

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 368**

**Representative Dyer**

**Cosponsors: Representatives Harwood, Letson, Luckie, Okey, Skindell,  
Williams, S.**

**—**

**A B I L L**

To amend sections 5739.02 and 5739.05 of the Revised 1  
Code to provide a two-day period in August each 2  
year during which sales of tangible personal 3  
property are exempt from sales and use taxes. 4

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

**Section 1.** That sections 5739.02 and 5739.05 of the Revised 5  
Code be amended to read as follows: 6

**Sec. 5739.02.** For the purpose of providing revenue with which 7  
to meet the needs of the state, for the use of the general revenue 8  
fund of the state, for the purpose of securing a thorough and 9  
efficient system of common schools throughout the state, for the 10  
purpose of affording revenues, in addition to those from general 11  
property taxes, permitted under constitutional limitations, and 12  
from other sources, for the support of local governmental 13  
functions, and for the purpose of reimbursing the state for the 14  
expense of administering this chapter, an excise tax is hereby 15  
levied on each retail sale made in this state. 16

(A)(1) The tax shall be collected as provided in section 17  
5739.025 of the Revised Code, provided that on and after July 1, 18

2003, and on or before June 30, 2005, the rate of tax shall be six 19  
per cent. On and after July 1, 2005, the rate of the tax shall be 20  
five and one-half per cent. The tax applies and is collectible 21  
when the sale is made, regardless of the time when the price is 22  
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term of 24  
more than thirty days or an indefinite term with a minimum period 25  
of more than thirty days, of any motor vehicles designed by the 26  
manufacturer to carry a load of not more than one ton, watercraft, 27  
outboard motor, or aircraft, or of any tangible personal property, 28  
other than motor vehicles designed by the manufacturer to carry a 29  
load of more than one ton, to be used by the lessee or renter 30  
primarily for business purposes, the tax shall be collected by the 31  
vendor at the time the lease or rental is consummated and shall be 32  
calculated by the vendor on the basis of the total amount to be 33  
paid by the lessee or renter under the lease agreement. If the 34  
total amount of the consideration for the lease or rental includes 35  
amounts that are not calculated at the time the lease or rental is 36  
executed, the tax shall be calculated and collected by the vendor 37  
at the time such amounts are billed to the lessee or renter. In 38  
the case of an open-end lease or rental, the tax shall be 39  
calculated by the vendor on the basis of the total amount to be 40  
paid during the initial fixed term of the lease or rental, and for 41  
each subsequent renewal period as it comes due. As used in this 42  
division, "motor vehicle" has the same meaning as in section 43  
4501.01 of the Revised Code, and "watercraft" includes an outdrive 44  
unit attached to the watercraft. 45

A lease with a renewal clause and a termination penalty or 46  
similar provision that applies if the renewal clause is not 47  
exercised is presumed to be a sham transaction. In such a case, 48  
the tax shall be calculated and paid on the basis of the entire 49  
length of the lease period, including any renewal periods, until 50

the termination penalty or similar provision no longer applies. 51  
The taxpayer shall bear the burden, by a preponderance of the 52  
evidence, that the transaction or series of transactions is not a 53  
sham transaction. 54

(3) Except as provided in division (A)(2) of this section, in 55  
the case of a sale, the price of which consists in whole or in 56  
part of the lease or rental of tangible personal property, the tax 57  
shall be measured by the installments of that lease or rental. 58

(4) In the case of a sale of a physical fitness facility 59  
service or recreation and sports club service, the price of which 60  
consists in whole or in part of a membership for the receipt of 61  
the benefit of the service, the tax applicable to the sale shall 62  
be measured by the installments thereof. 63

(B) The tax does not apply to the following: 64

(1) Sales to the state or any of its political subdivisions, 65  
or to any other state or its political subdivisions if the laws of 66  
that state exempt from taxation sales made to this state and its 67  
political subdivisions; 68

(2) Sales of food for human consumption off the premises 69  
where sold; 70

(3) Sales of food sold to students only in a cafeteria, 71  
dormitory, fraternity, or sorority maintained in a private, 72  
public, or parochial school, college, or university; 73

(4) Sales of newspapers and of magazine subscriptions and 74  
sales or transfers of magazines distributed as controlled 75  
circulation publications; 76

(5) The furnishing, preparing, or serving of meals without 77  
charge by an employer to an employee provided the employer records 78  
the meals as part compensation for services performed or work 79  
done; 80

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

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

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

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

in division (B)(9)(b) of this section. If the number of days on 113  
which such sales are made exceeds six in any calendar year, the 114  
church or organization shall be considered to be engaged in 115  
business and all subsequent sales by it shall be subject to the 116  
tax. In counting the number of days, all sales by groups within a 117  
church or within an organization shall be considered to be sales 118  
of that church or organization. 119

(b) The limitation on the number of days on which tax-exempt 120  
sales may be made by a church or organization under division 121  
(B)(9)(a) of this section does not apply to sales made by student 122  
clubs and other groups of students of a primary or secondary 123  
school, or a parent-teacher association, booster group, or similar 124  
organization that raises money to support or fund curricular or 125  
extracurricular activities of a primary or secondary school. 126

(c) Divisions (B)(9)(a) and (b) of this section do not apply 127  
to sales by a noncommercial educational radio or television 128  
broadcasting station. 129

(10) Sales not within the taxing power of this state under 130  
the Constitution of the United States; 131

(11) Except for transactions that are sales under division 132  
(B)(3)(r) of section 5739.01 of the Revised Code, the 133  
transportation of persons or property, unless the transportation 134  
is by a private investigation and security service; 135

(12) Sales of tangible personal property or services to 136  
churches, to organizations exempt from taxation under section 137  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 138  
nonprofit organizations operated exclusively for charitable 139  
purposes in this state, no part of the net income of which inures 140  
to the benefit of any private shareholder or individual, and no 141  
substantial part of the activities of which consists of carrying 142  
on propaganda or otherwise attempting to influence legislation; 143

sales to offices administering one or more homes for the aged or 144  
one or more hospital facilities exempt under section 140.08 of the 145  
Revised Code; and sales to organizations described in division (D) 146  
of section 5709.12 of the Revised Code. 147

"Charitable purposes" means the relief of poverty; the 148  
improvement of health through the alleviation of illness, disease, 149  
or injury; the operation of an organization exclusively for the 150  
provision of professional, laundry, printing, and purchasing 151  
services to hospitals or charitable institutions; the operation of 152  
a home for the aged, as defined in section 5701.13 of the Revised 153  
Code; the operation of a radio or television broadcasting station 154  
that is licensed by the federal communications commission as a 155  
noncommercial educational radio or television station; the 156  
operation of a nonprofit animal adoption service or a county 157  
humane society; the promotion of education by an institution of 158  
learning that maintains a faculty of qualified instructors, 159  
teaches regular continuous courses of study, and confers a 160  
recognized diploma upon completion of a specific curriculum; the 161  
operation of a parent-teacher association, booster group, or 162  
similar organization primarily engaged in the promotion and 163  
support of the curricular or extracurricular activities of a 164  
primary or secondary school; the operation of a community or area 165  
center in which presentations in music, dramatics, the arts, and 166  
related fields are made in order to foster public interest and 167  
education therein; the production of performances in music, 168  
dramatics, and the arts; or the promotion of education by an 169  
organization engaged in carrying on research in, or the 170  
dissemination of, scientific and technological knowledge and 171  
information primarily for the public. 172

Nothing in this division shall be deemed to exempt sales to 173  
any organization for use in the operation or carrying on of a 174  
trade or business, or sales to a home for the aged for use in the 175

operation of independent living facilities as defined in division	176
(A) of section 5709.12 of the Revised Code.	177
(13) Building and construction materials and services sold to	178
construction contractors for incorporation into a structure or	179
improvement to real property under a construction contract with	180
this state or a political subdivision of this state, or with the	181
United States government or any of its agencies; building and	182
construction materials and services sold to construction	183
contractors for incorporation into a structure or improvement to	184
real property that are accepted for ownership by this state or any	185
of its political subdivisions, or by the United States government	186
or any of its agencies at the time of completion of the structures	187
or improvements; building and construction materials sold to	188
construction contractors for incorporation into a horticulture	189
structure or livestock structure for a person engaged in the	190
business of horticulture or producing livestock; building	191
materials and services sold to a construction contractor for	192
incorporation into a house of public worship or religious	193
education, or a building used exclusively for charitable purposes	194
under a construction contract with an organization whose purpose	195
is as described in division (B)(12) of this section; building	196
materials and services sold to a construction contractor for	197
incorporation into a building under a construction contract with	198
an organization exempt from taxation under section 501(c)(3) of	199
the Internal Revenue Code of 1986 when the building is to be used	200
exclusively for the organization's exempt purposes; building and	201
construction materials sold for incorporation into the original	202
construction of a sports facility under section 307.696 of the	203
Revised Code; and building and construction materials and services	204
sold to a construction contractor for incorporation into real	205
property outside this state if such materials and services, when	206
sold to a construction contractor in the state in which the real	207
property is located for incorporation into real property in that	208

state, would be exempt from a tax on sales levied by that state; 209

(14) Sales of ships or vessels or rail rolling stock used or 210  
to be used principally in interstate or foreign commerce, and 211  
repairs, alterations, fuel, and lubricants for such ships or 212  
vessels or rail rolling stock; 213

(15) Sales to persons primarily engaged in any of the 214  
activities mentioned in division (B)(42)(a) or (g) of this 215  
section, to persons engaged in making retail sales, or to persons 216  
who purchase for sale from a manufacturer tangible personal 217  
property that was produced by the manufacturer in accordance with 218  
specific designs provided by the purchaser, of packages, including 219  
material, labels, and parts for packages, and of machinery, 220  
equipment, and material for use primarily in packaging tangible 221  
personal property produced for sale, including any machinery, 222  
equipment, and supplies used to make labels or packages, to 223  
prepare packages or products for labeling, or to label packages or 224  
products, by or on the order of the person doing the packaging, or 225  
sold at retail. "Packages" includes bags, baskets, cartons, 226  
crates, boxes, cans, bottles, bindings, wrappings, and other 227  
similar devices and containers, but does not include motor 228  
vehicles or bulk tanks, trailers, or similar devices attached to 229  
motor vehicles. "Packaging" means placing in a package. Division 230  
(B)(15) of this section does not apply to persons engaged in 231  
highway transportation for hire. 232

(16) Sales of food to persons using food stamp benefits to 233  
purchase the food. As used in this division, "food" has the same 234  
meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 235  
2012, as amended, and federal regulations adopted pursuant to that 236  
act. 237

(17) Sales to persons engaged in farming, agriculture, 238  
horticulture, or floriculture, of tangible personal property for 239  
use or consumption directly in the production by farming, 240



agriculture, horticulture, or floriculture of other tangible 241  
personal property for use or consumption directly in the 242  
production of tangible personal property for sale by farming, 243  
agriculture, horticulture, or floriculture; or material and parts 244  
for incorporation into any such tangible personal property for use 245  
or consumption in production; and of tangible personal property 246  
for such use or consumption in the conditioning or holding of 247  
products produced by and for such use, consumption, or sale by 248  
persons engaged in farming, agriculture, horticulture, or 249  
floriculture, except where such property is incorporated into real 250  
property; 251

(18) Sales of drugs for a human being that may be dispensed 252  
only pursuant to a prescription; insulin as recognized in the 253  
official United States pharmacopoeia; urine and blood testing 254  
materials when used by diabetics or persons with hypoglycemia to 255  
test for glucose or acetone; hypodermic syringes and needles when 256  
used by diabetics for insulin injections; epoetin alfa when 257  
purchased for use in the treatment of persons with medical 258  
disease; hospital beds when purchased by hospitals, nursing homes, 259  
or other medical facilities; and medical oxygen and medical 260  
oxygen-dispensing equipment when purchased by hospitals, nursing 261  
homes, or other medical facilities; 262

(19) Sales of prosthetic devices, durable medical equipment 263  
for home use, or mobility enhancing equipment, when made pursuant 264  
to a prescription and when such devices or equipment are for use 265  
by a human being. 266

(20) Sales of emergency and fire protection vehicles and 267  
equipment to nonprofit organizations for use solely in providing 268  
fire protection and emergency services, including trauma care and 269  
emergency medical services, for political subdivisions of the 270  
state; 271

(21) Sales of tangible personal property manufactured in this 272

state, if sold by the manufacturer in this state to a retailer for 273  
use in the retail business of the retailer outside of this state 274  
and if possession is taken from the manufacturer by the purchaser 275  
within this state for the sole purpose of immediately removing the 276  
same from this state in a vehicle owned by the purchaser; 277

(22) Sales of services provided by the state or any of its 278  
political subdivisions, agencies, instrumentalities, institutions, 279  
or authorities, or by governmental entities of the state or any of 280  
its political subdivisions, agencies, instrumentalities, 281  
institutions, or authorities; 282

(23) Sales of motor vehicles to nonresidents of this state 283  
under the circumstances described in division (B) of section 284  
5739.029 of the Revised Code; 285

(24) Sales to persons engaged in the preparation of eggs for 286  
sale of tangible personal property used or consumed directly in 287  
such preparation, including such tangible personal property used 288  
for cleaning, sanitizing, preserving, grading, sorting, and 289  
classifying by size; packages, including material and parts for 290  
packages, and machinery, equipment, and material for use in 291  
packaging eggs for sale; and handling and transportation equipment 292  
and parts therefor, except motor vehicles licensed to operate on 293  
public highways, used in intraplant or interplant transfers or 294  
shipment of eggs in the process of preparation for sale, when the 295  
plant or plants within or between which such transfers or 296  
shipments occur are operated by the same person. "Packages" 297  
includes containers, cases, baskets, flats, fillers, filler flats, 298  
cartons, closure materials, labels, and labeling materials, and 299  
"packaging" means placing therein. 300

(25)(a) Sales of water to a consumer for residential use, 301  
except the sale of bottled water, distilled water, mineral water, 302  
carbonated water, or ice; 303

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	304 305 306 307
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	308 309
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	310 311 312 313
(a) To prepare food for human consumption for sale;	314
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	315 316 317 318
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	319 320
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	321 322
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	323 324 325 326
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	327 328 329
(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;	330 331 332
(32) The sale, lease, repair, and maintenance of, parts for,	333

or items attached to or incorporated in, motor vehicles that are 334  
primarily used for transporting tangible personal property 335  
belonging to others by a person engaged in highway transportation 336  
for hire, except for packages and packaging used for the 337  
transportation of tangible personal property; 338

(33) Sales to the state headquarters of any veterans' 339  
organization in this state that is either incorporated and issued 340  
a charter by the congress of the United States or is recognized by 341  
the United States veterans administration, for use by the 342  
headquarters; 343

(34) Sales to a telecommunications service vendor, mobile 344  
telecommunications service vendor, or satellite broadcasting 345  
service vendor of tangible personal property and services used 346  
directly and primarily in transmitting, receiving, switching, or 347  
recording any interactive, one- or two-way electromagnetic 348  
communications, including voice, image, data, and information, 349  
through the use of any medium, including, but not limited to, 350  
poles, wires, cables, switching equipment, computers, and record 351  
storage devices and media, and component parts for the tangible 352  
personal property. The exemption provided in this division shall 353  
be in lieu of all other exemptions under division (B)(42)(a) of 354  
this section to which the vendor may otherwise be entitled, based 355  
upon the use of the thing purchased in providing the 356  
telecommunications, mobile telecommunications, or satellite 357  
broadcasting service. 358

(35)(a) Sales where the purpose of the consumer is to use or 359  
consume the things transferred in making retail sales and 360  
consisting of newspaper inserts, catalogues, coupons, flyers, gift 361  
certificates, or other advertising material that prices and 362  
describes tangible personal property offered for retail sale. 363

(b) Sales to direct marketing vendors of preliminary 364  
materials such as photographs, artwork, and typesetting that will 365

be used in printing advertising material; of printed matter that 366  
offers free merchandise or chances to win sweepstake prizes and 367  
that is mailed to potential customers with advertising material 368  
described in division (B)(35)(a) of this section; and of equipment 369  
such as telephones, computers, facsimile machines, and similar 370  
tangible personal property primarily used to accept orders for 371  
direct marketing retail sales. 372

(c) Sales of automatic food vending machines that preserve 373  
food with a shelf life of forty-five days or less by refrigeration 374  
and dispense it to the consumer. 375

For purposes of division (B)(35) of this section, "direct 376  
marketing" means the method of selling where consumers order 377  
tangible personal property by United States mail, delivery 378  
service, or telecommunication and the vendor delivers or ships the 379  
tangible personal property sold to the consumer from a warehouse, 380  
catalogue distribution center, or similar fulfillment facility by 381  
means of the United States mail, delivery service, or common 382  
carrier. 383

(36) Sales to a person engaged in the business of 384  
horticulture or producing livestock of materials to be 385  
incorporated into a horticulture structure or livestock structure; 386

(37) Sales of personal computers, computer monitors, computer 387  
keyboards, modems, and other peripheral computer equipment to an 388  
individual who is licensed or certified to teach in an elementary 389  
or a secondary school in this state for use by that individual in 390  
preparation for teaching elementary or secondary school students; 391

(38) Sales to a professional racing team of any of the 392  
following: 393

(a) Motor racing vehicles; 394

(b) Repair services for motor racing vehicles; 395

(c) Items of property that are attached to or incorporated in 396  
motor racing vehicles, including engines, chassis, and all other 397  
components of the vehicles, and all spare, replacement, and 398  
rebuilt parts or components of the vehicles; except not including 399  
tires, consumable fluids, paint, and accessories consisting of 400  
instrumentation sensors and related items added to the vehicle to 401  
collect and transmit data by means of telemetry and other forms of 402  
communication. 403

(39) Sales of used manufactured homes and used mobile homes, 404  
as defined in section 5739.0210 of the Revised Code, made on or 405  
after January 1, 2000; 406

(40) Sales of tangible personal property and services to a 407  
provider of electricity used or consumed directly and primarily in 408  
generating, transmitting, or distributing electricity for use by 409  
others, including property that is or is to be incorporated into 410  
and will become a part of the consumer's production, transmission, 411  
or distribution system and that retains its classification as 412  
tangible personal property after incorporation; fuel or power used 413  
in the production, transmission, or distribution of electricity; 414  
and tangible personal property and services used in the repair and 415  
maintenance of the production, transmission, or distribution 416  
system, including only those motor vehicles as are specially 417  
designed and equipped for such use. The exemption provided in this 418  
division shall be in lieu of all other exemptions in division 419  
(B)(42)(a) of this section to which a provider of electricity may 420  
otherwise be entitled based on the use of the tangible personal 421  
property or service purchased in generating, transmitting, or 422  
distributing electricity. 423

(41) Sales to a person providing services under division 424  
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 425  
personal property and services used directly and primarily in 426  
providing taxable services under that section. 427

(42) Sales where the purpose of the purchaser is to do any of 428  
the following: 429

(a) To incorporate the thing transferred as a material or a 430  
part into tangible personal property to be produced for sale by 431  
manufacturing, assembling, processing, or refining; or to use or 432  
consume the thing transferred directly in producing tangible 433  
personal property for sale by mining, including, without 434  
limitation, the extraction from the earth of all substances that 435  
are classed geologically as minerals, production of crude oil and 436  
natural gas, farming, agriculture, horticulture, or floriculture, 437  
or directly in the rendition of a public utility service, except 438  
that the sales tax levied by this section shall be collected upon 439  
all meals, drinks, and food for human consumption sold when 440  
transporting persons. Persons engaged in rendering farming, 441  
agricultural, horticultural, or floricultural services, and 442  
services in the exploration for, and production of, crude oil and 443  
natural gas, for others are deemed engaged directly in farming, 444  
agriculture, horticulture, and floriculture, or exploration for, 445  
and production of, crude oil and natural gas. This paragraph does 446  
not exempt from "retail sale" or "sales at retail" the sale of 447  
tangible personal property that is to be incorporated into a 448  
structure or improvement to real property. 449

(b) To hold the thing transferred as security for the 450  
performance of an obligation of the vendor; 451

(c) To resell, hold, use, or consume the thing transferred as 452  
evidence of a contract of insurance; 453

(d) To use or consume the thing directly in commercial 454  
fishing; 455

(e) To incorporate the thing transferred as a material or a 456  
part into, or to use or consume the thing transferred directly in 457  
the production of, magazines distributed as controlled circulation 458

publications;	459
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	460 461 462 463 464
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	465 466 467
(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;	468 469 470 471 472 473
(i) To use the thing transferred as qualified research and development equipment;	474 475
(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.	476 477 478 479 480 481 482 483 484 485 486 487 488
(k) To use or consume the thing transferred to fulfill a	489



contractual obligation incurred by a warrantor pursuant to a 490  
warranty provided as a part of the price of the tangible personal 491  
property sold or by a vendor of a warranty, maintenance or service 492  
contract, or similar agreement the provision of which is defined 493  
as a sale under division (B)(7) of section 5739.01 of the Revised 494  
Code; 495

(l) To use or consume the thing transferred in the production 496  
of a newspaper for distribution to the public; 497

(m) To use tangible personal property to perform a service 498  
listed in division (B)(3) of section 5739.01 of the Revised Code, 499  
if the property is or is to be permanently transferred to the 500  
consumer of the service as an integral part of the performance of 501  
the service. 502

As used in division (B)(42) of this section, "thing" includes 503  
all transactions included in divisions (B)(3)(a), (b), and (e) of 504  
section 5739.01 of the Revised Code. 505

(43) Sales conducted through a coin operated device that 506  
activates vacuum equipment or equipment that dispenses water, 507  
whether or not in combination with soap or other cleaning agents 508  
or wax, to the consumer for the consumer's use on the premises in 509  
washing, cleaning, or waxing a motor vehicle, provided no other 510  
personal property or personal service is provided as part of the 511  
transaction. 512

(44) Sales of replacement and modification parts for engines, 513  
airframes, instruments, and interiors in, and paint for, aircraft 514  
used primarily in a fractional aircraft ownership program, and 515  
sales of services for the repair, modification, and maintenance of 516  
such aircraft, and machinery, equipment, and supplies primarily 517  
used to provide those services. 518

(45) Sales of telecommunications service that is used 519  
directly and primarily to perform the functions of a call center. 520

As used in this division, "call center" means any physical 521  
location where telephone calls are placed or received in high 522  
volume for the purpose of making sales, marketing, customer 523  
service, technical support, or other specialized business 524  
activity, and that employs at least fifty individuals that engage 525  
in call center activities on a full-time basis, or sufficient 526  
individuals to fill fifty full-time equivalent positions. 527

(46) Sales by a telecommunications service vendor of 900 528  
service to a subscriber. This division does not apply to 529  
information services, as defined in division (FF) of section 530  
5739.01 of the Revised Code. 531

(47) Sales of value-added non-voice data service. This 532  
division does not apply to any similar service that is not 533  
otherwise a telecommunications service. 534

(48)(a) During the two-day period each year that includes the 535  
second Saturday and the following Sunday in August: 536

(i) Except as provided in division (B)(48)(a)(ii) of this 537  
section, the sale of an item of tangible personal property the 538  
price of which does not exceed two thousand five hundred dollars. 539

(ii) The sale of an item of clothing the price of which does 540  
not exceed two hundred fifty dollars. 541

(b) Tangible personal property ordered and paid for in full 542  
during the two-day period described in division (B)(48)(a) of this 543  
section is eligible for exemption under that division regardless 544  
of when the property is delivered to the purchaser. 545

(c) The sale of any service or the lease or rental of any 546  
item of tangible personal property does not qualify for exemption 547  
under division (B)(48)(a) of this section. 548

(d) A sale of tangible personal property, including clothing, 549  
under a lay-away sale does not qualify for exemption under 550

division (B)(48)(a) of this section. 551

(C) For the purpose of the proper administration of this 552  
chapter, and to prevent the evasion of the tax, it is presumed 553  
that all sales made in this state are subject to the tax until the 554  
contrary is established. 555

(D) The levy of this tax on retail sales of recreation and 556  
sports club service shall not prevent a municipal corporation from 557  
levying any tax on recreation and sports club dues or on any 558  
income generated by recreation and sports club dues. 559

(E) The tax collected by the vendor from the consumer under 560  
this chapter is not part of the price, but is a tax collection for 561  
the benefit of the state, and of counties levying an additional 562  
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 563  
Code and of transit authorities levying an additional sales tax 564  
pursuant to section 5739.023 of the Revised Code. Except for the 565  
discount authorized under section 5739.12 of the Revised Code and 566  
the effects of any rounding pursuant to section 5703.055 of the 567  
Revised Code, no person other than the state or such a county or 568  
transit authority shall derive any benefit from the collection or 569  
payment of the tax levied by this section or section 5739.021, 570  
5739.023, or 5739.026 of the Revised Code. 571

**Sec. 5739.05.** (A)(1) The tax commissioner shall enforce and 572  
administer sections 5739.01 to 5739.31 of the Revised Code, which 573  
are hereby declared to be sections ~~which~~ that the commissioner is 574  
required to administer within the meaning of sections 5703.17 to 575  
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 576  
commissioner may adopt and promulgate, in accordance with sections 577  
119.01 to 119.13 of the Revised Code, such rules as the 578  
commissioner deems necessary to administer sections 5739.01 to 579  
5739.31 of the Revised Code. 580

(2) The commissioner, in accordance with section 5703.14 of 581

the Revised Code, shall adopt rules necessary to implement the 582  
two-day tax exemption provided by division (B)(48) of section 583  
5739.02 of the Revised Code. Before each exemption period required 584  
under that section, the commissioner shall make available to 585  
vendors informational bulletins explaining the exemption. 586

(B) Upon application, the commissioner may authorize a vendor 587  
to pay on a predetermined basis the tax levied by or pursuant to 588  
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 589  
Code upon sales of things produced or distributed or services 590  
provided by such vendor, and the commissioner may waive the 591  
collection of the tax from the consumer. The commissioner shall 592  
not grant such authority unless the commissioner finds that the 593  
granting of the authority would improve compliance and increase 594  
the efficiency of the administration of the tax. The person to 595  
whom such authority is granted shall post a notice, if required by 596  
the commissioner, at the location where the product is offered for 597  
sale, that the tax is included in the selling price. The 598  
~~commissioner~~ commissioner may adopt rules to administer this 599  
division. 600

(C) The commissioner may authorize a vendor to pay, on the 601  
basis of a prearranged agreement under this division, the tax 602  
levied by section 5739.02 or pursuant to section 5739.021, 603  
5739.023, or 5739.026 of the Revised Code, and waive the 604  
requirement that the vendor maintain the complete and accurate 605  
record of individual taxable sales and tax collected thereon 606  
required by section 5739.11 of the Revised Code, upon application 607  
of the vendor, if the commissioner finds that the conditions of 608  
the vendor-applicant's business are such that the maintenance of 609  
such records of individual taxable sales and tax collected thereon 610  
would impose an unreasonable burden upon the vendor. If the 611  
commissioner determines that such unreasonable burden has been 612  
imposed, the vendor and the commissioner shall agree to the terms 613

and conditions of a test check to be conducted. If the parties are 614  
unable to agree to the terms and conditions of the test check, the 615  
application shall be denied. The test check conducted shall 616  
determine the proportion that taxable retail sales bear to all of 617  
the vendor's retail sales and the ratio which the tax required to 618  
be collected under sections 5739.02, 5739.021, and 5739.023 of the 619  
Revised Code bears to the receipts from the vendor's taxable 620  
retail sales. 621

The vendor shall collect the tax on the vendor's taxable 622  
sales and the vendor's liability for collecting or remitting shall 623  
be based upon the proportions and ratios established by the test 624  
check, and not upon any other basis of determination, until such 625  
time as a subsequent test check is made at the request of either 626  
the vendor or the commissioner where either party believes that 627  
the nature of the vendor's business has so changed as to make the 628  
prior or existing test check no longer representative. The 629  
commissioner may give notice to the vendor at any time that the 630  
authorization is revoked or the vendor may notify the commissioner 631  
that the vendor no longer elects to report under the 632  
authorization. Such notice shall be delivered to the other party 633  
personally or by registered mail. The revocation or cancellation 634  
is not effective prior to the date of receipt of such notice. 635

**Section 2.** That existing sections 5739.02 and 5739.05 of the 636  
Revised Code are hereby repealed. 637

**Section 3.** The first two-day sales and use tax exemption 638  
period under division (A)(1) of section 5739.02 of the Revised 639  
Code, as amended by this act, shall begin August 9, 2008. 640