

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 430**

**Representative Schaffer**

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**A BILL**

To amend sections 5709.20 and 5739.02 of the 1  
Revised Code to expand the scope of a sales and 2  
use tax exemption for certain kinds of property 3  
used in the production of oil and gas. 4

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

**Section 1.** That sections 5709.20 and 5739.02 of the 5  
Revised Code be amended to read as follows: 6

**Sec. 5709.20.** As used in sections 5709.20 to 5709.27 of 7  
the Revised Code: 8

(A) "Air contaminant" means particulate matter, dust, 9  
fumes, gas, mist, smoke, vapor, or odorous substances, or any 10  
combination thereof. 11

(B) "Air pollution control facility" means any property 12  
designed, constructed, or installed for the primary purpose of 13  
eliminating or reducing the emission of, or ground level 14  
concentration of, air contaminants generated at an industrial or 15  
commercial plant or site that renders air harmful or inimical to 16  
the public health or to property within this state, or such 17  
property installed on or after November 1, 1993, at a petroleum 18  
refinery for the primary purpose of eliminating or reducing 19

substances within fuel that otherwise would create the emission 20  
of air contaminants upon the combustion of fuel. 21

(C) "Energy conversion" means the conversion of fuel or 22  
power usage and consumption from natural gas to an alternate 23  
fuel or power source other than propane, butane, naphtha, or 24  
fuel oil; or the conversion of fuel or power usage and 25  
consumption from fuel oil to an alternate fuel or power source 26  
other than natural gas, propane, butane, or naphtha. 27

(D) "Energy conversion facility" means any additional 28  
property or equipment designed, constructed, or installed after 29  
December 31, 1974, for use at an industrial or commercial plant 30  
or site for the primary purpose of energy conversion. 31

(E) "Exempt facility" means any of the facilities defined 32  
in division (B), (D), (F), (I), (K), or (L) of this section for 33  
which an exempt facility certificate is issued pursuant to 34  
section 5709.21 or for which a certificate remains valid under 35  
section 5709.201 of the Revised Code. 36

(F) "Noise pollution control facility" means any property 37  
designed, constructed, or installed for use at an industrial or 38  
commercial plant or site for the primary purpose of eliminating 39  
or reducing, at that plant or site, the emission of sound which 40  
is harmful or inimical to persons or property, or materially 41  
reduces the quality of the environment, as shall be determined 42  
by the director of environmental protection within such 43  
standards for noise pollution control facilities and standards 44  
for environmental noise necessary to protect public health and 45  
welfare as may be promulgated by the United States environmental 46  
protection agency. In the absence of such United States 47  
environmental protection agency standards, the determination 48  
shall be made in accordance with generally accepted current 49

standards of good engineering practice in environmental noise control. 50  
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(G) "Solid waste" means such unwanted residual solid or semi-solid material as results from industrial operations, including those of public utility companies, and commercial, distribution, research, agricultural, and community operations, including garbage, combustible or noncombustible, street dirt, and debris. 52  
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(H) "Solid waste energy conversion" means the conversion of solid waste into energy and the utilization of such energy for some useful purpose. 58  
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(I) "Solid waste energy conversion facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of solid waste energy conversion. 61  
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(J) "Thermal efficiency improvement" means the recovery and use of waste heat or waste steam produced incidental to electric power generation, industrial process heat generation, lighting, refrigeration, or space heating. 66  
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(K) "Thermal efficiency improvement facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of thermal efficiency improvement. 70  
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(L) "Industrial water pollution control facility" means any property designed, constructed, or installed for the primary purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating 75  
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water pollution caused by industrial waste; or reducing, 79  
controlling, or eliminating the discharge into a disposal system 80  
of industrial waste or what would be industrial waste if 81  
discharged into the waters of this state. This division applies 82  
only to property related to an industrial water pollution 83  
control facility placed into operation or initially capable of 84  
operation after December 31, 1965, and installed pursuant to the 85  
approval of the environmental protection agency, department of 86  
natural resources, or any other governmental agency having 87  
authority to approve the installation of industrial water 88  
pollution control facilities. The definitions in section 6111.01 89  
of the Revised Code, as applicable, apply to the terms used in 90  
this division. 91

(M) Property designed, constructed, installed, used, or 92  
placed in operation primarily for the safety, health, 93  
protection, or benefit, or any combination thereof, of personnel 94  
of a business, or primarily for a business's own benefit, is not 95  
an "exempt facility." 96

**Sec. 5739.02.** For the purpose of providing revenue with 97  
which to meet the needs of the state, for the use of the general 98  
revenue fund of the state, for the purpose of securing a 99  
thorough and efficient system of common schools throughout the 100  
state, for the purpose of affording revenues, in addition to 101  
those from general property taxes, permitted under 102  
constitutional limitations, and from other sources, for the 103  
support of local governmental functions, and for the purpose of 104  
reimbursing the state for the expense of administering this 105  
chapter, an excise tax is hereby levied on each retail sale made 106  
in this state. 107

(A) (1) The tax shall be collected as provided in section 108

5739.025 of the Revised Code. The rate of the tax shall be five 109  
and three-fourths per cent. The tax applies and is collectible 110  
when the sale is made, regardless of the time when the price is 111  
paid or delivered. 112

(2) In the case of the lease or rental, with a fixed term 113  
of more than thirty days or an indefinite term with a minimum 114  
period of more than thirty days, of any motor vehicles designed 115  
by the manufacturer to carry a load of not more than one ton, 116  
watercraft, outboard motor, or aircraft, or of any tangible 117  
personal property, other than motor vehicles designed by the 118  
manufacturer to carry a load of more than one ton, to be used by 119  
the lessee or renter primarily for business purposes, the tax 120  
shall be collected by the vendor at the time the lease or rental 121  
is consummated and shall be calculated by the vendor on the 122  
basis of the total amount to be paid by the lessee or renter 123  
under the lease agreement. If the total amount of the 124  
consideration for the lease or rental includes amounts that are 125  
not calculated at the time the lease or rental is executed, the 126  
tax shall be calculated and collected by the vendor at the time 127  
such amounts are billed to the lessee or renter. In the case of 128  
an open-end lease or rental, the tax shall be calculated by the 129  
vendor on the basis of the total amount to be paid during the 130  
initial fixed term of the lease or rental, and for each 131  
subsequent renewal period as it comes due. As used in this 132  
division, "motor vehicle" has the same meaning as in section 133  
4501.01 of the Revised Code, and "watercraft" includes an 134  
outdrive unit attached to the watercraft. 135

A lease with a renewal clause and a termination penalty or 136  
similar provision that applies if the renewal clause is not 137  
exercised is presumed to be a sham transaction. In such a case, 138  
the tax shall be calculated and paid on the basis of the entire 139

length of the lease period, including any renewal periods, until 140  
the termination penalty or similar provision no longer applies. 141  
The taxpayer shall bear the burden, by a preponderance of the 142  
evidence, that the transaction or series of transactions is not 143  
a sham transaction. 144

(3) Except as provided in division (A)(2) of this section, 145  
in the case of a sale, the price of which consists in whole or 146  
in part of the lease or rental of tangible personal property, 147  
the tax shall be measured by the installments of that lease or 148  
rental. 149

(4) In the case of a sale of a physical fitness facility 150  
service or recreation and sports club service, the price of 151  
which consists in whole or in part of a membership for the 152  
receipt of the benefit of the service, the tax applicable to the 153  
sale shall be measured by the installments thereof. 154

(B) The tax does not apply to the following: 155

(1) Sales to the state or any of its political 156  
subdivisions, or to any other state or its political 157  
subdivisions if the laws of that state exempt from taxation 158  
sales made to this state and its political subdivisions; 159

(2) Sales of food for human consumption off the premises 160  
where sold; 161

(3) Sales of food sold to students only in a cafeteria, 162  
dormitory, fraternity, or sorority maintained in a private, 163  
public, or parochial school, college, or university; 164

(4) Sales of newspapers and sales or transfers of 165  
magazines distributed as controlled circulation publications; 166

(5) The furnishing, preparing, or serving of meals without 167

charge by an employer to an employee provided the employer 168  
records the meals as part compensation for services performed or 169  
work done; 170

(6) Sales of motor fuel upon receipt, use, distribution, 171  
or sale of which in this state a tax is imposed by the law of 172  
this state, but this exemption shall not apply to the sale of 173  
motor fuel on which a refund of the tax is allowable under 174  
division (A) of section 5735.14 of the Revised Code; and the tax 175  
commissioner may deduct the amount of tax levied by this section 176  
applicable to the price of motor fuel when granting a refund of 177  
motor fuel tax pursuant to division (A) of section 5735.14 of 178  
the Revised Code and shall cause the amount deducted to be paid 179  
into the general revenue fund of this state; 180

(7) Sales of natural gas by a natural gas company or 181  
municipal gas utility, of water by a water-works company, or of 182  
steam by a heating company, if in each case the thing sold is 183  
delivered to consumers through pipes or conduits, and all sales 184  
of communications services by a telegraph company, all terms as 185  
defined in section 5727.01 of the Revised Code, and sales of 186  
electricity delivered through wires; 187

(8) Casual sales by a person, or auctioneer employed 188  
directly by the person to conduct such sales, except as to such 189  
sales of motor vehicles, watercraft or outboard motors required 190  
to be titled under section 1548.06 of the Revised Code, 191  
watercraft documented with the United States coast guard, 192  
snowmobiles, and all-purpose vehicles as defined in section 193  
4519.01 of the Revised Code; 194

(9) (a) Sales of services or tangible personal property, 195  
other than motor vehicles, mobile homes, and manufactured homes, 196  
by churches, organizations exempt from taxation under section 197

501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 198  
organizations operated exclusively for charitable purposes as 199  
defined in division (B) (12) of this section, provided that the 200  
number of days on which such tangible personal property or 201  
services, other than items never subject to the tax, are sold 202  
does not exceed six in any calendar year, except as otherwise 203  
provided in division (B) (9) (b) of this section. If the number of 204  
days on which such sales are made exceeds six in any calendar 205  
year, the church or organization shall be considered to be 206  
engaged in business and all subsequent sales by it shall be 207  
subject to the tax. In counting the number of days, all sales by 208  
groups within a church or within an organization shall be 209  
considered to be sales of that church or organization. 210

(b) The limitation on the number of days on which tax- 211  
exempt sales may be made by a church or organization under 212  
division (B) (9) (a) of this section does not apply to sales made 213  
by student clubs and other groups of students of a primary or 214  
secondary school, or a parent-teacher association, booster 215  
group, or similar organization that raises money to support or 216  
fund curricular or extracurricular activities of a primary or 217  
secondary school. 218

(c) Divisions (B) (9) (a) and (b) of this section do not 219  
apply to sales by a noncommercial educational radio or 220  
television broadcasting station. 221

(10) Sales not within the taxing power of this state under 222  
the Constitution or laws of the United States or the 223  
Constitution of this state; 224

(11) Except for transactions that are sales under division 225  
(B) (3) (r) of section 5739.01 of the Revised Code, the 226  
transportation of persons or property, unless the transportation 227



is by a private investigation and security service;	228
(12) Sales of tangible personal property or services to	229
churches, to organizations exempt from taxation under section	230
501(c) (3) of the Internal Revenue Code of 1986, and to any other	231
nonprofit organizations operated exclusively for charitable	232
purposes in this state, no part of the net income of which	233
inures to the benefit of any private shareholder or individual,	234
and no substantial part of the activities of which consists of	235
carrying on propaganda or otherwise attempting to influence	236
legislation; sales to offices administering one or more homes	237
for the aged or one or more hospital facilities exempt under	238
section 140.08 of the Revised Code; and sales to organizations	239
described in division (D) of section 5709.12 of the Revised	240
Code.	241
"Charitable purposes" means the relief of poverty; the	242
improvement of health through the alleviation of illness,	243
disease, or injury; the operation of an organization exclusively	244
for the provision of professional, laundry, printing, and	245
purchasing services to hospitals or charitable institutions; the	246
operation of a home for the aged, as defined in section 5701.13	247
of the Revised Code; the operation of a radio or television	248
broadcasting station that is licensed by the federal	249
communications commission as a noncommercial educational radio	250
or television station; the operation of a nonprofit animal	251
adoption service or a county humane society; the promotion of	252
education by an institution of learning that maintains a faculty	253
of qualified instructors, teaches regular continuous courses of	254
study, and confers a recognized diploma upon completion of a	255
specific curriculum; the operation of a parent-teacher	256
association, booster group, or similar organization primarily	257
engaged in the promotion and support of the curricular or	258

extracurricular activities of a primary or secondary school; the 259  
operation of a community or area center in which presentations 260  
in music, dramatics, the arts, and related fields are made in 261  
order to foster public interest and education therein; the 262  
production of performances in music, dramatics, and the arts; or 263  
the promotion of education by an organization engaged in 264  
carrying on research in, or the dissemination of, scientific and 265  
technological knowledge and information primarily for the 266  
public. 267

Nothing in this division shall be deemed to exempt sales 268  
to any organization for use in the operation or carrying on of a 269  
trade or business, or sales to a home for the aged for use in 270  
the operation of independent living facilities as defined in 271  
division (A) of section 5709.12 of the Revised Code. 272

(13) Building and construction materials and services sold 273  
to construction contractors for incorporation into a structure 274  
or improvement to real property under a construction contract 275  
with this state or a political subdivision of this state, or 276  
with the United States government or any of its agencies; 277  
building and construction materials and services sold to 278  
construction contractors for incorporation into a structure or 279  
improvement to real property that are accepted for ownership by 280  
this state or any of its political subdivisions, or by the 281  
United States government or any of its agencies at the time of 282  
completion of the structures or improvements; building and 283  
construction materials sold to construction contractors for 284  
incorporation into a horticulture structure or livestock 285  
structure for a person engaged in the business of horticulture 286  
or producing livestock; building materials and services sold to 287  
a construction contractor for incorporation into a house of 288  
public worship or religious education, or a building used 289

exclusively for charitable purposes under a construction 290  
contract with an organization whose purpose is as described in 291  
division (B) (12) of this section; building materials and 292  
services sold to a construction contractor for incorporation 293  
into a building under a construction contract with an 294  
organization exempt from taxation under section 501(c) (3) of the 295  
Internal Revenue Code of 1986 when the building is to be used 296  
exclusively for the organization's exempt purposes; building and 297  
construction materials sold for incorporation into the original 298  
construction of a sports facility under section 307.696 of the 299  
Revised Code; building and construction materials and services 300  
sold to a construction contractor for incorporation into real 301  
property outside this state if such materials and services, when 302  
sold to a construction contractor in the state in which the real 303  
property is located for incorporation into real property in that 304  
state, would be exempt from a tax on sales levied by that state; 305  
building and construction materials for incorporation into a 306  
transportation facility pursuant to a public-private agreement 307  
entered into under sections 5501.70 to 5501.83 of the Revised 308  
Code; and, until one calendar year after the construction of a 309  
convention center that qualifies for property tax exemption 310  
under section 5709.084 of the Revised Code is completed, 311  
building and construction materials and services sold to a 312  
construction contractor for incorporation into the real property 313  
comprising that convention center; 314

(14) Sales of ships or vessels or rail rolling stock used 315  
or to be used principally in interstate or foreign commerce, and 316  
repairs, alterations, fuel, and lubricants for such ships or 317  
vessels or rail rolling stock; 318

(15) Sales to persons primarily engaged in any of the 319  
activities mentioned in division (B) (42) (a), (g), or (h) of this 320

section, to persons engaged in making retail sales, or to 321  
persons who purchase for sale from a manufacturer tangible 322  
personal property that was produced by the manufacturer in 323  
accordance with specific designs provided by the purchaser, of 324  
packages, including material, labels, and parts for packages, 325  
and of machinery, equipment, and material for use primarily in 326  
packaging tangible personal property produced for sale, 327  
including any machinery, equipment, and supplies used to make 328  
labels or packages, to prepare packages or products for 329  
labeling, or to label packages or products, by or on the order 330  
of the person doing the packaging, or sold at retail. "Packages" 331  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 332  
bindings, wrappings, and other similar devices and containers, 333  
but does not include motor vehicles or bulk tanks, trailers, or 334  
similar devices attached to motor vehicles. "Packaging" means 335  
placing in a package. Division (B) (15) of this section does not 336  
apply to persons engaged in highway transportation for hire. 337

(16) Sales of food to persons using supplemental nutrition 338  
assistance program benefits to purchase the food. As used in 339  
this division, "food" has the same meaning as in 7 U.S.C. 2012 340  
and federal regulations adopted pursuant to the Food and 341  
Nutrition Act of 2008. 342

(17) Sales to persons engaged in farming, agriculture, 343  
horticulture, or floriculture, of tangible personal property for 344  
use or consumption primarily in the production by farming, 345  
agriculture, horticulture, or floriculture of other tangible 346  
personal property for use or consumption primarily in the 347  
production of tangible personal property for sale by farming, 348  
agriculture, horticulture, or floriculture; or material and 349  
parts for incorporation into any such tangible personal property 350  
for use or consumption in production; and of tangible personal 351

property for such use or consumption in the conditioning or 352  
holding of products produced by and for such use, consumption, 353  
or sale by persons engaged in farming, agriculture, 354  
horticulture, or floriculture, except where such property is 355  
incorporated into real property; 356

(18) Sales of drugs for a human being that may be 357  
dispensed only pursuant to a prescription; insulin as recognized 358  
in the official United States pharmacopoeia; urine and blood 359  
testing materials when used by diabetics or persons with 360  
hypoglycemia to test for glucose or acetone; hypodermic syringes 361  
and needles when used by diabetics for insulin injections; 362  
epoetin alfa when purchased for use in the treatment of persons 363  
with medical disease; hospital beds when purchased by hospitals, 364  
nursing homes, or other medical facilities; and medical oxygen 365  
and medical oxygen-dispensing equipment when purchased by 366  
hospitals, nursing homes, or other medical facilities; 367

(19) Sales of prosthetic devices, durable medical 368  
equipment for home use, or mobility enhancing equipment, when 369  
made pursuant to a prescription and when such devices or 370  
equipment are for use by a human being. 371

(20) Sales of emergency and fire protection vehicles and 372  
equipment to nonprofit organizations for use solely in providing 373  
fire protection and emergency services, including trauma care 374  
and emergency medical services, for political subdivisions of 375  
the state; 376

(21) Sales of tangible personal property manufactured in 377  
this state, if sold by the manufacturer in this state to a 378  
retailer for use in the retail business of the retailer outside 379  
of this state and if possession is taken from the manufacturer 380  
by the purchaser within this state for the sole purpose of 381

immediately removing the same from this state in a vehicle owned	382
by the purchaser;	383
(22) Sales of services provided by the state or any of its	384
political subdivisions, agencies, instrumentalities,	385
institutions, or authorities, or by governmental entities of the	386
state or any of its political subdivisions, agencies,	387
instrumentalities, institutions, or authorities;	388
(23) Sales of motor vehicles to nonresidents of this state	389
under the circumstances described in division (B) of section	390
5739.029 of the Revised Code;	391
(24) Sales to persons engaged in the preparation of eggs	392
for sale of tangible personal property used or consumed directly	393
in such preparation, including such tangible personal property	394
used for cleaning, sanitizing, preserving, grading, sorting, and	395
classifying by size; packages, including material and parts for	396
packages, and machinery, equipment, and material for use in	397
packaging eggs for sale; and handling and transportation	398
equipment and parts therefor, except motor vehicles licensed to	399
operate on public highways, used in intraplant or interplant	400
transfers or shipment of eggs in the process of preparation for	401
sale, when the plant or plants within or between which such	402
transfers or shipments occur are operated by the same person.	403
"Packages" includes containers, cases, baskets, flats, fillers,	404
filler flats, cartons, closure materials, labels, and labeling	405
materials, and "packaging" means placing therein.	406
(25) (a) Sales of water to a consumer for residential use;	407
(b) Sales of water by a nonprofit corporation engaged	408
exclusively in the treatment, distribution, and sale of water to	409
consumers, if such water is delivered to consumers through pipes	410

or tubing.	411
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	412 413
(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:	414 415 416 417
(a) To prepare food for human consumption for sale;	418
(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;	419 420 421 422
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	423 424
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	425 426
(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;	427 428 429 430
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	431 432 433
(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;	434 435 436
(32) The sale, lease, repair, and maintenance of, parts	437

for, or items attached to or incorporated in, motor vehicles 438  
that are primarily used for transporting tangible personal 439  
property belonging to others by a person engaged in highway 440  
transportation for hire, except for packages and packaging used 441  
for the transportation of tangible personal property; 442

(33) Sales to the state headquarters of any veterans' 443  
organization in this state that is either incorporated and 444  
issued a charter by the congress of the United States or is 445  
recognized by the United States veterans administration, for use 446  
by the headquarters; 447

(34) Sales to a telecommunications service vendor, mobile 448  
telecommunications service vendor, or satellite broadcasting 449  
service vendor of tangible personal property and services used 450  
directly and primarily in transmitting, receiving, switching, or 451  
recording any interactive, one- or two-way electromagnetic 452  
communications, including voice, image, data, and information, 453  
through the use of any medium, including, but not limited to, 454  
poles, wires, cables, switching equipment, computers, and record 455  
storage devices and media, and component parts for the tangible 456  
personal property. The exemption provided in this division shall 457  
be in lieu of all other exemptions under division (B) (42) (a) or 458  
(n) of this section to which the vendor may otherwise be 459  
entitled, based upon the use of the thing purchased in providing 460  
the telecommunications, mobile telecommunications, or satellite 461  
broadcasting service. 462

(35) (a) Sales where the purpose of the consumer is to use 463  
or consume the things transferred in making retail sales and 464  
consisting of newspaper inserts, catalogues, coupons, flyers, 465  
gift certificates, or other advertising material that prices and 466  
describes tangible personal property offered for retail sale. 467



(b) Sales to direct marketing vendors of preliminary 468  
materials such as photographs, artwork, and typesetting that 469  
will be used in printing advertising material; and of printed 470  
matter that offers free merchandise or chances to win sweepstake 471  
prizes and that is mailed to potential customers with 472  
advertising material described in division (B) (35) (a) of this 473  
section; 474

(c) Sales of equipment such as telephones, computers, 475  
facsimile machines, and similar tangible personal property 476  
primarily used to accept orders for direct marketing retail 477  
sales. 478

(d) Sales of automatic food vending machines that preserve 479  
food with a shelf life of forty-five days or less by 480  
refrigeration and dispense it to the consumer. 481

For purposes of division (B) (35) of this section, "direct 482  
marketing" means the method of selling where consumers order 483  
tangible personal property by United States mail, delivery 484  
service, or telecommunication and the vendor delivers or ships 485  
the tangible personal property sold to the consumer from a 486  
warehouse, catalogue distribution center, or similar fulfillment 487  
facility by means of the United States mail, delivery service, 488  
or common carrier. 489

(36) Sales to a person engaged in the business of 490  
horticulture or producing livestock of materials to be 491  
incorporated into a horticulture structure or livestock 492  
structure; 493

(37) Sales of personal computers, computer monitors, 494  
computer keyboards, modems, and other peripheral computer 495  
equipment to an individual who is licensed or certified to teach 496

in an elementary or a secondary school in this state for use by	497
that individual in preparation for teaching elementary or	498
secondary school students;	499
(38) Sales to a professional racing team of any of the	500
following:	501
(a) Motor racing vehicles;	502
(b) Repair services for motor racing vehicles;	503
(c) Items of property that are attached to or incorporated	504
in motor racing vehicles, including engines, chassis, and all	505
other components of the vehicles, and all spare, replacement,	506
and rebuilt parts or components of the vehicles; except not	507
including tires, consumable fluids, paint, and accessories	508
consisting of instrumentation sensors and related items added to	509
the vehicle to collect and transmit data by means of telemetry	510
and other forms of communication.	511
(39) Sales of used manufactured homes and used mobile	512
homes, as defined in section 5739.0210 of the Revised Code, made	513
on or after January 1, 2000;	514
(40) Sales of tangible personal property and services to a	515
provider of electricity used or consumed directly and primarily	516
in generating, transmitting, or distributing electricity for use	517
by others, including property that is or is to be incorporated	518
into and will become a part of the consumer's production,	519
transmission, or distribution system and that retains its	520
classification as tangible personal property after	521
incorporation; fuel or power used in the production,	522
transmission, or distribution of electricity; energy conversion	523
equipment as defined in section 5727.01 of the Revised Code; and	524
tangible personal property and services used in the repair and	525

maintenance of the production, transmission, or distribution 526  
system, including only those motor vehicles as are specially 527  
designed and equipped for such use. The exemption provided in 528  
this division shall be in lieu of all other exemptions in 529  
division (B) (42) (a) or (n) of this section to which a provider 530  
of electricity may otherwise be entitled based on the use of the 531  
tangible personal property or service purchased in generating, 532  
transmitting, or distributing electricity. 533

(41) Sales to a person providing services under division 534  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 535  
personal property and services used directly and primarily in 536  
providing taxable services under that section. 537

(42) Sales where the purpose of the purchaser is to do any 538  
of the following: 539

(a) To incorporate the thing transferred as a material or 540  
a part into tangible personal property to be produced for sale 541  
by manufacturing, assembling, processing, or refining; or to use 542  
or consume the thing transferred directly in producing tangible 543  
personal property for sale by mining, including, without 544  
limitation, the extraction from the earth of all substances that 545  
are classed geologically as minerals, ~~production of crude oil-~~ 546  
~~and natural gas,~~ or directly in the rendition of a public 547  
utility service, except that the sales tax levied by this 548  
section shall be collected upon all meals, drinks, and food for 549  
human consumption sold when transporting persons. ~~Persons-~~ 550  
~~engaged in rendering services in the exploration for, and-~~ 551  
~~production of, crude oil and natural gas for others are deemed-~~ 552  
~~engaged directly in the exploration for, and production of,~~ 553  
~~crude oil and natural gas.~~ This paragraph does not exempt from 554  
"retail sale" or "sales at retail" the sale of tangible personal 555

property that is to be incorporated into a structure or	556
improvement to real property.	557
(b) To hold the thing transferred as security for the	558
performance of an obligation of the vendor;	559
(c) To resell, hold, use, or consume the thing transferred	560
as evidence of a contract of insurance;	561
(d) To use or consume the thing directly in commercial	562
fishing;	563
(e) To incorporate the thing transferred as a material or	564
a part into, or to use or consume the thing transferred directly	565
in the production of, magazines distributed as controlled	566
circulation publications;	567
(f) To use or consume the thing transferred in the	568
production and preparation in suitable condition for market and	569
sale of printed, imprinted, overprinted, lithographic,	570
multilithic, blueprinted, photostatic, or other productions or	571
reproductions of written or graphic matter;	572
(g) To use the thing transferred, as described in section	573
5739.011 of the Revised Code, primarily in a manufacturing	574
operation to produce tangible personal property for sale;	575
(h) To use the benefit of a warranty, maintenance or	576
service contract, or similar agreement, as described in division	577
(B) (7) of section 5739.01 of the Revised Code, to repair or	578
maintain tangible personal property, if all of the property that	579
is the subject of the warranty, contract, or agreement would not	580
be subject to the tax imposed by this section;	581
(i) To use the thing transferred as qualified research and	582
development equipment;	583

(j) To use or consume the thing transferred primarily in 584  
storing, transporting, mailing, or otherwise handling purchased 585  
sales inventory in a warehouse, distribution center, or similar 586  
facility when the inventory is primarily distributed outside 587  
this state to retail stores of the person who owns or controls 588  
the warehouse, distribution center, or similar facility, to 589  
retail stores of an affiliated group of which that person is a 590  
member, or by means of direct marketing. This division does not 591  
apply to motor vehicles registered for operation on the public 592  
highways. As used in this division, "affiliated group" has the 593  
same meaning as in division (B) (3) (e) of section 5739.01 of the 594  
Revised Code and "direct marketing" has the same meaning as in 595  
division (B) (35) of this section. 596

(k) To use or consume the thing transferred to fulfill a 597  
contractual obligation incurred by a warrantor pursuant to a 598  
warranty provided as a part of the price of the tangible 599  
personal property sold or by a vendor of a warranty, maintenance 600  
or service contract, or similar agreement the provision of which 601  
is defined as a sale under division (B) (7) of section 5739.01 of 602  
the Revised Code; 603

(l) To use or consume the thing transferred in the 604  
production of a newspaper for distribution to the public; 605

(m) To use tangible personal property to perform a service 606  
listed in division (B) (3) of section 5739.01 of the Revised 607  
Code, if the property is or is to be permanently transferred to 608  
the consumer of the service as an integral part of the 609  
performance of the service; 610

(n) To use or consume the thing transferred primarily in 611  
producing tangible personal property for sale by farming, 612  
agriculture, horticulture, or floriculture. Persons engaged in 613

rendering farming, agriculture, horticulture, or floriculture 614  
services for others are deemed engaged primarily in farming, 615  
agriculture, horticulture, or floriculture. This paragraph does 616  
not exempt from "retail sale" or "sales at retail" the sale of 617  
tangible personal property that is to be incorporated into a 618  
structure or improvement to real property. 619

(o) To use or consume the thing transferred in acquiring, 620  
formatting, editing, storing, and disseminating data or 621  
information by electronic publishing; 622

(p) To provide the thing transferred to the owner or 623  
lessee of a motor vehicle that is being repaired or serviced, if 624  
the thing transferred is a rented motor vehicle and the 625  
purchaser is reimbursed for the cost of the rented motor vehicle 626  
by a manufacturer, warrantor, or provider of a maintenance, 627  
service, or other similar contract or agreement, with respect to 628  
the motor vehicle that is being repaired or serviced. 629

(q) To use or consume the thing transferred in a 630  
production operation to produce crude oil and natural gas for 631  
sale. Persons engaged in rendering production operation services 632  
for others are deemed engaged in a production operation. 633  
Division (B) (42) (q) of this section does not exempt from "retail 634  
sale" or "sales at retail" the sale of tangible personal 635  
property that is to be incorporated into a structure or 636  
improvement to real property. 637

As used in division (B) (42) (q) of this section, 638  
"production operation" has the same meaning as in section 639  
1509.01 of the Revised Code, but does not include any of the 640  
following operations, activities, or equipment: 641

(i) Operations, activities, or equipment used in or 642

associated with the exploration and production of any mineral 643  
resource regulated under Chapter 1509. of the Revised Code other 644  
than oil or gas; 645

(ii) Storing, holding, or blending solutions or chemicals 646  
used in well stimulation as defined in section 1509.01 of the 647  
Revised Code; 648

(iii) Preparing, installing, or reclaiming foundations for 649  
drilling or pumping equipment or well stimulation material 650  
tanks; 651

(iv) Transporting, delivering, or removing equipment to or 652  
from the well site or storing such equipment before its use at 653  
the well site; 654

(v) Gathering operations occurring off the well site, 655  
including gathering pipelines transporting hydrocarbon gas or 656  
liquids away from a crude oil or natural gas production 657  
facility. 658

As used in division (B) (42) of this section, "thing" 659  
includes all transactions included in divisions (B) (3) (a), (b), 660  
and (e) of section 5739.01 of the Revised Code. 661

(43) Sales conducted through a coin operated device that 662  
activates vacuum equipment or equipment that dispenses water, 663  
whether or not in combination with soap or other cleaning agents 664  
or wax, to the consumer for the consumer's use on the premises 665  
in washing, cleaning, or waxing a motor vehicle, provided no 666  
other personal property or personal service is provided as part 667  
of the transaction. 668

(44) Sales of replacement and modification parts for 669  
engines, airframes, instruments, and interiors in, and paint 670  
for, aircraft used primarily in a fractional aircraft ownership 671

program, and sales of services for the repair, modification, and 672  
maintenance of such aircraft, and machinery, equipment, and 673  
supplies primarily used to provide those services. 674

(45) Sales of telecommunications service that is used 675  
directly and primarily to perform the functions of a call 676  
center. As used in this division, "call center" means any 677  
physical location where telephone calls are placed or received 678  
in high volume for the purpose of making sales, marketing, 679  
customer service, technical support, or other specialized 680  
business activity, and that employs at least fifty individuals 681  
that engage in call center activities on a full-time basis, or 682  
sufficient individuals to fill fifty full-time equivalent 683  
positions. 684

(46) Sales by a telecommunications service vendor of 900 685  
service to a subscriber. This division does not apply to 686  
information services, as defined in division (FF) of section 687  
5739.01 of the Revised Code. 688

(47) Sales of value-added non-voice data service. This 689  
division does not apply to any similar service that is not 690  
otherwise a telecommunications service. 691

(48) (a) Sales of machinery, equipment, and software to a 692  
qualified direct selling entity for use in a warehouse or 693  
distribution center primarily for storing, transporting, or 694  
otherwise handling inventory that is held for sale to 695  
independent salespersons who operate as direct sellers and that 696  
is held primarily for distribution outside this state; 697

(b) As used in division (B) (48) (a) of this section: 698

(i) "Direct seller" means a person selling consumer 699  
products to individuals for personal or household use and not 700



from a fixed retail location, including selling such product at 701  
in-home product demonstrations, parties, and other one-on-one 702  
selling. 703

(ii) "Qualified direct selling entity" means an entity 704  
selling to direct sellers at the time the entity enters into a 705  
tax credit agreement with the tax credit authority pursuant to 706  
section 122.17 of the Revised Code, provided that the agreement 707  
was entered into on or after January 1, 2007. Neither 708  
contingencies relevant to the granting of, nor later 709  
developments with respect to, the tax credit shall impair the 710  
status of the qualified direct selling entity under division (B) 711  
(48) of this section after execution of the tax credit agreement 712  
by the tax credit authority. 713

(c) Division (B) (48) of this section is limited to 714  
machinery, equipment, and software first stored, used, or 715  
consumed in this state within the period commencing June 24, 716  
2008, and ending on the date that is five years after that date. 717

(49) Sales of materials, parts, equipment, or engines used 718  
in the repair or maintenance of aircraft or avionics systems of 719  
such aircraft, and sales of repair, remodeling, replacement, or 720  
maintenance services in this state performed on aircraft or on 721  
an aircraft's avionics, engine, or component materials or parts. 722  
As used in division (B) (49) of this section, "aircraft" means 723  
aircraft of more than six thousand pounds maximum certified 724  
takeoff weight or used exclusively in general aviation. 725

(50) Sales of full flight simulators that are used for 726  
pilot or flight-crew training, sales of repair or replacement 727  
parts or components, and sales of repair or maintenance services 728  
for such full flight simulators. "Full flight simulator" means a 729  
replica of a specific type, or make, model, and series of 730

aircraft cockpit. It includes the assemblage of equipment and 731  
computer programs necessary to represent aircraft operations in 732  
ground and flight conditions, a visual system providing an out- 733  
of-the-cockpit view, and a system that provides cues at least 734  
equivalent to those of a three-degree-of-freedom motion system, 735  
and has the full range of capabilities of the systems installed 736  
in the device as described in appendices A and B of part 60 of 737  
chapter 1 of title 14 of the Code of Federal Regulations. 738

(51) Any transfer or lease of tangible personal property 739  
between the state and JobsOhio in accordance with section 740  
4313.02 of the Revised Code. 741

(52) (a) Sales to a qualifying corporation. 742

(b) As used in division (B) (52) of this section: 743

(i) "Qualifying corporation" means a nonprofit corporation 744  
organized in this state that leases from an eligible county 745  
land, buildings, structures, fixtures, and improvements to the 746  
land that are part of or used in a public recreational facility 747  
used by a major league professional athletic team or a class A 748  
to class AAA minor league affiliate of a major league 749  
professional athletic team for a significant portion of the 750  
team's home schedule, provided the following apply: 751

(I) The facility is leased from the eligible county 752  
pursuant to a lease that requires substantially all of the 753  
revenue from the operation of the business or activity conducted 754  
by the nonprofit corporation at the facility in excess of 755  
operating costs, capital expenditures, and reserves to be paid 756  
to the eligible county at least once per calendar year. 757

(II) Upon dissolution and liquidation of the nonprofit 758  
corporation, all of its net assets are distributable to the 759

board of commissioners of the eligible county from which the 760  
corporation leases the facility. 761

(ii) "Eligible county" has the same meaning as in section 762  
307.695 of the Revised Code. 763

(53) Sales to or by a cable service provider, video 764  
service provider, or radio or television broadcast station 765  
regulated by the federal government of cable service or 766  
programming, video service or programming, audio service or 767  
programming, or electronically transferred digital audiovisual 768  
or audio work. As used in division (B) (53) of this section, 769  
"cable service" and "cable service provider" have the same 770  
meanings as in section 1332.01 of the Revised Code, and "video 771  
service," "video service provider," and "video programming" have 772  
the same meanings as in section 1332.21 of the Revised Code. 773

(54) Sales of investment metal bullion and investment 774  
coins. "Investment metal bullion" means any bullion described in 775  
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 776  
whether that bullion is in the physical possession of a trustee. 777  
"Investment coin" means any coin composed primarily of gold, 778  
silver, platinum, or palladium. 779

(C) For the purpose of the proper administration of this 780  
chapter, and to prevent the evasion of the tax, it is presumed 781  
that all sales made in this state are subject to the tax until 782  
the contrary is established. 783

(D) The levy of this tax on retail sales of recreation and 784  
sports club service shall not prevent a municipal corporation 785  
from levying any tax on recreation and sports club dues or on 786  
any income generated by recreation and sports club dues. 787

(E) The tax collected by the vendor from the consumer 788

under this chapter is not part of the price, but is a tax 789  
collection for the benefit of the state, and of counties levying 790  
an additional sales tax pursuant to section 5739.021 or 5739.026 791  
of the Revised Code and of transit authorities levying an 792  
additional sales tax pursuant to section 5739.023 of the Revised 793  
Code. Except for the discount authorized under section 5739.12 794  
of the Revised Code and the effects of any rounding pursuant to 795  
section 5703.055 of the Revised Code, no person other than the 796  
state or such a county or transit authority shall derive any 797  
benefit from the collection or payment of the tax levied by this 798  
section or section 5739.021, 5739.023, or 5739.026 of the 799  
Revised Code. 800

**Section 2.** That existing sections 5709.20 and 5739.02 of 801  
the Revised Code are hereby repealed. 802

**Section 3.** The amendment by this act of sections 5709.20 803  
and 5739.02 of the Revised Code is a remedial measure intended 804  
to clarify existing law. The General Assembly intends those 805  
amendments to be applied retrospectively to all cases pending on 806  
or transactions occurring after the effective date of section 807  
1509.01 of the Revised Code as amended by Sub. S.B. 165 of the 808  
128th General Assembly. 809

**Section 4.** Section 5739.02 of the Revised Code is 810  
presented in this act as a composite of the section as amended 811  
by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of 812  
the 131st General Assembly. The General Assembly, applying the 813  
principle stated in division (B) of section 1.52 of the Revised 814  
Code that amendments are to be harmonized if reasonably capable 815  
of simultaneous operation, finds that the composite is the 816  
resulting version of the section in effect prior to the 817  
effective date of the section as presented in this act. 818