

As Introduced

**129th General Assembly
Regular Session
2011-2012**

S. B. No. 263

Senator Coley

Cosponsor: Senator Bacon

—

A B I L L

To amend section 5739.02 of the Revised Code to 1
remove the requirement that certain 2
telecommunications equipment used in direct 3
marketing must be purchased by a direct marketing 4
vendor in order for the equipment to be exempt 5
from the sales tax. 6

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

Section 1. That section 5739.02 of the Revised Code be 7
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 81

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

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 Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

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

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

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

and, until one calendar year after the construction of a 210
convention center that qualifies for property tax exemption under 211
section 5709.084 of the Revised Code is completed, building and 212
construction materials and services sold to a construction 213
contractor for incorporation into the real property comprising 214
that convention center; 215

(14) Sales of ships or vessels or rail rolling stock used or 216
to be used principally in interstate or foreign commerce, and 217
repairs, alterations, fuel, and lubricants for such ships or 218
vessels or rail rolling stock; 219

(15) Sales to persons primarily engaged in any of the 220
activities mentioned in division (B)(42)(a), (g), or (h) of this 221
section, to persons engaged in making retail sales, or to persons 222
who purchase for sale from a manufacturer tangible personal 223
property that was produced by the manufacturer in accordance with 224
specific designs provided by the purchaser, of packages, including 225
material, labels, and parts for packages, and of machinery, 226
equipment, and material for use primarily in packaging tangible 227
personal property produced for sale, including any machinery, 228
equipment, and supplies used to make labels or packages, to 229
prepare packages or products for labeling, or to label packages or 230
products, by or on the order of the person doing the packaging, or 231
sold at retail. "Packages" includes bags, baskets, cartons, 232
crates, boxes, cans, bottles, bindings, wrappings, and other 233
similar devices and containers, but does not include motor 234
vehicles or bulk tanks, trailers, or similar devices attached to 235
motor vehicles. "Packaging" means placing in a package. Division 236
(B)(15) of this section does not apply to persons engaged in 237
highway transportation for hire. 238

(16) Sales of food to persons using supplemental nutrition 239
assistance program benefits to purchase the food. As used in this 240
division, "food" has the same meaning as in 7 U.S.C. 2012 and 241

federal regulations adopted pursuant to the Food and Nutrition Act 242
of 2008. 243

(17) Sales to persons engaged in farming, agriculture, 244
horticulture, or floriculture, of tangible personal property for 245
use or consumption primarily in the production by farming, 246
agriculture, horticulture, or floriculture of other tangible 247
personal property for use or consumption primarily in the 248
production of tangible personal property for sale by farming, 249
agriculture, horticulture, or floriculture; or material and parts 250
for incorporation into any such tangible personal property for use 251
or consumption in production; and of tangible personal property 252
for such use or consumption in the conditioning or holding of 253
products produced by and for such use, consumption, or sale by 254
persons engaged in farming, agriculture, horticulture, or 255
floriculture, except where such property is incorporated into real 256
property; 257

(18) Sales of drugs for a human being that may be dispensed 258
only pursuant to a prescription; insulin as recognized in the 259
official United States pharmacopoeia; urine and blood testing 260
materials when used by diabetics or persons with hypoglycemia to 261
test for glucose or acetone; hypodermic syringes and needles when 262
used by diabetics for insulin injections; epoetin alfa when 263
purchased for use in the treatment of persons with medical 264
disease; hospital beds when purchased by hospitals, nursing homes, 265
or other medical facilities; and medical oxygen and medical 266
oxygen-dispensing equipment when purchased by hospitals, nursing 267
homes, or other medical facilities; 268

(19) Sales of prosthetic devices, durable medical equipment 269
for home use, or mobility enhancing equipment, when made pursuant 270
to a prescription and when such devices or equipment are for use 271
by a human being. 272

(20) Sales of emergency and fire protection vehicles and 273

equipment to nonprofit organizations for use solely in providing 274
fire protection and emergency services, including trauma care and 275
emergency medical services, for political subdivisions of the 276
state; 277

(21) Sales of tangible personal property manufactured in this 278
state, if sold by the manufacturer in this state to a retailer for 279
use in the retail business of the retailer outside of this state 280
and if possession is taken from the manufacturer by the purchaser 281
within this state for the sole purpose of immediately removing the 282
same from this state in a vehicle owned by the purchaser; 283

(22) Sales of services provided by the state or any of its 284
political subdivisions, agencies, instrumentalities, institutions, 285
or authorities, or by governmental entities of the state or any of 286
its political subdivisions, agencies, instrumentalities, 287
institutions, or authorities; 288

(23) Sales of motor vehicles to nonresidents of this state 289
under the circumstances described in division (B) of section 290
5739.029 of the Revised Code; 291

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

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

(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;

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

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

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

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

certificates, or other advertising material that prices and 368
describes tangible personal property offered for retail sale-;i 369

(b) Sales to direct marketing vendors of preliminary 370
materials such as photographs, artwork, and typesetting that will 371
be used in printing advertising material; and of printed matter 372
that offers free merchandise or chances to win sweepstake prizes 373
and that is mailed to potential customers with advertising 374
material described in division (B)(35)(a) of this section; ~~and~~ 375

(c) Sales of equipment such as telephones, computers, 376
facsimile machines, and similar tangible personal property 377
primarily used to accept orders for direct marketing retail 378
sales-;i 379

~~(e)~~(d) Sales of automatic food vending machines that preserve 380
food with a shelf life of forty-five days or less by refrigeration 381
and dispense it to the consumer. 382

For purposes of division (B)(35) of this section, "direct 383
marketing" means the method of selling where consumers order 384
tangible personal property by United States mail, delivery 385
service, or telecommunication and the vendor delivers or ships the 386
tangible personal property sold to the consumer from a warehouse, 387
catalogue distribution center, or similar fulfillment facility by 388
means of the United States mail, delivery service, or common 389
carrier. 390

(36) Sales to a person engaged in the business of 391
horticulture or producing livestock of materials to be 392
incorporated into a horticulture structure or livestock structure; 393

(37) Sales of personal computers, computer monitors, computer 394
keyboards, modems, and other peripheral computer equipment to an 395
individual who is licensed or certified to teach in an elementary 396
or a secondary school in this state for use by that individual in 397
preparation for teaching elementary or secondary school students; 398

| | |
|--|-----|
| (38) Sales to a professional racing team of any of the | 399 |
| following: | 400 |
| (a) Motor racing vehicles; | 401 |
| (b) Repair services for motor racing vehicles; | 402 |
| (c) Items of property that are attached to or incorporated in | 403 |
| motor racing vehicles, including engines, chassis, and all other | 404 |
| components of the vehicles, and all spare, replacement, and | 405 |
| rebuilt parts or components of the vehicles; except not including | 406 |
| tires, consumable fluids, paint, and accessories consisting of | 407 |
| instrumentation sensors and related items added to the vehicle to | 408 |
| collect and transmit data by means of telemetry and other forms of | 409 |
| communication. | 410 |
| (39) Sales of used manufactured homes and used mobile homes, | 411 |
| as defined in section 5739.0210 of the Revised Code, made on or | 412 |
| after January 1, 2000; | 413 |
| (40) Sales of tangible personal property and services to a | 414 |
| provider of electricity used or consumed directly and primarily in | 415 |
| generating, transmitting, or distributing electricity for use by | 416 |
| others, including property that is or is to be incorporated into | 417 |
| and will become a part of the consumer's production, transmission, | 418 |
| or distribution system and that retains its classification as | 419 |
| tangible personal property after incorporation; fuel or power used | 420 |
| in the production, transmission, or distribution of electricity; | 421 |
| energy conversion equipment as defined in section 5727.01 of the | 422 |
| Revised Code; and tangible personal property and services used in | 423 |
| the repair and maintenance of the production, transmission, or | 424 |
| distribution system, including only those motor vehicles as are | 425 |
| specially designed and equipped for such use. The exemption | 426 |
| provided in this division shall be in lieu of all other exemptions | 427 |
| in division (B)(42)(a) or (n) of this section to which a provider | 428 |
| of electricity may otherwise be entitled based on the use of the | 429 |

tangible personal property or service purchased in generating, 430
transmitting, or distributing electricity. 431

(41) Sales to a person providing services under division 432
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 433
personal property and services used directly and primarily in 434
providing taxable services under that section. 435

(42) Sales where the purpose of the purchaser is to do any of 436
the following: 437

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

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

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

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

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

(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;

(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;

(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;

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

(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 492
this section. 493

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

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

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

(n) To use or consume the thing transferred primarily in 508
producing tangible personal property for sale by farming, 509
agriculture, horticulture, or floriculture. Persons engaged in 510
rendering farming, agriculture, horticulture, or floriculture 511
services for others are deemed engaged primarily in farming, 512
agriculture, horticulture, or floriculture. This paragraph does 513
not exempt from "retail sale" or "sales at retail" the sale of 514
tangible personal property that is to be incorporated into a 515
structure or improvement to real property. 516

(o) To use or consume the thing transferred in acquiring, 517
formatting, editing, storing, and disseminating data or 518
information by electronic publishing. 519

As used in division (B)(42) of this section, "thing" includes 520
all transactions included in divisions (B)(3)(a), (b), and (e) of 521
section 5739.01 of the Revised Code. 522

(43) Sales conducted through a coin operated device that 523
activates vacuum equipment or equipment that dispenses water, 524
whether or not in combination with soap or other cleaning agents 525
or wax, to the consumer for the consumer's use on the premises in 526
washing, cleaning, or waxing a motor vehicle, provided no other 527
personal property or personal service is provided as part of the 528
transaction. 529

(44) Sales of replacement and modification parts for engines, 530
airframes, instruments, and interiors in, and paint for, aircraft 531
used primarily in a fractional aircraft ownership program, and 532
sales of services for the repair, modification, and maintenance of 533
such aircraft, and machinery, equipment, and supplies primarily 534
used to provide those services. 535

(45) Sales of telecommunications service that is used 536
directly and primarily to perform the functions of a call center. 537
As used in this division, "call center" means any physical 538
location where telephone calls are placed or received in high 539
volume for the purpose of making sales, marketing, customer 540
service, technical support, or other specialized business 541
activity, and that employs at least fifty individuals that engage 542
in call center activities on a full-time basis, or sufficient 543
individuals to fill fifty full-time equivalent positions. 544

(46) Sales by a telecommunications service vendor of 900 545
service to a subscriber. This division does not apply to 546
information services, as defined in division (FF) of section 547
5739.01 of the Revised Code. 548

(47) Sales of value-added non-voice data service. This 549
division does not apply to any similar service that is not 550
otherwise a telecommunications service. 551

(48)(a) Sales of machinery, equipment, and software to a 552
qualified direct selling entity for use in a warehouse or 553

distribution center primarily for storing, transporting, or 554
otherwise handling inventory that is held for sale to independent 555
salespersons who operate as direct sellers and that is held 556
primarily for distribution outside this state; 557

(b) As used in division (B)(48)(a) of this section: 558

(i) "Direct seller" means a person selling consumer products 559
to individuals for personal or household use and not from a fixed 560
retail location, including selling such product at in-home product 561
demonstrations, parties, and other one-on-one selling. 562

(ii) "Qualified direct selling entity" means an entity 563
selling to direct sellers at the time the entity enters into a tax 564
credit agreement with the tax credit authority pursuant to section 565
122.17 of the Revised Code, provided that the agreement was 566
entered into on or after January 1, 2007. Neither contingencies 567
relevant to the granting of, nor later developments with respect 568
to, the tax credit shall impair the status of the qualified direct 569
selling entity under division (B)(48) of this section after 570
execution of the tax credit agreement by the tax credit authority. 571

(c) Division (B)(48) of this section is limited to machinery, 572
equipment, and software first stored, used, or consumed in this 573
state within the period commencing June 24, 2008, and ending on 574
the date that is five years after that date. 575

(49) Sales of materials, parts, equipment, or engines used in 576
the repair or maintenance of aircraft or avionics systems of such 577
aircraft, and sales of repair, remodeling, replacement, or 578
maintenance services in this state performed on aircraft or on an 579
aircraft's avionics, engine, or component materials or parts. As 580
used in division (B)(49) of this section, "aircraft" means 581
aircraft of more than six thousand pounds maximum certified 582
takeoff weight or used exclusively in general aviation. 583

(50) Sales of full flight simulators that are used for pilot 584

or flight-crew training, sales of repair or replacement parts or 585
components, and sales of repair or maintenance services for such 586
full flight simulators. "Full flight simulator" means a replica of 587
a specific type, or make, model, and series of aircraft cockpit. 588
It includes the assemblage of equipment and computer programs 589
necessary to represent aircraft operations in ground and flight 590
conditions, a visual system providing an out-of-the-cockpit view, 591
and a system that provides cues at least equivalent to those of a 592
three-degree-of-freedom motion system, and has the full range of 593
capabilities of the systems installed in the device as described 594
in appendices A and B of part 60 of chapter 1 of title 14 of the 595
Code of Federal Regulations. 596

(51) Any transfer or lease of tangible personal property 597
between the state and a successful proposer in accordance with 598
sections 126.60 to 126.605 of the Revised Code, provided the 599
property is part of a project as defined in section 126.60 of the 600
Revised Code and the state retains ownership of the project or 601
part thereof that is being transferred or leased, between the 602
state and JobsOhio in accordance with section 4313.02 of the 603
Revised Code. 604

(C) For the purpose of the proper administration of this 605
chapter, and to prevent the evasion of the tax, it is presumed 606
that all sales made in this state are subject to the tax until the 607
contrary is established. 608

(D) The levy of this tax on retail sales of recreation and 609
sports club service shall not prevent a municipal corporation from 610
levying any tax on recreation and sports club dues or on any 611
income generated by recreation and sports club dues. 612

(E) The tax collected by the vendor from the consumer under 613
this chapter is not part of the price, but is a tax collection for 614
the benefit of the state, and of counties levying an additional 615
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 616

Code and of transit authorities levying an additional sales tax 617
pursuant to section 5739.023 of the Revised Code. Except for the 618
discount authorized under section 5739.12 of the Revised Code and 619
the effects of any rounding pursuant to section 5703.055 of the 620
Revised Code, no person other than the state or such a county or 621
transit authority shall derive any benefit from the collection or 622
payment of the tax levied by this section or section 5739.021, 623
5739.023, or 5739.026 of the Revised Code. 624

Section 2. That existing section 5739.02 of the Revised Code 625
is hereby repealed. 626

Section 3. The General Assembly hereby declares that the 627
intent of the amendment by this act of section 5739.02 of the 628
Revised Code is to clarify the law as it existed prior to the 629
amendment by this act of that section. 630