

**As Introduced**

**130th General Assembly  
Regular Session  
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**H. B. No. 649**

**Representative Barborak**

**Cosponsors: Representatives Ashford, Becker, Mallory, Sheehy, Hagan, R.**

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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 taxation the bulk sale 2  
of firewood, propane, butane, kerosene, and number 3  
two fuel oil for heating purposes and to declare 4  
an emergency. 5

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

**Section 1.** That section 5739.02 of the Revised Code be 6  
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 three-fourths per cent. The tax applies and is collectible 20  
when the sale is made, regardless of the time when the price is 21  
paid or 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 51

evidence, that the transaction or series of transactions is not a 52  
sham transaction. 53

(3) Except as provided in division (A)(2) of this section, in 54  
the case of a sale, the price of which consists in whole or in 55  
part of the lease or rental of tangible personal property, the tax 56  
shall be measured by the installments of that lease or rental. 57

(4) In the case of a sale of a physical fitness facility 58  
service or recreation and sports club service, the price of which 59  
consists in whole or in part of a membership for the receipt of 60  
the benefit of the service, the tax applicable to the sale shall 61  
be measured by the installments thereof. 62

(B) The tax does not apply to the following: 63

(1) Sales to the state or any of its political subdivisions, 64  
or to any other state or its political subdivisions if the laws of 65  
that state exempt from taxation sales made to this state and its 66  
political subdivisions; 67

(2) Sales of food for human consumption off the premises 68  
where sold; 69

(3) Sales of food sold to students only in a cafeteria, 70  
dormitory, fraternity, or sorority maintained in a private, 71  
public, or parochial school, college, or university; 72

(4) Sales of newspapers and sales or transfers of magazines 73  
distributed as controlled circulation publications; 74

(5) The furnishing, preparing, or serving of meals without 75  
charge by an employer to an employee provided the employer records 76  
the meals as part compensation for services performed or work 77  
done; 78

(6) Sales of motor fuel upon receipt, use, distribution, or 79  
sale of which in this state a tax is imposed by the law of this 80  
state, but this exemption shall not apply to the sale of motor 81

fuel on which a refund of the tax is allowable under division (A) 82  
of section 5735.14 of the Revised Code; and the tax commissioner 83  
may deduct the amount of tax levied by this section applicable to 84  
the price of motor fuel when granting a refund of motor fuel tax 85  
pursuant to division (A) of section 5735.14 of the Revised Code 86  
and shall cause the amount deducted to be paid into the general 87  
revenue fund of this state; 88

(7) Sales of natural gas by a natural gas company, of water 89  
by a water-works company, or of steam by a heating company, if in 90  
each case the thing sold is delivered to consumers through pipes 91  
or conduits, and all sales of communications services by a 92  
telegraph company, all terms as defined in section 5727.01 of the 93  
Revised Code, and sales of electricity delivered through wires; 94

(8) Casual sales by a person, or auctioneer employed directly 95  
by the person to conduct such sales, except as to such sales of 96  
motor vehicles, watercraft or outboard motors required to be 97  
titled under section 1548.06 of the Revised Code, watercraft 98  
documented with the United States coast guard, snowmobiles, and 99  
all-purpose vehicles as defined in section 4519.01 of the Revised 100  
Code; 101

(9)(a) Sales of services or tangible personal property, other 102  
than motor vehicles, mobile homes, and manufactured homes, by 103  
churches, organizations exempt from taxation under section 104  
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 105  
organizations operated exclusively for charitable purposes as 106  
defined in division (B)(12) of this section, provided that the 107  
number of days on which such tangible personal property or 108  
services, other than items never subject to the tax, are sold does 109  
not exceed six in any calendar year, except as otherwise provided 110  
in division (B)(9)(b) of this section. If the number of days on 111  
which such sales are made exceeds six in any calendar year, the 112  
church or organization shall be considered to be engaged in 113

business and all subsequent sales by it shall be subject to the 114  
tax. In counting the number of days, all sales by groups within a 115  
church or within an organization shall be considered to be sales 116  
of that church or organization. 117

(b) The limitation on the number of days on which tax-exempt 118  
sales may be made by a church or organization under division 119  
(B)(9)(a) of this section does not apply to sales made by student 120  
clubs and other groups of students of a primary or secondary 121  
school, or a parent-teacher association, booster group, or similar 122  
organization that raises money to support or fund curricular or 123  
extracurricular activities of a primary or secondary school. 124

(c) Divisions (B)(9)(a) and (b) of this section do not apply 125  
to sales by a noncommercial educational radio or television 126  
broadcasting station. 127

(10) Sales not within the taxing power of this state under 128  
the Constitution or laws of the United States or the Constitution 129  
of this state; 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 144

Revised Code; and sales to organizations described in division (D) 145  
of section 5709.12 of the Revised Code. 146

"Charitable purposes" means the relief of poverty; the 147  
improvement of health through the alleviation of illness, disease, 148  
or injury; the operation of an organization exclusively for the 149  
provision of professional, laundry, printing, and purchasing 150  
services to hospitals or charitable institutions; the operation of 151  
a home for the aged, as defined in section 5701.13 of the Revised 152  
Code; the operation of a radio or television broadcasting station 153  
that is licensed by the federal communications commission as a 154  
noncommercial educational radio or television station; the 155  
operation of a nonprofit animal adoption service or a county 156  
humane society; the promotion of education by an institution of 157  
learning that maintains a faculty of qualified instructors, 158  
teaches regular continuous courses of study, and confers a 159  
recognized diploma upon completion of a specific curriculum; the 160  
operation of a parent-teacher association, booster group, or 161  
similar organization primarily engaged in the promotion and 162  
support of the curricular or extracurricular activities of a 163  
primary or secondary school; the operation of a community or area 164  
center in which presentations in music, dramatics, the arts, and 165  
related fields are made in order to foster public interest and 166  
education therein; the production of performances in music, 167  
dramatics, and the arts; or the promotion of education by an 168  
organization engaged in carrying on research in, or the 169  
dissemination of, scientific and technological knowledge and 170  
information primarily for the public. 171

Nothing in this division shall be deemed to exempt sales to 172  
any organization for use in the operation or carrying on of a 173  
trade or business, or sales to a home for the aged for use in the 174  
operation of independent living facilities as defined in division 175  
(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; building and construction materials for incorporation into a

transportation facility pursuant to a public-private agreement 210  
entered into under sections 5501.70 to 5501.83 of the Revised 211  
Code; and, until one calendar year after the construction of a 212  
convention center that qualifies for property tax exemption under 213  
section 5709.084 of the Revised Code is completed, building and 214  
construction materials and services sold to a construction 215  
contractor for incorporation into the real property comprising 216  
that convention center; 217

(14) Sales of ships or vessels or rail rolling stock used or 218  
to be used principally in interstate or foreign commerce, and 219  
repairs, alterations, fuel, and lubricants for such ships or 220  
vessels or rail rolling stock; 221

(15) Sales to persons primarily engaged in any of the 222  
activities mentioned in division (B)(42)(a), (g), or (h) of this 223  
section, to persons engaged in making retail sales, or to persons 224  
who purchase for sale from a manufacturer tangible personal 225  
property that was produced by the manufacturer in accordance with 226  
specific designs provided by the purchaser, of packages, including 227  
material, labels, and parts for packages, and of machinery, 228  
equipment, and material for use primarily in packaging tangible 229  
personal property produced for sale, including any machinery, 230  
equipment, and supplies used to make labels or packages, to 231  
prepare packages or products for labeling, or to label packages or 232  
products, by or on the order of the person doing the packaging, or 233  
sold at retail. "Packages" includes bags, baskets, cartons, 234  
crates, boxes, cans, bottles, bindings, wrappings, and other 235  
similar devices and containers, but does not include motor 236  
vehicles or bulk tanks, trailers, or similar devices attached to 237  
motor vehicles. "Packaging" means placing in a package. Division 238  
(B)(15) of this section does not apply to persons engaged in 239  
highway transportation for hire. 240

(16) Sales of food to persons using supplemental nutrition 241



assistance program benefits to purchase the food. As used in this 242  
division, "food" has the same meaning as in 7 U.S.C. 2012 and 243  
federal regulations adopted pursuant to the Food and Nutrition Act 244  
of 2008. 245

(17) Sales to persons engaged in farming, agriculture, 246  
horticulture, or floriculture, of tangible personal property for 247  
use or consumption primarily in the production by farming, 248  
agriculture, horticulture, or floriculture of other tangible 249  
personal property for use or consumption primarily in the 250  
production of tangible personal property for sale by farming, 251  
agriculture, horticulture, or floriculture; or material and parts 252  
for incorporation into any such tangible personal property for use 253  
or consumption in production; and of tangible personal property 254  
for such use or consumption in the conditioning or holding of 255  
products produced by and for such use, consumption, or sale by 256  
persons engaged in farming, agriculture, horticulture, or 257  
floriculture, except where such property is incorporated into real 258  
property; 259

(18) Sales of drugs for a human being that may be dispensed 260  
only pursuant to a prescription; insulin as recognized in the 261  
official United States pharmacopoeia; urine and blood testing 262  
materials when used by diabetics or persons with hypoglycemia to 263  
test for glucose or acetone; hypodermic syringes and needles when 264  
used by diabetics for insulin injections; epoetin alfa when 265  
purchased for use in the treatment of persons with medical 266  
disease; hospital beds when purchased by hospitals, nursing homes, 267  
or other medical facilities; and medical oxygen and medical 268  
oxygen-dispensing equipment when purchased by hospitals, nursing 269  
homes, or other medical facilities; 270

(19) Sales of prosthetic devices, durable medical equipment 271  
for home use, or mobility enhancing equipment, when made pursuant 272  
to a prescription and when such devices or equipment are for use 273

by a human being.	274
(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 state;	275 276 277 278 279
(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;	280 281 282 283 284 285
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	286 287 288 289 290
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	291 292 293
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or	294 295 296 297 298 299 300 301 302 303 304

shipments occur are operated by the same person. "Packages"	305
includes containers, cases, baskets, flats, fillers, filler flats,	306
cartons, closure materials, labels, and labeling materials, and	307
"packaging" means placing therein.	308
(25)(a) Sales of water to a consumer for residential use;	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;	336 337 338
(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;	339 340 341 342 343 344
(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;	345 346 347 348 349
(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.	350 351 352 353 354 355 356 357 358 359 360 361 362 363 364
(35)(a) Sales where the purpose of the consumer is to use or	365

consume the things transferred in making retail sales and 366  
consisting of newspaper inserts, catalogues, coupons, flyers, gift 367  
certificates, or other advertising material that prices and 368  
describes tangible personal property offered for retail sale. 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; 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 sales. 378

(d) Sales of automatic food vending machines that preserve 379  
food with a shelf life of forty-five days or less by refrigeration 380  
and dispense it to the consumer. 381

For purposes of division (B)(35) of this section, "direct 382  
marketing" means the method of selling where consumers order 383  
tangible personal property by United States mail, delivery 384  
service, or telecommunication and the vendor delivers or ships the 385  
tangible personal property sold to the consumer from a warehouse, 386  
catalogue distribution center, or similar fulfillment facility by 387  
means of the United States mail, delivery service, or common 388  
carrier. 389

(36) Sales to a person engaged in the business of 390  
horticulture or producing livestock of materials to be 391  
incorporated into a horticulture structure or livestock structure; 392

(37) Sales of personal computers, computer monitors, computer 393  
keyboards, modems, and other peripheral computer equipment to an 394  
individual who is licensed or certified to teach in an elementary 395  
or a secondary school in this state for use by that individual in 396

preparation for teaching elementary or secondary school students;	397
(38) Sales to a professional racing team of any of the	398
following:	399
(a) Motor racing vehicles;	400
(b) Repair services for motor racing vehicles;	401
(c) Items of property that are attached to or incorporated in	402
motor racing vehicles, including engines, chassis, and all other	403
components of the vehicles, and all spare, replacement, and	404
rebuilt parts or components of the vehicles; except not including	405
tires, consumable fluids, paint, and accessories consisting of	406
instrumentation sensors and related items added to the vehicle to	407
collect and transmit data by means of telemetry and other forms of	408
communication.	409
(39) Sales of used manufactured homes and used mobile homes,	410
as defined in section 5739.0210 of the Revised Code, made on or	411
after January 1, 2000;	412
(40) Sales of tangible personal property and services to a	413
provider of electricity used or consumed directly and primarily in	414
generating, transmitting, or distributing electricity for use by	415
others, including property that is or is to be incorporated into	416
and will become a part of the consumer's production, transmission,	417
or distribution system and that retains its classification as	418
tangible personal property after incorporation; fuel or power used	419
in the production, transmission, or distribution of electricity;	420
energy conversion equipment as defined in section 5727.01 of the	421
Revised Code; and tangible personal property and services used in	422
the repair and maintenance of the production, transmission, or	423
distribution system, including only those motor vehicles as are	424
specially designed and equipped for such use. The exemption	425
provided in this division shall be in lieu of all other exemptions	426
in division (B)(42)(a) or (n) of this section to which a provider	427

of electricity may otherwise be entitled based on the use of the 428  
tangible personal property or service purchased in generating, 429  
transmitting, or distributing electricity. 430

(41) Sales to a person providing services under division 431  
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 432  
personal property and services used directly and primarily in 433  
providing taxable services under that section. 434

(42) Sales where the purpose of the purchaser is to do any of 435  
the following: 436

(a) To incorporate the thing transferred as a material or a 437  
part into tangible personal property to be produced for sale by 438  
manufacturing, assembling, processing, or refining; or to use or 439  
consume the thing transferred directly in producing tangible 440  
personal property for sale by mining, including, without 441  
limitation, the extraction from the earth of all substances that 442  
are classed geologically as minerals, production of crude oil and 443  
natural gas, or directly in the rendition of a public utility 444  
service, except that the sales tax levied by this section shall be 445  
collected upon all meals, drinks, and food for human consumption 446  
sold when transporting persons. Persons engaged in rendering 447  
services in the exploration for, and production of, crude oil and 448  
natural gas for others are deemed engaged directly in the 449  
exploration for, and production of, crude oil and natural gas. 450  
This paragraph does not exempt from "retail sale" or "sales at 451  
retail" the sale of tangible personal property that is to be 452  
incorporated into a structure or improvement to real property. 453

(b) To hold the thing transferred as security for the 454  
performance of an obligation of the vendor; 455

(c) To resell, hold, use, or consume the thing transferred as 456  
evidence of a contract of insurance; 457

(d) To use or consume the thing directly in commercial 458

fishing;	459
(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;	460 461 462 463
(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;	464 465 466 467 468
(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;	469 470 471
(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;	472 473 474 475 476 477
(i) To use the thing transferred as qualified research and development equipment;	478 479
(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	480 481 482 483 484 485 486 487 488 489



in division (B)(3)(e) of section 5739.01 of the Revised Code and 490  
"direct marketing" has the same meaning as in division (B)(35) of 491  
this section. 492

(k) To use or consume the thing transferred to fulfill a 493  
contractual obligation incurred by a warrantor pursuant to a 494  
warranty provided as a part of the price of the tangible personal 495  
property sold or by a vendor of a warranty, maintenance or service 496  
contract, or similar agreement the provision of which is defined 497  
as a sale under division (B)(7) of section 5739.01 of the Revised 498  
Code; 499

(l) To use or consume the thing transferred in the production 500  
of a newspaper for distribution to the public; 501

(m) To use tangible personal property to perform a service 502  
listed in division (B)(3) of section 5739.01 of the Revised Code, 503  
if the property is or is to be permanently transferred to the 504  
consumer of the service as an integral part of the performance of 505  
the service; 506

(n) To use or consume the thing transferred primarily in 507  
producing tangible personal property for sale by farming, 508  
agriculture, horticulture, or floriculture. Persons engaged in 509  
rendering farming, agriculture, horticulture, or floriculture 510  
services for others are deemed engaged primarily in farming, 511  
agriculture, horticulture, or floriculture. This paragraph does 512  
not exempt from "retail sale" or "sales at retail" the sale of 513  
tangible personal property that is to be incorporated into a 514  
structure or improvement to real property. 515

(o) To use or consume the thing transferred in acquiring, 516  
formatting, editing, storing, and disseminating data or 517  
information by electronic publishing. 518

As used in division (B)(42) of this section, "thing" includes 519  
all transactions included in divisions (B)(3)(a), (b), and (e) of 520

section 5739.01 of the Revised Code. 521

(43) Sales conducted through a coin operated device that 522  
activates vacuum equipment or equipment that dispenses water, 523  
whether or not in combination with soap or other cleaning agents 524  
or wax, to the consumer for the consumer's use on the premises in 525  
washing, cleaning, or waxing a motor vehicle, provided no other 526  
personal property or personal service is provided as part of the 527  
transaction. 528

(44) Sales of replacement and modification parts for engines, 529  
airframes, instruments, and interiors in, and paint for, aircraft 530  
used primarily in a fractional aircraft ownership program, and 531  
sales of services for the repair, modification, and maintenance of 532  
such aircraft, and machinery, equipment, and supplies primarily 533  
used to provide those services. 534

(45) Sales of telecommunications service that is used 535  
directly and primarily to perform the functions of a call center. 536  
As used in this division, "call center" means any physical 537  
location where telephone calls are placed or received in high 538  
volume for the purpose of making sales, marketing, customer 539  
service, technical support, or other specialized business 540  
activity, and that employs at least fifty individuals that engage 541  
in call center activities on a full-time basis, or sufficient 542  
individuals to fill fifty full-time equivalent positions. 543

(46) Sales by a telecommunications service vendor of 900 544  
service to a subscriber. This division does not apply to 545  
information services, as defined in division (FF) of section 546  
5739.01 of the Revised Code. 547

(47) Sales of value-added non-voice data service. This 548  
division does not apply to any similar service that is not 549  
otherwise a telecommunications service. 550

(48)(a) Sales of machinery, equipment, and software to a 551

qualified direct selling entity for use in a warehouse or 552  
distribution center primarily for storing, transporting, or 553  
otherwise handling inventory that is held for sale to independent 554  
salespersons who operate as direct sellers and that is held 555  
primarily for distribution outside this state; 556

(b) As used in division (B)(48)(a) of this section: 557

(i) "Direct seller" means a person selling consumer products 558  
to individuals for personal or household use and not from a fixed 559  
retail location, including selling such product at in-home product 560  
demonstrations, parties, and other one-on-one selling. 561

(ii) "Qualified direct selling entity" means an entity 562  
selling to direct sellers at the time the entity enters into a tax 563  
credit agreement with the tax credit authority pursuant to section 564  
122.17 of the Revised Code, provided that the agreement was 565  
entered into on or after January 1, 2007. Neither contingencies 566  
relevant to the granting of, nor later developments with respect 567  
to, the tax credit shall impair the status of the qualified direct 568  
selling entity under division (B)(48) of this section after 569  
execution of the tax credit agreement by the tax credit authority. 570

(c) Division (B)(48) of this section is limited to machinery, 571  
equipment, and software first stored, used, or consumed in this 572  
state within the period commencing June 24, 2008, and ending on 573  
the date that is five years after that date. 574

(49) Sales of materials, parts, equipment, or engines used in 575  
the repair or maintenance of aircraft or avionics systems of such 576  
aircraft, and sales of repair, remodeling, replacement, or 577  
maintenance services in this state performed on aircraft or on an 578  
aircraft's avionics, engine, or component materials or parts. As 579  
used in division (B)(49) of this section, "aircraft" means 580  
aircraft of more than six thousand pounds maximum certified 581  
takeoff weight or used exclusively in general aviation. 582

(50) Sales of full flight simulators that are used for pilot 583  
or flight-crew training, sales of repair or replacement parts or 584  
components, and sales of repair or maintenance services for such 585  
full flight simulators. "Full flight simulator" means a replica of 586  
a specific type, or make, model, and series of aircraft cockpit. 587  
It includes the assemblage of equipment and computer programs 588  
necessary to represent aircraft operations in ground and flight 589  
conditions, a visual system providing an out-of-the-cockpit view, 590  
and a system that provides cues at least equivalent to those of a 591  
three-degree-of-freedom motion system, and has the full range of 592  
capabilities of the systems installed in the device as described 593  
in appendices A and B of part 60 of chapter 1 of title 14 of the 594  
Code of Federal Regulations. 595

(51) Any transfer or lease of tangible personal property 596  
between the state and JobsOhio in accordance with section 4313.02 597  
of the Revised Code. 598

(52)(a) Sales to a qualifying corporation. 599

(b) As used in division (B)(52) of this section: 600

(i) "Qualifying corporation" means a nonprofit corporation 601  
organized in this state that leases from an eligible county land, 602  
buildings, structures, fixtures, and improvements to the land that 603  
are part of or used in a public recreational facility used by a 604  
major league professional athletic team or a class A to class AAA 605  
minor league affiliate of a major league professional athletic 606  
team for a significant portion of the team's home schedule, 607  
provided the following apply: 608

(I) The facility is leased from the eligible county pursuant 609  
to a lease that requires substantially all of the revenue from the 610  
operation of the business or activity conducted by the nonprofit 611  
corporation at the facility in excess of operating costs, capital 612  
expenditures, and reserves to be paid to the eligible county at 613

least once per calendar year. 614

(II) Upon dissolution and liquidation of the nonprofit 615  
corporation, all of its net assets are distributable to the board 616  
of commissioners of the eligible county from which the corporation 617  
leases the facility. 618

(ii) "Eligible county" has the same meaning as in section 619  
307.695 of the Revised Code. 620

(53) Sales to or by a cable service provider, video service 621  
provider, or radio or television broadcast station regulated by 622  
the federal government of cable service or programming, video 623  
service or programming, audio service or programming, or 624  
electronically transferred digital audiovisual or audio work. As 625  
used in division (B)(53) of this section, "cable service" and 626  
"cable service provider" have the same meanings as in section 627  
1332.01 of the Revised Code, and "video service," "video service 628  
provider," and "video programming" have the same meanings as in 629  
section 1332.21 of the Revised Code. 630

(54) Sales in a nonpackaged form of firewood, kerosene, 631  
liquid petroleum gas, or number two fuel oil that is to be used 632  
for heating purposes. 633

(C) For the purpose of the proper administration of this 634  
chapter, and to prevent the evasion of the tax, it is presumed 635  
that all sales made in this state are subject to the tax until the 636  
contrary is established. 637

(D) The levy of this tax on retail sales of recreation and 638  
sports club service shall not prevent a municipal corporation from 639  
levying any tax on recreation and sports club dues or on any 640  
income generated by recreation and sports club dues. 641

(E) The tax collected by the vendor from the consumer under 642  
this chapter is not part of the price, but is a tax collection for 643  
the benefit of the state, and of counties levying an additional 644

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

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

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

**Section 4.** This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to ensure that Ohio residents and businesses are not subject to sales and use tax on the purchase of heating fuel during the approaching winter season. Therefore, this act shall go into immediate effect.