

As Introduced

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H. B. No. 308

Representatives Duffey, Stinziano

**Cosponsors: Representatives Antani, Bishoff, Boyd, Derickson, Grossman, Hood,
Lepore-Hagan, Ramos, Reece, Rogers, Slesnick, Patterson**

A BILL

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

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

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

Sec. 5739.02. For the purpose of providing revenue with 6
which to meet the needs of the state, for the use of the general 7
revenue fund of the state, for the purpose of securing a 8
thorough and efficient system of common schools throughout the 9
state, for the purpose of affording revenues, in addition to 10
those from general property taxes, permitted under 11
constitutional limitations, and from other sources, for the 12
support of local governmental functions, and for the purpose of 13
reimbursing the state for the expense of administering this 14
chapter, an excise tax is hereby levied on each retail sale made 15
in this state. 16

(A) (1) The tax shall be collected as provided in section 17
5739.025 of the Revised Code. The rate of the tax shall be five 18

and three-fourths per cent. The tax applies and is collectible 19
when the sale is made, regardless of the time when the price is 20
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term 22
of more than thirty days or an indefinite term with a minimum 23
period of more than thirty days, of any motor vehicles designed 24
by the manufacturer to carry a load of not more than one ton, 25
watercraft, outboard motor, or aircraft, or of any tangible 26
personal property, other than motor vehicles designed by the 27
manufacturer to carry a load of more than one ton, to be used by 28
the lessee or renter primarily for business purposes, the tax 29
shall be collected by the vendor at the time the lease or rental 30
is consummated and shall be calculated by the vendor on the 31
basis of the total amount to be paid by the lessee or renter 32
under the lease agreement. If the total amount of the 33
consideration for the lease or rental includes amounts that are 34
not calculated at the time the lease or rental is executed, the 35
tax shall be calculated and collected by the vendor at the time 36
such amounts are billed to the lessee or renter. In the case of 37
an open-end lease or rental, the tax shall be calculated by the 38
vendor on the basis of the total amount to be paid during the 39
initial fixed term of the lease or rental, and for each 40
subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an 43
outdrive unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45
similar provision that applies if the renewal clause is not 46
exercised is presumed to be a sham transaction. In such a case, 47
the tax shall be calculated and paid on the basis of the entire 48
length of the lease period, including any renewal periods, until 49

the termination penalty or similar provision no longer applies. 50
The taxpayer shall bear the burden, by a preponderance of the 51
evidence, that the transaction or series of transactions is not 52
a sham transaction. 53

(3) Except as provided in division (A)(2) of this section, 54
in the case of a sale, the price of which consists in whole or 55
in part of the lease or rental of tangible personal property, 56
the tax shall be measured by the installments of that lease or 57
rental. 58

(4) In the case of a sale of a physical fitness facility 59
service or recreation and sports club service, the price of 60
which consists in whole or in part of a membership for the 61
receipt of the benefit of the service, the tax applicable to the 62
sale shall be measured by the installments thereof. 63

(B) The tax does not apply to the following: 64

(1) Sales to the state or any of its political 65
subdivisions, or to any other state or its political 66
subdivisions if the laws of that state exempt from taxation 67
sales made to this state and its political subdivisions; 68

(2) Sales of food for human consumption off the premises 69
where sold; 70

(3) Sales of food sold to students only in a cafeteria, 71
dormitory, fraternity, or sorority maintained in a private, 72
public, or parochial school, college, or university; 73

(4) Sales of newspapers and sales or transfers of 74
magazines distributed as controlled circulation publications; 75

(5) The furnishing, preparing, or serving of meals without 76
charge by an employer to an employee provided the employer 77

records the meals as part compensation for services performed or 78
work done; 79

(6) Sales of motor fuel upon receipt, use, distribution, 80
or sale of which in this state a tax is imposed by the law of 81
this state, but this exemption shall not apply to the sale of 82
motor fuel on which a refund of the tax is allowable under 83
division (A) of section 5735.14 of the Revised Code; and the tax 84
commissioner may deduct the amount of tax levied by this section 85
applicable to the price of motor fuel when granting a refund of 86
motor fuel tax pursuant to division (A) of section 5735.14 of 87
the Revised Code and shall cause the amount deducted to be paid 88
into the general revenue fund of this state; 89

(7) Sales of natural gas by a natural gas company, of 90
water by a water-works company, or of steam by a heating 91
company, if in each case the thing sold is delivered to 92
consumers through pipes or conduits, and all sales of 93
communications services by a telegraph company, all terms as 94
defined in section 5727.01 of the Revised Code, and sales of 95
electricity delivered through wires; 96

(8) Casual sales by a person, or auctioneer employed 97
directly by the person to conduct such sales, except as to such 98
sales of motor vehicles, watercraft or outboard motors required 99
to be titled under section 1548.06 of the Revised Code, 100
watercraft documented with the United States coast guard, 101
snowmobiles, and all-purpose vehicles as defined in section 102
4519.01 of the Revised Code; 103

(9) (a) Sales of services or tangible personal property, 104
other than motor vehicles, mobile homes, and manufactured homes, 105
by churches, organizations exempt from taxation under section 106
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 107

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

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

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

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

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

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

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the purchaser;	292
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	293 294 295 296 297
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	298 299 300
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.	301 302 303 304 305 306 307 308 309 310 311 312 313 314 315
(25) (a) Sales of water to a consumer for residential use;	316
(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	317 318 319 320

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	321 322
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	323 324 325 326
(a) To prepare food for human consumption for sale;	327
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	328 329 330 331
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	332 333
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	334 335
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	336 337 338 339
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	340 341 342
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;	343 344 345
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal	346 347 348

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

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

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

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

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

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

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

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

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

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

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

secondary school students;	408
(38) Sales to a professional racing team of any of the following:	409
(a) Motor racing vehicles;	410
(b) Repair services for motor racing vehicles;	411
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.	412
(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	413
(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially	414
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designed and equipped for such use. The exemption provided in 437
this division shall be in lieu of all other exemptions in 438
division (B) (42) (a) or (n) of this section to which a provider 439
of electricity may otherwise be entitled based on the use of the 440
tangible personal property or service purchased in generating, 441
transmitting, or distributing electricity. 442

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

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

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

- (b) To hold the thing transferred as security for the performance of an obligation of the vendor; 467
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- (c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance; 469
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- (d) To use or consume the thing directly in commercial fishing; 471
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- (e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications; 473
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- (f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter; 477
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- (g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale; 482
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- (h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section; 485
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- (i) To use the thing transferred as qualified research and development equipment; 491
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- (j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased 493
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sales inventory in a warehouse, distribution center, or similar 495
facility when the inventory is primarily distributed outside 496
this state to retail stores of the person who owns or controls 497
the warehouse, distribution center, or similar facility, to 498
retail stores of an affiliated group of which that person is a 499
member, or by means of direct marketing. This division does not 500
apply to motor vehicles registered for operation on the public 501
highways. As used in this division, "affiliated group" has the 502
same meaning as in division (B) (3) (e) of section 5739.01 of the 503
Revised Code and "direct marketing" has the same meaning as in 504
division (B) (35) of this section. 505

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

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

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

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

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

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

As used in division (B) (42) of this section, "thing" 532
includes all transactions included in divisions (B) (3) (a), (b), 533
and (e) of section 5739.01 of the Revised Code. 534

(43) Sales conducted through a coin operated device that 535
activates vacuum equipment or equipment that dispenses water, 536
whether or not in combination with soap or other cleaning agents 537
or wax, to the consumer for the consumer's use on the premises 538
in washing, cleaning, or waxing a motor vehicle, provided no 539
other personal property or personal service is provided as part 540
of the transaction. 541

(44) Sales of replacement and modification parts for 542
engines, airframes, instruments, and interiors in, and paint 543
for, aircraft used primarily in a fractional aircraft ownership 544
program, and sales of services for the repair, modification, and 545
maintenance of such aircraft, and machinery, equipment, and 546
supplies primarily used to provide those services. 547

(45) Sales of telecommunications service that is used 548
directly and primarily to perform the functions of a call 549
center. As used in this division, "call center" means any 550
physical location where telephone calls are placed or received 551
in high volume for the purpose of making sales, marketing, 552
customer service, technical support, or other specialized 553

business activity, and that employs at least fifty individuals 554
that engage in call center activities on a full-time basis, or 555
sufficient individuals to fill fifty full-time equivalent 556
positions. 557

(46) Sales by a telecommunications service vendor of 900 558
service to a subscriber. This division does not apply to 559
information services, as defined in division (FF) of section 560
5739.01 of the Revised Code. 561

(47) Sales of value-added non-voice data service. This 562
division does not apply to any similar service that is not 563
otherwise a telecommunications service. 564

(48) (a) Sales of machinery, equipment, and software to a 565
qualified direct selling entity for use in a warehouse or 566
distribution center primarily for storing, transporting, or 567
otherwise handling inventory that is held for sale to 568
independent salespersons who operate as direct sellers and that 569
is held primarily for distribution outside this state; 570

(b) As used in division (B) (48) (a) of this section: 571

(i) "Direct seller" means a person selling consumer 572
products to individuals for personal or household use and not 573
from a fixed retail location, including selling such product at 574
in-home product demonstrations, parties, and other one-on-one 575
selling. 576

(ii) "Qualified direct selling entity" means an entity 577
selling to direct sellers at the time the entity enters into a 578
tax credit agreement with the tax credit authority pursuant to 579
section 122.17 of the Revised Code, provided that the agreement 580
was entered into on or after January 1, 2007. Neither 581
contingencies relevant to the granting of, nor later 582

developments with respect to, the tax credit shall impair the 583
status of the qualified direct selling entity under division (B) 584
(48) of this section after execution of the tax credit agreement 585
by the tax credit authority. 586

(c) Division (B) (48) of this section is limited to 587
machinery, equipment, and software first stored, used, or 588
consumed in this state within the period commencing June 24, 589
2008, and ending on the date that is five years after that date. 590

(49) Sales of materials, parts, equipment, or engines used 591
in the repair or maintenance of aircraft or avionics systems of 592
such aircraft, and sales of repair, remodeling, replacement, or 593
maintenance services in this state performed on aircraft or on 594
an aircraft's avionics, engine, or component materials or parts. 595
As used in division (B) (49) of this section, "aircraft" means 596
aircraft of more than six thousand pounds maximum certified 597
takeoff weight or used exclusively in general aviation. 598

(50) Sales of full flight simulators that are used for 599
pilot or flight-crew training, sales of repair or replacement 600
parts or components, and sales of repair or maintenance services 601
for such full flight simulators. "Full flight simulator" means a 602
replica of a specific type, or make, model, and series of 603
aircraft cockpit. It includes the assemblage of equipment and 604
computer programs necessary to represent aircraft operations in 605
ground and flight conditions, a visual system providing an out- 606
of-the-cockpit view, and a system that provides cues at least 607
equivalent to those of a three-degree-of-freedom motion system, 608
and has the full range of capabilities of the systems installed 609
in the device as described in appendices A and B of part 60 of 610
chapter 1 of title 14 of the Code of Federal Regulations. 611

(51) Any transfer or lease of tangible personal property 612

between the state and JobsOhio in accordance with section 613
4313.02 of the Revised Code. 614

(52) (a) Sales to a qualifying corporation. 615

(b) As used in division (B) (52) of this section: 616

(i) "Qualifying corporation" means a nonprofit corporation 617
organized in this state that leases from an eligible county 618
land, buildings, structures, fixtures, and improvements to the 619
land that are part of or used in a public recreational facility 620
used by a major league professional athletic team or a class A 621
to class AAA minor league affiliate of a major league 622
professional athletic team for a significant portion of the 623
team's home schedule, provided the following apply: 624

(I) The facility is leased from the eligible county 625
pursuant to a lease that requires substantially all of the 626
revenue from the operation of the business or activity conducted 627
by the nonprofit corporation at the facility in excess of 628
operating costs, capital expenditures, and reserves to be paid 629
to the eligible county at least once per calendar year. 630

(II) Upon dissolution and liquidation of the nonprofit 631
corporation, all of its net assets are distributable to the 632
board of commissioners of the eligible county from which the 633
corporation leases the facility. 634

(ii) "Eligible county" has the same meaning as in section 635
307.695 of the Revised Code. 636

(53) Sales to or by a cable service provider, video 637
service provider, or radio or television broadcast station 638
regulated by the federal government of cable service or 639
programming, video service or programming, audio service or 640
programming, or electronically transferred digital audiovisual 641

or audio work. As used in division (B) (53) of this section, 642
"cable service" and "cable service provider" have the same 643
meanings as in section 1332.01 of the Revised Code, and "video 644
service," "video service provider," and "video programming" have 645
the same meanings as in section 1332.21 of the Revised Code. 646

(54) (a) Sales of college textbooks to students. 647

(b) As used in division (B) (54) of this section: 648

(i) "Institution of higher education" means all of the 649
following: 650

(I) A state institution of higher education as defined in 651
section 3345.12 of the Revised Code; 652

(II) An institution authorized by the Ohio board of 653
regents under Chapter 1713. of the Revised Code to grant degrees 654
and that is accredited by the appropriate regional and 655
professional accrediting associations within whose jurisdiction 656
it falls; 657

(III) Private career schools holding program 658
authorizations issued by the state board of career colleges and 659
schools under division (C) of section 3332.05 of the Revised 660
Code; 661

(IV) Private institutions exempt from regulation under 662
Chapter 3332. of the Revised Code as prescribed in section 663
3333.046 of the Revised Code; 664

(V) An accredited college, university, or other 665
postsecondary institution located outside this state that is 666
accredited by an accrediting organization recognized by the Ohio 667
board of regents. 668

(ii) "Student" means an individual enrolled part-time or 669

full-time in a course of study at an institution of higher 670
education. 671

(iii) "College textbook" means a new or used book or 672
workbook that is required or recommended by an institution of 673
higher education for a course offered by the institution, 674
including a digital copy thereof. "College textbook" does not 675
include notebooks, sketch pads, calculators, and laboratory 676
kits. 677

(C) For the purpose of the proper administration of this 678
chapter, and to prevent the evasion of the tax, it is presumed 679
that all sales made in this state are subject to the tax until 680
the contrary is established. 681

(D) The levy of this tax on retail sales of recreation and 682
sports club service shall not prevent a municipal corporation 683
from levying any tax on recreation and sports club dues or on 684
any income generated by recreation and sports club dues. 685

(E) The tax collected by the vendor from the consumer 686
under this chapter is not part of the price, but is a tax 687
collection for the benefit of the state, and of counties levying 688
an additional sales tax pursuant to section 5739.021 or 5739.026 689
of the Revised Code and of transit authorities levying an 690
additional sales tax pursuant to section 5739.023 of the Revised 691
Code. Except for the discount authorized under section 5739.12 692
of the Revised Code and the effects of any rounding pursuant to 693
section 5703.055 of the Revised Code, no person other than the 694
state or such a county or transit authority shall derive any 695
benefit from the collection or payment of the tax levied by this 696
section or section 5739.021, 5739.023, or 5739.026 of the 697
Revised Code. 698

Sec. 5739.03. (A) Except as provided in section 5739.05 or 699
section 5739.051 of the Revised Code, the tax imposed by or 700
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 701
the Revised Code shall be paid by the consumer to the vendor, 702
and each vendor shall collect from the consumer, as a trustee 703
for the state of Ohio, the full and exact amount of the tax 704
payable on each taxable sale, in the manner and at the times 705
provided as follows: 706

(1) If the price is, at or prior to the provision of the 707
service or the delivery of possession of the thing sold to the 708
consumer, paid in currency passed from hand to hand by the 709
consumer or the consumer's agent to the vendor or the vendor's 710
agent, the vendor or the vendor's agent shall collect the tax 711
with and at the same time as the price; 712

(2) If the price is otherwise paid or to be paid, the 713
vendor or the vendor's agent shall, at or prior to the provision 714
of the service or the delivery of possession of the thing sold 715
to the consumer, charge the tax imposed by or pursuant to 716
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 717
Code to the account of the consumer, which amount shall be 718
collected by the vendor from the consumer in addition to the 719
price. Such sale shall be reported on and the amount of the tax 720
applicable thereto shall be remitted with the return for the 721
period in which the sale is made, and the amount of the tax 722
shall become a legal charge in favor of the vendor and against 723
the consumer. 724

(B) (1) (a) If any sale is claimed to be exempt under 725
division (E) of section 5739.01 of the Revised Code or under 726
section 5739.02 of the Revised Code, with the exception of 727
divisions (B) (1) to (11) ~~or, (28), or (54)~~ of section 5739.02 728

of the Revised Code, the consumer must provide to the vendor, 729
and the vendor must obtain from the consumer, a certificate 730
specifying the reason that the sale is not legally subject to 731
the tax. The certificate shall be in such form, and shall be 732
provided either in a hard copy form or electronic form, as the 733
tax commissioner prescribes. 734

(b) A vendor that obtains a fully completed exemption 735
certificate from a consumer is relieved of liability for 736
collecting and remitting tax on any sale covered by that 737
certificate. If it is determined the exemption was improperly 738
claimed, the consumer shall be liable for any tax due on that 739
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 740
Chapter 5741. of the Revised Code. Relief under this division 741
from liability does not apply to any of the following: 742

(i) A vendor that fraudulently fails to collect tax; 743

(ii) A vendor that solicits consumers to participate in 744
the unlawful claim of an exemption; 745

(iii) A vendor that accepts an exemption certificate from 746
a consumer that claims an exemption based on who purchases or 747
who sells property or a service, when the subject of the 748
transaction sought to be covered by the exemption certificate is 749
actually received by the consumer at a location operated by the 750
vendor in this state, and this state has posted to its web site 751
an exemption certificate form that clearly and affirmatively 752
indicates that the claimed exemption is not available in this 753
state; 754

(iv) A vendor that accepts an exemption certificate from a 755
consumer who claims a multiple points of use exemption under 756
division (D) of section 5739.033 of the Revised Code, if the 757

item purchased is tangible personal property, other than 758
prewritten computer software. 759

(2) The vendor shall maintain records, including exemption 760
certificates, of all sales on which a consumer has claimed an 761
exemption, and provide them to the tax commissioner on request. 762

(3) The tax commissioner may establish an identification 763
system whereby the commissioner issues an identification number 764
to a consumer that is exempt from payment of the tax. The 765
consumer must present the number to the vendor, if any sale is 766
claimed to be exempt as provided in this section. 767

(4) If no certificate is provided or obtained within 768
ninety days after the date on which such sale is consummated, it 769
shall be presumed that the tax applies. Failure to have so 770
provided or obtained a certificate shall not preclude a vendor, 771
within one hundred twenty days after the tax commissioner gives 772
written notice of intent to levy an assessment, from either 773
establishing that the sale is not subject to the tax, or 774
obtaining, in good faith, a fully completed exemption 775
certificate. 776

(5) Certificates need not be obtained nor provided where 777
the identity of the consumer is such that the transaction is 778
never subject to the tax imposed or where the item of tangible 779
personal property sold or the service provided is never subject 780
to the tax imposed, regardless of use, or when the sale is in 781
interstate commerce. 782

(6) If a transaction is claimed to be exempt under 783
division (B) (13) of section 5739.02 of the Revised Code, the 784
contractor shall obtain certification of the claimed exemption 785
from the contractee. This certification shall be in addition to 786

an exemption certificate provided by the contractor to the 787
vendor. A contractee that provides a certification under this 788
division shall be deemed to be the consumer of all items 789
purchased by the contractor under the claim of exemption, if it 790
is subsequently determined that the exemption is not properly 791
claimed. The certification shall be in such form as the tax 792
commissioner prescribes. 793

(7) If a transaction is claimed to be exempt under 794
division (B) (54) of section 5739.02 of the Revised Code, the 795
vendor shall obtain from the purchasing student the following 796
records, as applicable: 797

(a) Except as provided in division (B) (7) (d) of this 798
section, if the vendor possesses a list of college textbooks for 799
one or more courses offered by an institution of higher 800
education, a copy of the student's valid student identification 801
card. 802

(b) Except as provided in division (B) (7) (c) and (d) of 803
this section, if the vendor does not possess a list of college 804
textbooks for the courses offered by an institution of higher 805
education for which the textbooks are required or recommended, a 806
copy of such a list and a copy of the student's valid student 807
identification card. 808

(c) Except as provided in division (B) (7) (d) of this 809
section, if the vendor does not possess a list of college 810
textbooks for one or more courses offered by an institution of 811
higher education because the institution has not made such a 812
list available, each of the following: 813

(i) Written proof of the student's enrollment in a course 814
at an institution of higher education; 815

(ii) A copy of the student's valid student identification card; 816
817

(iii) A written statement signed by the student affirming that the student is purchasing a college textbook for a course in which the student is enrolled. 818
819
820

(d) For a college textbook purchased through use of a printed catalog, the telephone, or a web site, each of the following: 821
822
823

(i) The student's name and address; 824

(ii) The name of the course in which the student is enrolled; 825
826

(iii) The name and address of the institution of higher education at which the student is enrolled for the course; 827
828

(iv) The identification number appearing on the student's valid student identification card, unless that number is the same as the student's social security number. 829
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831

(C) As used in this division, "contractee" means a person who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property. 832
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Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt 837
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requested. Upon receipt of such request and prior to entering 844
into the contract or agreement, the contractee shall provide to 845
the contractor or vendor a certification sufficiently detailed 846
to enable the contractor or vendor to ascertain the resulting 847
classification of all materials purchased or fabricated by the 848
contractor or vendor and transferred to the contractee. This 849
requirement applies to a contractee regardless of whether the 850
contractee holds a direct payment permit under section 5739.031 851
of the Revised Code or provides to the contractor or vendor an 852
exemption certificate as provided under this section. 853

For the purposes of the taxes levied by this chapter and 854
Chapter 5741. of the Revised Code, the contractor or vendor may 855
in good faith rely on the contractee's certification. 856
Notwithstanding division (B) of section 5739.01 of the Revised 857
Code, if the tax commissioner determines that certain property 858
certified by the contractee as tangible personal property 859
pursuant to this division is, in fact, real property, the 860
contractee shall be considered to be the consumer of all 861
materials so incorporated into that real property and shall be 862
liable for the applicable tax, and the contractor or vendor 863
shall be excused from any liability on those materials. 864

If a contractee fails to provide such certification upon 865
the request of the contractor or vendor, the contractor or 866
vendor shall comply with the provisions of this chapter and 867
Chapter 5741. of the Revised Code without the certification. If 868
the tax commissioner determines that such compliance has been 869
performed in good faith and that certain property treated as 870
tangible personal property by the contractor or vendor is, in 871
fact, real property, the contractee shall be considered to be 872
the consumer of all materials so incorporated into that real 873
property and shall be liable for the applicable tax, and the 874

construction contractor or vendor shall be excused from any 875
liability on those materials. 876

This division does not apply to any contract or agreement 877
where the tax commissioner determines as a fact that a 878
certification under this division was made solely on the 879
decision or advice of the contractor or vendor. 880

(D) Notwithstanding division (B) of section 5739.01 of the 881
Revised Code, whenever the total rate of tax imposed under this 882
chapter is increased after the date after a construction 883
contract is entered into, the contractee shall reimburse the 884
construction contractor for any additional tax paid on tangible 885
property consumed or services received pursuant to the contract. 886

(E) A vendor who files a petition for reassessment 887
contesting the assessment of tax on sales for which the vendor 888
obtained no valid exemption certificates and for which the 889
vendor failed to establish that the sales were properly not 890
subject to the tax during the one-hundred-twenty-day period 891
allowed under division (B) of this section, may present to the 892
tax commissioner additional evidence to prove that the sales 893
were properly subject to a claim of exception or exemption. The 894
vendor shall file such evidence within ninety days of the 895
receipt by the vendor of the notice of assessment, except that, 896
upon application and for reasonable cause, the period for 897
submitting such evidence shall be extended thirty days. 898

The commissioner shall consider such additional evidence 899
in reaching the final determination on the assessment and 900
petition for reassessment. 901

(F) Whenever a vendor refunds the price, minus any 902
separately stated delivery charge, of an item of tangible 903

personal property on which the tax imposed under this chapter 904
has been paid, the vendor shall also refund the amount of tax 905
paid, minus the amount of tax attributable to the delivery 906
charge. 907

Section 2. That existing sections 5739.02 and 5739.03 of 908
the Revised Code are hereby repealed. 909

Section 3. The amendment by this act of sections 5739.02 910
and 5739.03 of the Revised Code apply beginning on the first day 911
of the first month that begins after the effective date of this 912
act. 913