

As Introduced

**129th General Assembly
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H. B. No. 581

Representatives Lundy, Gerberry

**Cosponsors: Representatives Murray, Driehaus, Yuko, Winburn, Clyde,
Garland, Boyd**

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A B I L L

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

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

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

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

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

5739.025 of the Revised Code. The rate of the tax shall be five 19
and one-half per cent. The tax applies and is collectible when the 20
sale is made, regardless of the time when the price is paid or 21
delivered. 22

(2) In the case of the lease or rental, with a fixed term of 23
more than thirty days or an indefinite term with a minimum period 24
of more than thirty days, of any motor vehicles designed by the 25
manufacturer to carry a load of not more than one ton, watercraft, 26
outboard motor, or aircraft, or of any tangible personal property, 27
other than motor vehicles designed by the manufacturer to carry a 28
load of more than one ton, to be used by the lessee or renter 29
primarily for business purposes, the tax shall be collected by the 30
vendor at the time the lease or rental is consummated and shall be 31
calculated by the vendor on the basis of the total amount to be 32
paid by the lessee or renter under the lease agreement. If the 33
total amount of the consideration for the lease or rental includes 34
amounts that are not calculated at the time the lease or rental is 35
executed, the tax shall be calculated and collected by the vendor 36
at the time such amounts are billed to the lessee or renter. In 37
the case of an open-end lease or rental, the tax shall be 38
calculated by the vendor on the basis of the total amount to be 39
paid during the initial fixed term of the lease or rental, and for 40
each subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an outdrive 43
unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45
similar provision that applies if the renewal clause is not 46
exercised is presumed to be a sham transaction. In such a case, 47
the tax shall be calculated and paid on the basis of the entire 48
length of the lease period, including any renewal periods, until 49
the termination penalty or similar provision no longer applies. 50

The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

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

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

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

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

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

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

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

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

(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 81
state, but this exemption shall not apply to the sale of motor 82
fuel on which a refund of the tax is allowable under division (A) 83
of section 5735.14 of the Revised Code; and the tax commissioner 84
may deduct the amount of tax levied by this section applicable to 85
the price of motor fuel when granting a refund of motor fuel tax 86
pursuant to division (A) of section 5735.14 of the Revised Code 87
and shall cause the amount deducted to be paid into the general 88
revenue fund of this state; 89

(7) Sales of natural gas by a natural gas company, of water 90
by a water-works company, or of steam by a heating company, if in 91
each case the thing sold is delivered to consumers through pipes 92
or conduits, and all sales of communications services by a 93
telegraph company, all terms as defined in section 5727.01 of the 94
Revised Code, and sales of electricity delivered through wires; 95

(8) Casual sales by a person, or auctioneer employed directly 96
by the person to conduct such sales, except as to such sales of 97
motor vehicles, watercraft or outboard motors required to be 98
titled under section 1548.06 of the Revised Code, watercraft 99
documented with the United States coast guard, snowmobiles, and 100
all-purpose vehicles as defined in section 4519.01 of the Revised 101
Code; 102

(9)(a) Sales of services or tangible personal property, other 103
than motor vehicles, mobile homes, and manufactured homes, by 104
churches, organizations exempt from taxation under section 105
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 106
organizations operated exclusively for charitable purposes as 107
defined in division (B)(12) of this section, provided that the 108
number of days on which such tangible personal property or 109
services, other than items never subject to the tax, are sold does 110
not exceed six in any calendar year, except as otherwise provided 111
in division (B)(9)(b) of this section. If the number of days on 112

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

(b) The limitation on the number of days on which tax-exempt 119
sales may be made by a church or organization under division 120
(B)(9)(a) of this section does not apply to sales made by student 121
clubs and other groups of students of a primary or secondary 122
school, or a parent-teacher association, booster group, or similar 123
organization that raises money to support or fund curricular or 124
extracurricular activities of a primary or secondary school. 125

(c) Divisions (B)(9)(a) and (b) of this section do not apply 126
to sales by a noncommercial educational radio or television 127
broadcasting station. 128

(10) Sales not within the taxing power of this state under 129
the Constitution of the United States; 130

(11) Except for transactions that are sales under division 131
(B)(3)(r) of section 5739.01 of the Revised Code, the 132
transportation of persons or property, unless the transportation 133
is by a private investigation and security service; 134

(12) Sales of tangible personal property or services to 135
churches, to organizations exempt from taxation under section 136
501(c)(3) of the Internal Revenue Code of 1986, and to any other 137
nonprofit organizations operated exclusively for charitable 138
purposes in this state, no part of the net income of which inures 139
to the benefit of any private shareholder or individual, and no 140
substantial part of the activities of which consists of carrying 141
on propaganda or otherwise attempting to influence legislation; 142
sales to offices administering one or more homes for the aged or 143

one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

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

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

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

and, until one calendar year after the construction of a 209
convention center that qualifies for property tax exemption under 210
section 5709.084 of the Revised Code is completed, building and 211
construction materials and services sold to a construction 212
contractor for incorporation into the real property comprising 213
that convention center; 214

(14) Sales of ships or vessels or rail rolling stock used or 215
to be used principally in interstate or foreign commerce, and 216
repairs, alterations, fuel, and lubricants for such ships or 217
vessels or rail rolling stock; 218

(15) Sales to persons primarily engaged in any of the 219
activities mentioned in division (B)(42)(a), (g), or (h) of this 220
section, to persons engaged in making retail sales, or to persons 221
who purchase for sale from a manufacturer tangible personal 222
property that was produced by the manufacturer in accordance with 223
specific designs provided by the purchaser, of packages, including 224
material, labels, and parts for packages, and of machinery, 225
equipment, and material for use primarily in packaging tangible 226
personal property produced for sale, including any machinery, 227
equipment, and supplies used to make labels or packages, to 228
prepare packages or products for labeling, or to label packages or 229
products, by or on the order of the person doing the packaging, or 230
sold at retail. "Packages" includes bags, baskets, cartons, 231
crates, boxes, cans, bottles, bindings, wrappings, and other 232
similar devices and containers, but does not include motor 233
vehicles or bulk tanks, trailers, or similar devices attached to 234
motor vehicles. "Packaging" means placing in a package. Division 235
(B)(15) of this section does not apply to persons engaged in 236
highway transportation for hire. 237

(16) Sales of food to persons using supplemental nutrition 238
assistance program benefits to purchase the food. As used in this 239
division, "food" has the same meaning as in 7 U.S.C. 2012 and 240

federal regulations adopted pursuant to the Food and Nutrition Act 241
of 2008. 242

(17) Sales to persons engaged in farming, agriculture, 243
horticulture, or floriculture, of tangible personal property for 244
use or consumption primarily in the production by farming, 245
agriculture, horticulture, or floriculture of other tangible 246
personal property for use or consumption primarily in the 247
production of tangible personal property for sale by farming, 248
agriculture, horticulture, or floriculture; or material and parts 249
for incorporation into any such tangible personal property for use 250
or consumption in production; and of tangible personal property 251
for such use or consumption in the conditioning or holding of 252
products produced by and for such use, consumption, or sale by 253
persons engaged in farming, agriculture, horticulture, or 254
floriculture, except where such property is incorporated into real 255
property; 256

(18) Sales of drugs for a human being that may be dispensed 257
only pursuant to a prescription; insulin as recognized in the 258
official United States pharmacopoeia; urine and blood testing 259
materials when used by diabetics or persons with hypoglycemia to 260
test for glucose or acetone; hypodermic syringes and needles when 261
used by diabetics for insulin injections; epoetin alfa when 262
purchased for use in the treatment of persons with medical 263
disease; hospital beds when purchased by hospitals, nursing homes, 264
or other medical facilities; and medical oxygen and medical 265
oxygen-dispensing equipment when purchased by hospitals, nursing 266
homes, or other medical facilities; 267

(19) Sales of prosthetic devices, durable medical equipment 268
for home use, or mobility enhancing equipment, when made pursuant 269
to a prescription and when such devices or equipment are for use 270
by a human being. 271

(20) Sales of emergency and fire protection vehicles and 272

equipment to nonprofit organizations for use solely in providing 273
fire protection and emergency services, including trauma care and 274
emergency medical services, for political subdivisions of the 275
state; 276

(21) Sales of tangible personal property manufactured in this 277
state, if sold by the manufacturer in this state to a retailer for 278
use in the retail business of the retailer outside of this state 279
and if possession is taken from the manufacturer by the purchaser 280
within this state for the sole purpose of immediately removing the 281
same from this state in a vehicle owned by the purchaser; 282

(22) Sales of services provided by the state or any of its 283
political subdivisions, agencies, instrumentalities, institutions, 284
or authorities, or by governmental entities of the state or any of 285
its political subdivisions, agencies, instrumentalities, 286
institutions, or authorities; 287

(23) Sales of motor vehicles to nonresidents of this state 288
under the circumstances described in division (B) of section 289
5739.029 of the Revised Code; 290

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

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| "packaging" means placing therein. | 305 |
| (25)(a) Sales of water to a consumer for residential use; | 306 |
| (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. | 307 308 309 310 |
| (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code; | 311 312 |
| (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: | 313 314 315 316 |
| (a) To prepare food for human consumption for sale; | 317 |
| (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; | 318 319 320 321 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale. | 322 323 |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies; | 324 325 |
| (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; | 326 327 328 329 |
| (30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code; | 330 331 332 |
| (31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the | 333 334 |

Revised Code; 335

(32) The sale, lease, repair, and maintenance of, parts for, 336
or items attached to or incorporated in, motor vehicles that are 337
primarily used for transporting tangible personal property 338
belonging to others by a person engaged in highway transportation 339
for hire, except for packages and packaging used for the 340
transportation of tangible personal property; 341

(33) Sales to the state headquarters of any veterans' 342
organization in this state that is either incorporated and issued 343
a charter by the congress of the United States or is recognized by 344
the United States veterans administration, for use by the 345
headquarters; 346

(34) Sales to a telecommunications service vendor, mobile 347
telecommunications service vendor, or satellite broadcasting 348
service vendor of tangible personal property and services used 349
directly and primarily in transmitting, receiving, switching, or 350
recording any interactive, one- or two-way electromagnetic 351
communications, including voice, image, data, and information, 352
through the use of any medium, including, but not limited to, 353
poles, wires, cables, switching equipment, computers, and record 354
storage devices and media, and component parts for the tangible 355
personal property. The exemption provided in this division shall 356
be in lieu of all other exemptions under division (B)(42)(a) or 357
(n) of this section to which the vendor may otherwise be entitled, 358
based upon the use of the thing purchased in providing the 359
telecommunications, mobile telecommunications, or satellite 360
broadcasting service. 361

(35)(a) Sales where the purpose of the consumer is to use or 362
consume the things transferred in making retail sales and 363
consisting of newspaper inserts, catalogues, coupons, flyers, gift 364
certificates, or other advertising material that prices and 365
describes tangible personal property offered for retail sale. 366

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and 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;

(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(d) 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;

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| (b) Repair services for motor racing vehicles; | 398 |
| (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. | 399 400 401 402 403 404 405 406 |
| (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; | 407 408 409 |
| (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; energy conversion equipment as defined in section 5727.01 of the Revised Code; 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) or (n) 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. | 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 |
| (41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible | 428 429 |

personal property and services used directly and primarily in 430
providing taxable services under that section. 431

(42) Sales where the purpose of the purchaser is to do any of 432
the following: 433

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

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

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

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

(e) To incorporate the thing transferred as a material or a 457
part into, or to use or consume the thing transferred directly in 458
the production of, magazines distributed as controlled circulation 459
publications; 460

(f) To use or consume the thing transferred in the production 461
and preparation in suitable condition for market and sale of 462
printed, imprinted, overprinted, lithographic, multilithic, 463
blueprinted, photostatic, or other productions or reproductions of 464
written or graphic matter; 465

(g) To use the thing transferred, as described in section 466
5739.011 of the Revised Code, primarily in a manufacturing 467
operation to produce tangible personal property for sale; 468

(h) To use the benefit of a warranty, maintenance or service 469
contract, or similar agreement, as described in division (B)(7) of 470
section 5739.01 of the Revised Code, to repair or maintain 471
tangible personal property, if all of the property that is the 472
subject of the warranty, contract, or agreement would not be 473
subject to the tax imposed by this section; 474

(i) To use the thing transferred as qualified research and 475
development equipment; 476

(j) To use or consume the thing transferred primarily in 477
storing, transporting, mailing, or otherwise handling purchased 478
sales inventory in a warehouse, distribution center, or similar 479
facility when the inventory is primarily distributed outside this 480
state to retail stores of the person who owns or controls the 481
warehouse, distribution center, or similar facility, to retail 482
stores of an affiliated group of which that person is a member, or 483
by means of direct marketing. This division does not apply to 484
motor vehicles registered for operation on the public highways. As 485
used in this division, "affiliated group" has the same meaning as 486
in division (B)(3)(e) of section 5739.01 of the Revised Code and 487
"direct marketing" has the same meaning as in division (B)(35) of 488
this section. 489

(k) To use or consume the thing transferred to fulfill a 490
contractual obligation incurred by a warrantor pursuant to a 491

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

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

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

(n) To use or consume the thing transferred primarily in 504
producing tangible personal property for sale by farming, 505
agriculture, horticulture, or floriculture. Persons engaged in 506
rendering farming, agriculture, horticulture, or floriculture 507
services for others are deemed engaged primarily in farming, 508
agriculture, horticulture, or floriculture. This paragraph does 509
not exempt from "retail sale" or "sales at retail" the sale of 510
tangible personal property that is to be incorporated into a 511
structure or improvement to real property. 512

(o) To use or consume the thing transferred in acquiring, 513
formatting, editing, storing, and disseminating data or 514
information by electronic publishing. 515

As used in division (B)(42) of this section, "thing" includes 516
all transactions included in divisions (B)(3)(a), (b), and (e) of 517
section 5739.01 of the Revised Code. 518

(43) Sales conducted through a coin operated device that 519
activates vacuum equipment or equipment that dispenses water, 520
whether or not in combination with soap or other cleaning agents 521
or wax, to the consumer for the consumer's use on the premises in 522

washing, cleaning, or waxing a motor vehicle, provided no other 523
personal property or personal service is provided as part of the 524
transaction. 525

(44) Sales of replacement and modification parts for engines, 526
airframes, instruments, and interiors in, and paint for, aircraft 527
used primarily in a fractional aircraft ownership program, and 528
sales of services for the repair, modification, and maintenance of 529
such aircraft, and machinery, equipment, and supplies primarily 530
used to provide those services. 531

(45) Sales of telecommunications service that is used 532
directly and primarily to perform the functions of a call center. 533
As used in this division, "call center" means any physical 534
location where telephone calls are placed or received in high 535
volume for the purpose of making sales, marketing, customer 536
service, technical support, or other specialized business 537
activity, and that employs at least fifty individuals that engage 538
in call center activities on a full-time basis, or sufficient 539
individuals to fill fifty full-time equivalent positions. 540

(46) Sales by a telecommunications service vendor of 900 541
service to a subscriber. This division does not apply to 542
information services, as defined in division (FF) of section 543
5739.01 of the Revised Code. 544

(47) Sales of value-added non-voice data service. This 545
division does not apply to any similar service that is not 546
otherwise a telecommunications service. 547

(48)(a) Sales of machinery, equipment, and software to a 548
qualified direct selling entity for use in a warehouse or 549
distribution center primarily for storing, transporting, or 550
otherwise handling inventory that is held for sale to independent 551
salespersons who operate as direct sellers and that is held 552
primarily for distribution outside this state; 553

(b) As used in division (B)(48)(a) of this section: 554

(i) "Direct seller" means a person selling consumer products 555
to individuals for personal or household use and not from a fixed 556
retail location, including selling such product at in-home product 557
demonstrations, parties, and other one-on-one selling. 558

(ii) "Qualified direct selling entity" means an entity 559
selling to direct sellers at the time the entity enters into a tax 560
credit agreement with the tax credit authority pursuant to section 561
122.17 of the Revised Code, provided that the agreement was 562
entered into on or after January 1, 2007. Neither contingencies 563
relevant to the granting of, nor later developments with respect 564
to, the tax credit shall impair the status of the qualified direct 565
selling entity under division (B)(48) of this section after 566
execution of the tax credit agreement by the tax credit authority. 567

(c) Division (B)(48) of this section is limited to machinery, 568
equipment, and software first stored, used, or consumed in this 569
state within the period commencing June 24, 2008, and ending on 570
the date that is five years after that date. 571

(49) Sales of materials, parts, equipment, or engines used in 572
the repair or maintenance of aircraft or avionics systems of such 573
aircraft, and sales of repair, remodeling, replacement, or 574
maintenance services in this state performed on aircraft or on an 575
aircraft's avionics, engine, or component materials or parts. As 576
used in division (B)(49) of this section, "aircraft" means 577
aircraft of more than six thousand pounds maximum certified 578
takeoff weight or used exclusively in general aviation. 579

(50) Sales of full flight simulators that are used for pilot 580
or flight-crew training, sales of repair or replacement parts or 581
components, and sales of repair or maintenance services for such 582
full flight simulators. "Full flight simulator" means a replica of 583
a specific type, or make, model, and series of aircraft cockpit. 584

It includes the assemblage of equipment and computer programs 585
necessary to represent aircraft operations in ground and flight 586
conditions, a visual system providing an out-of-the-cockpit view, 587
and a system that provides cues at least equivalent to those of a 588
three-degree-of-freedom motion system, and has the full range of 589
capabilities of the systems installed in the device as described 590
in appendices A and B of part 60 of chapter 1 of title 14 of the 591
Code of Federal Regulations. 592

(51) Any transfer or lease of tangible personal property 593
between the state and a successful proposer in accordance with 594
sections 126.60 to 126.605 of the Revised Code, provided the 595
property is part of a project as defined in section 126.60 of the 596
Revised Code and the state retains ownership of the project or 597
part thereof that is being transferred or leased, between the 598
state and JobsOhio in accordance with section 4313.02 of the 599
Revised Code. 600

(52)(a) Sales of the following occurring on the second 601
Saturday of August and the following Sunday of each year: 602

(i) An item of clothing, the price of which is less than one 603
hundred dollars; 604

(ii) An item of school supplies, the price of which is less 605
than one hundred dollars; 606

(iii) A computer, the price of which, less any manufacturer's 607
rebate, is less than seven hundred fifty dollars; and 608

(iv) A computer accessory, the price of which, less any 609
manufacturer's rebate, is less than one hundred dollars. 610

(b) For purposes of division (B)(52) of this section: 611

(i) "Clothing" does not include clothing or footwear that is 612
designed primarily for athletic activity or protective use and 613
that is not normally worn except when used for the athletic 614

activity or protective use for which it is designed; accessories, 615
including jewelry, handbags, luggage, umbrellas, wallets, watches, 616
and similar items carried on or about the human body, without 617
regard to whether the item is worn on the body in a manner 618
characteristic of clothing; or clothing that is rented, or that is 619
for use in a trade or business. 620

(ii) "School supplies" means pens, pencils, binders, 621
notebooks, reference books, book bags, lunch boxes, calculators, 622
and similar items. "School supplies" does not include furniture, 623
items that are rented, or tangible personal property for use in a 624
trade or business. 625

(C) For the purpose of the proper administration of this 626
chapter, and to prevent the evasion of the tax, it is presumed 627
that all sales made in this state are subject to the tax until the 628
contrary is established. 629

(D) The levy of this tax on retail sales of recreation and 630
sports club service shall not prevent a municipal corporation from 631
levying any tax on recreation and sports club dues or on any 632
income generated by recreation and sports club dues. 633

(E) The tax collected by the vendor from the consumer under 634
this chapter is not part of the price, but is a tax collection for 635
the benefit of the state, and of counties levying an additional 636
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 637
Code and of transit authorities levying an additional sales tax 638
pursuant to section 5739.023 of the Revised Code. Except for the 639
discount authorized under section 5739.12 of the Revised Code and 640
the effects of any rounding pursuant to section 5703.055 of the 641
Revised Code, no person other than the state or such a county or 642
transit authority shall derive any benefit from the collection or 643
payment of the tax levied by this section or section 5739.021, 644
5739.023, or 5739.026 of the Revised Code. 645

Sec. 5739.05. (A)(1) The tax commissioner shall enforce and 646
administer sections 5739.01 to 5739.31 of the Revised Code, which 647
are hereby declared to be sections which the commissioner is 648
required to administer within the meaning of sections 5703.17 to 649
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 650
commissioner may adopt and promulgate, in accordance with sections 651
119.01 to 119.13 of the Revised Code, such rules as the 652
commissioner deems necessary to administer sections 5739.01 to 653
5739.31 of the Revised Code. 654

(2) In accordance with section 5703.14 of the Revised Code, 655
the tax commissioner shall adopt rules that are necessary to 656
implement the tax exemption provided by division (B)(52) of 657
section 5739.02 of the Revised Code. Before each exemption period 658
required under that division, the commissioner shall make 659
available to vendors information bulletins explaining the 660
exemption. 661

(B) Upon application, the commissioner may authorize a vendor 662
to pay on a predetermined basis the tax levied by or pursuant to 663
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 664
Code upon sales of things produced or distributed or services 665
provided by such vendor, and the commissioner may waive the 666
collection of the tax from the consumer. The commissioner shall 667
not grant such authority unless the commissioner finds that the 668
granting of the authority would improve compliance and increase 669
the efficiency of the administration of the tax. The person to 670
whom such authority is granted shall post a notice, if required by 671
the commissioner, at the location where the product is offered for 672
sale that the tax is included in the selling price. The 673
~~commissioner~~ commissioner may adopt rules to administer this 674
division. 675

(C) The commissioner may authorize a vendor to pay, on the 676

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

The vendor shall collect the tax on the vendor's taxable 697
sales and the vendor's liability for collecting or remitting shall 698
be based upon the proportions and ratios established by the test 699
check, and not upon any other basis of determination, until such 700
time as a subsequent test check is made at the request of either 701
the vendor or the commissioner where either party believes that 702
the nature of the vendor's business has so changed as to make the 703
prior or existing test check no longer representative. The 704
commissioner may give notice to the vendor at any time that the 705
authorization is revoked or the vendor may notify the commissioner 706
that the vendor no longer elects to report under the 707
authorization. Such notice shall be delivered to the other party 708
personally or by registered mail. The revocation or cancellation 709

is not effective prior to the date of receipt of such notice. 710

Section 2. That existing sections 5739.02 and 5739.05 of the 711
Revised Code are hereby repealed. 712

Section 3. Section 5739.02 of the Revised Code is presented 713
in this act as a composite of the section as amended by both Am. 714
Sub. H.B. 487 and Am. Sub. H.B. 508 of the 129th General Assembly. 715
The General Assembly, applying the principle stated in division 716
(B) of section 1.52 of the Revised Code that amendments are to be 717
harmonized if reasonably capable of simultaneous operation, finds 718
that the composite is the resulting version of the section in 719
effect prior to the effective date of the section as presented in 720
this act. 721