

As Introduced

**130th General Assembly
Regular Session
2013-2014**

S. B. No. 224

Senators Burke, Gardner

**Cosponsors: Senators Schaffer, Patton, Seitz, Coley, Uecker, Beagle,
Eklund, Hite**

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A B I L L

To amend sections 5739.01 and 5739.02 of the Revised 1
Code to exempt from sales and use tax prescription 2
optical aids and components that are prescribed by 3
state-licensed physicians or optometrists. 4

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

Section 1. That sections 5739.01 and 5739.02 of the Revised 5
Code be amended to read as follows: 6

Sec. 5739.01. As used in this chapter: 7

(A) "Person" includes individuals, receivers, assignees, 8
trustees in bankruptcy, estates, firms, partnerships, 9
associations, joint-stock companies, joint ventures, clubs, 10
societies, corporations, the state and its political subdivisions, 11
and combinations of individuals of any form. 12

(B) "Sale" and "selling" include all of the following 13
transactions for a consideration in any manner, whether absolutely 14
or conditionally, whether for a price or rental, in money or by 15
exchange, and by any means whatsoever: 16

(1) All transactions by which title or possession, or both, 17

of tangible personal property, is or is to be transferred, or a 18
license to use or consume tangible personal property is or is to 19
be granted; 20

(2) All transactions by which lodging by a hotel is or is to 21
be furnished to transient guests; 22

(3) All transactions by which: 23

(a) An item of tangible personal property is or is to be 24
repaired, except property, the purchase of which would not be 25
subject to the tax imposed by section 5739.02 of the Revised Code; 26

(b) An item of tangible personal property is or is to be 27
installed, except property, the purchase of which would not be 28
subject to the tax imposed by section 5739.02 of the Revised Code 29
or property that is or is to be incorporated into and will become 30
a part of a production, transmission, transportation, or 31
distribution system for the delivery of a public utility service; 32

(c) The service of washing, cleaning, waxing, polishing, or 33
painting a motor vehicle is or is to be furnished; 34

(d) Until August 1, 2003, industrial laundry cleaning 35
services are or are to be provided and, on and after August 1, 36
2003, laundry and dry cleaning services are or are to be provided; 37

(e) Automatic data processing, computer services, or 38
electronic information services are or are to be provided for use 39
in business when the true object of the transaction is the receipt 40
by the consumer of automatic data processing, computer services, 41
or electronic information services rather than the receipt of 42
personal or professional services to which automatic data 43
processing, computer services, or electronic information services 44
are incidental or supplemental. Notwithstanding any other 45
provision of this chapter, such transactions that occur between 46
members of an affiliated group are not sales. An "affiliated 47
group" means two or more persons related in such a way that one 48

person owns or controls the business operation of another member 49
of the group. In the case of corporations with stock, one 50
corporation owns or controls another if it owns more than fifty 51
per cent of the other corporation's common stock with voting 52
rights. 53

(f) Telecommunications service, including prepaid calling 54
service, prepaid wireless calling service, or ancillary service, 55
is or is to be provided, but not including coin-operated telephone 56
service; 57

(g) Landscaping and lawn care service is or is to be 58
provided; 59

(h) Private investigation and security service is or is to be 60
provided; 61

(i) Information services or tangible personal property is 62
provided or ordered by means of a nine hundred telephone call; 63

(j) Building maintenance and janitorial service is or is to 64
be provided; 65

(k) Employment service is or is to be provided; 66

(l) Employment placement service is or is to be provided; 67

(m) Exterminating service is or is to be provided; 68

(n) Physical fitness facility service is or is to be 69
provided; 70

(o) Recreation and sports club service is or is to be 71
provided; 72

(p) On and after August 1, 2003, satellite broadcasting 73
service is or is to be provided; 74

(q) On and after August 1, 2003, personal care service is or 75
is to be provided to an individual. As used in this division, 76
"personal care service" includes skin care, the application of 77

cosmetics, manicuring, pedicuring, hair removal, tattooing, body 78
piercing, tanning, massage, and other similar services. "Personal 79
care service" does not include a service provided by or on the 80
order of a licensed physician or licensed chiropractor, or the 81
cutting, coloring, or styling of an individual's hair. 82

(r) On and after August 1, 2003, the transportation of 83
persons by motor vehicle or aircraft is or is to be provided, when 84
the transportation is entirely within this state, except for 85
transportation provided by an ambulance service, by a transit bus, 86
as defined in section 5735.01 of the Revised Code, and 87
transportation provided by a citizen of the United States holding 88
a certificate of public convenience and necessity issued under 49 89
U.S.C. 41102; 90

(s) On and after August 1, 2003, motor vehicle towing service 91
is or is to be provided. As used in this division, "motor vehicle 92
towing service" means the towing or conveyance of a wrecked, 93
disabled, or illegally parked motor vehicle. 94

(t) On and after August 1, 2003, snow removal service is or 95
is to be provided. As used in this division, "snow removal 96
service" means the removal of snow by any mechanized means, but 97
does not include the providing of such service by a person that 98
has less than five thousand dollars in sales of such service 99
during the calendar year. 100

(u) Electronic publishing service is or is to be provided to 101
a consumer for use in business, except that such transactions 102
occurring between members of an affiliated group, as defined in 103
division (B)(3)(e) of this section, are not sales. 104

(4) All transactions by which printed, imprinted, 105
overprinted, lithographic, multilithic, blueprinted, photostatic, 106
or other productions or reproductions of written or graphic matter 107
are or are to be furnished or transferred; 108

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used primarily in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, or an ownership interest in a pass-through entity, as defined in section 5733.04 of the Revised Code, is transferred, if the corporation or pass-through entity is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders or owners;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale;

(9) On and after August 1, 2003, all transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business;

(10) All transactions in which "guaranteed auto protection" is provided whereby a person promises to pay to the consumer the difference between the amount the consumer receives from motor vehicle insurance and the amount the consumer owes to a person holding title to or a lien on the consumer's motor vehicle in the event the consumer's motor vehicle suffers a total loss under the terms of the motor vehicle insurance policy or is stolen and not recovered, if the protection and its price are included in the purchase or lease agreement;

(11)(a) Except as provided in division (B)(11)(b) of this section, on and after October 1, 2009, all transactions by which

health care services are paid for, reimbursed, provided, 172
delivered, arranged for, or otherwise made available by a medicaid 173
health insuring corporation pursuant to the corporation's contract 174
with the state. 175

(b) If the centers for medicare and medicaid services of the 176
United States department of health and human services determines 177
that the taxation of transactions described in division (B)(11)(a) 178
of this section constitutes an impermissible health care-related 179
tax under the "Social Security Act," section 1903(w), 42 U.S.C. 180
1396b(w), and regulations adopted thereunder, the medicaid 181
director shall notify the tax commissioner of that determination. 182
Beginning with the first day of the month following that 183
notification, the transactions described in division (B)(11)(a) of 184
this section are not sales for the purposes of this chapter or 185
Chapter 5741. of the Revised Code. The tax commissioner shall 186
order that the collection of taxes under sections 5739.02, 187
5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and 188
5741.023 of the Revised Code shall cease for transactions 189
occurring on or after that date. 190

(12) All transactions by which a specified digital product is 191
provided for permanent use or less than permanent use, regardless 192
of whether continued payment is required. 193

Except as provided in this section, "sale" and "selling" do 194
not include transfers of interest in leased property where the 195
original lessee and the terms of the original lease agreement 196
remain unchanged, or professional, insurance, or personal service 197
transactions that involve the transfer of tangible personal 198
property as an inconsequential element, for which no separate 199
charges are made. 200

(C) "Vendor" means the person providing the service or by 201
whom the transfer effected or license given by a sale is or is to 202
be made or given and, for sales described in division (B)(3)(i) of 203

this section, the telecommunications service vendor that provides 204
the nine hundred telephone service; if two or more persons are 205
engaged in business at the same place of business under a single 206
trade name in which all collections on account of sales by each 207
are made, such persons shall constitute a single vendor. 208

Physicians, dentists, hospitals, and veterinarians who are 209
engaged in selling tangible personal property as received from 210
others, such as ~~eyeglasses~~, mouthwashes, dentifrices, or similar 211
articles, are vendors. Veterinarians who are engaged in 212
transferring to others for a consideration drugs, the dispensing 213
of which does not require an order of a licensed veterinarian or 214
physician under federal law, are vendors. 215

(D)(1) "Consumer" means the person for whom the service is 216
provided, to whom the transfer effected or license given by a sale 217
is or is to be made or given, to whom the service described in 218
division (B)(3)(f) or (i) of this section is charged, or to whom 219
the admission is granted. 220

(2) Physicians, dentists, hospitals, and blood banks operated 221
by nonprofit institutions and persons licensed to practice 222
veterinary medicine, surgery, and dentistry are consumers of all 223
tangible personal property and services purchased by them in 224
connection with the practice of medicine, dentistry, the rendition 225
of hospital or blood bank service, or the practice of veterinary 226
medicine, surgery, and dentistry. In addition to being consumers 227
of drugs administered by them or by their assistants according to 228
their direction, veterinarians also are consumers of drugs that 229
under federal law may be dispensed only by or upon the order of a 230
licensed veterinarian or physician, when transferred by them to 231
others for a consideration to provide treatment to animals as 232
directed by the veterinarian. 233

(3) A person who performs a facility management, or similar 234
service contract for a contractee is a consumer of all tangible 235

personal property and services purchased for use in connection 236
with the performance of such contract, regardless of whether title 237
to any such property vests in the contractee. The purchase of such 238
property and services is not subject to the exception for resale 239
under division (E)(1) of this section. 240

(4)(a) In the case of a person who purchases printed matter 241
for the purpose of distributing it or having it distributed to the 242
public or to a designated segment of the public, free of charge, 243
that person is the consumer of that printed matter, and the 244
purchase of that printed matter for that purpose is a sale. 245

(b) In the case of a person who produces, rather than 246
purchases, printed matter for the purpose of distributing it or 247
having it distributed to the public or to a designated segment of 248
the public, free of charge, that person is the consumer of all 249
tangible personal property and services purchased for use or 250
consumption in the production of that printed matter. That person 251
is not entitled to claim exemption under division (B)(42)(f) of 252
section 5739.02 of the Revised Code for any material incorporated 253
into the printed matter or any equipment, supplies, or services 254
primarily used to produce the printed matter. 255

(c) The distribution of printed matter to the public or to a 256
designated segment of the public, free of charge, is not a sale to 257
the members of the public to whom the printed matter is 258
distributed or to any persons who purchase space in the printed 259
matter for advertising or other purposes. 260

(5) A person who makes sales of any of the services listed in 261
division (B)(3) of this section is the consumer of any tangible 262
personal property used in performing the service. The purchase of 263
that property is not subject to the resale exception under 264
division (E)(1) of this section. 265

(6) A person who engages in highway transportation for hire 266

is the consumer of all packaging materials purchased by that 267
person and used in performing the service, except for packaging 268
materials sold by such person in a transaction separate from the 269
service. 270

(7) In the case of a transaction for health care services 271
under division (B)(11) of this section, a medicaid health insuring 272
corporation is the consumer of such services. The purchase of such 273
services by a medicaid health insuring corporation is not subject 274
to the exception for resale under division (E)(1) of this section 275
or to the exemptions provided under divisions (B)(12), (18), (19), 276
and (22) of section 5739.02 of the Revised Code. 277

(E) "Retail sale" and "sales at retail" include all sales, 278
except those in which the purpose of the consumer is to resell the 279
thing transferred or benefit of the service provided, by a person 280
engaging in business, in the form in which the same is, or is to 281
be, received by the person. 282

(F) "Business" includes any activity engaged in by any person 283
with the object of gain, benefit, or advantage, either direct or 284
indirect. "Business" does not include the activity of a person in 285
managing and investing the person's own funds. 286

(G) "Engaging in business" means commencing, conducting, or 287
continuing in business, and liquidating a business when the 288
liquidator thereof holds itself out to the public as conducting 289
such business. Making a casual sale is not engaging in business. 290

(H)(1)(a) "Price," except as provided in divisions (H)(2), 291
(3), and (4) of this section, means the total amount of 292
consideration, including cash, credit, property, and services, for 293
which tangible personal property or services are sold, leased, or 294
rented, valued in money, whether received in money or otherwise, 295
without any deduction for any of the following: 296

(i) The vendor's cost of the property sold; 297

(ii) The cost of materials used, labor or service costs,	298
interest, losses, all costs of transportation to the vendor, all	299
taxes imposed on the vendor, including the tax imposed under	300
Chapter 5751. of the Revised Code, and any other expense of the	301
vendor;	302
(iii) Charges by the vendor for any services necessary to	303
complete the sale;	304
(iv) On and after August 1, 2003, delivery charges. As used	305
in this division, "delivery charges" means charges by the vendor	306
for preparation and delivery to a location designated by the	307
consumer of tangible personal property or a service, including	308
transportation, shipping, postage, handling, crating, and packing.	309
(v) Installation charges;	310
(vi) Credit for any trade-in.	311
(b) "Price" includes consideration received by the vendor	312
from a third party, if the vendor actually receives the	313
consideration from a party other than the consumer, and the	314
consideration is directly related to a price reduction or discount	315
on the sale; the vendor has an obligation to pass the price	316
reduction or discount through to the consumer; the amount of the	317
consideration attributable to the sale is fixed and determinable	318
by the vendor at the time of the sale of the item to the consumer;	319
and one of the following criteria is met:	320
(i) The consumer presents a coupon, certificate, or other	321
document to the vendor to claim a price reduction or discount	322
where the coupon, certificate, or document is authorized,	323
distributed, or granted by a third party with the understanding	324
that the third party will reimburse any vendor to whom the coupon,	325
certificate, or document is presented;	326
(ii) The consumer identifies the consumer's self to the	327
seller as a member of a group or organization entitled to a price	328

reduction or discount. A preferred customer card that is available 329
to any patron does not constitute membership in such a group or 330
organization. 331

(iii) The price reduction or discount is identified as a 332
third party price reduction or discount on the invoice received by 333
the consumer, or on a coupon, certificate, or other document 334
presented by the consumer. 335

(c) "Price" does not include any of the following: 336

(i) Discounts, including cash, term, or coupons that are not 337
reimbursed by a third party that are allowed by a vendor and taken 338
by a consumer on a sale; 339

(ii) Interest, financing, and carrying charges from credit 340
extended on the sale of tangible personal property or services, if 341
the amount is separately stated on the invoice, bill of sale, or 342
similar document given to the purchaser; 343

(iii) Any taxes legally imposed directly on the consumer that 344
are separately stated on the invoice, bill of sale, or similar 345
document given to the consumer. For the purpose of this division, 346
the tax imposed under Chapter 5751. of the Revised Code is not a 347
tax directly on the consumer, even if the tax or a portion thereof 348
is separately stated. 349

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this 350
section, any discount allowed by an automobile manufacturer to its 351
employee, or to the employee of a supplier, on the purchase of a 352
new motor vehicle from a new motor vehicle dealer in this state. 353

(v) The dollar value of a gift card that is not sold by a 354
vendor or purchased by a consumer and that is redeemed by the 355
consumer in purchasing tangible personal property or services if 356
the vendor is not reimbursed and does not receive compensation 357
from a third party to cover all or part of the gift card value. 358
For the purposes of this division, a gift card is not sold by a 359

vendor or purchased by a consumer if it is distributed pursuant to 360
an awards, loyalty, or promotional program. Past and present 361
purchases of tangible personal property or services by the 362
consumer shall not be treated as consideration exchanged for a 363
gift card. 364

(2) In the case of a sale of any new motor vehicle by a new 365
motor vehicle dealer, as defined in section 4517.01 of the Revised 366
Code, in which another motor vehicle is accepted by the dealer as 367
part of the consideration received, "price" has the same meaning 368
as in division (H)(1) of this section, reduced by the credit 369
afforded the consumer by the dealer for the motor vehicle received 370
in trade. 371

(3) In the case of a sale of any watercraft or outboard motor 372
by a watercraft dealer licensed in accordance with section 373
1547.543 of the Revised Code, in which another watercraft, 374
watercraft and trailer, or outboard motor is accepted by the 375
dealer as part of the consideration received, "price" has the same 376
meaning as in division (H)(1) of this section, reduced by the 377
credit afforded the consumer by the dealer for the watercraft, 378
watercraft and trailer, or outboard motor received in trade. As 379
used in this division, "watercraft" includes an outdrive unit 380
attached to the watercraft. 381

(4) In the case of transactions for health care services 382
under division (B)(11) of this section, "price" means the amount 383
of managed care premiums received each month by a medicaid health 384
insuring corporation. 385

(I) "Receipts" means the total amount of the prices of the 386
sales of vendors, provided that the dollar value of gift cards 387
distributed pursuant to an awards, loyalty, or promotional 388
program, and cash discounts allowed and taken on sales at the time 389
they are consummated are not included, minus any amount deducted 390
as a bad debt pursuant to section 5739.121 of the Revised Code. 391

"Receipts" does not include the sale price of property returned or 392
services rejected by consumers when the full sale price and tax 393
are refunded either in cash or by credit. 394

(J) "Place of business" means any location at which a person 395
engages in business. 396

(K) "Premises" includes any real property or portion thereof 397
upon which any person engages in selling tangible personal 398
property at retail or making retail sales and also includes any 399
real property or portion thereof designated for, or devoted to, 400
use in conjunction with the business engaged in by such person. 401

(L) "Casual sale" means a sale of an item of tangible 402
personal property that was obtained by the person making the sale, 403
through purchase or otherwise, for the person's own use and was 404
previously subject to any state's taxing jurisdiction on its sale 405
or use, and includes such items acquired for the seller's use that 406
are sold by an auctioneer employed directly by the person for such 407
purpose, provided the location of such sales is not the 408
auctioneer's permanent place of business. As used in this 409
division, "permanent place of business" includes any location 410
where such auctioneer has conducted more than two auctions during 411
the year. 412

(M) "Hotel" means every establishment kept, used, maintained, 413
advertised, or held out to the public to be a place where sleeping 414
accommodations are offered to guests, in which five or more rooms 415
are used for the accommodation of such guests, whether the rooms 416
are in one or several structures, except as otherwise provided in 417
division (G) of section 5739.09 of the Revised Code. 418

(N) "Transient guests" means persons occupying a room or 419
rooms for sleeping accommodations for less than thirty consecutive 420
days. 421

(O) "Making retail sales" means the effecting of transactions 422

wherein one party is obligated to pay the price and the other 423
party is obligated to provide a service or to transfer title to or 424
possession of the item sold. "Making retail sales" does not 425
include the preliminary acts of promoting or soliciting the retail 426
sales, other than the distribution of printed matter which 427
displays or describes and prices the item offered for sale, nor 428
does it include delivery of a predetermined quantity of tangible 429
personal property or transportation of property or personnel to or 430
from a place where a service is performed. 431

(P) "Used directly in the rendition of a public utility 432
service" means that property that is to be incorporated into and 433
will become a part of the consumer's production, transmission, 434
transportation, or distribution system and that retains its 435
classification as tangible personal property after such 436
incorporation; fuel or power used in the production, transmission, 437
transportation, or distribution system; and tangible personal 438
property used in the repair and maintenance of the production, 439
transmission, transportation, or distribution system, including 440
only such motor vehicles as are specially designed and equipped 441
for such use. Tangible personal property and services used 442
primarily in providing highway transportation for hire are not 443
used directly in the rendition of a public utility service. In 444
this definition, "public utility" includes a citizen of the United 445
States holding, and required to hold, a certificate of public 446
convenience and necessity issued under 49 U.S.C. 41102. 447

(Q) "Refining" means removing or separating a desirable 448
product from raw or contaminated materials by distillation or 449
physical, mechanical, or chemical processes. 450

(R) "Assembly" and "assembling" mean attaching or fitting 451
together parts to form a product, but do not include packaging a 452
product. 453

(S) "Manufacturing operation" means a process in which 454

materials are changed, converted, or transformed into a different 455
state or form from which they previously existed and includes 456
refining materials, assembling parts, and preparing raw materials 457
and parts by mixing, measuring, blending, or otherwise committing 458
such materials or parts to the manufacturing process. 459
"Manufacturing operation" does not include packaging. 460

(T) "Fiscal officer" means, with respect to a regional 461
transit authority, the secretary-treasurer thereof, and with 462
respect to a county that is a transit authority, the fiscal 463
officer of the county transit board if one is appointed pursuant 464
to section 306.03 of the Revised Code or the county auditor if the 465
board of county commissioners operates the county transit system. 466

(U) "Transit authority" means a regional transit authority 467
created pursuant to section 306.31 of the Revised Code or a county 468
in which a county transit system is created pursuant to section 469
306.01 of the Revised Code. For the purposes of this chapter, a 470
transit authority must extend to at least the entire area of a 471
single county. A transit authority that includes territory in more 472
than one county must include all the area of the most populous 473
county that is a part of such transit authority. County population 474
shall be measured by the most recent census taken by the United 475
States census bureau. 476

(V) "Legislative authority" means, with respect to a regional 477
transit authority, the board of trustees thereof, and with respect 478
to a county that is a transit authority, the board of county 479
commissioners. 480

(W) "Territory of the transit authority" means all of the 481
area included within the territorial boundaries of a transit 482
authority as they from time to time exist. Such territorial 483
boundaries must at all times include all the area of a single 484
county or all the area of the most populous county that is a part 485
of such transit authority. County population shall be measured by 486

the most recent census taken by the United States census bureau. 487

(X) "Providing a service" means providing or furnishing 488
anything described in division (B)(3) of this section for 489
consideration. 490

(Y)(1)(a) "Automatic data processing" means processing of 491
others' data, including keypunching or similar data entry services 492
together with verification thereof, or providing access to 493
computer equipment for the purpose of processing data. 494

(b) "Computer services" means providing services consisting 495
of specifying computer hardware configurations and evaluating 496
technical processing characteristics, computer programming, and 497
training of computer programmers and operators, provided in 498
conjunction with and to support the sale, lease, or operation of 499
taxable computer equipment or systems. 500

(c) "Electronic information services" means providing access 501
to computer equipment by means of telecommunications equipment for 502
the purpose of either of the following: 503

(i) Examining or acquiring data stored in or accessible to 504
the computer equipment; 505

(ii) Placing data into the computer equipment to be retrieved 506
by designated recipients with access to the computer equipment. 507

For transactions occurring on or after the effective date of 508
the amendment of this section by H.B. 157 of the 127th general 509
assembly, December 21, 2007, "electronic information services" 510
does not include electronic publishing as defined in division 511
(LLL) of this section. 512

(d) "Automatic data processing, computer services, or 513
electronic information services" shall not include personal or 514
professional services. 515

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 516

section, "personal and professional services" means all services	517
other than automatic data processing, computer services, or	518
electronic information services, including but not limited to:	519
(a) Accounting and legal services such as advice on tax	520
matters, asset management, budgetary matters, quality control,	521
information security, and auditing and any other situation where	522
the service provider receives data or information and studies,	523
alters, analyzes, interprets, or adjusts such material;	524
(b) Analyzing business policies and procedures;	525
(c) Identifying management information needs;	526
(d) Feasibility studies, including economic and technical	527
analysis of existing or potential computer hardware or software	528
needs and alternatives;	529
(e) Designing policies, procedures, and custom software for	530
collecting business information, and determining how data should	531
be summarized, sequenced, formatted, processed, controlled, and	532
reported so that it will be meaningful to management;	533
(f) Developing policies and procedures that document how	534
business events and transactions are to be authorized, executed,	535
and controlled;	536
(g) Testing of business procedures;	537
(h) Training personnel in business procedure applications;	538
(i) Providing credit information to users of such information	539
by a consumer reporting agency, as defined in the "Fair Credit	540
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or	541
as hereafter amended, including but not limited to gathering,	542
organizing, analyzing, recording, and furnishing such information	543
by any oral, written, graphic, or electronic medium;	544
(j) Providing debt collection services by any oral, written,	545
graphic, or electronic means.	546

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA)(1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

(h) Ancillary service;

(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.

(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:

(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video

conference call, including providing a telephone number. 608

"Conference bridging service" does not include telecommunications 609

services used to reach the conference bridge. 610

(b) "Detailed telecommunications billing service" means an 611

ancillary service of separately stating information pertaining to 612

individual calls on a customer's billing statement. 613

(c) "Directory assistance" means an ancillary service of 614

providing telephone number or address information. 615

(d) "Vertical service" means an ancillary service that is 616

offered in connection with one or more telecommunications 617

services, which offers advanced calling features that allow 618

customers to identify callers and manage multiple calls and call 619

connections, including conference bridging service. 620

(e) "Voice mail service" means an ancillary service that 621

enables the customer to store, send, or receive recorded messages. 622

"Voice mail service" does not include any vertical services that 623

the customer may be required to have in order to utilize the voice 624

mail service. 625

(3) "900 service" means an inbound toll telecommunications 626

service purchased by a subscriber that allows the subscriber's 627

customers to call in to the subscriber's prerecorded announcement 628

or live service, and which is typically marketed under the name 629

"900 service" and any subsequent numbers designated by the federal 630

communications commission. "900 service" does not include the 631

charge for collection services provided by the seller of the 632

telecommunications service to the subscriber, or services or 633

products sold by the subscriber to the subscriber's customer. 634

(4) "Prepaid calling service" means the right to access 635

exclusively telecommunications services, which must be paid for in 636

advance and which enables the origination of calls using an access 637

number or authorization code, whether manually or electronically 638

dialed, and that is sold in predetermined units or dollars of 639
which the number declines with use in a known amount. 640

(5) "Prepaid wireless calling service" means a 641
telecommunications service that provides the right to utilize 642
mobile telecommunications service as well as other 643
non-telecommunications services, including the download of digital 644
products delivered electronically, and content and ancillary 645
services, that must be paid for in advance and that is sold in 646
predetermined units or dollars of which the number declines with 647
use in a known amount. 648

(6) "Value-added non-voice data service" means a 649
telecommunications service in which computer processing 650
applications are used to act on the form, content, code, or 651
protocol of the information or data primarily for a purpose other 652
than transmission, conveyance, or routing. 653

(7) "Coin-operated telephone service" means a 654
telecommunications service paid for by inserting money into a 655
telephone accepting direct deposits of money to operate. 656

(8) "Customer" has the same meaning as in section 5739.034 of 657
the Revised Code. 658

(BB) "Laundry and dry cleaning services" means removing soil 659
or dirt from towels, linens, articles of clothing, or other fabric 660
items that belong to others and supplying towels, linens, articles 661
of clothing, or other fabric items. "Laundry and dry cleaning 662
services" does not include the provision of self-service 663
facilities for use by consumers to remove soil or dirt from 664
towels, linens, articles of clothing, or other fabric items. 665

(CC) "Magazines distributed as controlled circulation 666
publications" means magazines containing at least twenty-four 667
pages, at least twenty-five per cent editorial content, issued at 668
regular intervals four or more times a year, and circulated 669

without charge to the recipient, provided that such magazines are 670
not owned or controlled by individuals or business concerns which 671
conduct such publications as an auxiliary to, and essentially for 672
the advancement of the main business or calling of, those who own 673
or control them. 674

(DD) "Landscaping and lawn care service" means the services 675
of planting, seeding, sodding, removing, cutting, trimming, 676
pruning, mulching, aerating, applying chemicals, watering, 677
fertilizing, and providing similar services to establish, promote, 678
or control the growth of trees, shrubs, flowers, grass, ground 679
cover, and other flora, or otherwise maintaining a lawn or 680
landscape grown or maintained by the owner for ornamentation or 681
other nonagricultural purpose. However, "landscaping and lawn care 682
service" does not include the providing of such services by a 683
person who has less than five thousand dollars in sales of such 684
services during the calendar year. 685

(EE) "Private investigation and security service" means the 686
performance of any activity for which the provider of such service 687
is required to be licensed pursuant to Chapter 4749. of the 688
Revised Code, or would be required to be so licensed in performing 689
such services in this state, and also includes the services of 690
conducting polygraph examinations and of monitoring or overseeing 691
the activities on or in, or the condition of, the consumer's home, 692
business, or other facility by means of electronic or similar 693
monitoring devices. "Private investigation and security service" 694
does not include special duty services provided by off-duty police 695
officers, deputy sheriffs, and other peace officers regularly 696
employed by the state or a political subdivision. 697

(FF) "Information services" means providing conversation, 698
giving consultation or advice, playing or making a voice or other 699
recording, making or keeping a record of the number of callers, 700
and any other service provided to a consumer by means of a nine 701

hundred telephone call, except when the nine hundred telephone 702
call is the means by which the consumer makes a contribution to a 703
recognized charity. 704

(GG) "Research and development" means designing, creating, or 705
formulating new or enhanced products, equipment, or manufacturing 706
processes, and also means conducting scientific or technological 707
inquiry and experimentation in the physical sciences with the goal 708
of increasing scientific knowledge which may reveal the bases for 709
new or enhanced products, equipment, or manufacturing processes. 710

(HH) "Qualified research and development equipment" means 711
capitalized tangible personal property, and leased personal 712
property that would be capitalized if purchased, used by a person 713
primarily to perform research and development. Tangible personal 714
property primarily used in testing, as defined in division (A)(4) 715
of section 5739.011 of the Revised Code, or used for recording or 716
storing test results, is not qualified research and development 717
equipment unless such property is primarily used by the consumer 718
in testing the product, equipment, or manufacturing process being 719
created, designed, or formulated by the consumer in the research 720
and development activity or in recording or storing such test 721
results. 722

(II) "Building maintenance and janitorial service" means 723
cleaning the interior or exterior of a building and any tangible 724
personal property located therein or thereon, including any 725
services incidental to such cleaning for which no separate charge 726
is made. However, "building maintenance and janitorial service" 727
does not include the providing of such service by a person who has 728
less than five thousand dollars in sales of such service during 729
the calendar year. 730

(JJ) "Employment service" means providing or supplying 731
personnel, on a temporary or long-term basis, to perform work or 732
labor under the supervision or control of another, when the 733

personnel so provided or supplied receive their wages, salary, or 734
other compensation from the provider or supplier of the employment 735
service or from a third party that provided or supplied the 736
personnel to the provider or supplier. "Employment service" does 737
not include: 738

(1) Acting as a contractor or subcontractor, where the 739
personnel performing the work are not under the direct control of 740
the purchaser. 741

(2) Medical and health care services. 742

(3) Supplying personnel to a purchaser pursuant to a contract 743
of at least one year between the service provider and the 744
purchaser that specifies that each employee covered under the 745
contract is assigned to the purchaser on a permanent basis. 746

(4) Transactions between members of an affiliated group, as 747
defined in division (B)(3)(e) of this section. 748

(5) Transactions where the personnel so provided or supplied 749
by a provider or supplier to a purchaser of an employment service 750
are then provided or supplied by that purchaser to a third party 751
as an employment service, except "employment service" does include 752
the transaction between that purchaser and the third party. 753

(KK) "Employment placement service" means locating or finding 754
employment for a person or finding or locating an employee to fill 755
an available position. 756

(LL) "Exterminating service" means eradicating or attempting 757
to eradicate vermin infestations from a building or structure, or 758
the area surrounding a building or structure, and includes 759
activities to inspect, detect, or prevent vermin infestation of a 760
building or structure. 761

(MM) "Physical fitness facility service" means all 762
transactions by which a membership is granted, maintained, or 763

renewed, including initiation fees, membership dues, renewal fees, 764
monthly minimum fees, and other similar fees and dues, by a 765
physical fitness facility such as an athletic club, health spa, or 766
gymnasium, which entitles the member to use the facility for 767
physical exercise. 768

(NN) "Recreation and sports club service" means all 769
transactions by which a membership is granted, maintained, or 770
renewed, including initiation fees, membership dues, renewal fees, 771
monthly minimum fees, and other similar fees and dues, by a 772
recreation and sports club, which entitles the member to use the 773
facilities of the organization. "Recreation and sports club" means 774
an organization that has ownership of, or controls or leases on a 775
continuing, long-term basis, the facilities used by its members 776
and includes an aviation club, gun or shooting club, yacht club, 777
card club, swimming club, tennis club, golf club, country club, 778
riding club, amateur sports club, or similar organization. 779

(OO) "Livestock" means farm animals commonly raised for food, 780
food production, or other agricultural purposes, including, but 781
not limited to, cattle, sheep, goats, swine, poultry, and captive 782
deer. "Livestock" does not include invertebrates, amphibians, 783
reptiles, domestic pets, animals for use in laboratories or for 784
exhibition, or other animals not commonly raised for food or food 785
production. 786

(PP) "Livestock structure" means a building or structure used 787
exclusively for the housing, raising, feeding, or sheltering of 788
livestock, and includes feed storage or handling structures and 789
structures for livestock waste handling. 790

(QQ) "Horticulture" means the growing, cultivation, and 791
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 792
and nursery stock. As used in this division, "nursery stock" has 793
the same meaning as in section 927.51 of the Revised Code. 794

(RR) "Horticulture structure" means a building or structure 795
used exclusively for the commercial growing, raising, or 796
overwintering of horticultural products, and includes the area 797
used for stocking, storing, and packing horticultural products 798
when done in conjunction with the production of those products. 799

(SS) "Newspaper" means an unbound publication bearing a title 800
or name that is regularly published, at least as frequently as 801
biweekly, and distributed from a fixed place of business to the 802
public in a specific geographic area, and that contains a 803
substantial amount of news matter of international, national, or 804
local events of interest to the general public. 805

(TT) "Professional racing team" means a person that employs 806
at least twenty full-time employees for the purpose of conducting 807
a motor vehicle racing business for profit. The person must 808
conduct the business with the purpose of racing one or more motor 809
racing vehicles in at least ten competitive professional racing 810
events each year that comprise all or part of a motor racing 811
series sanctioned by one or more motor racing sanctioning 812
organizations. A "motor racing vehicle" means a vehicle for which 813
the chassis, engine, and parts are designed exclusively for motor 814
racing, and does not include a stock or production model vehicle 815
that may be modified for use in racing. For the purposes of this 816
division: 817

(1) A "competitive professional racing event" is a motor 818
vehicle racing event sanctioned by one or more motor racing 819
sanctioning organizations, at which aggregate cash prizes in 820
excess of eight hundred thousand dollars are awarded to the 821
competitors. 822

(2) "Full-time employee" means an individual who is employed 823
for consideration for thirty-five or more hours a week, or who 824
renders any other standard of service generally accepted by custom 825
or specified by contract as full-time employment. 826

(UU)(1) "Lease" or "rental" means any transfer of the 827
possession or control of tangible personal property for a fixed or 828
indefinite term, for consideration. "Lease" or "rental" includes 829
future options to purchase or extend, and agreements described in 830
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 831
the amount of consideration may be increased or decreased by 832
reference to the amount realized upon the sale or disposition of 833
the property. "Lease" or "rental" does not include: 834

(a) A transfer of possession or control of tangible personal 835
property under a security agreement or a deferred payment plan 836
that requires the transfer of title upon completion of the 837
required payments; 838

(b) A transfer of possession or control of tangible personal 839
property under an agreement that requires the transfer of title 840
upon completion of required payments and payment of an option 841
price that does not exceed the greater of one hundred dollars or 842
one per cent of the total required payments; 843

(c) Providing tangible personal property along with an 844
operator for a fixed or indefinite period of time, if the operator 845
is necessary for the property to perform as designed. For purposes 846
of this division, the operator must do more than maintain, 847
inspect, or set up the tangible personal property. 848

(2) "Lease" and "rental," as defined in division (UU) of this 849
section, shall not apply to leases or rentals that exist before 850
June 26, 2003. 851

(3) "Lease" and "rental" have the same meaning as in division 852
(UU)(1) of this section regardless of whether a transaction is 853
characterized as a lease or rental under generally accepted 854
accounting principles, the Internal Revenue Code, Title XIII of 855
the Revised Code, or other federal, state, or local laws. 856

(VV) "Mobile telecommunications service" has the same meaning 857

as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 858
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, 859
on and after August 1, 2003, includes related fees and ancillary 860
services, including universal service fees, detailed billing 861
service, directory assistance, service initiation, voice mail 862
service, and vertical services, such as caller ID and three-way 863
calling. 864

(WW) "Certified service provider" has the same meaning as in 865
section 5740.01 of the Revised Code. 866

(XX) "Satellite broadcasting service" means the distribution 867
or broadcasting of programming or services by satellite directly 868
to the subscriber's receiving equipment without the use of ground 869
receiving or distribution equipment, except the subscriber's 870
receiving equipment or equipment used in the uplink process to the 871
satellite, and includes all service and rental charges, premium 872
channels or other special services, installation and repair 873
service charges, and any other charges having any connection with 874
the provision of the satellite broadcasting service. 875

(YY) "Tangible personal property" means personal property 876
that can be seen, weighed, measured, felt, or touched, or that is 877
in any other manner perceptible to the senses. For purposes of 878
this chapter and Chapter 5741. of the Revised Code, "tangible 879
personal property" includes motor vehicles, electricity, water, 880
gas, steam, and prewritten computer software. 881

(ZZ) "Direct mail" means printed material delivered or 882
distributed by United States mail or other delivery service to a 883
mass audience or to addressees on a mailing list provided by the 884
consumer or at the direction of the consumer when the cost of the 885
items are not billed directly to the recipients. "Direct mail" 886
includes tangible personal property supplied directly or 887
indirectly by the consumer to the direct mail vendor for inclusion 888
in the package containing the printed material. "Direct mail" does 889

not include multiple items of printed material delivered to a 890
single address. 891

(AAA) "Computer" means an electronic device that accepts 892
information in digital or similar form and manipulates it for a 893
result based on a sequence of instructions. 894

(BBB) "Computer software" means a set of coded instructions 895
designed to cause a computer or automatic data processing 896
equipment to perform a task. 897

(CCC) "Delivered electronically" means delivery of computer 898
software from the seller to the purchaser by means other than 899
tangible storage media. 900

(DDD) "Prewritten computer software" means computer software, 901
including prewritten upgrades, that is not designed and developed 902
by the author or other creator to the specifications of a specific 903
purchaser. The combining of two or more prewritten computer 904
software programs or prewritten portions thereof does not cause 905
the combination to be other than prewritten computer software. 906
"Prewritten computer software" includes software designed and 907
developed by the author or other creator to the specifications of 908
a specific purchaser when it is sold to a person other than the 909
purchaser. If a person modifies or enhances computer software of 910
which the person is not the author or creator, the person shall be 911
deemed to be the author or creator only of such person's 912
modifications or enhancements. Prewritten computer software or a 913
prewritten portion thereof that is modified or enhanced to any 914
degree, where such modification or enhancement is designed and 915
developed to the specifications of a specific purchaser, remains 916
prewritten computer software; provided, however, that where there 917
is a reasonable, separately stated charge or an invoice or other 918
statement of the price given to the purchaser for the modification 919
or enhancement, the modification or enhancement shall not 920
constitute prewritten computer software. 921

(EEE)(1) "Food" means substances, whether in liquid, 922
concentrated, solid, frozen, dried, or dehydrated form, that are 923
sold for ingestion or chewing by humans and are consumed for their 924
taste or nutritional value. "Food" does not include alcoholic 925
beverages, dietary supplements, soft drinks, or tobacco. 926

(2) As used in division (EEE)(1) of this section: 927

(a) "Alcoholic beverages" means beverages that are suitable 928
for human consumption and contain one-half of one per cent or more 929
of alcohol by volume. 930

(b) "Dietary supplements" means any product, other than 931
tobacco, that is intended to supplement the diet and that is 932
intended for ingestion in tablet, capsule, powder, softgel, 933
gelcap, or liquid form, or, if not intended for ingestion in such 934
a form, is not represented as conventional food for use as a sole 935
item of a meal or of the diet; that is required to be labeled as a 936
dietary supplement, identifiable by the "supplement facts" box 937
found on the label, as required by 21 C.F.R. 101.36; and that 938
contains one or more of the following dietary ingredients: 939

(i) A vitamin; 940

(ii) A mineral; 941

(iii) An herb or other botanical; 942

(iv) An amino acid; 943

(v) A dietary substance for use by humans to supplement the 944
diet by increasing the total dietary intake; 945

(vi) A concentrate, metabolite, constituent, extract, or 946
combination of any ingredient described in divisions 947
(EEE)(2)(b)(i) to (v) of this section. 948

(c) "Soft drinks" means nonalcoholic beverages that contain 949
natural or artificial sweeteners. "Soft drinks" does not include 950
beverages that contain milk or milk products, soy, rice, or 951

similar milk substitutes, or that contains greater than fifty per 952
cent vegetable or fruit juice by volume. 953

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 954
tobacco, or any other item that contains tobacco. 955

(FFF) "Drug" means a compound, substance, or preparation, and 956
any component of a compound, substance, or preparation, other than 957
food, dietary supplements, or alcoholic beverages that is 958
recognized in the official United States pharmacopoeia, official 959
homeopathic pharmacopoeia of the United States, or official 960
national formulary, and supplements to them; is intended for use 961
in the diagnosis, cure, mitigation, treatment, or prevention of 962
disease; or is intended to affect the structure or any function of 963
the body. 964

(GGG) "Prescription" means an order, formula, or recipe 965
issued in any form of oral, written, electronic, or other means of 966
transmission by a duly licensed practitioner authorized by the 967
laws of this state to issue a prescription. 968

(HHH) "Durable medical equipment" means equipment, including 969
repair and replacement parts for such equipment, that can 970
withstand repeated use, is primarily and customarily used to serve 971
a medical purpose, generally is not useful to a person in the 972
absence of illness or injury, and is not worn in or on the body. 973
"Durable medical equipment" does not include mobility enhancing 974
equipment. 975

(III) "Mobility enhancing equipment" means equipment, 976
including repair and replacement parts for such equipment, that is 977
primarily and customarily used to provide or increase the ability 978
to move from one place to another and is appropriate for use 979
either in a home or a motor vehicle, that is not generally used by 980
persons with normal mobility, and that does not include any motor 981
vehicle or equipment on a motor vehicle normally provided by a 982

motor vehicle manufacturer. "Mobility enhancing equipment" does 983
not include durable medical equipment. 984

(JJJ) "Prosthetic device" means a replacement, corrective, or 985
supportive device, including repair and replacement parts for the 986
device, worn on or in the human body to artificially replace a 987
missing portion of the body, prevent or correct physical deformity 988
or malfunction, or support a weak or deformed portion of the body. 989
As used in this division, "prosthetic device" does not include 990
corrective eyeglasses, contact lenses, or dental prosthesis. 991

(KKK)(1) "Fractional aircraft ownership program" means a 992
program in which persons within an affiliated group sell and 993
manage fractional ownership program aircraft, provided that at 994
least one hundred airworthy aircraft are operated in the program 995
and the program meets all of the following criteria: 996

(a) Management services are provided by at least one program 997
manager within an affiliated group on behalf of the fractional 998
owners. 999

(b) Each program aircraft is owned or possessed by at least 1000
one fractional owner. 1001

(c) Each fractional owner owns or possesses at least a 1002
one-sixteenth interest in at least one fixed-wing program 1003
aircraft. 1004

(d) A dry-lease aircraft interchange arrangement is in effect 1005
among all of the fractional owners. 1006

(e) Multi-year program agreements are in effect regarding the 1007
fractional ownership, management services, and dry-lease aircraft 1008
interchange arrangement aspects of the program. 1009

(2) As used in division (KKK)(1) of this section: 1010

(a) "Affiliated group" has the same meaning as in division 1011
(B)(3)(e) of this section. 1012

(b) "Fractional owner" means a person that owns or possesses 1013
at least a one-sixteenth interest in a program aircraft and has 1014
entered into the agreements described in division (KKK)(1)(e) of 1015
this section. 1016

(c) "Fractional ownership program aircraft" or "program 1017
aircraft" means a turbojet aircraft that is owned or possessed by 1018
a fractional owner and that has been included in a dry-lease 1019
aircraft interchange arrangement and agreement under divisions 1020
(KKK)(1)(d) and (e) of this section, or an aircraft a program 1021
manager owns or possesses primarily for use in a fractional 1022
aircraft ownership program. 1023

(d) "Management services" means administrative and aviation 1024
support services furnished under a fractional aircraft ownership 1025
program in accordance with a management services agreement under 1026
division (KKK)(1)(e) of this section, and offered by the program 1027
manager to the fractional owners, including, at a minimum, the 1028
establishment and implementation of safety guidelines; the 1029
coordination of the scheduling of the program aircraft and crews; 1030
program aircraft maintenance; program aircraft insurance; crew 1031
training for crews employed, furnished, or contracted by the 1032
program manager or the fractional owner; the satisfaction of 1033
record-keeping requirements; and the development and use of an 1034
operations manual and a maintenance manual for the fractional 1035
aircraft ownership program. 1036

(e) "Program manager" means the person that offers management 1037
services to fractional owners pursuant to a management services 1038
agreement under division (KKK)(1)(e) of this section. 1039

(LLL) "Electronic publishing" means providing access to one 1040
or more of the following primarily for business customers, 1041
including the federal government or a state government or a 1042
political subdivision thereof, to conduct research: news; 1043
business, financial, legal, consumer, or credit materials; 1044

editorials, columns, reader commentary, or features; photos or 1045
images; archival or research material; legal notices, identity 1046
verification, or public records; scientific, educational, 1047
instructional, technical, professional, trade, or other literary 1048
materials; or other similar information which has been gathered 1049
and made available by the provider to the consumer in an 1050
electronic format. Providing electronic publishing includes the 1051
functions necessary for the acquisition, formatting, editing, 1052
storage, and dissemination of data or information that is the 1053
subject of a sale. 1054

(MMM) "Medicaid health insuring corporation" means a health 1055
insuring corporation that holds a certificate of authority under 1056
Chapter 1751. of the Revised Code and is under contract with the 1057
department of job and family services pursuant to section 5111.17 1058
of the Revised Code. 1059

(NNN) "Managed care premium" means any premium, capitation, 1060
or other payment a medicaid health insuring corporation receives 1061
for providing or arranging for the provision of health care 1062
services to its members or enrollees residing in this state. 1063

(OOO) "Captive deer" means deer and other cervidae that have 1064
been legally acquired, or their offspring, that are privately 1065
owned for agricultural or farming purposes. 1066

(PPP) "Gift card" means a document, card, certificate, or 1067
other record, whether tangible or intangible, that may be redeemed 1068
by a consumer for a dollar value when making a purchase of 1069
tangible personal property or services. 1070

(QQQ) "Specified digital product" means an electronically 1071
transferred digital audiovisual work, digital audio work, or 1072
digital book. 1073

As used in division (QQQ) of this section: 1074

(1) "Digital audiovisual work" means a series of related 1075

images that, when shown in succession, impart an impression of 1076
motion, together with accompanying sounds, if any. 1077

(2) "Digital audio work" means a work that results from the 1078
fixation of a series of musical, spoken, or other sounds, 1079
including digitized sound files that are downloaded onto a device 1080
and that may be used to alert the customer with respect to a 1081
communication. 1082

(3) "Digital book" means a work that is generally recognized 1083
in the ordinary and usual sense as a book. 1084

(4) "Electronically transferred" means obtained by the 1085
purchaser by means other than tangible storage media. 1086

Sec. 5739.02. For the purpose of providing revenue with which 1087
to meet the needs of the state, for the use of the general revenue 1088
fund of the state, for the purpose of securing a thorough and 1089
efficient system of common schools throughout the state, for the 1090
purpose of affording revenues, in addition to those from general 1091
property taxes, permitted under constitutional limitations, and 1092
from other sources, for the support of local governmental 1093
functions, and for the purpose of reimbursing the state for the 1094
expense of administering this chapter, an excise tax is hereby 1095
levied on each retail sale made in this state. 1096

(A)(1) The tax shall be collected as provided in section 1097
5739.025 of the Revised Code. The rate of the tax shall be five 1098
and three-fourths per cent. The tax applies and is collectible 1099
when the sale is made, regardless of the time when the price is 1100
paid or delivered. 1101

(2) In the case of the lease or rental, with a fixed term of 1102
more than thirty days or an indefinite term with a minimum period 1103
of more than thirty days, of any motor vehicles designed by the 1104
manufacturer to carry a load of not more than one ton, watercraft, 1105

outboard motor, or aircraft, or of any tangible personal property, 1106
other than motor vehicles designed by the manufacturer to carry a 1107
load of more than one ton, to be used by the lessee or renter 1108
primarily for business purposes, the tax shall be collected by the 1109
vendor at the time the lease or rental is consummated and shall be 1110
calculated by the vendor on the basis of the total amount to be 1111
paid by the lessee or renter under the lease agreement. If the 1112
total amount of the consideration for the lease or rental includes 1113
amounts that are not calculated at the time the lease or rental is 1114
executed, the tax shall be calculated and collected by the vendor 1115
at the time such amounts are billed to the lessee or renter. In 1116
the case of an open-end lease or rental, the tax shall be 1117
calculated by the vendor on the basis of the total amount to be 1118
paid during the initial fixed term of the lease or rental, and for 1119
each subsequent renewal period as it comes due. As used in this 1120
division, "motor vehicle" has the same meaning as in section 1121
4501.01 of the Revised Code, and "watercraft" includes an outdrive 1122
unit attached to the watercraft. 1123

A lease with a renewal clause and a termination penalty or 1124
similar provision that applies if the renewal clause is not 1125
exercised is presumed to be a sham transaction. In such a case, 1126
the tax shall be calculated and paid on the basis of the entire 1127
length of the lease period, including any renewal periods, until 1128
the termination penalty or similar provision no longer applies. 1129
The taxpayer shall bear the burden, by a preponderance of the 1130
evidence, that the transaction or series of transactions is not a 1131
sham transaction. 1132

(3) Except as provided in division (A)(2) of this section, in 1133
the case of a sale, the price of which consists in whole or in 1134
part of the lease or rental of tangible personal property, the tax 1135
shall be measured by the installments of that lease or rental. 1136

(4) In the case of a sale of a physical fitness facility 1137

service or recreation and sports club service, the price of which 1138
consists in whole or in part of a membership for the receipt of 1139
the benefit of the service, the tax applicable to the sale shall 1140
be measured by the installments thereof. 1141

(B) The tax does not apply to the following: 1142

(1) Sales to the state or any of its political subdivisions, 1143
or to any other state or its political subdivisions if the laws of 1144
that state exempt from taxation sales made to this state and its 1145
political subdivisions; 1146

(2) Sales of food for human consumption off the premises 1147
where sold; 1148

(3) Sales of food sold to students only in a cafeteria, 1149
dormitory, fraternity, or sorority maintained in a private, 1150
public, or parochial school, college, or university; 1151

(4) Sales of newspapers and sales or transfers of magazines 1152
distributed as controlled circulation publications; 1153

(5) The furnishing, preparing, or serving of meals without 1154
charge by an employer to an employee provided the employer records 1155
the meals as part compensation for services performed or work 1156
done; 1157

(6) Sales of motor fuel upon receipt, use, distribution, or 1158
sale of which in this state a tax is imposed by the law of this 1159
state, but this exemption shall not apply to the sale of motor 1160
fuel on which a refund of the tax is allowable under division (A) 1161
of section 5735.14 of the Revised Code; and the tax commissioner 1162
may deduct the amount of tax levied by this section applicable to 1163
the price of motor fuel when granting a refund of motor fuel tax 1164
pursuant to division (A) of section 5735.14 of the Revised Code 1165
and shall cause the amount deducted to be paid into the general 1166
revenue fund of this state; 1167

(7) Sales of natural gas by a natural gas company, of water 1168
by a water-works company, or of steam by a heating company, if in 1169
each case the thing sold is delivered to consumers through pipes 1170
or conduits, and all sales of communications services by a 1171
telegraph company, all terms as defined in section 5727.01 of the 1172
Revised Code, and sales of electricity delivered through wires; 1173

(8) Casual sales by a person, or auctioneer employed directly 1174
by the person to conduct such sales, except as to such sales of 1175
motor vehicles, watercraft or outboard motors required to be 1176
titled under section 1548.06 of the Revised Code, watercraft 1177
documented with the United States coast guard, snowmobiles, and 1178
all-purpose vehicles as defined in section 4519.01 of the Revised 1179
Code; 1180

(9)(a) Sales of services or tangible personal property, other 1181
than motor vehicles, mobile homes, and manufactured homes, by 1182
churches, organizations exempt from taxation under section 1183
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 1184
organizations operated exclusively for charitable purposes as 1185
defined in division (B)(12) of this section, provided that the 1186
number of days on which such tangible personal property or 1187
services, other than items never subject to the tax, are sold does 1188
not exceed six in any calendar year, except as otherwise provided 1189
in division (B)(9)(b) of this section. If the number of days on 1190
which such sales are made exceeds six in any calendar year, the 1191
church or organization shall be considered to be engaged in 1192
business and all subsequent sales by it shall be subject to the 1193
tax. In counting the number of days, all sales by groups within a 1194
church or within an organization shall be considered to be sales 1195
of that church or organization. 1196

(b) The limitation on the number of days on which tax-exempt 1197
sales may be made by a church or organization under division 1198
(B)(9)(a) of this section does not apply to sales made by student 1199

clubs and other groups of students of a primary or secondary 1200
school, or a parent-teacher association, booster group, or similar 1201
organization that raises money to support or fund curricular or 1202
extracurricular activities of a primary or secondary school. 1203

(c) Divisions (B)(9)(a) and (b) of this section do not apply 1204
to sales by a noncommercial educational radio or television 1205
broadcasting station. 1206

(10) Sales not within the taxing power of this state under 1207
the Constitution or laws of the United States or the Constitution 1208
of this state; 1209

(11) Except for transactions that are sales under division 1210
(B)(3)(r) of section 5739.01 of the Revised Code, the 1211
transportation of persons or property, unless the transportation 1212
is by a private investigation and security service; 1213

(12) Sales of tangible personal property or services to 1214
churches, to organizations exempt from taxation under section 1215
501(c)(3) of the Internal Revenue Code of 1986, and to any other 1216
nonprofit organizations operated exclusively for charitable 1217
purposes in this state, no part of the net income of which inures 1218
to the benefit of any private shareholder or individual, and no 1219
substantial part of the activities of which consists of carrying 1220
on propaganda or otherwise attempting to influence legislation; 1221
sales to offices administering one or more homes for the aged or 1222
one or more hospital facilities exempt under section 140.08 of the 1223
Revised Code; and sales to organizations described in division (D) 1224
of section 5709.12 of the Revised Code. 1225

"Charitable purposes" means the relief of poverty; the 1226
improvement of health through the alleviation of illness, disease, 1227
or injury; the operation of an organization exclusively for the 1228
provision of professional, laundry, printing, and purchasing 1229
services to hospitals or charitable institutions; the operation of 1230

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.

(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 1263
of its political subdivisions, or by the United States government 1264
or any of its agencies at the time of completion of the structures 1265
or improvements; building and construction materials sold to 1266
construction contractors for incorporation into a horticulture 1267
structure or livestock structure for a person engaged in the 1268
business of horticulture or producing livestock; building 1269
materials and services sold to a construction contractor for 1270
incorporation into a house of public worship or religious 1271
education, or a building used exclusively for charitable purposes 1272
under a construction contract with an organization whose purpose 1273
is as described in division (B)(12) of this section; building 1274
materials and services sold to a construction contractor for 1275
incorporation into a building under a construction contract with 1276
an organization exempt from taxation under section 501(c)(3) of 1277
the Internal Revenue Code of 1986 when the building is to be used 1278
exclusively for the organization's exempt purposes; building and 1279
construction materials sold for incorporation into the original 1280
construction of a sports facility under section 307.696 of the 1281
Revised Code; building and construction materials and services 1282
sold to a construction contractor for incorporation into real 1283
property outside this state if such materials and services, when 1284
sold to a construction contractor in the state in which the real 1285
property is located for incorporation into real property in that 1286
state, would be exempt from a tax on sales levied by that state; 1287
and, until one calendar year after the construction of a 1288
convention center that qualifies for property tax exemption under 1289
section 5709.084 of the Revised Code is completed, building and 1290
construction materials and services sold to a construction 1291
contractor for incorporation into the real property comprising 1292
that convention center; 1293

(14) Sales of ships or vessels or rail rolling stock used or 1294
to be used principally in interstate or foreign commerce, and 1295

repairs, alterations, fuel, and lubricants for such ships or 1296
vessels or rail rolling stock; 1297

(15) Sales to persons primarily engaged in any of the 1298
activities mentioned in division (B)(42)(a), (g), or (h) of this 1299
section, to persons engaged in making retail sales, or to persons 1300
who purchase for sale from a manufacturer tangible personal 1301
property that was produced by the manufacturer in accordance with 1302
specific designs provided by the purchaser, of packages, including 1303
material, labels, and parts for packages, and of machinery, 1304
equipment, and material for use primarily in packaging tangible 1305
personal property produced for sale, including any machinery, 1306
equipment, and supplies used to make labels or packages, to 1307
prepare packages or products for labeling, or to label packages or 1308
products, by or on the order of the person doing the packaging, or 1309
sold at retail. "Packages" includes bags, baskets, cartons, 1310
crates, boxes, cans, bottles, bindings, wrappings, and other 1311
similar devices and containers, but does not include motor 1312
vehicles or bulk tanks, trailers, or similar devices attached to 1313
motor vehicles. "Packaging" means placing in a package. Division 1314
(B)(15) of this section does not apply to persons engaged in 1315
highway transportation for hire. 1316

(16) Sales of food to persons using supplemental nutrition 1317
assistance program benefits to purchase the food. As used in this 1318
division, "food" has the same meaning as in 7 U.S.C. 2012 and 1319
federal regulations adopted pursuant to the Food and Nutrition Act 1320
of 2008. 1321

(17) Sales to persons engaged in farming, agriculture, 1322
horticulture, or floriculture, of tangible personal property for 1323
use or consumption primarily in the production by farming, 1324
agriculture, horticulture, or floriculture of other tangible 1325
personal property for use or consumption primarily in the 1326
production of tangible personal property for sale by farming, 1327

agriculture, horticulture, or floriculture; or material and parts 1328
for incorporation into any such tangible personal property for use 1329
or consumption in production; and of tangible personal property 1330
for such use or consumption in the conditioning or holding of 1331
products produced by and for such use, consumption, or sale by 1332
persons engaged in farming, agriculture, horticulture, or 1333
floriculture, except where such property is incorporated into real 1334
property; 1335

(18) Sales of drugs for a human being that may be dispensed 1336
only pursuant to a prescription; insulin as recognized in the 1337
official United States pharmacopoeia; urine and blood testing 1338
materials when used by diabetics or persons with hypoglycemia to 1339
test for glucose or acetone; hypodermic syringes and needles when 1340
used by diabetics for insulin injections; epoetin alfa when 1341
purchased for use in the treatment of persons with medical 1342
disease; hospital beds when purchased by hospitals, nursing homes, 1343
or other medical facilities; and medical oxygen and medical 1344
oxygen-dispensing equipment when purchased by hospitals, nursing 1345
homes, or other medical facilities; 1346

(19) Sales of prosthetic devices, durable medical equipment 1347
for home use, or mobility enhancing equipment, when made pursuant 1348
to a prescription and when such devices or equipment are for use 1349
by a human being. 1350

(20) Sales of emergency and fire protection vehicles and 1351
equipment to nonprofit organizations for use solely in providing 1352
fire protection and emergency services, including trauma care and 1353
emergency medical services, for political subdivisions of the 1354
state; 1355

(21) Sales of tangible personal property manufactured in this 1356
state, if sold by the manufacturer in this state to a retailer for 1357
use in the retail business of the retailer outside of this state 1358
and if possession is taken from the manufacturer by the purchaser 1359

within this state for the sole purpose of immediately removing the	1360
same from this state in a vehicle owned by the purchaser;	1361
(22) Sales of services provided by the state or any of its	1362
political subdivisions, agencies, instrumentalities, institutions,	1363
or authorities, or by governmental entities of the state or any of	1364
its political subdivisions, agencies, instrumentalities,	1365
institutions, or authorities;	1366
(23) Sales of motor vehicles to nonresidents of this state	1367
under the circumstances described in division (B) of section	1368
5739.029 of the Revised Code;	1369
(24) Sales to persons engaged in the preparation of eggs for	1370
sale of tangible personal property used or consumed directly in	1371
such preparation, including such tangible personal property used	1372
for cleaning, sanitizing, preserving, grading, sorting, and	1373
classifying by size; packages, including material and parts for	1374
packages, and machinery, equipment, and material for use in	1375
packaging eggs for sale; and handling and transportation equipment	1376
and parts therefor, except motor vehicles licensed to operate on	1377
public highways, used in intraplant or interplant transfers or	1378
shipment of eggs in the process of preparation for sale, when the	1379
plant or plants within or between which such transfers or	1380
shipments occur are operated by the same person. "Packages"	1381
includes containers, cases, baskets, flats, fillers, filler flats,	1382
cartons, closure materials, labels, and labeling materials, and	1383
"packaging" means placing therein.	1384
(25)(a) Sales of water to a consumer for residential use;	1385
(b) Sales of water by a nonprofit corporation engaged	1386
exclusively in the treatment, distribution, and sale of water to	1387
consumers, if such water is delivered to consumers through pipes	1388
or tubing.	1389
(26) Fees charged for inspection or reinspection of motor	1390

vehicles under section 3704.14 of the Revised Code;	1391
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	1392
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	1394
	1395
(a) To prepare food for human consumption for sale;	1396
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	1397
	1398
	1399
	1400
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1401
	1402
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1403
	1404
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	1405
	1406
	1407
	1408
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	1409
	1410
	1411
(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;	1412
	1413
	1414
(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;	1415
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(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 describes tangible personal property offered for retail sale.

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

(c) Sales of equipment such as telephones, computers,

facsimile machines, and similar tangible personal property	1453
primarily used to accept orders for direct marketing retail sales.	1454
(d) Sales of automatic food vending machines that preserve	1455
food with a shelf life of forty-five days or less by refrigeration	1456
and dispense it to the consumer.	1457
For purposes of division (B)(35) of this section, "direct	1458
marketing" means the method of selling where consumers order	1459
tangible personal property by United States mail, delivery	1460
service, or telecommunication and the vendor delivers or ships the	1461
tangible personal property sold to the consumer from a warehouse,	1462
catalogue distribution center, or similar fulfillment facility by	1463
means of the United States mail, delivery service, or common	1464
carrier.	1465
(36) Sales to a person engaged in the business of	1466
horticulture or producing livestock of materials to be	1467
incorporated into a horticulture structure or livestock structure;	1468
(37) Sales of personal computers, computer monitors, computer	1469
keyboards, modems, and other peripheral computer equipment to an	1470
individual who is licensed or certified to teach in an elementary	1471
or a secondary school in this state for use by that individual in	1472
preparation for teaching elementary or secondary school students;	1473
(38) Sales to a professional racing team of any of the	1474
following:	1475
(a) Motor racing vehicles;	1476
(b) Repair services for motor racing vehicles;	1477
(c) Items of property that are attached to or incorporated in	1478
motor racing vehicles, including engines, chassis, and all other	1479
components of the vehicles, and all spare, replacement, and	1480
rebuilt parts or components of the vehicles; except not including	1481
tires, consumable fluids, paint, and accessories consisting of	1482

instrumentation sensors and related items added to the vehicle to 1483
collect and transmit data by means of telemetry and other forms of 1484
communication. 1485

(39) Sales of used manufactured homes and used mobile homes, 1486
as defined in section 5739.0210 of the Revised Code, made on or 1487
after January 1, 2000; 1488

(40) Sales of tangible personal property and services to a 1489
provider of electricity used or consumed directly and primarily in 1490
generating, transmitting, or distributing electricity for use by 1491
others, including property that is or is to be incorporated into 1492
and will become a part of the consumer's production, transmission, 1493
or distribution system and that retains its classification as 1494
tangible personal property after incorporation; fuel or power used 1495
in the production, transmission, or distribution of electricity; 1496
energy conversion equipment as defined in section 5727.01 of the 1497
Revised Code; and tangible personal property and services used in 1498
the repair and maintenance of the production, transmission, or 1499
distribution system, including only those motor vehicles as are 1500
specially designed and equipped for such use. The exemption 1501
provided in this division shall be in lieu of all other exemptions 1502
in division (B)(42)(a) or (n) of this section to which a provider 1503
of electricity may otherwise be entitled based on the use of the 1504
tangible personal property or service purchased in generating, 1505
transmitting, or distributing electricity. 1506

(41) Sales to a person providing services under division 1507
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 1508
personal property and services used directly and primarily in 1509
providing taxable services under that section. 1510

(42) Sales where the purpose of the purchaser is to do any of 1511
the following: 1512

(a) To incorporate the thing transferred as a material or a 1513

part into tangible personal property to be produced for sale by 1514
manufacturing, assembling, processing, or refining; or to use or 1515
consume the thing transferred directly in producing tangible 1516
personal property for sale by mining, including, without 1517
limitation, the extraction from the earth of all substances that 1518
are classed geologically as minerals, production of crude oil and 1519
natural gas, or directly in the rendition of a public utility 1520
service, except that the sales tax levied by this section shall be 1521
collected upon all meals, drinks, and food for human consumption 1522
sold when transporting persons. Persons engaged in rendering 1523
services in the exploration for, and production of, crude oil and 1524
natural gas for others are deemed engaged directly in the 1525
exploration for, and production of, crude oil and natural gas. 1526
This paragraph does not exempt from "retail sale" or "sales at 1527
retail" the sale of tangible personal property that is to be 1528
incorporated into a structure or improvement to real property. 1529

(b) To hold the thing transferred as security for the 1530
performance of an obligation of the vendor; 1531

(c) To resell, hold, use, or consume the thing transferred as 1532
evidence of a contract of insurance; 1533

(d) To use or consume the thing directly in commercial 1534
fishing; 1535

(e) To incorporate the thing transferred as a material or a 1536
part into, or to use or consume the thing transferred directly in 1537
the production of, magazines distributed as controlled circulation 1538
publications; 1539

(f) To use or consume the thing transferred in the production 1540
and preparation in suitable condition for market and sale of 1541
printed, imprinted, overprinted, lithographic, multilithic, 1542
blueprinted, photostatic, or other productions or reproductions of 1543
written or graphic matter; 1544

(g) To use the thing transferred, as described in section 1545
5739.011 of the Revised Code, primarily in a manufacturing 1546
operation to produce tangible personal property for sale; 1547

(h) To use the benefit of a warranty, maintenance or service 1548
contract, or similar agreement, as described in division (B)(7) of 1549
section 5739.01 of the Revised Code, to repair or maintain 1550
tangible personal property, if all of the property that is the 1551
subject of the warranty, contract, or agreement would not be 1552
subject to the tax imposed by this section; 1553

(i) To use the thing transferred as qualified research and 1554
development equipment; 1555

(j) To use or consume the thing transferred primarily in 1556
storing, transporting, mailing, or otherwise handling purchased 1557
sales inventory in a warehouse, distribution center, or similar 1558
facility when the inventory is primarily distributed outside this 1559
state to retail stores of the person who owns or controls the 1560
warehouse, distribution center, or similar facility, to retail 1561
stores of an affiliated group of which that person is a member, or 1562
by means of direct marketing. This division does not apply to 1563
motor vehicles registered for operation on the public highways. As 1564
used in this division, "affiliated group" has the same meaning as 1565
in division (B)(3)(e) of section 5739.01 of the Revised Code and 1566
"direct marketing" has the same meaning as in division (B)(35) of 1567
this section. 1568

(k) To use or consume the thing transferred to fulfill a 1569
contractual obligation incurred by a warrantor pursuant to a 1570
warranty provided as a part of the price of the tangible personal 1571
property sold or by a vendor of a warranty, maintenance or service 1572
contract, or similar agreement the provision of which is defined 1573
as a sale under division (B)(7) of section 5739.01 of the Revised 1574
Code; 1575

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;	1576 1577
(m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;	1578 1579 1580 1581 1582
(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.	1583 1584 1585 1586 1587 1588 1589 1590 1591
(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.	1592 1593 1594
As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.	1595 1596 1597
(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.	1598 1599 1600 1601 1602 1603 1604
(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft	1605 1606

used primarily in a fractional aircraft ownership program, and 1607
sales of services for the repair, modification, and maintenance of 1608
such aircraft, and machinery, equipment, and supplies primarily 1609
used to provide those services. 1610

(45) Sales of telecommunications service that is used 1611
directly and primarily to perform the functions of a call center. 1612
As used in this division, "call center" means any physical 1613
location where telephone calls are placed or received in high 1614
volume for the purpose of making sales, marketing, customer 1615
service, technical support, or other specialized business 1616
activity, and that employs at least fifty individuals that engage 1617
in call center activities on a full-time basis, or sufficient 1618
individuals to fill fifty full-time equivalent positions. 1619

(46) Sales by a telecommunications service vendor of 900 1620
service to a subscriber. This division does not apply to 1621
information services, as defined in division (FF) of section 1622
5739.01 of the Revised Code. 1623

(47) Sales of value-added non-voice data service. This 1624
division does not apply to any similar service that is not 1625
otherwise a telecommunications service. 1626

(48)(a) Sales of machinery, equipment, and software to a 1627
qualified direct selling entity for use in a warehouse or 1628
distribution center primarily for storing, transporting, or 1629
otherwise handling inventory that is held for sale to independent 1630
salespersons who operate as direct sellers and that is held 1631
primarily for distribution outside this state; 1632

(b) As used in division (B)(48)(a) of this section: 1633

(i) "Direct seller" means a person selling consumer products 1634
to individuals for personal or household use and not from a fixed 1635
retail location, including selling such product at in-home product 1636
demonstrations, parties, and other one-on-one selling. 1637

(ii) "Qualified direct selling entity" means an entity 1638
selling to direct sellers at the time the entity enters into a tax 1639
credit agreement with the tax credit authority pursuant to section 1640
122.17 of the Revised Code, provided that the agreement was 1641
entered into on or after January 1, 2007. Neither contingencies 1642
relevant to the granting of, nor later developments with respect 1643
to, the tax credit shall impair the status of the qualified direct 1644
selling entity under division (B)(48) of this section after 1645
execution of the tax credit agreement by the tax credit authority. 1646

(c) Division (B)(48) of this section is limited to machinery, 1647
equipment, and software first stored, used, or consumed in this 1648
state within the period commencing June 24, 2008, and ending on 1649
the date that is five years after that date. 1650

(49) Sales of materials, parts, equipment, or engines used in 1651
the repair or maintenance of aircraft or avionics systems of such 1652
aircraft, and sales of repair, remodeling, replacement, or 1653
maintenance services in this state performed on aircraft or on an 1654
aircraft's avionics, engine, or component materials or parts. As 1655
used in division (B)(49) of this section, "aircraft" means 1656
aircraft of more than six thousand pounds maximum certified 1657
takeoff weight or used exclusively in general aviation. 1658

(50) Sales of full flight simulators that are used for pilot 1659
or flight-crew training, sales of repair or replacement parts or 1660
components, and sales of repair or maintenance services for such 1661
full flight simulators. "Full flight simulator" means a replica of 1662
a specific type, or make, model, and series of aircraft cockpit. 1663
It includes the assemblage of equipment and computer programs 1664
necessary to represent aircraft operations in ground and flight 1665
conditions, a visual system providing an out-of-the-cockpit view, 1666
and a system that provides cues at least equivalent to those of a 1667
three-degree-of-freedom motion system, and has the full range of 1668
capabilities of the systems installed in the device as described 1669

in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

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

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

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

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

(I) The facility is leased from the eligible county pursuant to a lease that requires substantially all of the revenue from the operation of the business or activity conducted by the nonprofit corporation at the facility in excess of operating costs, capital expenditures, and reserves to be paid to the eligible county at least once per calendar year.

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

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

(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video

service or programming, audio service or programming, or 1700
electronically transferred digital audiovisual or audio work. As 1701
used in division (B)(53) of this section, "cable service" and 1702
"cable service provider" have the same meanings as in section 1703
1332.01 of the Revised Code, and "video service," "video service 1704
provider," and "video programming" have the same meanings as in 1705
section 1332.21 of the Revised Code. 1706

(54) Sales of optical aids or components thereof by a vendor 1707
licensed under Chapter 4725. or 4731. of the Revised Code that are 1708
received by the vendor from others. As used in division (B)(54) of 1709
this section, "optical aid" has the same meaning as in section 1710
4725.40 of the Revised Code. 1711

(C) For the purpose of the proper administration of this 1712
chapter, and to prevent the evasion of the tax, it is presumed 1713
that all sales made in this state are subject to the tax until the 1714
contrary is established. 1715

(D) The levy of this tax on retail sales of recreation and 1716
sports club service shall not prevent a municipal corporation from 1717
levying any tax on recreation and sports club dues or on any 1718
income generated by recreation and sports club dues. 1719

(E) The tax collected by the vendor from the consumer under 1720
this chapter is not part of the price, but is a tax collection for 1721
the benefit of the state, and of counties levying an additional 1722
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 1723
Code and of transit authorities levying an additional sales tax 1724
pursuant to section 5739.023 of the Revised Code. Except for the 1725
discount authorized under section 5739.12 of the Revised Code and 1726
the effects of any rounding pursuant to section 5703.055 of the 1727
Revised Code, no person other than the state or such a county or 1728
transit authority shall derive any benefit from the collection or 1729
payment of the tax levied by this section or section 5739.021, 1730
5739.023, or 5739.026 of the Revised Code. 1731

Section 2. That existing sections 5739.01 and 5739.02 of the Revised Code are hereby repealed.

Section 3. The amendment by this act of sections 5739.01 and 5739.02 of the Revised Code applies to the sale or storage, use, or other consumption of tangible personal property occurring on or after the first day of the first month beginning on or after the effective date of this section.

Section 4. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 51 and Am. Sub. H.B. 59 of the 130th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.