single return. 1860

(E) If a husband and wife file a joint federal income tax 1861
return for a taxable year, they shall file a joint return under 1862
this section for that taxable year, and their liabilities are 1863
joint and several, but, if the federal income tax liability of 1864
either spouse is determined on a separate federal income tax 1865
return, they shall file separate returns under this section. 1866

If either spouse is not required to file a federal income tax 1867
return and either or both are required to file a return pursuant 1868
to this chapter, they may elect to file separate or joint returns, 1869
and, pursuant to that election, their liabilities are separate or 1870
joint and several. If a husband and wife file separate returns 1871
pursuant to this chapter, each must claim the taxpayer's own 1872
exemption, but not both, as authorized under section 5747.02 of 1873
the Revised Code on the taxpayer's own return. 1874

(F) Each return or notice required to be filed under this 1875
section shall contain the signature of the taxpayer or the 1876
taxpayer's duly authorized agent and of the person who prepared 1877

the return for the taxpayer, and shall include the taxpayer's 1878
social security number. Each return shall be verified by a 1879
declaration under the penalties of perjury. The tax commissioner 1880
shall prescribe the form that the signature and declaration shall 1881
take. 1882

(G) Each return or notice required to be filed under this 1883
section shall be made and filed as required by section 5747.04 of 1884
the Revised Code, on or before the fifteenth day of April of each 1885
year, on forms that the tax commissioner shall prescribe, together 1886
with remittance made payable to the treasurer of state in the 1887
combined amount of the state and all school district income taxes 1888
shown to be due on the form, unless the combined amount shown to 1889
be due is one dollar or less, in which case that amount need not 1890
be remitted. 1891

Upon good cause shown, the tax commissioner may extend the 1892
period for filing any notice or return required to be filed under 1893
this section and may adopt rules relating to extensions. If the 1894
extension results in an extension of time for the payment of any 1895
state or school district income tax liability with respect to 1896
which the return is filed, the taxpayer shall pay at the time the 1897
tax liability is paid an amount of interest computed at the rate 1898
per annum prescribed by section 5703.47 of the Revised Code on 1899
that liability from the time that payment is due without extension 1900
to the time of actual payment. Except as provided in section 1901
5747.132 of the Revised Code, in addition to all other interest 1902
charges and penalties, all taxes imposed under this chapter or 1903
Chapter 5748. of the Revised Code and remaining unpaid after they 1904
become due, except combined amounts due of one dollar or less, 1905
bear interest at the rate per annum prescribed by section 5703.47 1906
of the Revised Code until paid or until the day an assessment is 1907
issued under section 5747.13 of the Revised Code, whichever occurs 1908
first. 1909

If the tax commissioner considers it necessary in order to 1910
ensure the payment of the tax imposed by section 5747.02 of the 1911
Revised Code or any tax imposed under Chapter 5748. of the Revised 1912
Code, the tax commissioner may require returns and payments to be 1913
made otherwise than as provided in this section. 1914

To the extent that any provision in this division conflicts 1915
with any provision in section 5747.026 of the Revised Code, the 1916
provision in that section prevails. 1917

(H) If any report, claim, statement, or other document 1918
required to be filed, or any payment required to be made, within a 1919
prescribed period or on or before a prescribed date under this 1920
chapter is delivered after that period or that date by United 1921
States mail to the agency, officer, or office with which the 1922
report, claim, statement, or other document is required to be 1923
filed, or to which the payment is required to be made, the date of 1924
the postmark stamped on the cover in which the report, claim, 1925
statement, or other document, or payment is mailed shall be deemed 1926
to be the date of delivery or the date of payment. 1927

If a payment is required to be made by electronic funds 1928
transfer pursuant to section 5747.072 of the Revised Code, the 1929
payment is considered to be made when the payment is received by 1930
the treasurer of state or credited to an account designated by the 1931
treasurer of state for the receipt of tax payments. 1932

"The date of the postmark" means, in the event there is more 1933
than one date on the cover, the earliest date imprinted on the 1934
cover by the United States postal service. 1935

(I) The amounts withheld by the employer pursuant to section 1936
5747.06 of the Revised Code shall be allowed to the recipient of 1937
the compensation as credits against payment of the appropriate 1938
taxes imposed on the recipient by section 5747.02 and under 1939
Chapter 5748. of the Revised Code. 1940

(J) If, in accordance with division (D) of this section, a pass-through entity elects to file a single return and if any investor is required to file the return and make the payment of taxes required by this chapter on account of the investor's other income that is not included in a single return filed by a pass-through entity, the investor is entitled to a refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor. The investor shall claim the credit for the investor's taxable year in which or with which ends the taxable year of the pass-through entity. Nothing in this chapter shall be construed to allow any credit provided in this chapter to be claimed more than once. For the purposes of computing any interest, penalty, or interest penalty, the investor shall be deemed to have paid the refundable credit provided by this division on the day that the pass-through entity paid the estimated tax or the tax giving rise to the credit.

(K) The tax commissioner shall ensure that each return required to be filed under this section includes a box that the taxpayer may check to authorize a paid tax preparer who prepared the return to communicate with the department of taxation about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the department of taxation to contact the preparer concerning questions that arise during the processing of the return and authorizes the preparer only to provide the department with information that is missing from the return, to contact the department for information about the processing of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the department and has shown to the preparer.

Section 2. That existing sections 3953.33, 5701.11, 5739.01,

5739.02, 5739.035, and 5747.08 of the Revised Code are hereby 1973
repealed. 1974

Section 3. The amendments by this act of sections 5701.11, 1975
5739.01, 5739.02, and 5739.035 of the Revised Code provide for or 1976
are essential to implementation of a tax levy. Therefore, under 1977
Ohio Constitution, Article II, Section 1d, the amendments, and the 1978
items of which they are composed, are not subject to the 1979
referendum and go into immediate effect when this act becomes law. 1980

Section 4. Section 5739.01 of the Revised Code is presented 1981
in this act as a composite of the section as amended by both Sub. 1982
H.B. 293 and Am. Sub. H.B. 699 of the 126th General Assembly. The 1983
General Assembly, applying the principle stated in division (B) of 1984
section 1.52 of the Revised Code that amendments are to be 1985
harmonized if reasonably capable of simultaneous operation, finds 1986
that the composite is the resulting version of the section in 1987
effect prior to the effective date of the section as presented in 1988
this act. 1989