

As Introduced

**127th General Assembly
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H. B. No. 369

Representative Lundy

**Cosponsors: Representatives Letson, Yuko, Brown, Williams, B., DeGeeter,
Fende, Book, Luckie**

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A B I L L

To amend sections 5739.02 and 5739.05 of the Revised 1
Code to provide a two-day sales tax "holiday" each 2
August during which sales of back-to-school 3
clothing, school supplies, computers, and computer 4
accessories are exempt from sales and use taxes. 5

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

Section 1. That sections 5739.02 and 5739.05 of the Revised 6
Code be amended to read as follows: 7

Sec. 5739.02. For the purpose of providing revenue with which 8
to meet the needs of the state, for the use of the general revenue 9
fund of the state, for the purpose of securing a thorough and 10
efficient system of common schools throughout the state, for the 11
purpose of affording revenues, in addition to those from general 12
property taxes, permitted under constitutional limitations, and 13
from other sources, for the support of local governmental 14
functions, and for the purpose of reimbursing the state for the 15
expense of administering this chapter, an excise tax is hereby 16
levied on each retail sale made in this state. 17

(A)(1) The tax shall be collected as provided in section 18

5739.025 of the Revised Code, provided that on and after July 1, 19
2003, and on or before June 30, 2005, the rate of tax shall be six 20
per cent. On and after July 1, 2005, the rate of the tax shall be 21
five and one-half per cent. The tax applies and is collectible 22
when the sale is made, regardless of the time when the price is 23
paid or delivered. 24

(2) In the case of the lease or rental, with a fixed term of 25
more than thirty days or an indefinite term with a minimum period 26
of more than thirty days, of any motor vehicles designed by the 27
manufacturer to carry a load of not more than one ton, watercraft, 28
outboard motor, or aircraft, or of any tangible personal property, 29
other than motor vehicles designed by the manufacturer to carry a 30
load of more than one ton, to be used by the lessee or renter 31
primarily for business purposes, the tax shall be collected by the 32
vendor at the time the lease or rental is consummated and shall be 33
calculated by the vendor on the basis of the total amount to be 34
paid by the lessee or renter under the lease agreement. If the 35
total amount of the consideration for the lease or rental includes 36
amounts that are not calculated at the time the lease or rental is 37
executed, the tax shall be calculated and collected by the vendor 38
at the time such amounts are billed to the lessee or renter. In 39
the case of an open-end lease or rental, the tax shall be 40
calculated by the vendor on the basis of the total amount to be 41
paid during the initial fixed term of the lease or rental, and for 42
each subsequent renewal period as it comes due. As used in this 43
division, "motor vehicle" has the same meaning as in section 44
4501.01 of the Revised Code, and "watercraft" includes an outdrive 45
unit attached to the watercraft. 46

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

length of the lease period, including any renewal periods, until 51
the termination penalty or similar provision no longer applies. 52
The taxpayer shall bear the burden, by a preponderance of the 53
evidence, that the transaction or series of transactions is not a 54
sham transaction. 55

(3) Except as provided in division (A)(2) of this section, in 56
the case of a sale, the price of which consists in whole or in 57
part of the lease or rental of tangible personal property, the tax 58
shall be measured by the installments of that lease or rental. 59

(4) In the case of a sale of a physical fitness facility 60
service or recreation and sports club service, the price of which 61
consists in whole or in part of a membership for the receipt of 62
the benefit of the service, the tax applicable to the sale shall 63
be measured by the installments thereof. 64

(B) The tax does not apply to the following: 65

(1) Sales to the state or any of its political subdivisions, 66
or to any other state or its political subdivisions if the laws of 67
that state exempt from taxation sales made to this state and its 68
political subdivisions; 69

(2) Sales of food for human consumption off the premises 70
where sold; 71

(3) Sales of food sold to students only in a cafeteria, 72
dormitory, fraternity, or sorority maintained in a private, 73
public, or parochial school, college, or university; 74

(4) Sales of newspapers and of magazine subscriptions and 75
sales or transfers of magazines distributed as controlled 76
circulation publications; 77

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

done; 81

(6) Sales of motor fuel upon receipt, use, distribution, or 82
sale of which in this state a tax is imposed by the law of this 83
state, but this exemption shall not apply to the sale of motor 84
fuel on which a refund of the tax is allowable under division (A) 85
of section 5735.14 of the Revised Code; and the tax commissioner 86
may deduct the amount of tax levied by this section applicable to 87
the price of motor fuel when granting a refund of motor fuel tax 88
pursuant to division (A) of section 5735.14 of the Revised Code 89
and shall cause the amount deducted to be paid into the general 90
revenue fund of this state; 91

(7) Sales of natural gas by a natural gas company, of water 92
by a water-works company, or of steam by a heating company, if in 93
each case the thing sold is delivered to consumers through pipes 94
or conduits, and all sales of communications services by a 95
telegraph company, all terms as defined in section 5727.01 of the 96
Revised Code, and sales of electricity delivered through wires; 97

(8) Casual sales by a person, or auctioneer employed directly 98
by the person to conduct such sales, except as to such sales of 99
motor vehicles, watercraft or outboard motors required to be 100
titled under section 1548.06 of the Revised Code, watercraft 101
documented with the United States coast guard, snowmobiles, and 102
all-purpose vehicles as defined in section 4519.01 of the Revised 103
Code; 104

(9) Sales of services or tangible personal property, other 105
than motor vehicles, mobile homes, and manufactured homes, by 106
churches, organizations exempt from taxation under section 107
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 108
organizations operated exclusively for charitable purposes as 109
defined in division (B)(12) of this section, provided that the 110
number of days on which such tangible personal property or 111
services, other than items never subject to the tax, are sold does 112

not exceed six in any calendar year. 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, except that sales made by separate 119
student clubs and other groups of students of a primary or 120
secondary school, and sales made by a parent-teacher association, 121
booster group, or similar organization that raises money to 122
support or fund curricular or extracurricular activities of a 123
primary or secondary school, shall not be considered to be sales 124
of such school, and sales by each such club, group, association, 125
or organization shall be counted separately for purposes of the 126
six-day limitation. This division does not apply to sales by a 127
noncommercial educational radio or television broadcasting 128
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 Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

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

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division

(A) of section 5709.12 of the Revised Code.	177
(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;	178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209

(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
upon the presentation of an affidavit executed in this state by 284
the nonresident purchaser affirming that the purchaser is a 285
nonresident of this state, that possession of the motor vehicle is 286
taken in this state for the sole purpose of immediately removing 287
it from this state, that the motor vehicle will be permanently 288
titled and registered in another state, and that the motor vehicle 289
will not be used in this state; 290

(24) Sales to persons engaged in the preparation of eggs for 291
sale of tangible personal property used or consumed directly in 292
such preparation, including such tangible personal property used 293
for cleaning, sanitizing, preserving, grading, sorting, and 294
classifying by size; packages, including material and parts for 295
packages, and machinery, equipment, and material for use in 296
packaging eggs for sale; and handling and transportation equipment 297
and parts therefor, except motor vehicles licensed to operate on 298
public highways, used in intraplant or interplant transfers or 299
shipment of eggs in the process of preparation for sale, when the 300
plant or plants within or between which such transfers or 301
shipments occur are operated by the same person. "Packages" 302
includes containers, cases, baskets, flats, fillers, filler flats, 303
cartons, closure materials, labels, and labeling materials, and 304
"packaging" means placing therein. 305

(25)(a) Sales of water to a consumer for residential use,	306
except the sale of bottled water, distilled water, mineral water,	307
carbonated water, or ice;	308
(b) Sales of water by a nonprofit corporation engaged	309
exclusively in the treatment, distribution, and sale of water to	310
consumers, if such water is delivered to consumers through pipes	311
or tubing.	312
(26) Fees charged for inspection or reinspection of motor	313
vehicles under section 3704.14 of the Revised Code;	314
(27) Sales to persons licensed to conduct a food service	315
operation pursuant to section 3717.43 of the Revised Code, of	316
tangible personal property primarily used directly for the	317
following:	318
(a) To prepare food for human consumption for sale;	319
(b) To preserve food that has been or will be prepared for	320
human consumption for sale by the food service operator, not	321
including tangible personal property used to display food for	322
selection by the consumer;	323
(c) To clean tangible personal property used to prepare or	324
serve food for human consumption for sale.	325
(28) Sales of animals by nonprofit animal adoption services	326
or county humane societies;	327
(29) Sales of services to a corporation described in division	328
(A) of section 5709.72 of the Revised Code, and sales of tangible	329
personal property that qualifies for exemption from taxation under	330
section 5709.72 of the Revised Code;	331
(30) Sales and installation of agricultural land tile, as	332
defined in division (B)(5)(a) of section 5739.01 of the Revised	333
Code;	334
(31) Sales and erection or installation of portable grain	335

bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;

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

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

(35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and

describes tangible personal property offered for retail sale. 368

(b) Sales to direct marketing vendors of preliminary 369
materials such as photographs, artwork, and typesetting that will 370
be used in printing advertising material; of printed matter that 371
offers free merchandise or chances to win sweepstake prizes and 372
that is mailed to potential customers with advertising material 373
described in division (B)(35)(a) of this section; and of equipment 374
such as telephones, computers, facsimile machines, and similar 375
tangible personal property primarily used to accept orders for 376
direct marketing retail sales. 377

(c) Sales of automatic food vending machines that preserve 378
food with a shelf life of forty-five days or less by refrigeration 379
and dispense it to the consumer. 380

For purposes of division (B)(35) of this section, "direct 381
marketing" means the method of selling where consumers order 382
tangible personal property by United States mail, delivery 383
service, or telecommunication and the vendor delivers or ships the 384
tangible personal property sold to the consumer from a warehouse, 385
catalogue distribution center, or similar fulfillment facility by 386
means of the United States mail, delivery service, or common 387
carrier. 388

(36) Sales to a person engaged in the business of 389
horticulture or producing livestock of materials to be 390
incorporated into a horticulture structure or livestock structure; 391

(37) Sales of personal computers, computer monitors, computer 392
keyboards, modems, and other peripheral computer equipment to an 393
individual who is licensed or certified to teach in an elementary 394
or a secondary school in this state for use by that individual in 395
preparation for teaching elementary or secondary school students; 396

(38) Sales to a professional racing team of any of the 397
following: 398

(a) Motor racing vehicles;	399
(b) Repair services for motor racing vehicles;	400
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.	401 402 403 404 405 406 407 408
(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	409 410 411
(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.	412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428
(41) Sales to a person providing services under division	429

(B)(3)(r) of section 5739.01 of the Revised Code of tangible 430
personal property and services used directly and primarily in 431
providing taxable services under that section. 432

(42) Sales where the purpose of the purchaser is to do any of 433
the following: 434

(a) To incorporate the thing transferred as a material or a 435
part into tangible personal property to be produced for sale by 436
manufacturing, assembling, processing, or refining; or to use or 437
consume the thing transferred directly in producing tangible 438
personal property for sale by mining, including, without 439
limitation, the extraction from the earth of all substances that 440
are classed geologically as minerals, production of crude oil and 441
natural gas, farming, agriculture, horticulture, or floriculture, 442
or directly in the rendition of a public utility service, except 443
that the sales tax levied by this section shall be collected upon 444
all meals, drinks, and food for human consumption sold when 445
transporting persons. Persons engaged in rendering farming, 446
agricultural, horticultural, or floricultural services, and 447
services in the exploration for, and production of, crude oil and 448
natural gas, for others are deemed engaged directly in farming, 449
agriculture, horticulture, and floriculture, or exploration for, 450
and production of, crude oil and natural gas. This paragraph does 451
not exempt from "retail sale" or "sales at retail" the sale of 452
tangible personal property that is to be incorporated into a 453
structure or improvement to real property. 454

(b) To hold the thing transferred as security for the 455
performance of an obligation of the vendor; 456

(c) To resell, hold, use, or consume the thing transferred as 457
evidence of a contract of insurance; 458

(d) To use or consume the thing directly in commercial 459
fishing; 460

(e) To incorporate the thing transferred as a material or a 461
part into, or to use or consume the thing transferred directly in 462
the production of, magazines distributed as controlled circulation 463
publications; 464

(f) To use or consume the thing transferred in the production 465
and preparation in suitable condition for market and sale of 466
printed, imprinted, overprinted, lithographic, multilithic, 467
blueprinted, photostatic, or other productions or reproductions of 468
written or graphic matter; 469

(g) To use the thing transferred, as described in section 470
5739.011 of the Revised Code, primarily in a manufacturing 471
operation to produce tangible personal property for sale; 472

(h) To use the benefit of a warranty, maintenance or service 473
contract, or similar agreement, as described in division (B)(7) of 474
section 5739.01 of the Revised Code, to repair or maintain 475
tangible personal property, if all of the property that is the 476
subject of the warranty, contract, or agreement would not be 477
subject to the tax imposed by this section; 478

(i) To use the thing transferred as qualified research and 479
development equipment; 480

(j) To use or consume the thing transferred primarily in 481
storing, transporting, mailing, or otherwise handling purchased 482
sales inventory in a warehouse, distribution center, or similar 483
facility when the inventory is primarily distributed outside this 484
state to retail stores of the person who owns or controls the 485
warehouse, distribution center, or similar facility, to retail 486
stores of an affiliated group of which that person is a member, or 487
by means of direct marketing. This division does not apply to 488
motor vehicles registered for operation on the public highways. As 489
used in this division, "affiliated group" has the same meaning as 490
in division (B)(3)(e) of section 5739.01 of the Revised Code and 491

"direct marketing" has the same meaning as in division (B)(35) of 492
this section. 493

(k) To use or consume the thing transferred to fulfill a 494
contractual obligation incurred by a warrantor pursuant to a 495
warranty provided as a part of the price of the tangible personal 496
property sold or by a vendor of a warranty, maintenance or service 497
contract, or similar agreement the provision of which is defined 498
as a sale under division (B)(7) of section 5739.01 of the Revised 499
Code; 500

(l) To use or consume the thing transferred in the production 501
of a newspaper for distribution to the public; 502

(m) To use tangible personal property to perform a service 503
listed in division (B)(3) of section 5739.01 of the Revised Code, 504
if the property is or is to be permanently transferred to the 505
consumer of the service as an integral part of the performance of 506
the service. 507

As used in division (B)(42) of this section, "thing" includes 508
all transactions included in divisions (B)(3)(a), (b), and (e) of 509
section 5739.01 of the Revised Code. 510

(43) Sales conducted through a coin operated device that 511
activates vacuum equipment or equipment that dispenses water, 512
whether or not in combination with soap or other cleaning agents 513
or wax, to the consumer for the consumer's use on the premises in 514
washing, cleaning, or waxing a motor vehicle, provided no other 515
personal property or personal service is provided as part of the 516
transaction. 517

(44) Sales of replacement and modification parts for engines, 518
airframes, instruments, and interiors in, and paint for, aircraft 519
used primarily in a fractional aircraft ownership program, and 520
sales of services for the repair, modification, and maintenance of 521
such aircraft, and machinery, equipment, and supplies primarily 522

used to provide those services. 523

(45) Sales of telecommunications service that is used 524
directly and primarily to perform the functions of a call center. 525
As used in this division, "call center" means any physical 526
location where telephone calls are placed or received in high 527
volume for the purpose of making sales, marketing, customer 528
service, technical support, or other specialized business 529
activity, and that employs at least fifty individuals that engage 530
in call center activities on a full-time basis, or sufficient 531
individuals to fill fifty full-time equivalent positions. 532

(46) Sales by a telecommunications service vendor of 900 533
service to a subscriber. This division does not apply to 534
information services, as defined in division (FF) of section 535
5739.01 of the Revised Code. 536

(47) Sales of value-added non-voice data service. This 537
division does not apply to any similar service that is not 538
otherwise a telecommunications service. 539

(48)(a) Sales of the following occurring on the second 540
Saturday of August and the following Sunday of each year: 541

(i) An item of clothing, the price of which is less than one 542
hundred dollars; 543

(ii) An item of school supplies, the price of which is less 544
than one hundred dollars; 545

(iii) A computer, the price of which, less any manufacturer's 546
rebate, is less than seven hundred fifty dollars; and 547

(iv) A computer accessory, the price of which, less any 548
manufacturer's rebate, is less than one hundred dollars. 549

(b) For purposes of division (A)(48) of this section: 550

(i) "Clothing" does not include clothing or footwear that is 551
designed primarily for athletic activity or protective use and 552

that is not normally worn except when used for the athletic 553
activity or protective use for which it is designed; accessories, 554
including jewelry, handbags, luggage, umbrellas, wallets, watches, 555
and similar items carried on or about the human body, without 556
regard to whether the item is worn on the body in a manner 557
characteristic of clothing; or clothing that is rented, or that is 558
for use in a trade or business. 559

(ii) "School supplies" means pens, pencils, binders, 560
notebooks, reference books, book bags, lunch boxes, calculators, 561
and similar items. "School supplies" does not include furniture, 562
items that are rented, or tangible personal property for use in a 563
trade or business. 564

(C) For the purpose of the proper administration of this 565
chapter, and to prevent the evasion of the tax, it is presumed 566
that all sales made in this state are subject to the tax until the 567
contrary is established. 568

(D) The levy of this tax on retail sales of recreation and 569
sports club service shall not prevent a municipal corporation from 570
levying any tax on recreation and sports club dues or on any 571
income generated by recreation and sports club dues. 572

(E) The tax collected by the vendor from the consumer under 573
this chapter is not part of the price, but is a tax collection for 574
the benefit of the state, and of counties levying an additional 575
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 576
Code and of transit authorities levying an additional sales tax 577
pursuant to section 5739.023 of the Revised Code. Except for the 578
discount authorized under section 5739.12 of the Revised Code and 579
the effects of any rounding pursuant to section 5703.055 of the 580
Revised Code, no person other than the state or such a county or 581
transit authority shall derive any benefit from the collection or 582
payment of the tax levied by this section or section 5739.021, 583
5739.023, or 5739.026 of the Revised Code. 584

Sec. 5739.05. (A)(1) The tax commissioner shall enforce and 585
administer sections 5739.01 to 5739.31 of the Revised Code, which 586
are hereby declared to be sections which the commissioner is 587
required to administer within the meaning of sections 5703.17 to 588
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 589
commissioner may adopt and promulgate, in accordance with sections 590
119.01 to 119.13 of the Revised Code, such rules as the 591
commissioner deems necessary to administer sections 5739.01 to 592
5739.31 of the Revised Code. 593

(2) In accordance with section 5703.14 of the Revised Code, 594
the tax commissioner shall adopt rules that are necessary to 595
implement the tax exemption provided by division (B)(48) of 596
section 5739.02 of the Revised Code. Before each exemption period 597
required under that division, the commissioner shall make 598
available to vendors information bulletins explaining the 599
exemption. 600

(B) Upon application, the commissioner may authorize a vendor 601
to pay on a predetermined basis the tax levied by or pursuant to 602
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 603
Code upon sales of things produced or distributed or services 604
provided by such vendor, and the commissioner may waive the 605
collection of the tax from the consumer. The commissioner shall 606
not grant such authority unless the commissioner finds that the 607
granting of the authority would improve compliance and increase 608
the efficiency of the administration of the tax. The person to 609
whom such authority is granted shall post a notice, if required by 610
the commissioner, at the location where the product is offered for 611
sale that the tax is included in the selling price. The 612
~~commissioner~~ commissioner may adopt rules to administer this 613
division. 614

(C) The commissioner may authorize a vendor to pay, on the 615

basis of a prearranged agreement under this division, the tax 616
levied by section 5739.02 or pursuant to section 5739.021, 617
5739.023, or 5739.026 of the Revised Code, and waive the 618
requirement that the vendor maintain the complete and accurate 619
record of individual taxable sales and tax collected thereon 620
required by section 5739.11 of the Revised Code, upon application 621
of the vendor, if the commissioner finds that the conditions of 622
the vendor-applicant's business are such that the maintenance of 623
such records of individual taxable sales and tax collected thereon 624
would impose an unreasonable burden upon the vendor. If the 625
commissioner determines that such unreasonable burden has been 626
imposed, the vendor and the commissioner shall agree to the terms 627
and conditions of a test check to be conducted. If the parties are 628
unable to agree to the terms and conditions of the test check, the 629
application shall be denied. The test check conducted shall 630
determine the proportion that taxable retail sales bear to all of 631
the vendor's retail sales and the ratio which the tax required to 632
be collected under sections 5739.02, 5739.021, and 5739.023 of the 633
Revised Code bears to the receipts from the vendor's taxable 634
retail sales. 635

The vendor shall collect the tax on the vendor's taxable 636
sales and the vendor's liability for collecting or remitting shall 637
be based upon the proportions and ratios established by the test 638
check, and not upon any other basis of determination, until such 639
time as a subsequent test check is made at the request of either 640
the vendor or the commissioner where either party believes that 641
the nature of the vendor's business has so changed as to make the 642
prior or existing test check no longer representative. The 643
commissioner may give notice to the vendor at any time that the 644
authorization is revoked or the vendor may notify the commissioner 645
that the vendor no longer elects to report under the 646
authorization. Such notice shall be delivered to the other party 647
personally or by registered mail. The revocation or cancellation 648

is not effective prior to the date of receipt of such notice. 649

Section 2. That existing sections 5739.02 and 5739.05 of the 650
Revised Code are hereby repealed. 651