

As Introduced

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Representative Bacon

**Cosponsors: Representatives Wachtmann, Derickson, Ruhl, Grossman,
Boose, Jordan, Uecker, Adams, J., Maag, Mandel**

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A B I L L

To amend sections 5739.02 and 5739.05 of the Revised 1
Code to provide a three-day period in August and 2
in December each year during which sales of 3
clothing, footwear, school supplies, personal 4
computers and computer-related items, and sporting 5
equipment are exempt from sales and use taxes. 6

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

Section 1. That sections 5739.02 and 5739.05 of the Revised 7
Code be amended to read as follows: 8

Sec. 5739.02. For the purpose of providing revenue with which 9
to meet the needs of the state, for the use of the general revenue 10
fund of the state, for the purpose of securing a thorough and 11
efficient system of common schools throughout the state, for the 12
purpose of affording revenues, in addition to those from general 13
property taxes, permitted under constitutional limitations, and 14
from other sources, for the support of local governmental 15
functions, and for the purpose of reimbursing the state for the 16
expense of administering this chapter, an excise tax is hereby 17
levied on each retail sale made in this state. 18

(A)(1) The tax shall be collected as provided in section 19
5739.025 of the Revised Code. The rate of the tax shall be five 20
and one-half per cent. The tax applies and is collectible when the 21
sale is made, regardless of the time when the price is paid or 22
delivered. 23

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operation of independent living facilities as defined in division 176
(A) of section 5709.12 of the Revised Code. 177

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

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

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

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

(16) Sales of food to persons using supplemental nutrition 233
assistance program benefits to purchase the food. As used in this 234
division, "food" has the same meaning as in 7 U.S.C. 2012 and 235
federal regulations adopted pursuant to the Food and Nutrition Act 236
of 2008. 237

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Motor racing vehicles; 394

(b) Repair services for motor racing vehicles; 395

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

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

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

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

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

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

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

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

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

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

publications;	459
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	460 461 462 463 464
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	465 466 467
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	468 469 470 471 472 473
(i) To use the thing transferred as qualified research and development equipment;	474 475
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(35) of this section.	476 477 478 479 480 481 482 483 484 485 486 487 488
(k) To use or consume the thing transferred to fulfill a	489

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

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

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

(n) To use or consume the thing transferred in acquiring, 503
formatting, editing, storing, and disseminating data or 504
information by electronic publishing. 505

As used in division (B)(42) of this section, "thing" includes 506
all transactions included in divisions (B)(3)(a), (b), and (e) of 507
section 5739.01 of the Revised Code. 508

(43) Sales conducted through a coin operated device that 509
activates vacuum equipment or equipment that dispenses water, 510
whether or not in combination with soap or other cleaning agents 511
or wax, to the consumer for the consumer's use on the premises in 512
washing, cleaning, or waxing a motor vehicle, provided no other 513
personal property or personal service is provided as part of the 514
transaction. 515

(44) Sales of replacement and modification parts for engines, 516
airframes, instruments, and interiors in, and paint for, aircraft 517
used primarily in a fractional aircraft ownership program, and 518
sales of services for the repair, modification, and maintenance of 519
such aircraft, and machinery, equipment, and supplies primarily 520

used to provide those services. 521

(45) Sales of telecommunications service that is used 522
directly and primarily to perform the functions of a call center. 523
As used in this division, "call center" means any physical 524
location where telephone calls are placed or received in high 525
volume for the purpose of making sales, marketing, customer 526
service, technical support, or other specialized business 527
activity, and that employs at least fifty individuals that engage 528
in call center activities on a full-time basis, or sufficient 529
individuals to fill fifty full-time equivalent positions. 530

(46) Sales by a telecommunications service vendor of 900 531
service to a subscriber. This division does not apply to 532
information services, as defined in division (FF) of section 533
5739.01 of the Revised Code. 534

(47) Sales of value-added non-voice data service. This 535
division does not apply to any similar service that is not 536
otherwise a telecommunications service. 537

(48)(a) Sales of machinery, equipment, and software to a 538
qualified direct selling entity for use in a warehouse or 539
distribution center primarily for storing, transporting, or 540
otherwise handling inventory that is held for sale to independent 541
salespersons who operate as direct sellers and that is held 542
primarily for distribution outside this state; 543

(b) As used in division (B)(48)(a) of this section: 544

(i) "Direct seller" means a person selling consumer products 545
to individuals for personal or household use and not from a fixed 546
retail location, including selling such product at in-home product 547
demonstrations, parties, and other one-on-one selling. 548

(ii) "Qualified direct selling entity" means an entity 549
selling to direct sellers at the time the entity enters into a tax 550
credit agreement with the tax credit authority pursuant to section 551

122.17 of the Revised Code, provided that the agreement was 552
entered into on or after January 1, 2007. Neither contingencies 553
relevant to the granting of, nor later developments with respect 554
to, the tax credit shall impair the status of the qualified direct 555
selling entity under division (B)(48) of this section after 556
execution of the tax credit agreement by the tax credit authority. 557

(c) Division (B)(48) of this section is limited to machinery, 558
equipment, and software first stored, used, or consumed in this 559
state within the period commencing June 24, 2008, and ending on 560
the date that is five years after that date. 561

(49) Sales of materials, parts, equipment, or engines used in 562
the repair or maintenance of aircraft or avionics systems of such 563
aircraft, and sales of repair, remodeling, replacement, or 564
maintenance services in this state performed on aircraft or on an 565
aircraft's avionics, engine, or component materials or parts. As 566
used in division (B)(49) of this section, "aircraft" means 567
aircraft of more than six thousand pounds maximum certified 568
takeoff weight or used exclusively in general aviation. 569

(50) Sales of full flight simulators that are used for pilot 570
or flight-crew training, sales of repair or replacement parts or 571
components, and sales of repair or maintenance services for such 572
full flight simulators. "Full flight simulator" means a replica of 573
a specific type, or make, model, and series of aircraft cockpit. 574
It includes the assemblage of equipment and computer programs 575
necessary to represent aircraft operations in ground and flight 576
conditions, a visual system providing an out-of-the-cockpit view, 577
and a system that provides cues at least equivalent to those of a 578
three-degree-of-freedom motion system, and has the full range of 579
capabilities of the systems installed in the device as described 580
in appendices A and B of part 60 of chapter 1 of title 14 of the 581
Code of Federal Regulations. 582

(51)(a) Sales of the following occurring during the three-day periods that include the first Friday, Saturday, and Sunday in August and in December each year beginning in 2010: 584
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(i) An article of clothing or footwear intended to be worn on or about the human body, the price of which does not exceed two hundred fifty dollars; 587
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(ii) An item of school supplies, the price of which does not exceed one hundred fifty dollars; 590
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(iii) A personal computer system, the price of which does not exceed three thousand five hundred dollars; 592
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(iv) Personal computer-related software and peripherals the price of which does not exceed three thousand five hundred dollars; 594
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(v) An item of sporting equipment, the price of which does not exceed two hundred fifty dollars. 597
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(b) The lease or rental of clothing, footwear, school supplies, a personal computer system, personal computer-related software and peripherals, or sporting equipment or the sale of such items for use in a trade or business does not qualify for exemption under division (B)(51) of this section. 599
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(c) As used in division (B)(51) of this section: 604

(i) "Clothing or footwear" does not include jewelry, watches, handbags, wallets, or umbrellas. 605
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(ii) "School supplies" means pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, calculators, and similar items. "School supplies" does not include furniture or school instructional material. 607
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(iii) "Personal computer system" means all computer hardware and software sold together in the same retail transaction, including a central processing unit, storage drive, display 611
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monitor, keyboard, random access memory, and printer. "Personal computer system" does not include minicomputers, mainframe computers, network servers, local area network hubs, routers and cabling, hardware word processors, personal digital assistants, graphical calculators, hand-held computers, game consoles, internet television devices, network operating systems, multiple-user licensed software and hardware, separate sales or use of internal or external components, or separate sales of add-on components.

(iv) "Sporting equipment" means clothing, footwear, or equipment designed primarily for athletic activity or protective use during participation in the athletic activity for which it is designed.

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

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

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

5739.023, or 5739.026 of the Revised Code. 646

Sec. 5739.05. (A)(1) The tax commissioner shall enforce and 647
administer sections 5739.01 to 5739.31 of the Revised Code, which 648
are hereby declared to be sections ~~which~~ that the commissioner is 649
required to administer within the meaning of sections 5703.17 to 650
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 651
commissioner may adopt and promulgate, in accordance with sections 652
119.01 to 119.13 of the Revised Code, such rules as the 653
commissioner deems necessary to administer sections 5739.01 to 654
5739.31 of the Revised Code. 655

(2) The commissioner, in accordance with section 5703.14 of 656
the Revised Code, shall adopt rules necessary to implement the 657
three-day tax exemption periods provided by division (B)(51) of 658
section 5739.02 of the Revised Code. Before each exemption period 659
required under that division, the commissioner shall make 660
available to vendors informational bulletins explaining the 661
exemption. 662

(B) Upon application, the commissioner may authorize a vendor 663
to pay on a predetermined basis the tax levied by or pursuant to 664
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 665
Code upon sales of things produced or distributed or services 666
provided by such vendor, and the commissioner may waive the 667
collection of the tax from the consumer. The commissioner shall 668
not grant such authority unless the commissioner finds that the 669
granting of the authority would improve compliance and increase 670
the efficiency of the administration of the tax. The person to 671
whom such authority is granted shall post a notice, if required by 672
the commissioner, at the location where the product is offered for 673
sale, that the tax is included in the selling price. The 674
~~commissioner~~ commissioner may adopt rules to administer this 675
division. 676

(C) The commissioner may authorize a vendor to pay, on the 677
basis of a prearranged agreement under this division, the tax 678
levied by section 5739.02 or pursuant to section 5739.021, 679
5739.023, or 5739.026 of the Revised Code, and waive the 680
requirement that the vendor maintain the complete and accurate 681
record of individual taxable sales and tax collected thereon 682
required by section 5739.11 of the Revised Code, upon application 683
of the vendor, if the commissioner finds that the conditions of 684
the vendor-applicant's business are such that the maintenance of 685
such records of individual taxable sales and tax collected thereon 686
would impose an unreasonable burden upon the vendor. If the 687
commissioner determines that such unreasonable burden has been 688
imposed, the vendor and the commissioner shall agree to the terms 689
and conditions of a test check to be conducted. If the parties are 690
unable to agree to the terms and conditions of the test check, the 691
application shall be denied. The test check conducted shall 692
determine the proportion that taxable retail sales bear to all of 693
the vendor's retail sales and the ratio which the tax required to 694
be collected under sections 5739.02, 5739.021, and 5739.023 of the 695
Revised Code bears to the receipts from the vendor's taxable 696
retail sales. 697

The vendor shall collect the tax on the vendor's taxable 698
sales and the vendor's liability for collecting or remitting shall 699
be based upon the proportions and ratios established by the test 700
check, and not upon any other basis of determination, until such 701
time as a subsequent test check is made at the request of either 702
the vendor or the commissioner where either party believes that 703
the nature of the vendor's business has so changed as to make the 704
prior or existing test check no longer representative. The 705
commissioner may give notice to the vendor at any time that the 706
authorization is revoked or the vendor may notify the commissioner 707
that the vendor no longer elects to report under the 708
authorization. Such notice shall be delivered to the other party 709

personally or by registered mail. The revocation or cancellation 710
is not effective prior to the date of receipt of such notice. 711

Section 2. That existing sections 5739.02 and 5739.05 of the 712
Revised Code are hereby repealed. 713