

As Introduced

**132nd General Assembly
Regular Session
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H. B. No. 337

Representative Duffey

A BILL

To amend sections 5739.02 and 5739.03 of the 1
Revised Code to exempt from sales and use tax 2
textbooks purchased by post-secondary students. 3

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

Section 1. That sections 5739.02 and 5739.03 of the 4
Revised Code be amended to read as follows: 5

Sec. 5739.02. For the purpose of providing revenue with 6
which to meet the needs of the state, for the use of the general 7
revenue fund of the state, for the purpose of securing a 8
thorough and efficient system of common schools throughout the 9
state, for the purpose of affording revenues, in addition to 10
those from general property taxes, permitted under 11
constitutional limitations, and from other sources, for the 12
support of local governmental functions, and for the purpose of 13
reimbursing the state for the expense of administering this 14
chapter, an excise tax is hereby levied on each retail sale made 15
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 22
of more than thirty days or an indefinite term with a minimum 23
period of more than thirty days, of any motor vehicles designed 24
by the manufacturer to carry a load of not more than one ton, 25
watercraft, outboard motor, or aircraft, or of any tangible 26
personal property, other than motor vehicles designed by the 27
manufacturer to carry a load of more than one ton, to be used by 28
the lessee or renter primarily for business purposes, the tax 29
shall be collected by the vendor at the time the lease or rental 30
is consummated and shall be calculated by the vendor on the 31
basis of the total amount to be paid by the lessee or renter 32
under the lease agreement. If the total amount of the 33
consideration for the lease or rental includes amounts that are 34
not calculated at the time the lease or rental is executed, the 35
tax shall be calculated and collected by the vendor at the time 36
such amounts are billed to the lessee or renter. In the case of 37
an open-end lease or rental, the tax shall be calculated by the 38
vendor on the basis of the total amount to be paid during the 39
initial fixed term of the lease or rental, and for each 40
subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an 43
outdrive unit attached to the watercraft. 44

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

The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or

work done;	79
(6) Sales of motor fuel upon receipt, use, distribution,	80
or sale of which in this state a tax is imposed by the law of	81
this state, but this exemption shall not apply to the sale of	82
motor fuel on which a refund of the tax is allowable under	83
division (A) of section 5735.14 of the Revised Code; and the tax	84
commissioner may deduct the amount of tax levied by this section	85
applicable to the price of motor fuel when granting a refund of	86
motor fuel tax pursuant to division (A) of section 5735.14 of	87
the Revised Code and shall cause the amount deducted to be paid	88
into the general revenue fund of this state;	89
(7) Sales of natural gas by a natural gas company or	90
municipal gas utility, of water by a water-works company, or of	91
steam by a heating company, if in each case the thing sold is	92
delivered to consumers through pipes or conduits, and all sales	93
of communications services by a telegraph company, all terms as	94
defined in section 5727.01 of the Revised Code, and sales of	95
electricity delivered through wires;	96
(8) Casual sales by a person, or auctioneer employed	97
directly by the person to conduct such sales, except as to such	98
sales of motor vehicles, watercraft or outboard motors required	99
to be titled under section 1548.06 of the Revised Code,	100
watercraft documented with the United States coast guard,	101
snowmobiles, and all-purpose vehicles as defined in section	102
4519.01 of the Revised Code;	103
(9) (a) Sales of services or tangible personal property,	104
other than motor vehicles, mobile homes, and manufactured homes,	105
by churches, organizations exempt from taxation under section	106
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit	107
organizations operated exclusively for charitable purposes as	108

defined in division (B) (12) of this section, provided that the 109
number of days on which such tangible personal property or 110
services, other than items never subject to the tax, are sold 111
does not exceed six in any calendar year, except as otherwise 112
provided in division (B) (9) (b) of this section. If the number of 113
days on which such sales are made exceeds six in any calendar 114
year, the church or organization shall be considered to be 115
engaged in business and all subsequent sales by it shall be 116
subject to the tax. In counting the number of days, all sales by 117
groups within a church or within an organization shall be 118
considered to be sales of that church or organization. 119

(b) The limitation on the number of days on which tax- 120
exempt sales may be made by a church or organization under 121
division (B) (9) (a) of this section does not apply to sales made 122
by student clubs and other groups of students of a primary or 123
secondary school, or a parent-teacher association, booster 124
group, or similar organization that raises money to support or 125
fund curricular or extracurricular activities of a primary or 126
secondary school. 127

(c) Divisions (B) (9) (a) and (b) of this section do not 128
apply to sales by a noncommercial educational radio or 129
television broadcasting station. 130

(10) Sales not within the taxing power of this state under 131
the Constitution or laws of the United States or the 132
Constitution of this state; 133

(11) Except for transactions that are sales under division 134
(B) (3) (r) of section 5739.01 of the Revised Code, the 135
transportation of persons or property, unless the transportation 136
is by a private investigation and security service; 137

(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 improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of 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 169
in music, dramatics, the arts, and related fields are made in 170
order to foster public interest and education therein; the 171
production of performances in music, dramatics, and the arts; or 172
the promotion of education by an organization engaged in 173
carrying on research in, or the dissemination of, scientific and 174
technological knowledge and information primarily for the 175
public. 176

Nothing in this division shall be deemed to exempt sales 177
to any organization for use in the operation or carrying on of a 178
trade or business, or sales to a home for the aged for use in 179
the operation of independent living facilities as defined in 180
division (A) of section 5709.12 of the Revised Code. 181

(13) Building and construction materials and services sold 182
to construction contractors for incorporation into a structure 183
or improvement to real property under a construction contract 184
with this state or a political subdivision of this state, or 185
with the United States government or any of its agencies; 186
building and construction materials and services sold to 187
construction contractors for incorporation into a structure or 188
improvement to real property that are accepted for ownership by 189
this state or any of its political subdivisions, or by the 190
United States government or any of its agencies at the time of 191
completion of the structures or improvements; building and 192
construction materials sold to construction contractors for 193
incorporation into a horticulture structure or livestock 194
structure for a person engaged in the business of horticulture 195
or producing livestock; building materials and services sold to 196
a construction contractor for incorporation into a house of 197
public worship or religious education, or a building used 198
exclusively for charitable purposes under a construction 199

contract with an organization whose purpose is as described in 200
division (B) (12) of this section; building materials and 201
services sold to a construction contractor for incorporation 202
into a building under a construction contract with an 203
organization exempt from taxation under section 501(c) (3) of the 204
Internal Revenue Code of 1986 when the building is to be used 205
exclusively for the organization's exempt purposes; building and 206
construction materials sold for incorporation into the original 207
construction of a sports facility under section 307.696 of the 208
Revised Code; building and construction materials and services 209
sold to a construction contractor for incorporation into real 210
property outside this state if such materials and services, when 211
sold to a construction contractor in the state in which the real 212
property is located for incorporation into real property in that 213
state, would be exempt from a tax on sales levied by that state; 214
building and construction materials for incorporation into a 215
transportation facility pursuant to a public-private agreement 216
entered into under sections 5501.70 to 5501.83 of the Revised 217
Code; and, until one calendar year after the construction of a 218
convention center that qualifies for property tax exemption 219
under section 5709.084 of the Revised Code is completed, 220
building and construction materials and services sold to a 221
construction contractor for incorporation into the real property 222
comprising that convention center; 223

(14) Sales of ships or vessels or rail rolling stock used 224
or to be used principally in interstate or foreign commerce, and 225
repairs, alterations, fuel, and lubricants for such ships or 226
vessels or rail rolling stock; 227

(15) Sales to persons primarily engaged in any of the 228
activities mentioned in division (B) (42) (a), (g), or (h) of this 229
section, to persons engaged in making retail sales, or to 230

persons who purchase for sale from a manufacturer tangible 231
personal property that was produced by the manufacturer in 232
accordance with specific designs provided by the purchaser, of 233
packages, including material, labels, and parts for packages, 234
and of machinery, equipment, and material for use primarily in 235
packaging tangible personal property produced for sale, 236
including any machinery, equipment, and supplies used to make 237
labels or packages, to prepare packages or products for 238
labeling, or to label packages or products, by or on the order 239
of the person doing the packaging, or sold at retail. "Packages" 240
includes bags, baskets, cartons, crates, boxes, cans, bottles, 241
bindings, wrappings, and other similar devices and containers, 242
but does not include motor vehicles or bulk tanks, trailers, or 243
similar devices attached to motor vehicles. "Packaging" means 244
placing in a package. Division (B) (15) of this section does not 245
apply to persons engaged in highway transportation for hire. 246

(16) Sales of food to persons using supplemental nutrition 247
assistance program benefits to purchase the food. As used in 248
this division, "food" has the same meaning as in 7 U.S.C. 2012 249
and federal regulations adopted pursuant to the Food and 250
Nutrition Act of 2008. 251

(17) Sales to persons engaged in farming, agriculture, 252
horticulture, or floriculture, of tangible personal property for 253
use or consumption primarily in the production by farming, 254
agriculture, horticulture, or floriculture of other tangible 255
personal property for use or consumption primarily in the 256
production of tangible personal property for sale by farming, 257
agriculture, horticulture, or floriculture; or material and 258
parts for incorporation into any such tangible personal property 259
for use or consumption in production; and of tangible personal 260
property for such use or consumption in the conditioning or 261

holding of products produced by and for such use, consumption, 262
or sale by persons engaged in farming, agriculture, 263
horticulture, or floriculture, except where such property is 264
incorporated into real property; 265

(18) Sales of drugs for a human being that may be 266
dispensed only pursuant to a prescription; insulin as recognized 267
in the official United States pharmacopoeia; urine and blood 268
testing materials when used by diabetics or persons with 269
hypoglycemia to test for glucose or acetone; hypodermic syringes 270
and needles when used by diabetics for insulin injections; 271
epoetin alfa when purchased for use in the treatment of persons 272
with medical disease; hospital beds when purchased by hospitals, 273
nursing homes, or other medical facilities; and medical oxygen 274
and medical oxygen-dispensing equipment when purchased by 275
hospitals, nursing homes, or other medical facilities; 276

(19) Sales of prosthetic devices, durable medical 277
equipment for home use, or mobility enhancing equipment, when 278
made pursuant to a prescription and when such devices or 279
equipment are for use by a human being. 280

(20) Sales of emergency and fire protection vehicles and 281
equipment to nonprofit organizations for use solely in providing 282
fire protection and emergency services, including trauma care 283
and emergency medical services, for political subdivisions of 284
the state; 285

(21) Sales of tangible personal property manufactured in 286
this state, if sold by the manufacturer in this state to a 287
retailer for use in the retail business of the retailer outside 288
of this state and if possession is taken from the manufacturer 289
by the purchaser within this state for the sole purpose of 290
immediately removing the same from this state in a vehicle owned 291

by the purchaser;	292
(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;	293 294 295 296 297
(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;	298 299 300
(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.	301 302 303 304 305 306 307 308 309 310 311 312 313 314 315
(25) (a) Sales of water to a consumer for residential use;	316
(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.	317 318 319 320

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	321 322
(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:	323 324 325 326
(a) To prepare food for human consumption for sale;	327
(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;	328 329 330 331
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	332 333
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	334 335
(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;	336 337 338 339
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	340 341 342
(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;	343 344 345
(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	346 347 348

property belonging to others by a person engaged in highway 349
transportation for hire, except for packages and packaging used 350
for the transportation of tangible personal property; 351

(33) Sales to the state headquarters of any veterans' 352
organization in this state that is either incorporated and 353
issued a charter by the congress of the United States or is 354
recognized by the United States veterans administration, for use 355
by the headquarters; 356

(34) Sales to a telecommunications service vendor, mobile 357
telecommunications service vendor, or satellite broadcasting 358
service vendor of tangible personal property and services used 359
directly and primarily in transmitting, receiving, switching, or 360
recording any interactive, one- or two-way electromagnetic 361
communications, including voice, image, data, and information, 362
through the use of any medium, including, but not limited to, 363
poles, wires, cables, switching equipment, computers, and record 364
storage devices and media, and component parts for the tangible 365
personal property. The exemption provided in this division shall 366
be in lieu of all other exemptions under division (B) (42) (a) or 367
(n) of this section to which the vendor may otherwise be 368
entitled, based upon the use of the thing purchased in providing 369
the telecommunications, mobile telecommunications, or satellite 370
broadcasting service. 371

(35) (a) Sales where the purpose of the consumer is to use 372
or consume the things transferred in making retail sales and 373
consisting of newspaper inserts, catalogues, coupons, flyers, 374
gift certificates, or other advertising material that prices and 375
describes tangible personal property offered for retail sale. 376

(b) Sales to direct marketing vendors of preliminary 377
materials such as photographs, artwork, and typesetting that 378

will be used in printing advertising material; and of printed 379
matter that offers free merchandise or chances to win sweepstake 380
prizes and that is mailed to potential customers with 381
advertising material described in division (B) (35) (a) of this 382
section; 383

(c) Sales of equipment such as telephones, computers, 384
facsimile machines, and similar tangible personal property 385
primarily used to accept orders for direct marketing retail 386
sales. 387

(d) Sales of automatic food vending machines that preserve 388
food with a shelf life of forty-five days or less by 389
refrigeration and dispense it to the consumer. 390

For purposes of division (B) (35) of this section, "direct 391
marketing" means the method of selling where consumers order 392
tangible personal property by United States mail, delivery 393
service, or telecommunication and the vendor delivers or ships 394
the tangible personal property sold to the consumer from a 395
warehouse, catalogue distribution center, or similar fulfillment 396
facility by means of the United States mail, delivery service, 397
or common carrier. 398

(36) Sales to a person engaged in the business of 399
horticulture or producing livestock of materials to be 400
incorporated into a horticulture structure or livestock 401
structure; 402

(37) Sales of personal computers, computer monitors, 403
computer keyboards, modems, and other peripheral computer 404
equipment to an individual who is licensed or certified to teach 405
in an elementary or a secondary school in this state for use by 406
that individual in preparation for teaching elementary or 407

secondary school students;	408
(38) Sales to a professional racing team of any of the	409
following:	410
(a) Motor racing vehicles;	411
(b) Repair services for motor racing vehicles;	412
(c) Items of property that are attached to or incorporated	413
in motor racing vehicles, including engines, chassis, and all	414
other components of the vehicles, and all spare, replacement,	415
and rebuilt parts or components of the vehicles; except not	416
including tires, consumable fluids, paint, and accessories	417
consisting of instrumentation sensors and related items added to	418
the vehicle to collect and transmit data by means of telemetry	419
and other forms of communication.	420
(39) Sales of used manufactured homes and used mobile	421
homes, as defined in section 5739.0210 of the Revised Code, made	422
on or after January 1, 2000;	423
(40) Sales of tangible personal property and services to a	424
provider of electricity used or consumed directly and primarily	425
in generating, transmitting, or distributing electricity for use	426
by others, including property that is or is to be incorporated	427
into and will become a part of the consumer's production,	428
transmission, or distribution system and that retains its	429
classification as tangible personal property after	430
incorporation; fuel or power used in the production,	431
transmission, or distribution of electricity; energy conversion	432
equipment as defined in section 5727.01 of the Revised Code; and	433
tangible personal property and services used in the repair and	434
maintenance of the production, transmission, or distribution	435
system, including only those motor vehicles as are specially	436

designed and equipped for such use. The exemption provided in 437
this division shall be in lieu of all other exemptions in 438
division (B) (42) (a) or (n) of this section to which a provider 439
of electricity may otherwise be entitled based on the use of the 440
tangible personal property or service purchased in generating, 441
transmitting, or distributing electricity. 442

(41) Sales to a person providing services under division 443
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 444
personal property and services used directly and primarily in 445
providing taxable services under that section. 446

(42) Sales where the purpose of the purchaser is to do any 447
of the following: 448

(a) To incorporate the thing transferred as a material or 449
a part into tangible personal property to be produced for sale 450
by manufacturing, assembling, processing, or refining; or to use 451
or consume the thing transferred directly in producing tangible 452
personal property for sale by mining, including, without 453
limitation, the extraction from the earth of all substances that 454
are classed geologically as minerals, production of crude oil 455
and natural gas, or directly in the rendition of a public 456
utility service, except that the sales tax levied by this 457
section shall be collected upon all meals, drinks, and food for 458
human consumption sold when transporting persons. Persons 459
engaged in rendering services in the exploration for, and 460
production of, crude oil and natural gas for others are deemed 461
engaged directly in the exploration for, and production of, 462
crude oil and natural gas. This paragraph does not exempt from 463
"retail sale" or "sales at retail" the sale of tangible personal 464
property that is to be incorporated into a structure or 465
improvement to real property. 466

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;	467 468
(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	469 470
(d) To use or consume the thing directly in commercial fishing;	471 472
(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;	473 474 475 476
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	477 478 479 480 481
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	482 483 484
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	485 486 487 488 489 490
(i) To use the thing transferred as qualified research and development equipment;	491 492
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased	493 494

sales inventory in a warehouse, distribution center, or similar 495
facility when the inventory is primarily distributed outside 496
this state to retail stores of the person who owns or controls 497
the warehouse, distribution center, or similar facility, to 498
retail stores of an affiliated group of which that person is a 499
member, or by means of direct marketing. This division does not 500
apply to motor vehicles registered for operation on the public 501
highways. As used in this division, "affiliated group" has the 502
same meaning as in division (B) (3) (e) of section 5739.01 of the 503
Revised Code and "direct marketing" has the same meaning as in 504
division (B) (35) of this section. 505

(k) To use or consume the thing transferred to fulfill a 506
contractual obligation incurred by a warrantor pursuant to a 507
warranty provided as a part of the price of the tangible 508
personal property sold or by a vendor of a warranty, maintenance 509
or service contract, or similar agreement the provision of which 510
is defined as a sale under division (B) (7) of section 5739.01 of 511
the Revised Code; 512

(l) To use or consume the thing transferred in the 513
production of a newspaper for distribution to the public; 514

(m) To use tangible personal property to perform a service 515
listed in division (B) (3) of section 5739.01 of the Revised 516
Code, if the property is or is to be permanently transferred to 517
the consumer of the service as an integral part of the 518
performance of the service; 519

(n) To use or consume the thing transferred primarily in 520
producing tangible personal property for sale by farming, 521
agriculture, horticulture, or floriculture. Persons engaged in 522
rendering farming, agriculture, horticulture, or floriculture 523
services for others are deemed engaged primarily in farming, 524

agriculture, horticulture, or floriculture. This paragraph does 525
not exempt from "retail sale" or "sales at retail" the sale of 526
tangible personal property that is to be incorporated into a 527
structure or improvement to real property. 528

(o) To use or consume the thing transferred in acquiring, 529
formatting, editing, storing, and disseminating data or 530
information by electronic publishing; 531

(p) To provide the thing transferred to the owner or 532
lessee of a motor vehicle that is being repaired or serviced, if 533
the thing transferred is a rented motor vehicle and the 534
purchaser is reimbursed for the cost of the rented motor vehicle 535
by a manufacturer, warrantor, or provider of a maintenance, 536
service, or other similar contract or agreement, with respect to 537
the motor vehicle that is being repaired or serviced. 538

As used in division (B) (42) of this section, "thing" 539
includes all transactions included in divisions (B) (3) (a), (b), 540
and (e) of section 5739.01 of the Revised Code. 541

(43) Sales conducted through a coin operated device that 542
activates vacuum equipment or equipment that dispenses water, 543
whether or not in combination with soap or other cleaning agents 544
or wax, to the consumer for the consumer's use on the premises 545
in washing, cleaning, or waxing a motor vehicle, provided no 546
other personal property or personal service is provided as part 547
of the transaction. 548

(44) Sales of replacement and modification parts for 549
engines, airframes, instruments, and interiors in, and paint 550
for, aircraft used primarily in a fractional aircraft ownership 551
program, and sales of services for the repair, modification, and 552
maintenance of such aircraft, and machinery, equipment, and 553

supplies primarily used to provide those services.	554
(45) Sales of telecommunications service that is used	555
directly and primarily to perform the functions of a call	556
center. As used in this division, "call center" means any	557
physical location where telephone calls are placed or received	558
in high volume for the purpose of making sales, marketing,	559
customer service, technical support, or other specialized	560
business activity, and that employs at least fifty individuals	561
that engage in call center activities on a full-time basis, or	562
sufficient individuals to fill fifty full-time equivalent	563
positions.	564
(46) Sales by a telecommunications service vendor of 900	565
service to a subscriber. This division does not apply to	566
information services, as defined in division (FF) of section	567
5739.01 of the Revised Code.	568
(47) Sales of value-added non-voice data service. This	569
division does not apply to any similar service that is not	570
otherwise a telecommunications service.	571
(48) (a) Sales of machinery, equipment, and software to a	572
qualified direct selling entity for use in a warehouse or	573
distribution center primarily for storing, transporting, or	574
otherwise handling inventory that is held for sale to	575
independent salespersons who operate as direct sellers and that	576
is held primarily for distribution outside this state;	577
(b) As used in division (B) (48) (a) of this section:	578
(i) "Direct seller" means a person selling consumer	579
products to individuals for personal or household use and not	580
from a fixed retail location, including selling such product at	581
in-home product demonstrations, parties, and other one-on-one	582

selling. 583

(ii) "Qualified direct selling entity" means an entity 584
selling to direct sellers at the time the entity enters into a 585
tax credit agreement with the tax credit authority pursuant to 586
section 122.17 of the Revised Code, provided that the agreement 587
was entered into on or after January 1, 2007. Neither 588
contingencies relevant to the granting of, nor later 589
developments with respect to, the tax credit shall impair the 590
status of the qualified direct selling entity under division (B) 591
(48) of this section after execution of the tax credit agreement 592
by the tax credit authority. 593

(c) Division (B) (48) of this section is limited to 594
machinery, equipment, and software first stored, used, or 595
consumed in this state within the period commencing June 24, 596
2008, and ending on the date that is five years after that date. 597

(49) Sales of materials, parts, equipment, or engines used 598
in the repair or maintenance of aircraft or avionics systems of 599
such aircraft, and sales of repair, remodeling, replacement, or 600
maintenance services in this state performed on aircraft or on 601
an aircraft's avionics, engine, or component materials or parts. 602
As used in division (B) (49) of this section, "aircraft" means 603
aircraft of more than six thousand pounds maximum certified 604
takeoff weight or used exclusively in general aviation. 605

(50) Sales of full flight simulators that are used for 606
pilot or flight-crew training, sales of repair or replacement 607
parts or components, and sales of repair or maintenance services 608
for such full flight simulators. "Full flight simulator" means a 609
replica of a specific type, or make, model, and series of 610
aircraft cockpit. It includes the assemblage of equipment and 611
computer programs necessary to represent aircraft operations in 612

ground and flight conditions, a visual system providing an out- 613
of-the-cockpit view, and a system that provides cues at least 614
equivalent to those of a three-degree-of-freedom motion system, 615
and has the full range of capabilities of the systems installed 616
in the device as described in appendices A and B of part 60 of 617
chapter 1 of title 14 of the Code of Federal Regulations. 618

(51) Any transfer or lease of tangible personal property 619
between the state and JobsOhio in accordance with section 620
4313.02 of the Revised Code. 621

(52) (a) Sales to a qualifying corporation. 622

(b) As used in division (B) (52) of this section: 623

(i) "Qualifying corporation" means a nonprofit corporation 624
organized in this state that leases from an eligible county 625
land, buildings, structures, fixtures, and improvements to the 626
land that are part of or used in a public recreational facility 627
used by a major league professional athletic team or a class A 628
to class AAA minor league affiliate of a major league 629
professional athletic team for a significant portion of the 630
team's home schedule, provided the following apply: 631

(I) The facility is leased from the eligible county 632
pursuant to a lease that requires substantially all of the 633
revenue from the operation of the business or activity conducted 634
by the nonprofit corporation at the facility in excess of 635
operating costs, capital expenditures, and reserves to be paid 636
to the eligible county at least once per calendar year. 637

(II) Upon dissolution and liquidation of the nonprofit 638
corporation, all of its net assets are distributable to the 639
board of commissioners of the eligible county from which the 640
corporation leases the facility. 641

(ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code.	642 643
(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 electronically transferred digital audiovisual or audio work. As used in division (B) (53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video programming" have the same meanings as in section 1332.21 of the Revised Code.	644 645 646 647 648 649 650 651 652 653
(54) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any bullion described in section 408(m) (3) (B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee. "Investment coin" means any coin composed primarily of gold, silver, platinum, or palladium.	654 655 656 657 658 659
(55) Sales of a digital audio work electronically transferred for delivery through use of a machine, such as a juke box, that does all of the following:	660 661 662
(a) Accepts direct payments to operate;	663
(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section;	664 665 666
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	667 668
<u>(56) (a) Sales of college textbooks to students.</u>	669

- (b) As used in division (B) (56) of this section: 670
- (i) "Institution of higher education" means all of the 671
following: 672
- (I) A state institution of higher education as defined in 673
section 3345.12 of the Revised Code; 674
- (II) An institution authorized by the Ohio board of 675
regents under Chapter 1713. of the Revised Code to grant degrees 676
and that is accredited by the appropriate regional and 677
professional accrediting associations within whose jurisdiction 678
it falls; 679
- (III) Private career schools holding program 680
authorizations issued by the state board of career colleges and 681
schools under division (C) of section 3332.05 of the Revised 682
Code; 683
- (IV) Private institutions exempt from regulation under 684
Chapter 3332. of the Revised Code as prescribed in section 685
3333.046 of the Revised Code; 686
- (V) An accredited college, university, or other 687
postsecondary institution located outside this state that is 688
accredited by an accrediting organization recognized by the Ohio 689
board of regents. 690
- (ii) "Student" means an individual enrolled part-time or 691
full-time in a course of study at an institution of higher 692
education. 693
- (iii) "College textbook" means a new or used book or 694
workbook that is required or recommended by an institution of 695
higher education for a course offered by the institution, 696
including a digital copy thereof. "College textbook" does not 697

include notebooks, sketch pads, calculators, and laboratory 698
kits. 699

(C) For the purpose of the proper administration of this 700
chapter, and to prevent the evasion of the tax, it is presumed 701
that all sales made in this state are subject to the tax until 702
the contrary is established. 703

(D) The levy of this tax on retail sales of recreation and 704
sports club service shall not prevent a municipal corporation 705
from levying any tax on recreation and sports club dues or on 706
any income generated by recreation and sports club dues. 707

(E) The tax collected by the vendor from the consumer 708
under this chapter is not part of the price, but is a tax 709
collection for the benefit of the state, and of counties levying 710
an additional sales tax pursuant to section 5739.021 or 5739.026 711
of the Revised Code and of transit authorities levying an 712
additional sales tax pursuant to section 5739.023 of the Revised 713
Code. Except for the discount authorized under section 5739.12 714
of the Revised Code and the effects of any rounding pursuant to 715
section 5703.055 of the Revised Code, no person other than the 716
state or such a county or transit authority shall derive any 717
benefit from the collection or payment of the tax levied by this 718
section or section 5739.021, 5739.023, or 5739.026 of the 719
Revised Code. 720

Sec. 5739.03. (A) Except as provided in section 5739.05 or 721
section 5739.051 of the Revised Code, the tax imposed by or 722
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 723
the Revised Code shall be paid by the consumer to the vendor, 724
and each vendor shall collect from the consumer, as a trustee 725
for the state of Ohio, the full and exact amount of the tax 726
payable on each taxable sale, in the manner and at the times 727

provided as follows: 728

(1) If the price is, at or prior to the provision of the 729
service or the delivery of possession of the thing sold to the 730
consumer, paid in currency passed from hand to hand by the 731
consumer or the consumer's agent to the vendor or the vendor's 732
agent, the vendor or the vendor's agent shall collect the tax 733
with and at the same time as the price; 734

(2) If the price is otherwise paid or to be paid, the 735
vendor or the vendor's agent shall, at or prior to the provision 736
of the service or the delivery of possession of the thing sold 737
to the consumer, charge the tax imposed by or pursuant to 738
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 739
Code to the account of the consumer, which amount shall be 740
collected by the vendor from the consumer in addition to the 741
price. Such sale shall be reported on and the amount of the tax 742
applicable thereto shall be remitted with the return for the 743
period in which the sale is made, and the amount of the tax 744
shall become a legal charge in favor of the vendor and against 745
the consumer. 746

(B) (1) (a) If any sale is claimed to be exempt under 747
division (E) of section 5739.01 of the Revised Code or under 748
section 5739.02 of the Revised Code, with the exception of 749
divisions (B) (1) to (11) ~~or, (28), or (56)~~ of section 5739.02 750
of the Revised Code, or if the consumer claims the transaction 751
is not a taxable sale due to one or more of the exclusions 752
provided under divisions (JJ) (1) to (5) of section 5739.01 of 753
the Revised Code, the consumer must provide to the vendor, and 754
the vendor must obtain from the consumer, a certificate 755
specifying the reason that the sale is not legally subject to 756
the tax. The certificate shall be in such form, and shall be 757

provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:

(i) A vendor that fraudulently fails to collect tax;

(ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;

(iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;

(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.

(2) The vendor shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an

exemption, and provide them to the tax commissioner on request. 787

(3) The tax commissioner may establish an identification 788
system whereby the commissioner issues an identification number 789
to a consumer that is exempt from payment of the tax. The 790
consumer must present the number to the vendor, if any sale is 791
claimed to be exempt as provided in this section. 792

(4) If no certificate is provided or obtained within 793
ninety days after the date on which such sale is consummated, it 794
shall be presumed that the tax applies. Failure to have so 795
provided or obtained a certificate shall not preclude a vendor, 796
within one hundred twenty days after the tax commissioner gives 797
written notice of intent to levy an assessment, from either 798
establishing that the sale is not subject to the tax, or 799
obtaining, in good faith, a fully completed exemption 800
certificate. 801

(5) Certificates need not be obtained nor provided where 802
the identity of the consumer is such that the transaction is 803
never subject to the tax imposed or where the item of tangible 804
personal property sold or the service provided is never subject 805
to the tax imposed, regardless of use, or when the sale is in 806
interstate commerce. 807

(6) If a transaction is claimed to be exempt under 808
division (B) (13) of section 5739.02 of the Revised Code, the 809
contractor shall obtain certification of the claimed exemption 810
from the contractee. This certification shall be in addition to 811
an exemption certificate provided by the contractor to the 812
vendor. A contractee that provides a certification under this 813
division shall be deemed to be the consumer of all items 814
purchased by the contractor under the claim of exemption, if it 815
is subsequently determined that the exemption is not properly 816

claimed. The certification shall be in such form as the tax 817
commissioner prescribes. 818

(7) If a transaction is claimed to be exempt under 819
division (B) (56) of section 5739.02 of the Revised Code, the 820
vendor shall obtain from the purchasing student the following 821
records, as applicable: 822

(a) Except as provided in division (B) (7) (d) of this 823
section, if the vendor possesses a list of college textbooks for 824
one or more courses offered by an institution of higher 825
education, a copy of the student's valid student identification 826
card. 827

(b) Except as provided in divisions (B) (7) (c) and (d) of 828
this section, if the vendor does not possess a list of college 829
textbooks for the courses offered by an institution of higher 830
education for which the textbooks are required or recommended, a 831
copy of such a list and a copy of the student's valid student 832
identification card. 833

(c) Except as provided in division (B) (7) (d) of this 834
section, if the vendor does not possess a list of college 835
textbooks for one or more courses offered by an institution of 836
higher education because the institution has not made such a 837
list available, each of the following: 838

(i) Written proof of the student's enrollment in a course 839
at an institution of higher education; 840

(ii) A copy of the student's valid student identification 841
card; 842

(iii) A written statement signed by the student affirming 843
that the student is purchasing a college textbook for a course 844
in which the student is enrolled. 845

(d) For a college textbook purchased through use of a 846
printed catalog, the telephone, or a web site, each of the 847
following: 848

(i) The student's name and address; 849

(ii) The name of the course in which the student is 850
enrolled; 851

(iii) The name and address of the institution of higher 852
education at which the student is enrolled for the course; 853

(iv) The identification number appearing on the student's 854
valid student identification card, unless that number is the 855
same as the student's social security number. 856

(C) As used in this division, "contractee" means a person 857
who seeks to enter or enters into a contract or agreement with a 858
contractor or vendor for the construction of real property or 859
for the sale and installation onto real property of tangible 860
personal property. 861

Any contractor or vendor may request from any contractee a 862
certification of what portion of the property to be transferred 863
under such contract or agreement is to be incorporated into the 864
realty and what portion will retain its status as tangible 865
personal property after installation is completed. The 866
contractor or vendor shall request the certification by 867
certified mail delivered to the contractee, return receipt 868
requested. Upon receipt of such request and prior to entering 869
into the contract or agreement, the contractee shall provide to 870
the contractor or vendor a certification sufficiently detailed 871
to enable the contractor or vendor to ascertain the resulting 872
classification of all materials purchased or fabricated by the 873
contractor or vendor and transferred to the contractee. This 874

requirement applies to a contractee regardless of whether the 875
contractee holds a direct payment permit under section 5739.031 876
of the Revised Code or provides to the contractor or vendor an 877
exemption certificate as provided under this section. 878

For the purposes of the taxes levied by this chapter and 879
Chapter 5741. of the Revised Code, the contractor or vendor may 880
in good faith rely on the contractee's certification. 881
Notwithstanding division (B) of section 5739.01 of the Revised 882
Code, if the tax commissioner determines that certain property 883
certified by the contractee as tangible personal property 884
pursuant to this division is, in fact, real property, the 885
contractee shall be considered to be the consumer of all 886
materials so incorporated into that real property and shall be 887
liable for the applicable tax, and the contractor or vendor 888
shall be excused from any liability on those materials. 889

If a contractee fails to provide such certification upon 890
the request of the contractor or vendor, the contractor or 891
vendor shall comply with the provisions of this chapter and 892
Chapter 5741. of the Revised Code without the certification. If 893
the tax commissioner determines that such compliance has been 894
performed in good faith and that certain property treated as 895
tangible personal property by the contractor or vendor is, in 896
fact, real property, the contractee shall be considered to be 897
the consumer of all materials so incorporated into that real 898
property and shall be liable for the applicable tax, and the 899
construction contractor or vendor shall be excused from any 900
liability on those materials. 901

This division does not apply to any contract or agreement 902
where the tax commissioner determines as a fact that a 903
certification under this division was made solely on the 904

decision or advice of the contractor or vendor. 905

(D) Notwithstanding division (B) of section 5739.01 of the Revised Code, whenever the total rate of tax imposed under this chapter is increased after the date after a construction contract is entered into, the contractee shall reimburse the construction contractor for any additional tax paid on tangible property consumed or services received pursuant to the contract. 906
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(E) A vendor who files a petition for reassessment contesting the assessment of tax on sales for which the vendor obtained no valid exemption certificates and for which the vendor failed to establish that the sales were properly not subject to the tax during the one-hundred-twenty-day period allowed under division (B) of this section, may present to the tax commissioner additional evidence to prove that the sales were properly subject to a claim of exception or exemption. The vendor shall file such evidence within ninety days of the receipt by the vendor of the notice of assessment, except that, upon application and for reasonable cause, the period for submitting such evidence shall be extended thirty days. 912
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The commissioner shall consider such additional evidence in reaching the final determination on the assessment and petition for reassessment. 924
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(F) Whenever a vendor refunds the price, minus any separately stated delivery charge, of an item of tangible personal property on which the tax imposed under this chapter has been paid, the vendor shall also refund the amount of tax paid, minus the amount of tax attributable to the delivery charge. 927
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Section 2. That existing sections 5739.02 and 5739.03 of 933

the Revised Code are hereby repealed. 934

Section 3. The amendment by this act of sections 5739.02 935
and 5739.03 of the Revised Code applies beginning on the first 936
day of the first month that begins after the effective date of 937
this act. 938