

As Introduced

**130th General Assembly
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S. B. No. 303

Senator Brown

Cosponsors: Senators Cafaro, Kearney, Sawyer, Smith, Turner

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A B I L L

To amend sections 5739.02 and 5739.05 of the Revised 1
Code to provide a three-day sales tax "holiday" 2
each April during which sales of qualifying Energy 3
Star products are exempt from sales and use taxes. 4

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

Section 1. That sections 5739.02 and 5739.05 of the Revised 5
Code be amended to read as follows: 6

Sec. 5739.02. For the purpose of providing revenue with which 7
to meet the needs of the state, for the use of the general revenue 8
fund of the state, for the purpose of securing a thorough and 9
efficient system of common schools throughout the state, for the 10
purpose of affording revenues, in addition to those from general 11
property taxes, permitted under constitutional limitations, and 12
from other sources, for the support of local governmental 13
functions, and for the purpose of reimbursing the state for the 14
expense of administering this chapter, an excise tax is hereby 15
levied on each retail sale made in this state. 16

(A)(1) The tax shall be collected as provided in section 17
5739.025 of the Revised Code. The rate of the tax shall be five 18
and three-fourths per cent. The tax applies and is collectible 19

when the sale is made, regardless of the time when the price is 20
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term of 22
more than thirty days or an indefinite term with a minimum period 23
of more than thirty days, of any motor vehicles designed by the 24
manufacturer to carry a load of not more than one ton, watercraft, 25
outboard motor, or aircraft, or of any tangible personal property, 26
other than motor vehicles designed by the manufacturer to carry a 27
load of more than one ton, to be used by the lessee or renter 28
primarily for business purposes, the tax shall be collected by the 29
vendor at the time the lease or rental is consummated and shall be 30
calculated by the vendor on the basis of the total amount to be 31
paid by the lessee or renter under the lease agreement. If the 32
total amount of the consideration for the lease or rental includes 33
amounts that are not calculated at the time the lease or rental is 34
executed, the tax shall be calculated and collected by the vendor 35
at the time such amounts are billed to the lessee or renter. In 36
the case of an open-end lease or rental, the tax shall be 37
calculated by the vendor on the basis of the total amount to be 38
paid during the initial fixed term of the lease or rental, and for 39
each subsequent renewal period as it comes due. As used in this 40
division, "motor vehicle" has the same meaning as in section 41
4501.01 of the Revised Code, and "watercraft" includes an outdrive 42
unit attached to the watercraft. 43

A lease with a renewal clause and a termination penalty or 44
similar provision that applies if the renewal clause is not 45
exercised is presumed to be a sham transaction. In such a case, 46
the tax shall be calculated and paid on the basis of the entire 47
length of the lease period, including any renewal periods, until 48
the termination penalty or similar provision no longer applies. 49
The taxpayer shall bear the burden, by a preponderance of the 50
evidence, that the transaction or series of transactions is not a 51

sham transaction. 52

(3) Except as provided in division (A)(2) of this section, in 53
the case of a sale, the price of which consists in whole or in 54
part of the lease or rental of tangible personal property, the tax 55
shall be measured by the installments of that lease or rental. 56

(4) In the case of a sale of a physical fitness facility 57
service or recreation and sports club service, the price of which 58
consists in whole or in part of a membership for the receipt of 59
the benefit of the service, the tax applicable to the sale shall 60
be measured by the installments thereof. 61

(B) The tax does not apply to the following: 62

(1) Sales to the state or any of its political subdivisions, 63
or to any other state or its political subdivisions if the laws of 64
that state exempt from taxation sales made to this state and its 65
political subdivisions; 66

(2) Sales of food for human consumption off the premises 67
where sold; 68

(3) Sales of food sold to students only in a cafeteria, 69
dormitory, fraternity, or sorority maintained in a private, 70
public, or parochial school, college, or university; 71

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

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

(6) Sales of motor fuel upon receipt, use, distribution, or 78
sale of which in this state a tax is imposed by the law of this 79
state, but this exemption shall not apply to the sale of motor 80
fuel on which a refund of the tax is allowable under division (A) 81

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

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

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

(9)(a) Sales of services or tangible personal property, other 101
than motor vehicles, mobile homes, and manufactured homes, by 102
churches, organizations exempt from taxation under section 103
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 104
organizations operated exclusively for charitable purposes as 105
defined in division (B)(12) of this section, provided that the 106
number of days on which such tangible personal property or 107
services, other than items never subject to the tax, are sold does 108
not exceed six in any calendar year, except as otherwise provided 109
in division (B)(9)(b) of this section. If the number of days on 110
which such sales are made exceeds six in any calendar year, the 111
church or organization shall be considered to be engaged in 112
business and all subsequent sales by it shall be subject to the 113

tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

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

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

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

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

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

of section 5709.12 of the Revised Code. 145

"Charitable purposes" means the relief of poverty; the 146
improvement of health through the alleviation of illness, disease, 147
or injury; the operation of an organization exclusively for the 148
provision of professional, laundry, printing, and purchasing 149
services to hospitals or charitable institutions; the operation of 150
a home for the aged, as defined in section 5701.13 of the Revised 151
Code; the operation of a radio or television broadcasting station 152
that is licensed by the federal communications commission as a 153
noncommercial educational radio or television station; the 154
operation of a nonprofit animal adoption service or a county 155
humane society; the promotion of education by an institution of 156
learning that maintains a faculty of qualified instructors, 157
teaches regular continuous courses of study, and confers a 158
recognized diploma upon completion of a specific curriculum; the 159
operation of a parent-teacher association, booster group, or 160
similar organization primarily engaged in the promotion and 161
support of the curricular or extracurricular activities of a 162
primary or secondary school; the operation of a community or area 163
center in which presentations in music, dramatics, the arts, and 164
related fields are made in order to foster public interest and 165
education therein; the production of performances in music, 166
dramatics, and the arts; or the promotion of education by an 167
organization engaged in carrying on research in, or the 168
dissemination of, scientific and technological knowledge and 169
information primarily for the public. 170

Nothing in this division shall be deemed to exempt sales to 171
any organization for use in the operation or carrying on of a 172
trade or business, or sales to a home for the aged for use in the 173
operation of independent living facilities as defined in division 174
(A) of section 5709.12 of the Revised Code. 175

(13) Building and construction materials and services sold to 176

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

section 5709.084 of the Revised Code is completed, building and 210
construction materials and services sold to a construction 211
contractor for incorporation into the real property comprising 212
that convention center; 213

(14) Sales of ships or vessels or rail rolling stock used or 214
to be used principally in interstate or foreign commerce, and 215
repairs, alterations, fuel, and lubricants for such ships or 216
vessels or rail rolling stock; 217

(15) Sales to persons primarily engaged in any of the 218
activities mentioned in division (B)(42)(a), (g), or (h) of this 219
section, to persons engaged in making retail sales, or to persons 220
who purchase for sale from a manufacturer tangible personal 221
property that was produced by the manufacturer in accordance with 222
specific designs provided by the purchaser, of packages, including 223
material, labels, and parts for packages, and of machinery, 224
equipment, and material for use primarily in packaging tangible 225
personal property produced for sale, including any machinery, 226
equipment, and supplies used to make labels or packages, to 227
prepare packages or products for labeling, or to label packages or 228
products, by or on the order of the person doing the packaging, or 229
sold at retail. "Packages" includes bags, baskets, cartons, 230
crates, boxes, cans, bottles, bindings, wrappings, and other 231
similar devices and containers, but does not include motor 232
vehicles or bulk tanks, trailers, or similar devices attached to 233
motor vehicles. "Packaging" means placing in a package. Division 234
(B)(15) of this section does not apply to persons engaged in 235
highway transportation for hire. 236

(16) Sales of food to persons using supplemental nutrition 237
assistance program benefits to purchase the food. As used in this 238
division, "food" has the same meaning as in 7 U.S.C. 2012 and 239
federal regulations adopted pursuant to the Food and Nutrition Act 240
of 2008. 241

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

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

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

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

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

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

(32) The sale, lease, repair, and maintenance of, parts for, 335
or items attached to or incorporated in, motor vehicles that are 336
primarily used for transporting tangible personal property 337
belonging to others by a person engaged in highway transportation 338
for hire, except for packages and packaging used for the 339
transportation of tangible personal property; 340

(33) Sales to the state headquarters of any veterans' 341
organization in this state that is either incorporated and issued 342
a charter by the congress of the United States or is recognized by 343
the United States veterans administration, for use by the 344
headquarters; 345

(34) Sales to a telecommunications service vendor, mobile 346
telecommunications service vendor, or satellite broadcasting 347
service vendor of tangible personal property and services used 348
directly and primarily in transmitting, receiving, switching, or 349
recording any interactive, one- or two-way electromagnetic 350
communications, including voice, image, data, and information, 351
through the use of any medium, including, but not limited to, 352
poles, wires, cables, switching equipment, computers, and record 353
storage devices and media, and component parts for the tangible 354
personal property. The exemption provided in this division shall 355
be in lieu of all other exemptions under division (B)(42)(a) or 356
(n) of this section to which the vendor may otherwise be entitled, 357
based upon the use of the thing purchased in providing the 358
telecommunications, mobile telecommunications, or satellite 359
broadcasting service. 360

(35)(a) Sales where the purpose of the consumer is to use or 361
consume the things transferred in making retail sales and 362
consisting of newspaper inserts, catalogues, coupons, flyers, gift 363
certificates, or other advertising material that prices and 364
describes tangible personal property offered for retail sale. 365

(b) Sales to direct marketing vendors of preliminary 366

materials such as photographs, artwork, and typesetting that will 367
be used in printing advertising material; and of printed matter 368
that offers free merchandise or chances to win sweepstake prizes 369
and that is mailed to potential customers with advertising 370
material described in division (B)(35)(a) of this section; 371

(c) Sales of equipment such as telephones, computers, 372
facsimile machines, and similar tangible personal property 373
primarily used to accept orders for direct marketing retail sales. 374

(d) Sales of automatic food vending machines that preserve 375
food with a shelf life of forty-five days or less by refrigeration 376
and dispense it to the consumer. 377

For purposes of division (B)(35) of this section, "direct 378
marketing" means the method of selling where consumers order 379
tangible personal property by United States mail, delivery 380
service, or telecommunication and the vendor delivers or ships the 381
tangible personal property sold to the consumer from a warehouse, 382
catalogue distribution center, or similar fulfillment facility by 383
means of the United States mail, delivery service, or common 384
carrier. 385

(36) Sales to a person engaged in the business of 386
horticulture or producing livestock of materials to be 387
incorporated into a horticulture structure or livestock structure; 388

(37) Sales of personal computers, computer monitors, computer 389
keyboards, modems, and other peripheral computer equipment to an 390
individual who is licensed or certified to teach in an elementary 391
or a secondary school in this state for use by that individual in 392
preparation for teaching elementary or secondary school students; 393

(38) Sales to a professional racing team of any of the 394
following: 395

(a) Motor racing vehicles; 396

(b) Repair services for motor racing vehicles;	397
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.	398 399 400 401 402 403 404 405
(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	406 407 408
(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.	409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426
(41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible	427 428

personal property and services used directly and primarily in 429
providing taxable services under that section. 430

(42) Sales where the purpose of the purchaser is to do any of 431
the following: 432

(a) To incorporate the thing transferred as a material or a 433
part into tangible personal property to be produced for sale by 434
manufacturing, assembling, processing, or refining; or to use or 435
consume the thing transferred directly in producing tangible 436
personal property for sale by mining, including, without 437
limitation, the extraction from the earth of all substances that 438
are classed geologically as minerals, production of crude oil and 439
natural gas, or directly in the rendition of a public utility 440
service, except that the sales tax levied by this section shall be 441
collected upon all meals, drinks, and food for human consumption 442
sold when transporting persons. Persons engaged in rendering 443
services in the exploration for, and production of, crude oil and 444
natural gas for others are deemed engaged directly in the 445
exploration for, and production of, crude oil and natural gas. 446
This paragraph does not exempt from "retail sale" or "sales at 447
retail" the sale of tangible personal property that is to be 448
incorporated into a structure or improvement to real property. 449

(b) To hold the thing transferred as security for the 450
performance of an obligation of the vendor; 451

(c) To resell, hold, use, or consume the thing transferred as 452
evidence of a contract of insurance; 453

(d) To use or consume the thing directly in commercial 454
fishing; 455

(e) To incorporate the thing transferred as a material or a 456
part into, or to use or consume the thing transferred directly in 457
the production of, magazines distributed as controlled circulation 458
publications; 459

(f) To use or consume the thing transferred in the production 460
and preparation in suitable condition for market and sale of 461
printed, imprinted, overprinted, lithographic, multilithic, 462
blueprinted, photostatic, or other productions or reproductions of 463
written or graphic matter; 464

(g) To use the thing transferred, as described in section 465
5739.011 of the Revised Code, primarily in a manufacturing 466
operation to produce tangible personal property for sale; 467

(h) To use the benefit of a warranty, maintenance or service 468
contract, or similar agreement, as described in division (B)(7) of 469
section 5739.01 of the Revised Code, to repair or maintain 470
tangible personal property, if all of the property that is the 471
subject of the warranty, contract, or agreement would not be 472
subject to the tax imposed by this section; 473

(i) To use the thing transferred as qualified research and 474
development equipment; 475

(j) To use or consume the thing transferred primarily in 476
storing, transporting, mailing, or otherwise handling purchased 477
sales inventory in a warehouse, distribution center, or similar 478
facility when the inventory is primarily distributed outside this 479
state to retail stores of the person who owns or controls the 480
warehouse, distribution center, or similar facility, to retail 481
stores of an affiliated group of which that person is a member, or 482
by means of direct marketing. This division does not apply to 483
motor vehicles registered for operation on the public highways. As 484
used in this division, "affiliated group" has the same meaning as 485
in division (B)(3)(e) of section 5739.01 of the Revised Code and 486
"direct marketing" has the same meaning as in division (B)(35) of 487
this section. 488

(k) To use or consume the thing transferred to fulfill a 489
contractual obligation incurred by a warrantor pursuant to a 490

warranty provided as a part of the price of the tangible personal 491
property sold or by a vendor of a warranty, maintenance or service 492
contract, or similar agreement the provision of which is defined 493
as a sale under division (B)(7) of section 5739.01 of the Revised 494
Code; 495

(l) To use or consume the thing transferred in the production 496
of a newspaper for distribution to the public; 497

(m) To use tangible personal property to perform a service 498
listed in division (B)(3) of section 5739.01 of the Revised Code, 499
if the property is or is to be permanently transferred to the 500
consumer of the service as an integral part of the performance of 501
the service; 502

(n) To use or consume the thing transferred primarily in 503
producing tangible personal property for sale by farming, 504
agriculture, horticulture, or floriculture. Persons engaged in 505
rendering farming, agriculture, horticulture, or floriculture 506
services for others are deemed engaged primarily in farming, 507
agriculture, horticulture, or floriculture. This paragraph does 508
not exempt from "retail sale" or "sales at retail" the sale of 509
tangible personal property that is to be incorporated into a 510
structure or improvement to real property. 511

(o) To use or consume the thing transferred in acquiring, 512
formatting, editing, storing, and disseminating data or 513
information by electronic publishing. 514

As used in division (B)(42) of this section, "thing" includes 515
all transactions included in divisions (B)(3)(a), (b), and (e) of 516
section 5739.01 of the Revised Code. 517

(43) Sales conducted through a coin operated device that 518
activates vacuum equipment or equipment that dispenses water, 519
whether or not in combination with soap or other cleaning agents 520
or wax, to the consumer for the consumer's use on the premises in 521

washing, cleaning, or waxing a motor vehicle, provided no other 522
personal property or personal service is provided as part of the 523
transaction. 524

(44) Sales of replacement and modification parts for engines, 525
airframes, instruments, and interiors in, and paint for, aircraft 526
used primarily in a fractional aircraft ownership program, and 527
sales of services for the repair, modification, and maintenance of 528
such aircraft, and machinery, equipment, and supplies primarily 529
used to provide those services. 530

(45) Sales of telecommunications service that is used 531
directly and primarily to perform the functions of a call center. 532
As used in this division, "call center" means any physical 533
location where telephone calls are placed or received in high 534
volume for the purpose of making sales, marketing, customer 535
service, technical support, or other specialized business 536
activity, and that employs at least fifty individuals that engage 537
in call center activities on a full-time basis, or sufficient 538
individuals to fill fifty full-time equivalent positions. 539

(46) Sales by a telecommunications service vendor of 900 540
service to a subscriber. This division does not apply to 541
information services, as defined in division (FF) of section 542
5739.01 of the Revised Code. 543

(47) Sales of value-added non-voice data service. This 544
division does not apply to any similar service that is not 545
otherwise a telecommunications service. 546

(48)(a) Sales of machinery, equipment, and software to a 547
qualified direct selling entity for use in a warehouse or 548
distribution center primarily for storing, transporting, or 549
otherwise handling inventory that is held for sale to independent 550
salespersons who operate as direct sellers and that is held 551
primarily for distribution outside this state; 552

(b) As used in division (B)(48)(a) of this section:	553
(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.	554 555 556 557
(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.	558 559 560 561 562 563 564 565 566
(c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.	567 568 569 570
(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.	571 572 573 574 575 576 577 578
(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit.	579 580 581 582 583

It includes the assemblage of equipment and computer programs 584
necessary to represent aircraft operations in ground and flight 585
conditions, a visual system providing an out-of-the-cockpit view, 586
and a system that provides cues at least equivalent to those of a 587
three-degree-of-freedom motion system, and has the full range of 588
capabilities of the systems installed in the device as described 589
in appendices A and B of part 60 of chapter 1 of title 14 of the 590
Code of Federal Regulations. 591

(51) Any transfer or lease of tangible personal property 592
between the state and JobsOhio in accordance with section 4313.02 593
of the Revised Code. 594

(52)(a) Sales to a qualifying corporation. 595

(b) As used in division (B)(52) of this section: 596

(i) "Qualifying corporation" means a nonprofit corporation 597
organized in this state that leases from an eligible county land, 598
buildings, structures, fixtures, and improvements to the land that 599
are part of or used in a public recreational facility used by a 600
major league professional athletic team or a class A to class AAA 601
minor league affiliate of a major league professional athletic 602
team for a significant portion of the team's home schedule, 603
provided the following apply: 604

(I) The facility is leased from the eligible county pursuant 605
to a lease that requires substantially all of the revenue from the 606
operation of the business or activity conducted by the nonprofit 607
corporation at the facility in excess of operating costs, capital 608
expenditures, and reserves to be paid to the eligible county at 609
least once per calendar year. 610

(II) Upon dissolution and liquidation of the nonprofit 611
corporation, all of its net assets are distributable to the board 612
of commissioners of the eligible county from which the corporation 613
leases the facility. 614

(ii) "Eligible county" has the same meaning as in section 615
307.695 of the Revised Code. 616

(53) Sales to or by a cable service provider, video service 617
provider, or radio or television broadcast station regulated by 618
the federal government of cable service or programming, video 619
service or programming, audio service or programming, or 620
electronically transferred digital audiovisual or audio work. As 621
used in division (B)(53) of this section, "cable service" and 622
"cable service provider" have the same meanings as in section 623
1332.01 of the Revised Code, and "video service," "video service 624
provider," and "video programming" have the same meanings as in 625
section 1332.21 of the Revised Code. 626

(54) Sales of qualifying energy star products occurring on 627
the first Friday in April and the following Saturday and Sunday of 628
each year. 629

As used in this division, "qualifying energy star product" 630
means a device that carries the energy star label indicating that 631
the device meets the energy efficiency criteria of the energy star 632
program established by the United States department of energy and 633
the United States environmental protection agency and that is 634
categorized as an appliance or as heating and cooling equipment 635
under that program. "Qualifying energy star product" does not 636
include any device that is rented, purchased for use in a trade or 637
business, or purchased by a person who will affix or install the 638
device on behalf of the ultimate consumer. For the purposes of 639
this division, a sale of a qualifying energy star product is 640
considered to "occur" during the specified three-day period if, 641
regardless of the date the device is delivered, the purchaser paid 642
for the device during the specified period and did not request any 643
delay in the shipment or delivery of the device. 644

(C) For the purpose of the proper administration of this 645
chapter, and to prevent the evasion of the tax, it is presumed 646

that all sales made in this state are subject to the tax until the 647
contrary is established. 648

(D) The levy of this tax on retail sales of recreation and 649
sports club service shall not prevent a municipal corporation from 650
levying any tax on recreation and sports club dues or on any 651
income generated by recreation and sports club dues. 652

(E) The tax collected by the vendor from the consumer under 653
this chapter is not part of the price, but is a tax collection for 654
the benefit of the state, and of counties levying an additional 655
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 656
Code and of transit authorities levying an additional sales tax 657
pursuant to section 5739.023 of the Revised Code. Except for the 658
discount authorized under section 5739.12 of the Revised Code and 659
the effects of any rounding pursuant to section 5703.055 of the 660
Revised Code, no person other than the state or such a county or 661
transit authority shall derive any benefit from the collection or 662
payment of the tax levied by this section or section 5739.021, 663
5739.023, or 5739.026 of the Revised Code. 664

Sec. 5739.05. (A)(1) The tax commissioner shall enforce and 665
administer sections 5739.01 to 5739.31 of the Revised Code, which 666
are hereby declared to be sections which the commissioner is 667
required to administer within the meaning of sections 5703.17 to 668
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 669
commissioner may adopt and promulgate, in accordance with sections 670
119.01 to 119.13 of the Revised Code, such rules as the 671
commissioner deems necessary to administer sections 5739.01 to 672
5739.31 of the Revised Code. 673

(2) The commissioner, in accordance with section 5703.14 of 674
the Revised Code, shall adopt rules necessary to implement the 675
three-day tax exemption periods provided by division (B)(54) of 676
section 5739.02 of the Revised Code. Before each exemption period 677

required under that division, the commissioner shall make 678
available to vendors informational bulletins explaining the 679
exemption. 680

(B) Upon application, the commissioner may authorize a vendor 681
to pay on a predetermined basis the tax levied by or pursuant to 682
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 683
Code upon sales of things produced or distributed or services 684
provided by such vendor, and the commissioner may waive the 685
collection of the tax from the consumer. The commissioner shall 686
not grant such authority unless the commissioner finds that the 687
granting of the authority would improve compliance and increase 688
the efficiency of the administration of the tax. The person to 689
whom such authority is granted shall post a notice, if required by 690
the commissioner, at the location where the product is offered for 691
sale that the tax is included in the selling price. The 692
~~commissioner~~ commissioner may adopt rules to administer this 693
division. 694

(C) The commissioner may authorize a vendor to pay, on the 695
basis of a prearranged agreement under this division, the tax 696
levied by section 5739.02 or pursuant to section 5739.021, 697
5739.023, or 5739.026 of the Revised Code, and waive the 698
requirement that the vendor maintain the complete and accurate 699
record of individual taxable sales and tax collected thereon 700
required by section 5739.11 of the Revised Code, upon application 701
of the vendor, if the commissioner finds that the conditions of 702
the vendor-applicant's business are such that the maintenance of 703
such records of individual taxable sales and tax collected thereon 704
would impose an unreasonable burden upon the vendor. If the 705
commissioner determines that such unreasonable burden has been 706
imposed, the vendor and the commissioner shall agree to the terms 707
and conditions of a test check to be conducted. If the parties are 708
unable to agree to the terms and conditions of the test check, the 709

application shall be denied. The test check conducted shall 710
determine the proportion that taxable retail sales bear to all of 711
the vendor's retail sales and the ratio which the tax required to 712
be collected under sections 5739.02, 5739.021, and 5739.023 of the 713
Revised Code bears to the receipts from the vendor's taxable 714
retail sales. 715

The vendor shall collect the tax on the vendor's taxable 716
sales and the vendor's liability for collecting or remitting shall 717
be based upon the proportions and ratios established by the test 718
check, and not upon any other basis of determination, until such 719
time as a subsequent test check is made at the request of either 720
the vendor or the commissioner where either party believes that 721
the nature of the vendor's business has so changed as to make the 722
prior or existing test check no longer representative. The 723
commissioner may give notice to the vendor at any time that the 724
authorization is revoked or the vendor may notify the commissioner 725
that the vendor no longer elects to report under the 726
authorization. Such notice shall be delivered to the other party 727
personally or by registered mail. The revocation or cancellation 728
is not effective prior to the date of receipt of such notice. 729

Section 2. That existing sections 5739.02 and 5739.05 of the 730
Revised Code are hereby repealed. 731

Section 3. Section 5739.02 of the Revised Code is presented 732
in this act as a composite of the section as amended by both Am. 733
Sub. H.B. 51 and Am. Sub. H.B. 59 of the 130th General Assembly. 734
The General Assembly, applying the principle stated in division 735
(B) of section 1.52 of the Revised Code that amendments are to be 736
harmonized if reasonably capable of simultaneous operation, finds 737
that the composite is the resulting version of the section in 738
effect prior to the effective date of the section as presented in 739
this act. 740