

As Introduced

**130th General Assembly
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H. B. No. 26

Representative Maag

**Cosponsors: Representatives Brenner, Henne, Mallory, Retherford,
Roegner, Wachtmann**

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A B I L L

To amend section 5739.02 of the Revised Code to 1
exempt from sales and use taxes the sale or use of 2
investment metal bullion and coins. 3

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

Section 1. That section 5739.02 of the Revised Code be 4
amended to read as follows: 5

Sec. 5739.02. For the purpose of providing revenue with which 6
to meet the needs of the state, for the use of the general revenue 7
fund of the state, for the purpose of securing a thorough and 8
efficient system of common schools throughout the state, for the 9
purpose of affording revenues, in addition to those from general 10
property taxes, permitted under constitutional limitations, and 11
from other sources, for the support of local governmental 12
functions, and for the purpose of reimbursing the state for the 13
expense of administering this chapter, an excise tax is hereby 14
levied on each retail sale made in this state. 15

(A)(1) The tax shall be collected as provided in section 16
5739.025 of the Revised Code. The rate of the tax shall be five 17
and one-half per cent. The tax applies and is collectible when the 18

sale is made, regardless of the time when the price is paid or 19
delivered. 20

(2) In the case of the lease or rental, with a fixed term of 21
more than thirty days or an indefinite term with a minimum period 22
of more than thirty days, of any motor vehicles designed by the 23
manufacturer to carry a load of not more than one ton, watercraft, 24
outboard motor, or aircraft, or of any tangible personal property, 25
other than motor vehicles designed by the manufacturer to carry a 26
load of more than one ton, to be used by the lessee or renter 27
primarily for business purposes, the tax shall be collected by the 28
vendor at the time the lease or rental is consummated and shall be 29
calculated by the vendor on the basis of the total amount to be 30
paid by the lessee or renter under the lease agreement. If the 31
total amount of the consideration for the lease or rental includes 32
amounts that are not calculated at the time the lease or rental is 33
executed, the tax shall be calculated and collected by the vendor 34
at the time such amounts are billed to the lessee or renter. In 35
the case of an open-end lease or rental, the tax shall be 36
calculated by the vendor on the basis of the total amount to be 37
paid during the initial fixed term of the lease or rental, and for 38
each subsequent renewal period as it comes due. As used in this 39
division, "motor vehicle" has the same meaning as in section 40
4501.01 of the Revised Code, and "watercraft" includes an outdrive 41
unit attached to the watercraft. 42

A lease with a renewal clause and a termination penalty or 43
similar provision that applies if the renewal clause is not 44
exercised is presumed to be a sham transaction. In such a case, 45
the tax shall be calculated and paid on the basis of the entire 46
length of the lease period, including any renewal periods, until 47
the termination penalty or similar provision no longer applies. 48
The taxpayer shall bear the burden, by a preponderance of the 49
evidence, that the transaction or series of transactions is not a 50

sham transaction. 51

(3) Except as provided in division (A)(2) of this section, in 52
the case of a sale, the price of which consists in whole or in 53
part of the lease or rental of tangible personal property, the tax 54
shall be measured by the installments of that lease or rental. 55

(4) In the case of a sale of a physical fitness facility 56
service or recreation and sports club service, the price of which 57
consists in whole or in part of a membership for the receipt of 58
the benefit of the service, the tax applicable to the sale shall 59
be measured by the installments thereof. 60

(B) The tax does not apply to the following: 61

(1) Sales to the state or any of its political subdivisions, 62
or to any other state or its political subdivisions if the laws of 63
that state exempt from taxation sales made to this state and its 64
political subdivisions; 65

(2) Sales of food for human consumption off the premises 66
where sold; 67

(3) Sales of food sold to students only in a cafeteria, 68
dormitory, fraternity, or sorority maintained in a private, 69
public, or parochial school, college, or university; 70

(4) Sales of newspapers and of magazine subscriptions and 71
sales or transfers of magazines distributed as controlled 72
circulation publications; 73

(5) The furnishing, preparing, or serving of meals without 74
charge by an employer to an employee provided the employer records 75
the meals as part compensation for services performed or work 76
done; 77

(6) Sales of motor fuel upon receipt, use, distribution, or 78
sale of which in this state a tax is imposed by the law of this 79
state, but this exemption shall not apply to the sale of motor 80

fuel on which a refund of the tax is allowable under division (A) 81
of section 5735.14 of the Revised Code; and the tax commissioner 82
may deduct the amount of tax levied by this section applicable to 83
the price of motor fuel when granting a refund of motor fuel tax 84
pursuant to division (A) of section 5735.14 of the Revised Code 85
and shall cause the amount deducted to be paid into the general 86
revenue fund of this state; 87

(7) Sales of natural gas by a natural gas company, of water 88
by a water-works company, or of steam by a heating company, if in 89
each case the thing sold is delivered to consumers through pipes 90
or conduits, and all sales of communications services by a 91
telegraph company, all terms as defined in section 5727.01 of the 92
Revised Code, and sales of electricity delivered through wires; 93

(8) Casual sales by a person, or auctioneer employed directly 94
by the person to conduct such sales, except as to such sales of 95
motor vehicles, watercraft or outboard motors required to be 96
titled under section 1548.06 of the Revised Code, watercraft 97
documented with the United States coast guard, snowmobiles, and 98
all-purpose vehicles as defined in section 4519.01 of the Revised 99
Code; 100

(9)(a) Sales of services or tangible personal property, other 101
than motor vehicles, mobile homes, and manufactured homes, by 102
churches, organizations exempt from taxation under section 103
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 104
organizations operated exclusively for charitable purposes as 105
defined in division (B)(12) of this section, provided that the 106
number of days on which such tangible personal property or 107
services, other than items never subject to the tax, are sold does 108
not exceed six in any calendar year, except as otherwise provided 109
in division (B)(9)(b) of this section. If the number of days on 110
which such sales are made exceeds six in any calendar year, the 111
church or organization shall be considered to be engaged in 112

business and all subsequent sales by it shall be subject to the 113
tax. In counting the number of days, all sales by groups within a 114
church or within an organization shall be considered to be sales 115
of that church or organization. 116

(b) The limitation on the number of days on which tax-exempt 117
sales may be made by a church or organization under division 118
(B)(9)(a) of this section does not apply to sales made by student 119
clubs and other groups of students of a primary or secondary 120
school, or a parent-teacher association, booster group, or similar 121
organization that raises money to support or fund curricular or 122
extracurricular activities of a primary or secondary school. 123

(c) Divisions (B)(9)(a) and (b) of this section do not apply 124
to sales by a noncommercial educational radio or television 125
broadcasting station. 126

(10) Sales not within the taxing power of this state under 127
the Constitution of the United States; 128

(11) Except for transactions that are sales under division 129
(B)(3)(r) of section 5739.01 of the Revised Code, the 130
transportation of persons or property, unless the transportation 131
is by a private investigation and security service; 132

(12) Sales of tangible personal property or services to 133
churches, to organizations exempt from taxation under section 134
501(c)(3) of the Internal Revenue Code of 1986, and to any other 135
nonprofit organizations operated exclusively for charitable 136
purposes in this state, no part of the net income of which inures 137
to the benefit of any private shareholder or individual, and no 138
substantial part of the activities of which consists of carrying 139
on propaganda or otherwise attempting to influence legislation; 140
sales to offices administering one or more homes for the aged or 141
one or more hospital facilities exempt under section 140.08 of the 142
Revised Code; and sales to organizations described in division (D) 143

of section 5709.12 of the Revised Code. 144

"Charitable purposes" means the relief of poverty; the 145
improvement of health through the alleviation of illness, disease, 146
or injury; the operation of an organization exclusively for the 147
provision of professional, laundry, printing, and purchasing 148
services to hospitals or charitable institutions; the operation of 149
a home for the aged, as defined in section 5701.13 of the Revised 150
Code; the operation of a radio or television broadcasting station 151
that is licensed by the federal communications commission as a 152
noncommercial educational radio or television station; the 153
operation of a nonprofit animal adoption service or a county 154
humane society; the promotion of education by an institution of 155
learning that maintains a faculty of qualified instructors, 156
teaches regular continuous courses of study, and confers a 157
recognized diploma upon completion of a specific curriculum; the 158
operation of a parent-teacher association, booster group, or 159
similar organization primarily engaged in the promotion and 160
support of the curricular or extracurricular activities of a 161
primary or secondary school; the operation of a community or area 162
center in which presentations in music, dramatics, the arts, and 163
related fields are made in order to foster public interest and 164
education therein; the production of performances in music, 165
dramatics, and the arts; or the promotion of education by an 166
organization engaged in carrying on research in, or the 167
dissemination of, scientific and technological knowledge and 168
information primarily for the public. 169

Nothing in this division shall be deemed to exempt sales to 170
any organization for use in the operation or carrying on of a 171
trade or business, or sales to a home for the aged for use in the 172
operation of independent living facilities as defined in division 173
(A) of section 5709.12 of the Revised Code. 174

(13) Building and construction materials and services sold to 175

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

section 5709.084 of the Revised Code is completed, building and 209
construction materials and services sold to a construction 210
contractor for incorporation into the real property comprising 211
that convention center; 212

(14) Sales of ships or vessels or rail rolling stock used or 213
to be used principally in interstate or foreign commerce, and 214
repairs, alterations, fuel, and lubricants for such ships or 215
vessels or rail rolling stock; 216

(15) Sales to persons primarily engaged in any of the 217
activities mentioned in division (B)(42)(a), (g), or (h) of this 218
section, to persons engaged in making retail sales, or to persons 219
who purchase for sale from a manufacturer tangible personal 220
property that was produced by the manufacturer in accordance with 221
specific designs provided by the purchaser, of packages, including 222
material, labels, and parts for packages, and of machinery, 223
equipment, and material for use primarily in packaging tangible 224
personal property produced for sale, including any machinery, 225
equipment, and supplies used to make labels or packages, to 226
prepare packages or products for labeling, or to label packages or 227
products, by or on the order of the person doing the packaging, or 228
sold at retail. "Packages" includes bags, baskets, cartons, 229
crates, boxes, cans, bottles, bindings, wrappings, and other 230
similar devices and containers, but does not include motor 231
vehicles or bulk tanks, trailers, or similar devices attached to 232
motor vehicles. "Packaging" means placing in a package. Division 233
(B)(15) of this section does not apply to persons engaged in 234
highway transportation for hire. 235

(16) Sales of food to persons using supplemental nutrition 236
assistance program benefits to purchase the food. As used in this 237
division, "food" has the same meaning as in 7 U.S.C. 2012 and 238
federal regulations adopted pursuant to the Food and Nutrition Act 239
of 2008. 240

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

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

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

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and

emergency medical services, for political subdivisions of the	273
state;	274
(21) Sales of tangible personal property manufactured in this	275
state, if sold by the manufacturer in this state to a retailer for	276
use in the retail business of the retailer outside of this state	277
and if possession is taken from the manufacturer by the purchaser	278
within this state for the sole purpose of immediately removing the	279
same from this state in a vehicle owned by the purchaser;	280
(22) Sales of services provided by the state or any of its	281
political subdivisions, agencies, instrumentalities, institutions,	282
or authorities, or by governmental entities of the state or any of	283
its political subdivisions, agencies, instrumentalities,	284
institutions, or authorities;	285
(23) Sales of motor vehicles to nonresidents of this state	286
under the circumstances described in division (B) of section	287
5739.029 of the Revised Code;	288
(24) Sales to persons engaged in the preparation of eggs for	289
sale of tangible personal property used or consumed directly in	290
such preparation, including such tangible personal property used	291
for cleaning, sanitizing, preserving, grading, sorting, and	292
classifying by size; packages, including material and parts for	293
packages, and machinery, equipment, and material for use in	294
packaging eggs for sale; and handling and transportation equipment	295
and parts therefor, except motor vehicles licensed to operate on	296
public highways, used in intraplant or interplant transfers or	297
shipment of eggs in the process of preparation for sale, when the	298
plant or plants within or between which such transfers or	299
shipments occur are operated by the same person. "Packages"	300
includes containers, cases, baskets, flats, fillers, filler flats,	301
cartons, closure materials, labels, and labeling materials, and	302
"packaging" means placing therein.	303

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

(32) The sale, lease, repair, and maintenance of, parts for, 334
or items attached to or incorporated in, motor vehicles that are 335
primarily used for transporting tangible personal property 336
belonging to others by a person engaged in highway transportation 337
for hire, except for packages and packaging used for the 338
transportation of tangible personal property; 339

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

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

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

(b) Sales to direct marketing vendors of preliminary 365

materials such as photographs, artwork, and typesetting that will 366
be used in printing advertising material; and of printed matter 367
that offers free merchandise or chances to win sweepstake prizes 368
and that is mailed to potential customers with advertising 369
material described in division (B)(35)(a) of this section; 370

(c) Sales of equipment such as telephones, computers, 371
facsimile machines, and similar tangible personal property 372
primarily used to accept orders for direct marketing retail sales. 373

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

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

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

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

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

(a) Motor racing vehicles; 395

(b) Repair services for motor racing vehicles;	396
(c) Items of property that are attached to or incorporated in 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.	397 398 399 400 401 402 403 404
(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;	405 406 407
(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.	408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425
(41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible	426 427

personal property and services used directly and primarily in 428
providing taxable services under that section. 429

(42) Sales where the purpose of the purchaser is to do any of 430
the following: 431

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

(b) To hold the thing transferred as security for the 449
performance of an obligation of the vendor; 450

(c) To resell, hold, use, or consume the thing transferred as 451
evidence of a contract of insurance; 452

(d) To use or consume the thing directly in commercial 453
fishing; 454

(e) To incorporate the thing transferred as a material or a 455
part into, or to use or consume the thing transferred directly in 456
the production of, magazines distributed as controlled circulation 457
publications; 458

(f) To use or consume the thing transferred in the production 459
and preparation in suitable condition for market and sale of 460
printed, imprinted, overprinted, lithographic, multilithic, 461
blueprinted, photostatic, or other productions or reproductions of 462
written or graphic matter; 463

(g) To use the thing transferred, as described in section 464
5739.011 of the Revised Code, primarily in a manufacturing 465
operation to produce tangible personal property for sale; 466

(h) To use the benefit of a warranty, maintenance or service 467
contract, or similar agreement, as described in division (B)(7) of 468
section 5739.01 of the Revised Code, to repair or maintain 469
tangible personal property, if all of the property that is the 470
subject of the warranty, contract, or agreement would not be 471
subject to the tax imposed by this section; 472

(i) To use the thing transferred as qualified research and 473
development equipment; 474

(j) To use or consume the thing transferred primarily in 475
storing, transporting, mailing, or otherwise handling purchased 476
sales inventory in a warehouse, distribution center, or similar 477
facility when the inventory is primarily distributed outside this 478
state to retail stores of the person who owns or controls the 479
warehouse, distribution center, or similar facility, to retail 480
stores of an affiliated group of which that person is a member, or 481
by means of direct marketing. This division does not apply to 482
motor vehicles registered for operation on the public highways. As 483
used in this division, "affiliated group" has the same meaning as 484
in division (B)(3)(e) of section 5739.01 of the Revised Code and 485
"direct marketing" has the same meaning as in division (B)(35) of 486
this section. 487

(k) To use or consume the thing transferred to fulfill a 488
contractual obligation incurred by a warrantor pursuant to a 489

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

(l) To use or consume the thing transferred in the production 495
of a newspaper for distribution to the public; 496

(m) To use tangible personal property to perform a service 497
listed in division (B)(3) of section 5739.01 of the Revised Code, 498
if the property is or is to be permanently transferred to the 499
consumer of the service as an integral part of the performance of 500
the service; 501

(n) To use or consume the thing transferred primarily in 502
producing tangible personal property for sale by farming, 503
agriculture, horticulture, or floriculture. Persons engaged in 504
rendering farming, agriculture, horticulture, or floriculture 505
services for others are deemed engaged primarily in farming, 506
agriculture, horticulture, or floriculture. This paragraph does 507
not exempt from "retail sale" or "sales at retail" the sale of 508
tangible personal property that is to be incorporated into a 509
structure or improvement to real property. 510

(o) To use or consume the thing transferred in acquiring, 511
formatting, editing, storing, and disseminating data or 512
information by electronic publishing. 513

As used in division (B)(42) of this section, "thing" includes 514
all transactions included in divisions (B)(3)(a), (b), and (e) of 515
section 5739.01 of the Revised Code. 516

(43) Sales conducted through a coin operated device that 517
activates vacuum equipment or equipment that dispenses water, 518
whether or not in combination with soap or other cleaning agents 519
or wax, to the consumer for the consumer's use on the premises in 520

washing, cleaning, or waxing a motor vehicle, provided no other 521
personal property or personal service is provided as part of the 522
transaction. 523

(44) Sales of replacement and modification parts for engines, 524
airframes, instruments, and interiors in, and paint for, aircraft 525
used primarily in a fractional aircraft ownership program, and 526
sales of services for the repair, modification, and maintenance of 527
such aircraft, and machinery, equipment, and supplies primarily 528
used to provide those services. 529

(45) Sales of telecommunications service that is used 530
directly and primarily to perform the functions of a call center. 531
As used in this division, "call center" means any physical 532
location where telephone calls are placed or received in high 533
volume for the purpose of making sales, marketing, customer 534
service, technical support, or other specialized business 535
activity, and that employs at least fifty individuals that engage 536
in call center activities on a full-time basis, or sufficient 537
individuals to fill fifty full-time equivalent positions. 538

(46) Sales by a telecommunications service vendor of 900 539
service to a subscriber. This division does not apply to 540
information services, as defined in division (FF) of section 541
5739.01 of the Revised Code. 542

(47) Sales of value-added non-voice data service. This 543
division does not apply to any similar service that is not 544
otherwise a telecommunications service. 545

(48)(a) Sales of machinery, equipment, and software to a 546
qualified direct selling entity for use in a warehouse or 547
distribution center primarily for storing, transporting, or 548
otherwise handling inventory that is held for sale to independent 549
salespersons who operate as direct sellers and that is held 550
primarily for distribution outside this state; 551

(b) As used in division (B)(48)(a) of this section: 552

(i) "Direct seller" means a person selling consumer products 553
to individuals for personal or household use and not from a fixed 554
retail location, including selling such product at in-home product 555
demonstrations, parties, and other one-on-one selling. 556

(ii) "Qualified direct selling entity" means an entity 557
selling to direct sellers at the time the entity enters into a tax 558
credit agreement with the tax credit authority pursuant to section 559
122.17 of the Revised Code, provided that the agreement was 560
entered into on or after January 1, 2007. Neither contingencies 561
relevant to the granting of, nor later developments with respect 562
to, the tax credit shall impair the status of the qualified direct 563
selling entity under division (B)(48) of this section after 564
execution of the tax credit agreement by the tax credit authority. 565

(c) Division (B)(48) of this section is limited to machinery, 566
equipment, and software first stored, used, or consumed in this 567
state within the period commencing June 24, 2008, and ending on 568
the date that is five years after that date. 569

(49) Sales of materials, parts, equipment, or engines used in 570
the repair or maintenance of aircraft or avionics systems of such 571
aircraft, and sales of repair, remodeling, replacement, or 572
maintenance services in this state performed on aircraft or on an 573
aircraft's avionics, engine, or component materials or parts. As 574
used in division (B)(49) of this section, "aircraft" means 575
aircraft of more than six thousand pounds maximum certified 576
takeoff weight or used exclusively in general aviation. 577

(50) Sales of full flight simulators that are used for pilot 578
or flight-crew training, sales of repair or replacement parts or 579
components, and sales of repair or maintenance services for such 580
full flight simulators. "Full flight simulator" means a replica of 581
a specific type, or make, model, and series of aircraft cockpit. 582

It includes the assemblage of equipment and computer programs 583
necessary to represent aircraft operations in ground and flight 584
conditions, a visual system providing an out-of-the-cockpit view, 585
and a system that provides cues at least equivalent to those of a 586
three-degree-of-freedom motion system, and has the full range of 587
capabilities of the systems installed in the device as described 588
in appendices A and B of part 60 of chapter 1 of title 14 of the 589
Code of Federal Regulations. 590

(51) Any transfer or lease of tangible personal property 591
between the state and a successful proposer in accordance with 592
sections 126.60 to 126.605 of the Revised Code, provided the 593
property is part of a project as defined in section 126.60 of the 594
Revised Code and the state retains ownership of the project or 595
part thereof that is being transferred or leased, between the 596
state and JobsOhio in accordance with section 4313.02 of the 597
Revised Code. 598

(52) Sales of investment metal bullion and investment coins. 599
"Investment metal bullion" means any elementary precious metal 600
that has been put through a process of smelting or refining, 601
including, but not limited to, gold, silver, platinum, and 602
palladium, and which is in such state or condition that its value 603
depends upon its content and not upon its form. "Investment metal 604
bullion" does not include fabricated precious metal that has been 605
processed or manufactured for one or more specific and customary 606
industrial, professional, or artistic uses. "Investment coins" 607
means numismatic coins or other forms of money and legal tender 608
manufactured of gold, silver, platinum, palladium, or other metal 609
under the laws of the United States or any foreign nation with a 610
fair market value greater than any statutory or nominal value of 611
such coins. 612

(C) For the purpose of the proper administration of this 613
chapter, and to prevent the evasion of the tax, it is presumed 614

that all sales made in this state are subject to the tax until the 615
contrary is established. 616

(D) The levy of this tax on retail sales of recreation and 617
sports club service shall not prevent a municipal corporation from 618
levying any tax on recreation and sports club dues or on any 619
income generated by recreation and sports club dues. 620

(E) The tax collected by the vendor from the consumer under 621
this chapter is not part of the price, but is a tax collection for 622
the benefit of the state, and of counties levying an additional 623
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 624
Code and of transit authorities levying an additional sales tax 625
pursuant to section 5739.023 of the Revised Code. Except for the 626
discount authorized under section 5739.12 of the Revised Code and 627
the effects of any rounding pursuant to section 5703.055 of the 628
Revised Code, no person other than the state or such a county or 629
transit authority shall derive any benefit from the collection or 630
payment of the tax levied by this section or section 5739.021, 631
5739.023, or 5739.026 of the Revised Code. 632

Section 2. That existing section 5739.02 of the Revised Code 633
is hereby repealed. 634

Section 3. That the amendment by this act of section 5739.02 635
of the Revised Code applies on and after the first day of the 636
first month that begins after the effective date of this act. 637

Section 4. Section 5739.02 of the Revised Code is presented 638
in this act as a composite of the section as amended by both Am. 639
Sub. H.B. 487 and Am. Sub. H.B. 508 of the 129th General Assembly. 640
The General Assembly, applying the principle stated in division 641
(B) of section 1.52 of the Revised Code that amendments are to be 642
harmonized if reasonably capable of simultaneous operation, finds 643
that the composite is the resulting version of the section in 644

effect prior to the effective date of the section as presented in
this act.

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