

**As Passed by the Senate**

**135th General Assembly**

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**S. B. No. 39**

**Senator Schaffer**

**Cosponsors: Senators Antonio, Brenner, Cirino, Craig, DeMora, Dolan, Gavarone,  
Hicks-Hudson, Ingram, Johnson, Kunze, Landis, Manning, Reineke, Reynolds,  
Romanchuk, Rulli, Sykes, Wilkin**

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**A BILL**

To amend sections 5739.01 and 5739.02 of the 1  
Revised Code to exempt certain baby products 2  
from sales and use tax. 3

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

**Section 1.** That sections 5739.01 and 5739.02 of the 4  
Revised Code be amended to read as follows: 5

**Sec. 5739.01.** As used in this chapter: 6

(A) "Person" includes individuals, receivers, assignees, 7  
trustees in bankruptcy, estates, firms, partnerships, 8  
associations, joint-stock companies, joint ventures, clubs, 9  
societies, corporations, the state and its political 10  
subdivisions, and combinations of individuals of any form. 11

(B) "Sale" and "selling" include all of the following 12  
transactions for a consideration in any manner, whether 13  
absolutely or conditionally, whether for a price or rental, in 14  
money or by exchange, and by any means whatsoever: 15

(1) All transactions by which title or possession, or 16

both, of tangible personal property, is or is to be transferred, 17  
or a license to use or consume tangible personal property is or 18  
is to be granted; 19

(2) All transactions by which lodging by a hotel is or is 20  
to be furnished to transient guests; 21

(3) All transactions by which: 22

(a) An item of tangible personal property is or is to be 23  
repaired, except property, the purchase of which would not be 24  
subject to the tax imposed by section 5739.02 of the Revised 25  
Code; 26

(b) An item of tangible personal property is or is to be 27  
installed, except property, the purchase of which would not be 28  
subject to the tax imposed by section 5739.02 of the Revised 29  
Code or property that is or is to be incorporated into and will 30  
become a part of a production, transmission, transportation, or 31  
distribution system for the delivery of a public utility 32  
service; 33

(c) The service of washing, cleaning, waxing, polishing, 34  
or painting a motor vehicle is or is to be furnished; 35

(d) Laundry and dry cleaning services are or are to be 36  
provided; 37

(e) Automatic data processing, computer services, or 38  
electronic information services are or are to be provided for 39  
use in business when the true object of the transaction is the 40  
receipt by the consumer of automatic data processing, computer 41  
services, or electronic information services rather than the 42  
receipt of personal or professional services to which automatic 43  
data processing, computer services, or electronic information 44  
services are incidental or supplemental. Notwithstanding any 45

other provision of this chapter, such transactions that occur 46  
between members of an affiliated group are not sales. An 47  
"affiliated group" means two or more persons related in such a 48  
way that one person owns or controls the business operation of 49  
another member of the group. In the case of corporations with 50  
stock, one corporation owns or controls another if it owns more 51  
than fifty per cent of the other corporation's common stock with 52  
voting rights. 53

(f) Telecommunications service, including prepaid calling 54  
service, prepaid wireless calling service, or ancillary service, 55  
is or is to be provided, but not including coin-operated 56  
telephone service; 57

(g) Landscaping and lawn care service is or is to be 58  
provided; 59

(h) Private investigation and security service is or is to 60  
be provided; 61

(i) Information services or tangible personal property is 62  
provided or ordered by means of a nine hundred telephone call; 63

(j) Building maintenance and janitorial service is or is 64  
to be provided; 65

(k) Exterminating service is or is to be provided; 66

(l) Physical fitness facility service is or is to be 67  
provided; 68

(m) Recreation and sports club service is or is to be 69  
provided; 70

(n) Satellite broadcasting service is or is to be 71  
provided; 72

(o) Personal care service is or is to be provided to an 73  
individual. As used in this division, "personal care service" 74  
includes skin care, the application of cosmetics, manicuring, 75  
pedicuring, hair removal, tattooing, body piercing, tanning, 76  
massage, and other similar services. "Personal care service" 77  
does not include a service provided by or on the order of a 78  
licensed physician or licensed chiropractor, or the cutting, 79  
coloring, or styling of an individual's hair. 80

(p) The transportation of persons by motor vehicle or 81  
aircraft is or is to be provided, when the transportation is 82  
entirely within this state, except for transportation provided 83  
by an ambulance service, by a transit bus, as defined in section 84  
5735.01 of the Revised Code, and transportation provided by a 85  
citizen of the United States holding a certificate of public 86  
convenience and necessity issued under 49 U.S.C. 41102; 87

(q) Motor vehicle towing service is or is to be provided. 88  
As used in this division, "motor vehicle towing service" means 89  
the towing or conveyance of a wrecked, disabled, or illegally 90  
parked motor vehicle. 91

(r) Snow removal service is or is to be provided. As used 92  
in this division, "snow removal service" means the removal of 93  
snow by any mechanized means, but does not include the providing 94  
of such service by a person that has less than five thousand 95  
dollars in sales of such service during the calendar year. 96

(s) Electronic publishing service is or is to be provided 97  
to a consumer for use in business, except that such transactions 98  
occurring between members of an affiliated group, as defined in 99  
division (B) (3) (e) of this section, are not sales. 100

(4) All transactions by which printed, imprinted, 101

overprinted, lithographic, multilithic, blueprinted, 102  
photostatic, or other productions or reproductions of written or 103  
graphic matter are or are to be furnished or transferred; 104

(5) The production or fabrication of tangible personal 105  
property for a consideration for consumers who furnish either 106  
directly or indirectly the materials used in the production of 107  
fabrication work; and include the furnishing, preparing, or 108  
serving for a consideration of any tangible personal property 109  
consumed on the premises of the person furnishing, preparing, or 110  
serving such tangible personal property. Except as provided in 111  
section 5739.03 of the Revised Code, a construction contract 112  
pursuant to which tangible personal property is or is to be 113  
incorporated into a structure or improvement on and becoming a 114  
part of real property is not a sale of such tangible personal 115  
property. The construction contractor is the consumer of such 116  
tangible personal property, provided that the sale and 117  
installation of carpeting, the sale and installation of 118  
agricultural land tile, the sale and erection or installation of 119  
portable grain bins, or the provision of landscaping and lawn 120  
care service and the transfer of property as part of such 121  
service is never a construction contract. 122

As used in division (B) (5) of this section: 123

(a) "Agricultural land tile" means fired clay or concrete 124  
tile, or flexible or rigid perforated plastic pipe or tubing, 125  
incorporated or to be incorporated into a subsurface drainage 126  
system appurtenant to land used or to be used primarily in 127  
production by farming, agriculture, horticulture, or 128  
floriculture. The term does not include such materials when they 129  
are or are to be incorporated into a drainage system appurtenant 130  
to a building or structure even if the building or structure is 131

used or to be used in such production.	132
(b) "Portable grain bin" means a structure that is used or	133
to be used by a person engaged in farming or agriculture to	134
shelter the person's grain and that is designed to be	135
disassembled without significant damage to its component parts.	136
(6) All transactions in which all of the shares of stock	137
of a closely held corporation are transferred, or an ownership	138
interest in a pass-through entity, as defined in section 5733.04	139
of the Revised Code, is transferred, if the corporation or pass-	140
through entity is not engaging in business and its entire assets	141
consist of boats, planes, motor vehicles, or other tangible	142
personal property operated primarily for the use and enjoyment	143
of the shareholders or owners;	144
(7) All transactions in which a warranty, maintenance or	145
service contract, or similar agreement by which the vendor of	146
the warranty, contract, or agreement agrees to repair or	147
maintain the tangible personal property of the consumer is or is	148
to be provided;	149
(8) The transfer of copyrighted motion picture films used	150
solely for advertising purposes, except that the transfer of	151
such films for exhibition purposes is not a sale;	152
(9) All transactions by which tangible personal property	153
is or is to be stored, except such property that the consumer of	154
the storage holds for sale in the regular course of business;	155
(10) All transactions in which "guaranteed auto	156
protection" is provided whereby a person promises to pay to the	157
consumer the difference between the amount the consumer receives	158
from motor vehicle insurance and the amount the consumer owes to	159
a person holding title to or a lien on the consumer's motor	160

vehicle in the event the consumer's motor vehicle suffers a 161  
total loss under the terms of the motor vehicle insurance policy 162  
or is stolen and not recovered, if the protection and its price 163  
are included in the purchase or lease agreement; 164

(11) (a) Except as provided in division (B) (11) (b) of this 165  
section, all transactions by which health care services are paid 166  
for, reimbursed, provided, delivered, arranged for, or otherwise 167  
made available by a medicaid health insuring corporation 168  
pursuant to the corporation's contract with the state. 169

(b) If the centers for medicare and medicaid services of 170  
the United States department of health and human services 171  
determines that the taxation of transactions described in 172  
division (B) (11) (a) of this section constitutes an impermissible 173  
health care-related tax under the "Social Security Act," section 174  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 175  
the medicaid director shall notify the tax commissioner of that 176  
determination. Beginning with the first day of the month 177  
following that notification, the transactions described in 178  
division (B) (11) (a) of this section are not sales for the 179  
purposes of this chapter or Chapter 5741. of the Revised Code. 180  
The tax commissioner shall order that the collection of taxes 181  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 182  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 183  
for transactions occurring on or after that date. 184

(12) All transactions by which a specified digital product 185  
is provided for permanent use or less than permanent use, 186  
regardless of whether continued payment is required. 187

Except as provided in this section, "sale" and "selling" 188  
do not include transfers of interest in leased property where 189  
the original lessee and the terms of the original lease 190

agreement remain unchanged, or professional, insurance, or 191  
personal service transactions that involve the transfer of 192  
tangible personal property as an inconsequential element, for 193  
which no separate charges are made. 194

(C) "Vendor" means the person providing the service or by 195  
whom the transfer effected or license given by a sale is or is 196  
to be made or given and, for sales described in division (B) (3) 197  
(i) of this section, the telecommunications service vendor that 198  
provides the nine hundred telephone service; if two or more 199  
persons are engaged in business at the same place of business 200  
under a single trade name in which all collections on account of 201  
sales by each are made, such persons shall constitute a single 202  
vendor. 203

Physicians, dentists, hospitals, and veterinarians who are 204  
engaged in selling tangible personal property as received from 205  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 206  
articles, are vendors. Veterinarians who are engaged in 207  
transferring to others for a consideration drugs, the dispensing 208  
of which does not require an order of a licensed veterinarian or 209  
physician under federal law, are vendors. 210

The operator of any peer-to-peer car sharing program shall 211  
be considered to be the vendor. 212

(D) (1) "Consumer" means the person for whom the service is 213  
provided, to whom the transfer effected or license given by a 214  
sale is or is to be made or given, to whom the service described 215  
in division (B) (3) (f) or (i) of this section is charged, or to 216  
whom the admission is granted. 217

(2) Physicians, dentists, hospitals, and blood banks 218  
operated by nonprofit institutions and persons licensed to 219

practice veterinary medicine, surgery, and dentistry are 220  
consumers of all tangible personal property and services 221  
purchased by them in connection with the practice of medicine, 222  
dentistry, the rendition of hospital or blood bank service, or 223  
the practice of veterinary medicine, surgery, and dentistry. In 224  
addition to being consumers of drugs administered by them or by 225  
their assistants according to their direction, veterinarians 226  
also are consumers of drugs that under federal law may be 227  
dispensed only by or upon the order of a licensed veterinarian 228  
or physician, when transferred by them to others for a 229  
consideration to provide treatment to animals as directed by the 230  
veterinarian. 231

(3) A person who performs a facility management, or 232  
similar service contract for a contractee is a consumer of all 233  
tangible personal property and services purchased for use in 234  
connection with the performance of such contract, regardless of 235  
whether title to any such property vests in the contractee. The 236  
purchase of such property and services is not subject to the 237  
exception for resale under division (E) of this section. 238

(4) (a) In the case of a person who purchases printed 239  
matter for the purpose of distributing it or having it 240  
distributed to the public or to a designated segment of the 241  
public, free of charge, that person is the consumer of that 242  
printed matter, and the purchase of that printed matter for that 243  
purpose is a sale. 244

(b) In the case of a person who produces, rather than 245  
purchases, printed matter for the purpose of distributing it or 246  
having it distributed to the public or to a designated segment 247  
of the public, free of charge, that person is the consumer of 248  
all tangible personal property and services purchased for use or 249

consumption in the production of that printed matter. That 250  
person is not entitled to claim exemption under division (B) (42) 251  
(f) of section 5739.02 of the Revised Code for any material 252  
incorporated into the printed matter or any equipment, supplies, 253  
or services primarily used to produce the printed matter. 254

(c) The distribution of printed matter to the public or to 255  
a designated segment of the public, free of charge, is not a 256  
sale to the members of the public to whom the printed matter is 257  
distributed or to any persons who purchase space in the printed 258  
matter for advertising or other purposes. 259

(5) A person who makes sales of any of the services listed 260  
in division (B) (3) of this section is the consumer of any 261  
tangible personal property used in performing the service. The 262  
purchase of that property is not subject to the resale exception 263  
under division (E) of this section. 264

(6) A person who engages in highway transportation for 265  
hire is the consumer of all packaging materials purchased by 266  
that person and used in performing the service, except for 267  
packaging materials sold by such person in a transaction 268  
separate from the service. 269

(7) In the case of a transaction for health care services 270  
under division (B) (11) of this section, a medicaid health 271  
insuring corporation is the consumer of such services. The 272  
purchase of such services by a medicaid health insuring 273  
corporation is not subject to the exception for resale under 274  
division (E) of this section or to the exemptions provided under 275  
divisions (B) (12), (18), (19), and (22) of section 5739.02 of 276  
the Revised Code. 277

(E) "Retail sale" and "sales at retail" include all sales, 278

except those in which the purpose of the consumer is to resell 279  
the thing transferred or benefit of the service provided, by a 280  
person engaging in business, in the form in which the same is, 281  
or is to be, received by the person. 282

(F) "Business" includes any activity engaged in by any 283  
person with the object of gain, benefit, or advantage, either 284  
direct or indirect. "Business" does not include the activity of 285  
a person in managing and investing the person's own funds. 286

(G) "Engaging in business" means commencing, conducting, 287  
or continuing in business, and liquidating a business when the 288  
liquidator thereof holds itself out to the public as conducting 289  
such business. Making a casual sale is not engaging in business. 290

(H) (1) (a) "Price," except as provided in divisions (H) (2), 291  
(3), and (4) of this section, means the total amount of 292  
consideration, including cash, credit, property, and services, 293  
for which tangible personal property or services are sold, 294  
leased, or rented, valued in money, whether received in money or 295  
otherwise, without any deduction for any of the following: 296

(i) The vendor's cost of the property sold; 297

(ii) The cost of materials used, labor or service costs, 298  
interest, losses, all costs of transportation to the vendor, all 299  
taxes imposed on the vendor, including the tax imposed under 300  
Chapter 5751. of the Revised Code, and any other expense of the 301  
vendor; 302

(iii) Charges by the vendor for any services necessary to 303  
complete the sale; 304

(iv) Delivery charges. As used in this division, "delivery 305  
charges" means charges by the vendor for preparation and 306  
delivery to a location designated by the consumer of tangible 307

personal property or a service, including transportation,	308
shipping, postage, handling, crating, and packing.	309
(v) Installation charges;	310
(vi) Credit for any trade-in.	311
(b) "Price" includes consideration received by the vendor	312
from a third party, if the vendor actually receives the	313
consideration from a party other than the consumer, and the	314
consideration is directly related to a price reduction or	315
discount on the sale; the vendor has an obligation to pass the	316
price reduction or discount through to the consumer; the amount	317
of the consideration attributable to the sale is fixed and	318
determinable by the vendor at the time of the sale of the item	319
to the consumer; and one of the following criteria is met:	320
(i) The consumer presents a coupon, certificate, or other	321
document to the vendor to claim a price reduction or discount	322
where the coupon, certificate, or document is authorized,	323
distributed, or granted by a third party with the understanding	324
that the third party will reimburse any vendor to whom the	325
coupon, certificate, or document is presented;	326
(ii) The consumer identifies the consumer's self to the	327
seller as a member of a group or organization entitled to a	328
price reduction or discount. A preferred customer card that is	329
available to any patron does not constitute membership in such a	330
group or organization.	331
(iii) The price reduction or discount is identified as a	332
third party price reduction or discount on the invoice received	333
by the consumer, or on a coupon, certificate, or other document	334
presented by the consumer.	335
(c) "Price" does not include any of the following:	336

(i) Discounts, including cash, term, or coupons that are 337  
not reimbursed by a third party that are allowed by a vendor and 338  
taken by a consumer on a sale; 339

(ii) Interest, financing, and carrying charges from credit 340  
extended on the sale of tangible personal property or services, 341  
if the amount is separately stated on the invoice, bill of sale, 342  
or similar document given to the purchaser; 343

(iii) Any taxes legally imposed directly on the consumer 344  
that are separately stated on the invoice, bill of sale, or 345  
similar document given to the consumer. For the purpose of this 346  
division, the tax imposed under Chapter 5751. of the Revised 347  
Code is not a tax directly on the consumer, even if the tax or a 348  
portion thereof is separately stated. 349

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 350  
this section, any discount allowed by an automobile manufacturer 351  
to its employee, or to the employee of a supplier, on the 352  
purchase of a new motor vehicle from a new motor vehicle dealer 353  
in this state. 354

(v) The dollar value of a gift card that is not sold by a 355  
vendor or purchased by a consumer and that is redeemed by the 356  
consumer in purchasing tangible personal property or services if 357  
the vendor is not reimbursed and does not receive compensation 358  
from a third party to cover all or part of the gift card value. 359  
For the purposes of this division, a gift card is not sold by a 360  
vendor or purchased by a consumer if it is distributed pursuant 361  
to an awards, loyalty, or promotional program. Past and present 362  
purchases of tangible personal property or services by the 363  
consumer shall not be treated as consideration exchanged for a 364  
gift card. 365

(2) In the case of a sale of any new motor vehicle by a 366  
new motor vehicle dealer, as defined in section 4517.01 of the 367  
Revised Code, in which another motor vehicle is accepted by the 368  
dealer as part of the consideration received, "price" has the 369  
same meaning as in division (H)(1) of this section, reduced by 370  
the credit afforded the consumer by the dealer for the motor 371  
vehicle received in trade. 372

(3) In the case of a sale of any watercraft or outboard 373  
motor by a watercraft dealer licensed in accordance with section 374  
1547.543 of the Revised Code, in which another watercraft, 375  
watercraft and trailer, or outboard motor is accepted by the 376  
dealer as part of the consideration received, "price" has the 377  
same meaning as in division (H)(1) of this section, reduced by 378  
the credit afforded the consumer by the dealer for the 379  
watercraft, watercraft and trailer, or outboard motor received 380  
in trade. As used in this division, "watercraft" includes an 381  
outdrive unit attached to the watercraft. 382

(4) In the case of transactions for health care services 383  
under division (B)(11) of this section, "price" means the amount 384  
of managed care premiums received each month by a medicaid 385  
health insuring corporation. 386

(I) "Receipts" means the total amount of the prices of the 387  
sales of vendors, provided that the dollar value of gift cards 388  
distributed pursuant to an awards, loyalty, or promotional 389  
program, and cash discounts allowed and taken on sales at the 390  
time they are consummated are not included, minus any amount 391  
deducted as a bad debt pursuant to section 5739.121 of the 392  
Revised Code. "Receipts" does not include the sale price of 393  
property returned or services rejected by consumers when the 394  
full sale price and tax are refunded either in cash or by 395

credit.	396
(J) "Place of business" means any location at which a person engages in business.	397 398
(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.	399 400 401 402 403 404
(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.	405 406 407 408 409 410 411 412 413 414 415
(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 section 5739.091 of the Revised Code.	416 417 418 419 420 421 422
(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty	423 424

consecutive days. 425

(O) "Making retail sales" means the effecting of 426  
transactions wherein one party is obligated to pay the price and 427  
the other party is obligated to provide a service or to transfer 428  
title to or possession of the item sold. "Making retail sales" 429  
does not include the preliminary acts of promoting or soliciting 430  
the retail sales, other than the distribution of printed matter 431  
which displays or describes and prices the item offered for 432  
sale, nor does it include delivery of a predetermined quantity 433  
of tangible personal property or transportation of property or 434  
personnel to or from a place where a service is performed. 435

(P) "Used directly in the rendition of a public utility 436  
service" means that property that is to be incorporated into and 437  
will become a part of the consumer's production, transmission, 438  
transportation, or distribution system and that retains its 439  
classification as tangible personal property after such 440  
incorporation; fuel or power used in the production, 441  
transmission, transportation, or distribution system; and 442  
tangible personal property used in the repair and maintenance of 443  
the production, transmission, transportation, or distribution 444  
system, including only such motor vehicles as are specially 445  
designed and equipped for such use. Tangible personal property 446  
and services used primarily in providing highway transportation 447  
for hire are not used directly in the rendition of a public 448  
utility service. In this definition, "public utility" includes a 449  
citizen of the United States holding, and required to hold, a 450  
certificate of public convenience and necessity issued under 49 451  
U.S.C. 41102. 452

(Q) "Refining" means removing or separating a desirable 453  
product from raw or contaminated materials by distillation or 454

physical, mechanical, or chemical processes. 455

(R) "Assembly" and "assembling" mean attaching or fitting 456  
together parts to form a product, but do not include packaging a 457  
product. 458

(S) "Manufacturing operation" means a process in which 459  
materials are changed, converted, or transformed into a 460  
different state or form from which they previously existed and 461  
includes refining materials, assembling parts, and preparing raw 462  
materials and parts by mixing, measuring, blending, or otherwise 463  
committing such materials or parts to the manufacturing process. 464  
"Manufacturing operation" does not include packaging. 465

(T) "Fiscal officer" means, with respect to a regional 466  
transit authority, the secretary-treasurer thereof, and with 467  
respect to a county that is a transit authority, the fiscal 468  
officer of the county transit board if one is appointed pursuant 469  
to section 306.03 of the Revised Code or the county auditor if 470  
the board of county commissioners operates the county transit 471  
system. 472

(U) "Transit authority" means a regional transit authority 473  
created pursuant to section 306.31 of the Revised Code or a 474  
county in which a county transit system is created pursuant to 475  
section 306.01 of the Revised Code. For the purposes of this 476  
chapter, a transit authority must extend to at least the entire 477  
area of a single county. A transit authority that includes 478  
territory in more than one county must include all the area of 479  
the most populous county that is a part of such transit 480  
authority. County population shall be measured by the most 481  
recent census taken by the United States census bureau. 482

(V) "Legislative authority" means, with respect to a 483

regional transit authority, the board of trustees thereof, and 484  
with respect to a county that is a transit authority, the board 485  
of county commissioners. 486

(W) "Territory of the transit authority" means all of the 487  
area included within the territorial boundaries of a transit 488  
authority as they from time to time exist. Such territorial 489  
boundaries must at all times include all the area of a single 490  
county or all the area of the most populous county that is a 491  
part of such transit authority. County population shall be 492  
measured by the most recent census taken by the United States 493  
census bureau. 494

(X) "Providing a service" means providing or furnishing 495  
anything described in division (B) (3) of this section for 496  
consideration. 497

(Y) (1) (a) "Automatic data processing" means processing of 498  
others' data, including keypunching or similar data entry 499  
services together with verification thereof, or providing access 500  
to computer equipment for the purpose of processing data. 501

(b) "Computer services" means providing services 502  
consisting of specifying computer hardware configurations and 503  
evaluating technical processing characteristics, computer 504  
programming, and training of computer programmers and operators, 505  
provided in conjunction with and to support the sale, lease, or 506  
operation of taxable computer equipment or systems. 507

(c) "Electronic information services" means providing 508  
access to computer equipment by means of telecommunications 509  
equipment for the purpose of either of the following: 510

(i) Examining or acquiring data stored in or accessible to 511  
the computer equipment; 512

(ii) Placing data into the computer equipment to be 513  
retrieved by designated recipients with access to the computer 514  
equipment. 515

"Electronic information services" does not include 516  
electronic publishing. 517

(d) "Automatic data processing, computer services, or 518  
electronic information services" shall not include personal or 519  
professional services. 520

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 521  
section, "personal and professional services" means all services 522  
other than automatic data processing, computer services, or 523  
electronic information services, including but not limited to: 524

(a) Accounting and legal services such as advice on tax 525  
matters, asset management, budgetary matters, quality control, 526  
information security, and auditing and any other situation where 527  
the service provider receives data or information and studies, 528  
alters, analyzes, interprets, or adjusts such material; 529

(b) Analyzing business policies and procedures; 530

(c) Identifying management information needs; 531

(d) Feasibility studies, including economic and technical 532  
analysis of existing or potential computer hardware or software 533  
needs and alternatives; 534

(e) Designing policies, procedures, and custom software 535  
for collecting business information, and determining how data 536  
should be summarized, sequenced, formatted, processed, 537  
controlled, and reported so that it will be meaningful to 538  
management; 539

(f) Developing policies and procedures that document how 540

business events and transactions are to be authorized, executed, and controlled;	541 542
(g) Testing of business procedures;	543
(h) Training personnel in business procedure applications;	544
(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;	545 546 547 548 549 550 551
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	552 553
(k) Providing digital advertising services;	554
(l) Providing services to electronically file any federal, state, or local individual income tax return, report, or other related document or schedule with a federal, state, or local government entity or to electronically remit a payment of any such individual income tax to such an entity. For the purpose of this division, "individual income tax" does not include federal, state, or local taxes withheld by an employer from an employee's compensation.	555 556 557 558 559 560 561 562
The services listed in divisions (Y) (2) (a) to (l) of this section are not automatic data processing or computer services.	563 564
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	565 566 567
(1) The holder of a permit or certificate issued by this	568

state or the United States authorizing the holder to engage in 569  
transportation of personal property belonging to others for 570  
consideration over or on highways, roadways, streets, or any 571  
similar public thoroughfare; 572

(2) A person who engages in the transportation of personal 573  
property belonging to others for consideration over or on 574  
highways, roadways, streets, or any similar public thoroughfare 575  
but who could not have engaged in such transportation on 576  
December 11, 1985, unless the person was the holder of a permit 577  
or certificate of the types described in division (Z) (1) of this 578  
section; 579

(3) A person who leases a motor vehicle to and operates it 580  
for a person described by division (Z) (1) or (2) of this 581  
section. 582

(AA) (1) "Telecommunications service" means the electronic 583  
transmission, conveyance, or routing of voice, data, audio, 584  
video, or any other information or signals to a point, or 585  
between or among points. "Telecommunications service" includes 586  
such transmission, conveyance, or routing in which computer 587  
processing applications are used to act on the form, code, or 588  
protocol of the content for purposes of transmission, 589  
conveyance, or routing without regard to whether the service is 590  
referred to as voice-over internet protocol service or is 591  
classified by the federal communications commission as enhanced 592  
or value-added. "Telecommunications service" does not include 593  
any of the following: 594

(a) Data processing and information services that allow 595  
data to be generated, acquired, stored, processed, or retrieved 596  
and delivered by an electronic transmission to a consumer where 597  
the consumer's primary purpose for the underlying transaction is 598

the processed data or information;	599
(b) Installation or maintenance of wiring or equipment on a customer's premises;	600 601
(c) Tangible personal property;	602
(d) Advertising, including directory advertising;	603
(e) Billing and collection services provided to third parties;	604 605
(f) Internet access service;	606
(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;	607 608 609 610 611 612 613 614
(h) Ancillary service;	615
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	616 617
(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:	618 619 620 621 622 623
(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video	624 625

conference call, including providing a telephone number. 626

"Conference bridging service" does not include 627

telecommunications services used to reach the conference bridge. 628

(b) "Detailed telecommunications billing service" means an 629

ancillary service of separately stating information pertaining 630

to individual calls on a customer's billing statement. 631

(c) "Directory assistance" means an ancillary service of 632

providing telephone number or address information. 633

(d) "Vertical service" means an ancillary service that is 634

offered in connection with one or more telecommunications 635

services, which offers advanced calling features that allow 636

customers to identify callers and manage multiple calls and call 637

connections, including conference bridging service. 638

(e) "Voice mail service" means an ancillary service that 639

enables the customer to store, send, or receive recorded 640

messages. "Voice mail service" does not include any vertical 641

services that the customer may be required to have in order to 642

utilize the voice mail service. 643

(3) "900 service" means an inbound toll telecommunications 644

service purchased by a subscriber that allows the subscriber's 645

customers to call in to the subscriber's prerecorded 646

announcement or live service, and which is typically marketed 647

under the name "900 service" and any subsequent numbers 648

designated by the federal communications commission. "900 649

service" does not include the charge for collection services 650

provided by the seller of the telecommunications service to the 651

subscriber, or services or products sold by the subscriber to 652

the subscriber's customer. 653

(4) "Prepaid calling service" means the right to access 654

exclusively telecommunications services, which must be paid for 655  
in advance and which enables the origination of calls using an 656  
access number or authorization code, whether manually or 657  
electronically dialed, and that is sold in predetermined units 658  
or dollars of which the number declines with use in a known 659  
amount. 660

(5) "Prepaid wireless calling service" means a 661  
telecommunications service that provides the right to utilize 662  
mobile telecommunications service as well as other non- 663  
telecommunications services, including the download of digital 664  
products delivered electronically, and content and ancillary 665  
services, that must be paid for in advance and that is sold in 666  
predetermined units or dollars of which the number declines with 667  
use in a known amount. 668

(6) "Value-added non-voice data service" means a 669  
telecommunications service in which computer processing 670  
applications are used to act on the form, content, code, or 671  
protocol of the information or data primarily for a purpose 672  
other than transmission, conveyance, or routing. 673

(7) "Coin-operated telephone service" means a 674  
telecommunications service paid for by inserting money into a 675  
telephone accepting direct deposits of money to operate. 676

(8) "Customer" has the same meaning as in section 5739.034 677  
of the Revised Code. 678

(BB) "Laundry and dry cleaning services" means removing 679  
soil or dirt from towels, linens, articles of clothing, or other 680  
fabric items that belong to others and supplying towels, linens, 681  
articles of clothing, or other fabric items. "Laundry and dry 682  
cleaning services" does not include the provision of self- 683

service facilities for use by consumers to remove soil or dirt 684  
from towels, linens, articles of clothing, or other fabric 685  
items. 686

(CC) "Magazines distributed as controlled circulation 687  
publications" means magazines containing at least twenty-four 688  
pages, at least twenty-five per cent editorial content, issued 689  
at regular intervals four or more times a year, and circulated 690  
without charge to the recipient, provided that such magazines 691  
are not owned or controlled by individuals or business concerns 692  
which conduct such publications as an auxiliary to, and 693  
essentially for the advancement of the main business or calling 694  
of, those who own or control them. 695

(DD) "Landscaping and lawn care service" means the 696  
services of planting, seeding, sodding, removing, cutting, 697  
trimming, pruning, mulching, aerating, applying chemicals, 698  
watering, fertilizing, and providing similar services to 699  
establish, promote, or control the growth of trees, shrubs, 700  
flowers, grass, ground cover, and other flora, or otherwise 701  
maintaining a lawn or landscape grown or maintained by the owner 702  
for ornamentation or other nonagricultural purpose. However, 703  
"landscaping and lawn care service" does not include the 704  
providing of such services by a person who has less than five 705  
thousand dollars in sales of such services during the calendar 706  
year. 707

(EE) "Private investigation and security service" means 708  
the performance of any activity for which the provider of such 709  
service is required to be licensed pursuant to Chapter 4749. of 710  
the Revised Code, or would be required to be so licensed in 711  
performing such services in this state, and also includes the 712  
services of conducting polygraph examinations and of monitoring 713

or overseeing the activities on or in, or the condition of, the 714  
consumer's home, business, or other facility by means of 715  
electronic or similar monitoring devices. "Private investigation 716  
and security service" does not include special duty services 717  
provided by off-duty police officers, deputy sheriffs, and other 718  
peace officers regularly employed by the state or a political 719  
subdivision. 720

(FF) "Information services" means providing conversation, 721  
giving consultation or advice, playing or making a voice or 722  
other recording, making or keeping a record of the number of 723  
callers, and any other service provided to a consumer by means 724  
of a nine hundred telephone call, except when the nine hundred 725  
telephone call is the means by which the consumer makes a 726  
contribution to a recognized charity. 727

(GG) "Research and development" means designing, creating, 728  
or formulating new or enhanced products, equipment, or 729  
manufacturing processes, and also means conducting scientific or 730  
technological inquiry and experimentation in the physical 731  
sciences with the goal of increasing scientific knowledge which 732  
may reveal the bases for new or enhanced products, equipment, or 733  
manufacturing processes. 734

(HH) "Qualified research and development equipment" means 735  
either of the following: 736

(1) Capitalized tangible personal property, and leased 737  
personal property that would be capitalized if purchased, used 738  
by a person primarily to perform research and development; 739

(2) Any tangible personal property used by a megaproject 740  
operator primarily to perform research and development at the 741  
site of a megaproject that satisfies the criteria described in 742

division (A) (11) (a) (ii) of section 122.17 of the Revised Code 743  
during the period that the megaproject operator has an agreement 744  
for such megaproject with the tax credit authority under 745  
division (D) of that section that remains in effect and has not 746  
expired or been terminated. 747

"Qualified research and development equipment" does not 748  
include tangible personal property primarily used in testing, as 749  
defined in division (A) (4) of section 5739.011 of the Revised 750  
Code, or used for recording or storing test results, unless such 751  
property is primarily used by the consumer in testing the 752  
product, equipment, or manufacturing process being created, 753  
designed, or formulated by the consumer in the research and 754  
development activity or in recording or storing such test 755  
results. 756

(II) "Building maintenance and janitorial service" means 757  
cleaning the interior or exterior of a building and any tangible 758  
personal property located therein or thereon, including any 759  
services incidental to such cleaning for which no separate 760  
charge is made. However, "building maintenance and janitorial 761  
service" does not include the providing of such service by a 762  
person who has less than five thousand dollars in sales of such 763  
service during the calendar year. As used in this division, 764  
"cleaning" does not include sanitation services necessary for an 765  
establishment described in 21 U.S.C. 608 to comply with rules 766  
and regulations adopted pursuant to that section. 767

(JJ) "Exterminating service" means eradicating or 768  
attempting to eradicate vermin infestations from a building or 769  
structure, or the area surrounding a building or structure, and 770  
includes activities to inspect, detect, or prevent vermin 771  
infestation of a building or structure. 772

(KK) "Physical fitness facility service" means all 773  
transactions by which a membership is granted, maintained, or 774  
renewed, including initiation fees, membership dues, renewal 775  
fees, monthly minimum fees, and other similar fees and dues, by 776  
a physical fitness facility such as an athletic club, health 777  
spa, or gymnasium, which entitles the member to use the facility 778  
for physical exercise. 779

(LL) "Recreation and sports club service" means all 780  
transactions by which a membership is granted, maintained, or 781  
renewed, including initiation fees, membership dues, renewal 782  
fees, monthly minimum fees, and other similar fees and dues, by 783  
a recreation and sports club, which entitles the member to use 784  
the facilities of the organization. "Recreation and sports club" 785  
means an organization that has ownership of, or controls or 786  
leases on a continuing, long-term basis, the facilities used by 787  
its members and includes an aviation club, gun or shooting club, 788  
yacht club, card club, swimming club, tennis club, golf club, 789  
country club, riding club, amateur sports club, or similar 790  
organization. 791

(MM) "Livestock" means farm animals commonly raised for 792  
food, food production, or other agricultural purposes, 793  
including, but not limited to, cattle, sheep, goats, swine, 794  
poultry, and captive deer. "Livestock" does not include 795  
invertebrates, amphibians, reptiles, domestic pets, animals for 796  
use in laboratories or for exhibition, or other animals not 797  
commonly raised for food or food production. 798

(NN) "Livestock structure" means a building or structure 799  
used exclusively for the housing, raising, feeding, or 800  
sheltering of livestock, and includes feed storage or handling 801  
structures and structures for livestock waste handling. 802

(OO) "Horticulture" means the growing, cultivation, and 803  
production of flowers, fruits, herbs, vegetables, sod, 804  
mushrooms, and nursery stock. As used in this division, "nursery 805  
stock" has the same meaning as in section 927.51 of the Revised 806  
Code. 807

(PP) "Horticulture structure" means a building or 808  
structure used exclusively for the commercial growing, raising, 809  
or overwintering of horticultural products, and includes the 810  
area used for stocking, storing, and packing horticultural 811  
products when done in conjunction with the production of those 812  
products. 813

(QQ) "Newspaper" means an unbound publication bearing a 814  
title or name that is regularly published, at least as 815  
frequently as biweekly, and distributed from a fixed place of 816  
business to the public in a specific geographic area, and that 817  
contains a substantial amount of news matter of international, 818  
national, or local events of interest to the general public. 819

(RR) (1) "Feminine hygiene products" means tampons, panty 820  
liners, menstrual cups, sanitary napkins, and other similar 821  
tangible personal property designed for feminine hygiene in 822  
connection with the human menstrual cycle, but does not include 823  
grooming and hygiene products. 824

(2) "Grooming and hygiene products" means soaps and 825  
cleaning solutions, shampoo, toothpaste, mouthwash, 826  
antiperspirants, and sun tan lotions and screens, regardless of 827  
whether any of these products are over-the-counter drugs. 828

(3) "Over-the-counter drugs" means a drug that contains a 829  
label that identifies the product as a drug as required by 21 830  
C.F.R. 201.66, which label includes a drug facts panel or a 831

statement of the active ingredients with a list of those 832  
ingredients contained in the compound, substance, or 833  
preparation. 834

(SS) (1) "Lease" or "rental" means any transfer of the 835  
possession or control of tangible personal property for a fixed 836  
or indefinite term, for consideration. "Lease" or "rental" 837  
includes future options to purchase or extend, and agreements 838  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 839  
trailers where the amount of consideration may be increased or 840  
decreased by reference to the amount realized upon the sale or 841  
disposition of the property. "Lease" or "rental" does not 842  
include: 843

(a) A transfer of possession or control of tangible 844  
personal property under a security agreement or a deferred 845  
payment plan that requires the transfer of title upon completion 846  
of the required payments; 847

(b) A transfer of possession or control of tangible 848  
personal property under an agreement that requires the transfer 849  
of title upon completion of required payments and payment of an 850  
option price that does not exceed the greater of one hundred 851  
dollars or one per cent of the total required payments; 852

(c) Providing tangible personal property along with an 853  
operator for a fixed or indefinite period of time, if the 854  
operator is necessary for the property to perform as designed. 855  
For purposes of this division, the operator must do more than 856  
maintain, inspect, or set up the tangible personal property. 857

(2) "Lease" and "rental," as defined in division (SS) of 858  
this section, shall not apply to leases or rentals that exist 859  
before June 26, 2003. 860

(3) "Lease" and "rental" have the same meaning as in 861  
division (SS) (1) of this section regardless of whether a 862  
transaction is characterized as a lease or rental under 863  
generally accepted accounting principles, the Internal Revenue 864  
Code, Title XIII of the Revised Code, or other federal, state, 865  
or local laws. 866

(TT) "Mobile telecommunications service" has the same 867  
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 868  
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 869  
amended, and, on and after August 1, 2003, includes related fees 870  
and ancillary services, including universal service fees, 871  
detailed billing service, directory assistance, service 872  
initiation, voice mail service, and vertical services, such as 873  
caller ID and three-way calling. 874

(UU) "Certified service provider" has the same meaning as 875  
in section 5740.01 of the Revised Code. 876

(VV) "Satellite broadcasting service" means the 877  
distribution or broadcasting of programming or services by 878  
satellite directly to the subscriber's receiving equipment 879  
without the use of ground receiving or distribution equipment, 880  
except the subscriber's receiving equipment or equipment used in 881  
the uplink process to the satellite, and includes all service 882  
and rental charges, premium channels or other special services, 883  
installation and repair service charges, and any other charges 884  
having any connection with the provision of the satellite 885  
broadcasting service. 886

(WW) "Tangible personal property" means personal property 887  
that can be seen, weighed, measured, felt, or touched, or that 888  
is in any other manner perceptible to the senses. For purposes 889  
of this chapter and Chapter 5741. of the Revised Code, "tangible 890

personal property" includes motor vehicles, electricity, water, 891  
gas, steam, and prewritten computer software. 892

(XX) "Municipal gas utility" means a municipal corporation 893  
that owns or operates a system for the distribution of natural 894  
gas. 895

(YY) "Computer" means an electronic device that accepts 896  
information in digital or similar form and manipulates it for a 897  
result based on a sequence of instructions. 898

(ZZ) "Computer software" means a set of coded instructions 899  
designed to cause a computer or automatic data processing 900  
equipment to perform a task. 901

(AAA) "Delivered electronically" means delivery of 902  
computer software from the seller to the purchaser by means 903  
other than tangible storage media. 904

(BBB) "Prewritten computer software" means computer 905  
software, including prewritten upgrades, that is not designed 906  
and developed by the author or other creator to the 907  
specifications of a specific purchaser. The combining of two or 908  
more prewritten computer software programs or prewritten 909  
portions thereof does not cause the combination to be other than 910  
prewritten computer software. "Prewritten computer software" 911  
includes software designed and developed by the author or other 912  
creator to the specifications of a specific purchaser when it is 913  
sold to a person other than the purchaser. If a person modifies 914  
or enhances computer software of which the person is not the 915  
author or creator, the person shall be deemed to be the author 916  
or creator only of such person's modifications or enhancements. 917  
Prewritten computer software or a prewritten portion thereof 918  
that is modified or enhanced to any degree, where such 919

modification or enhancement is designed and developed to the 920  
specifications of a specific purchaser, remains prewritten 921  
computer software; provided, however, that where there is a 922  
reasonable, separately stated charge or an invoice or other 923  
statement of the price given to the purchaser for the 924  
modification or enhancement, the modification or enhancement 925  
shall not constitute prewritten computer software. 926

(CCC) (1) "Food" means substances, whether in liquid, 927  
concentrated, solid, frozen, dried, or dehydrated form, that are 928  
sold for ingestion or chewing by humans and are consumed for 929  
their taste or nutritional value. "Food" does not include 930  
alcoholic beverages, dietary supplements, soft drinks, or 931  
tobacco. 932

(2) As used in division (CCC) (1) of this section: 933

(a) "Alcoholic beverages" means beverages that are 934  
suitable for human consumption and contain one-half of one per 935  
cent or more of alcohol by volume. 936

(b) "Dietary supplements" means any product, other than 937  
tobacco, that is intended to supplement the diet and that is 938  
intended for ingestion in tablet, capsule, powder, softgel, 939  
gelcap, or liquid form, or, if not intended for ingestion in 940  
such a form, is not represented as conventional food for use as 941  
a sole item of a meal or of the diet; that is required to be 942  
labeled as a dietary supplement, identifiable by the "supplement 943  
facts" box found on the label, as required by 21 C.F.R. 101.36; 944  
and that contains one or more of the following dietary 945  
ingredients: 946

(i) A vitamin; 947

(ii) A mineral; 948

(iii) An herb or other botanical;	949
(iv) An amino acid;	950
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	951 952
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (CCC) (2) (b) (i) to (v) of this section.	953 954 955
(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.	956 957 958 959 960
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	961 962
(DDD) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	963 964 965 966 967 968 969 970 971
(EEE) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	972 973 974 975
(FFF) "Durable medical equipment" means equipment,	976

including repair and replacement parts for such equipment, that 977  
can withstand repeated use, is primarily and customarily used to 978  
serve a medical purpose, generally is not useful to a person in 979  
the absence of illness or injury, and is not worn in or on the 980  
body. "Durable medical equipment" does not include mobility 981  
enhancing equipment. 982

(GGG) "Mobility enhancing equipment" means equipment, 983  
including repair and replacement parts for such equipment, that 984  
is primarily and customarily used to provide or increase the 985  
ability to move from one place to another and is appropriate for 986  
use either in a home or a motor vehicle, that is not generally 987  
used by persons with normal mobility, and that does not include 988  
any motor vehicle or equipment on a motor vehicle normally 989  
provided by a motor vehicle manufacturer. "Mobility enhancing 990  
equipment" does not include durable medical equipment. 991

(HHH) "Prosthetic device" means a replacement, corrective, 992  
or supportive device, including repair and replacement parts for 993  
the device, worn on or in the human body to artificially replace 994  
a missing portion of the body, prevent or correct physical 995  
deformity or malfunction, or support a weak or deformed portion 996  
of the body. As used in this division, before July 1, 2019, 997  
"prosthetic device" does not include corrective eyeglasses, 998  
contact lenses, or dental prosthesis. On or after July 1, 2019, 999  
"prosthetic device" does not include dental prosthesis but does 1000  
include corrective eyeglasses or contact lenses. 1001

(III) (1) "Fractional aircraft ownership program" means a 1002  
program in which persons within an affiliated group sell and 1003  
manage fractional ownership program aircraft, provided that at 1004  
least one hundred airworthy aircraft are operated in the program 1005  
and the program meets all of the following criteria: 1006

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

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

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

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

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

(2) As used in division (III)(1) of this section:

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section.

(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 (III)(1)(e) of this section.

(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 (III)(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.

(d) "Management services" means administrative and

aviation support services furnished under a fractional aircraft 1035  
ownership program in accordance with a management services 1036  
agreement under division (III) (1) (e) of this section, and 1037  
offered by the program manager to the fractional owners, 1038  
including, at a minimum, the establishment and implementation of 1039  
safety guidelines; the coordination of the scheduling of the 1040  
program aircraft and crews; program aircraft maintenance; 1041  
program aircraft insurance; crew training for crews employed, 1042  
furnished, or contracted by the program manager or the 1043  
fractional owner; the satisfaction of record-keeping 1044  
requirements; and the development and use of an operations 1045  
manual and a maintenance manual for the fractional aircraft 1046  
ownership program. 1047

(e) "Program manager" means the person that offers 1048  
management services to fractional owners pursuant to a 1049  
management services agreement under division (III) (1) (e) of this 1050  
section. 1051

(JJJ) "Electronic publishing" means providing access to 1052  
one or more of the following primarily for business customers, 1053  
including the federal government or a state government or a 1054  
political subdivision thereof, to conduct research: news; 1055  
business, financial, legal, consumer, or credit materials; 1056  
editorials, columns, reader commentary, or features; photos or 1057  
images; archival or research material; legal notices, identity 1058  
verification, or public records; scientific, educational, 1059  
instructional, technical, professional, trade, or other literary 1060  
materials; or other similar information which has been gathered 1061  
and made available by the provider to the consumer in an 1062  
electronic format. Providing electronic publishing includes the 1063  
functions necessary for the acquisition, formatting, editing, 1064  
storage, and dissemination of data or information that is the 1065

subject of a sale. 1066

(KKK) "Medicaid health insuring corporation" means a 1067  
health insuring corporation that holds a certificate of 1068  
authority under Chapter 1751. of the Revised Code and is under 1069  
contract with the department of medicaid pursuant to section 1070  
5167.10 of the Revised Code. 1071

(LLL) "Managed care premium" means any premium, 1072  
capitation, or other payment a medicaid health insuring 1073  
corporation receives for providing or arranging for the 1074  
provision of health care services to its members or enrollees 1075  
residing in this state. 1076

(MMM) "Captive deer" means deer and other cervidae that 1077  
have been legally acquired, or their offspring, that are 1078  
privately owned for agricultural or farming purposes. 1079

(NNN) "Gift card" means a document, card, certificate, or 1080  
other record, whether tangible or intangible, that may be 1081  
redeemed by a consumer for a dollar value when making a purchase 1082  
of tangible personal property or services. 1083

(OOO) "Specified digital product" means an electronically 1084  
transferred digital audiovisual work, digital audio work, or 1085  
digital book. 1086

As used in division (OOO) of this section: 1087

(1) "Digital audiovisual work" means a series of related 1088  
images that, when shown in succession, impart an impression of 1089  
motion, together with accompanying sounds, if any. 1090

(2) "Digital audio work" means a work that results from 1091  
the fixation of a series of musical, spoken, or other sounds, 1092  
including digitized sound files that are downloaded onto a 1093

device and that may be used to alert the customer with respect 1094  
to a communication. 1095

(3) "Digital book" means a work that is generally 1096  
recognized in the ordinary and usual sense as a book. 1097

(4) "Electronically transferred" means obtained by the 1098  
purchaser by means other than tangible storage media. 1099

(PPP) "Digital advertising services" means providing 1100  
access, by means of telecommunications equipment, to computer 1101  
equipment that is used to enter, upload, download, review, 1102  
manipulate, store, add, or delete data for the purpose of 1103  
electronically displaying, delivering, placing, or transferring 1104  
promotional advertisements to potential customers about products 1105  
or services or about industry or business brands. 1106

(QQQ) "Peer-to-peer car sharing program" has the same 1107  
meaning as in section 4516.01 of the Revised Code. 1108

(RRR) "Megaproject" and "megaproject operator" have the 1109  
same meanings as in section 122.17 of the Revised Code. 1110

(SSS) (1) "Diaper" means an absorbent garment worn by 1111  
humans who are incapable of, or have difficulty, controlling 1112  
their bladder or bowel movements. 1113

(2) "Children's diaper" means a diaper marketed to be worn 1114  
by children. 1115

(3) "Adult diaper" means a diaper other than a children's 1116  
diaper. 1117

**Sec. 5739.02.** For the purpose of providing revenue with 1118  
which to meet the needs of the state, for the use of the general 1119  
revenue fund of the state, for the purpose of securing a 1120  
thorough and efficient system of common schools throughout the 1121

state, for the purpose of affording revenues, in addition to 1122  
those from general property taxes, permitted under 1123  
constitutional limitations, and from other sources, for the 1124  
support of local governmental functions, and for the purpose of 1125  
reimbursing the state for the expense of administering this 1126  
chapter, an excise tax is hereby levied on each retail sale made 1127  
in this state. 1128

(A) (1) The tax shall be collected as provided in section 1129  
5739.025 of the Revised Code. The rate of the tax shall be five 1130  
and three-fourths per cent. The tax applies and is collectible 1131  
when the sale is made, regardless of the time when the price is 1132  
paid or delivered. 1133

(2) In the case of the lease or rental, with a fixed term 1134  
of more than thirty days or an indefinite term with a minimum 1135  
period of more than thirty days, of any motor vehicles designed 1136  
by the manufacturer to carry a load of not more than one ton, 1137  
watercraft, outboard motor, or aircraft, or of any tangible 1138  
personal property, other than motor vehicles designed by the 1139  
manufacturer to carry a load of more than one ton, to be used by 1140  
the lessee or renter primarily for business purposes, the tax 1141  
shall be collected by the vendor at the time the lease or rental 1142  
is consummated and shall be calculated by the vendor on the 1143  
basis of the total amount to be paid by the lessee or renter 1144  
under the lease agreement. If the total amount of the 1145  
consideration for the lease or rental includes amounts that are 1146  
not calculated at the time the lease or rental is executed, the 1147  
tax shall be calculated and collected by the vendor at the time 1148  
such amounts are billed to the lessee or renter. In the case of 1149  
an open-end lease or rental, the tax shall be calculated by the 1150  
vendor on the basis of the total amount to be paid during the 1151  
initial fixed term of the lease or rental, and for each 1152

subsequent renewal period as it comes due. As used in this 1153  
division, "motor vehicle" has the same meaning as in section 1154  
4501.01 of the Revised Code, and "watercraft" includes an 1155  
outdrive unit attached to the watercraft. 1156

A lease with a renewal clause and a termination penalty or 1157  
similar provision that applies if the renewal clause is not 1158  
exercised is presumed to be a sham transaction. In such a case, 1159  
the tax shall be calculated and paid on the basis of the entire 1160  
length of the lease period, including any renewal periods, until 1161  
the termination penalty or similar provision no longer applies. 1162  
The taxpayer shall bear the burden, by a preponderance of the 1163  
evidence, that the transaction or series of transactions is not 1164  
a sham transaction. 1165

(3) Except as provided in division (A) (2) of this section, 1166  
in the case of a sale, the price of which consists in whole or 1167  
in part of the lease or rental of tangible personal property, 1168  
the tax shall be measured by the installments of that lease or 1169  
rental. 1170

(4) In the case of a sale of a physical fitness facility 1171  
service or recreation and sports club service, the price of 1172  
which consists in whole or in part of a membership for the 1173  
receipt of the benefit of the service, the tax applicable to the 1174  
sale shall be measured by the installments thereof. 1175

(B) The tax does not apply to the following: 1176

(1) Sales to the state or any of its political 1177  
subdivisions, or to any other state or its political 1178  
subdivisions if the laws of that state exempt from taxation 1179  
sales made to this state and its political subdivisions; 1180

(2) Sales of food for human consumption off the premises 1181

where sold;	1182
(3) Sales of food sold to students only in a cafeteria,	1183
dormitory, fraternity, or sorority maintained in a private,	1184
public, or parochial school, college, or university;	1185
(4) Sales of newspapers and sales or transfers of	1186
magazines distributed as controlled circulation publications;	1187
(5) The furnishing, preparing, or serving of meals without	1188
charge by an employer to an employee provided the employer	1189
records the meals as part compensation for services performed or	1190
work done;	1191
(6) (a) Sales of motor fuel upon receipt, use,	1192
distribution, or sale of which in this state a tax is imposed by	1193
the law of this state, but this exemption shall not apply to the	1194
sale of motor fuel on which a refund of the tax is allowable	1195
under division (A) of section 5735.14 of the Revised Code; and	1196
the tax commissioner may deduct the amount of tax levied by this	1197
section applicable to the price of motor fuel when granting a	1198
refund of motor fuel tax pursuant to division (A) of section	1199
5735.14 of the Revised Code and shall cause the amount deducted	1200
to be paid into the general revenue fund of this state;	1201
(b) Sales of motor fuel other than that described in	1202
division (B) (6) (a) of this section and used for powering a	1203
refrigeration unit on a vehicle other than one used primarily to	1204
provide comfort to the operator or occupants of the vehicle.	1205
(7) Sales of natural gas by a natural gas company or	1206
municipal gas utility, of water by a water-works company, or of	1207
steam by a heating company, if in each case the thing sold is	1208
delivered to consumers through pipes or conduits, and all sales	1209
of communications services by a telegraph company, all terms as	1210

defined in section 5727.01 of the Revised Code, and sales of 1211  
electricity delivered through wires; 1212

(8) Casual sales by a person, or auctioneer employed 1213  
directly by the person to conduct such sales, except as to such 1214  
sales of motor vehicles, watercraft or outboard motors required 1215  
to be titled under section 1548.06 of the Revised Code, 1216  
watercraft documented with the United States coast guard, 1217  
snowmobiles, and all-purpose vehicles as defined in section 1218  
4519.01 of the Revised Code; 1219

(9) (a) Sales of services or tangible personal property, 1220  
other than motor vehicles, mobile homes, and manufactured homes, 1221  
by churches, organizations exempt from taxation under section 1222  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1223  
organizations operated exclusively for charitable purposes as 1224  
defined in division (B) (12) of this section, provided that the 1225  
number of days on which such tangible personal property or 1226  
services, other than items never subject to the tax, are sold 1227  
does not exceed six in any calendar year, except as otherwise 1228  
provided in division (B) (9) (b) of this section. If the number of 1229  
days on which such sales are made exceeds six in any calendar 1230  
year, the church or organization shall be considered to be 1231  
engaged in business and all subsequent sales by it shall be 1232  
subject to the tax. In counting the number of days, all sales by 1233  
groups within a church or within an organization shall be 1234  
considered to be sales of that church or organization. 1235

(b) The limitation on the number of days on which tax- 1236  
exempt sales may be made by a church or organization under 1237  
division (B) (9) (a) of this section does not apply to sales made 1238  
by student clubs and other groups of students of a primary or 1239  
secondary school, or a parent-teacher association, booster 1240

group, or similar organization that raises money to support or 1241  
fund curricular or extracurricular activities of a primary or 1242  
secondary school. 1243

(c) Divisions (B) (9) (a) and (b) of this section do not 1244  
apply to sales by a noncommercial educational radio or 1245  
television broadcasting station. 1246

(10) Sales not within the taxing power of this state under 1247  
the Constitution or laws of the United States or the 1248  
Constitution of this state; 1249

(11) Except for transactions that are sales under division 1250  
(B) (3) (p) of section 5739.01 of the Revised Code, the 1251  
transportation of persons or property, unless the transportation 1252  
is by a private investigation and security service; 1253

(12) Sales of tangible personal property or services to 1254  
churches, to organizations exempt from taxation under section 1255  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1256  
nonprofit organizations operated exclusively for charitable 1257  
purposes in this state, no part of the net income of which 1258  
inures to the benefit of any private shareholder or individual, 1259  
and no substantial part of the activities of which consists of 1260  
carrying on propaganda or otherwise attempting to influence 1261  
legislation; sales to offices administering one or more homes 1262  
for the aged or one or more hospital facilities exempt under 1263  
section 140.08 of the Revised Code; and sales to organizations 1264  
described in division (D) of section 5709.12 of the Revised 1265  
Code. 1266

"Charitable purposes" means the relief of poverty; the 1267  
improvement of health through the alleviation of illness, 1268  
disease, or injury; the operation of an organization exclusively 1269

for the provision of professional, laundry, printing, and 1270  
purchasing services to hospitals or charitable institutions; the 1271  
operation of a home for the aged, as defined in section 5701.13 1272  
of the Revised Code; the operation of a radio or television 1273  
broadcasting station that is licensed by the federal 1274  
communications commission as a noncommercial educational radio 1275  
or television station; the operation of a nonprofit animal 1276  
adoption service or a county humane society; the promotion of 1277  
education by an institution of learning that maintains a faculty 1278  
of qualified instructors, teaches regular continuous courses of 1279  
study, and confers a recognized diploma upon completion of a 1280  
specific curriculum; the operation of a parent-teacher 1281  
association, booster group, or similar organization primarily 1282  
engaged in the promotion and support of the curricular or 1283  
extracurricular activities of a primary or secondary school; the 1284  
operation of a community or area center in which presentations 1285  
in music, dramatics, the arts, and related fields are made in 1286  
order to foster public interest and education therein; the 1287  
production of performances in music, dramatics, and the arts; or 1288  
the promotion of education by an organization engaged in 1289  
carrying on research in, or the dissemination of, scientific and 1290  
technological knowledge and information primarily for the 1291  
public. 1292

Nothing in this division shall be deemed to exempt sales 1293  
to any organization for use in the operation or carrying on of a 1294  
trade or business, or sales to a home for the aged for use in 1295  
the operation of independent living facilities as defined in 1296  
division (A) of section 5709.12 of the Revised Code. 1297

(13) Building and construction materials and services sold 1298  
to construction contractors for incorporation into a structure 1299  
or improvement to real property under a construction contract 1300

with this state or a political subdivision of this state, or 1301  
with the United States government or any of its agencies; 1302  
building and construction materials and services sold to 1303  
construction contractors for incorporation into a structure or 1304  
improvement to real property that are accepted for ownership by 1305  
this state or any of its political subdivisions, or by the 1306  
United States government or any of its agencies at the time of 1307  
completion of the structures or improvements; building and 1308  
construction materials sold to construction contractors for 1309  
incorporation into a horticulture structure or livestock 1310  
structure for a person engaged in the business of horticulture 1311  
or producing livestock; building materials and services sold to 1312  
a construction contractor for incorporation into a house of 1313  
public worship or religious education, or a building used 1314  
exclusively for charitable purposes under a construction 1315  
contract with an organization whose purpose is as described in 1316  
division (B) (12) of this section; building materials and 1317  
services sold to a construction contractor for incorporation 1318  
into a building under a construction contract with an 1319  
organization exempt from taxation under section 501(c) (3) of the 1320  
Internal Revenue Code of 1986 when the building is to be used 1321  
exclusively for the organization's exempt purposes; building and 1322  
construction materials sold for incorporation into the original 1323  
construction of a sports facility under section 307.696 of the 1324  
Revised Code; building and construction materials and services 1325  
sold to a construction contractor for incorporation into real 1326  
property outside this state if such materials and services, when 1327  
sold to a construction contractor in the state in which the real 1328  
property is located for incorporation into real property in that 1329  
state, would be exempt from a tax on sales levied by that state; 1330  
building and construction materials for incorporation into a 1331  
transportation facility pursuant to a public-private agreement 1332

entered into under sections 5501.70 to 5501.83 of the Revised 1333  
Code; until one calendar year after the construction of a 1334  
convention center that qualifies for property tax exemption 1335  
under section 5709.084 of the Revised Code is completed, 1336  
building and construction materials and services sold to a 1337  
construction contractor for incorporation into the real property 1338  
comprising that convention center; and building and construction 1339  
materials sold for incorporation into a structure or improvement 1340  
to real property that is used primarily as, or primarily in 1341  
support of, a manufacturing facility or research and development 1342  
facility and that is to be owned by a megaproject operator upon 1343  
completion and located at the site of a megaproject that 1344  
satisfies the criteria described in division (A) (11) (a) (ii) of 1345  
section 122.17 of the Revised Code, provided that the sale 1346  
occurs during the period that the megaproject operator has an 1347  
agreement for such megaproject with the tax credit authority 1348  
under division (D) of section 122.17 of the Revised Code that 1349  
remains in effect and has not expired or been terminated. 1350

(14) Sales of ships or vessels or rail rolling stock used 1351  
or to be used principally in interstate or foreign commerce, and 1352  
repairs, alterations, fuel, and lubricants for such ships or 1353  
vessels or rail rolling stock; 1354

(15) Sales to persons primarily engaged in any of the 1355  
activities mentioned in division (B) (42) (a), (g), or (h) of this 1356  
section, to persons engaged in making retail sales, or to 1357  
persons who purchase for sale from a manufacturer tangible 1358  
personal property that was produced by the manufacturer in 1359  
accordance with specific designs provided by the purchaser, of 1360  
packages, including material, labels, and parts for packages, 1361  
and of machinery, equipment, and material for use primarily in 1362  
packaging tangible personal property produced for sale, 1363

including any machinery, equipment, and supplies used to make 1364  
labels or packages, to prepare packages or products for 1365  
labeling, or to label packages or products, by or on the order 1366  
of the person doing the packaging, or sold at retail. "Packages" 1367  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1368  
bindings, wrappings, and other similar devices and containers, 1369  
but does not include motor vehicles or bulk tanks, trailers, or 1370  
similar devices attached to motor vehicles. "Packaging" means 1371  
placing in a package. Division (B) (15) of this section does not 1372  
apply to persons engaged in highway transportation for hire. 1373

(16) Sales of food to persons using supplemental nutrition 1374  
assistance program benefits to purchase the food. As used in 1375  
this division, "food" has the same meaning as in 7 U.S.C. 2012 1376  
and federal regulations adopted pursuant to the Food and 1377  
Nutrition Act of 2008. 1378

(17) Sales to persons engaged in farming, agriculture, 1379  
horticulture, or floriculture, of tangible personal property for 1380  
use or consumption primarily in the production by farming, 1381  
agriculture, horticulture, or floriculture of other tangible 1382  
personal property for use or consumption primarily in the 1383  
production of tangible personal property for sale by farming, 1384  
agriculture, horticulture, or floriculture; or material and 1385  
parts for incorporation into any such tangible personal property 1386  
for use or consumption in production; and of tangible personal 1387  
property for such use or consumption in the conditioning or 1388  
holding of products produced by and for such use, consumption, 1389  
or sale by persons engaged in farming, agriculture, 1390  
horticulture, or floriculture, except where such property is 1391  
incorporated into real property; 1392

(18) Sales of drugs for a human being that may be 1393

dispensed only pursuant to a prescription; insulin as recognized 1394  
in the official United States pharmacopoeia; urine and blood 1395  
testing materials when used by diabetics or persons with 1396  
hypoglycemia to test for glucose or acetone; hypodermic syringes 1397  
and needles when used by diabetics for insulin injections; 1398  
epoetin alfa when purchased for use in the treatment of persons 1399  
with medical disease; hospital beds when purchased by hospitals, 1400  
nursing homes, or other medical facilities; and medical oxygen 1401  
and medical oxygen-dispensing equipment when purchased by 1402  
hospitals, nursing homes, or other medical facilities; 1403

(19) Sales of prosthetic devices, durable medical 1404  
equipment for home use, or mobility enhancing equipment, when 1405  
made pursuant to a prescription and when such devices or 1406  
equipment are for use by a human being. 1407

(20) Sales of emergency and fire protection vehicles and 1408  
equipment to nonprofit organizations for use solely in providing 1409  
fire protection and emergency services, including trauma care 1410  
and emergency medical services, for political subdivisions of 1411  
the state; 1412

(21) Sales of tangible personal property manufactured in 1413  
this state, if sold by the manufacturer in this state to a 1414  
retailer for use in the retail business of the retailer outside 1415  
of this state and if possession is taken from the manufacturer 1416  
by the purchaser within this state for the sole purpose of 1417  
immediately removing the same from this state in a vehicle owned 1418  
by the purchaser; 1419

(22) Sales of services provided by the state or any of its 1420  
political subdivisions, agencies, instrumentalities, 1421  
institutions, or authorities, or by governmental entities of the 1422  
state or any of its political subdivisions, agencies, 1423

instrumentalities, institutions, or authorities;	1424
(23) Sales of motor vehicles to nonresidents of this state	1425
under the circumstances described in division (B) of section	1426
5739.029 of the Revised Code;	1427
(24) Sales to persons engaged in the preparation of eggs	1428
for sale of tangible personal property used or consumed directly	1429
in such preparation, including such tangible personal property	1430
used for cleaning, sanitizing, preserving, grading, sorting, and	1431
classifying by size; packages, including material and parts for	1432
packages, and machinery, equipment, and material for use in	1433
packaging eggs for sale; and handling and transportation	1434
equipment and parts therefor, except motor vehicles licensed to	1435
operate on public highways, used in intraplant or interplant	1436
transfers or shipment of eggs in the process of preparation for	1437
sale, when the plant or plants within or between which such	1438
transfers or shipments occur are operated by the same person.	1439
"Packages" includes containers, cases, baskets, flats, fillers,	1440
filler flats, cartons, closure materials, labels, and labeling	1441
materials, and "packaging" means placing therein.	1442
(25) (a) Sales of water to a consumer for residential use;	1443
(b) Sales of water by a nonprofit corporation engaged	1444
exclusively in the treatment, distribution, and sale of water to	1445
consumers, if such water is delivered to consumers through pipes	1446
or tubing.	1447
(26) Fees charged for inspection or reinspection of motor	1448
vehicles under section 3704.14 of the Revised Code;	1449
(27) Sales to persons licensed to conduct a food service	1450
operation pursuant to section 3717.43 of the Revised Code, of	1451
tangible personal property primarily used directly for the	1452

following:	1453
(a) To prepare food for human consumption for sale;	1454
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	1455 1456 1457 1458
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1459 1460
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1461 1462
(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;	1463 1464 1465 1466
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	1467 1468 1469
(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;	1470 1471 1472
(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;	1473 1474 1475 1476 1477 1478
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and	1479 1480

issued a charter by the congress of the United States or is 1481  
recognized by the United States veterans administration, for use 1482  
by the headquarters; 1483

(34) Sales to a telecommunications service vendor, mobile 1484  
telecommunications service vendor, or satellite broadcasting 1485  
service vendor of tangible personal property and services used 1486  
directly and primarily in transmitting, receiving, switching, or 1487  
recording any interactive, one- or two-way electromagnetic 1488  
communications, including voice, image, data, and information, 1489  
through the use of any medium, including, but not limited to, 1490  
poles, wires, cables, switching equipment, computers, and record 1491  
storage devices and media, and component parts for the tangible 1492  
personal property. The exemption provided in this division shall 1493  
be in lieu of all other exemptions under division (B) (42) (a) or 1494  
(n) of this section to which the vendor may otherwise be 1495  
entitled, based upon the use of the thing purchased in providing 1496  
the telecommunications, mobile telecommunications, or satellite 1497  
broadcasting service. 1498

(35) (a) Sales where the purpose of the consumer is to use 1499  
or consume the things transferred in making retail sales and 1500  
consisting of newspaper inserts, catalogues, coupons, flyers, 1501  
gift certificates, or other advertising material that prices and 1502  
describes tangible personal property offered for retail sale. 1503

(b) Sales to direct marketing vendors of preliminary 1504  
materials such as photographs, artwork, and typesetting that 1505  
will be used in printing advertising material; and of printed 1506  
matter that offers free merchandise or chances to win sweepstake 1507  
prizes and that is mailed to potential customers with 1508  
advertising material described in division (B) (35) (a) of this 1509  
section; 1510

(c) Sales of equipment such as telephones, computers, 1511  
facsimile machines, and similar tangible personal property 1512  
primarily used to accept orders for direct marketing retail 1513  
sales. 1514

(d) Sales of automatic food vending machines that preserve 1515  
food with a shelf life of forty-five days or less by 1516  
refrigeration and dispense it to the consumer. 1517

For purposes of division (B) (35) of this section, "direct 1518  
marketing" means the method of selling where consumers order 1519  
tangible personal property by United States mail, delivery 1520  
service, or telecommunication and the vendor delivers or ships 1521  
the tangible personal property sold to the consumer from a 1522  
warehouse, catalogue distribution center, or similar fulfillment 1523  
facility by means of the United States mail, delivery service, 1524  
or common carrier. 1525

(36) Sales to a person engaged in the business of 1526  
horticulture or producing livestock of materials to be 1527  
incorporated into a horticulture structure or livestock 1528  
structure; 1529

(37) Sales of personal computers, computer monitors, 1530  
computer keyboards, modems, and other peripheral computer 1531  
equipment to an individual who is licensed or certified to teach 1532  
in an elementary or a secondary school in this state for use by 1533  
that individual in preparation for teaching elementary or 1534  
secondary school students; 1535

(38) Sales of tangible personal property that is not 1536  
required to be registered or licensed under the laws of this 1537  
state to a citizen of a foreign nation that is not a citizen of 1538  
the United States, provided the property is delivered to a 1539

person in this state that is not a related member of the 1540  
purchaser, is physically present in this state for the sole 1541  
purpose of temporary storage and package consolidation, and is 1542  
subsequently delivered to the purchaser at a delivery address in 1543  
a foreign nation. As used in division (B)(38) of this section, 1544  
"related member" has the same meaning as in section 5733.042 of 1545  
the Revised Code, and "temporary storage" means the storage of 1546  
tangible personal property for a period of not more than sixty 1547  
days. 1548

(39) Sales of used manufactured homes and used mobile 1549  
homes, as defined in section 5739.0210 of the Revised Code, made 1550  
on or after January 1, 2000; 1551

(40) Sales of tangible personal property and services to a 1552  
provider of electricity used or consumed directly and primarily 1553  
in generating, transmitting, or distributing electricity for use 1554  
by others, including property that is or is to be incorporated 1555  
into and will become a part of the consumer's production, 1556  
transmission, or distribution system and that retains its 1557  
classification as tangible personal property after 1558  
incorporation; fuel or power used in the production, 1559  
transmission, or distribution of electricity; energy conversion 1560  
equipment as defined in section 5727.01 of the Revised Code; and 1561  
tangible personal property and services used in the repair and 1562  
maintenance of the production, transmission, or distribution 1563  
system, including only those motor vehicles as are specially 1564  
designed and equipped for such use. The exemption provided in 1565  
this division shall be in lieu of all other exemptions in 1566  
division (B)(42)(a) or (n) of this section to which a provider 1567  
of electricity may otherwise be entitled based on the use of the 1568  
tangible personal property or service purchased in generating, 1569  
transmitting, or distributing electricity. 1570

(41) Sales to a person providing services under division	1571
(B) (3) (p) of section 5739.01 of the Revised Code of tangible	1572
personal property and services used directly and primarily in	1573
providing taxable services under that section.	1574
(42) Sales where the purpose of the purchaser is to do any	1575
of the following:	1576
(a) To incorporate the thing transferred as a material or	1577
a part into tangible personal property to be produced for sale	1578
by manufacturing, assembling, processing, or refining; or to use	1579
or consume the thing transferred directly in producing tangible	1580
personal property for sale by mining, including, without	1581
limitation, the extraction from the earth of all substances that	1582
are classed geologically as minerals, or directly in the	1583
rendition of a public utility service, except that the sales tax	1584
levied by this section shall be collected upon all meals,	1585
drinks, and food for human consumption sold when transporting	1586
persons. This paragraph does not exempt from "retail sale" or	1587
"sales at retail" the sale of tangible personal property that is	1588
to be incorporated into a structure or improvement to real	1589
property.	1590
(b) To hold the thing transferred as security for the	1591
performance of an obligation of the vendor;	1592
(c) To resell, hold, use, or consume the thing transferred	1593
as evidence of a contract of insurance;	1594
(d) To use or consume the thing directly in commercial	1595
fishing;	1596
(e) To incorporate the thing transferred as a material or	1597
a part into, or to use or consume the thing transferred directly	1598
in the production of, magazines distributed as controlled	1599

circulation publications; 1600

(f) To use or consume the thing transferred in the 1601  
production and preparation in suitable condition for market and 1602  
sale of printed, imprinted, overprinted, lithographic, 1603  
multilithic, blueprinted, photostatic, or other productions or 1604  
reproductions of written or graphic matter; 1605

(g) To use the thing transferred, as described in section 1606  
5739.011 of the Revised Code, primarily in a manufacturing 1607  
operation to produce tangible personal property for sale; 1608

(h) To use the benefit of a warranty, maintenance or 1609  
service contract, or similar agreement, as described in division 1610  
(B) (7) of section 5739.01 of the Revised Code, to repair or 1611  
maintain tangible personal property, if all of the property that 1612  
is the subject of the warranty, contract, or agreement would not 1613  
be subject to the tax imposed by this section; 1614

(i) To use the thing transferred as qualified research and 1615  
development equipment; 1616

(j) To use or consume the thing transferred primarily in 1617  
storing, transporting, mailing, or otherwise handling purchased 1618  
sales inventory in a warehouse, distribution center, or similar 1619  
facility when the inventory is primarily distributed outside 1620  
this state to retail stores of the person who owns or controls 1621  
the warehouse, distribution center, or similar facility, to 1622  
retail stores of an affiliated group of which that person is a 1623  
member, or by means of direct marketing. This division does not 1624  
apply to motor vehicles registered for operation on the public 1625  
highways. As used in this division, "affiliated group" has the 1626  
same meaning as in division (B) (3) (e) of section 5739.01 of the 1627  
Revised Code and "direct marketing" has the same meaning as in 1628

division (B) (35) of this section. 1629

(k) To use or consume the thing transferred to fulfill a 1630  
contractual obligation incurred by a warrantor pursuant to a 1631  
warranty provided as a part of the price of the tangible 1632  
personal property sold or by a vendor of a warranty, maintenance 1633  
or service contract, or similar agreement the provision of which 1634  
is defined as a sale under division (B) (7) of section 5739.01 of 1635  
the Revised Code; 1636

(l) To use or consume the thing transferred in the 1637  
production of a newspaper for distribution to the public; 1638

(m) To use tangible personal property to perform a service 1639  
listed in division (B) (3) of section 5739.01 of the Revised 1640  
Code, if the property is or is to be permanently transferred to 1641  
the consumer of the service as an integral part of the 1642  
performance of the service; 1643

(n) To use or consume the thing transferred primarily in 1644  
producing tangible personal property for sale by farming, 1645  
agriculture, horticulture, or floriculture. Persons engaged in 1646  
rendering farming, agriculture, horticulture, or floriculture 1647  
services for others are deemed engaged primarily in farming, 1648  
agriculture, horticulture, or floriculture. This paragraph does 1649  
not exempt from "retail sale" or "sales at retail" the sale of 1650  
tangible personal property that is to be incorporated into a 1651  
structure or improvement to real property. 1652

(o) To use or consume the thing transferred in acquiring, 1653  
formatting, editing, storing, and disseminating data or 1654  
information by electronic publishing; 1655

(p) To provide the thing transferred to the owner or 1656  
lessee of a motor vehicle that is being repaired or serviced, if 1657

the thing transferred is a rented motor vehicle and the 1658  
purchaser is reimbursed for the cost of the rented motor vehicle 1659  
by a manufacturer, warrantor, or provider of a maintenance, 1660  
service, or other similar contract or agreement, with respect to 1661  
the motor vehicle that is being repaired or serviced; 1662

(q) To use or consume the thing transferred directly in 1663  
production of crude oil and natural gas for sale. Persons 1664  
engaged in rendering production services for others are deemed 1665  
engaged in production. 1666

As used in division (B) (42) (q) of this section, 1667  
"production" means operations and tangible personal property 1668  
directly used to expose and evaluate an underground reservoir 1669  
that may contain hydrocarbon resources, prepare the wellbore for 1670  
production, and lift and control all substances yielded by the 1671  
reservoir to the surface of the earth. 1672

(i) For the purposes of division (B) (42) (q) of this 1673  
section, the "thing transferred" includes, but is not limited 1674  
to, any of the following: 1675

(I) Services provided in the construction of permanent 1676  
access roads, services provided in the construction of the well 1677  
site, and services provided in the construction of temporary 1678  
impoundments; 1679

(II) Equipment and rigging used for the specific purpose 1680  
of creating with integrity a wellbore pathway to underground 1681  
reservoirs; 1682

(III) Drilling and workover services used to work within a 1683  
subsurface wellbore, and tangible personal property directly 1684  
used in providing such services; 1685

(IV) Casing, tubulars, and float and centralizing 1686

equipment;	1687
(V) Trailers to which production equipment is attached;	1688
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	1689 1690 1691
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	1692 1693 1694
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	1695 1696 1697 1698
(IX) Pressure pumping equipment;	1699
(X) Artificial lift systems equipment;	1700
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	1701 1702 1703
(XII) Tangible personal property directly used to control production equipment.	1704 1705
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	1706 1707 1708
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	1709 1710 1711
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well	1712 1713

stimulation as defined in section 1509.01 of the Revised Code;	1714
(III) Tangible personal property used primarily in	1715
preparing, installing, or reclaiming foundations for drilling or	1716
pumping equipment or well stimulation material tanks;	1717
(IV) Tangible personal property used primarily in	1718
transporting, delivering, or removing equipment to or from the	1719
well site or storing such equipment before its use at the well	1720
site;	1721
(V) Tangible personal property used primarily in gathering	1722
operations occurring off the well site, including gathering	1723
pipelines transporting hydrocarbon gas or liquids away from a	1724
crude oil or natural gas production facility;	1725
(VI) Tangible personal property that is to be incorporated	1726
into a structure or improvement to real property;	1727
(VII) Well site fencing, lighting, or security systems;	1728
(VIII) Communication devices or services;	1729
(IX) Office supplies;	1730
(X) Trailers used as offices or lodging;	1731
(XI) Motor vehicles of any kind;	1732
(XII) Tangible personal property used primarily for the	1733
storage of drilling byproducts and fuel not used for production;	1734
(XIII) Tangible personal property used primarily as a	1735
safety device;	1736
(XIV) Data collection or monitoring devices;	1737
(XV) Access ladders, stairs, or platforms attached to	1738
storage tanks.	1739

The enumeration of tangible personal property in division 1740  
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 1741  
and any tangible personal property not so enumerated shall not 1742  
necessarily be construed to be a "thing transferred" for the 1743  
purposes of division (B) (42) (q) of this section. 1744

The commissioner shall adopt and promulgate rules under 1745  
sections 119.01 to 119.13 of the Revised Code that the 1746  
commissioner deems necessary to administer division (B) (42) (q) 1747  
of this section. 1748

As used in division (B) (42) of this section, "thing" 1749  
includes all transactions included in divisions (B) (3) (a), (b), 1750  
and (e) of section 5739.01 of the Revised Code. 1751

(43) Sales conducted through a coin operated device that 1752  
activates vacuum equipment or equipment that dispenses water, 1753  
whether or not in combination with soap or other cleaning agents 1754  
or wax, to the consumer for the consumer's use on the premises 1755  
in washing, cleaning, or waxing a motor vehicle, provided no 1756  
other personal property or personal service is provided as part 1757  
of the transaction. 1758

(44) Sales of replacement and modification parts for 1759  
engines, airframes, instruments, and interiors in, and paint 1760  
for, aircraft used primarily in a fractional aircraft ownership 1761  
program, and sales of services for the repair, modification, and 1762  
maintenance of such aircraft, and machinery, equipment, and 1763  
supplies primarily used to provide those services. 1764

(45) Sales of telecommunications service that is used 1765  
directly and primarily to perform the functions of a call 1766  
center. As used in this division, "call center" means any 1767  
physical location where telephone calls are placed or received 1768

in high volume for the purpose of making sales, marketing, 1769  
customer service, technical support, or other specialized 1770  
business activity, and that employs at least fifty individuals 1771  
that engage in call center activities on a full-time basis, or 1772  
sufficient individuals to fill fifty full-time equivalent 1773  
positions. 1774

(46) Sales by a telecommunications service vendor of 900 1775  
service to a subscriber. This division does not apply to 1776  
information services. 1777

(47) Sales of value-added non-voice data service. This 1778  
division does not apply to any similar service that is not 1779  
otherwise a telecommunications service. 1780

(48) Sales of feminine hygiene products. 1781

(49) Sales of materials, parts, equipment, or engines used 1782  
in the repair or maintenance of aircraft or avionics systems of 1783  
such aircraft, and sales of repair, remodeling, replacement, or 1784  
maintenance services in this state performed on aircraft or on 1785  
an aircraft's avionics, engine, or component materials or parts. 1786  
As used in division (B) (49) of this section, "aircraft" means 1787  
aircraft of more than six thousand pounds maximum certified 1788  
takeoff weight or used exclusively in general aviation. 1789

(50) Sales of full flight simulators that are used for 1790  
pilot or flight-crew training, sales of repair or replacement 1791  
parts or components, and sales of repair or maintenance services 1792  
for such full flight simulators. "Full flight simulator" means a 1793  
replica of a specific type, or make, model, and series of 1794  
aircraft cockpit. It includes the assemblage of equipment and 1795  
computer programs necessary to represent aircraft operations in 1796  
ground and flight conditions, a visual system providing an out- 1797

of-the-cockpit view, and a system that provides cues at least 1798  
equivalent to those of a three-degree-of-freedom motion system, 1799  
and has the full range of capabilities of the systems installed 1800  
in the device as described in appendices A and B of part 60 of 1801  
chapter 1 of title 14 of the Code of Federal Regulations. 1802

(51) Any transfer or lease of tangible personal property 1803  
between the state and JobsOhio in accordance with section 1804  
4313.02 of the Revised Code. 1805

(52) (a) Sales to a qualifying corporation. 1806

(b) As used in division (B) (52) of this section: 1807

(i) "Qualifying corporation" means a nonprofit corporation 1808  
organized in this state that leases from an eligible county 1809  
land, buildings, structures, fixtures, and improvements to the 1810  
land that are part of or used in a public recreational facility 1811  
used by a major league professional athletic team or a class A 1812  
to class AAA minor league affiliate of a major league 1813  
professional athletic team for a significant portion of the 1814  
team's home schedule, provided the following apply: 1815

(I) The facility is leased from the eligible county 1816  
pursuant to a lease that requires substantially all of the 1817  
revenue from the operation of the business or activity conducted 1818  
by the nonprofit corporation at the facility in excess of 1819  
operating costs, capital expenditures, and reserves to be paid 1820  
to the eligible county at least once per calendar year. 1821

(II) Upon dissolution and liquidation of the nonprofit 1822  
corporation, all of its net assets are distributable to the 1823  
board of commissioners of the eligible county from which the 1824  
corporation leases the facility. 1825

(ii) "Eligible county" has the same meaning as in section 1826

307.695 of the Revised Code.	1827
(53) Sales to or by a cable service provider, video	1828
service provider, or radio or television broadcast station	1829
regulated by the federal government of cable service or	1830
programming, video service or programming, audio service or	1831
programming, or electronically transferred digital audiovisual	1832
or audio work. As used in division (B) (53) of this section,	1833
"cable service" and "cable service provider" have the same	1834
meanings as in section 1332.01 of the Revised Code, and "video	1835
service," "video service provider," and "video programming" have	1836
the same meanings as in section 1332.21 of the Revised Code.	1837
(54) Sales of a digital audio work electronically	1838
transferred for delivery through use of a machine, such as a	1839
juke box, that does all of the following:	1840
(a) Accepts direct payments to operate;	1841
(b) Automatically plays a selected digital audio work for	1842
a single play upon receipt of a payment described in division	1843
(B) (54) (a) of this section;	1844
(c) Operates exclusively for the purpose of playing	1845
digital audio works in a commercial establishment.	1846
(55) (a) Sales of the following occurring on the first	1847
Friday of August and the following Saturday and Sunday of each	1848
year, beginning in 2018:	1849
(i) An item of clothing, the price of which is seventy-	1850
five dollars or less;	1851
(ii) An item of school supplies, the price of which is	1852
twenty dollars or less;	1853
(iii) An item of school instructional material, the price	1854

of which is twenty dollars or less. 1855

(b) As used in division (B) (55) of this section: 1856

(i) "Clothing" means all human wearing apparel suitable 1857  
for general use. "Clothing" includes, but is not limited to, 1858  
aprons, household and shop; athletic supporters; baby receiving 1859  
blankets; bathing suits and caps; beach capes and coats; belts 1860  
and suspenders; boots; coats and jackets; costumes; adult 1861  
~~diapers, children and adult~~, including disposable diapers; 1862  
earmuffs; footlets; formal wear; garters and garter belts; 1863  
girdles; gloves and mittens for general use; hats and caps; 1864  
hosiery; insoles for shoes; lab coats; neckties; overshoes; 1865  
pantyhose; rainwear; rubber pants; sandals; scarves; shoes and 1866  
shoe laces; slippers; sneakers; socks and stockings; steel-toed 1867  
shoes; underwear; uniforms, athletic and nonathletic; and 1868  
wedding apparel. "Clothing" does not include items purchased for 1869  
use in a trade or business; clothing accessories or equipment; 1870  
protective equipment; sports or recreational equipment; belt 1871  
buckles sold separately; costume masks sold separately; patches 1872  
and emblems sold separately; sewing equipment and supplies 1873  
including, but not limited to, knitting needles, patterns, pins, 1874  
scissors, sewing machines, sewing needles, tape measures, and 1875  
thimbles; and sewing materials that become part of "clothing" 1876  
including, but not limited to, buttons, fabric, lace, thread, 1877  
yarn, and zippers. 1878

(ii) "School supplies" means items commonly used by a 1879  
student in a course of study. "School supplies" includes only 1880  
the following items: binders; book bags; calculators; cellophane 1881  
tape; blackboard chalk; compasses; composition books; crayons; 1882  
erasers; folders, expandable, pocket, plastic, and manila; glue, 1883  
paste, and paste sticks; highlighters; index cards; index card 1884

boxes; legal pads; lunch boxes; markers; notebooks; paper, 1885  
loose-leaf ruled notebook paper, copy paper, graph paper, 1886  
tracing paper, manila paper, colored paper, poster board, and 1887  
construction paper; pencil boxes and other school supply boxes; 1888  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 1889  
and writing tablets. "School supplies" does not include any item 1890  
purchased for use in a trade or business. 1891

(iii) "School instructional material" means written 1892  
material commonly used by a student in a course of study as a 1893  
reference and to learn the subject being taught. "School 1894  
instructional material" includes only the following items: 1895  
reference books, reference maps and globes, textbooks, and 1896  
workbooks. "School instructional material" does not include any 1897  
material purchased for use in a trade or business. 1898

~~(56) (a)~~ (56) Sales of adult diapers or incontinence 1899  
underpads sold pursuant to a prescription, for the benefit of a 1900  
medicaid recipient with a diagnosis of incontinence, and by a 1901  
medicaid provider that maintains a valid provider agreement 1902  
under section 5164.30 of the Revised Code with the department of 1903  
medicaid, provided that the medicaid program covers adult 1904  
diapers or incontinence underpads as an incontinence garment. 1905

~~(b)~~ As used in division ~~(B) (56) (a)~~ (B) (56) of this 1906  
section:— 1907

~~(i) "Diaper" means an absorbent garment worn by humans who 1908  
are incapable of, or have difficulty, controlling their bladder 1909  
or bowel movements.— 1910~~

~~(ii) "Incontinence", "incontinence underpad" means an 1911  
absorbent product, not worn on the body, designed to protect 1912  
furniture or other tangible personal property from soiling or 1913~~

damage due to human incontinence.	1914
(57) Sales of investment metal bullion and investment	1915
coins. "Investment metal bullion" means any bullion described in	1916
section 408(m) (3) (B) of the Internal Revenue Code, regardless of	1917
whether that bullion is in the physical possession of a trustee.	1918
"Investment coin" means any coin composed primarily of gold,	1919
silver, platinum, or palladium.	1920
(58) Sales of tangible personal property used primarily	1921
for any of the following purposes by a megaproject operator at	1922
the site of a megaproject that satisfies the criteria described	1923
in division (A) (11) (a) (ii) of section 122.17 of the Revised	1924
Code, provided that the sale occurs during the period that the	1925
megaproject operator has an agreement for such megaproject with	1926
the tax credit authority under division (D) of section 122.17 of	1927
the Revised Code that remains in effect and has not expired or	1928
been terminated:	1929
(a) To store, transmit, convey, distribute, recycle,	1930
circulate, or clean water, steam, or other gases used in or	1931
produced as a result of manufacturing activity, including items	1932
that support or aid in the operation of such property;	1933
(b) To clean or prepare inventory, at any stage of storage	1934
or production, or equipment used in a manufacturing activity,	1935
including chemicals, solvents, catalysts, soaps, and other items	1936
that support or aid in the operation of property;	1937
(c) To regulate, treat, filter, condition, improve, clean,	1938
maintain, or monitor environmental conditions within areas where	1939
manufacturing activities take place;	1940
(d) To handle, transport, or convey inventory during	1941
production or manufacturing.	1942

(59) Documentary services charges imposed pursuant to 1943  
section 4517.261 or 4781.24 of the Revised Code. 1944

(60) Sales of children's diapers, child restraint devices 1945  
or booster seats for use in motor vehicles, baby carriers, 1946  
strollers, cribs, including portable cribs, and baby monitors. 1947  
As used in division (B) (60) of this section, "baby monitor" 1948  
means an audio or video system designed and marketed to allow an 1949  
individual to monitor a baby in a different room of the same 1950  
building. 1951

(C) For the purpose of the proper administration of this 1952  
chapter, and to prevent the evasion of the tax, it is presumed 1953  
that all sales made in this state are subject to the tax until 1954  
the contrary is established. 1955

(D) The tax collected by the vendor from the consumer 1956  
under this chapter is not part of the price, but is a tax 1957  
collection for the benefit of the state, and of counties levying 1958  
an additional sales tax pursuant to section 5739.021 or 5739.026 1959  
of the Revised Code and of transit authorities levying an 1960  
additional sales tax pursuant to section 5739.023 of the Revised 1961  
Code. Except for the discount authorized under section 5739.12 1962  
of the Revised Code and the effects of any rounding pursuant to 1963  
section 5703.055 of the Revised Code, no person other than the 1964  
state or such a county or transit authority shall derive any 1965  
benefit from the collection or payment of the tax levied by this 1966  
section or section 5739.021, 5739.023, or 5739.026 of the 1967  
Revised Code. 1968

**Section 2.** That existing sections 5739.01 and 5739.02 of 1969  
the Revised Code are hereby repealed. 1970

**Section 3.** The amendment by this act of sections 5739.01 1971

and 5739.02 of the Revised Code applies on and after the first 1972  
day of the first month after the effective date of this section. 1973