

As Introduced

**127th General Assembly
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H. B. No. 370

Representative Bacon

**Cosponsors: Representatives Hughes, Wagoner, Peterson, Brown, Flowers,
Williams, S., Fessler, Beatty, Zehringer, Oelslager, Boyd**

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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 three-day period in August each 2
year during which sales of clothing, footwear, 3
school supplies, and personal computers are exempt 4
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)(a) 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, except as otherwise provided 113
in division (B)(9)(b) of this section. If the number of days on 114
which such sales are made exceeds six in any calendar year, the 115
church or organization shall be considered to be engaged in 116
business and all subsequent sales by it shall be subject to the 117
tax. In counting the number of days, all sales by groups within a 118
church or within an organization shall be considered to be sales 119
of that church or organization. 120

(b) The limitation on the number of days on which tax-exempt 121
sales may be made by a church or organization under division 122
(B)(9)(a) of this section does not apply to sales made by student 123
clubs and other groups of students of a primary or secondary 124
school, or a parent-teacher association, booster group, or similar 125
organization that raises money to support or fund curricular or 126
extracurricular activities of a primary or secondary school. 127

(c) Divisions (B)(9)(a) and (b) of this section do not apply 128
to sales by a noncommercial educational radio or television 129
broadcasting station. 130

(10) Sales not within the taxing power of this state under 131
the Constitution of the United States; 132

(11) Except for transactions that are sales under division 133
(B)(3)(r) of section 5739.01 of the Revised Code, the 134
transportation of persons or property, unless the transportation 135
is by a private investigation and security service; 136

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

on propaganda or otherwise attempting to influence legislation; 144
sales to offices administering one or more homes for the aged or 145
one or more hospital facilities exempt under section 140.08 of the 146
Revised Code; and sales to organizations described in division (D) 147
of section 5709.12 of the Revised Code. 148

"Charitable purposes" means the relief of poverty; the 149
improvement of health through the alleviation of illness, disease, 150
or injury; the operation of an organization exclusively for the 151
provision of professional, laundry, printing, and purchasing 152
services to hospitals or charitable institutions; the operation of 153
a home for the aged, as defined in section 5701.13 of the Revised 154
Code; the operation of a radio or television broadcasting station 155
that is licensed by the federal communications commission as a 156
noncommercial educational radio or television station; the 157
operation of a nonprofit animal adoption service or a county 158
humane society; the promotion of education by an institution of 159
learning that maintains a faculty of qualified instructors, 160
teaches regular continuous courses of study, and confers a 161
recognized diploma upon completion of a specific curriculum; the 162
operation of a parent-teacher association, booster group, or 163
similar organization primarily engaged in the promotion and 164
support of the curricular or extracurricular activities of a 165
primary or secondary school; the operation of a community or area 166
center in which presentations in music, dramatics, the arts, and 167
related fields are made in order to foster public interest and 168
education therein; the production of performances in music, 169
dramatics, and the arts; or the promotion of education by an 170
organization engaged in carrying on research in, or the 171
dissemination of, scientific and technological knowledge and 172
information primarily for the public. 173

Nothing in this division shall be deemed to exempt sales to 174
any organization for use in the operation or carrying on of a 175

trade or business, or sales to a home for the aged for use in the 176
operation of independent living facilities as defined in division 177
(A) of section 5709.12 of the Revised Code. 178

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

property is located for incorporation into real property in that 209
state, would be exempt from a tax on sales levied by that state; 210

(14) Sales of ships or vessels or rail rolling stock used or 211
to be used principally in interstate or foreign commerce, and 212
repairs, alterations, fuel, and lubricants for such ships or 213
vessels or rail rolling stock; 214

(15) Sales to persons primarily engaged in any of the 215
activities mentioned in division (B)(42)(a) or (g) of this 216
section, to persons engaged in making retail sales, or to persons 217
who purchase for sale from a manufacturer tangible personal 218
property that was produced by the manufacturer in accordance with 219
specific designs provided by the purchaser, of packages, including 220
material, labels, and parts for packages, and of machinery, 221
equipment, and material for use primarily in packaging tangible 222
personal property produced for sale, including any machinery, 223
equipment, and supplies used to make labels or packages, to 224
prepare packages or products for labeling, or to label packages or 225
products, by or on the order of the person doing the packaging, or 226
sold at retail. "Packages" includes bags, baskets, cartons, 227
crates, boxes, cans, bottles, bindings, wrappings, and other 228
similar devices and containers, but does not include motor 229
vehicles or bulk tanks, trailers, or similar devices attached to 230
motor vehicles. "Packaging" means placing in a package. Division 231
(B)(15) of this section does not apply to persons engaged in 232
highway transportation for hire. 233

(16) Sales of food to persons using food stamp benefits to 234
purchase the food. As used in this division, "food" has the same 235
meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 236
2012, as amended, and federal regulations adopted pursuant to that 237
act. 238

(17) Sales to persons engaged in farming, agriculture, 239
horticulture, or floriculture, of tangible personal property for 240

use or consumption directly in the production by farming, 241
agriculture, horticulture, or floriculture of other tangible 242
personal property for use or consumption directly in the 243
production of tangible personal property for sale by farming, 244
agriculture, horticulture, or floriculture; or material and parts 245
for incorporation into any such tangible personal property for use 246
or consumption in production; and of tangible personal property 247
for such use or consumption in the conditioning or holding of 248
products produced by and for such use, consumption, or sale by 249
persons engaged in farming, agriculture, horticulture, or 250
floriculture, except where such property is incorporated into real 251
property; 252

(18) Sales of drugs for a human being that may be dispensed 253
only pursuant to a prescription; insulin as recognized in the 254
official United States pharmacopoeia; urine and blood testing 255
materials when used by diabetics or persons with hypoglycemia to 256
test for glucose or acetone; hypodermic syringes and needles when 257
used by diabetics for insulin injections; epoetin alfa when 258
purchased for use in the treatment of persons with medical 259
disease; hospital beds when purchased by hospitals, nursing homes, 260
or other medical facilities; and medical oxygen and medical 261
oxygen-dispensing equipment when purchased by hospitals, nursing 262
homes, or other medical facilities; 263

(19) Sales of prosthetic devices, durable medical equipment 264
for home use, or mobility enhancing equipment, when made pursuant 265
to a prescription and when such devices or equipment are for use 266
by a human being. 267

(20) Sales of emergency and fire protection vehicles and 268
equipment to nonprofit organizations for use solely in providing 269
fire protection and emergency services, including trauma care and 270
emergency medical services, for political subdivisions of the 271
state; 272

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

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

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

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

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

(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.	305 306 307 308
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	309 310
(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:	311 312 313 314
(a) To prepare food for human consumption for sale;	315
(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;	316 317 318 319
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	320 321
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	322 323
(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;	324 325 326 327
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	328 329 330
(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;	331 332 333
(32) The sale, lease, repair, and maintenance of, parts for,	334

or items attached to or incorporated in, motor vehicles that are 335
primarily used for transporting tangible personal property 336
belonging to others by a person engaged in highway transportation 337
for hire, except for packages and packaging used for the 338
transportation of tangible personal property; 339

(33) Sales to the state headquarters of any veterans' 340
organization in this state that is either incorporated and issued 341
a charter by the congress of the United States or is recognized by 342
the United States veterans administration, for use by the 343
headquarters; 344

(34) Sales to a telecommunications service vendor, mobile 345
telecommunications service vendor, or satellite broadcasting 346
service vendor of tangible personal property and services used 347
directly and primarily in transmitting, receiving, switching, or 348
recording any interactive, one- or two-way electromagnetic 349
communications, including voice, image, data, and information, 350
through the use of any medium, including, but not limited to, 351
poles, wires, cables, switching equipment, computers, and record 352
storage devices and media, and component parts for the tangible 353
personal property. The exemption provided in this division shall 354
be in lieu of all other exemptions under division (B)(42)(a) of 355
this section to which the vendor may otherwise be entitled, based 356
upon the use of the thing purchased in providing the 357
telecommunications, mobile telecommunications, or satellite 358
broadcasting service. 359

(35)(a) Sales where the purpose of the consumer is to use or 360
consume the things transferred in making retail sales and 361
consisting of newspaper inserts, catalogues, coupons, flyers, gift 362
certificates, or other advertising material that prices and 363
describes tangible personal property offered for retail sale. 364

(b) Sales to direct marketing vendors of preliminary 365
materials such as photographs, artwork, and typesetting that will 366

be used in printing advertising material; of printed matter that 367
offers free merchandise or chances to win sweepstake prizes and 368
that is mailed to potential customers with advertising material 369
described in division (B)(35)(a) of this section; and of equipment 370
such as telephones, computers, facsimile machines, and similar 371
tangible personal property primarily used to accept orders for 372
direct marketing retail sales. 373

(c) Sales of automatic food vending machines that preserve 374
food with a shelf life of forty-five days or less by refrigeration 375
and dispense it to the consumer. 376

For purposes of division (B)(35) of this section, "direct 377
marketing" means the method of selling where consumers order 378
tangible personal property by United States mail, delivery 379
service, or telecommunication and the vendor delivers or ships the 380
tangible personal property sold to the consumer from a warehouse, 381
catalogue distribution center, or similar fulfillment facility by 382
means of the United States mail, delivery service, or common 383
carrier. 384

(36) Sales to a person engaged in the business of 385
horticulture or producing livestock of materials to be 386
incorporated into a horticulture structure or livestock structure; 387

(37) Sales of personal computers, computer monitors, computer 388
keyboards, modems, and other peripheral computer equipment to an 389
individual who is licensed or certified to teach in an elementary 390
or a secondary school in this state for use by that individual in 391
preparation for teaching elementary or secondary school students; 392

(38) Sales to a professional racing team of any of the 393
following: 394

(a) Motor racing vehicles; 395

(b) Repair services for motor racing vehicles; 396

(c) Items of property that are attached to or incorporated in 397
motor racing vehicles, including engines, chassis, and all other 398
components of the vehicles, and all spare, replacement, and 399
rebuilt parts or components of the vehicles; except not including 400
tires, consumable fluids, paint, and accessories consisting of 401
instrumentation sensors and related items added to the vehicle to 402
collect and transmit data by means of telemetry and other forms of 403
communication. 404

(39) Sales of used manufactured homes and used mobile homes, 405
as defined in section 5739.0210 of the Revised Code, made on or 406
after January 1, 2000; 407

(40) Sales of tangible personal property and services to a 408
provider of electricity used or consumed directly and primarily in 409
generating, transmitting, or distributing electricity for use by 410
others, including property that is or is to be incorporated into 411
and will become a part of the consumer's production, transmission, 412
or distribution system and that retains its classification as 413
tangible personal property after incorporation; fuel or power used 414
in the production, transmission, or distribution of electricity; 415
and tangible personal property and services used in the repair and 416
maintenance of the production, transmission, or distribution 417
system, including only those motor vehicles as are specially 418
designed and equipped for such use. The exemption provided in this 419
division shall be in lieu of all other exemptions in division 420
(B)(42)(a) of this section to which a provider of electricity may 421
otherwise be entitled based on the use of the tangible personal 422
property or service purchased in generating, transmitting, or 423
distributing electricity. 424

(41) Sales to a person providing services under division 425
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 426
personal property and services used directly and primarily in 427
providing taxable services under that section. 428

(42) Sales where the purpose of the purchaser is to do any of 429
the following: 430

(a) To incorporate the thing transferred as a material or a 431
part into tangible personal property to be produced for sale by 432
manufacturing, assembling, processing, or refining; or to use or 433
consume the thing transferred directly in producing tangible 434
personal property for sale by mining, including, without 435
limitation, the extraction from the earth of all substances that 436
are classed geologically as minerals, production of crude oil and 437
natural gas, farming, agriculture, horticulture, or floriculture, 438
or directly in the rendition of a public utility service, except 439
that the sales tax levied by this section shall be collected upon 440
all meals, drinks, and food for human consumption sold when 441
transporting persons. Persons engaged in rendering farming, 442
agricultural, horticultural, or floricultural services, and 443
services in the exploration for, and production of, crude oil and 444
natural gas, for others are deemed engaged directly in farming, 445
agriculture, horticulture, and floriculture, or exploration for, 446
and production of, crude oil and natural gas. This paragraph does 447
not exempt from "retail sale" or "sales at retail" the sale of 448
tangible personal property that is to be incorporated into a 449
structure or improvement to real property. 450

(b) To hold the thing transferred as security for the 451
performance of an obligation of the vendor; 452

(c) To resell, hold, use, or consume the thing transferred as 453
evidence of a contract of insurance; 454

(d) To use or consume the thing directly in commercial 455
fishing; 456

(e) To incorporate the thing transferred as a material or a 457
part into, or to use or consume the thing transferred directly in 458
the production of, magazines distributed as controlled circulation 459

publications;	460
(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;	461 462 463 464 465
(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;	466 467 468
(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;	469 470 471 472 473 474
(i) To use the thing transferred as qualified research and development equipment;	475 476
(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.	477 478 479 480 481 482 483 484 485 486 487 488 489
(k) To use or consume the thing transferred to fulfill a	490

contractual obligation incurred by a warrantor pursuant to a 491
warranty provided as a part of the price of the tangible personal 492
property sold or by a vendor of a warranty, maintenance or service 493
contract, or similar agreement the provision of which is defined 494
as a sale under division (B)(7) of section 5739.01 of the Revised 495
Code; 496

(l) To use or consume the thing transferred in the production 497
of a newspaper for distribution to the public; 498

(m) To use tangible personal property to perform a service 499
listed in division (B)(3) of section 5739.01 of the Revised Code, 500
if the property is or is to be permanently transferred to the 501
consumer of the service as an integral part of the performance of 502
the service. 503

As used in division (B)(42) of this section, "thing" includes 504
all transactions included in divisions (B)(3)(a), (b), and (e) of 505
section 5739.01 of the Revised Code. 506

(43) Sales conducted through a coin operated device that 507
activates vacuum equipment or equipment that dispenses water, 508
whether or not in combination with soap or other cleaning agents 509
or wax, to the consumer for the consumer's use on the premises in 510
washing, cleaning, or waxing a motor vehicle, provided no other 511
personal property or personal service is provided as part of the 512
transaction. 513

(44) Sales of replacement and modification parts for engines, 514
airframes, instruments, and interiors in, and paint for, aircraft 515
used primarily in a fractional aircraft ownership program, and 516
sales of services for the repair, modification, and maintenance of 517
such aircraft, and machinery, equipment, and supplies primarily 518
used to provide those services. 519

(45) Sales of telecommunications service that is used 520
directly and primarily to perform the functions of a call center. 521

As used in this division, "call center" means any physical 522
location where telephone calls are placed or received in high 523
volume for the purpose of making sales, marketing, customer 524
service, technical support, or other specialized business 525
activity, and that employs at least fifty individuals that engage 526
in call center activities on a full-time basis, or sufficient 527
individuals to fill fifty full-time equivalent positions. 528

(46) Sales by a telecommunications service vendor of 900 529
service to a subscriber. This division does not apply to 530
information services, as defined in division (FF) of section 531
5739.01 of the Revised Code. 532

(47) Sales of value-added non-voice data service. This 533
division does not apply to any similar service that is not 534
otherwise a telecommunications service. 535

(48)(a) Sales of the following occurring during the three-day 536
period each year that includes the first Friday, Saturday, and 537
Sunday in August: 538

(i) An article of clothing or footwear intended to be worn on 539
or about the human body, the price of which does not exceed one 540
hundred twenty-five dollars; 541

(ii) An item of school supplies, the price of which does not 542
exceed thirty dollars; 543

(iii) A personal computer system, the price of which does not 544
exceed two thousand five hundred dollars. 545

(b) The lease or rental of clothing, footwear, school 546
supplies, or a personal computer system, or the sale of clothing, 547
footwear, school supplies, or a personal computer system for use 548
in a trade or business, does not qualify for exemption under 549
division (B)(48) of this section. 550

(c) As used in division (B)(48) of this section: 551

(i) "Clothing or footwear" does not include jewelry, watches, handbags, wallets, or umbrellas, or clothing or footwear that is designed primarily for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed.

(ii) "School supplies" means pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, calculators, and similar items. "School supplies" does not include furniture or school instructional material.

(iii) "Personal computer system" means all computer hardware and software sold together in the same retail transaction, including a central processing unit, storage drive, display monitor, keyboard, and random access memory. "Personal computer system" does not include minicomputers, mainframe computers, network servers, local area network hubs, routers and cabling, hardware word processors, personal digital assistants, graphical calculators, hand-held computers, game consoles, internet television devices, network operating systems, multiple-user licensed software and hardware, separate sales or use of internal or external components, or separate sales of add-on components.

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

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

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional

sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.

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

(2) The commissioner, in accordance with section 5703.14 of the Revised Code, shall adopt rules necessary to implement the three-day tax exemption provided by division (B)(48) of section 5739.02 of the Revised Code. Before each exemption period required under that section, the commissioner shall make available to vendors informational bulletins explaining the exemption.

(B) Upon application, the commissioner may authorize a vendor to pay on a predetermined basis the tax levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code upon sales of things produced or distributed or services provided by such vendor, and the commissioner may waive the collection of the tax from the consumer. The commissioner shall not grant such authority unless the commissioner finds that the

granting of the authority would improve compliance and increase 614
the efficiency of the administration of the tax. The person to 615
whom such authority is granted shall post a notice, if required by 616
the commissioner, at the location where the product is offered for 617
sale, that the tax is included in the selling price. The 618
~~commissioner~~ commissioner may adopt rules to administer this 619
division. 620

(C) The commissioner may authorize a vendor to pay, on the 621
basis of a prearranged agreement under this division, the tax 622
levied by section 5739.02 or pursuant to section 5739.021, 623
5739.023, or 5739.026 of the Revised Code, and waive the 624
requirement that the vendor maintain the complete and accurate 625
record of individual taxable sales and tax collected thereon 626
required by section 5739.11 of the Revised Code, upon application 627
of the vendor, if the commissioner finds that the conditions of 628
the vendor-applicant's business are such that the maintenance of 629
such records of individual taxable sales and tax collected thereon 630
would impose an unreasonable burden upon the vendor. If the 631
commissioner determines that such unreasonable burden has been 632
imposed, the vendor and the commissioner shall agree to the terms 633
and conditions of a test check to be conducted. If the parties are 634
unable to agree to the terms and conditions of the test check, the 635
application shall be denied. The test check conducted shall 636
determine the proportion that taxable retail sales bear to all of 637
the vendor's retail sales and the ratio which the tax required to 638
be collected under sections 5739.02, 5739.021, and 5739.023 of the 639
Revised Code bears to the receipts from the vendor's taxable 640
retail sales. 641

The vendor shall collect the tax on the vendor's taxable 642
sales and the vendor's liability for collecting or remitting shall 643
be based upon the proportions and ratios established by the test 644
check, and not upon any other basis of determination, until such 645

time as a subsequent test check is made at the request of either 646
the vendor or the commissioner where either party believes that 647
the nature of the vendor's business has so changed as to make the 648
prior or existing test check no longer representative. The 649
commissioner may give notice to the vendor at any time that the 650
authorization is revoked or the vendor may notify the commissioner 651
that the vendor no longer elects to report under the 652
authorization. Such notice shall be delivered to the other party 653
personally or by registered mail. The revocation or cancellation 654
is not effective prior to the date of receipt of such notice. 655

Section 2. That existing sections 5739.02 and 5739.05 of the 656
Revised Code are hereby repealed. 657

Section 3. The first three-day sales and use tax exemption 658
period under division (B)(48) of section 5739.02 of the Revised 659
Code, as amended by this act, shall begin August 1, 2008. 660