

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 599

Representative Blessing

**Cosponsors: Representatives Batchelder, Combs, Reinhard, Uecker,
Stebelton**

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A B I L L

To amend sections 5739.01, 5739.02, 5739.035, and 1
5739.17 of the Revised Code to exempt sales of 2
satellite broadcasting services from sales and use 3
taxation and to provide that the provisions of 4
this act in section 5739.035 of the Revised Code 5
terminate on January 1, 2010, when that section is 6
repealed on that date. 7

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

Section 1. That sections 5739.01, 5739.02, 5739.035, and 8
5739.17 of the Revised Code be amended to read as follows: 9

Sec. 5739.01. As used in this chapter: 10

(A) "Person" includes individuals, receivers, assignees, 11
trustees in bankruptcy, estates, firms, partnerships, 12
associations, joint-stock companies, joint ventures, clubs, 13
societies, corporations, the state and its political subdivisions, 14
and combinations of individuals of any form. 15

(B) "Sale" and "selling" include all of the following 16
transactions for a consideration in any manner, whether absolutely 17
or conditionally, whether for a price or rental, in money or by 18

exchange, and by any means whatsoever:	19
(1) All transactions by which title or possession, or both,	20
of tangible personal property, is or is to be transferred, or a	21
license to use or consume tangible personal property is or is to	22
be granted;	23
(2) All transactions by which lodging by a hotel is or is to	24
be furnished to transient guests;	25
(3) All transactions by which:	26
(a) An item of tangible personal property is or is to be	27
repaired, except property, the purchase of which would not be	28
subject to the tax imposed by section 5739.02 of the Revised Code;	29
(b) An item of tangible personal property is or is to be	30
installed, except property, the purchase of which would not be	31
subject to the tax imposed by section 5739.02 of the Revised Code	32
or property that is or is to be incorporated into and will become	33
a part of a production, transmission, transportation, or	34
distribution system for the delivery of a public utility service;	35
(c) The service of washing, cleaning, waxing, polishing, or	36
painting a motor vehicle is or is to be furnished;	37
(d) Until August 1, 2003, industrial laundry cleaning	38
services are or are to be provided and, on and after August 1,	39
2003, laundry and dry cleaning services are or are to be provided;	40
(e) Automatic data processing, computer services, or	41
electronic information services are or are to be provided for use	42
in business when the true object of the transaction is the receipt	43
by the consumer of automatic data processing, computer services,	44
or electronic information services rather than the receipt of	45
personal or professional services to which automatic data	46
processing, computer services, or electronic information services	47
are incidental or supplemental. Notwithstanding any other	48

provision of this chapter, such transactions that occur between 49
members of an affiliated group are not sales. An "affiliated 50
group" means two or more persons related in such a way that one 51
person owns or controls the business operation of another member 52
of the group. In the case of corporations with stock, one 53
corporation owns or controls another if it owns more than fifty 54
per cent of the other corporation's common stock with voting 55
rights. 56

(f) Telecommunications service, including prepaid calling 57
service, prepaid wireless calling service, or ancillary service, 58
is or is to be provided, but not including coin-operated telephone 59
service; 60

(g) Landscaping and lawn care service is or is to be 61
provided; 62

(h) Private investigation and security service is or is to be 63
provided; 64

(i) Information services or tangible personal property is 65
provided or ordered by means of a nine hundred telephone call; 66

(j) Building maintenance and janitorial service is or is to 67
be provided; 68

(k) Employment service is or is to be provided; 69

(l) Employment placement service is or is to be provided; 70

(m) Exterminating service is or is to be provided; 71

(n) Physical fitness facility service is or is to be 72
provided; 73

(o) Recreation and sports club service is or is to be 74
provided; 75

~~(p) On and after August 1, 2003, satellite broadcasting 76
service is or is to be provided; 77~~

~~(q)~~ On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.

~~(r)~~(q) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;

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

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

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

(4) All transactions by which printed, imprinted,

overprinted, lithographic, multilithic, blueprinted, photostatic, 109
or other productions or reproductions of written or graphic matter 110
are or are to be furnished or transferred; 111

(5) The production or fabrication of tangible personal 112
property for a consideration for consumers who furnish either 113
directly or indirectly the materials used in the production of 114
fabrication work; and include the furnishing, preparing, or 115
serving for a consideration of any tangible personal property 116
consumed on the premises of the person furnishing, preparing, or 117
serving such tangible personal property. Except as provided in 118
section 5739.03 of the Revised Code, a construction contract 119
pursuant to which tangible personal property is or is to be 120
incorporated into a structure or improvement on and becoming a 121
part of real property is not a sale of such tangible personal 122
property. The construction contractor is the consumer of such 123
tangible personal property, provided that the sale and 124
installation of carpeting, the sale and installation of 125
agricultural land tile, the sale and erection or installation of 126
portable grain bins, or the provision of landscaping and lawn care 127
service and the transfer of property as part of such service is 128
never a construction contract. 129

As used in division (B)(5) of this section: 130

(a) "Agricultural land tile" means fired clay or concrete 131
tile, or flexible or rigid perforated plastic pipe or tubing, 132
incorporated or to be incorporated into a subsurface drainage 133
system appurtenant to land used or to be used directly in 134
production by farming, agriculture, horticulture, or floriculture. 135
The term does not include such materials when they are or are to 136
be incorporated into a drainage system appurtenant to a building 137
or structure even if the building or structure is used or to be 138
used in such production. 139

(b) "Portable grain bin" means a structure that is used or to 140

be used by a person engaged in farming or agriculture to shelter 141
the person's grain and that is designed to be disassembled without 142
significant damage to its component parts. 143

(6) All transactions in which all of the shares of stock of a 144
closely held corporation are transferred, if the corporation is 145
not engaging in business and its entire assets consist of boats, 146
planes, motor vehicles, or other tangible personal property 147
operated primarily for the use and enjoyment of the shareholders; 148

(7) All transactions in which a warranty, maintenance or 149
service contract, or similar agreement by which the vendor of the 150
warranty, contract, or agreement agrees to repair or maintain the 151
tangible personal property of the consumer is or is to be 152
provided; 153

(8) The transfer of copyrighted motion picture films used 154
solely for advertising purposes, except that the transfer of such 155
films for exhibition purposes is not a sale. 156

(9) On and after August 1, 2003, all transactions by which 157
tangible personal property is or is to be stored, except such 158
property that the consumer of the storage holds for sale in the 159
regular course of business. 160

Except as provided in this section, "sale" and "selling" do 161
not include transfers of interest in leased property where the 162
original lessee and the terms of the original lease agreement 163
remain unchanged, or professional, insurance, or personal service 164
transactions that involve the transfer of tangible personal 165
property as an inconsequential element, for which no separate 166
charges are made. 167

(C) "Vendor" means the person providing the service or by 168
whom the transfer effected or license given by a sale is or is to 169
be made or given and, for sales described in division (B)(3)(i) of 170
this section, the telecommunications service vendor that provides 171

the nine hundred telephone service; if two or more persons are 172
engaged in business at the same place of business under a single 173
trade name in which all collections on account of sales by each 174
are made, such persons shall constitute a single vendor. 175

Physicians, dentists, hospitals, and veterinarians who are 176
engaged in selling tangible personal property as received from 177
others, such as eyeglasses, mouthwashes, dentifrices, or similar 178
articles, are vendors. Veterinarians who are engaged in 179
transferring to others for a consideration drugs, the dispensing 180
of which does not require an order of a licensed veterinarian or 181
physician under federal law, are vendors. 182

(D)(1) "Consumer" means the person for whom the service is 183
provided, to whom the transfer effected or license given by a sale 184
is or is to be made or given, to whom the service described in 185
division (B)(3)(f) or (i) of this section is charged, or to whom 186
the admission is granted. 187

(2) Physicians, dentists, hospitals, and blood banks operated 188
by nonprofit institutions and persons licensed to practice 189
veterinary medicine, surgery, and dentistry are consumers of all 190
tangible personal property and services purchased by them in 191
connection with the practice of medicine, dentistry, the rendition 192
of hospital or blood bank service, or the practice of veterinary 193
medicine, surgery, and dentistry. In addition to being consumers 194
of drugs administered by them or by their assistants according to 195
their direction, veterinarians also are consumers of drugs that 196
under federal law may be dispensed only by or upon the order of a 197
licensed veterinarian or physician, when transferred by them to 198
others for a consideration to provide treatment to animals as 199
directed by the veterinarian. 200

(3) A person who performs a facility management, or similar 201
service contract for a contractee is a consumer of all tangible 202
personal property and services purchased for use in connection 203

with the performance of such contract, regardless of whether title 204
to any such property vests in the contractee. The purchase of such 205
property and services is not subject to the exception for resale 206
under division (E)(1) of this section. 207

(4)(a) In the case of a person who purchases printed matter 208
for the purpose of distributing it or having it distributed to the 209
public or to a designated segment of the public, free of charge, 210
that person is the consumer of that printed matter, and the 211
purchase of that printed matter for that purpose is a sale. 212

(b) In the case of a person who produces, rather than 213
purchases, printed matter for the purpose of distributing it or 214
having it distributed to the public or to a designated segment of 215
the public, free of charge, that person is the consumer of all 216
~~tangible~~ tangible personal property and services purchased for use 217
or consumption in the production of that printed matter. That 218
person is not entitled to claim exemption under division 219
(B)(42)(f) of section 5739.02 of the Revised Code for any material 220
incorporated into the printed matter or any equipment, supplies, 221
or services primarily used to produce the printed matter. 222

(c) The distribution of printed matter to the public or to a 224
designated segment of the public, free of charge, is not a sale to 225
the members of the public to whom the printed matter is 226
distributed or to any persons who purchase space in the printed 227
matter for advertising or other purposes. 228

(5) A person who makes sales of any of the services listed in 229
division (B)(3) of this section is the consumer of any tangible 230
personal property used in performing the service. The purchase of 231
that property is not subject to the resale exception under 232
division (E)(1) of this section. 233

(6) A person who engages in highway transportation for hire 234

is the consumer of all packaging materials purchased by that 235
person and used in performing the service, except for packaging 236
materials sold by such person in a transaction separate from the 237
service. 238

(E) "Retail sale" and "sales at retail" include all sales, 239
except those in which the purpose of the consumer is to resell the 240
thing transferred or benefit of the service provided, by a person 241
engaging in business, in the form in which the same is, or is to 242
be, received by the person. 243

(F) "Business" includes any activity engaged in by any person 244
with the object of gain, benefit, or advantage, either direct or 245
indirect. "Business" does not include the activity of a person in 246
managing and investing the person's own funds. 247

(G) "Engaging in business" means commencing, conducting, or 248
continuing in business, and liquidating a business when the 249
liquidator thereof holds itself out to the public as conducting 250
such business. Making a casual sale is not engaging in business. 251

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 252
(3) of this section, means the total amount of consideration, 253
including cash, credit, property, and services, for which tangible 254
personal property or services are sold, leased, or rented, valued 255
in money, whether received in money or otherwise, without any 256
deduction for any of the following: 257

(i) The vendor's cost of the property sold; 258

(ii) The cost of materials used, labor or service costs, 259
interest, losses, all costs of transportation to the vendor, all 260
taxes imposed on the vendor, including the tax imposed under 261
Chapter 5751. of the Revised Code, and any other expense of the 262
vendor; 263

(iii) Charges by the vendor for any services necessary to 264
complete the sale; 265

(iv) On and after August 1, 2003, delivery charges. As used	266
in this division, "delivery charges" means charges by the vendor	267
for preparation and delivery to a location designated by the	268
consumer of tangible personal property or a service, including	269
transportation, shipping, postage, handling, crating, and packing.	270
(v) Installation charges;	271
(vi) Credit for any trade-in.	272
(b) "Price" includes consideration received by the vendor	273
from a third party, if the vendor actually receives the	274
consideration from a party other than the consumer, and the	275
consideration is directly related to a price reduction or discount	276
on the sale; the vendor has an obligation to pass the price	277
reduction or discount through to the consumer; the amount of the	278
consideration attributable to the sale is fixed and determinable	279
by the vendor at the time of the sale of the item to the consumer;	280
and one of the following criteria is met:	281
(i) The consumer presents a coupon, certificate, or other	282
document to the vendor to claim a price reduction or discount	283
where the coupon, certificate, or document is authorized,	284
distributed, or granted by a third party with the understanding	285
that the third party will reimburse any vendor to whom the coupon,	286
certificate, or document is presented;	287
(ii) The consumer identifies the consumer's self to the	288
seller as a member of a group or organization entitled to a price	289
reduction or discount. A preferred customer card that is available	290
to any patron does not constitute membership in such a group or	291
organization.	292
(iii) The price reduction or discount is identified as a	293
third party price reduction or discount on the invoice received by	294
the consumer, or on a coupon, certificate, or other document	295
presented by the consumer.	296

(c) "Price" does not include any of the following:	297
(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;	298 299 300
(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;	301 302 303 304
(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.	305 306 307 308 309 310
(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.	311 312 313 314
(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.	315 316 317 318 319 320 321
(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the	322 323 324 325 326 327

credit afforded the consumer by the dealer for the watercraft, 328
watercraft and trailer, or outboard motor received in trade. As 329
used in this division, "watercraft" includes an outdrive unit 330
attached to the watercraft. 331

(I) "Receipts" means the total amount of the prices of the 332
sales of vendors, provided that cash discounts allowed and taken 333
on sales at the time they are consummated are not included, minus 334
any amount deducted as a bad debt pursuant to section 5739.121 of 335
the Revised Code. "Receipts" does not include the sale price of 336
property returned or services rejected by consumers when the full 337
sale price and tax are refunded either in cash or by credit. 338

(J) "Place of business" means any location at which a person 339
engages in business. 340

(K) "Premises" includes any real property or portion thereof 341
upon which any person engages in selling tangible personal 342
property at retail or making retail sales and also includes any 343
real property or portion thereof designated for, or devoted to, 344
use in conjunction with the business engaged in by such person. 345

(L) "Casual sale" means a sale of an item of tangible 346
personal property that was obtained by the person making the sale, 347
through purchase or otherwise, for the person's own use and was 348
previously subject to any state's taxing jurisdiction on its sale 349
or use, and includes such items acquired for the seller's use that 350
are sold by an auctioneer employed directly by the person for such 351
purpose, provided the location of such sales is not the 352
auctioneer's permanent place of business. As used in this 353
division, "permanent place of business" includes any location 354
where such auctioneer has conducted more than two auctions during 355
the year. 356

(M) "Hotel" means every establishment kept, used, maintained, 357
advertised, or held out to the public to be a place where sleeping 358

accommodations are offered to guests, in which five or more rooms 359
are used for the accommodation of such guests, whether the rooms 360
are in one or several structures. 361

(N) "Transient guests" means persons occupying a room or 362
rooms for sleeping accommodations for less than thirty consecutive 363
days. 364

(O) "Making retail sales" means the effecting of transactions 365
wherein one party is obligated to pay the price and the other 366
party is obligated to provide a service or to transfer title to or 367
possession of the item sold. "Making retail sales" does not 368
include the preliminary acts of promoting or soliciting the retail 369
sales, other than the distribution of printed matter which 370
displays or describes and prices the item offered for sale, nor 371
does it include delivery of a predetermined quantity of tangible 372
personal property or transportation of property or personnel to or 373
from a place where a service is performed, regardless of whether 374
the vendor is a delivery vendor. 375

(P) "Used directly in the rendition of a public utility 376
service" means that property that is to be incorporated into and 377
will become a part of the consumer's production, transmission, 378
transportation, or distribution system and that retains its 379
classification as tangible personal property after such 380
incorporation; fuel or power used in the production, transmission, 381
transportation, or distribution system; and tangible personal 382
property used in the repair and maintenance of the production, 383
transmission, transportation, or distribution system, including 384
only such motor vehicles as are specially designed and equipped 385
for such use. Tangible personal property and services used 386
primarily in providing highway transportation for hire are not 387
used directly in the rendition of a public utility service. In 388
this definition, "public utility" includes a citizen of the United 389
States holding, and required to hold, a certificate of public 390

convenience and necessity issued under 49 U.S.C. 41102. 391

(Q) "Refining" means removing or separating a desirable 392
product from raw or contaminated materials by distillation or 393
physical, mechanical, or chemical processes. 394

(R) "Assembly" and "assembling" mean attaching or fitting 395
together parts to form a product, but do not include packaging a 396
product. 397

(S) "Manufacturing operation" means a process in which 398
materials are changed, converted, or transformed into a different 399
state or form from which they previously existed and includes 400
refining materials, assembling parts, and preparing raw materials 401
and parts by mixing, measuring, blending, or otherwise committing 402
such materials or parts to the manufacturing process. 403
"Manufacturing operation" does not include packaging. 404

(T) "Fiscal officer" means, with respect to a regional 405
transit authority, the secretary-treasurer thereof, and with 406
respect to a county that is a transit authority, the fiscal 407
officer of the county transit board if one is appointed pursuant 408
to section 306.03 of the Revised Code or the county auditor if the 409
board of county commissioners operates the county transit system. 410

(U) "Transit authority" means a regional transit authority 411
created pursuant to section 306.31 of the Revised Code or a county 412
in which a county transit system is created pursuant to section 413
306.01 of the Revised Code. For the purposes of this chapter, a 414
transit authority must extend to at least the entire area of a 415
single county. A transit authority that includes territory in more 416
than one county must include all the area of the most populous 417
county that is a part of such transit authority. County population 418
shall be measured by the most recent census taken by the United 419
States census bureau. 420

(V) "Legislative authority" means, with respect to a regional 421

transit authority, the board of trustees thereof, and with respect 422
to a county that is a transit authority, the board of county 423
commissioners. 424

(W) "Territory of the transit authority" means all of the 425
area included within the territorial boundaries of a transit 426
authority as they from time to time exist. Such territorial 427
boundaries must at all times include all the area of a single 428
county or all the area of the most populous county that is a part 429
of such transit authority. County population shall be measured by 430
the most recent census taken by the United States census bureau. 431

(X) "Providing a service" means providing or furnishing 432
anything described in division (B)(3) of this section for 433
consideration. 434

(Y)(1)(a) "Automatic data processing" means processing of 435
others' data, including keypunching or similar data entry services 436
together with verification thereof, or providing access to 437
computer equipment for the purpose of processing data. 438

(b) "Computer services" means providing services consisting 439
of specifying computer hardware configurations and evaluating 440
technical processing characteristics, computer programming, and 441
training of computer programmers and operators, provided in 442
conjunction with and to support the sale, lease, or operation of 443
taxable computer equipment or systems. 444

(c) "Electronic information services" means providing access 445
to computer equipment by means of telecommunications equipment for 446
the purpose of either of the following: 447

(i) Examining or acquiring data stored in or accessible to 448
the computer equipment; 449

(ii) Placing data into the computer equipment to be retrieved 450
by designated recipients with access to the computer equipment. 451

For transactions occurring on or after the effective date of 452
the amendment of this section by H.B. 157 of the 127th general 453
assembly, December 21, 2007, "electronic information services" 454
does not include electronic publishing as defined in division 455
(LLL) of this section. 456

(d) "Automatic data processing, computer services, or 457
electronic information services" shall not include personal or 458
professional services. 459

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 460
section, "personal and professional services" means all services 461
other than automatic data processing, computer services, or 462
electronic information services, including but not limited to: 463

(a) Accounting and legal services such as advice on tax 464
matters, asset management, budgetary matters, quality control, 465
information security, and auditing and any other situation where 466
the service provider receives data or information and studies, 467
alters, analyzes, interprets, or adjusts such material; 468

(b) Analyzing business policies and procedures; 469

(c) Identifying management information needs; 470

(d) Feasibility studies, including economic and technical 471
analysis of existing or potential computer hardware or software 472
needs and alternatives; 473

(e) Designing policies, procedures, and custom software for 474
collecting business information, and determining how data should 475
be summarized, sequenced, formatted, processed, controlled, and 476
reported so that it will be meaningful to management; 477

(f) Developing policies and procedures that document how 478
business events and transactions are to be authorized, executed, 479
and controlled; 480

(g) Testing of business procedures; 481

(h) Training personnel in business procedure applications;	482
(i) Providing credit information to users of such information	483
by a consumer reporting agency, as defined in the "Fair Credit	484
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or	485
as hereafter amended, including but not limited to gathering,	486
organizing, analyzing, recording, and furnishing such information	487
by any oral, written, graphic, or electronic medium;	488
(j) Providing debt collection services by any oral, written,	489
graphic, or electronic means.	490
The services listed in divisions (Y)(2)(a) to (j) of this	491
section are not automatic data processing or computer services.	492
(Z) "Highway transportation for hire" means the	493
transportation of personal property belonging to others for	494
consideration by any of the following:	495
(1) The holder of a permit or certificate issued by this	496
state or the United States authorizing the holder to engage in	497
transportation of personal property belonging to others for	498
consideration over or on highways, roadways, streets, or any	499
similar public thoroughfare;	500
(2) A person who engages in the transportation of personal	501
property belonging to others for consideration over or on	502
highways, roadways, streets, or any similar public thoroughfare	503
but who could not have engaged in such transportation on December	504
11, 1985, unless the person was the holder of a permit or	505
certificate of the types described in division (Z)(1) of this	506
section;	507
(3) A person who leases a motor vehicle to and operates it	508
for a person described by division (Z)(1) or (2) of this section.	509
(AA)(1) "Telecommunications service" means the electronic	510
transmission, conveyance, or routing of voice, data, audio, video,	511

or any other information or signals to a point, or between or 512
among points. "Telecommunications service" includes such 513
transmission, conveyance, or routing in which computer processing 514
applications are used to act on the form, code, or protocol of the 515
content for purposes of transmission, conveyance, or routing 516
without regard to whether the service is referred to as voice-over 517
internet protocol service or is classified by the federal 518
communications commission as enhanced or value-added. 519
"Telecommunications service" does not include any of the 520
following: 521

(a) Data processing and information services that allow data 522
to be generated, acquired, stored, processed, or retrieved and 523
delivered by an electronic transmission to a consumer where the 524
consumer's primary purpose for the underlying transaction is the 525
processed data or information; 526

(b) Installation or maintenance of wiring or equipment on a 527
customer's premises; 528

(c) Tangible personal property; 529

(d) Advertising, including directory advertising; 530

(e) Billing and collection services provided to third 531
parties; 532

(f) Internet access service; 533

(g) Radio and television audio and video programming 534
services, regardless of the medium, including the furnishing of 535
transmission, conveyance, and routing of such services by the 536
programming service provider. Radio and television audio and video 537
programming services include, but are not limited to, cable 538
service, as defined in 47 U.S.C. 522(6), and audio and video 539
programming services delivered by commercial mobile radio service 540
providers, as defined in 47 C.F.R. 20.3; 541

(h) Ancillary service;	542
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	543 544
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:	545 546 547 548 549
(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.	550 551 552 553 554
(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.	555 556 557
(c) "Directory assistance" means an ancillary service of providing telephone number or address information.	558 559
(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service.	560 561 562 563 564
(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.	565 566 567 568 569
(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's	570 571

customers to call in to the subscriber's prerecorded announcement 572
or live service, and which is typically marketed under the name 573
"900" service and any subsequent numbers designated by the federal 574
communications commission. "900 service" does not include the 575
charge for collection services provided by the seller of the 576
telecommunications service to the subscriber, or services or 577
products sold by the subscriber to the subscriber's customer. 578

(4) "Prepaid calling service" means the right to access 579
exclusively telecommunications services, which must be paid for in 580
advance and which enables the origination of calls using an access 581
number or authorization code, whether manually or electronically 582
dialed, and that is sold in predetermined units of dollars of 583
which the number declines with use in a known amount. 584

(5) "Prepaid wireless calling service" means a 585
telecommunications service that provides the right to utilize 586
mobile telecommunications service as well as other 587
non-telecommunications services, including the download of digital 588
products delivered electronically, and content and ancillary 589
services, that must be paid for in advance and that is sold in 590
predetermined units of dollars of which the number declines with 591
use in a known amount. 592

(6) "Value-added non-voice data service" means a 593
telecommunications service in which computer processing 594
applications are used to act on the form, content, code, or 595
protocol of the information or data primarily for a purpose other 596
than transmission, conveyance, or routing. 597

(7) "Coin-operated telephone service" means a 598
telecommunications service paid for by inserting money into a 599
telephone accepting direct deposits of money to operate. 600

(8) "Customer" has the same meaning as in section 5739.034 of 601
the Revised Code. 602

(BB) "Laundry and dry cleaning services" means removing soil 603
or dirt from towels, linens, articles of clothing, or other fabric 604
items that belong to others and supplying towels, linens, articles 605
of clothing, or other fabric items. "Laundry and dry cleaning 606
services" does not include the provision of self-service 607
facilities for use by consumers to remove soil or dirt from 608
towels, linens, articles of clothing, or other fabric items. 609

(CC) "Magazines distributed as controlled circulation 610
publications" means magazines containing at least twenty-four 611
pages, at least twenty-five per cent editorial content, issued at 612
regular intervals four or more times a year, and circulated 613
without charge to the recipient, provided that such magazines are 614
not owned or controlled by individuals or business concerns which 615
conduct such publications as an auxiliary to, and essentially for 616
the advancement of the main business or calling of, those who own 617
or control them. 618

(DD) "Landscaping and lawn care service" means the services 619
of planting, seeding, sodding, removing, cutting, trimming, 620
pruning, mulching, aerating, applying chemicals, watering, 621
fertilizing, and providing similar services to establish, promote, 622
or control the growth of trees, shrubs, flowers, grass, ground 623
cover, and other flora, or otherwise maintaining a lawn or 624
landscape grown or maintained by the owner for ornamentation or 625
other nonagricultural purpose. However, "landscaping and lawn care 626
service" does not include the providing of such services by a 627
person who has less than five thousand dollars in sales of such 628
services during the calendar year. 629

(EE) "Private investigation and security service" means the 630
performance of any activity for which the provider of such service 631
is required to be licensed pursuant to Chapter 4749. of the 632
Revised Code, or would be required to be so licensed in performing 633
such services in this state, and also includes the services of 634

conducting polygraph examinations and of monitoring or overseeing 635
the activities on or in, or the condition of, the consumer's home, 636
business, or other facility by means of electronic or similar 637
monitoring devices. "Private investigation and security service" 638
does not include special duty services provided by off-duty police 639
officers, deputy sheriffs, and other peace officers regularly 640
employed by the state or a political subdivision. 641

(FF) "Information services" means providing conversation, 642
giving consultation or advice, playing or making a voice or other 643
recording, making or keeping a record of the number of callers, 644
and any other service provided to a consumer by means of a nine 645
hundred telephone call, except when the nine hundred telephone 646
call is the means by which the consumer makes a contribution to a 647
recognized charity. 648

(GG) "Research and development" means designing, creating, or 649
formulating new or enhanced products, equipment, or manufacturing 650
processes, and also means conducting scientific or technological 651
inquiry and experimentation in the physical sciences with the goal 652
of increasing scientific knowledge which may reveal the bases for 653
new or enhanced products, equipment, or manufacturing processes. 654

(HH) "Qualified research and development equipment" means 655
capitalized tangible personal property, and leased personal 656
property that would be capitalized if purchased, used by a person 657
primarily to perform research and development. Tangible personal 658
property primarily used in testing, as defined in division (A)(4) 659
of section 5739.011 of the Revised Code, or used for recording or 660
storing test results, is not qualified research and development 661
equipment unless such property is primarily used by the consumer 662
in testing the product, equipment, or manufacturing process being 663
created, designed, or formulated by the consumer in the research 664
and development activity or in recording or storing such test 665
results. 666

(II) "Building maintenance and janitorial service" means 667
cleaning the interior or exterior of a building and any tangible 668
personal property located therein or thereon, including any 669
services incidental to such cleaning for which no separate charge 670
is made. However, "building maintenance and janitorial service" 671
does not include the providing of such service by a person who has 672
less than five thousand dollars in sales of such service during 673
the calendar year. 674

(JJ) "Employment service" means providing or supplying 675
personnel, on a temporary or long-term basis, to perform work or 676
labor under the supervision or control of another, when the 677
personnel so provided or supplied receive their wages, salary, or 678
other compensation from the provider or supplier of the employment 679
service or from a third party that provided or supplied the 680
personnel to the provider or supplier. "Employment service" does 681
not include: 682

(1) Acting as a contractor or subcontractor, where the 683
personnel performing the work are not under the direct control of 684
the purchaser. 685

(2) Medical and health care services. 686

(3) Supplying personnel to a purchaser pursuant to a contract 687
of at least one year between the service provider and the 688
purchaser that specifies that each employee covered under the 689
contract is assigned to the purchaser on a permanent basis. 690

(4) Transactions between members of an affiliated group, as 691
defined in division (B)(3)(e) of this section. 692

(5) Transactions where the personnel so provided or supplied 693
by a provider or supplier to a purchaser of an employment service 694
are then provided or supplied by that purchaser to a third party 695
as an employment service, except "employment service" does include 696
the transaction between that purchaser and the third party. 697

(KK) "Employment placement service" means locating or finding 698
employment for a person or finding or locating an employee to fill 699
an available position. 700

(LL) "Exterminating service" means eradicating or attempting 701
to eradicate vermin infestations from a building or structure, or 702
the area surrounding a building or structure, and includes 703
activities to inspect, detect, or prevent vermin infestation of a 704
building or structure. 705

(MM) "Physical fitness facility service" means all 706
transactions by which a membership is granted, maintained, or 707
renewed, including initiation fees, membership dues, renewal fees, 708
monthly minimum fees, and other similar fees and dues, by a 709
physical fitness facility such as an athletic club, health spa, or 710
gymnasium, which entitles the member to use the facility for 711
physical exercise. 712

(NN) "Recreation and sports club service" means all 713
transactions by which a membership is granted, maintained, or 714
renewed, including initiation fees, membership dues, renewal fees, 715
monthly minimum fees, and other similar fees and dues, by a 716
recreation and sports club, which entitles the member to use the 717
facilities of the organization. "Recreation and sports club" means 718
an organization that has ownership of, or controls or leases on a 719
continuing, long-term basis, the facilities used by its members 720
and includes an aviation club, gun or shooting club, yacht club, 721
card club, swimming club, tennis club, golf club, country club, 722
riding club, amateur sports club, or similar organization. 723

(OO) "Livestock" means farm animals commonly raised for food 724
or food production, and includes but is not limited to cattle, 725
sheep, goats, swine, and poultry. "Livestock" does not include 726
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 727
animals for use in laboratories or for exhibition, or other 728
animals not commonly raised for food or food production. 729

(PP) "Livestock structure" means a building or structure used 730
exclusively for the housing, raising, feeding, or sheltering of 731
livestock, and includes feed storage or handling structures and 732
structures for livestock waste handling. 733

(QQ) "Horticulture" means the growing, cultivation, and 734
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 735
and nursery stock. As used in this division, "nursery stock" has 736
the same meaning as in section 927.51 of the Revised Code. 737

(RR) "Horticulture structure" means a building or structure 738
used exclusively for the commercial growing, raising, or 739
overwintering of horticultural products, and includes the area 740
used for stocking, storing, and packing horticultural products 741
when done in conjunction with the production of those products. 742

(SS) "Newspaper" means an unbound publication bearing a title 743
or name that is regularly published, at least as frequently as 744
biweekly, and distributed from a fixed place of business to the 745
public in a specific geographic area, and that contains a 746
substantial amount of news matter of international, national, or 747
local events of interest to the general public. 748

(TT) "Professional racing team" means a person that employs 749
at least twenty full-time employees for the purpose of conducting 750
a motor vehicle racing business for profit. The person must 751
conduct the business with the purpose of racing one or more motor 752
racing vehicles in at least ten competitive professional racing 753
events each year that comprise all or part of a motor racing 754
series sanctioned by one or more motor racing sanctioning 755
organizations. A "motor racing vehicle" means a vehicle for which 756
the chassis, engine, and parts are designed exclusively for motor 757
racing, and does not include a stock or production model vehicle 758
that may be modified for use in racing. For the purposes of this 759
division: 760

(1) A "competitive professional racing event" is a motor 761
vehicle racing event sanctioned by one or more motor racing 762
sanctioning organizations, at which aggregate cash prizes in 763
excess of eight hundred thousand dollars are awarded to the 764
competitors. 765

(2) "Full-time employee" means an individual who is employed 766
for consideration for thirty-five or more hours a week, or who 767
renders any other standard of service generally accepted by custom 768
or specified by contract as full-time employment. 769

(UU)(1) "Lease" or "rental" means any transfer of the 770
possession or control of tangible personal property for a fixed or 771
indefinite term, for consideration. "Lease" or "rental" includes 772
future options to purchase or extend, and agreements described in 773
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 774
the amount of consideration may be increased or decreased by 775
reference to the amount realized upon the sale or disposition of 776
the property. "Lease" or "rental" does not include: 777

(a) A transfer of possession or control of tangible personal 778
property under a security agreement or a deferred payment plan 779
that requires the transfer of title upon completion of the 780
required payments; 781

(b) A transfer of possession or control of tangible personal 782
property under an agreement that requires the transfer of title 783
upon completion of required payments and payment of an option 784
price that does not exceed the greater of one hundred dollars or 785
one per cent of the total required payments; 786

(c) Providing tangible personal property along with an 787
operator for a fixed or indefinite period of time, if the operator 788
is necessary for the property to perform as designed. For purposes 789
of this division, the operator must do more than maintain, 790
inspect, or set-up the tangible personal property. 791

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

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

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

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

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

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible

personal property" includes motor vehicles, electricity, water, 823
gas, steam, and prewritten computer software. 824

(ZZ) "Direct mail" means printed material delivered or 825
distributed by United States mail or other delivery service to a 826
mass audience or to addressees on a mailing list provided by the 827
consumer or at the direction of the consumer when the cost of the 828
items are not billed directly to the recipients. "Direct mail" 829
includes tangible personal property supplied directly or 830
indirectly by the consumer to the direct mail vendor for inclusion 831
in the package containing the printed material. "Direct mail" does 832
not include multiple items of printed material delivered to a 833
single address. 834

(AAA) "Computer" means an electronic device that accepts 835
information in digital or similar form and manipulates it for a 836
result based on a sequence of instructions. 837

(BBB) "Computer software" means a set of coded instructions 838
designed to cause a computer or automatic data processing 839
equipment to perform a task. 840

(CCC) "Delivered electronically" means delivery of computer 841
software from the seller to the purchaser by means other than 842
tangible storage media. 843

(DDD) "Prewritten computer software" means computer software, 844
including prewritten upgrades, that is not designed and developed 845
by the author or other creator to the specifications of a specific 846
purchaser. The combining of two or more prewritten computer 847
software programs or prewritten portions thereof does not cause 848
the combination to be other than prewritten computer software. 849
"Prewritten computer software" includes software designed and 850
developed by the author or other creator to the specifications of 851
a specific purchaser when it is sold to a person other than the 852
purchaser. If a person modifies or enhances computer software of 853

which the person is not the author or creator, the person shall be 854
deemed to be the author or creator only of such person's 855
modifications or enhancements. Prewritten computer software or a 856
prewritten portion thereof that is modified or enhanced to any 857
degree, where such modification or enhancement is designed and 858
developed to the specifications of a specific purchaser, remains 859
prewritten computer software; provided, however, that where there 860
is a reasonable, separately stated charge or an invoice or other 861
statement of the price given to the purchaser for the modification 862
or enhancement, the modification or enhancement shall not 863
constitute prewritten computer software. 864

(EEE)(1) "Food" means substances, whether in liquid, 865
concentrated, solid, frozen, dried, or dehydrated form, that are 866
sold for ingestion or chewing by humans and are consumed for their 867
taste or nutritional value. "Food" does not include alcoholic 868
beverages, dietary supplements, soft drinks, or tobacco. 869

(2) As used in division (EEE)(1) of this section: 870

(a) "Alcoholic beverages" means beverages that are suitable 871
for human consumption and contain one-half of one per cent or more 872
of alcohol by volume. 873

(b) "Dietary supplements" means any product, other than 874
tobacco, that is intended to supplement the diet and that is 875
intended for ingestion in tablet, capsule, powder, softgel, 876
gelcap, or liquid form, or, if not intended for ingestion in such 877
a form, is not represented as conventional food for use as a sole 878
item of a meal or of the diet; that is required to be labeled as a 879
dietary supplement, identifiable by the "supplement facts" box 880
found on the label, as required by 21 C.F.R. 101.36; and that 881
contains one or more of the following dietary ingredients: 882

(i) A vitamin; 883

(ii) A mineral; 884

(iii) An herb or other botanical;	885
(iv) An amino acid;	886
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	887 888
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(2)(b)(i) to (v) of this section.	889 890 891
(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	892 893 894 895 896
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	897 898
(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	899 900 901 902 903 904 905 906 907
(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	908 909 910 911
(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve	912 913 914

a medical purpose, generally is not useful to a person in the 915
absence of illness or injury, and is not worn in or on the body. 916
"Durable medical equipment" does not include mobility enhancing 917
equipment. 918

(III) "Mobility enhancing equipment" means equipment, 919
including repair and replacement parts for such equipment, that is 920
primarily and customarily used to provide or increase the ability 921
to move from one place to another and is appropriate for use 922
either in a home or a motor vehicle, that is not generally used by 923
persons with normal mobility, and that does not include any motor 924
vehicle or equipment on a motor vehicle normally provided by a 925
motor vehicle manufacturer. "Mobility enhancing equipment" does 926
not include durable medical equipment. 927

(JJJ) "Prosthetic device" means a replacement, corrective, or 928
supportive device, including repair and replacement parts for the 929
device, worn on or in the human body to artificially replace a 930
missing portion of the body, prevent or correct physical deformity 931
or malfunction, or support a weak or deformed portion of the body. 932
As used in this division, "prosthetic device" does not include 933
corrective eyeglasses, contact lenses, or dental prosthesis. 934

(KKK)(1) "Fractional aircraft ownership program" means a 935
program in which persons within an affiliated group sell and 936
manage fractional ownership program aircraft, provided that at 937
least one hundred airworthy aircraft are operated in the program 938
and the program meets all of the following criteria: 939

(a) Management services are provided by at least one program 940
manager within an affiliated group on behalf of the fractional 941
owners. 942

(b) Each program aircraft is owned or possessed by at least 943
one fractional owner. 944

(c) Each fractional owner owns or possesses at least a 945

one-sixteenth interest in at least one fixed-wing program 946
aircraft. 947

(d) A dry-lease aircraft interchange arrangement is in effect 948
among all of the fractional owners. 949

(e) Multi-year program agreements are in effect regarding the 950
fractional ownership, management services, and dry-lease aircraft 951
interchange arrangement aspects of the program. 952

(2) As used in division (KKK)(1) of this section: 953

(a) "Affiliated group" has the same meaning as in division 954
(B)(3)(e) of this section. 955

(b) "Fractional owner" means a person that owns or possesses 956
at least a one-sixteenth interest in a program aircraft and has 957
entered into the agreements described in division (KKK)(1)(e) of 958
this section. 959

(c) "Fractional ownership program aircraft" or "program 960
aircraft" means a turbojet aircraft that is owned or possessed by 961
a fractional owner and that has been included in a dry-lease 962
aircraft interchange arrangement and agreement under divisions 963
(KKK)(1)(d) and (e) of this section, or an aircraft a program 964
manager owns or possesses primarily for use in a fractional 965
aircraft ownership program. 966

(d) "Management services" means administrative and aviation 967
support services furnished under a fractional aircraft ownership 968
program in accordance with a management services agreement under 969
division (KKK)(1)(e) of this section, and offered by the program 970
manager to the fractional owners, including, at a minimum, the 971
establishment and implementation of safety guidelines; the 972
coordination of the scheduling of the program aircraft and crews; 973
program aircraft maintenance; program aircraft insurance; crew 974
training for crews employed, furnished, or contracted by the 975
program manager or the fractional owner; the satisfaction of 976

record-keeping requirements; and the development and use of an 977
operations manual and a maintenance manual for the fractional 978
aircraft ownership program. 979

(e) "Program manager" means the person that offers management 980
services to fractional owners pursuant to a management services 981
agreement under division (KKK)(1)(e) of this section. 982

(LLL) "Electronic publishing" means providing access to one 983
or more of the following primarily for business customers, 984
including the federal government or a state government or a 985
political subdivision thereof, to conduct research: news; 986
business, financial, legal, consumer, or credit materials; 987
editorials, columns, reader commentary, or features; photos or 988
images; archival or research material; legal notices, identity 989
verification, or public records; scientific, educational, 990
instructional, technical, professional, trade, or other literary 991
materials; or other similar information which has been gathered 992
and made available by the provider to the consumer in an 993
electronic format. Providing electronic publishing includes the 994
functions necessary for the acquisition, formatting, editing, 995
storage, and dissemination of data or information that is the 996
subject of a sale. 997

Sec. 5739.02. For the purpose of providing revenue with which 998
to meet the needs of the state, for the use of the general revenue 999
fund of the state, for the purpose of securing a thorough and 1000
efficient system of common schools throughout the state, for the 1001
purpose of affording revenues, in addition to those from general 1002
property taxes, permitted under constitutional limitations, and 1003
from other sources, for the support of local governmental 1004
functions, and for the purpose of reimbursing the state for the 1005
expense of administering this chapter, an excise tax is hereby 1006
levied on each retail sale made in this state. 1007

(A)(1) The tax shall be collected as provided in section 1008
5739.025 of the Revised Code, provided that on and after July 1, 1009
2003, and on or before June 30, 2005, the rate of tax shall be six 1010
per cent. On and after July 1, 2005, the rate of the tax shall be 1011
five and one-half per cent. The tax applies and is collectible 1012
when the sale is made, regardless of the time when the price is 1013
paid or delivered. 1014

(2) In the case of the lease or rental, with a fixed term of 1015
more than thirty days or an indefinite term with a minimum period 1016
of more than thirty days, of any motor vehicles designed by the 1017
manufacturer to carry a load of not more than one ton, watercraft, 1018
outboard motor, or aircraft, or of any tangible personal property, 1019
other than motor vehicles designed by the manufacturer to carry a 1020
load of more than one ton, to be used by the lessee or renter 1021
primarily for business purposes, the tax shall be collected by the 1022
vendor at the time the lease or rental is consummated and shall be 1023
calculated by the vendor on the basis of the total amount to be 1024
paid by the lessee or renter under the lease agreement. If the 1025
total amount of the consideration for the lease or rental includes 1026
amounts that are not calculated at the time the lease or rental is 1027
executed, the tax shall be calculated and collected by the vendor 1028
at the time such amounts are billed to the lessee or renter. In 1029
the case of an open-end lease or rental, the tax shall be 1030
calculated by the vendor on the basis of the total amount to be 1031
paid during the initial fixed term of the lease or rental, and for 1032
each subsequent renewal period as it comes due. As used in this 1033
division, "motor vehicle" has the same meaning as in section 1034
4501.01 of the Revised Code, and "watercraft" includes an outdrive 1035
unit attached to the watercraft. 1036

A lease with a renewal clause and a termination penalty or 1037
similar provision that applies if the renewal clause is not 1038
exercised is presumed to be a sham transaction. In such a case, 1039

the tax shall be calculated and paid on the basis of the entire 1040
length of the lease period, including any renewal periods, until 1041
the termination penalty or similar provision no longer applies. 1042
The taxpayer shall bear the burden, by a preponderance of the 1043
evidence, that the transaction or series of transactions is not a 1044
sham transaction. 1045

(3) Except as provided in division (A)(2) of this section, in 1046
the case of a sale, the price of which consists in whole or in 1047
part of the lease or rental of tangible personal property, the tax 1048
shall be measured by the installments of that lease or rental. 1049

(4) In the case of a sale of a physical fitness facility 1050
service or recreation and sports club service, the price of which 1051
consists in whole or in part of a membership for the receipt of 1052
the benefit of the service, the tax applicable to the sale shall 1053
be measured by the installments thereof. 1054

(B) The tax does not apply to the following: 1055

(1) Sales to the state or any of its political subdivisions, 1056
or to any other state or its political subdivisions if the laws of 1057
that state exempt from taxation sales made to this state and its 1058
political subdivisions; 1059

(2) Sales of food for human consumption off the premises 1060
where sold; 1061

(3) Sales of food sold to students only in a cafeteria, 1062
dormitory, fraternity, or sorority maintained in a private, 1063
public, or parochial school, college, or university; 1064

(4) Sales of newspapers and of magazine subscriptions and 1065
sales or transfers of magazines distributed as controlled 1066
circulation publications; 1067

(5) The furnishing, preparing, or serving of meals without 1068
charge by an employer to an employee provided the employer records 1069

the meals as part compensation for services performed or work 1070
done; 1071

(6) Sales of motor fuel upon receipt, use, distribution, or 1072
sale of which in this state a tax is imposed by the law of this 1073
state, but this exemption shall not apply to the sale of motor 1074
fuel on which a refund of the tax is allowable under division (A) 1075
of section 5735.14 of the Revised Code; and the tax commissioner 1076
may deduct the amount of tax levied by this section applicable to 1077
the price of motor fuel when granting a refund of motor fuel tax 1078
pursuant to division (A) of section 5735.14 of the Revised Code 1079
and shall cause the amount deducted to be paid into the general 1080
revenue fund of this state; 1081

(7) Sales of natural gas by a natural gas company, of water 1082
by a water-works company, or of steam by a heating company, if in 1083
each case the thing sold is delivered to consumers through pipes 1084
or conduits, and all sales of communications services by a 1085
telegraph company, all terms as defined in section 5727.01 of the 1086
Revised Code, and sales of electricity delivered through wires; 1087

(8) Casual sales by a person, or auctioneer employed directly 1088
by the person to conduct such sales, except as to such sales of 1089
motor vehicles, watercraft or outboard motors required to be 1090
titled under section 1548.06 of the Revised Code, watercraft 1091
documented with the United States coast guard, snowmobiles, and 1092
all-purpose vehicles as defined in section 4519.01 of the Revised 1093
Code; 1094

(9)(a) Sales of services or tangible personal property, other 1095
than motor vehicles, mobile homes, and manufactured homes, by 1096
churches, organizations exempt from taxation under section 1097
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 1098
organizations operated exclusively for charitable purposes as 1099
defined in division (B)(12) of this section, provided that the 1100
number of days on which such tangible personal property or 1101

services, other than items never subject to the tax, are sold does 1102
not exceed six in any calendar year, except as otherwise provided 1103
in division (B)(9)(b) of this section. If the number of days on 1104
which such sales are made exceeds six in any calendar year, the 1105
church or organization shall be considered to be engaged in 1106
business and all subsequent sales by it shall be subject to the 1107
tax. In counting the number of days, all sales by groups within a 1108
church or within an organization shall be considered to be sales 1109
of that church or organization. 1110

(b) The limitation on the number of days on which tax-exempt 1111
sales may be made by a church or organization under division 1112
(B)(9)(a) of this section does not apply to sales made by student 1113
clubs and other groups of students of a primary or secondary 1114
school, or a parent-teacher association, booster group, or similar 1115
organization that raises money to support or fund curricular or 1116
extracurricular activities of a primary or secondary school. 1117

(c) Divisions (B)(9)(a) and (b) of this section do not apply 1118
to sales by a noncommercial educational radio or television 1119
broadcasting station. 1120

(10) Sales not within the taxing power of this state under 1121
the Constitution of the United States; 1122

(11) Except for transactions that are sales under division 1123
(B)(3)~~(r)~~(g) of section 5739.01 of the Revised Code, the 1124
transportation of persons or property, unless the transportation 1125
is by a private investigation and security service; 1126

(12) Sales of tangible personal property or services to 1127
churches, to organizations exempt from taxation under section 1128
501(c)(3) of the Internal Revenue Code of 1986, and to any other 1129
nonprofit organizations operated exclusively for charitable 1130
purposes in this state, no part of the net income of which inures 1131
to the benefit of any private shareholder or individual, and no 1132

substantial part of the activities of which consists of carrying 1133
on propaganda or otherwise attempting to influence legislation; 1134
sales to offices administering one or more homes for the aged or 1135
one or more hospital facilities exempt under section 140.08 of the 1136
Revised Code; and sales to organizations described in division (D) 1137
of section 5709.12 of the Revised Code. 1138

"Charitable purposes" means the relief of poverty; the 1139
improvement of health through the alleviation of illness, disease, 1140
or injury; the operation of an organization exclusively for the 1141
provision of professional, laundry, printing, and purchasing 1142
services to hospitals or charitable institutions; the operation of 1143
a home for the aged, as defined in section 5701.13 of the Revised 1144
Code; the operation of a radio or television broadcasting station 1145
that is licensed by the federal communications commission as a 1146
noncommercial educational radio or television station; the 1147
operation of a nonprofit animal adoption service or a county 1148
humane society; the promotion of education by an institution of 1149
learning that maintains a faculty of qualified instructors, 1150
teaches regular continuous courses of study, and confers a 1151
recognized diploma upon completion of a specific curriculum; the 1152
operation of a parent-teacher association, booster group, or 1153
similar organization primarily engaged in the promotion and 1154
support of the curricular or extracurricular activities of a 1155
primary or secondary school; the operation of a community or area 1156
center in which presentations in music, dramatics, the arts, and 1157
related fields are made in order to foster public interest and 1158
education therein; the production of performances in music, 1159
dramatics, and the arts; or the promotion of education by an 1160
organization engaged in carrying on research in, or the 1161
dissemination of, scientific and technological knowledge and 1162
information primarily for the public. 1163

Nothing in this division shall be deemed to exempt sales to 1164

any organization for use in the operation or carrying on of a 1165
trade or business, or sales to a home for the aged for use in the 1166
operation of independent living facilities as defined in division 1167
(A) of section 5709.12 of the Revised Code. 1168

(13) Building and construction materials and services sold to 1169
construction contractors for incorporation into a structure or 1170
improvement to real property under a construction contract with 1171
this state or a political subdivision of this state, or with the 1172
United States government or any of its agencies; building and 1173
construction materials and services sold to construction 1174
contractors for incorporation into a structure or improvement to 1175
real property that are accepted for ownership by this state or any 1176
of its political subdivisions, or by the United States government 1177
or any of its agencies at the time of completion of the structures 1178
or improvements; building and construction materials sold to 1179
construction contractors for incorporation into a horticulture 1180
structure or livestock structure for a person engaged in the 1181
business of horticulture or producing livestock; building 1182
materials and services sold to a construction contractor for 1183
incorporation into a house of public worship or religious 1184
education, or a building used exclusively for charitable purposes 1185
under a construction contract with an organization whose purpose 1186
is as described in division (B)(12) of this section; building 1187
materials and services sold to a construction contractor for 1188
incorporation into a building under a construction contract with 1189
an organization exempt from taxation under section 501(c)(3) of 1190
the Internal Revenue Code of 1986 when the building is to be used 1191
exclusively for the organization's exempt purposes; building and 1192
construction materials sold for incorporation into the original 1193
construction of a sports facility under section 307.696 of the 1194
Revised Code; and building and construction materials and services 1195
sold to a construction contractor for incorporation into real 1196
property outside this state if such materials and services, when 1197

sold to a construction contractor in the state in which the real 1198
property is located for incorporation into real property in that 1199
state, would be exempt from a tax on sales levied by that state; 1200

(14) Sales of ships or vessels or rail rolling stock used or 1201
to be used principally in interstate or foreign commerce, and 1202
repairs, alterations, fuel, and lubricants for such ships or 1203
vessels or rail rolling stock; 1204

(15) Sales to persons primarily engaged in any of the 1205
activities mentioned in division (B)(42)(a) or (g) of this 1206
section, to persons engaged in making retail sales, or to persons 1207
who purchase for sale from a manufacturer tangible personal 1208
property that was produced by the manufacturer in accordance with 1209
specific designs provided by the purchaser, of packages, including 1210
material, labels, and parts for packages, and of machinery, 1211
equipment, and material for use primarily in packaging tangible 1212
personal property produced for sale, including any machinery, 1213
equipment, and supplies used to make labels or packages, to 1214
prepare packages or products for labeling, or to label packages or 1215
products, by or on the order of the person doing the packaging, or 1216
sold at retail. "Packages" includes bags, baskets, cartons, 1217
crates, boxes, cans, bottles, bindings, wrappings, and other 1218
similar devices and containers, but does not include motor 1219
vehicles or bulk tanks, trailers, or similar devices attached to 1220
motor vehicles. "Packaging" means placing in a package. Division 1221
(B)(15) of this section does not apply to persons engaged in 1222
highway transportation for hire. 1223

(16) Sales of food to persons using food stamp benefits to 1224
purchase the food. As used in this division, "food" has the same 1225
meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 1226
2012, as amended, and federal regulations adopted pursuant to that 1227
act. 1228

(17) Sales to persons engaged in farming, agriculture, 1229

horticulture, or floriculture, of tangible personal property for 1230
use or consumption directly in the production by farming, 1231
agriculture, horticulture, or floriculture of other tangible 1232
personal property for use or consumption directly in the 1233
production of tangible personal property for sale by farming, 1234
agriculture, horticulture, or floriculture; or material and parts 1235
for incorporation into any such tangible personal property for use 1236
or consumption in production; and of tangible personal property 1237
for such use or consumption in the conditioning or holding of 1238
products produced by and for such use, consumption, or sale by 1239
persons engaged in farming, agriculture, horticulture, or 1240
floriculture, except where such property is incorporated into real 1241
property; 1242

(18) Sales of drugs for a human being that may be dispensed 1243
only pursuant to a prescription; insulin as recognized in the 1244
official United States pharmacopoeia; urine and blood testing 1245
materials when used by diabetics or persons with hypoglycemia to 1246
test for glucose or acetone; hypodermic syringes and needles when 1247
used by diabetics for insulin injections; epoetin alfa when 1248
purchased for use in the treatment of persons with medical 1249
disease; hospital beds when purchased by hospitals, nursing homes, 1250
or other medical facilities; and medical oxygen and medical 1251
oxygen-dispensing equipment when purchased by hospitals, nursing 1252
homes, or other medical facilities; 1253

(19) Sales of prosthetic devices, durable medical equipment 1254
for home use, or mobility enhancing equipment, when made pursuant 1255
to a prescription and when such devices or equipment are for use 1256
by a human being. 1257

(20) Sales of emergency and fire protection vehicles and 1258
equipment to nonprofit organizations for use solely in providing 1259
fire protection and emergency services, including trauma care and 1260
emergency medical services, for political subdivisions of the 1261

state;	1262
(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;	1263 1264 1265 1266 1267 1268
(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;	1269 1270 1271 1272 1273
(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;	1274 1275 1276
(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.	1277 1278 1279 1280 1281 1282 1283 1284 1285 1286 1287 1288 1289 1290 1291
(25)(a) Sales of water to a consumer for residential use,	1292

except the sale of bottled water, distilled water, mineral water,	1293
carbonated water, or ice;	1294
(b) Sales of water by a nonprofit corporation engaged	1295
exclusively in the treatment, distribution, and sale of water to	1296
consumers, if such water is delivered to consumers through pipes	1297
or tubing.	1298
(26) Fees charged for inspection or reinspection of motor	1299
vehicles under section 3704.14 of the Revised Code;	1300
(27) Sales to persons licensed to conduct a food service	1301
operation pursuant to section 3717.43 of the Revised Code, of	1302
tangible personal property primarily used directly for the	1303
following:	1304
(a) To prepare food for human consumption for sale;	1305
(b) To preserve food that has been or will be prepared for	1306
human consumption for sale by the food service operator, not	1307
including tangible personal property used to display food for	1308
selection by the consumer;	1309
(c) To clean tangible personal property used to prepare or	1310
serve food for human consumption for sale.	1311
(28) Sales of animals by nonprofit animal adoption services	1312
or county humane societies;	1313
(29) Sales of services to a corporation described in division	1314
(A) of section 5709.72 of the Revised Code, and sales of tangible	1315
personal property that qualifies for exemption from taxation under	1316
section 5709.72 of the Revised Code;	1317
(30) Sales and installation of agricultural land tile, as	1318
defined in division (B)(5)(a) of section 5739.01 of the Revised	1319
Code;	1320
(31) Sales and erection or installation of portable grain	1321
bins, as defined in division (B)(5)(b) of section 5739.01 of the	1322

Revised Code;	1323
(32) The sale, lease, repair, and maintenance of, parts for,	1324
or items attached to or incorporated in, motor vehicles that are	1325
primarily used for transporting tangible personal property	1326
belonging to others by a person engaged in highway transportation	1327
for hire, except for packages and packaging used for the	1328
transportation of tangible personal property;	1329
(33) Sales to the state headquarters of any veterans'	1330
organization in this state that is either incorporated and issued	1331
a charter by the congress of the United States or is recognized by	1332
the United States veterans administration, for use by the	1333
headquarters;	1334
(34) Sales to a telecommunications service vendor, mobile	1335
telecommunications service vendor, or satellite broadcasting	1336
service vendor of tangible personal property and services used	1337
directly and primarily in transmitting, receiving, switching, or	1338
recording any interactive, one- or two-way electromagnetic	1339
communications, including voice, image, data, and information,	1340
through the use of any medium, including, but not limited to,	1341
poles, wires, cables, switching equipment, computers, and record	1342
storage devices and media, and component parts for the tangible	1343
personal property. The exemption provided in this division shall	1344
be in lieu of all other exemptions under division (B)(42)(a) of	1345
this section to which the vendor may otherwise be entitled, based	1346
upon the use of the thing purchased in providing the	1347
telecommunications, mobile telecommunications, or satellite	1348
broadcasting service.	1349
(35)(a) Sales where the purpose of the consumer is to use or	1350
consume the things transferred in making retail sales and	1351
consisting of newspaper inserts, catalogues, coupons, flyers, gift	1352
certificates, or other advertising material that prices and	1353
describes tangible personal property offered for retail sale.	1354

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

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

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

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

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

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

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;	1386
(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.	1387 1388 1389 1390 1391 1392 1393 1394
(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;	1395 1396 1397
(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.	1398 1399 1400 1401 1402 1403 1404 1405 1406 1407 1408 1409 1410 1411 1412 1413 1414
(41) Sales to a person providing services under division (B)(3) (r) <u>(q)</u> of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in	1415 1416 1417

providing taxable services under that section. 1418

(42) Sales where the purpose of the purchaser is to do any of 1419
the following: 1420

(a) To incorporate the thing transferred as a material or a 1421
part into tangible personal property to be produced for sale by 1422
manufacturing, assembling, processing, or refining; or to use or 1423
consume the thing transferred directly in producing tangible 1424
personal property for sale by mining, including, without 1425
limitation, the extraction from the earth of all substances that 1426
are classed geologically as minerals, production of crude oil and 1427
natural gas, farming, agriculture, horticulture, or floriculture, 1428
or directly in the rendition of a public utility service, except 1429
that the sales tax levied by this section shall be collected upon 1430
all meals, drinks, and food for human consumption sold when 1431
transporting persons. Persons engaged in rendering farming, 1432
agricultural, horticultural, or floricultural services, and 1433
services in the exploration for, and production of, crude oil and 1434
natural gas, for others are deemed engaged directly in farming, 1435
agriculture, horticulture, and floriculture, or exploration for, 1436
and production of, crude oil and natural gas. This paragraph does 1437
not exempt from "retail sale" or "sales at retail" the sale of 1438
tangible personal property that is to be incorporated into a 1439
structure or improvement to real property. 1440

(b) To hold the thing transferred as security for the 1441
performance of an obligation of the vendor; 1442

(c) To resell, hold, use, or consume the thing transferred as 1443
evidence of a contract of insurance; 1444

(d) To use or consume the thing directly in commercial 1445
fishing; 1446

(e) To incorporate the thing transferred as a material or a 1447
part into, or to use or consume the thing transferred directly in 1448

the production of, magazines distributed as controlled circulation 1449
publications; 1450

(f) To use or consume the thing transferred in the production 1451
and preparation in suitable condition for market and sale of 1452
printed, imprinted, overprinted, lithographic, multilithic, 1453
blueprinted, photostatic, or other productions or reproductions of 1454
written or graphic matter; 1455

(g) To use the thing transferred, as described in section 1456
5739.011 of the Revised Code, primarily in a manufacturing 1457
operation to produce tangible personal property for sale; 1458

(h) To use the benefit of a warranty, maintenance or service 1459
contract, or similar agreement, as described in division (B)(7) of 1460
section 5739.01 of the Revised Code, to repair or maintain 1461
tangible personal property, if all of the property that is the 1462
subject of the warranty, contract, or agreement would not be 1463
subject to the tax imposed by this section; 1464

(i) To use the thing transferred as qualified research and 1465
development equipment; 1466

(j) To use or consume the thing transferred primarily in 1467
storing, transporting, mailing, or otherwise handling purchased 1468
sales inventory in a warehouse, distribution center, or similar 1469
facility when the inventory is primarily distributed outside this 1470
state to retail stores of the person who owns or controls the 1471
warehouse, distribution center, or similar facility, to retail 1472
stores of an affiliated group of which that person is a member, or 1473
by means of direct marketing. This division does not apply to 1474
motor vehicles registered for operation on the public highways. As 1475
used in this division, "affiliated group" has the same meaning as 1476
in division (B)(3)(e) of section 5739.01 of the Revised Code and 1477
"direct marketing" has the same meaning as in division (B)(35) of 1478
this section. 1479

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

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

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

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

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

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

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of

such aircraft, and machinery, equipment, and supplies primarily 1511
used to provide those services. 1512

(45) Sales of telecommunications service that is used 1513
directly and primarily to perform the functions of a call center. 1514
As used in this division, "call center" means any physical 1515
location where telephone calls are placed or received in high 1516
volume for the purpose of making sales, marketing, customer 1517
service, technical support, or other specialized business 1518
activity, and that employs at least fifty individuals that engage 1519
in call center activities on a full-time basis, or sufficient 1520
individuals to fill fifty full-time equivalent positions. 1521

(46) Sales by a telecommunications service vendor of 900 1522
service to a subscriber. This division does not apply to 1523
information services, as defined in division (FF) of section 1524
5739.01 of the Revised Code. 1525

(47) Sales of value-added non-voice data service. This 1526
division does not apply to any similar service that is not 1527
otherwise a telecommunications service. 1528

(C) For the purpose of the proper administration of this 1529
chapter, and to prevent the evasion of the tax, it is presumed 1530
that all sales made in this state are subject to the tax until the 1531
contrary is established. 1532

(D) The levy of this tax on retail sales of recreation and 1533
sports club service shall not prevent a municipal corporation from 1534
levying any tax on recreation and sports club dues or on any 1535
income generated by recreation and sports club dues. 1536

(E) The tax collected by the vendor from the consumer under 1537
this chapter is not part of the price, but is a tax collection for 1538
the benefit of the state, and of counties levying an additional 1539
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 1540
Code and of transit authorities levying an additional sales tax 1541

pursuant to section 5739.023 of the Revised Code. Except for the 1542
discount authorized under section 5739.12 of the Revised Code and 1543
the effects of any rounding pursuant to section 5703.055 of the 1544
Revised Code, no person other than the state or such a county or 1545
transit authority shall derive any benefit from the collection or 1546
payment of the tax levied by this section or section 5739.021, 1547
5739.023, or 5739.026 of the Revised Code. 1548

Sec. 5739.035. This section only applies to sales that may be 1549
situated under this section pursuant to division (B) of section 1550
5739.033 of the Revised Code. 1551

(A) Except as otherwise provided in this section, the situs 1552
of all sales is the vendor's place of business. 1553

(1) If the consumer or the consumer's agent takes possession 1554
of the tangible personal property at a place of business of the 1555
vendor where the purchase contract or agreement was made, the 1556
situs of the sale is that place of business. 1557

(2) If the consumer or the consumer's agent takes possession 1558
of the tangible personal property other than at a place of 1559
business of the vendor, or takes possession at a warehouse or 1560
similar facility of the vendor, the situs of the sale is the 1561
vendor's place of business where the purchase contract or 1562
agreement was made or the purchase order was received. 1563

(3) If the vendor provides a service specified in division 1564
(B)(3)(a), (b), (c), (d), (n), (o), (p), (q), or (r), ~~or (s)~~ of 1565
section 5739.01 or makes a sale specified in division (B)(8) of 1566
section 5739.01 of the Revised Code, the situs of the sale is the 1567
vendor's place of business where the service is performed or the 1568
contract or agreement for the service was made or the purchase 1569
order was received. 1570

(B) If the vendor is a transient vendor as specified in 1571

division (B) of section 5739.17 of the Revised Code, the situs of 1572
the sale is the vendor's temporary place of business or, if the 1573
transient vendor is the lessor of titled motor vehicles, titled 1574
watercraft, or titled outboard motors, at the location where the 1575
lessee keeps the leased property. 1576

(C) If the vendor makes sales of tangible personal property 1577
from a stock of goods carried in a motor vehicle, from which the 1578
purchaser makes selection and takes possession, or from which the 1579
vendor sells tangible personal property the quantity of which has 1580
not been determined prior to the time the purchaser takes 1581
possession, the situs of the sale is the location of the motor 1582
vehicle when the sale is made. 1583

(D) If the vendor is a delivery vendor as specified in 1584
division (D) of section 5739.17 of the Revised Code, the situs of 1585
the sale is the place where the tangible personal property is 1586
delivered, where the leased property is used, or where the service 1587
is performed or received. 1588

(E) If the vendor provides a service specified in division 1589
(B)(3)(e), (g), (h), (j), (k), (l), (m), ~~(p)~~(s), or (t), ~~or~~ ~~(u)~~ of 1590
section 5739.01 of the Revised Code, the situs of the sale is the 1591
location of the consumer where the service is performed or 1592
received. 1593

(F) If the vendor provides lodging to transient guests as 1594
specified in division (B)(2) of section 5739.01 of the Revised 1595
Code, the situs of the sale is the location where the lodging is 1596
located. 1597

(G) If the vendor sells a warranty, maintenance or service 1598
contract, or similar agreement as specified in division (B)(7) of 1599
section 5739.01 of the Revised Code and the vendor is a delivery 1600
vendor, the situs of the sale is the location of the consumer. If 1601
the vendor is not a delivery vendor, the situs of the sale is the 1602

vendor's place of business where the contract or agreement was 1603
made, unless the warranty or contract is a component of the sale 1604
of a titled motor vehicle, titled watercraft, or titled outboard 1605
motor, in which case the situs of the sale is the county of 1606
titling. 1607

(H) Except as otherwise provided in this division, if the 1608
vendor sells a prepaid authorization number or a prepaid telephone 1609
calling card, the situs of the sale is the vendor's place of 1610
business and shall be taxed at the time of sale. If the vendor 1611
sells a prepaid authorization number or prepaid telephone calling 1612
card through a telephone call, electronic commerce, or any other 1613
form of remote commerce, the situs of the sale is the consumer's 1614
shipping address, or, if there is no item shipped, at the 1615
consumer's billing address. 1616

(I) Division (I) of this section applies only if the tax 1617
commissioner makes the certification provided under section 1618
5740.10 of the Revised Code. 1619

(1) In each delivery sale by a vendor permitted to situs its 1620
sales under this section, the vendor shall clearly indicate on the 1621
invoice or other similar document provided to the purchaser at the 1622
time of the sale that the vendor is a vendor permitted to situs 1623
its sales under this section. 1624

(2) A purchaser that receives tangible personal property or 1625
services in a delivery sale from a vendor permitted to situs its 1626
sales under this section may claim a refund of the tax the vendor 1627
collected and remitted on the sale in an amount equal to the 1628
excess of the tax collected and remitted over the tax that would 1629
have been due if the sale had been sitused to the tax jurisdiction 1630
in which the purchaser received the property or service. 1631

A refund is authorized under this division only if the 1632
invoice or other similar document provided to the purchaser at the 1633

time of the sale includes the notice required under division 1634
(I)(1) of this section. 1635

Refunds shall be filed directly with the tax commissioner and 1636
claimed in the manner prescribed by section 5739.07 of the Revised 1637
Code. 1638

(3) A purchaser of tangible personal property from a vendor 1639
permitted to situs its sales under this section that removes the 1640
property from the tax jurisdiction in which the resident received 1641
the property is liable for additional tax in an amount equal to 1642
the excess of the tax that would have been due on the sale if the 1643
sale had been sitused to the tax jurisdiction to which the 1644
purchaser removed the property over the tax that the vendor 1645
collected and remitted on the sale. 1646

(4) Nothing in this section relieves a person claiming to be 1647
authorized to situs sales under this section, but not so 1648
authorized, from liability for tax, penalty, interest, or 1649
additional charges imposed under this chapter for failure to 1650
collect the amount of tax lawfully due applying the situsing 1651
provisions of divisions (C) to (I) of section 5739.033 of the 1652
Revised Code. 1653

(5) For the purposes of division (I) of this section, 1654
"delivery sale" has the same meaning as in section 5739.033 of the 1655
Revised Code, and "tax jurisdiction" has the same meaning as in 1656
section 5739.24 of the Revised Code. 1657

Sec. 5739.17. (A) No person shall engage in making retail 1658
sales subject to a tax imposed by or pursuant to section 5739.02, 1659
5739.021, 5739.023, or 5739.026 of the Revised Code as a business 1660
without having a license therefor, except as otherwise provided in 1661
divisions (A)(1), (2), and (3) of this section. 1662

(1) In the dissolution of a partnership by death, the 1663

surviving partner may operate under the license of the partnership 1664
for a period of sixty days. 1665

(2) The heirs or legal representatives of deceased persons, 1666
and receivers and trustees in bankruptcy, appointed by any 1667
competent authority, may operate under the license of the person 1668
so succeeded in possession. 1669

(3) Two or more persons who are not partners may operate a 1670
single place of business under one license. In such case neither 1671
the retirement of any such person from business at that place of 1672
business, nor the entrance of any person, under an existing 1673
arrangement, shall affect the license or require the issuance of a 1674
new license, unless the person retiring from the business is the 1675
individual named on the vendor's license. 1676

Except as otherwise provided in this section, each applicant 1677
for a license shall make out and deliver to the county auditor of 1678
each county in which the applicant desires to engage in business, 1679
upon a blank to be furnished by such auditor for that purpose, a 1680
statement showing the name of the applicant, each place of 1681
business in the county where the applicant will make retail sales, 1682
the nature of the business, and any other information the tax 1683
commissioner reasonably prescribes in the form of a statement 1684
prescribed by the commissioner. 1685

At the time of making the application, the applicant shall 1686
pay into the county treasury a license fee in the sum of 1687
twenty-five dollars for each fixed place of business in the county 1688
that will be the situs of retail sales. Upon receipt of the 1689
application and exhibition of the county treasurer's receipt, 1690
showing the payment of the license fee, the county auditor shall 1691
issue to the applicant a license for each fixed place of business 1692
designated in the application, authorizing the applicant to engage 1693
in business at that location. If a vendor's identity changes, the 1694
vendor shall apply for a new license. If a vendor wishes to move 1695

an existing fixed place of business to a new location within the 1696
same county, the vendor shall obtain a new vendor's license or 1697
submit a request to the tax commissioner to transfer the existing 1698
vendor's license to the new location. When the new location has 1699
been verified as being within the same county, the commissioner 1700
shall authorize the transfer and notify the county auditor of the 1701
change of location. If a vendor wishes to move an existing fixed 1702
place of business to another county, the vendor's license shall 1703
not transfer and the vendor shall obtain a new vendor's license 1704
from the county in which the business is to be located. The form 1705
of the license shall be prescribed by the commissioner. The fees 1706
collected shall be credited to the general fund of the county. 1707

The tax commissioner may establish or participate in a 1708
registration system whereby any vendor may obtain a vendor's 1709
license by submitting to the commissioner a vendor's license 1710
application and a license fee of twenty-five dollars for each 1711
fixed place of business at which the vendor intends to make retail 1712
sales. Under this registration system, the commissioner shall 1713
issue a vendor's license to the applicant on behalf of the county 1714
auditor of the county in which the applicant desires to engage in 1715
business, and shall forward a copy of the application and license 1716
fee to that county. All such license fees received by the 1717
commissioner for the issuance of vendor's licenses shall be 1718
deposited into the vendor's license application fund, which is 1719
hereby created in the state treasury. The commissioner shall 1720
certify to the director of budget and management within ten 1721
business days after the close of a month the license fees to be 1722
transmitted to each county from the vendor's license application 1723
fund for vendor's license applications received by the 1724
commissioner during that month. License fees transmitted to a 1725
county for which payment was not received by the commissioner may 1726
be netted against a future distribution to that county, including 1727
distributions made pursuant to section 5739.21 of the Revised 1728

Code. 1729

A vendor that makes retail sales subject to tax under Chapter 1730
5739. of the Revised Code pursuant to a permit issued by the 1731
division of liquor control shall obtain a vendor's license in the 1732
identical name and for the identical address as shown on the 1733
permit. 1734

Except as otherwise provided in this section, if a vendor has 1735
no fixed place of business and sells from a vehicle, each vehicle 1736
intended to be used within a county constitutes a place of 1737
business for the purpose of this section. 1738

(B) As used in this division, "transient vendor" means any 1739
person who makes sales of tangible personal property from vending 1740
machines located on land owned by others, who leases titled motor 1741
vehicles, titled watercraft, or titled outboard motors, who 1742
effectuates leases that are taxed according to division (A)(2) of 1743
section 5739.02 of the Revised Code, or who, in the usual course 1744
of the person's business, transports inventory, stock of goods, or 1745
similar tangible personal property to a temporary place of 1746
business or temporary exhibition, show, fair, flea market, or 1747
similar event in a county in which the person has no fixed place 1748
of business, for the purpose of making retail sales of such 1749
property. A "temporary place of business" means any public or 1750
quasi-public place including, but not limited to, a hotel, rooming 1751
house, storeroom, building, part of a building, tent, vacant lot, 1752
railroad car, or motor vehicle that is temporarily occupied for 1753
the purpose of making retail sales of goods to the public. A place 1754
of business is not temporary if the same person conducted business 1755
at the place continuously for more than six months or occupied the 1756
premises as the person's permanent residence for more than six 1757
months, or if the person intends it to be a fixed place of 1758
business. 1759

Any transient vendor, in lieu of obtaining a vendor's license 1760

under division (A) of this section for counties in which the
transient vendor has no fixed place of business, may apply to the
tax commissioner, on a form prescribed by the commissioner, for a
transient vendor's license. The transient vendor's license
authorizes the transient vendor to make retail sales in any county
in which the transient vendor does not maintain a fixed place of
business. Any holder of a transient vendor's license shall not be
required to obtain a separate vendor's license from the county
auditor in that county. Upon the commissioner's determination that
an applicant is a transient vendor, the applicant shall pay a
license fee in the amount of twenty-five dollars, at which time
the tax commissioner shall issue the license. The tax commissioner
may require a vendor to be licensed as a transient vendor if, in
the opinion of the commissioner, such licensing is necessary for
the efficient administration of the tax.

Any holder of a valid transient vendor's license may make
retail sales at a temporary place of business or temporary
exhibition, show, fair, flea market, or similar event, held
anywhere in the state without complying with any provision of
section 311.37 of the Revised Code. Any holder of a valid vendor's
license may make retail sales as a transient vendor at a temporary
place of business or temporary exhibition, show, fair, flea
market, or similar event held in any county in which the vendor
maintains a fixed place of business for which the vendor holds a
vendor's license without obtaining a transient vendor's license.

(C) As used in this division, "service vendor" means any
person who, in the usual course of the person's business, sells
services described in division (B)(3)(e), (f), (g), (h), (i), (j),
(k), (l), (m), ~~(p)~~, or ~~(t)~~(s) of section 5739.01 of the Revised
Code.

Every service vendor shall make application to the tax
commissioner for a service vendor's license. Each applicant shall

pay a license fee in the amount of twenty-five dollars. Upon the
commissioner's determination that an applicant is a service vendor
and payment of the fee, the commissioner shall issue the applicant
a service vendor's license.

Only sales described in division (B)(3)(e), (f), (g), (h),
(i), (j), (k), (l), (m), ~~(p)~~, or ~~(t)~~(s) of section 5739.01 of the
Revised Code may be made under authority of a service vendor's
license, and that license authorizes sales to be made at any place
in this state. Any service vendor who makes sales of other
services or tangible personal property subject to the sales tax
also shall be licensed under division (A), (B), or (D) of this
section.

(D) As used in this division, "delivery vendor" means any
vendor who engages in one or more of the activities described in
divisions (D)(1) to (4) of this section, and who maintains no
store, showroom, or similar fixed place of business or other
location where merchandise regularly is offered for sale or
displayed or shown in catalogs for selection or pick-up by
consumers, or where consumers bring goods for repair or other
service.

(1) The vendor makes retail sales of tangible personal
property;

(2) The vendor rents or leases, at retail, tangible personal
property, except titled motor vehicles, titled watercraft, or
titled outboard motors;

(3) The vendor provides a service, at retail, described in
division (B)(3)(a), (b), (c), or (d) of section 5739.01 of the
Revised Code; or

(4) The vendor makes retail sales of warranty, maintenance or
service contracts, or similar agreements as described in division
(B)(7) of section 5739.01 of the Revised Code.

A transient vendor or a seller registered pursuant to section 1824
5741.17 of the Revised Code is not a delivery vendor. 1825

Delivery vendors shall apply to the tax commissioner, on a 1826
form prescribed by the commissioner, for a delivery vendor's 1827
license. Each applicant shall pay a license fee of twenty-five 1828
dollars for each delivery vendor's license, to be credited to the 1829
general revenue fund. Upon the commissioner's determination that 1830
the applicant is a delivery vendor, the commissioner shall issue 1831
the license. A delivery vendor's license authorizes retail sales 1832
to be made throughout the state. All sales of the vendor must be 1833
reported under the delivery license. The commissioner may require 1834
a vendor to be licensed as a delivery vendor if, in the opinion of 1835
the commissioner, such licensing is necessary for the efficient 1836
administration of the tax. The commissioner shall not issue a 1837
delivery vendor license to a vendor who holds a license issued 1838
under division (A) of this section. 1839

(E) Any transient vendor who is issued a license pursuant to 1840
this section shall display the license or a copy of it 1841
prominently, in plain view, at every place of business of the 1842
transient vendor. Every owner, organizer, or promoter who operates 1843
a fair, flea market, show, exhibition, convention, or similar 1844
event at which transient vendors are present shall keep a 1845
comprehensive record of all such vendors, listing the vendor's 1846
name, permanent address, vendor's license number, and the type of 1847
goods sold. Such records shall be kept for four years and shall be 1848
open to inspection by the tax commissioner. 1849

Section 2. That existing sections 5739.01, 5739.02, 5739.035, 1850
and 5739.17 of the Revised Code are hereby repealed. 1851

Section 3. That the amendment by this act of sections 1852
5739.01, 5739.02, 5739.035, and 5739.17 of the Revised Code 1853

applies to sales occurring on or after January 1, 2009. 1854

Section 4. The amendment of section 5739.035 of the Revised 1855
Code is not intended to supersede the earlier repeal, with delayed 1856
effective date, of that section. 1857