

**As Introduced**

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

**S. B. No. 85**

**Senator Jordan**

**Cosponsor: Senator Beagle**

—

**A B I L L**

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

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

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

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

(A)(1) The tax shall be collected as provided in section 16  
5739.025 of the Revised Code. The rate of the tax shall be five 17  
and one-half per cent. The tax applies and is collectible when the 18  
sale is made, regardless of the time when the price is paid or 19

delivered. 20

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

A lease with a renewal clause and a termination penalty or 43  
similar provision that applies if the renewal clause is not 44  
exercised is presumed to be a sham transaction. In such a case, 45  
the tax shall be calculated and paid on the basis of the entire 46  
length of the lease period, including any renewal periods, until 47  
the termination penalty or similar provision no longer applies. 48  
The taxpayer shall bear the burden, by a preponderance of the 49  
evidence, that the transaction or series of transactions is not a 50  
sham transaction. 51

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

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

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

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

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

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

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

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

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

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

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

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

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

tax. In counting the number of days, all sales by groups within a 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 of the United States;

(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.

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

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

(13) Building and construction materials and services sold to 175  
construction contractors for incorporation into a structure or 176

improvement to real property under a construction contract with 177  
this state or a political subdivision of this state, or with the 178  
United States government or any of its agencies; building and 179  
construction materials and services sold to construction 180  
contractors for incorporation into a structure or improvement to 181  
real property that are accepted for ownership by this state or any 182  
of its political subdivisions, or by the United States government 183  
or any of its agencies at the time of completion of the structures 184  
or improvements; building and construction materials sold to 185  
construction contractors for incorporation into a horticulture 186  
structure or livestock structure for a person engaged in the 187  
business of horticulture or producing livestock; building 188  
materials and services sold to a construction contractor for 189  
incorporation into a house of public worship or religious 190  
education, or a building used exclusively for charitable purposes 191  
under a construction contract with an organization whose purpose 192  
is as described in division (B)(12) of this section; building 193  
materials and services sold to a construction contractor for 194  
incorporation into a building under a construction contract with 195  
an organization exempt from taxation under section 501(c)(3) of 196  
the Internal Revenue Code of 1986 when the building is to be used 197  
exclusively for the organization's exempt purposes; building and 198  
construction materials sold for incorporation into the original 199  
construction of a sports facility under section 307.696 of the 200  
Revised Code; building and construction materials and services 201  
sold to a construction contractor for incorporation into real 202  
property outside this state if such materials and services, when 203  
sold to a construction contractor in the state in which the real 204  
property is located for incorporation into real property in that 205  
state, would be exempt from a tax on sales levied by that state; 206  
and, until one calendar year after the construction of a 207  
convention center that qualifies for property tax exemption under 208  
section 5709.084 of the Revised Code is completed, building and 209

construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

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

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

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

(17) Sales to persons engaged in farming, agriculture,



horticulture, or floriculture, of tangible personal property for 242  
use or consumption primarily in the production by farming, 243  
agriculture, horticulture, or floriculture of other tangible 244  
personal property for use or consumption primarily in the 245  
production of tangible personal property for sale by farming, 246  
agriculture, horticulture, or floriculture; or material and parts 247  
for incorporation into any such tangible personal property for use 248  
or consumption in production; and of tangible personal property 249  
for such use or consumption in the conditioning or holding of 250  
products produced by and for such use, consumption, or sale by 251  
persons engaged in farming, agriculture, horticulture, or 252  
floriculture, except where such property is incorporated into real 253  
property; 254

(18) Sales of drugs for a human being that may be dispensed 255  
only pursuant to a prescription; insulin as recognized in the 256  
official United States pharmacopoeia; urine and blood testing 257  
materials when used by diabetics or persons with hypoglycemia to 258  
test for glucose or acetone; hypodermic syringes and needles when 259  
used by diabetics for insulin injections; epoetin alfa when 260  
purchased for use in the treatment of persons with medical 261  
disease; hospital beds when purchased by hospitals, nursing homes, 262  
or other medical facilities; and medical oxygen and medical 263  
oxygen-dispensing equipment when purchased by hospitals, nursing 264  
homes, or other medical facilities; 265

(19) Sales of prosthetic devices, durable medical equipment 266  
for home use, or mobility enhancing equipment, when made pursuant 267  
to a prescription and when such devices or equipment are for use 268  
by a human being. 269

(20) Sales of emergency and fire protection vehicles and 270  
equipment to nonprofit organizations for use solely in providing 271  
fire protection and emergency services, including trauma care and 272  
emergency medical services, for political subdivisions of the 273

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

(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.	305 306 307 308
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	309 310
(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:	311 312 313 314
(a) To prepare food for human consumption for sale;	315
(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;	316 317 318 319
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	320 321
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	322 323
(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;	324 325 326 327
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	328 329 330
(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;	331 332 333
(32) The sale, lease, repair, and maintenance of, parts for,	334

or items attached to or incorporated in, motor vehicles that are 335  
primarily used for transporting tangible personal property 336  
belonging to others by a person engaged in highway transportation 337  
for hire, except for packages and packaging used for the 338  
transportation of tangible personal property; 339

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

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

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

(b) Sales to direct marketing vendors of preliminary 365  
materials such as photographs, artwork, and typesetting that will 366

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

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

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

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

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

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

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

(a) Motor racing vehicles; 395

(b) Repair services for motor racing vehicles; 396

(c) Items of property that are attached to or incorporated in 397  
motor racing vehicles, including engines, chassis, and all other 398  
components of the vehicles, and all spare, replacement, and 399  
rebuilt parts or components of the vehicles; except not including 400  
tires, consumable fluids, paint, and accessories consisting of 401  
instrumentation sensors and related items added to the vehicle to 402  
collect and transmit data by means of telemetry and other forms of 403  
communication. 404

(39) Sales of used manufactured homes and used mobile homes, 405  
as defined in section 5739.0210 of the Revised Code, made on or 406  
after January 1, 2000; 407

(40) Sales of tangible personal property and services to a 408  
provider of electricity used or consumed directly and primarily in 409  
generating, transmitting, or distributing electricity for use by 410  
others, including property that is or is to be incorporated into 411  
and will become a part of the consumer's production, transmission, 412  
or distribution system and that retains its classification as 413  
tangible personal property after incorporation; fuel or power used 414  
in the production, transmission, or distribution of electricity; 415  
energy conversion equipment as defined in section 5727.01 of the 416  
Revised Code; and tangible personal property and services used in 417  
the repair and maintenance of the production, transmission, or 418  
distribution system, including only those motor vehicles as are 419  
specially designed and equipped for such use. The exemption 420  
provided in this division shall be in lieu of all other exemptions 421  
in division (B)(42)(a) or (n) of this section to which a provider 422  
of electricity may otherwise be entitled based on the use of the 423  
tangible personal property or service purchased in generating, 424  
transmitting, or distributing electricity. 425

(41) Sales to a person providing services under division 426  
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 427  
personal property and services used directly and primarily in 428

providing taxable services under that section. 429

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

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

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

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

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

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

(f) To use or consume the thing transferred in the production 459

and preparation in suitable condition for market and sale of 460  
printed, imprinted, overprinted, lithographic, multilithic, 461  
blueprinted, photostatic, or other productions or reproductions of 462  
written or graphic matter; 463

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

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

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

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

(k) To use or consume the thing transferred to fulfill a 488  
contractual obligation incurred by a warrantor pursuant to a 489  
warranty provided as a part of the price of the tangible personal 490



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

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

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

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

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

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

(43) Sales conducted through a coin operated device that 517  
activates vacuum equipment or equipment that dispenses water, 518  
whether or not in combination with soap or other cleaning agents 519  
or wax, to the consumer for the consumer's use on the premises in 520  
washing, cleaning, or waxing a motor vehicle, provided no other 521

personal property or personal service is provided as part of the 522  
transaction. 523

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

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

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

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

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

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

(i) "Direct seller" means a person selling consumer products 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.

(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.

(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.

(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.

(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. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight

conditions, a visual system providing an out-of-the-cockpit view, 585  
and a system that provides cues at least equivalent to those of a 586  
three-degree-of-freedom motion system, and has the full range of 587  
capabilities of the systems installed in the device as described 588  
in appendices A and B of part 60 of chapter 1 of title 14 of the 589  
Code of Federal Regulations. 590

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

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

(C) For the purpose of the proper administration of this 613  
chapter, and to prevent the evasion of the tax, it is presumed 614  
that all sales made in this state are subject to the tax until the 615  
contrary is established. 616

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

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

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

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

**Section 4.** 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. 487 and Am. Sub. H.B. 508 of the 129th 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.