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Am. H. B. No. 337

Representative Duffey

**Cosponsors: Representatives Schaffer, Rogers, Hambley, Henne, Ramos,
Retherford**

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 students enrolled in an 3
institution of higher education. 4

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

Section 1. That sections 5739.02 and 5739.03 of the 5
Revised Code be amended to read as follows: 6

Sec. 5739.02. For the purpose of providing revenue with 7
which to meet the needs of the state, for the use of the general 8
revenue fund of the state, for the purpose of securing a 9
thorough and efficient system of common schools throughout the 10
state, for the purpose of affording revenues, in addition to 11
those from general property taxes, permitted under 12
constitutional limitations, and from other sources, for the 13
support of local governmental functions, and for the purpose of 14
reimbursing the state for the expense of administering this 15
chapter, an excise tax is hereby levied on each retail sale made 16
in this state. 17

(A) (1) The tax shall be collected as provided in section 18
5739.025 of the Revised Code. The rate of the tax shall be five 19
and three-fourths per cent. The tax applies and is collectible 20
when the sale is made, regardless of the time when the price is 21
paid or delivered. 22

(2) In the case of the lease or rental, with a fixed term 23
of more than thirty days or an indefinite term with a minimum 24
period of more than thirty days, of any motor vehicles designed 25
by the manufacturer to carry a load of not more than one ton, 26
watercraft, outboard motor, or aircraft, or of any tangible 27
personal property, other than motor vehicles designed by the 28
manufacturer to carry a load of more than one ton, to be used by 29
the lessee or renter primarily for business purposes, the tax 30
shall be collected by the vendor at the time the lease or rental 31
is consummated and shall be calculated by the vendor on the 32
basis of the total amount to be paid by the lessee or renter 33
under the lease agreement. If the total amount of the 34
consideration for the lease or rental includes amounts that are 35
not calculated at the time the lease or rental is executed, the 36
tax shall be calculated and collected by the vendor at the time 37
such amounts are billed to the lessee or renter. In the case of 38
an open-end lease or rental, the tax shall be calculated by the 39
vendor on the basis of the total amount to be paid during the 40
initial fixed term of the lease or rental, and for each 41
subsequent renewal period as it comes due. As used in this 42
division, "motor vehicle" has the same meaning as in section 43
4501.01 of the Revised Code, and "watercraft" includes an 44
outdrive unit attached to the watercraft. 45

A lease with a renewal clause and a termination penalty or 46
similar provision that applies if the renewal clause is not 47
exercised is presumed to be a sham transaction. In such a case, 48

the tax shall be calculated and paid on the basis of the entire 49
length of the lease period, including any renewal periods, until 50
the termination penalty or similar provision no longer applies. 51
The taxpayer shall bear the burden, by a preponderance of the 52
evidence, that the transaction or series of transactions is not 53
a sham transaction. 54

(3) Except as provided in division (A) (2) of this section, 55
in the case of a sale, the price of which consists in whole or 56
in part of the lease or rental of tangible personal property, 57
the tax shall be measured by the installments of that lease or 58
rental. 59

(4) In the case of a sale of a physical fitness facility 60
service or recreation and sports club service, the price of 61
which consists in whole or in part of a membership for the 62
receipt of the benefit of the service, the tax applicable to the 63
sale shall be measured by the installments thereof. 64

(B) The tax does not apply to the following: 65

(1) Sales to the state or any of its political 66
subdivisions, or to any other state or its political 67
subdivisions if the laws of that state exempt from taxation 68
sales made to this state and its political subdivisions; 69

(2) Sales of food for human consumption off the premises 70
where sold; 71

(3) Sales of food sold to students only in a cafeteria, 72
dormitory, fraternity, or sorority maintained in a private, 73
public, or parochial school, college, or university; 74

(4) Sales of newspapers and sales or transfers of 75
magazines distributed as controlled circulation publications; 76

(5) The furnishing, preparing, or serving of meals without 77
charge by an employer to an employee provided the employer 78
records the meals as part compensation for services performed or 79
work done; 80

(6) Sales of motor fuel upon receipt, use, distribution, 81
or sale of which in this state a tax is imposed by the law of 82
this state, but this exemption shall not apply to the sale of 83
motor fuel on which a refund of the tax is allowable under 84
division (A) of section 5735.14 of the Revised Code; and the tax 85
commissioner may deduct the amount of tax levied by this section 86
applicable to the price of motor fuel when granting a refund of 87
motor fuel tax pursuant to division (A) of section 5735.14 of 88
the Revised Code and shall cause the amount deducted to be paid 89
into the general revenue fund of this state; 90

(7) Sales of natural gas by a natural gas company or 91
municipal gas utility, of water by a water-works company, or of 92
steam by a heating company, if in each case the thing sold is 93
delivered to consumers through pipes or conduits, and all sales 94
of communications services by a telegraph company, all terms as 95
defined in section 5727.01 of the Revised Code, and sales of 96
electricity delivered through wires; 97

(8) Casual sales by a person, or auctioneer employed 98
directly by the person to conduct such sales, except as to such 99
sales of motor vehicles, watercraft or outboard motors required 100
to be titled under section 1548.06 of the Revised Code, 101
watercraft documented with the United States coast guard, 102
snowmobiles, and all-purpose vehicles as defined in section 103
4519.01 of the Revised Code; 104

(9) (a) Sales of services or tangible personal property, 105
other than motor vehicles, mobile homes, and manufactured homes, 106

by churches, organizations exempt from taxation under section 107
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 108
organizations operated exclusively for charitable purposes as 109
defined in division (B) (12) of this section, provided that the 110
number of days on which such tangible personal property or 111
services, other than items never subject to the tax, are sold 112
does not exceed six in any calendar year, except as otherwise 113
provided in division (B) (9) (b) of this section. If the number of 114
days on which such sales are made exceeds six in any calendar 115
year, the church or organization shall be considered to be 116
engaged in business and all subsequent sales by it shall be 117
subject to the tax. In counting the number of days, all sales by 118
groups within a church or within an organization shall be 119
considered to be sales of that church or organization. 120

(b) The limitation on the number of days on which tax- 121
exempt sales may be made by a church or organization under 122
division (B) (9) (a) of this section does not apply to sales made 123
by student clubs and other groups of students of a primary or 124
secondary school, or a parent-teacher association, booster 125
group, or similar organization that raises money to support or 126
fund curricular or extracurricular activities of a primary or 127
secondary school. 128

(c) Divisions (B) (9) (a) and (b) of this section do not 129
apply to sales by a noncommercial educational radio or 130
television broadcasting station. 131

(10) Sales not within the taxing power of this state under 132
the Constitution or laws of the United States or the 133
Constitution of this state; 134

(11) Except for transactions that are sales under division 135
(B) (3) (r) of section 5739.01 of the Revised Code, the 136

transportation of persons or property, unless the transportation	137
is by a private investigation and security service;	138
(12) Sales of tangible personal property or services to	139
churches, to organizations exempt from taxation under section	140
501(c)(3) of the Internal Revenue Code of 1986, and to any other	141
nonprofit organizations operated exclusively for charitable	142
purposes in this state, no part of the net income of which	143
inures to the benefit of any private shareholder or individual,	144
and no substantial part of the activities of which consists of	145
carrying on propaganda or otherwise attempting to influence	146
legislation; sales to offices administering one or more homes	147
for the aged or one or more hospital facilities exempt under	148
section 140.08 of the Revised Code; and sales to organizations	149
described in division (D) of section 5709.12 of the Revised	150
Code.	151
"Charitable purposes" means the relief of poverty; the	152
improvement of health through the alleviation of illness,	153
disease, or injury; the operation of an organization exclusively	154
for the provision of professional, laundry, printing, and	155
purchasing services to hospitals or charitable institutions; the	156
operation of a home for the aged, as defined in section 5701.13	157
of the Revised Code; the operation of a radio or television	158
broadcasting station that is licensed by the federal	159
communications commission as a noncommercial educational radio	160
or television station; the operation of a nonprofit animal	161
adoption service or a county humane society; the promotion of	162
education by an institution of learning that maintains a faculty	163
of qualified instructors, teaches regular continuous courses of	164
study, and confers a recognized diploma upon completion of a	165
specific curriculum; the operation of a parent-teacher	166
association, booster group, or similar organization primarily	167

engaged in the promotion and support of the curricular or 168
extracurricular activities of a primary or secondary school; the 169
operation of a community or area center in which presentations 170
in music, dramatics, the arts, and related fields are made in 171
order to foster public interest and education therein; the 172
production of performances in music, dramatics, and the arts; or 173
the promotion of education by an organization engaged in 174
carrying on research in, or the dissemination of, scientific and 175
technological knowledge and information primarily for the 176
public. 177

Nothing in this division shall be deemed to exempt sales 178
to any organization for use in the operation or carrying on of a 179
trade or business, or sales to a home for the aged for use in 180
the operation of independent living facilities as defined in 181
division (A) of section 5709.12 of the Revised Code. 182

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

public worship or religious education, or a building used	199
exclusively for charitable purposes under a construction	200
contract with an organization whose purpose is as described in	201
division (B) (12) of this section; building materials and	202
services sold to a construction contractor for incorporation	203
into a building under a construction contract with an	204
organization exempt from taxation under section 501(c) (3) of the	205
Internal Revenue Code of 1986 when the building is to be used	206
exclusively for the organization's exempt purposes; building and	207
construction materials sold for incorporation into the original	208
construction of a sports facility under section 307.696 of the	209
Revised Code; building and construction materials and services	210
sold to a construction contractor for incorporation into real	211
property outside this state if such materials and services, when	212
sold to a construction contractor in the state in which the real	213
property is located for incorporation into real property in that	214
state, would be exempt from a tax on sales levied by that state;	215
building and construction materials for incorporation into a	216
transportation facility pursuant to a public-private agreement	217
entered into under sections 5501.70 to 5501.83 of the Revised	218
Code; and, until one calendar year after the construction of a	219
convention center that qualifies for property tax exemption	220
under section 5709.084 of the Revised Code is completed,	221
building and construction materials and services sold to a	222
construction contractor for incorporation into the real property	223
comprising that convention center;	224
(14) Sales of ships or vessels or rail rolling stock used	225
or to be used principally in interstate or foreign commerce, and	226
repairs, alterations, fuel, and lubricants for such ships or	227
vessels or rail rolling stock;	228
(15) Sales to persons primarily engaged in any of the	229

activities mentioned in division (B)(42)(a), (g), or (h) of this 230
section, to persons engaged in making retail sales, or to 231
persons who purchase for sale from a manufacturer tangible 232
personal property that was produced by the manufacturer in 233
accordance with specific designs provided by the purchaser, of 234
packages, including material, labels, and parts for packages, 235
and of machinery, equipment, and material for use primarily in 236
packaging tangible personal property produced for sale, 237
including any machinery, equipment, and supplies used to make 238
labels or packages, to prepare packages or products for 239
labeling, or to label packages or products, by or on the order 240
of the person doing the packaging, or sold at retail. "Packages" 241
includes bags, baskets, cartons, crates, boxes, cans, bottles, 242
bindings, wrappings, and other similar devices and containers, 243
but does not include motor vehicles or bulk tanks, trailers, or 244
similar devices attached to motor vehicles. "Packaging" means 245
placing in a package. Division (B)(15) of this section does not 246
apply to persons engaged in highway transportation for hire. 247

(16) Sales of food to persons using supplemental nutrition 248
assistance program benefits to purchase the food. As used in 249
this division, "food" has the same meaning as in 7 U.S.C. 2012 250
and federal regulations adopted pursuant to the Food and 251
Nutrition Act of 2008. 252

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

for use or consumption in production; and of tangible personal 261
property for such use or consumption in the conditioning or 262
holding of products produced by and for such use, consumption, 263
or sale by persons engaged in farming, agriculture, 264
horticulture, or floriculture, except where such property is 265
incorporated into real property; 266

(18) Sales of drugs for a human being that may be 267
dispensed only pursuant to a prescription; insulin as recognized 268
in the official United States pharmacopoeia; urine and blood 269
testing materials when used by diabetics or persons with 270
hypoglycemia to test for glucose or acetone; hypodermic syringes 271
and needles when used by diabetics for insulin injections; 272
epoetin alfa when purchased for use in the treatment of persons 273
with medical disease; hospital beds when purchased by hospitals, 274
nursing homes, or other medical facilities; and medical oxygen 275
and medical oxygen-dispensing equipment when purchased by 276
hospitals, nursing homes, or other medical facilities; 277

(19) Sales of prosthetic devices, durable medical 278
equipment for home use, or mobility enhancing equipment, when 279
made pursuant to a prescription and when such devices or 280
equipment are for use by a human being. 281

(20) Sales of emergency and fire protection vehicles and 282
equipment to nonprofit organizations for use solely in providing 283
fire protection and emergency services, including trauma care 284
and emergency medical services, for political subdivisions of 285
the state; 286

(21) Sales of tangible personal property manufactured in 287
this state, if sold by the manufacturer in this state to a 288
retailer for use in the retail business of the retailer outside 289
of this state and if possession is taken from the manufacturer 290

by the purchaser within this state for the sole purpose of	291
immediately removing the same from this state in a vehicle owned	292
by the purchaser;	293
(22) Sales of services provided by the state or any of its	294
political subdivisions, agencies, instrumentalities,	295
institutions, or authorities, or by governmental entities of the	296
state or any of its political subdivisions, agencies,	297
instrumentalities, institutions, or authorities;	298
(23) Sales of motor vehicles to nonresidents of this state	299
under the circumstances described in division (B) of section	300
5739.029 of the Revised Code;	301
(24) Sales to persons engaged in the preparation of eggs	302
for sale of tangible personal property used or consumed directly	303
in such preparation, including such tangible personal property	304
used for cleaning, sanitizing, preserving, grading, sorting, and	305
classifying by size; packages, including material and parts for	306
packages, and machinery, equipment, and material for use in	307
packaging eggs for sale; and handling and transportation	308
equipment and parts therefor, except motor vehicles licensed to	309
operate on public highways, used in intraplant or interplant	310
transfers or shipment of eggs in the process of preparation for	311
sale, when the plant or plants within or between which such	312
transfers or shipments occur are operated by the same person.	313
"Packages" includes containers, cases, baskets, flats, fillers,	314
filler flats, cartons, closure materials, labels, and labeling	315
materials, and "packaging" means placing therein.	316
(25) (a) Sales of water to a consumer for residential use;	317
(b) Sales of water by a nonprofit corporation engaged	318
exclusively in the treatment, distribution, and sale of water to	319

consumers, if such water is delivered to consumers through pipes	320
or tubing.	321
(26) Fees charged for inspection or reinspection of motor	322
vehicles under section 3704.14 of the Revised Code;	323
(27) Sales to persons licensed to conduct a food service	324
operation pursuant to section 3717.43 of the Revised Code, of	325
tangible personal property primarily used directly for the	326
following:	327
(a) To prepare food for human consumption for sale;	328
(b) To preserve food that has been or will be prepared for	329
human consumption for sale by the food service operator, not	330
including tangible personal property used to display food for	331
selection by the consumer;	332
(c) To clean tangible personal property used to prepare or	333
serve food for human consumption for sale.	334
(28) Sales of animals by nonprofit animal adoption	335
services or county humane societies;	336
(29) Sales of services to a corporation described in	337
division (A) of section 5709.72 of the Revised Code, and sales	338
of tangible personal property that qualifies for exemption from	339
taxation under section 5709.72 of the Revised Code;	340
(30) Sales and installation of agricultural land tile, as	341
defined in division (B) (5) (a) of section 5739.01 of the Revised	342
Code;	343
(31) Sales and erection or installation of portable grain	344
bins, as defined in division (B) (5) (b) of section 5739.01 of the	345
Revised Code;	346

(32) The sale, lease, repair, and maintenance of, parts 347
for, or items attached to or incorporated in, motor vehicles 348
that are primarily used for transporting tangible personal 349
property belonging to others by a person engaged in highway 350
transportation for hire, except for packages and packaging used 351
for the transportation of tangible personal property; 352

(33) Sales to the state headquarters of any veterans' 353
organization in this state that is either incorporated and 354
issued a charter by the congress of the United States or is 355
recognized by the United States veterans administration, for use 356
by the headquarters; 357

(34) Sales to a telecommunications service vendor, mobile 358
telecommunications service vendor, or satellite broadcasting 359
service vendor of tangible personal property and services used 360
directly and primarily in transmitting, receiving, switching, or 361
recording any interactive, one- or two-way electromagnetic 362
communications, including voice, image, data, and information, 363
through the use of any medium, including, but not limited to, 364
poles, wires, cables, switching equipment, computers, and record 365
storage devices and media, and component parts for the tangible 366
personal property. The exemption provided in this division shall 367
be in lieu of all other exemptions under division (B) (42) (a) or 368
(n) of this section to which the vendor may otherwise be 369
entitled, based upon the use of the thing purchased in providing 370
the telecommunications, mobile telecommunications, or satellite 371
broadcasting service. 372

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

describes tangible personal property offered for retail sale.	377
(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B) (35) (a) of this section;	378 379 380 381 382 383 384
(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.	385 386 387 388
(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.	389 390 391
For purposes of division (B) (35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.	392 393 394 395 396 397 398 399
(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;	400 401 402 403
(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer	404 405

equipment to an individual who is licensed or certified to teach 406
in an elementary or a secondary school in this state for use by 407
that individual in preparation for teaching elementary or 408
secondary school students; 409

(38) Sales to a professional racing team of any of the 410
following: 411

(a) Motor racing vehicles; 412

(b) Repair services for motor racing vehicles; 413

(c) Items of property that are attached to or incorporated 414
in motor racing vehicles, including engines, chassis, and all 415
other components of the vehicles, and all spare, replacement, 416
and rebuilt parts or components of the vehicles; except not 417
including tires, consumable fluids, paint, and accessories 418
consisting of instrumentation sensors and related items added to 419
the vehicle to collect and transmit data by means of telemetry 420
and other forms of communication. 421

(39) Sales of used manufactured homes and used mobile 422
homes, as defined in section 5739.0210 of the Revised Code, made 423
on or after January 1, 2000; 424

(40) Sales of tangible personal property and services to a 425
provider of electricity used or consumed directly and primarily 426
in generating, transmitting, or distributing electricity for use 427
by others, including property that is or is to be incorporated 428
into and will become a part of the consumer's production, 429
transmission, or distribution system and that retains its 430
classification as tangible personal property after 431
incorporation; fuel or power used in the production, 432
transmission, or distribution of electricity; energy conversion 433
equipment as defined in section 5727.01 of the Revised Code; and 434

tangible personal property and services used in the repair and 435
maintenance of the production, transmission, or distribution 436
system, including only those motor vehicles as are specially 437
designed and equipped for such use. The exemption provided in 438
this division shall be in lieu of all other exemptions in 439
division (B) (42) (a) or (n) of this section to which a provider 440
of electricity may otherwise be entitled based on the use of the 441
tangible personal property or service purchased in generating, 442
transmitting, or distributing electricity. 443

(41) Sales to a person providing services under division 444
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 445
personal property and services used directly and primarily in 446
providing taxable services under that section. 447

(42) Sales where the purpose of the purchaser is to do any 448
of the following: 449

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

"retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.	465 466 467
(b) To hold the thing transferred as security for the performance of an obligation of the vendor;	468 469
(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	470 471
(d) To use or consume the thing directly in commercial fishing;	472 473
(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;	474 475 476 477
(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;	478 479 480 481 482
(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;	483 484 485
(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;	486 487 488 489 490 491
(i) To use the thing transferred as qualified research and	492

development equipment;	493
(j) To use or consume the thing transferred primarily in	494
storing, transporting, mailing, or otherwise handling purchased	495
sales inventory in a warehouse, distribution center, or similar	496
facility when the inventory is primarily distributed outside	497
this state to retail stores of the person who owns or controls	498
the warehouse, distribution center, or similar facility, to	499
retail stores of an affiliated group of which that person is a	500
member, or by means of direct marketing. This division does not	501
apply to motor vehicles registered for operation on the public	502
highways. As used in this division, "affiliated group" has the	503
same meaning as in division (B) (3) (e) of section 5739.01 of the	504
Revised Code and "direct marketing" has the same meaning as in	505
division (B) (35) of this section.	506
(k) To use or consume the thing transferred to fulfill a	507
contractual obligation incurred by a warrantor pursuant to a	508
warranty provided as a part of the price of the tangible	509
personal property sold or by a vendor of a warranty, maintenance	510
or service contract, or similar agreement the provision of which	511
is defined as a sale under division (B) (7) of section 5739.01 of	512
the Revised Code;	513
(l) To use or consume the thing transferred in the	514
production of a newspaper for distribution to the public;	515
(m) To use tangible personal property to perform a service	516
listed in division (B) (3) of section 5739.01 of the Revised	517
Code, if the property is or is to be permanently transferred to	518
the consumer of the service as an integral part of the	519
performance of the service;	520
(n) To use or consume the thing transferred primarily in	521

producing tangible personal property for sale by farming, 522
agriculture, horticulture, or floriculture. Persons engaged in 523
rendering farming, agriculture, horticulture, or floriculture 524
services for others are deemed engaged primarily in farming, 525
agriculture, horticulture, or floriculture. This paragraph does 526
not exempt from "retail sale" or "sales at retail" the sale of 527
tangible personal property that is to be incorporated into a 528
structure or improvement to real property. 529

(o) To use or consume the thing transferred in acquiring, 530
formatting, editing, storing, and disseminating data or 531
information by electronic publishing; 532

(p) To provide the thing transferred to the owner or 533
lessee of a motor vehicle that is being repaired or serviced, if 534
the thing transferred is a rented motor vehicle and the 535
purchaser is reimbursed for the cost of the rented motor vehicle 536
by a manufacturer, warrantor, or provider of a maintenance, 537
service, or other similar contract or agreement, with respect to 538
the motor vehicle that is being repaired or serviced. 539

As used in division (B) (42) of this section, "thing" 540
includes all transactions included in divisions (B) (3) (a), (b), 541
and (e) of section 5739.01 of the Revised Code. 542

(43) Sales conducted through a coin operated device that 543
activates vacuum equipment or equipment that dispenses water, 544
whether or not in combination with soap or other cleaning agents 545
or wax, to the consumer for the consumer's use on the premises 546
in washing, cleaning, or waxing a motor vehicle, provided no 547
other personal property or personal service is provided as part 548
of the transaction. 549

(44) Sales of replacement and modification parts for 550

engines, airframes, instruments, and interiors in, and paint 551
for, aircraft used primarily in a fractional aircraft ownership 552
program, and sales of services for the repair, modification, and 553
maintenance of such aircraft, and machinery, equipment, and 554
supplies primarily used to provide those services. 555

(45) Sales of telecommunications service that is used 556
directly and primarily to perform the functions of a call 557
center. As used in this division, "call center" means any 558
physical location where telephone calls are placed or received 559
in high volume for the purpose of making sales, marketing, 560
customer service, technical support, or other specialized 561
business activity, and that employs at least fifty individuals 562
that engage in call center activities on a full-time basis, or 563
sufficient individuals to fill fifty full-time equivalent 564
positions. 565

(46) Sales by a telecommunications service vendor of 900 566
service to a subscriber. This division does not apply to 567
information services, as defined in division (FF) of section 568
5739.01 of the Revised Code. 569

(47) Sales of value-added non-voice data service. This 570
division does not apply to any similar service that is not 571
otherwise a telecommunications service. 572

(48) (a) Sales of machinery, equipment, and software to a 573
qualified direct selling entity for use in a warehouse or 574
distribution center primarily for storing, transporting, or 575
otherwise handling inventory that is held for sale to 576
independent salespersons who operate as direct sellers and that 577
is held primarily for distribution outside this state; 578

(b) As used in division (B) (48) (a) of this section: 579

(i) "Direct seller" means a person selling consumer 580
products to individuals for personal or household use and not 581
from a fixed retail location, including selling such product at 582
in-home product demonstrations, parties, and other one-on-one 583
selling. 584

(ii) "Qualified direct selling entity" means an entity 585
selling to direct sellers at the time the entity enters into a 586
tax credit agreement with the tax credit authority pursuant to 587
section 122.17 of the Revised Code, provided that the agreement 588
was entered into on or after January 1, 2007. Neither 589
contingencies relevant to the granting of, nor later 590
developments with respect to, the tax credit shall impair the 591
status of the qualified direct selling entity under division (B) 592
(48) of this section after execution of the tax credit agreement 593
by the tax credit authority. 594

(c) Division (B) (48) of this section is limited to 595
machinery, equipment, and software first stored, used, or 596
consumed in this state within the period commencing June 24, 597
2008, and ending on the date that is five years after that date. 598

(49) Sales of materials, parts, equipment, or engines used 599
in the repair or maintenance of aircraft or avionics systems of 600
such aircraft, and sales of repair, remodeling, replacement, or 601
maintenance services in this state performed on aircraft or on 602
an aircraft's avionics, engine, or component materials or parts. 603
As used in division (B) (49) of this section, "aircraft" means 604
aircraft of more than six thousand pounds maximum certified 605
takeoff weight or used exclusively in general aviation. 606

(50) Sales of full flight simulators that are used for 607
pilot or flight-crew training, sales of repair or replacement 608
parts or components, and sales of repair or maintenance services 609

for such full flight simulators. "Full flight simulator" means a 610
replica of a specific type, or make, model, and series of 611
aircraft cockpit. It includes the assemblage of equipment and 612
computer programs necessary to represent aircraft operations in 613
ground and flight conditions, a visual system providing an out- 614
of-the-cockpit view, and a system that provides cues at least 615
equivalent to those of a three-degree-of-freedom motion system, 616
and has the full range of capabilities of the systems installed 617
in the device as described in appendices A and B of part 60 of 618
chapter 1 of title 14 of the Code of Federal Regulations. 619

(51) Any transfer or lease of tangible personal property 620
between the state and JobsOhio in accordance with section 621
4313.02 of the Revised Code. 622

(52) (a) Sales to a qualifying corporation. 623

(b) As used in division (B) (52) of this section: 624

(i) "Qualifying corporation" means a nonprofit corporation 625
organized in this state that leases from an eligible county 626
land, buildings, structures, fixtures, and improvements to the 627
land that are part of or used in a public recreational facility 628
used by a major league professional athletic team or a class A 629
to class AAA minor league affiliate of a major league 630
professional athletic team for a significant portion of the 631
team's home schedule, provided the following apply: 632

(I) The facility is leased from the eligible county 633
pursuant to a lease that requires substantially all of the 634
revenue from the operation of the business or activity conducted 635
by the nonprofit corporation at the facility in excess of 636
operating costs, capital expenditures, and reserves to be paid 637
to the eligible county at least once per calendar year. 638

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

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

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

(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.

(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:

(a) Accepts direct payments to operate;

(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;

(c) Operates exclusively for the purpose of playing 668
digital audio works in a commercial establishment. 669

(56) (a) Sales of college textbooks to students. 670

(b) As used in division (B) (56) of this section: 671

(i) "Institution of higher education" means all of the 672
following: 673

(I) A state institution of higher education as defined in 674
section 3345.12 of the Revised Code; 675

(II) An institution authorized by the Ohio board of 676
regents under Chapter 1713. of the Revised Code to grant degrees 677
and that is accredited by the appropriate regional and 678
professional accrediting associations within whose jurisdiction 679
it falls; 680

(III) Private career schools holding program 681
authorizations issued by the state board of career colleges and 682
schools under division (C) of section 3332.05 of the Revised 683
Code; 684

(IV) Private institutions exempt from regulation under 685
Chapter 3332. of the Revised Code as prescribed in section 686
3333.046 of the Revised Code; 687

(V) An accredited college, university, or other 688
postsecondary institution located outside this state that is 689
accredited by an accrediting organization recognized by the Ohio 690
board of regents. 691

(ii) "Student" means an individual enrolled part-time or 692
full-time in a course of study at an institution of higher 693
education, including an individual enrolled in an institution of 694
higher education under the program established under Chapter 695

<u>3365. of the Revised Code.</u>	696
<u>(iii) "College textbook" means a new or used book or</u>	697
<u>workbook that is required or recommended by an institution of</u>	698
<u>higher education for a course offered by the institution,</u>	699
<u>including a digital copy thereof. "College textbook" does not</u>	700
<u>include notebooks, sketch pads, calculators, and laboratory</u>	701
<u>kits.</u>	702
(C) For the purpose of the proper administration of this	703
chapter, and to prevent the evasion of the tax, it is presumed	704
that all sales made in this state are subject to the tax until	705
the contrary is established.	706
(D) The levy of this tax on retail sales of recreation and	707
sports club service shall not prevent a municipal corporation	708
from levying any tax on recreation and sports club dues or on	709
any income generated by recreation and sports club dues.	710
(E) The tax collected by the vendor from the consumer	711
under this chapter is not part of the price, but is a tax	712
collection for the benefit of the state, and of counties levying	713
an additional sales tax pursuant to section 5739.021 or 5739.026	714
of the Revised Code and of transit authorities levying an	715
additional sales tax pursuant to section 5739.023 of the Revised	716
Code. Except for the discount authorized under section 5739.12	717
of the Revised Code and the effects of any rounding pursuant to	718
section 5703.055 of the Revised Code, no person other than the	719
state or such a county or transit authority shall derive any	720
benefit from the collection or payment of the tax levied by this	721
section or section 5739.021, 5739.023, or 5739.026 of the	722
Revised Code.	723
Sec. 5739.03. (A) Except as provided in section 5739.05 or	724

section 5739.051 of the Revised Code, the tax imposed by or 725
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 726
the Revised Code shall be paid by the consumer to the vendor, 727
and each vendor shall collect from the consumer, as a trustee 728
for the state of Ohio, the full and exact amount of the tax 729
payable on each taxable sale, in the manner and at the times 730
provided as follows: 731

(1) If the price is, at or prior to the provision of the 732
service or the delivery of possession of the thing sold to the 733
consumer, paid in currency passed from hand to hand by the 734
consumer or the consumer's agent to the vendor or the vendor's 735
agent, the vendor or the vendor's agent shall collect the tax 736
with and at the same time as the price; 737

(2) If the price is otherwise paid or to be paid, the 738
vendor or the vendor's agent shall, at or prior to the provision 739
of the service or the delivery of possession of the thing sold 740
to the consumer, charge the tax imposed by or pursuant to 741
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 742
Code to the account of the consumer, which amount shall be 743
collected by the vendor from the consumer in addition to the 744
price. Such sale shall be reported on and the amount of the tax 745
applicable thereto shall be remitted with the return for the 746
period in which the sale is made, and the amount of the tax 747
shall become a legal charge in favor of the vendor and against 748
the consumer. 749

(B) (1) (a) If any sale is claimed to be exempt under 750
division (E) of section 5739.01 of the Revised Code or under 751
section 5739.02 of the Revised Code, with the exception of 752
divisions (B) (1) to (11) ~~or, (28), or (56)~~ of section 5739.02 753
of the Revised Code, or if the consumer claims the transaction 754

is not a taxable sale due to one or more of the exclusions 755
provided under divisions (JJ) (1) to (5) of section 5739.01 of 756
the Revised Code, the consumer must provide to the vendor, and 757
the vendor must obtain from the consumer, a certificate 758
specifying the reason that the sale is not legally subject to 759
the tax. The certificate shall be in such form, and shall be 760
provided either in a hard copy form or electronic form, as the 761
tax commissioner prescribes. 762

(b) A vendor that obtains a fully completed exemption 763
certificate from a consumer is relieved of liability for 764
collecting and remitting tax on any sale covered by that 765
certificate. If it is determined the exemption was improperly 766
claimed, the consumer shall be liable for any tax due on that 767
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 768
Chapter 5741. of the Revised Code. Relief under this division 769
from liability does not apply to any of the following: 770

(i) A vendor that fraudulently fails to collect tax; 771

(ii) A vendor that solicits consumers to participate in 772
the unlawful claim of an exemption; 773

(iii) A vendor that accepts an exemption certificate from 774
a consumer that claims an exemption based on who purchases or 775
who sells property or a service, when the subject of the 776
transaction sought to be covered by the exemption certificate is 777
actually received by the consumer at a location operated by the 778
vendor in this state, and this state has posted to its web site 779
an exemption certificate form that clearly and affirmatively 780
indicates that the claimed exemption is not available in this 781
state; 782

(iv) A vendor that accepts an exemption certificate from a 783

consumer who claims a multiple points of use exemption under 784
division (D) of section 5739.033 of the Revised Code, if the 785
item purchased is tangible personal property, other than 786
prewritten computer software. 787

(2) The vendor shall maintain records, including exemption 788
certificates, of all sales on which a consumer has claimed an 789
exemption, and provide them to the tax commissioner on request. 790

(3) The tax commissioner may establish an identification 791
system whereby the commissioner issues an identification number 792
to a consumer that is exempt from payment of the tax. The 793
consumer must present the number to the vendor, if any sale is 794
claimed to be exempt as provided in this section. 795

(4) If no certificate is provided or obtained within 796
ninety days after the date on which such sale is consummated, it 797
shall be presumed that the tax applies. Failure to have so 798
provided or obtained a certificate shall not preclude a vendor, 799
within one hundred twenty days after the tax commissioner gives 800
written notice of intent to levy an assessment, from either 801
establishing that the sale is not subject to the tax, or 802
obtaining, in good faith, a fully completed exemption 803
certificate. 804

(5) Certificates need not be obtained nor provided where 805
the identity of the consumer is such that the transaction is 806
never subject to the tax imposed or where the item of tangible 807
personal property sold or the service provided is never subject 808
to the tax imposed, regardless of use, or when the sale is in 809
interstate commerce. 810

(6) If a transaction is claimed to be exempt under 811
division (B) (13) of section 5739.02 of the Revised Code, the 812

contractor shall obtain certification of the claimed exemption 813
from the contractee. This certification shall be in addition to 814
an exemption certificate provided by the contractor to the 815
vendor. A contractee that provides a certification under this 816
division shall be deemed to be the consumer of all items 817
purchased by the contractor under the claim of exemption, if it 818
is subsequently determined that the exemption is not properly 819
claimed. The certification shall be in such form as the tax 820
commissioner prescribes. 821

(7) If a transaction is claimed to be exempt under 822
division (B) (56) of section 5739.02 of the Revised Code, the 823
vendor shall obtain from the purchasing student the following 824
records, as applicable: 825

(a) Except as provided in division (B) (7) (d) of this 826
section, if the vendor possesses a list of college textbooks for 827
one or more courses offered by an institution of higher 828
education, a copy of the student's valid student identification 829
card. 830

(b) Except as provided in divisions (B) (7) (c) and (d) of 831
this section, if the vendor does not possess a list of college 832
textbooks for the courses offered by an institution of higher 833
education for which the textbooks are required or recommended, a 834
copy of such a list and a copy of the student's valid student 835
identification card. 836

(c) Except as provided in division (B) (7) (d) of this 837
section, if the vendor does not possess a list of college 838
textbooks for one or more courses offered by an institution of 839
higher education because the institution has not made such a 840
list available, each of the following: 841

<u>(i) Written proof of the student's enrollment in a course</u>	842
<u>at an institution of higher education;</u>	843
<u>(ii) A copy of the student's valid student identification</u>	844
<u>card;</u>	845
<u>(iii) A written statement signed by the student affirming</u>	846
<u>that the student is purchasing a college textbook for a course</u>	847
<u>in which the student is enrolled.</u>	848
<u>(d) For a college textbook purchased through use of a</u>	849
<u>printed catalog, the telephone, or a web site, each of the</u>	850
<u>following:</u>	851
<u>(i) The student's name and address;</u>	852
<u>(ii) The name of the course in which the student is</u>	853
<u>enrolled;</u>	854
<u>(iii) The name and address of the institution of higher</u>	855
<u>education at which the student is enrolled for the course;</u>	856
<u>(iv) The identification number appearing on the student's</u>	857
<u>valid student identification card, unless that number is the</u>	858
<u>same as the student's social security number.</u>	859
(C) As used in this division, "contractee" means a person	860
who seeks to enter or enters into a contract or agreement with a	861
contractor or vendor for the construction of real property or	862
for the sale and installation onto real property of tangible	863
personal property.	864
Any contractor or vendor may request from any contractee a	865
certification of what portion of the property to be transferred	866
under such contract or agreement is to be incorporated into the	867
realty and what portion will retain its status as tangible	868
personal property after installation is completed. The	869

contractor or vendor shall request the certification by 870
certified mail delivered to the contractee, return receipt 871
requested. Upon receipt of such request and prior to entering 872
into the contract or agreement, the contractee shall provide to 873
the contractor or vendor a certification sufficiently detailed 874
to enable the contractor or vendor to ascertain the resulting 875
classification of all materials purchased or fabricated by the 876
contractor or vendor and transferred to the contractee. This 877
requirement applies to a contractee regardless of whether the 878
contractee holds a direct payment permit under section 5739.031 879
of the Revised Code or provides to the contractor or vendor an 880
exemption certificate as provided under this section. 881

For the purposes of the taxes levied by this chapter and 882
Chapter 5741. of the Revised Code, the contractor or vendor may 883
in good faith rely on the contractee's certification. 884
Notwithstanding division (B) of section 5739.01 of the Revised 885
Code, if the tax commissioner determines that certain property 886
certified by the contractee as tangible personal property 887
pursuant to this division is, in fact, real property, the 888
contractee shall be considered to be the consumer of all 889
materials so incorporated into that real property and shall be 890
liable for the applicable tax, and the contractor or vendor 891
shall be excused from any liability on those materials. 892

If a contractee fails to provide such certification upon 893
the request of the contractor or vendor, the contractor or 894
vendor shall comply with the provisions of this chapter and 895
Chapter 5741. of the Revised Code without the certification. If 896
the tax commissioner determines that such compliance has been 897
performed in good faith and that certain property treated as 898
tangible personal property by the contractor or vendor is, in 899
fact, real property, the contractee shall be considered to be 900

the consumer of all materials so incorporated into that real 901
property and shall be liable for the applicable tax, and the 902
construction contractor or vendor shall be excused from any 903
liability on those materials. 904

This division does not apply to any contract or agreement 905
where the tax commissioner determines as a fact that a 906
certification under this division was made solely on the 907
decision or advice of the contractor or vendor. 908

(D) Notwithstanding division (B) of section 5739.01 of the 909
Revised Code, whenever the total rate of tax imposed under this 910
chapter is increased after the date after a construction 911
contract is entered into, the contractee shall reimburse the 912
construction contractor for any additional tax paid on tangible 913
property consumed or services received pursuant to the contract. 914

(E) A vendor who files a petition for reassessment 915
contesting the assessment of tax on sales for which the vendor 916
obtained no valid exemption certificates and for which the 917
vendor failed to establish that the sales were properly not 918
subject to the tax during the one-hundred-twenty-day period 919
allowed under division (B) of this section, may present to the 920
tax commissioner additional evidence to prove that the sales 921
were properly subject to a claim of exception or exemption. The 922
vendor shall file such evidence within ninety days of the 923
receipt by the vendor of the notice of assessment, except that, 924
upon application and for reasonable cause, the period for 925
submitting such evidence shall be extended thirty days. 926

The commissioner shall consider such additional evidence 927
in reaching the final determination on the assessment and 928
petition for reassessment. 929

(F) Whenever a vendor refunds the price, minus any 930
separately stated delivery charge, of an item of tangible 931
personal property on which the tax imposed under this chapter 932
has been paid, the vendor shall also refund the amount of tax 933
paid, minus the amount of tax attributable to the delivery 934
charge. 935

Section 2. That existing sections 5739.02 and 5739.03 of 936
the Revised Code are hereby repealed. 937

Section 3. The amendment by this act of sections 5739.02 938
and 5739.03 of the Revised Code applies beginning on the first 939
day of the first month that begins after the effective date of 940
this act. 941