

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 780

Representatives Butler, Strahorn

Cosponsor: Representative Henne

A BILL

To amend sections 5739.01, 5739.02, and 5751.01 and 1
to enact section 5709.122 of the Revised Code to 2
provide that a nonprofit hospital is no longer 3
exempt from property, sales, and commercial 4
activity taxes if the hospital takes certain 5
actions to reduce or cease operations at one of 6
the hospital's facilities. 7

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

Section 1. That sections 5739.01, 5739.02, and 5751.01 be 8
amended and section 5709.122 of the Revised Code be enacted to 9
read as follows: 10

Sec. 5709.122. (A) Any real property owned by an 11
ineligible nonprofit hospital agency shall not be considered to 12
be used exclusively for charitable purposes for the purposes of 13
section 5709.12 of the Revised Code, and may not be exempted 14
from taxation, for a period of twenty tax years beginning with 15
the tax year in which the nonprofit hospital agency takes either 16
of the actions described in division (B) (1) (a) or (b) of this 17
section. 18

(B) As used in this section: 19

(1) "Ineligible nonprofit hospital agency" means a 20
nonprofit hospital agency, as defined in section 140.01 of the 21
Revised Code, that takes or has taken either of the following 22
actions on or after January 1, 2018: 23

(a) The agency demolishes or causes to be demolished an 24
existing hospital without first complying with the following 25
procedures: 26

(i) The agency shall offer the property for sale to the 27
municipal corporation in which the property is located or, if 28
the municipal corporation declines the offer or if the hospital 29
is not located in a municipal corporation, to the county in 30
which the hospital is located. The offer of sale shall specify 31
that no restrictions will be set forth in the deed of sale 32
prohibiting the continued operation of the property as a 33
hospital, and shall specify a sale price not exceeding the true 34
value in money of the land as listed for taxation excluding the 35
value of any buildings, structures, or improvements on the land, 36
except that if a good faith estimate of the cost of demolition 37
exceeds the true value of the land, the offer shall state a sale 38
price of one dollar. 39

Within thirty days after receiving such an offer, the 40
municipal corporation or county shall accept or decline the 41
offer. If a municipal corporation or county does not respond 42
within thirty days after receiving the offer, the offer shall be 43
considered to have been declined. Within thirty days after an 44
offer is declined, the legislative authority of a municipal 45
corporation or, if the property is not located in a municipal 46
corporation, of a county may adopt a resolution approving or 47
disapproving of the demolition. When determining whether to 48

approve or disapprove of the demolition, the legislative 49
authority shall consider, among other factors at its discretion, 50
the capacity of any new inpatient, emergency room, and other 51
facilities that could replace the existing hospital. 52

(ii) If an offer of sale under division (B) (1) (a) (i) of 53
this section is declined by a municipal corporation, a county, 54
or both, as applicable, and if the legislative authority of the 55
municipal corporation or county does not adopt a resolution 56
approving of the demolition, the agency shall offer the property 57
for sale at a public auction. 58

The agency shall cause notice of the auction to be 59
published three times, once during each of the three months 60
beginning after the month in which the legislative authority 61
either adopted a resolution disapproving of the demolition or 62
failed to adopt a resolution approving of the demolition. The 63
notice shall be published in one or more hospital administration 64
journals of national circulation. The agency shall pay the cost 65
of publication. 66

The notice shall state the date of the auction and the 67
obligations required of the winning bidder under this division. 68
The auction shall occur at least six, but not more than eight, 69
months after the legislative authority either adopts a 70
resolution disapproving of the demolition or fails to adopt a 71
resolution approving of the demolition. 72

The minimum bid at the auction shall equal at least fifty 73
per cent of the amount for which the property was offered for 74
sale under division (B) (1) (a) (i) of this section. To qualify to 75
place a bid, a bidder shall affirm that the bidder will operate 76
the existing hospital at a capacity that is equal to at least 77
ninety per cent of the hospital's historical capacity by a date 78

specified in the contract for sale. Such date shall be not more 79
than five years from the date the contract is entered into. 80

The contract shall state that the municipal corporation or 81
county is a third-party beneficiary of the contract and that the 82
winning bidder shall make payments to be held in escrow by the 83
municipal corporation or county. The amount of the payments 84
shall equal the amount of current taxes, as defined by section 85
323.01 of the Revised Code, that would be charged and payable on 86
all property located in the county and owned by the winning 87
bidder and, if the winning bidder is a related member of the 88
agency, on all property in the county owned by the agency, if 89
that property were not exempted from taxation. Such payments 90
shall be made on or before each of the days property taxes are 91
payable without penalty under section 323.12 of the Revised Code 92
and for each year beginning with the year in which the contract 93
for sale is entered into and ending with the year in which the 94
winning bidder begins operating the hospital at ninety per cent 95
of its historical capacity. A municipal corporation or county 96
may accept any form of surety for the payment of amounts to be 97
held in escrow. 98

If the winning bidder begins operating the hospital at or 99
above ninety per cent of its historical capacity before the 100
deadline set in the contract, the municipal corporation or 101
county that holds the payments in escrow shall pay the escrowed 102
money, including any interest that accrued to that money while 103
in escrow, to the winning bidder. If the winning bidder fails to 104
begin operating the hospital at or above ninety per cent of its 105
historical capacity on or before that deadline, the municipal 106
corporation or county shall pay the escrowed money and accrued 107
interest, and any escrowed money remitted thereafter, to the 108
county treasurer, who shall credit the money to the undivided 109

general tax fund in the county treasury. Within thirty days 110
after the money is credited to the fund, the county auditor 111
shall distribute the amount so credited to that fund among the 112
various taxing units in the county as if the amount had been 113
levied, collected, and settled as real property taxes. The 114
amount so distributed to each taxing unit shall not be reduced 115
by the amounts computed for the district under section 5703.80 116
of the Revised Code. 117

The terms of the contract shall run with the land and 118
shall apply to all successors or assigns of the winning bidder 119
and the agency. 120

(b) The agency alters or causes to be altered a building, 121
structure, improvement, or fixture constituting any part of an 122
existing hospital in such a way or to such an extent as to 123
render the hospital incapable of being operated as a hospital at 124
the same capacity as the hospital was being operated before the 125
alteration. 126

"Ineligible nonprofit hospital agency" includes any 127
nonprofit hospital agency that succeeds to another ineligible 128
nonprofit hospital agency's interest in property demolished or 129
altered on or after January 1, 2018, as described in division 130
(B)(1)(a) or (b) of this section, or that transferred to another 131
person its interest in a hospital within five years before the 132
hospital is demolished or altered as described in those 133
divisions. 134

(2) "Historical capacity" means the average number of 135
patients that the ineligible nonprofit hospital agency served in 136
the inpatient and emergency departments of the hospital over a 137
five-year measurement period. The last day of the measurement 138
period shall be the later of the following: 139

(a) The first day on which the number of patients that 140
could be served by those departments is fifty per cent or less 141
of the number of patients that could be served by those 142
departments on the same date five years earlier. 143

(b) The date that is ten years before the date on which 144
the offer for sale of the hospital is made under division (B) (1) 145
(a) (i) of this section. 146

The measurement period shall include the five years 147
immediately preceding that end date. 148

(3) "Related member" has the same meaning as in section 149
5733.042 of the Revised Code. 150

Sec. 5739.01. As used in this chapter: 151

(A) "Person" includes individuals, receivers, assignees, 152
trustees in bankruptcy, estates, firms, partnerships, 153
associations, joint-stock companies, joint ventures, clubs, 154
societies, corporations, the state and its political 155
subdivisions, and combinations of individuals of any form. 156

(B) "Sale" and "selling" include all of the following 157
transactions for a consideration in any manner, whether 158
absolutely or conditionally, whether for a price or rental, in 159
money or by exchange, and by any means whatsoever: 160

(1) All transactions by which title or possession, or 161
both, of tangible personal property, is or is to be transferred, 162
or a license to use or consume tangible personal property is or 163
is to be granted; 164

(2) All transactions by which lodging by a hotel is or is 165
to be furnished to transient guests; 166

(3) All transactions by which: 167

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;	168 169 170 171
(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;	172 173 174 175 176 177 178
(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;	179 180
(d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;	181 182 183 184
(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with	185 186 187 188 189 190 191 192 193 194 195 196 197

stock, one corporation owns or controls another if it owns more	198
than fifty per cent of the other corporation's common stock with	199
voting rights.	200
(f) Telecommunications service, including prepaid calling	201
service, prepaid wireless calling service, or ancillary service,	202
is or is to be provided, but not including coin-operated	203
telephone service;	204
(g) Landscaping and lawn care service is or is to be	205
provided;	206
(h) Private investigation and security service is or is to	207
be provided;	208
(i) Information services or tangible personal property is	209
provided or ordered by means of a nine hundred telephone call;	210
(j) Building maintenance and janitorial service is or is	211
to be provided;	212
(k) Employment service is or is to be provided;	213
(l) Employment placement service is or is to be provided;	214
(m) Exterminating service is or is to be provided;	215
(n) Physical fitness facility service is or is to be	216
provided;	217
(o) Recreation and sports club service is or is to be	218
provided;	219
(p) On and after August 1, 2003, satellite broadcasting	220
service is or is to be provided;	221
(q) On and after August 1, 2003, personal care service is	222
or is to be provided to an individual. As used in this division,	223
"personal care service" includes skin care, the application of	224

cosmetics, manicuring, pedicuring, hair removal, tattooing, body 225
piercing, tanning, massage, and other similar services. 226

"Personal care service" does not include a service provided by 227
or on the order of a licensed physician or licensed 228
chiropractor, or the cutting, coloring, or styling of an 229
individual's hair. 230

(r) On and after August 1, 2003, the transportation of 231
persons by motor vehicle or aircraft is or is to be provided, 232
when the transportation is entirely within this state, except 233
for transportation provided by an ambulance service, by a 234
transit bus, as defined in section 5735.01 of the Revised Code, 235
and transportation provided by a citizen of the United States 236
holding a certificate of public convenience and necessity issued 237
under 49 U.S.C. 41102; 238

(s) On and after August 1, 2003, motor vehicle towing 239
service is or is to be provided. As used in this division, 240
"motor vehicle towing service" means the towing or conveyance of 241
a wrecked, disabled, or illegally parked motor vehicle. 242

(t) On and after August 1, 2003, snow removal service is 243
or is to be provided. As used in this division, "snow removal 244
service" means the removal of snow by any mechanized means, but 245
does not include the providing of such service by a person that 246
has less than five thousand dollars in sales of such service 247
during the calendar year. 248

(u) Electronic publishing service is or is to be provided 249
to a consumer for use in business, except that such transactions 250
occurring between members of an affiliated group, as defined in 251
division (B) (3) (e) of this section, are not sales. 252

(4) All transactions by which printed, imprinted, 253

overprinted, lithographic, multilithic, blueprinted, 254
photostatic, or other productions or reproductions of written or 255
graphic matter are or are to be furnished or transferred; 256

(5) The production or fabrication of tangible personal 257
property for a consideration for consumers who furnish either 258
directly or indirectly the materials used in the production of 259
fabrication work; and include the furnishing, preparing, or 260
serving for a consideration of any tangible personal property 261
consumed on the premises of the person furnishing, preparing, or 262
serving such tangible personal property. Except as provided in 263
section 5739.03 of the Revised Code, a construction contract 264
pursuant to which tangible personal property is or is to be 265
incorporated into a structure or improvement on and becoming a 266
part of real property is not a sale of such tangible personal 267
property. The construction contractor is the consumer of such 268
tangible personal property, provided that the sale and 269
installation of carpeting, the sale and installation of 270
agricultural land tile, the sale and erection or installation of 271
portable grain bins, or the provision of landscaping and lawn 272
care service and the transfer of property as part of such 273
service is never a construction contract. 274

As used in division (B) (5) of this section: 275

(a) "Agricultural land tile" means fired clay or concrete 276
tile, or flexible or rigid perforated plastic pipe or tubing, 277
incorporated or to be incorporated into a subsurface drainage 278
system appurtenant to land used or to be used primarily in 279
production by farming, agriculture, horticulture, or 280
floriculture. The term does not include such materials when they 281
are or are to be incorporated into a drainage system appurtenant 282
to a building or structure even if the building or structure is 283

used or to be used in such production.	284
(b) "Portable grain bin" means a structure that is used or	285
to be used by a person engaged in farming or agriculture to	286
shelter the person's grain and that is designed to be	287
disassembled without significant damage to its component parts.	288
(6) All transactions in which all of the shares of stock	289
of a closely held corporation are transferred, or an ownership	290
interest in a pass-through entity, as defined in section 5733.04	291
of the Revised Code, is transferred, if the corporation or pass-	292
through entity is not engaging in business and its entire assets	293
consist of boats, planes, motor vehicles, or other tangible	294
personal property operated primarily for the use and enjoyment	295
of the shareholders or owners;	296
(7) All transactions in which a warranty, maintenance or	297
service contract, or similar agreement by which the vendor of	298
the warranty, contract, or agreement agrees to repair or	299
maintain the tangible personal property of the consumer is or is	300
to be provided;	301
(8) The transfer of copyrighted motion picture films used	302
solely for advertising purposes, except that the transfer of	303
such films for exhibition purposes is not a sale;	304
(9) On and after August 1, 2003, all transactions by which	305
tangible personal property is or is to be stored, except such	306
property that the consumer of the storage holds for sale in the	307
regular course of business;	308
(10) All transactions in which "guaranteed auto	309
protection" is provided whereby a person promises to pay to the	310
consumer the difference between the amount the consumer receives	311
from motor vehicle insurance and the amount the consumer owes to	312

a person holding title to or a lien on the consumer's motor 313
vehicle in the event the consumer's motor vehicle suffers a 314
total loss under the terms of the motor vehicle insurance policy 315
or is stolen and not recovered, if the protection and its price 316
are included in the purchase or lease agreement; 317

(11) (a) Except as provided in division (B) (11) (b) of this 318
section, on and after October 1, 2009, all transactions by which 319
health care services are paid for, reimbursed, provided, 320
delivered, arranged for, or otherwise made available by a 321
medicaid health insuring corporation pursuant to the 322
corporation's contract with the state. 323

(b) If the centers for medicare and medicaid services of 324
the United States department of health and human services 325
determines that the taxation of transactions described in 326
division (B) (11) (a) of this section constitutes an impermissible 327
health care-related tax under the "Social Security Act," section 328
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 329
the medicaid director shall notify the tax commissioner of that 330
determination. Beginning with the first day of the month 331
following that notification, the transactions described in 332
division (B) (11) (a) of this section are not sales for the 333
purposes of this chapter or Chapter 5741. of the Revised Code. 334
The tax commissioner shall order that the collection of taxes 335
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 336
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 337
for transactions occurring on or after that date. 338

(12) All transactions by which a specified digital product 339
is provided for permanent use or less than permanent use, 340
regardless of whether continued payment is required. 341

Except as provided in this section, "sale" and "selling" 342

do not include transfers of interest in leased property where 343
the original lessee and the terms of the original lease 344
agreement remain unchanged, or professional, insurance, or 345
personal service transactions that involve the transfer of 346
tangible personal property as an inconsequential element, for 347
which no separate charges are made. 348

(C) "Vendor" means the person providing the service or by 349
whom the transfer effected or license given by a sale is or is 350
to be made or given and, for sales described in division (B)(3) 351
(i) of this section, the telecommunications service vendor that 352
provides the nine hundred telephone service; if two or more 353
persons are engaged in business at the same place of business 354
under a single trade name in which all collections on account of 355
sales by each are made, such persons shall constitute a single 356
vendor. 357

Physicians, dentists, hospitals, and veterinarians who are 358
engaged in selling tangible personal property as received from 359
others, such as eyeglasses, mouthwashes, dentifrices, or similar 360
articles, are vendors. Veterinarians who are engaged in 361
transferring to others for a consideration drugs, the dispensing 362
of which does not require an order of a licensed veterinarian or 363
physician under federal law, are vendors. 364

(D) (1) "Consumer" means the person for whom the service is 365
provided, to whom the transfer effected or license given by a 366
sale is or is to be made or given, to whom the service described 367
in division (B)(3)(f) or (i) of this section is charged, or to 368
whom the admission is granted. 369

(2) Physicians, dentists, hospitals, and blood banks 370
operated by nonprofit institutions and persons licensed to 371
practice veterinary medicine, surgery, and dentistry are 372

consumers of all tangible personal property and services 373
purchased by them in connection with the practice of medicine, 374
dentistry, the rendition of hospital or blood bank service, or 375
the practice of veterinary medicine, surgery, and dentistry. In 376
addition to being consumers of drugs administered by them or by 377
their assistants according to their direction, veterinarians 378
also are consumers of drugs that under federal law may be 379
dispensed only by or upon the order of a licensed veterinarian 380
or physician, when transferred by them to others for a 381
consideration to provide treatment to animals as directed by the 382
veterinarian. 383

(3) A person who performs a facility management, or 384
similar service contract for a contractee is a consumer of all 385
tangible personal property and services purchased for use in 386
connection with the performance of such contract, regardless of 387
whether title to any such property vests in the contractee. The 388
purchase of such property and services is not subject to the 389
exception for resale under division (E) of this section. 390

(4) (a) In the case of a person who purchases printed 391
matter for the purpose of distributing it or having it 392
distributed to the public or to a designated segment of the 393
public, free of charge, that person is the consumer of that 394
printed matter, and the purchase of that printed matter for that 395
purpose is a sale. 396

(b) In the case of a person who produces, rather than 397
purchases, printed matter for the purpose of distributing it or 398
having it distributed to the public or to a designated segment 399
of the public, free of charge, that person is the consumer of 400
all tangible personal property and services purchased for use or 401
consumption in the production of that printed matter. That 402

person is not entitled to claim exemption under division (B)(42) 403
(f) of section 5739.02 of the Revised Code for any material 404
incorporated into the printed matter or any equipment, supplies, 405
or services primarily used to produce the printed matter. 406

(c) The distribution of printed matter to the public or to 407
a designated segment of the public, free of charge, is not a 408
sale to the members of the public to whom the printed matter is 409
distributed or to any persons who purchase space in the printed 410
matter for advertising or other purposes. 411

(5) A person who makes sales of any of the services listed 412
in division (B)(3) of this section is the consumer of any 413
tangible personal property used in performing the service. The 414
purchase of that property is not subject to the resale exception 415
under division (E) of this section. 416

(6) A person who engages in highway transportation for 417
hire is the consumer of all packaging materials purchased by 418
that person and used in performing the service, except for 419
packaging materials sold by such person in a transaction 420
separate from the service. 421

(7) In the case of a transaction for health care services 422
under division (B)(11) of this section, a medicaid health 423
insuring corporation is the consumer of such services. The 424
purchase of such services by a medicaid health insuring 425
corporation is not subject to the exception for resale under 426
division (E) of this section or to the exemptions provided under 427
divisions (B)(12), (18), (19), and (22) of section 5739.02 of 428
the Revised Code. 429

(E) "Retail sale" and "sales at retail" include all sales, 430
except those in which the purpose of the consumer is to resell 431

the thing transferred or benefit of the service provided, by a 432
person engaging in business, in the form in which the same is, 433
or is to be, received by the person. 434

(F) "Business" includes any activity engaged in by any 435
person with the object of gain, benefit, or advantage, either 436
direct or indirect. "Business" does not include the activity of 437
a person in managing and investing the person's own funds. 438

(G) "Engaging in business" means commencing, conducting, 439
or continuing in business, and liquidating a business when the 440
liquidator thereof holds itself out to the public as conducting 441
such business. Making a casual sale is not engaging in business. 442

(H) (1) (a) "Price," except as provided in divisions (H) (2), 443
(3), and (4) of this section, means the total amount of 444
consideration, including cash, credit, property, and services, 445
for which tangible personal property or services are sold, 446
leased, or rented, valued in money, whether received in money or 447
otherwise, without any deduction for any of the following: 448

(i) The vendor's cost of the property sold; 449

(ii) The cost of materials used, labor or service costs, 450
interest, losses, all costs of transportation to the vendor, all 451
taxes imposed on the vendor, including the tax imposed under 452
Chapter 5751. of the Revised Code, and any other expense of the 453
vendor; 454

(iii) Charges by the vendor for any services necessary to 455
complete the sale; 456

(iv) On and after August 1, 2003, delivery charges. As 457
used in this division, "delivery charges" means charges by the 458
vendor for preparation and delivery to a location designated by 459
the consumer of tangible personal property or a service, 460

including transportation, shipping, postage, handling, crating, 461
and packing. 462

(v) Installation charges; 463

(vi) Credit for any trade-in. 464

(b) "Price" includes consideration received by the vendor 465
from a third party, if the vendor actually receives the 466
consideration from a party other than the consumer, and the 467
consideration is directly related to a price reduction or 468
discount on the sale; the vendor has an obligation to pass the 469
price reduction or discount through to the consumer; the amount 470
of the consideration attributable to the sale is fixed and 471
determinable by the vendor at the time of the sale of the item 472
to the consumer; and one of the following criteria is met: 473

(i) The consumer presents a coupon, certificate, or other 474
document to the vendor to claim a price reduction or discount 475
where the coupon, certificate, or document is authorized, 476
distributed, or granted by a third party with the understanding 477
that the third party will reimburse any vendor to whom the 478
coupon, certificate, or document is presented; 479

(ii) The consumer identifies the consumer's self to the 480
seller as a member of a group or organization entitled to a 481
price reduction or discount. A preferred customer card that is 482
available to any patron does not constitute membership in such a 483
group or organization. 484

(iii) The price reduction or discount is identified as a 485
third party price reduction or discount on the invoice received 486
by the consumer, or on a coupon, certificate, or other document 487
presented by the consumer. 488

(c) "Price" does not include any of the following: 489

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;	490 491 492
(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;	493 494 495 496
(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.	497 498 499 500 501 502
(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.	503 504 505 506 507
(v) The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation from a third party to cover all or part of the gift card value. For the purposes of this division, a gift card is not sold by a vendor or purchased by a consumer if it is distributed pursuant to an awards, loyalty, or promotional program. Past and present purchases of tangible personal property or services by the consumer shall not be treated as consideration exchanged for a gift card.	508 509 510 511 512 513 514 515 516 517 518

(2) In the case of a sale of any new motor vehicle by a 519
new motor vehicle dealer, as defined in section 4517.01 of the 520
Revised Code, in which another motor vehicle is accepted by the 521
dealer as part of the consideration received, "price" has the 522
same meaning as in division (H)(1) of this section, reduced by 523
the credit afforded the consumer by the dealer for the motor 524
vehicle received in trade. 525

(3) In the case of a sale of any watercraft or outboard 526
motor by a watercraft dealer licensed in accordance with section 527
1547.543 of the Revised Code, in which another watercraft, 528
watercraft and trailer, or outboard motor is accepted by the 529
dealer as part of the consideration received, "price" has the 530
same meaning as in division (H)(1) of this section, reduced by 531
the credit afforded the consumer by the dealer for the 532
watercraft, watercraft and trailer, or outboard motor received 533
in trade. As used in this division, "watercraft" includes an 534
outdrive unit attached to the watercraft. 535

(4) In the case of transactions for health care services 536
under division (B)(11) of this section, "price" means the amount 537
of managed care premiums received each month by a medicaid 538
health insuring corporation. 539

(I) "Receipts" means the total amount of the prices of the 540
sales of vendors, provided that the dollar value of gift cards 541
distributed pursuant to an awards, loyalty, or promotional 542
program, and cash discounts allowed and taken on sales at the 543
time they are consummated are not included, minus any amount 544
deducted as a bad debt pursuant to section 5739.121 of the 545
Revised Code. "Receipts" does not include the sale price of 546
property returned or services rejected by consumers when the 547
full sale price and tax are refunded either in cash or by 548

credit.	549
(J) "Place of business" means any location at which a person engages in business.	550 551
(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.	552 553 554 555 556 557
(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.	558 559 560 561 562 563 564 565 566 567 568
(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in division (G) of section 5739.09 of the Revised Code.	569 570 571 572 573 574 575
(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty	576 577

consecutive days. 578

(O) "Making retail sales" means the effecting of 579
transactions wherein one party is obligated to pay the price and 580
the other party is obligated to provide a service or to transfer 581
title to or possession of the item sold. "Making retail sales" 582
does not include the preliminary acts of promoting or soliciting 583
the retail sales, other than the distribution of printed matter 584
which displays or describes and prices the item offered for 585
sale, nor does it include delivery of a predetermined quantity 586
of tangible personal property or transportation of property or 587
personnel to or from a place where a service is performed. 588

(P) "Used directly in the rendition of a public utility 589
service" means that property that is to be incorporated into and 590
will become a part of the consumer's production, transmission, 591
transportation, or distribution system and that retains its 592
classification as tangible personal property after such 593
incorporation; fuel or power used in the production, 594
transmission, transportation, or distribution system; and 595
tangible personal property used in the repair and maintenance of 596
the production, transmission, transportation, or distribution 597
system, including only such motor vehicles as are specially 598
designed and equipped for such use. Tangible personal property 599
and services used primarily in providing highway transportation 600
for hire are not used directly in the rendition of a public 601
utility service. In this definition, "public utility" includes a 602
citizen of the United States holding, and required to hold, a 603
certificate of public convenience and necessity issued under 49 604
U.S.C. 41102. 605

(Q) "Refining" means removing or separating a desirable 606
product from raw or contaminated materials by distillation or 607

physical, mechanical, or chemical processes. 608

(R) "Assembly" and "assembling" mean attaching or fitting 609
together parts to form a product, but do not include packaging a 610
product. 611

(S) "Manufacturing operation" means a process in which 612
materials are changed, converted, or transformed into a 613
different state or form from which they previously existed and 614
includes refining materials, assembling parts, and preparing raw 615
materials and parts by mixing, measuring, blending, or otherwise 616
committing such materials or parts to the manufacturing process. 617
"Manufacturing operation" does not include packaging. 618

(T) "Fiscal officer" means, with respect to a regional 619
transit authority, the secretary-treasurer thereof, and with 620
respect to a county that is a transit authority, the fiscal 621
officer of the county transit board if one is appointed pursuant 622
to section 306.03 of the Revised Code or the county auditor if 623
the board of county commissioners operates the county transit 624
system. 625

(U) "Transit authority" means a regional transit authority 626
created pursuant to section 306.31 of the Revised Code or a 627
county in which a county transit system is created pursuant to 628
section 306.01 of the Revised Code. For the purposes of this 629
chapter, a transit authority must extend to at least the entire 630
area of a single county. A transit authority that includes 631
territory in more than one county must include all the area of 632
the most populous county that is a part of such transit 633
authority. County population shall be measured by the most 634
recent census taken by the United States census bureau. 635

(V) "Legislative authority" means, with respect to a 636

regional transit authority, the board of trustees thereof, and 637
with respect to a county that is a transit authority, the board 638
of county commissioners. 639

(W) "Territory of the transit authority" means all of the 640
area included within the territorial boundaries of a transit 641
authority as they from time to time exist. Such territorial 642
boundaries must at all times include all the area of a single 643
county or all the area of the most populous county that is a 644
part of such transit authority. County population shall be 645
measured by the most recent census taken by the United States 646
census bureau. 647

(X) "Providing a service" means providing or furnishing 648
anything described in division (B) (3) of this section for 649
consideration. 650

(Y) (1) (a) "Automatic data processing" means processing of 651
others' data, including keypunching or similar data entry 652
services together with verification thereof, or providing access 653
to computer equipment for the purpose of processing data. 654

(b) "Computer services" means providing services 655
consisting of specifying computer hardware configurations and 656
evaluating technical processing characteristics, computer 657
programming, and training of computer programmers and operators, 658
provided in conjunction with and to support the sale, lease, or 659
operation of taxable computer equipment or systems. 660

(c) "Electronic information services" means providing 661
access to computer equipment by means of telecommunications 662
equipment for the purpose of either of the following: 663

(i) Examining or acquiring data stored in or accessible to 664
the computer equipment; 665

(ii) Placing data into the computer equipment to be 666
retrieved by designated recipients with access to the computer 667
equipment. 668

For transactions occurring on or after the effective date 669
of the amendment of this section by H.B. 157 of the 127th 670
general assembly, December 21, 2007, "electronic information 671
services" does not include electronic publishing as defined in 672
division (LLL) of this section. 673

(d) "Automatic data processing, computer services, or 674
electronic information services" shall not include personal or 675
professional services. 676

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 677
section, "personal and professional services" means all services 678
other than automatic data processing, computer services, or 679
electronic information services, including but not limited to: 680

(a) Accounting and legal services such as advice on tax 681
matters, asset management, budgetary matters, quality control, 682
information security, and auditing and any other situation where 683
the service provider receives data or information and studies, 684
alters, analyzes, interprets, or adjusts such material; 685

(b) Analyzing business policies and procedures; 686

(c) Identifying management information needs; 687

(d) Feasibility studies, including economic and technical 688
analysis of existing or potential computer hardware or software 689
needs and alternatives; 690

(e) Designing policies, procedures, and custom software 691
for collecting business information, and determining how data 692
should be summarized, sequenced, formatted, processed, 693

controlled, and reported so that it will be meaningful to management;	694 695
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	696 697 698
(g) Testing of business procedures;	699
(h) Training personnel in business procedure applications;	700
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	701 702 703 704 705 706 707
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	708 709
(k) Providing digital advertising services.	710
The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing or computer services.	711 712
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	713 714 715
(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;	716 717 718 719 720

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z) (1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z) (1) or (2) of this section.

(AA) (1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;	750
(d) Advertising, including directory advertising;	751
(e) Billing and collection services provided to third parties;	752 753
(f) Internet access service;	754
(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;	755 756 757 758 759 760 761 762
(h) Ancillary service;	763
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	764 765
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:	766 767 768 769 770 771
(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.	772 773 774 775 776
(b) "Detailed telecommunications billing service" means an	777

ancillary service of separately stating information pertaining 778
to individual calls on a customer's billing statement. 779

(c) "Directory assistance" means an ancillary service of 780
providing telephone number or address information. 781

(d) "Vertical service" means an ancillary service that is 782
offered in connection with one or more telecommunications 783
services, which offers advanced calling features that allow 784
customers to identify callers and manage multiple calls and call 785
connections, including conference bridging service. 786

(e) "Voice mail service" means an ancillary service that 787
enables the customer to store, send, or receive recorded 788
messages. "Voice mail service" does not include any vertical 789
services that the customer may be required to have in order to 790
utilize the voice mail service. 791

(3) "900 service" means an inbound toll telecommunications 792
service purchased by a subscriber that allows the subscriber's 793
customers to call in to the subscriber's prerecorded 794
announcement or live service, and which is typically marketed 795
under the name "900 service" and any subsequent numbers 796
designated by the federal communications commission. "900 797
service" does not include the charge for collection services 798
provided by the seller of the telecommunications service to the 799
subscriber, or services or products sold by the subscriber to 800
the subscriber's customer. 801

(4) "Prepaid calling service" means the right to access 802
exclusively telecommunications services, which must be paid for 803
in advance and which enables the origination of calls using an 804
access number or authorization code, whether manually or 805
electronically dialed, and that is sold in predetermined units 806

or dollars of which the number declines with use in a known 807
amount. 808

(5) "Prepaid wireless calling service" means a 809
telecommunications service that provides the right to utilize 810
mobile telecommunications service as well as other non- 811
telecommunications services, including the download of digital 812
products delivered electronically, and content and ancillary 813
services, that must be paid for in advance and that is sold in 814
predetermined units or dollars of which the number declines with 815
use in a known amount. 816

(6) "Value-added non-voice data service" means a 817
telecommunications service in which computer processing 818
applications are used to act on the form, content, code, or 819
protocol of the information or data primarily for a purpose 820
other than transmission, conveyance, or routing. 821

(7) "Coin-operated telephone service" means a 822
telecommunications service paid for by inserting money into a 823
telephone accepting direct deposits of money to operate. 824

(8) "Customer" has the same meaning as in section 5739.034 825
of the Revised Code. 826

(BB) "Laundry and dry cleaning services" means removing 827
soil or dirt from towels, linens, articles of clothing, or other 828
fabric items that belong to others and supplying towels, linens, 829
articles of clothing, or other fabric items. "Laundry and dry 830
cleaning services" does not include the provision of self- 831
service facilities for use by consumers to remove soil or dirt 832
from towels, linens, articles of clothing, or other fabric 833
items. 834

(CC) "Magazines distributed as controlled circulation 835

publications" means magazines containing at least twenty-four 836
pages, at least twenty-five per cent editorial content, issued 837
at regular intervals four or more times a year, and circulated 838
without charge to the recipient, provided that such magazines 839
are not owned or controlled by individuals or business concerns 840
which conduct such publications as an auxiliary to, and 841
essentially for the advancement of the main business or calling 842
of, those who own or control them. 843

(DD) "Landscaping and lawn care service" means the 844
services of planting, seeding, sodding, removing, cutting, 845
trimming, pruning, mulching, aerating, applying chemicals, 846
watering, fertilizing, and providing similar services to 847
establish, promote, or control the growth of trees, shrubs, 848
flowers, grass, ground cover, and other flora, or otherwise 849
maintaining a lawn or landscape grown or maintained by the owner 850
for ornamentation or other nonagricultural purpose. However, 851
"landscaping and lawn care service" does not include the 852
providing of such services by a person who has less than five 853
thousand dollars in sales of such services during the calendar 854
year. 855

(EE) "Private investigation and security service" means 856
the performance of any activity for which the provider of such 857
service is required to be licensed pursuant to Chapter 4749. of 858
the Revised Code, or would be required to be so licensed in 859
performing such services in this state, and also includes the 860
services of conducting polygraph examinations and of monitoring 861
or overseeing the activities on or in, or the condition of, the 862
consumer's home, business, or other facility by means of 863
electronic or similar monitoring devices. "Private investigation 864
and security service" does not include special duty services 865
provided by off-duty police officers, deputy sheriffs, and other 866

peace officers regularly employed by the state or a political 867
subdivision. 868

(FF) "Information services" means providing conversation, 869
giving consultation or advice, playing or making a voice or 870
other recording, making or keeping a record of the number of 871
callers, and any other service provided to a consumer by means 872
of a nine hundred telephone call, except when the nine hundred 873
telephone call is the means by which the consumer makes a 874
contribution to a recognized charity. 875

(GG) "Research and development" means designing, creating, 876
or formulating new or enhanced products, equipment, or 877
manufacturing processes, and also means conducting scientific or 878
technological inquiry and experimentation in the physical 879
sciences with the goal of increasing scientific knowledge which 880
may reveal the bases for new or enhanced products, equipment, or 881
manufacturing processes. 882

(HH) "Qualified research and development equipment" means 883
capitalized tangible personal property, and leased personal 884
property that would be capitalized if purchased, used by a 885
person primarily to perform research and development. Tangible 886
personal property primarily used in testing, as defined in 887
division (A) (4) of section 5739.011 of the Revised Code, or used 888
for recording or storing test results, is not qualified research 889
and development equipment unless such property is primarily used 890
by the consumer in testing the product, equipment, or 891
manufacturing process being created, designed, or formulated by 892
the consumer in the research and development activity or in 893
recording or storing such test results. 894

(II) "Building maintenance and janitorial service" means 895
cleaning the interior or exterior of a building and any tangible 896

personal property located therein or thereon, including any 897
services incidental to such cleaning for which no separate 898
charge is made. However, "building maintenance and janitorial 899
service" does not include the providing of such service by a 900
person who has less than five thousand dollars in sales of such 901
service during the calendar year. As used in this division, 902
"cleaning" does not include sanitation services necessary for an 903
establishment described in 21 U.S.C. 608 to comply with rules 904
and regulations adopted pursuant to that section. 905

(JJ) "Employment service" means providing or supplying 906
personnel, on a temporary or long-term basis, to perform work or 907
labor under the supervision or control of another, when the 908
personnel so provided or supplied receive their wages, salary, 909
or other compensation from the provider or supplier of the 910
employment service or from a third party that provided or 911
supplied the personnel to the provider or supplier. "Employment 912
service" does not include: 913

(1) Acting as a contractor or subcontractor, where the 914
personnel performing the work are not under the direct control 915
of the purchaser. 916

(2) Medical and health care services. 917

(3) Supplying personnel to a purchaser pursuant to a 918
contract of at least one year between the service provider and 919
the purchaser that specifies that each employee covered under 920
the contract is assigned to the purchaser on a permanent basis. 921

(4) Transactions between members of an affiliated group, 922
as defined in division (B) (3) (e) of this section. 923

(5) Transactions where the personnel so provided or 924
supplied by a provider or supplier to a purchaser of an 925

employment service are then provided or supplied by that 926
purchaser to a third party as an employment service, except 927
"employment service" does include the transaction between that 928
purchaser and the third party. 929

(KK) "Employment placement service" means locating or 930
finding employment for a person or finding or locating an 931
employee to fill an available position. 932

(LL) "Exterminating service" means eradicating or 933
attempting to eradicate vermin infestations from a building or 934
structure, or the area surrounding a building or structure, and 935
includes activities to inspect, detect, or prevent vermin 936
infestation of a building or structure. 937

(MM) "Physical fitness facility service" means all 938
transactions by which a membership is granted, maintained, or 939
renewed, including initiation fees, membership dues, renewal 940
fees, monthly minimum fees, and other similar fees and dues, by 941
a physical fitness facility such as an athletic club, health 942
spa, or gymnasium, which entitles the member to use the facility 943
for physical exercise. 944

(NN) "Recreation and sports club service" means all 945
transactions by which a membership is granted, maintained, or 946
renewed, including initiation fees, membership dues, renewal 947
fees, monthly minimum fees, and other similar fees and dues, by 948
a recreation and sports club, which entitles the member to use 949
the facilities of the organization. "Recreation and sports club" 950
means an organization that has ownership of, or controls or 951
leases on a continuing, long-term basis, the facilities used by 952
its members and includes an aviation club, gun or shooting club, 953
yacht club, card club, swimming club, tennis club, golf club, 954
country club, riding club, amateur sports club, or similar 955

organization.	956
(OO) "Livestock" means farm animals commonly raised for food, food production, or other agricultural purposes, including, but not limited to, cattle, sheep, goats, swine, poultry, and captive deer. "Livestock" does not include invertebrates, amphibians, reptiles, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.	957 958 959 960 961 962 963
(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.	964 965 966 967
(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in section 927.51 of the Revised Code.	968 969 970 971 972
(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.	973 974 975 976 977 978
(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.	979 980 981 982 983 984

(TT) "Professional racing team" means a person that 985
employs at least twenty full-time employees for the purpose of 986
conducting a motor vehicle racing business for profit. The 987
person must conduct the business with the purpose of racing one 988
or more motor racing vehicles in at least ten competitive 989
professional racing events each year that comprise all or part 990
of a motor racing series sanctioned by one or more motor racing 991
sanctioning organizations. A "motor racing vehicle" means a 992
vehicle for which the chassis, engine, and parts are designed 993
exclusively for motor racing, and does not include a stock or 994
production model vehicle that may be modified for use in racing. 995
For the purposes of this division: 996

(1) A "competitive professional racing event" is a motor 997
vehicle racing event sanctioned by one or more motor racing 998
sanctioning organizations, at which aggregate cash prizes in 999
excess of eight hundred thousand dollars are awarded to the 1000
competitors. 1001

(2) "Full-time employee" means an individual who is 1002
employed for consideration for thirty-five or more hours a week, 1003
or who renders any other standard of service generally accepted 1004
by custom or specified by contract as full-time employment. 1005

(UU) (1) "Lease" or "rental" means any transfer of the 1006
possession or control of tangible personal property for a fixed 1007
or indefinite term, for consideration. "Lease" or "rental" 1008
includes future options to purchase or extend, and agreements 1009
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 1010
trailers where the amount of consideration may be increased or 1011
decreased by reference to the amount realized upon the sale or 1012
disposition of the property. "Lease" or "rental" does not 1013
include: 1014

(a) A transfer of possession or control of tangible 1015
personal property under a security agreement or a deferred 1016
payment plan that requires the transfer of title upon completion 1017
of the required payments; 1018

(b) A transfer of possession or control of tangible 1019
personal property under an agreement that requires the transfer 1020
of title upon completion of required payments and payment of an 1021
option price that does not exceed the greater of one hundred 1022
dollars or one per cent of the total required payments; 1023

(c) Providing tangible personal property along with an 1024
operator for a fixed or indefinite period of time, if the 1025
operator is necessary for the property to perform as designed. 1026
For purposes of this division, the operator must do more than 1027
maintain, inspect, or set up the tangible personal property. 1028

(2) "Lease" and "rental," as defined in division (UU) of 1029
this section, shall not apply to leases or rentals that exist 1030
before June 26, 2003. 1031

(3) "Lease" and "rental" have the same meaning as in 1032
division (UU) (1) of this section regardless of whether a 1033
transaction is characterized as a lease or rental under 1034
generally accepted accounting principles, the Internal Revenue 1035
Code, Title XIII of the Revised Code, or other federal, state, 1036
or local laws. 1037

(VV) "Mobile telecommunications service" has the same 1038
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 1039
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 1040
amended, and, on and after August 1, 2003, includes related fees 1041
and ancillary services, including universal service fees, 1042
detailed billing service, directory assistance, service 1043

initiation, voice mail service, and vertical services, such as 1044
caller ID and three-way calling. 1045

(WW) "Certified service provider" has the same meaning as 1046
in section 5740.01 of the Revised Code. 1047

(XX) "Satellite broadcasting service" means the 1048
distribution or broadcasting of programming or services by 1049
satellite directly to the subscriber's receiving equipment 1050
without the use of ground receiving or distribution equipment, 1051
except the subscriber's receiving equipment or equipment used in 1052
the uplink process to the satellite, and includes all service 1053
and rental charges, premium channels or other special services, 1054
installation and repair service charges, and any other charges 1055
having any connection with the provision of the satellite 1056
broadcasting service. 1057

(YY) "Tangible personal property" means personal property 1058
that can be seen, weighed, measured, felt, or touched, or that 1059
is in any other manner perceptible to the senses. For purposes 1060
of this chapter and Chapter 5741. of the Revised Code, "tangible 1061
personal property" includes motor vehicles, electricity, water, 1062
gas, steam, and prewritten computer software. 1063

(ZZ) "Municipal gas utility" means a municipal corporation 1064
that owns or operates a system for the distribution of natural 1065
gas. 1066

(AAA) "Computer" means an electronic device that accepts 1067
information in digital or similar form and manipulates it for a 1068
result based on a sequence of instructions. 1069

(BBB) "Computer software" means a set of coded 1070
instructions designed to cause a computer or automatic data 1071
processing equipment to perform a task. 1072

(CCC) "Delivered electronically" means delivery of 1073
computer software from the seller to the purchaser by means 1074
other than tangible storage media. 1075

(DDD) "Prewritten computer software" means computer 1076
software, including prewritten upgrades, that is not designed 1077
and developed by the author or other creator to the 1078
specifications of a specific purchaser. The combining of two or 1079
more prewritten computer software programs or prewritten 1080
portions thereof does not cause the combination to be other than 1081
prewritten computer software. "Prewritten computer software" 1082
includes software designed and developed by the author or other 1083
creator to the specifications of a specific purchaser when it is 1084
sold to a person other than the purchaser. If a person modifies 1085
or enhances computer software of which the person is not the 1086
author or creator, the person shall be deemed to be the author 1087
or creator only of such person's modifications or enhancements. 1088
Prewritten computer software or a prewritten portion thereof 1089
that is modified or enhanced to any degree, where such 1090
modification or enhancement is designed and developed to the 1091
specifications of a specific purchaser, remains prewritten 1092
computer software; provided, however, that where there is a 1093
reasonable, separately stated charge or an invoice or other 1094
statement of the price given to the purchaser for the 1095
modification or enhancement, the modification or enhancement 1096
shall not constitute prewritten computer software. 1097

(EEE) (1) "Food" means substances, whether in liquid, 1098
concentrated, solid, frozen, dried, or dehydrated form, that are 1099
sold for ingestion or chewing by humans and are consumed for 1100
their taste or nutritional value. "Food" does not include 1101
alcoholic beverages, dietary supplements, soft drinks, or 1102
tobacco. 1103

(2) As used in division (EEE)(1) of this section:	1104
(a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume.	1105 1106 1107
(b) "Dietary supplements" means any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by 21 C.F.R. 101.36; and that contains one or more of the following dietary ingredients:	1108 1109 1110 1111 1112 1113 1114 1115 1116 1117
(i) A vitamin;	1118
(ii) A mineral;	1119
(iii) An herb or other botanical;	1120
(iv) An amino acid;	1121
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	1122 1123
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(2)(b)(i) to (v) of this section.	1124 1125 1126
(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	1127 1128 1129 1130 1131

(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. 1132
1133

(FFF) "Drug" means a compound, substance, or preparation, 1134
and any component of a compound, substance, or preparation, 1135
other than food, dietary supplements, or alcoholic beverages 1136
that is recognized in the official United States pharmacopoeia, 1137
official homeopathic pharmacopoeia of the United States, or 1138
official national formulary, and supplements to them; is 1139
intended for use in the diagnosis, cure, mitigation, treatment, 1140
or prevention of disease; or is intended to affect the structure 1141
or any function of the body. 1142

(GGG) "Prescription" means an order, formula, or recipe 1143
issued in any form of oral, written, electronic, or other means 1144
of transmission by a duly licensed practitioner authorized by 1145
the laws of this state to issue a prescription. 1146

(HHH) "Durable medical equipment" means equipment, 1147
including repair and replacement parts for such equipment, that 1148
can withstand repeated use, is primarily and customarily used to 1149
serve a medical purpose, generally is not useful to a person in 1150
the absence of illness or injury, and is not worn in or on the 1151
body. "Durable medical equipment" does not include mobility 1152
enhancing equipment. 1153

(III) "Mobility enhancing equipment" means equipment, 1154
including repair and replacement parts for such equipment, that 1155
is primarily and customarily used to provide or increase the 1156
ability to move from one place to another and is appropriate for 1157
use either in a home or a motor vehicle, that is not generally 1158
used by persons with normal mobility, and that does not include 1159
any motor vehicle or equipment on a motor vehicle normally 1160
provided by a motor vehicle manufacturer. "Mobility enhancing 1161

equipment" does not include durable medical equipment. 1162

(JJJ) "Prosthetic device" means a replacement, corrective, 1163
or supportive device, including repair and replacement parts for 1164
the device, worn on or in the human body to artificially replace 1165
a missing portion of the body, prevent or correct physical 1166
deformity or malfunction, or support a weak or deformed portion 1167
of the body. As used in this division, before July 1, 2019, 1168
"prosthetic device" does not include corrective eyeglasses, 1169
contact lenses, or dental prosthesis. On or after July 1, 2019, 1170
"prosthetic device" does not include dental prosthesis but does 1171
include corrective eyeglasses or contact lenses. 1172

(KKK) (1) "Fractional aircraft ownership program" means a 1173
program in which persons within an affiliated group sell and 1174
manage fractional ownership program aircraft, provided that at 1175
least one hundred airworthy aircraft are operated in the program 1176
and the program meets all of the following criteria: 1177

(a) Management services are provided by at least one 1178
program manager within an affiliated group on behalf of the 1179
fractional owners. 1180

(b) Each program aircraft is owned or possessed by at 1181
least one fractional owner. 1182

(c) Each fractional owner owns or possesses at least a 1183
one-sixteenth interest in at least one fixed-wing program 1184
aircraft. 1185

(d) A dry-lease aircraft interchange arrangement is in 1186
effect among all of the fractional owners. 1187

(e) Multi-year program agreements are in effect regarding 1188
the fractional ownership, management services, and dry-lease 1189
aircraft interchange arrangement aspects of the program. 1190

(2) As used in division (KKK) (1) of this section:	1191
(a) "Affiliated group" has the same meaning as in division (B) (3) (e) of this section.	1192 1193
(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (KKK) (1) (e) of this section.	1194 1195 1196 1197
(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK) (1) (d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.	1198 1199 1200 1201 1202 1203 1204
(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (KKK) (1) (e) of this section, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; the satisfaction of record-keeping requirements; and the development and use of an operations manual and a maintenance manual for the fractional aircraft ownership program.	1205 1206 1207 1208 1209 1210 1211 1212 1213 1214 1215 1216 1217 1218
(e) "Program manager" means the person that offers	1219

management services to fractional owners pursuant to a 1220
management services agreement under division (KKK) (1) (e) of this 1221
section. 1222

(LLL) "Electronic publishing" means providing access to 1223
one or more of the following primarily for business customers, 1224
including the federal government or a state government or a 1225
political subdivision thereof, to conduct research: news; 1226
business, financial, legal, consumer, or credit materials; 1227
editorials, columns, reader commentary, or features; photos or 1228
images; archival or research material; legal notices, identity 1229
verification, or public records; scientific, educational, 1230
instructional, technical, professional, trade, or other literary 1231
materials; or other similar information which has been gathered 1232
and made available by the provider to the consumer in an 1233
electronic format. Providing electronic publishing includes the 1234
functions necessary for the acquisition, formatting, editing, 1235
storage, and dissemination of data or information that is the 1236
subject of a sale. 1237

(MMM) "Medicaid health insuring corporation" means a 1238
health insuring corporation that holds a certificate of 1239
authority under Chapter 1751. of the Revised Code and is under 1240
contract with the department of medicaid pursuant to section 1241
5167.10 of the Revised Code. 1242

(NNN) "Managed care premium" means any premium, 1243
capitation, or other payment a medicaid health insuring 1244
corporation receives for providing or arranging for the 1245
provision of health care services to its members or enrollees 1246
residing in this state. 1247

(OOO) "Captive deer" means deer and other cervidae that 1248
have been legally acquired, or their offspring, that are 1249

privately owned for agricultural or farming purposes.	1250
(PPP) "Gift card" means a document, card, certificate, or	1251
other record, whether tangible or intangible, that may be	1252
redeemed by a consumer for a dollar value when making a purchase	1253
of tangible personal property or services.	1254
(QQQ) "Specified digital product" means an electronically	1255
transferred digital audiovisual work, digital audio work, or	1256
digital book.	1257
As used in division (QQQ) of this section:	1258
(1) "Digital audiovisual work" means a series of related	1259
images that, when shown in succession, impart an impression of	1260
motion, together with accompanying sounds, if any.	1261
(2) "Digital audio work" means a work that results from	1262
the fixation of a series of musical, spoken, or other sounds,	1263
including digitized sound files that are downloaded onto a	1264
device and that may be used to alert the customer with respect	1265
to a communication.	1266
(3) "Digital book" means a work that is generally	1267
recognized in the ordinary and usual sense as a book.	1268
(4) "Electronically transferred" means obtained by the	1269
purchaser by means other than tangible storage media.	1270
(RRR) "Digital advertising services" means providing	1271
access, by means of telecommunications equipment, to computer	1272
equipment that is used to enter, upload, download, review,	1273
manipulate, store, add, or delete data for the purpose of	1274
electronically displaying, delivering, placing, or transferring	1275
promotional advertisements to potential customers about products	1276
or services or about industry or business brands.	1277

(SSS) "Ineligible nonprofit hospital agency" has the same 1278
meaning as in section 5709.122 of the Revised Code. 1279

Sec. 5739.02. For the purpose of providing revenue with 1280
which to meet the needs of the state, for the use of the general 1281
revenue fund of the state, for the purpose of securing a 1282
thorough and efficient system of common schools throughout the 1283
state, for the purpose of affording revenues, in addition to 1284
those from general property taxes, permitted under 1285
constitutional limitations, and from other sources, for the 1286
support of local governmental functions, and for the purpose of 1287
reimbursing the state for the expense of administering this 1288
chapter, an excise tax is hereby levied on each retail sale made 1289
in this state. 1290

(A) (1) The tax shall be collected as provided in section 1291
5739.025 of the Revised Code. The rate of the tax shall be five 1292
and three-fourths per cent. The tax applies and is collectible 1293
when the sale is made, regardless of the time when the price is 1294
paid or delivered. 1295

(2) In the case of the lease or rental, with a fixed term 1296
of more than thirty days or an indefinite term with a minimum 1297
period of more than thirty days, of any motor vehicles designed 1298
by the manufacturer to carry a load of not more than one ton, 1299
watercraft, outboard motor, or aircraft, or of any tangible 1300
personal property, other than motor vehicles designed by the 1301
manufacturer to carry a load of more than one ton, to be used by 1302
the lessee or renter primarily for business purposes, the tax 1303
shall be collected by the vendor at the time the lease or rental 1304
is consummated and shall be calculated by the vendor on the 1305
basis of the total amount to be paid by the lessee or renter 1306
under the lease agreement. If the total amount of the 1307

consideration for the lease or rental includes amounts that are 1308
not calculated at the time the lease or rental is executed, the 1309
tax shall be calculated and collected by the vendor at the time 1310
such amounts are billed to the lessee or renter. In the case of 1311
an open-end lease or rental, the tax shall be calculated by the 1312
vendor on the basis of the total amount to be paid during the 1313
initial fixed term of the lease or rental, and for each 1314
subsequent renewal period as it comes due. As used in this 1315
division, "motor vehicle" has the same meaning as in section 1316
4501.01 of the Revised Code, and "watercraft" includes an 1317
outdrive unit attached to the watercraft. 1318

A lease with a renewal clause and a termination penalty or 1319
similar provision that applies if the renewal clause is not 1320
exercised is presumed to be a sham transaction. In such a case, 1321
the tax shall be calculated and paid on the basis of the entire 1322
length of the lease period, including any renewal periods, until 1323
the termination penalty or similar provision no longer applies. 1324
The taxpayer shall bear the burden, by a preponderance of the 1325
evidence, that the transaction or series of transactions is not 1326
a sham transaction. 1327

(3) Except as provided in division (A) (2) of this section, 1328
in the case of a sale, the price of which consists in whole or 1329
in part of the lease or rental of tangible personal property, 1330
the tax shall be measured by the installments of that lease or 1331
rental. 1332

(4) In the case of a sale of a physical fitness facility 1333
service or recreation and sports club service, the price of 1334
which consists in whole or in part of a membership for the 1335
receipt of the benefit of the service, the tax applicable to the 1336
sale shall be measured by the installments thereof. 1337

(B) The tax does not apply to the following:	1338
(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;	1339 1340 1341 1342
(2) Sales of food for human consumption off the premises where sold;	1343 1344
(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;	1345 1346 1347
(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;	1348 1349
(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	1350 1351 1352 1353
(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;	1354 1355 1356 1357 1358 1359 1360 1361 1362 1363
(7) Sales of natural gas by a natural gas company or municipal gas utility, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is	1364 1365 1366

delivered to consumers through pipes or conduits, and all sales 1367
of communications services by a telegraph company, all terms as 1368
defined in section 5727.01 of the Revised Code, and sales of 1369
electricity delivered through wires; 1370

(8) Casual sales by a person, or auctioneer employed 1371
directly by the person to conduct such sales, except as to such 1372
sales of motor vehicles, watercraft or outboard motors required 1373
to be titled under section 1548.06 of the Revised Code, 1374
watercraft documented with the United States coast guard, 1375
snowmobiles, and all-purpose vehicles as defined in section 1376
4519.01 of the Revised Code; 1377

(9) (a) Sales of services or tangible personal property, 1378
other than motor vehicles, mobile homes, and manufactured homes, 1379
by churches, organizations exempt from taxation under section 1380
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1381
organizations operated exclusively for charitable purposes as 1382
defined in division (B) (12) of this section, provided that the 1383
number of days on which such tangible personal property or 1384
services, other than items never subject to the tax, are sold 1385
does not exceed six in any calendar year, except as otherwise 1386
provided in division (B) (9) (b) of this section. If the number of 1387
days on which such sales are made exceeds six in any calendar 1388
year, the church or organization shall be considered to be 1389
engaged in business and all subsequent sales by it shall be 1390
subject to the tax. In counting the number of days, all sales by 1391
groups within a church or within an organization shall be 1392
considered to be sales of that church or organization. 1393

(b) The limitation on the number of days on which tax- 1394
exempt sales may be made by a church or organization under 1395
division (B) (9) (a) of this section does not apply to sales made 1396

by student clubs and other groups of students of a primary or 1397
secondary school, or a parent-teacher association, booster 1398
group, or similar organization that raises money to support or 1399
fund curricular or extracurricular activities of a primary or 1400
secondary school. 1401

(c) Divisions (B) (9) (a) and (b) of this section do not 1402
apply to sales by a noncommercial educational radio or 1403
television broadcasting station or by an ineligible nonprofit 1404
hospital agency. 1405

(10) Sales not within the taxing power of this state under 1406
the Constitution or laws of the United States or the 1407
Constitution of this state; 1408

(11) Except for transactions that are sales under division 1409
(B) (3) (r) of section 5739.01 of the Revised Code, the 1410
transportation of persons or property, unless the transportation 1411
is by a private investigation and security service; 1412

(12) Sales of tangible personal property or services to 1413
churches, to organizations exempt from taxation under section 1414
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1415
nonprofit organizations operated exclusively for charitable 1416
purposes in this state, no part of the net income of which 1417
inures to the benefit of any private shareholder or individual, 1418
and no substantial part of the activities of which consists of 1419
carrying on propaganda or otherwise attempting to influence 1420
legislation; sales to offices administering one or more homes 1421
for the aged or one or more hospital facilities exempt under 1422
section 140.08 of the Revised Code; and sales to organizations 1423
described in division (D) of section 5709.12 of the Revised 1424
Code. 1425

"Charitable purposes" means the relief of poverty; the 1426
improvement of health through the alleviation of illness, 1427
disease, or injury; the operation of an organization exclusively 1428
for the provision of professional, laundry, printing, and 1429
purchasing services to hospitals or charitable institutions; the 1430
operation of a home for the aged, as defined in section 5701.13 1431
of the Revised Code; the operation of a radio or television 1432
broadcasting station that is licensed by the federal 1433
communications commission as a noncommercial educational radio 1434
or television station; the operation of a nonprofit animal 1435
adoption service or a county humane society; the promotion of 1436
education by an institution of learning that maintains a faculty 1437
of qualified instructors, teaches regular continuous courses of 1438
study, and confers a recognized diploma upon completion of a 1439
specific curriculum; the operation of a parent-teacher 1440
association, booster group, or similar organization primarily 1441
engaged in the promotion and support of the curricular or 1442
extracurricular activities of a primary or secondary school; the 1443
operation of a community or area center in which presentations 1444
in music, dramatics, the arts, and related fields are made in 1445
order to foster public interest and education therein; the 1446
production of performances in music, dramatics, and the arts; or 1447
the promotion of education by an organization engaged in 1448
carrying on research in, or the dissemination of, scientific and 1449
technological knowledge and information primarily for the 1450
public. 1451

Nothing in this division shall be deemed to exempt sales 1452
to any organization for use in the operation or carrying on of a 1453
trade or business, or sales to a home for the aged for use in 1454
the operation of independent living facilities as defined in 1455
division (A) of section 5709.12 of the Revised Code. 1456

Division (B) (12) of this section does not apply to sales 1457
to an ineligible nonprofit hospital agency. 1458

(13) Building and construction materials and services sold 1459
to construction contractors for incorporation into a structure 1460
or improvement to real property under a construction contract 1461
with this state or a political subdivision of this state, or 1462
with the United States government or any of its agencies; 1463
building and construction materials and services sold to 1464
construction contractors for incorporation into a structure or 1465
improvement to real property that are accepted for ownership by 1466
this state or any of its political subdivisions, or by the 1467
United States government or any of its agencies at the time of 1468
completion of the structures or improvements; building and 1469
construction materials sold to construction contractors for 1470
incorporation into a horticulture structure or livestock 1471
structure for a person engaged in the business of horticulture 1472
or producing livestock; building materials and services sold to 1473
a construction contractor for incorporation into a house of 1474
public worship or religious education, or a building used 1475
exclusively for charitable purposes under a construction 1476
contract with an organization whose purpose is as described in 1477
division (B) (12) of this section; building materials and 1478
services sold to a construction contractor for incorporation 1479
into a building under a construction contract with an 1480
organization exempt from taxation under section 501(c) (3) of the 1481
Internal Revenue Code of 1986 when the building is to be used 1482
exclusively for the organization's exempt purposes; building and 1483
construction materials sold for incorporation into the original 1484
construction of a sports facility under section 307.696 of the 1485
Revised Code; building and construction materials and services 1486
sold to a construction contractor for incorporation into real 1487

property outside this state if such materials and services, when 1488
sold to a construction contractor in the state in which the real 1489
property is located for incorporation into real property in that 1490
state, would be exempt from a tax on sales levied by that state; 1491
building and construction materials for incorporation into a 1492
transportation facility pursuant to a public-private agreement 1493
entered into under sections 5501.70 to 5501.83 of the Revised 1494
Code; and, until one calendar year after the construction of a 1495
convention center that qualifies for property tax exemption 1496
under section 5709.084 of the Revised Code is completed, 1497
building and construction materials and services sold to a 1498
construction contractor for incorporation into the real property 1499
comprising that convention center; 1500

(14) Sales of ships or vessels or rail rolling stock used 1501
or to be used principally in interstate or foreign commerce, and 1502
repairs, alterations, fuel, and lubricants for such ships or 1503
vessels or rail rolling stock; 1504

(15) Sales to persons primarily engaged in any of the 1505
activities mentioned in division (B) (42) (a), (g), or (h) of this 1506
section, to persons engaged in making retail sales, or to 1507
persons who purchase for sale from a manufacturer tangible 1508
personal property that was produced by the manufacturer in 1509
accordance with specific designs provided by the purchaser, of 1510
packages, including material, labels, and parts for packages, 1511
and of machinery, equipment, and material for use primarily in 1512
packaging tangible personal property produced for sale, 1513
including any machinery, equipment, and supplies used to make 1514
labels or packages, to prepare packages or products for 1515
labeling, or to label packages or products, by or on the order 1516
of the person doing the packaging, or sold at retail. "Packages" 1517
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1518

bindings, wrappings, and other similar devices and containers, 1519
but does not include motor vehicles or bulk tanks, trailers, or 1520
similar devices attached to motor vehicles. "Packaging" means 1521
placing in a package. Division (B) (15) of this section does not 1522
apply to persons engaged in highway transportation for hire. 1523

(16) Sales of food to persons using supplemental nutrition 1524
assistance program benefits to purchase the food. As used in 1525
this division, "food" has the same meaning as in 7 U.S.C. 2012 1526
and federal regulations adopted pursuant to the Food and 1527
Nutrition Act of 2008. 1528

(17) Sales to persons engaged in farming, agriculture, 1529
horticulture, or floriculture, of tangible personal property for 1530
use or consumption primarily in the production by farming, 1531
agriculture, horticulture, or floriculture of other tangible 1532
personal property for use or consumption primarily in the 1533
production of tangible personal property for sale by farming, 1534
agriculture, horticulture, or floriculture; or material and 1535
parts for incorporation into any such tangible personal property 1536
for use or consumption in production; and of tangible personal 1537
property for such use or consumption in the conditioning or 1538
holding of products produced by and for such use, consumption, 1539
or sale by persons engaged in farming, agriculture, 1540
horticulture, or floriculture, except where such property is 1541
incorporated into real property; 1542

(18) Sales of drugs for a human being that may be 1543
dispensed only pursuant to a prescription; insulin as recognized 1544
in the official United States pharmacopoeia; urine and blood 1545
testing materials when used by diabetics or persons with 1546
hypoglycemia to test for glucose or acetone; hypodermic syringes 1547
and needles when used by diabetics for insulin injections; 1548

epoetin alfa when purchased for use in the treatment of persons	1549
with medical disease; hospital beds when purchased by hospitals,	1550
nursing homes, or other medical facilities; and medical oxygen	1551
and medical oxygen-dispensing equipment when purchased by	1552
hospitals, nursing homes, or other medical facilities;	1553
(19) Sales of prosthetic devices, durable medical	1554
equipment for home use, or mobility enhancing equipment, when	1555
made pursuant to a prescription and when such devices or	1556
equipment are for use by a human being.	1557
(20) Sales of emergency and fire protection vehicles and	1558
equipment to nonprofit organizations for use solely in providing	1559
fire protection and emergency services, including trauma care	1560
and emergency medical services, for political subdivisions of	1561
the state;	1562
(21) Sales of tangible personal property manufactured in	1563
this state, if sold by the manufacturer in this state to a	1564
retailer for use in the retail business of the retailer outside	1565
of this state and if possession is taken from the manufacturer	1566
by the purchaser within this state for the sole purpose of	1567
immediately removing the same from this state in a vehicle owned	1568
by the purchaser;	1569
(22) Sales of services provided by the state or any of its	1570
political subdivisions, agencies, instrumentalities,	1571
institutions, or authorities, or by governmental entities of the	1572
state or any of its political subdivisions, agencies,	1573
instrumentalities, institutions, or authorities;	1574
(23) Sales of motor vehicles to nonresidents of this state	1575
under the circumstances described in division (B) of section	1576
5739.029 of the Revised Code;	1577

(24) Sales to persons engaged in the preparation of eggs	1578
for sale of tangible personal property used or consumed directly	1579
in such preparation, including such tangible personal property	1580
used for cleaning, sanitizing, preserving, grading, sorting, and	1581
classifying by size; packages, including material and parts for	1582
packages, and machinery, equipment, and material for use in	1583
packaging eggs for sale; and handling and transportation	1584
equipment and parts therefor, except motor vehicles licensed to	1585
operate on public highways, used in intraplant or interplant	1586
transfers or shipment of eggs in the process of preparation for	1587
sale, when the plant or plants within or between which such	1588
transfers or shipments occur are operated by the same person.	1589
"Packages" includes containers, cases, baskets, flats, fillers,	1590
filler flats, cartons, closure materials, labels, and labeling	1591
materials, and "packaging" means placing therein.	1592
(25) (a) Sales of water to a consumer for residential use;	1593
(b) Sales of water by a nonprofit corporation engaged	1594
exclusively in the treatment, distribution, and sale of water to	1595
consumers, if such water is delivered to consumers through pipes	1596
or tubing.	1597
(26) Fees charged for inspection or reinspection of motor	1598
vehicles under section 3704.14 of the Revised Code;	1599
(27) Sales to persons licensed to conduct a food service	1600
operation pursuant to section 3717.43 of the Revised Code, of	1601
tangible personal property primarily used directly for the	1602
following:	1603
(a) To prepare food for human consumption for sale;	1604
(b) To preserve food that has been or will be prepared for	1605
human consumption for sale by the food service operator, not	1606

including tangible personal property used to display food for selection by the consumer;	1607 1608
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1609 1610
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1611 1612
(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;	1613 1614 1615 1616
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	1617 1618 1619
(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;	1620 1621 1622
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;	1623 1624 1625 1626 1627 1628
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	1629 1630 1631 1632 1633
(34) Sales to a telecommunications service vendor, mobile	1634

telecommunications service vendor, or satellite broadcasting 1635
service vendor of tangible personal property and services used 1636
directly and primarily in transmitting, receiving, switching, or 1637
recording any interactive, one- or two-way electromagnetic 1638
communications, including voice, image, data, and information, 1639
through the use of any medium, including, but not limited to, 1640
poles, wires, cables, switching equipment, computers, and record 1641
storage devices and media, and component parts for the tangible 1642
personal property. The exemption provided in this division shall 1643
be in lieu of all other exemptions under division (B) (42) (a) or 1644
(n) of this section to which the vendor may otherwise be 1645
entitled, based upon the use of the thing purchased in providing 1646
the telecommunications, mobile telecommunications, or satellite 1647
broadcasting service. 1648

(35) (a) Sales where the purpose of the consumer is to use 1649
or consume the things transferred in making retail sales and 1650
consisting of newspaper inserts, catalogues, coupons, flyers, 1651
gift certificates, or other advertising material that prices and 1652
describes tangible personal property offered for retail sale. 1653

(b) Sales to direct marketing vendors of preliminary 1654
materials such as photographs, artwork, and typesetting that 1655
will be used in printing advertising material; and of printed 1656
matter that offers free merchandise or chances to win sweepstake 1657
prizes and that is mailed to potential customers with 1658
advertising material described in division (B) (35) (a) of this 1659
section; 1660

(c) Sales of equipment such as telephones, computers, 1661
facsimile machines, and similar tangible personal property 1662
primarily used to accept orders for direct marketing retail 1663
sales. 1664

(d) Sales of automatic food vending machines that preserve 1665
food with a shelf life of forty-five days or less by 1666
refrigeration and dispense it to the consumer. 1667

For purposes of division (B) (35) of this section, "direct 1668
marketing" means the method of selling where consumers order 1669
tangible personal property by United States mail, delivery 1670
service, or telecommunication and the vendor delivers or ships 1671
the tangible personal property sold to the consumer from a 1672
warehouse, catalogue distribution center, or similar fulfillment 1673
facility by means of the United States mail, delivery service, 1674
or common carrier. 1675

(36) Sales to a person engaged in the business of 1676
horticulture or producing livestock of materials to be 1677
incorporated into a horticulture structure or livestock 1678
structure; 1679

(37) Sales of personal computers, computer monitors, 1680
computer keyboards, modems, and other peripheral computer 1681
equipment to an individual who is licensed or certified to teach 1682
in an elementary or a secondary school in this state for use by 1683
that individual in preparation for teaching elementary or 1684
secondary school students; 1685

(38) Sales to a professional racing team of any of the 1686
following: 1687

(a) Motor racing vehicles; 1688

(b) Repair services for motor racing vehicles; 1689

(c) Items of property that are attached to or incorporated 1690
in motor racing vehicles, including engines, chassis, and all 1691
other components of the vehicles, and all spare, replacement, 1692
and rebuilt parts or components of the vehicles; except not 1693

including tires, consumable fluids, paint, and accessories 1694
consisting of instrumentation sensors and related items added to 1695
the vehicle to collect and transmit data by means of telemetry 1696
and other forms of communication. 1697

(39) Sales of used manufactured homes and used mobile 1698
homes, as defined in section 5739.0210 of the Revised Code, made 1699
on or after January 1, 2000; 1700

(40) Sales of tangible personal property and services to a 1701
provider of electricity used or consumed directly and primarily 1702
in generating, transmitting, or distributing electricity for use 1703
by others, including property that is or is to be incorporated 1704
into and will become a part of the consumer's production, 1705
transmission, or distribution system and that retains its 1706
classification as tangible personal property after 1707
incorporation; fuel or power used in the production, 1708
transmission, or distribution of electricity; energy conversion 1709
equipment as defined in section 5727.01 of the Revised Code; and 1710
tangible personal property and services used in the repair and 1711
maintenance of the production, transmission, or distribution 1712
system, including only those motor vehicles as are specially 1713
designed and equipped for such use. The exemption provided in 1714
this division shall be in lieu of all other exemptions in 1715
division (B) (42) (a) or (n) of this section to which a provider 1716
of electricity may otherwise be entitled based on the use of the 1717
tangible personal property or service purchased in generating, 1718
transmitting, or distributing electricity. 1719

(41) Sales to a person providing services under division 1720
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 1721
personal property and services used directly and primarily in 1722
providing taxable services under that section. 1723

(42) Sales where the purpose of the purchaser is to do any 1724
of the following: 1725

(a) To incorporate the thing transferred as a material or 1726
a part into tangible personal property to be produced for sale 1727
by manufacturing, assembling, processing, or refining; or to use 1728
or consume the thing transferred directly in producing tangible 1729
personal property for sale by mining, including, without 1730
limitation, the extraction from the earth of all substances that 1731
are classed geologically as minerals, or directly in the 1732
rendition of a public utility service, except that the sales tax 1733
levied by this section shall be collected upon all meals, 1734
drinks, and food for human consumption sold when transporting 1735
persons. This paragraph does not exempt from "retail sale" or 1736
"sales at retail" the sale of tangible personal property that is 1737
to be incorporated into a structure or improvement to real 1738
property. 1739

(b) To hold the thing transferred as security for the 1740
performance of an obligation of the vendor; 1741

(c) To resell, hold, use, or consume the thing transferred 1742
as evidence of a contract of insurance; 1743

(d) To use or consume the thing directly in commercial 1744
fishing; 1745

(e) To incorporate the thing transferred as a material or 1746
a part into, or to use or consume the thing transferred directly 1747
in the production of, magazines distributed as controlled 1748
circulation publications; 1749

(f) To use or consume the thing transferred in the 1750
production and preparation in suitable condition for market and 1751
sale of printed, imprinted, overprinted, lithographic, 1752

multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	1753 1754
(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;	1755 1756 1757
(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;	1758 1759 1760 1761 1762 1763
(i) To use the thing transferred as qualified research and development equipment;	1764 1765
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.	1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778
(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible	1779 1780 1781

personal property sold or by a vendor of a warranty, maintenance 1782
or service contract, or similar agreement the provision of which 1783
is defined as a sale under division (B) (7) of section 5739.01 of 1784
the Revised Code; 1785

(l) To use or consume the thing transferred in the 1786
production of a newspaper for distribution to the public; 1787

(m) To use tangible personal property to perform a service 1788
listed in division (B) (3) of section 5739.01 of the Revised 1789
Code, if the property is or is to be permanently transferred to 1790
the consumer of the service as an integral part of the 1791
performance of the service; 1792

(n) To use or consume the thing transferred primarily in 1793
producing tangible personal property for sale by farming, 1794
agriculture, horticulture, or floriculture. Persons engaged in 1795
rendering farming, agriculture, horticulture, or floriculture 1796
services for others are deemed engaged primarily in farming, 1797
agriculture, horticulture, or floriculture. This paragraph does 1798
not exempt from "retail sale" or "sales at retail" the sale of 1799
tangible personal property that is to be incorporated into a 1800
structure or improvement to real property. 1801

(o) To use or consume the thing transferred in acquiring, 1802
formatting, editing, storing, and disseminating data or 1803
information by electronic publishing; 1804

(p) To provide the thing transferred to the owner or 1805
lessee of a motor vehicle that is being repaired or serviced, if 1806
the thing transferred is a rented motor vehicle and the 1807
purchaser is reimbursed for the cost of the rented motor vehicle 1808
by a manufacturer, warrantor, or provider of a maintenance, 1809
service, or other similar contract or agreement, with respect to 1810

the motor vehicle that is being repaired or serviced; 1811

(q) To use or consume the thing transferred directly in 1812
production of crude oil and natural gas for sale. Persons 1813
engaged in rendering production services for others are deemed 1814
engaged in production. 1815

As used in division (B) (42) (q) of this section, 1816
"production" means operations and tangible personal property 1817
directly used to expose and evaluate an underground reservoir 1818
that may contain hydrocarbon resources, prepare the wellbore for 1819
production, and lift and control all substances yielded by the 1820
reservoir to the surface of the earth. 1821

(i) For the purposes of division (B) (42) (q) of this 1822
section, the "thing transferred" includes, but is not limited 1823
to, any of the following: 1824

(I) Services provided in the construction of permanent 1825
access roads, services provided in the construction of the well 1826
site, and services provided in the construction of temporary 1827
impoundments; 1828

(II) Equipment and rigging used for the specific purpose 1829
of creating with integrity a wellbore pathway to underground 1830
reservoirs; 1831

(III) Drilling and workover services used to work within a 1832
subsurface wellbore, and tangible personal property directly 1833
used in providing such services; 1834

(IV) Casing, tubulars, and float and centralizing 1835
equipment; 1836

(V) Trailers to which production equipment is attached; 1837

(VI) Well completion services, including cementing of 1838

casing, and tangible personal property directly used in	1839
providing such services;	1840
(VII) Wireline evaluation, mud logging, and perforation	1841
services, and tangible personal property directly used in	1842
providing such services;	1843
(VIII) Reservoir stimulation, hydraulic fracturing, and	1844
acidizing services, and tangible personal property directly used	1845
in providing such services, including all material pumped	1846
downhole;	1847
(IX) Pressure pumping equipment;	1848
(X) Artificial lift systems equipment;	1849
(XI) Wellhead equipment and well site equipment used to	1850
separate, stabilize, and control hydrocarbon phases and produced	1851
water;	1852
(XII) Tangible personal property directly used to control	1853
production equipment.	1854
(ii) For the purposes of division (B) (42) (q) of this	1855
section, the "thing transferred" does not include any of the	1856
following:	1857
(I) Tangible personal property used primarily in the	1858
exploration and production of any mineral resource regulated	1859
under Chapter 1509. of the Revised Code other than oil or gas;	1860
(II) Tangible personal property used primarily in storing,	1861
holding, or delivering solutions or chemicals used in well	1862
stimulation as defined in section 1509.01 of the Revised Code;	1863
(III) Tangible personal property used primarily in	1864
preparing, installing, or reclaiming foundations for drilling or	1865

pumping equipment or well stimulation material tanks;	1866
(IV) Tangible personal property used primarily in	1867
transporting, delivering, or removing equipment to or from the	1868
well site or storing such equipment before its use at the well	1869
site;	1870
(V) Tangible personal property used primarily in gathering	1871
operations occurring off the well site, including gathering	1872
pipelines transporting hydrocarbon gas or liquids away from a	1873
crude oil or natural gas production facility;	1874
(VI) Tangible personal property that is to be incorporated	1875
into a structure or improvement to real property;	1876
(VII) Well site fencing, lighting, or security systems;	1877
(VIII) Communication devices or services;	1878
(IX) Office supplies;	1879
(X) Trailers used as offices or lodging;	1880
(XI) Motor vehicles of any kind;	1881
(XII) Tangible personal property used primarily for the	1882
storage of drilling byproducts and fuel not used for production;	1883
(XIII) Tangible personal property used primarily as a	1884
safety device;	1885
(XIV) Data collection or monitoring devices;	1886
(XV) Access ladders, stairs, or platforms attached to	1887
storage tanks.	1888
The enumeration of tangible personal property in division	1889
(B) (42) (q) (ii) of this section is not intended to be exhaustive,	1890
and any tangible personal property not so enumerated shall not	1891

necessarily be construed to be a "thing transferred" for the 1892
purposes of division (B) (42) (q) of this section. 1893

The commissioner shall adopt and promulgate rules under 1894
sections 119.01 to 119.13 of the Revised Code that the 1895
commissioner deems necessary to administer division (B) (42) (q) 1896
of this section. 1897

As used in division (B) (42) of this section, "thing" 1898
includes all transactions included in divisions (B) (3) (a), (b), 1899
and (e) of section 5739.01 of the Revised Code. 1900

(43) Sales conducted through a coin operated device that 1901
activates vacuum equipment or equipment that dispenses water, 1902
whether or not in combination with soap or other cleaning agents 1903
or wax, to the consumer for the consumer's use on the premises 1904
in washing, cleaning, or waxing a motor vehicle, provided no 1905
other personal property or personal service is provided as part 1906
of the transaction. 1907

(44) Sales of replacement and modification parts for 1908
engines, airframes, instruments, and interiors in, and paint 1909
for, aircraft used primarily in a fractional aircraft ownership 1910
program, and sales of services for the repair, modification, and 1911
maintenance of such aircraft, and machinery, equipment, and 1912
supplies primarily used to provide those services. 1913

(45) Sales of telecommunications service that is used 1914
directly and primarily to perform the functions of a call 1915
center. As used in this division, "call center" means any 1916
physical location where telephone calls are placed or received 1917
in high volume for the purpose of making sales, marketing, 1918
customer service, technical support, or other specialized 1919
business activity, and that employs at least fifty individuals 1920

that engage in call center activities on a full-time basis, or 1921
sufficient individuals to fill fifty full-time equivalent 1922
positions. 1923

(46) Sales by a telecommunications service vendor of 900 1924
service to a subscriber. This division does not apply to 1925
information services, as defined in division (FF) of section 1926
5739.01 of the Revised Code. 1927

(47) Sales of value-added non-voice data service. This 1928
division does not apply to any similar service that is not 1929
otherwise a telecommunications service. 1930

(48) (a) Sales of machinery, equipment, and software to a 1931
qualified direct selling entity for use in a warehouse or 1932
distribution center primarily for storing, transporting, or 1933
otherwise handling inventory that is held for sale to 1934
independent salespersons who operate as direct sellers and that 1935
is held primarily for distribution outside this state; 1936

(b) As used in division (B) (48) (a) of this section: 1937

(i) "Direct seller" means a person selling consumer 1938
products to individuals for personal or household use and not 1939
from a fixed retail location, including selling such product at 1940
in-home product demonstrations, parties, and other one-on-one 1941
selling. 1942

(ii) "Qualified direct selling entity" means an entity 1943
selling to direct sellers at the time the entity enters into a 1944
tax credit agreement with the tax credit authority pursuant to 1945
section 122.17 of the Revised Code, provided that the agreement 1946
was entered into on or after January 1, 2007. Neither 1947
contingencies relevant to the granting of, nor later 1948
developments with respect to, the tax credit shall impair the 1949

status of the qualified direct selling entity under division (B) 1950
(48) of this section after execution of the tax credit agreement 1951
by the tax credit authority. 1952

(c) Division (B) (48) of this section is limited to 1953
machinery, equipment, and software first stored, used, or 1954
consumed in this state within the period commencing June 24, 1955
2008, and ending on the date that is five years after that date. 1956

(49) Sales of materials, parts, equipment, or engines used 1957
in the repair or maintenance of aircraft or avionics systems of 1958
such aircraft, and sales of repair, remodeling, replacement, or 1959
maintenance services in this state performed on aircraft or on 1960
an aircraft's avionics, engine, or component materials or parts. 1961
As used in division (B) (49) of this section, "aircraft" means 1962
aircraft of more than six thousand pounds maximum certified 1963
takeoff weight or used exclusively in general aviation. 1964

(50) Sales of full flight simulators that are used for 1965
pilot or flight-crew training, sales of repair or replacement 1966
parts or components, and sales of repair or maintenance services 1967
for such full flight simulators. "Full flight simulator" means a 1968
replica of a specific type, or make, model, and series of 1969
aircraft cockpit. It includes the assemblage of equipment and 1970
computer programs necessary to represent aircraft operations in 1971
ground and flight conditions, a visual system providing an out- 1972
of-the-cockpit view, and a system that provides cues at least 1973
equivalent to those of a three-degree-of-freedom motion system, 1974
and has the full range of capabilities of the systems installed 1975
in the device as described in appendices A and B of part 60 of 1976
chapter 1 of title 14 of the Code of Federal Regulations. 1977

(51) Any transfer or lease of tangible personal property 1978
between the state and JobsOhio in accordance with section 1979

4313.02 of the Revised Code.	1980
(52) (a) Sales to a qualifying corporation.	1981
(b) As used in division (B) (52) of this section:	1982
(i) "Qualifying corporation" means a nonprofit corporation	1983
organized in this state that leases from an eligible county	1984
land, buildings, structures, fixtures, and improvements to the	1985
land that are part of or used in a public recreational facility	1986
used by a major league professional athletic team or a class A	1987
to class AAA minor league affiliate of a major league	1988
professional athletic team for a significant portion of the	1989
team's home schedule, provided the following apply:	1990
(I) The facility is leased from the eligible county	1991
pursuant to a lease that requires substantially all of the	1992
revenue from the operation of the business or activity conducted	1993
by the nonprofit corporation at the facility in excess of	1994
operating costs, capital expenditures, and reserves to be paid	1995
to the eligible county at least once per calendar year.	1996
(II) Upon dissolution and liquidation of the nonprofit	1997
corporation, all of its net assets are distributable to the	1998
board of commissioners of the eligible county from which the	1999
corporation leases the facility.	2000
(ii) "Eligible county" has the same meaning as in section	2001
307.695 of the Revised Code.	2002
(53) Sales to or by a cable service provider, video	2003
service provider, or radio or television broadcast station	2004
regulated by the federal government of cable service or	2005
programming, video service or programming, audio service or	2006
programming, or electronically transferred digital audiovisual	2007
or audio work. As used in division (B) (53) of this section,	2008

"cable service" and "cable service provider" have the same 2009
meanings as in section 1332.01 of the Revised Code, and "video 2010
service," "video service provider," and "video programming" have 2011
the same meanings as in section 1332.21 of the Revised Code. 2012

(54) Sales of investment metal bullion and investment 2013
coins. "Investment metal bullion" means any bullion described in 2014
section 408(m)(3)(B) of the Internal Revenue Code, regardless of 2015
whether that bullion is in the physical possession of a trustee. 2016
"Investment coin" means any coin composed primarily of gold, 2017
silver, platinum, or palladium. 2018

(55) Sales of a digital audio work electronically 2019
transferred for delivery through use of a machine, such as a 2020
juke box, that does all of the following: 2021

(a) Accepts direct payments to operate; 2022

(b) Automatically plays a selected digital audio work for 2023
a single play upon receipt of a payment described in division 2024
(B)(55)(a) of this section; 2025

(c) Operates exclusively for the purpose of playing 2026
digital audio works in a commercial establishment. 2027

(56)(a) Sales of the following occurring on the first 2028
Friday of August and the following Saturday and Sunday of each 2029
year, beginning in 2018: 2030

(i) An item of clothing, the price of which is seventy- 2031
five dollars or less; 2032

(ii) An item of school supplies, the price of which is 2033
twenty dollars or less; 2034

(iii) An item of school instructional material, the price 2035
of which is twenty dollars or less. 2036

(b) As used in division (B) (56) of this section: 2037

(i) "Clothing" means all human wearing apparel suitable 2038
for general use. "Clothing" includes, but is not limited to, 2039
aprons, household and shop; athletic supporters; baby receiving 2040
blankets; bathing suits and caps; beach capes and coats; belts 2041
and suspenders; boots; coats and jackets; costumes; diapers, 2042
children and adult, including disposable diapers; ~~ear muffs~~ 2043
earmuffs; footlets; formal wear; garters and garter belts; 2044
girdles; gloves and mittens for general use; hats and caps; 2045
hosiery; insoles for shoes; lab coats; neckties; overshoes; 2046
pantyhose; rainwear; rubber pants; sandals; scarves; shoes and 2047
shoe laces; slippers; sneakers; socks and stockings; steel-toed 2048
shoes; underwear; uniforms, athletic and nonathletic; and 2049
wedding apparel. "Clothing" does not include items purchased for 2050
use in a trade or business; clothing accessories or equipment; 2051
protective equipment; sports or recreational equipment; belt 2052
buckles sold separately; costume masks sold separately; patches 2053
and emblems sold separately; sewing equipment and supplies 2054
including, but not limited to, knitting needles, patterns, pins, 2055
scissors, sewing machines, sewing needles, tape measures, and 2056
thimbles; and sewing materials that become part of "clothing" 2057
including, but not limited to, buttons, fabric, lace, thread, 2058
yarn, and zippers. 2059

(ii) "School supplies" means items commonly used by a 2060
student in a course of study. "School supplies" includes only 2061
the following items: binders; book bags; calculators; cellophane 2062
tape; blackboard chalk; compasses; composition books; crayons; 2063
erasers; folders, expandable, pocket, plastic, and manila; glue, 2064
paste, and paste sticks; highlighters; index cards; index card 2065
boxes; legal pads; lunch boxes; markers; notebooks; paper, 2066
loose-leaf ruled notebook paper, copy paper, graph paper, 2067

tracing paper, manila paper, colored paper, poster board, and 2068
construction paper; pencil boxes and other school supply boxes; 2069
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 2070
and writing tablets. "School supplies" does not include any item 2071
purchased for use in a trade or business. 2072

(iii) "School instructional material" means written 2073
material commonly used by a student in a course of study as a 2074
reference and to learn the subject being taught. "School 2075
instructional material" includes only the following items: 2076
reference books, reference maps and globes, textbooks, and 2077
workbooks. "School instructional material" does not include any 2078
material purchased for use in a trade or business. 2079

(C) For the purpose of the proper administration of this 2080
chapter, and to prevent the evasion of the tax, it is presumed 2081
that all sales made in this state are subject to the tax until 2082
the contrary is established. 2083

(D) The levy of this tax on retail sales of recreation and 2084
sports club service shall not prevent a municipal corporation 2085
from levying any tax on recreation and sports club dues or on 2086
any income generated by recreation and sports club dues. 2087

(E) The tax collected by the vendor from the consumer 2088
under this chapter is not part of the price, but is a tax 2089
collection for the benefit of the state, and of counties levying 2090
an additional sales tax pursuant to section 5739.021 or 5739.026 2091
of the Revised Code and of transit authorities levying an 2092
additional sales tax pursuant to section 5739.023 of the Revised 2093
Code. Except for the discount authorized under section 5739.12 2094
of the Revised Code and the effects of any rounding pursuant to 2095
section 5703.055 of the Revised Code, no person other than the 2096
state or such a county or transit authority shall derive any 2097

benefit from the collection or payment of the tax levied by this 2098
section or section 5739.021, 5739.023, or 5739.026 of the 2099
Revised Code. 2100

Sec. 5751.01. As used in this chapter: 2101

(A) "Person" means, but is not limited to, individuals, 2102
combinations of individuals of any form, receivers, assignees, 2103
trustees in bankruptcy, firms, companies, joint-stock companies, 2104
business trusts, estates, partnerships, limited liability 2105
partnerships, limited liability companies, associations, joint 2106
ventures, clubs, societies, for-profit corporations, S 2107
corporations, qualified subchapter S subsidiaries, qualified 2108
subchapter S trusts, trusts, entities that are disregarded for 2109
federal income tax purposes, and any other entities. 2110

(B) "Consolidated elected taxpayer" means a group of two 2111
or more persons treated as a single taxpayer for purposes of 2112
this chapter as the result of an election made under section 2113
5751.011 of the Revised Code. 2114

(C) "Combined taxpayer" means a group of two or more 2115
persons treated as a single taxpayer for purposes of this 2116
chapter under section 5751.012 of the Revised Code. 2117

(D) "Taxpayer" means any person, or any group of persons 2118
in the case of a consolidated elected taxpayer or combined 2119
taxpayer treated as one taxpayer, required to register or pay 2120
tax under this chapter. "Taxpayer" does not include excluded 2121
persons. 2122

(E) "Excluded person" means any of the following: 2123

(1) Any person with not more than one hundred fifty 2124
thousand dollars of taxable gross receipts during the calendar 2125
year. Division (E) (1) of this section does not apply to a person 2126

that is a member of a consolidated elected taxpayer; 2127

(2) A public utility that paid the excise tax imposed by 2128
section 5727.24 or 5727.30 of the Revised Code based on one or 2129
more measurement periods that include the entire tax period 2130
under this chapter, except that a public utility that is a 2131
combined company is a taxpayer with regard to the following 2132
gross receipts: 2133

(a) Taxable gross receipts directly attributed to a public 2134
utility activity, but not directly attributed to an activity 2135
that is subject to the excise tax imposed by section 5727.24 or 2136
5727.30 of the Revised Code; 2137

(b) Taxable gross receipts that cannot be directly 2138
attributed to any activity, multiplied by a fraction whose 2139
numerator is the taxable gross receipts described in division 2140
(E) (2) (a) of this section and whose denominator is the total 2141
taxable gross receipts that can be directly attributed to any 2142
activity; 2143

(c) Except for any differences resulting from the use of 2144
an accrual basis method of accounting for purposes of 2145
determining gross receipts under this chapter and the use of the 2146
cash basis method of accounting for purposes of determining 2147
gross receipts under section 5727.24 of the Revised Code, the 2148
gross receipts directly attributed to the activity of a natural 2149
gas company shall be determined in a manner consistent with 2150
division (D) of section 5727.03 of the Revised Code. 2151

As used in division (E) (2) of this section, "combined 2152
company" and "public utility" have the same meanings as in 2153
section 5727.01 of the Revised Code. 2154

(3) A financial institution, as defined in section 5726.01 2155

of the Revised Code, that paid the tax imposed by section 2156
5726.02 of the Revised Code based on one or more taxable years 2157
that include the entire tax period under this chapter; 2158

(4) A person directly or indirectly owned by one or more 2159
financial institutions, as defined in section 5726.01 of the 2160
Revised Code, that paid the tax imposed by section 5726.02 of 2161
the Revised Code based on one or more taxable years that include 2162
the entire tax period under this chapter. 2163

For the purposes of division (E) (4) of this section, a 2164
person owns another person under the following circumstances: 2165

(a) In the case of corporations issuing capital stock, one 2166
corporation owns another corporation if it owns fifty per cent 2167
or more of the other corporation's capital stock with current 2168
voting rights; 2169

(b) In the case of a limited liability company, one person 2170
owns the company if that person's membership interest, as 2171
defined in section 1705.01 of the Revised Code, is fifty per 2172
cent or more of the combined membership interests of all persons 2173
owning such interests in the company; 2174

(c) In the case of a partnership, trust, or other 2175
unincorporated business organization other than a limited 2176
liability company, one person owns the organization if, under 2177
the articles of organization or other instrument governing the 2178
affairs of the organization, that person has a beneficial 2179
interest in the organization's profits, surpluses, losses, or 2180
distributions of fifty per cent or more of the combined 2181
beneficial interests of all persons having such an interest in 2182
the organization. 2183

(5) A domestic insurance company or foreign insurance 2184

company, as defined in section 5725.01 of the Revised Code, that 2185
paid the insurance company premiums tax imposed by section 2186
5725.18 or Chapter 5729. of the Revised Code, or an unauthorized 2187
insurance company whose gross premiums are subject to tax under 2188
section 3905.36 of the Revised Code based on one or more 2189
measurement periods that include the entire tax period under 2190
this chapter; 2191

(6) A person that solely facilitates or services one or 2192
more securitizations of phase-in-recovery property pursuant to a 2193
final financing order as those terms are defined in section 2194
4928.23 of the Revised Code. For purposes of this division, 2195
"securitization" means transferring one or more assets to one or 2196
more persons and then issuing securities backed by the right to 2197
receive payment from the asset or assets so transferred. 2198

(7) Except as otherwise provided in this division, a pre- 2199
income tax trust as defined in division (FF) (4) of section 2200
5747.01 of the Revised Code and any pass-through entity of which 2201
such pre-income tax trust owns or controls, directly, 2202
indirectly, or constructively through related interests, more 2203
than five per cent of the ownership or equity interests. If the 2204
pre-income tax trust has made a qualifying pre-income tax trust 2205
election under division (FF) (3) of section 5747.01 of the 2206
Revised Code, then the trust and the pass-through entities of 2207
which it owns or controls, directly, indirectly, or 2208
constructively through related interests, more than five per 2209
cent of the ownership or equity interests, shall not be excluded 2210
persons for purposes of the tax imposed under section 5751.02 of 2211
the Revised Code. 2212

(8) Nonprofit organizations or the , other than ineligible 2213
nonprofit hospital agencies as defined in section 5709.122 of 2214

<u>the Revised Code;</u>	2215
<u>(9) The state and its agencies, instrumentalities, or</u>	2216
political subdivisions.	2217
(F) Except as otherwise provided in divisions (F) (2), (3),	2218
and (4) of this section, "gross receipts" means the total amount	2219
realized by a person, without deduction for the cost of goods	2220
sold or other expenses incurred, that contributes to the	2221
production of gross income of the person, including the fair	2222
market value of any property and any services received, and any	2223
debt transferred or forgiven as consideration.	2224
(1) The following are examples of gross receipts:	2225
(a) Amounts realized from the sale, exchange, or other	2226
disposition of the taxpayer's property to or with another;	2227
(b) Amounts realized from the taxpayer's performance of	2228
services for another;	2229
(c) Amounts realized from another's use or possession of	2230
the taxpayer's property or capital;	2231
(d) Any combination of the foregoing amounts.	2232
(2) "Gross receipts" excludes the following amounts:	2233
(a) Interest income except interest on credit sales;	2234
(b) Dividends and distributions from corporations, and	2235
distributive or proportionate shares of receipts and income from	2236
a pass-through entity as defined under section 5733.04 of the	2237
Revised Code;	2238
(c) Receipts from the sale, exchange, or other disposition	2239
of an asset described in section 1221 or 1231 of the Internal	2240
Revenue Code, without regard to the length of time the person	2241

held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.

(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;

(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;

(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements

received by or for an individual for medical or education	2272
expenses, health insurance premiums, or employee expenses, or on	2273
account of a dependent care spending account, legal services	2274
plan, any cafeteria plan described in section 125 of the	2275
Internal Revenue Code, or any similar employee reimbursement;	2276
(h) Proceeds received from the issuance of the taxpayer's	2277
own stock, options, warrants, puts, or calls, or from the sale	2278
of the taxpayer's treasury stock;	2279
(i) Proceeds received on the account of payments from	2280
insurance policies, except those proceeds received for the loss	2281
of business revenue;	2282
(j) Gifts or charitable contributions received; membership	2283
dues received by trade, professional, homeowners', or	2284
condominium associations; and payments received for educational	2285
courses, meetings, meals, or similar payments to a trade,	2286
professional, or other similar association; and fundraising	2287
receipts received by any person when any excess receipts are	2288
donated or used exclusively for charitable purposes;	2289
(k) Damages received as the result of litigation in excess	2290
of amounts that, if received without litigation, would be gross	2291
receipts;	2292
(l) Property, money, and other amounts received or	2293
acquired by an agent on behalf of another in excess of the	2294
agent's commission, fee, or other remuneration;	2295
(m) Tax refunds, other tax benefit recoveries, and	2296
reimbursements for the tax imposed under this chapter made by	2297
entities that are part of the same combined taxpayer or	2298
consolidated elected taxpayer group, and reimbursements made by	2299
entities that are not members of a combined taxpayer or	2300

consolidated elected taxpayer group that are required to be made 2301
for economic parity among multiple owners of an entity whose tax 2302
obligation under this chapter is required to be reported and 2303
paid entirely by one owner, pursuant to the requirements of 2304
sections 5751.011 and 5751.012 of the Revised Code; 2305

(n) Pension reversions; 2306

(o) Contributions to capital; 2307

(p) Sales or use taxes collected as a vendor or an out-of- 2308
state seller on behalf of the taxing jurisdiction from a 2309
consumer or other taxes the taxpayer is required by law to 2310
collect directly from a purchaser and remit to a local, state, 2311
or federal tax authority; 2312

(q) In the case of receipts from the sale of cigarettes or 2313
tobacco products by a wholesale dealer, retail dealer, 2314
distributor, manufacturer, or seller, all as defined in section 2315
5743.01 of the Revised Code, an amount equal to the federal and 2316
state excise taxes paid by any person on or for such cigarettes 2317
or tobacco products under subtitle E of the Internal Revenue 2318
Code or Chapter 5743. of the Revised Code; 2319

(r) In the case of receipts from the sale, transfer, 2320
exchange, or other disposition of motor fuel as "motor fuel" is 2321
defined in section 5736.01 of the Revised Code, an amount equal 2322
to the value of the motor fuel, including federal and state 2323
motor fuel excise taxes and receipts from billing or invoicing 2324
the tax imposed under section 5736.02 of the Revised Code to 2325
another person; 2326

(s) In the case of receipts from the sale of beer or 2327
intoxicating liquor, as defined in section 4301.01 of the 2328
Revised Code, by a person holding a permit issued under Chapter 2329

4301. or 4303. of the Revised Code, an amount equal to federal 2330
and state excise taxes paid by any person on or for such beer or 2331
intoxicating liquor under subtitle E of the Internal Revenue 2332
Code or Chapter 4301. or 4305. of the Revised Code; 2333

(t) Receipts realized by a new motor vehicle dealer or 2334
used motor vehicle dealer, as defined in section 4517.01 of the 2335
Revised Code, from the sale or other transfer of a motor 2336
vehicle, as defined in that section, to another motor vehicle 2337
dealer for the purpose of resale by the transferee motor vehicle 2338
dealer, but only if the sale or other transfer was based upon 2339
the transferee's need to meet a specific customer's preference 2340
for a motor vehicle; 2341

(u) Receipts from a financial institution described in 2342
division (E) (3) of this section for services provided to the 2343
financial institution in connection with the issuance, 2344
processing, servicing, and management of loans or credit 2345
accounts, if such financial institution and the recipient of 2346
such receipts have at least fifty per cent of their ownership 2347
interests owned or controlled, directly or constructively 2348
through related interests, by common owners; 2349

(v) Receipts realized from administering anti-neoplastic 2350
drugs and other cancer chemotherapy, biologicals, therapeutic 2351
agents, and supportive drugs in a physician's office to patients 2352
with cancer; 2353

(w) Funds received or used by a mortgage broker that is 2354
not a dealer in intangibles, other than fees or other 2355
consideration, pursuant to a table-funding mortgage loan or 2356
warehouse-lending mortgage loan. Terms used in division (F) (2) 2357
(w) of this section have the same meanings as in section 1322.01 2358
of the Revised Code, except "mortgage broker" means a person 2359

assisting a buyer in obtaining a mortgage loan for a fee or 2360
other consideration paid by the buyer or a lender, or a person 2361
engaged in table-funding or warehouse-lending mortgage loans 2362
that are first lien mortgage loans. 2363

(x) Property, money, and other amounts received by a 2364
professional employer organization, as defined in section 2365
4125.01 of the Revised Code, from a client employer, as defined 2366
in that section, in excess of the administrative fee charged by 2367
the professional employer organization to the client employer; 2368

(y) In the case of amounts retained as commissions by a 2369
permit holder under Chapter 3769. of the Revised Code, an amount 2370
equal to the amounts specified under that chapter that must be 2371
paid to or collected by the tax commissioner as a tax and the 2372
amounts specified under that chapter to be used as purse money; 2373

(z) Qualifying distribution center receipts. 2374

(i) For purposes of division (F) (2) (z) of this section: 2375

(I) "Qualifying distribution center receipts" means 2376
receipts of a supplier from qualified property that is delivered 2377
to a qualified distribution center, multiplied by a quantity 2378
that equals one minus the Ohio delivery percentage. If the 2379
qualified distribution center is a refining facility, "supplier" 2380
includes all dealers, brokers, processors, sellers, vendors, 2381
cosigners, and distributors of qualified property. 2382

(II) "Qualified property" means tangible personal property 2383
delivered to a qualified distribution center that is shipped to 2384
that qualified distribution center solely for further shipping 2385
by the qualified distribution center to another location in this 2386
state or elsewhere or, in the case of gold, silver, platinum, or 2387
palladium delivered to a refining facility solely for refining 2388

to a grade and fineness acceptable for delivery to a registered 2389
commodities exchange. "Further shipping" includes storing and 2390
repackaging property into smaller or larger bundles, so long as 2391
the property is not subject to further manufacturing or 2392
processing. "Refining" is limited to extracting impurities from 2393
gold, silver, platinum, or palladium through smelting or some 2394
other process at a refining facility. 2395

(III) "Qualified distribution center" means a warehouse, a 2396
facility similar to a warehouse, or a refining facility in this 2397
state that, for the qualifying year, is operated by a person 2398
that is not part of a combined taxpayer group and that has a 2399
qualifying certificate. All warehouses or facilities similar to 2400
warehouses that are operated by persons in the same taxpayer 2401
group and that are located within one mile of each other shall 2402
be treated as one qualified distribution center. All refining 2403
facilities that are operated by persons in the same taxpayer 2404
group and that are located in the same or adjacent counties may 2405
be treated as one qualified distribution center. 2406

(IV) "Qualifying year" means the calendar year to which 2407
the qualifying certificate applies. 2408

(V) "Qualifying period" means the period of the first day 2409
of July of the second year preceding the qualifying year through 2410
the thirtieth day of June of the year preceding the qualifying 2411
year. 2412

(VI) "Qualifying certificate" means the certificate issued 2413
by the tax commissioner after the operator of a distribution 2414
center files an annual application with the commissioner. The 2415
application and annual fee shall be filed and paid for each 2416
qualified distribution center on or before the first day of 2417
September before the qualifying year or within forty-five days 2418

after the distribution center opens, whichever is later. 2419

The applicant must substantiate to the commissioner's 2420
satisfaction that, for the qualifying period, all persons 2421
operating the distribution center have more than fifty per cent 2422
of the cost of the qualified property shipped to a location such 2423
that it would be situated outside this state under the provisions 2424
of division (E) of section 5751.033 of the Revised Code. The 2425
applicant must also substantiate that the distribution center 2426
cumulatively had costs from its suppliers equal to or exceeding 2427
five hundred million dollars during the qualifying period. (For 2428
purposes of division (F)(2)(z)(i)(VI) of this section, 2429
"supplier" excludes any person that is part of the consolidated 2430
elected taxpayer group, if applicable, of the operator of the 2431
qualified distribution center.) The commissioner may require the 2432
applicant to have an independent certified public accountant 2433
certify that the calculation of the minimum thresholds required 2434
for a qualified distribution center by the operator of a 2435
distribution center has been made in accordance with generally 2436
accepted accounting principles. The commissioner shall issue or 2437
deny the issuance of a certificate within sixty days after the 2438
receipt of the application. A denial is subject to appeal under 2439
section 5717.02 of the Revised Code. If the operator files a 2440
timely appeal under section 5717.02 of the Revised Code, the 2441
operator shall be granted a qualifying certificate effective for 2442
the remainder of the qualifying year or until the appeal is 2443
finalized, whichever is earlier. If the operator does not 2444
prevail in the appeal, the operator shall pay the ineligible 2445
operator's supplier tax liability. 2446

(VII) "Ohio delivery percentage" means the proportion of 2447
the total property delivered to a destination inside Ohio from 2448
the qualified distribution center during the qualifying period 2449

compared with total deliveries from such distribution center 2450
everywhere during the qualifying period. 2451

(VIII) "Refining facility" means one or more buildings 2452
located in a county in the Appalachian region of this state as 2453
defined by section 107.21 of the Revised Code and utilized for 2454
refining or smelting gold, silver, platinum, or palladium to a 2455
grade and fineness acceptable for delivery to a registered 2456
commodities exchange. 2457

(IX) "Registered commodities exchange" means a board of 2458
trade, such as New York mercantile exchange, inc. or commodity 2459
exchange, inc., designated as a contract market by the commodity 2460
futures trading commission under the "Commodity Exchange Act," 7 2461
U.S.C. 1 et seq., as amended. 2462

(X) "Ineligible operator's supplier tax liability" means 2463
an amount equal to the tax liability of all suppliers of a 2464
distribution center had the distribution center not been issued 2465
a qualifying certificate for the qualifying year. Ineligible 2466
operator's supplier tax liability shall not include interest or 2467
penalties. The tax commissioner shall determine an ineligible 2468
operator's supplier tax liability based on information that the 2469
commissioner may request from the operator of the distribution 2470
center. An operator shall provide a list of all suppliers of the 2471
distribution center and the corresponding costs of qualified 2472
property for the qualifying year at issue within sixty days of a 2473
request by the commissioner under this division. 2474

(ii) (I) If the distribution center is new and was not open 2475
for the entire qualifying period, the operator of the 2476
distribution center may request that the commissioner grant a 2477
qualifying certificate. If the certificate is granted and it is 2478
later determined that more than fifty per cent of the qualified 2479

property during that year was not shipped to a location such 2480
that it would be situated outside of this state under the 2481
provisions of division (E) of section 5751.033 of the Revised 2482
Code or if it is later determined that the person that operates 2483
the distribution center had average monthly costs from its 2484
suppliers of less than forty million dollars during that year, 2485
then the operator of the distribution center shall pay the 2486
ineligible operator's supplier tax liability. (For purposes of 2487
division (F) (2) (z) (ii) of this section, "supplier" excludes any 2488
person that is part of the consolidated elected taxpayer group, 2489
if applicable, of the operator of the qualified distribution 2490
center.) 2491

(II) The commissioner may grant a qualifying certificate 2492
to a distribution center that does not qualify as a qualified 2493
distribution center for an entire qualifying period if the 2494
operator of the distribution center demonstrates that the 2495
business operations of the distribution center have changed or 2496
will change such that the distribution center will qualify as a 2497
qualified distribution center within thirty-six months after the 2498
date the operator first applies for a certificate. If, at the 2499
end of that thirty-six-month period, the business operations of 2500
the distribution center have not changed such that the 2501
distribution center qualifies as a qualified distribution 2502
center, the operator of the distribution center shall pay the 2503
ineligible operator's supplier tax liability for each year that 2504
the distribution center received a certificate but did not 2505
qualify as a qualified distribution center. For each year the 2506
distribution center receives a certificate under division (F) (2) 2507
(z) (ii) (II) of this section, the distribution center shall pay 2508
all applicable fees required under division (F) (2) (z) of this 2509
section and shall submit an updated business plan showing the 2510

progress the distribution center made toward qualifying as a 2511
qualified distribution center during the preceding year. 2512

(III) An operator may appeal a determination under 2513
division (F) (2) (z) (ii) (I) or (II) of this section that the 2514
ineligible operator is liable for the operator's supplier tax 2515
liability as a result of not qualifying as a qualified 2516
distribution center, as provided in section 5717.02 of the 2517
Revised Code. 2518

(iii) When filing an application for a qualifying 2519
certificate under division (F) (2) (z) (i) (VI) of this section, the 2520
operator of a qualified distribution center also shall provide 2521
documentation, as the commissioner requires, for the 2522
commissioner to ascertain the Ohio delivery percentage. The 2523
commissioner, upon issuing the qualifying certificate, also 2524
shall certify the Ohio delivery percentage. The operator of the 2525
qualified distribution center may appeal the commissioner's 2526
certification of the Ohio delivery percentage in the same manner 2527
as an appeal is taken from the denial of a qualifying 2528
certificate under division (F) (2) (z) (i) (VI) of this section. 2529

(iv) (I) In the case where the distribution center is new 2530
and not open for the entire qualifying period, the operator 2531
shall make a good faith estimate of an Ohio delivery percentage 2532
for use by suppliers in their reports of taxable gross receipts 2533
for the remainder of the qualifying period. The operator of the 2534
facility shall disclose to the suppliers that such Ohio delivery 2535
percentage is an estimate and is subject to recalculation. By 2536
the due date of the next application for a qualifying 2537
certificate, the operator shall determine the actual Ohio 2538
delivery percentage for the estimated qualifying period and 2539
proceed as provided in division (F) (2) (z) (iii) of this section 2540

with respect to the calculation and recalculation of the Ohio 2541
delivery percentage. The supplier is required to file, within 2542
sixty days after receiving notice from the operator of the 2543
qualified distribution center, amended reports for the impacted 2544
calendar quarter or quarters or calendar year, whichever the 2545
case may be. Any additional tax liability or tax overpayment 2546
shall be subject to interest but shall not be subject to the 2547
imposition of any penalty so long as the amended returns are 2548
timely filed. 2549

(II) The operator of a distribution center that receives a 2550
qualifying certificate under division (F) (2) (z) (ii) (II) of this 2551
section shall make a good faith estimate of the Ohio delivery 2552
percentage that the operator estimates will apply to the 2553
distribution center at the end of the thirty-six-month period 2554
after the operator first applied for a qualifying certificate 2555
under that division. The result of the estimate shall be 2556
multiplied by a factor of one and seventy-five one-hundredths. 2557
The product of that calculation shall be the Ohio delivery 2558
percentage used by suppliers in their reports of taxable gross 2559
receipts for each qualifying year that the distribution center 2560
receives a qualifying certificate under division (F) (2) (z) (ii) 2561
(II) of this section, except that, if the product is less than 2562
five per cent, the Ohio delivery percentage used shall be five 2563
per cent and that, if the product exceeds forty-nine per cent, 2564
the Ohio delivery percentage used shall be forty-nine per cent. 2565

(v) Qualifying certificates and Ohio delivery percentages 2566
issued by the commissioner shall be open to public inspection 2567
and shall be timely published by the commissioner. A supplier 2568
relying in good faith on a certificate issued under this 2569
division shall not be subject to tax on the qualifying 2570
distribution center receipts under division (F) (2) (z) of this 2571

section. An operator receiving a qualifying certificate is 2572
liable for the ineligible operator's supplier tax liability for 2573
each year the operator received a certificate but did not 2574
qualify as a qualified distribution center. 2575

(vi) The annual fee for a qualifying certificate shall be 2576
one hundred thousand dollars for each qualified distribution 2577
center. If a qualifying certificate is not issued, the annual 2578
fee is subject to refund after the exhaustion of all appeals 2579
provided for in division (F) (2) (z) (i) (VI) of this section. The 2580
first one hundred thousand dollars of the annual application 2581
fees collected each calendar year shall be credited to the 2582
revenue enhancement fund. The remainder of the annual 2583
application fees collected shall be distributed in the same 2584
manner required under section 5751.20 of the Revised Code. 2585

(vii) The tax commissioner may require that adequate 2586
security be posted by the operator of the distribution center on 2587
appeal when the commissioner disagrees that the applicant has 2588
met the minimum thresholds for a qualified distribution center 2589
as set forth in division (F) (2) (z) of this section. 2590

(aa) Receipts of an employer from payroll deductions 2591
relating to the reimbursement of the employer for advancing 2592
moneys to an unrelated third party on an employee's behalf; 2593

(bb) Cash discounts allowed and taken; 2594

(cc) Returns and allowances; 2595

(dd) Bad debts from receipts on the basis of which the tax 2596
imposed by this chapter was paid in a prior quarterly tax 2597
payment period. For the purpose of this division, "bad debts" 2598
means any debts that have become worthless or uncollectible 2599
between the preceding and current quarterly tax payment periods, 2600

have been uncollected for at least six months, and that may be 2601
claimed as a deduction under section 166 of the Internal Revenue 2602
Code and the regulations adopted under that section, or that 2603
could be claimed as such if the taxpayer kept its accounts on 2604
the accrual basis. "Bad debts" does not include repossessed 2605
property, uncollectible amounts on property that remains in the 2606
possession of the taxpayer until the full purchase price is 2607
paid, or expenses in attempting to collect any account 2608
receivable or for any portion of the debt recovered; 2609

(ee) Any amount realized from the sale of an account 2610
receivable to the extent the receipts from the underlying 2611
transaction giving rise to the account receivable were included 2612
in the gross receipts of the taxpayer; 2613

(ff) Any receipts directly attributed to a transfer 2614
agreement or to the enterprise transferred under that agreement 2615
under section 4313.02 of the Revised Code. 2616

(gg) (i) As used in this division: 2617

(I) "Qualified uranium receipts" means receipts from the 2618
sale, exchange, lease, loan, production, processing, or other 2619
disposition of uranium within a uranium enrichment zone 2620
certified by the tax commissioner under division (F) (2) (gg) (ii) 2621
of this section. "Qualified uranium receipts" does not include 2622
any receipts with a situs in this state outside a uranium 2623
enrichment zone certified by the tax commissioner under division 2624
(F) (2) (gg) (ii) of this section. 2625

(II) "Uranium enrichment zone" means all real property 2626
that is part of a uranium enrichment facility licensed by the 2627
United States nuclear regulatory commission and that was or is 2628
owned or controlled by the United States department of energy or 2629

its successor. 2630

(ii) Any person that owns, leases, or operates real or 2631
tangible personal property constituting or located within a 2632
uranium enrichment zone may apply to the tax commissioner to 2633
have the uranium enrichment zone certified for the purpose of 2634
excluding qualified uranium receipts under division (F) (2) (gg) 2635
of this section. The application shall include such information 2636
that the tax commissioner prescribes. Within sixty days after 2637
receiving the application, the tax commissioner shall certify 2638
the zone for that purpose if the commissioner determines that 2639
the property qualifies as a uranium enrichment zone as defined 2640
in division (F) (2) (gg) of this section, or, if the tax 2641
commissioner determines that the property does not qualify, the 2642
commissioner shall deny the application or request additional 2643
information from the applicant. If the tax commissioner denies 2644
an application, the commissioner shall state the reasons for the 2645
denial. The applicant may appeal the denial of an application to 2646
the board of tax appeals pursuant to section 5717.02 of the 2647
Revised Code. If the applicant files a timely appeal, the tax 2648
commissioner shall conditionally certify the applicant's 2649
property. The conditional certification shall expire when all of 2650
the applicant's appeals are exhausted. Until final resolution of 2651
the appeal, the applicant shall retain the applicant's records 2652
in accordance with section 5751.12 of the Revised Code, 2653
notwithstanding any time limit on the preservation of records 2654
under that section. 2655

(hh) In the case of amounts collected by a licensed casino 2656
operator from casino gaming, amounts in excess of the casino 2657
operator's gross casino revenue. In this division, "casino 2658
operator" and "casino gaming" have the meanings defined in 2659
section 3772.01 of the Revised Code, and "gross casino revenue" 2660

has the meaning defined in section 5753.01 of the Revised Code. 2661

(ii) Receipts realized from the sale of agricultural 2662
commodities by an agricultural commodity handler, both as 2663
defined in section 926.01 of the Revised Code, that is licensed 2664
by the director of agriculture to handle agricultural 2665
commodities in this state. 2666

(jj) Qualifying integrated supply chain receipts. 2667

As used in division (F)(2)(jj) of this section: 2668

(i) "Qualifying integrated supply chain receipts" means 2669
receipts of a qualified integrated supply chain vendor from the 2670
sale of qualified property delivered to, or integrated supply 2671
chain services provided to, another qualified integrated supply 2672
chain vendor or to a retailer that is a member of the integrated 2673
supply chain. "Qualifying integrated supply chain receipts" does 2674
not include receipts of a person that is not a qualified 2675
integrated supply chain vendor from the sale of raw materials to 2676
a member of an integrated supply chain, or receipts of a member 2677
of an integrated supply chain from the sale of qualified 2678
property or integrated supply chain services to a person that is 2679
not a member of the integrated supply chain. 2680

(ii) "Qualified property" means any of the following: 2681

(I) Component parts used to hold, contain, package, or 2682
dispense qualified products, excluding equipment; 2683

(II) Work-in-process inventory that will become, comprise, 2684
or form a component part of a qualified product capable of being 2685
sold at retail, excluding equipment, machinery, furniture, and 2686
fixtures; 2687

(III) Finished goods inventory that is a qualified product 2688

capable of being sold at retail in the inventory's present form. 2689

(iii) "Qualified integrated supply chain vendor" means a 2690
person that is a member of an integrated supply chain and that 2691
provides integrated supply chain services within a qualified 2692
integrated supply chain district to a retailer that is a member 2693
of the integrated supply chain or to another qualified 2694
integrated supply chain vendor that is located within the same 2695
such district as the person but does not share a common owner 2696
with that person. 2697

(iv) "Qualified product" means a personal care, health, or 2698
beauty product or an aromatic product, including a candle. 2699
"Qualified product" does not include a drug that may be 2700
dispensed only pursuant to a prescription, durable medical 2701
equipment, mobility enhancing equipment, or a prosthetic device, 2702
as those terms are defined in section 5739.01 of the Revised 2703
Code. 2704

(v) "Integrated supply chain" means two or more qualified 2705
integrated supply chain vendors certified on the most recent 2706
list certified to the tax commissioner under this division that 2707
systematically collaborate and coordinate business operations 2708
with a retailer on the flow of tangible personal property from 2709
material sourcing through manufacturing, assembly, packaging, 2710
and delivery to the retailer to improve long-term financial 2711
performance of each vendor and the supply chain that includes 2712
the retailer. 2713

For the purpose of the certification required under this 2714
division, the reporting person for each retailer, on or before 2715
the first day of October of each year, shall certify to the tax 2716
commissioner a list of the qualified integrated supply chain 2717
vendors providing or receiving integrated supply chain services 2718

within a qualified integrated supply chain district for the 2719
ensuing calendar year. On or before the following first day of 2720
November, the commissioner shall issue a certificate to the 2721
retailer and to each vendor certified to the commissioner on 2722
that list. The certificate shall include the names of the 2723
retailer and of the qualified integrated supply chain vendors. 2724

The retailer shall notify the commissioner of any changes 2725
to the list, including additions to or subtractions from the 2726
list or changes in the name or legal entity of vendors certified 2727
on the list, within sixty days after the date the retailer 2728
becomes aware of the change. Within thirty days after receiving 2729
that notification, the commissioner shall issue a revised 2730
certificate to the retailer and to each vendor certified on the 2731
list. The revised certificate shall include the effective date 2732
of the change. 2733

Each recipient of a certificate issued pursuant to this 2734
division shall maintain a copy of the certificate for four years 2735
from the date the certificate was received. 2736

(vi) "Integrated supply chain services" means procuring 2737
raw materials or manufacturing, processing, refining, 2738
assembling, packaging, or repackaging tangible personal property 2739
that will become finished goods inventory capable of being sold 2740
at retail by a retailer that is a member of an integrated supply 2741
chain. 2742

(vii) "Retailer" means a person primarily engaged in 2743
making retail sales and any member of that person's consolidated 2744
elected taxpayer group or combined taxpayer group, whether or 2745
not that member is primarily engaged in making retail sales. 2746

(viii) "Qualified integrated supply chain district" means 2747

the parcel or parcels of land from which a retailer's integrated 2748
supply chain that existed on September 29, 2015, provides or 2749
receives integrated supply chain services, and to which all of 2750
the following apply: 2751

(I) The parcel or parcels are located wholly in a county 2752
having a population of greater than one hundred sixty-five 2753
thousand but less than one hundred seventy thousand based on the 2754
2010 federal decennial census. 2755

(II) The parcel or parcels are located wholly in the 2756
corporate limits of a municipal corporation with a population 2757
greater than seven thousand five hundred and less than eight 2758
thousand based on the 2010 federal decennial census that is 2759
partly located in the county described in division (F)(2)(jj) 2760
(viii)(I) of this section, as those corporate limits existed on 2761
September 29, 2015. 2762

(III) The aggregate acreage of the parcel or parcels 2763
equals or exceeds one hundred acres. 2764

(kk) In the case of a railroad company described in 2765
division (D)(9) of section 5727.01 of the Revised Code that 2766
purchases dyed diesel fuel directly from a supplier as defined 2767
by section 5736.01 of the Revised Code, an amount equal to the 2768
product of the number of gallons of dyed diesel fuel purchased 2769
directly from such a supplier multiplied by the average 2770
wholesale price for a gallon of diesel fuel as determined under 2771
section 5736.02 of the Revised Code for the period during which 2772
the fuel was purchased multiplied by a fraction, the numerator 2773
of which equals the rate of tax levied by section 5736.02 of the 2774
Revised Code less the rate of tax computed in section 5751.03 of 2775
the Revised Code, and the denominator of which equals the rate 2776
of tax computed in section 5751.03 of the Revised Code. 2777

(ll) Receipts realized by an out-of-state disaster 2778
business from disaster work conducted in this state during a 2779
disaster response period pursuant to a qualifying solicitation 2780
received by the business. Terms used in ~~this~~ division (F) (2) (ll) 2781
of this section have the same meanings as in section 5703.94 of 2782
the Revised Code. 2783

(mm) Any receipts for which the tax imposed by this 2784
chapter is prohibited by the constitution or laws of the United 2785
States or the constitution of this state. 2786

(3) In the case of a taxpayer when acting as a real estate 2787
broker, "gross receipts" includes only the portion of any fee 2788
for the service of a real estate broker, or service of a real 2789
estate salesperson associated with that broker, that is retained 2790
by the broker and not paid to an associated real estate 2791
salesperson or another real estate broker. For the purposes of 2792
this division, "real estate broker" and "real estate 2793
salesperson" have the same meanings as in section 4735.01 of the 2794
Revised Code. 2795

(4) A taxpayer's method of accounting for gross receipts 2796
for a tax period shall be the same as the taxpayer's method of 2797
accounting for federal income tax purposes for the taxpayer's 2798
federal taxable year that includes the tax period. If a 2799
taxpayer's method of accounting for federal income tax purposes 2800
changes, its method of accounting for gross receipts under this 2801
chapter shall be changed accordingly. 2802

(G) "Taxable gross receipts" means gross receipts situated 2803
to this state under section 5751.033 of the Revised Code. 2804

(H) A person has "substantial nexus with this state" if 2805
any of the following applies. The person: 2806

(1) Owns or uses a part or all of its capital in this state;	2807 2808
(2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;	2809 2810
(3) Has bright-line presence in this state;	2811
(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.	2812 2813 2814
(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:	2815 2816 2817
(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.	2818 2819 2820 2821 2822
(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:	2823 2824 2825
(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;	2826 2827
(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and	2828 2829 2830
(c) Any amount the person pays for services performed in this state on its behalf by another.	2831 2832
(3) Has during the calendar year taxable gross receipts of	2833

at least five hundred thousand dollars. 2834

(4) Has at any time during the calendar year within this 2835
state at least twenty-five per cent of the person's total 2836
property, total payroll, or total gross receipts. 2837

(5) Is domiciled in this state as an individual or for 2838
corporate, commercial, or other business purposes. 2839

(J) "Tangible personal property" has the same meaning as 2840
in section 5739.01 of the Revised Code. 2841

(K) "Internal Revenue Code" means the Internal Revenue 2842
Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term 2843
used in this chapter that is not otherwise defined has the same 2844
meaning as when used in a comparable context in the laws of the 2845
United States relating to federal income taxes unless a 2846
different meaning is clearly required. Any reference in this 2847
chapter to the Internal Revenue Code includes other laws of the 2848
United States relating to federal income taxes. 2849

(L) "Calendar quarter" means a three-month period ending 2850
on the thirty-first day of March, the thirtieth day of June, the 2851
thirtieth day of September, or the thirty-first day of December. 2852

(M) "Tax period" means the calendar quarter or calendar 2853
year on the basis of which a taxpayer is required to pay the tax 2854
imposed under this chapter. 2855

(N) "Calendar year taxpayer" means a taxpayer for which 2856
the tax period is a calendar year. 2857

(O) "Calendar quarter taxpayer" means a taxpayer for which 2858
the tax period is a calendar quarter. 2859

(P) "Agent" means a person authorized by another person to 2860
act on its behalf to undertake a transaction for the other, 2861

including any of the following:	2862
(1) A person receiving a fee to sell financial instruments;	2863 2864
(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person;	2865 2866 2867
(3) A person issuing licenses and permits under section 1533.13 of the Revised Code;	2868 2869
(4) A lottery sales agent holding a valid license issued under section 3770.05 of the Revised Code;	2870 2871
(5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code.	2872 2873
(Q) "Received" includes amounts accrued under the accrual method of accounting.	2874 2875
(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section 5751.04 of the Revised Code, a separate taxpayer that is not a member of such a group.	2876 2877 2878 2879 2880 2881 2882
Section 2. That existing sections 5739.01, 5739.02, and 5751.01 of the Revised Code are hereby repealed.	2883 2884
Section 3. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 49, Sub. H.B. 430, and Sub. S.B. 226, all of the 132nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised	2885 2886 2887 2888 2889

Code that amendments are to be harmonized if reasonably capable	2890
of simultaneous operation, finds that the composite is the	2891
resulting version of the section in effect prior to the	2892
effective date of the section as presented in this act.	2893