

As Introduced

135th General Assembly

Regular Session

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H. B. No. 347

Representative Jones

A BILL

To amend sections 5739.02 and 5739.03 of the
Revised Code to presume certain trailers and
vehicles are sold for agricultural purposes and
thus exempt from sales and use tax when sold to
established farmers.

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

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

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

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

5739.025 of the Revised Code. The rate of the tax shall be five 20
and three-fourths per cent. The tax applies and is collectible 21
when the sale is made, regardless of the time when the price is 22
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24
of more than thirty days or an indefinite term with a minimum 25
period of more than thirty days, of any motor vehicles designed 26
by the manufacturer to carry a load of not more than one ton, 27
watercraft, outboard motor, or aircraft, or of any tangible 28
personal property, other than motor vehicles designed by the 29
manufacturer to carry a load of more than one ton, to be used by 30
the lessee or renter primarily for business purposes, the tax 31
shall be collected by the vendor at the time the lease or rental 32
is consummated and shall be calculated by the vendor on the 33
basis of the total amount to be paid by the lessee or renter 34
under the lease agreement. If the total amount of the 35
consideration for the lease or rental includes amounts that are 36
not calculated at the time the lease or rental is executed, the 37
tax shall be calculated and collected by the vendor at the time 38
such amounts are billed to the lessee or renter. In the case of 39
an open-end lease or rental, the tax shall be calculated by the 40
vendor on the basis of the total amount to be paid during the 41
initial fixed term of the lease or rental, and for each 42
subsequent renewal period as it comes due. As used in this 43
division, "motor vehicle" has the same meaning as in section 44
4501.01 of the Revised Code, and "watercraft" includes an 45
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or 47
similar provision that applies if the renewal clause is not 48
exercised is presumed to be a sham transaction. In such a case, 49
the tax shall be calculated and paid on the basis of the entire 50

length of the lease period, including any renewal periods, until 51
the termination penalty or similar provision no longer applies. 52
The taxpayer shall bear the burden, by a preponderance of the 53
evidence, that the transaction or series of transactions is not 54
a sham transaction. 55

(3) Except as provided in division (A) (2) of this section, 56
in the case of a sale, the price of which consists in whole or 57
in part of the lease or rental of tangible personal property, 58
the tax shall be measured by the installments of that lease or 59
rental. 60

(4) In the case of a sale of a physical fitness facility 61
service or recreation and sports club service, the price of 62
which consists in whole or in part of a membership for the 63
receipt of the benefit of the service, the tax applicable to the 64
sale shall be measured by the installments thereof. 65

(B) The tax does not apply to the following: 66

(1) Sales to the state or any of its political 67
subdivisions, or to any other state or its political 68
subdivisions if the laws of that state exempt from taxation 69
sales made to this state and its political subdivisions 70
including either of the following: 71

(a) Sales or rentals of tangible personal property by 72
construction contractors or subcontractors to provide temporary 73
traffic control or temporary structures, including material and 74
equipment used to comply with the Ohio manual of uniform traffic 75
control devices adopted pursuant to section 4511.09 of the 76
Revised Code, whereby the state or any of its political 77
subdivisions take title to, or permanent or temporary possession 78
of, such tangible personal property for use by the state or any 79

of its political subdivisions, including for use by the general 80
public thereof; 81

(b) Sales of services by construction contractors or 82
subcontractors to provide temporary traffic control or 83
structures, including labor used to comply with the Ohio manual 84
of uniform traffic control devices adopted pursuant to section 85
4511.09 of the Revised Code, whereby the state or any of its 86
political subdivisions, including the general public thereof, 87
receive the benefit of such services. 88

As used in divisions (B)(1)(a) and (b) of this section, 89
"temporary structures" include temporary roads, bridges, drains, 90
and pavement. 91

(2) Sales of food for human consumption off the premises 92
where sold; 93

(3) Sales of food sold to students only in a cafeteria, 94
dormitory, fraternity, or sorority maintained in a private, 95
public, or parochial school, college, or university; 96

(4) Sales of newspapers and sales or transfers of 97
magazines distributed as controlled circulation publications; 98

(5) The furnishing, preparing, or serving of meals without 99
charge by an employer to an employee provided the employer 100
records the meals as part compensation for services performed or 101
work done; 102

(6) (a) Sales of motor fuel upon receipt, use, 103
distribution, or sale of which in this state a tax is imposed by 104
the law of this state, but this exemption shall not apply to the 105
sale of motor fuel on which a refund of the tax is allowable 106
under division (A) of section 5735.14 of the Revised Code; and 107
the tax commissioner may deduct the amount of tax levied by this 108

section applicable to the price of motor fuel when granting a 109
refund of motor fuel tax pursuant to division (A) of section 110
5735.14 of the Revised Code and shall cause the amount deducted 111
to be paid into the general revenue fund of this state; 112

(b) Sales of motor fuel other than that described in 113
division (B) (6) (a) of this section and used for powering a 114
refrigeration unit on a vehicle other than one used primarily to 115
provide comfort to the operator or occupants of the vehicle. 116

(7) Sales of natural gas by a natural gas company or 117
municipal gas utility, of water by a water-works company, or of 118
steam by a heating company, if in each case the thing sold is 119
delivered to consumers through pipes or conduits, and all sales 120
of communications services by a telegraph company, all terms as 121
defined in section 5727.01 of the Revised Code, and sales of 122
electricity delivered through wires; 123

(8) Casual sales by a person, or auctioneer employed 124
directly by the person to conduct such sales, except as to such 125
sales of motor vehicles, watercraft or outboard motors required 126
to be titled under section 1548.06 of the Revised Code, 127
watercraft documented with the United States coast guard, 128
snowmobiles, and all-purpose vehicles as defined in section 129
4519.01 of the Revised Code; 130

(9) (a) Sales of services or tangible personal property, 131
other than motor vehicles, mobile homes, and manufactured homes, 132
by churches, organizations exempt from taxation under section 133
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 134
organizations operated exclusively for charitable purposes as 135
defined in division (B) (12) of this section, provided that the 136
number of days on which such tangible personal property or 137
services, other than items never subject to the tax, are sold 138

does not exceed six in any calendar year, except as otherwise 139
provided in division (B) (9) (b) of this section. If the number of 140
days on which such sales are made exceeds six in any calendar 141
year, the church or organization shall be considered to be 142
engaged in business and all subsequent sales by it shall be 143
subject to the tax. In counting the number of days, all sales by 144
groups within a church or within an organization shall be 145
considered to be sales of that church or organization. 146

(b) The limitation on the number of days on which tax- 147
exempt sales may be made by a church or organization under 148
division (B) (9) (a) of this section does not apply to sales made 149
by student clubs and other groups of students of a primary or 150
secondary school, or a parent-teacher association, booster 151
group, or similar organization that raises money to support or 152
fund curricular or extracurricular activities of a primary or 153
secondary school. 154

(c) Divisions (B) (9) (a) and (b) of this section do not 155
apply to sales by a noncommercial educational radio or 156
television broadcasting station. 157

(10) Sales not within the taxing power of this state under 158
the Constitution or laws of the United States or the 159
Constitution of this state including either of the following: 160

(a) Sales or rentals of tangible personal property by 161
construction contractors or subcontractors to provide temporary 162
traffic control or temporary structures, including material and 163
equipment used to comply with the Ohio manual of uniform traffic 164
control devices adopted pursuant to section 4511.09 of the 165
Revised Code, whereby the United States takes title to, or 166
permanent or temporary possession of, such tangible personal 167
property for use by the United States including for use by the 168

general public thereof; 169

(b) Sales of services by construction contractors or 170
subcontractors to provide temporary traffic control or 171
structures, including labor used to comply with the Ohio manual 172
of uniform traffic control devices adopted pursuant to section 173
4511.09 of the Revised Code, whereby the United States, 174
including the general public thereof, receives the benefit of 175
such services. 176

As used in divisions (B) (10) (a) and (b) of this section, 177
"temporary structures" include temporary roads, bridges, drains, 178
and pavement. 179

(11) Except for transactions that are sales under division 180
(B) (3) (p) of section 5739.01 of the Revised Code, the 181
transportation of persons or property, unless the transportation 182
is by a private investigation and security service; 183

(12) Sales of tangible personal property or services to 184
churches, to organizations exempt from taxation under section 185
501(c) (3) of the Internal Revenue Code of 1986, and to any other 186
nonprofit organizations operated exclusively for charitable 187
purposes in this state, no part of the net income of which 188
inures to the benefit of any private shareholder or individual, 189
and no substantial part of the activities of which consists of 190
carrying on propaganda or otherwise attempting to influence 191
legislation; sales to offices administering one or more homes 192
for the aged or one or more hospital facilities exempt under 193
section 140.08 of the Revised Code; and sales to organizations 194
described in division (D) of section 5709.12 of the Revised 195
Code. 196

"Charitable purposes" means the relief of poverty; the 197

improvement of health through the alleviation of illness, 198
disease, or injury; the operation of an organization exclusively 199
for the provision of professional, laundry, printing, and 200
purchasing services to hospitals or charitable institutions; the 201
operation of a home for the aged, as defined in section 5701.13 202
of the Revised Code; the operation of a radio or television 203
broadcasting station that is licensed by the federal 204
communications commission as a noncommercial educational radio 205
or television station; the operation of a nonprofit animal 206
adoption service or a county humane society; the promotion of 207
education by an institution of learning that maintains a faculty 208
of qualified instructors, teaches regular continuous courses of 209
study, and confers a recognized diploma upon completion of a 210
specific curriculum; the operation of a parent-teacher 211
association, booster group, or similar organization primarily 212
engaged in the promotion and support of the curricular or 213
extracurricular activities of a primary or secondary school; the 214
operation of a community or area center in which presentations 215
in music, dramatics, the arts, and related fields are made in 216
order to foster public interest and education therein; the 217
production of performances in music, dramatics, and the arts; or 218
the promotion of education by an organization engaged in 219
carrying on research in, or the dissemination of, scientific and 220
technological knowledge and information primarily for the 221
public. 222

Nothing in this division shall be deemed to exempt sales 223
to any organization for use in the operation or carrying on of a 224
trade or business, or sales to a home for the aged for use in 225
the operation of independent living facilities as defined in 226
division (A) of section 5709.12 of the Revised Code. 227

(13) Building and construction materials and services sold 228

to construction contractors for incorporation into a structure 229
or improvement to real property under a construction contract 230
with this state or a political subdivision of this state, or 231
with the United States government or any of its agencies; 232
building and construction materials and services sold to 233
construction contractors for incorporation into a structure or 234
improvement to real property that are accepted for ownership by 235
this state or any of its political subdivisions, or by the 236
United States government or any of its agencies at the time of 237
completion of the structures or improvements; building and 238
construction materials sold to construction contractors for 239
incorporation into a horticulture structure or livestock 240
structure for a person engaged in the business of horticulture 241
or producing livestock; building materials and services sold to 242
a construction contractor for incorporation into a house of 243
public worship or religious education, or a building used 244
exclusively for charitable purposes under a construction 245
contract with an organization whose purpose is as described in 246
division (B) (12) of this section; building materials and 247
services sold to a construction contractor for incorporation 248
into a building under a construction contract with an 249
organization exempt from taxation under section 501(c) (3) of the 250
Internal Revenue Code of 1986 when the building is to be used 251
exclusively for the organization's exempt purposes; building and 252
construction materials sold for incorporation into the original 253
construction of a sports facility under section 307.696 of the 254
Revised Code; building and construction materials and services 255
sold to a construction contractor for incorporation into real 256
property outside this state if such materials and services, when 257
sold to a construction contractor in the state in which the real 258
property is located for incorporation into real property in that 259
state, would be exempt from a tax on sales levied by that state; 260

building and construction materials for incorporation into a 261
transportation facility pursuant to a public-private agreement 262
entered into under sections 5501.70 to 5501.83 of the Revised 263
Code; until one calendar year after the construction of a 264
convention center that qualifies for property tax exemption 265
under section 5709.084 of the Revised Code is completed, 266
building and construction materials and services sold to a 267
construction contractor for incorporation into the real property 268
comprising that convention center; and building and construction 269
materials sold for incorporation into a structure or improvement 270
to real property that is used primarily as, or primarily in 271
support of, a manufacturing facility or research and development 272
facility and that is to be owned by a megaproject operator upon 273
completion and located at the site of a megaproject that 274
satisfies the criteria described in division (A) (11) (a) (ii) of 275
section 122.17 of the Revised Code, provided that the sale 276
occurs during the period that the megaproject operator has an 277
agreement for such megaproject with the tax credit authority 278
under division (D) of section 122.17 of the Revised Code that 279
remains in effect and has not expired or been terminated. 280

(14) Sales of ships or vessels or rail rolling stock used 281
or to be used principally in interstate or foreign commerce, and 282
repairs, alterations, fuel, and lubricants for such ships or 283
vessels or rail rolling stock; 284

(15) Sales to persons primarily engaged in any of the 285
activities mentioned in division (B) (42) (a), (g), or (h) of this 286
section, to persons engaged in making retail sales, or to 287
persons who purchase for sale from a manufacturer tangible 288
personal property that was produced by the manufacturer in 289
accordance with specific designs provided by the purchaser, of 290
packages, including material, labels, and parts for packages, 291

and of machinery, equipment, and material for use primarily in 292
packaging tangible personal property produced for sale, 293
including any machinery, equipment, and supplies used to make 294
labels or packages, to prepare packages or products for 295
labeling, or to label packages or products, by or on the order 296
of the person doing the packaging, or sold at retail. "Packages" 297
includes bags, baskets, cartons, crates, boxes, cans, bottles, 298
bindings, wrappings, and other similar devices and containers, 299
but does not include motor vehicles or bulk tanks, trailers, or 300
similar devices attached to motor vehicles. "Packaging" means 301
placing in a package. Division (B) (15) of this section does not 302
apply to persons engaged in highway transportation for hire. 303

(16) Sales of food to persons using supplemental nutrition 304
assistance program benefits to purchase the food. As used in 305
this division, "food" has the same meaning as in 7 U.S.C. 2012 306
and federal regulations adopted pursuant to the Food and 307
Nutrition Act of 2008. 308

(17) Sales to persons engaged in farming, agriculture, 309
horticulture, or floriculture, of tangible personal property for 310
use or consumption primarily in the production by farming, 311
agriculture, horticulture, or floriculture of other tangible 312
personal property for use or consumption primarily in the 313
production of tangible personal property for sale by farming, 314
agriculture, horticulture, or floriculture; or material and 315
parts for incorporation into any such tangible personal property 316
for use or consumption in production; and of tangible personal 317
property for such use or consumption in the conditioning or 318
holding of products produced by and for such use, consumption, 319
or sale by persons engaged in farming, agriculture, 320
horticulture, or floriculture, except where such property is 321
incorporated into real property; 322

(18) Sales of drugs for a human being that may be 323
dispensed only pursuant to a prescription; insulin as recognized 324
in the official United States pharmacopoeia; urine and blood 325
testing materials when used by diabetics or persons with 326
hypoglycemia to test for glucose or acetone; hypodermic syringes 327
and needles when used by diabetics for insulin injections; 328
epoetin alfa when purchased for use in the treatment of persons 329
with medical disease; hospital beds when purchased by hospitals, 330
nursing homes, or other medical facilities; and medical oxygen 331
and medical oxygen-dispensing equipment when purchased by 332
hospitals, nursing homes, or other medical facilities; 333

(19) Sales of prosthetic devices, durable medical 334
equipment for home use, or mobility enhancing equipment, when 335
made pursuant to a prescription and when such devices or 336
equipment are for use by a human being. 337

(20) Sales of emergency and fire protection vehicles and 338
equipment to nonprofit organizations for use solely in providing 339
fire protection and emergency services, including trauma care 340
and emergency medical services, for political subdivisions of 341
the state; 342

(21) Sales of tangible personal property manufactured in 343
this state, if sold by the manufacturer in this state to a 344
retailer for use in the retail business of the retailer outside 345
of this state and if possession is taken from the manufacturer 346
by the purchaser within this state for the sole purpose of 347
immediately removing the same from this state in a vehicle owned 348
by the purchaser; 349

(22) Sales of services provided by the state or any of its 350
political subdivisions, agencies, instrumentalities, 351
institutions, or authorities, or by governmental entities of the 352

state or any of its political subdivisions, agencies, 353
instrumentalities, institutions, or authorities; 354

(23) Sales of motor vehicles to nonresidents of this state 355
under the circumstances described in division (B) of section 356
5739.029 of the Revised Code; 357

(24) Sales to persons engaged in the preparation of eggs 358
for sale of tangible personal property used or consumed directly 359
in such preparation, including such tangible personal property 360
used for cleaning, sanitizing, preserving, grading, sorting, and 361
classifying by size; packages, including material and parts for 362
packages, and machinery, equipment, and material for use in 363
packaging eggs for sale; and handling and transportation 364
equipment and parts therefor, except motor vehicles licensed to 365
operate on public highways, used in intraplant or interplant 366
transfers or shipment of eggs in the process of preparation for 367
sale, when the plant or plants within or between which such 368
transfers or shipments occur are operated by the same person. 369
"Packages" includes containers, cases, baskets, flats, fillers, 370
filler flats, cartons, closure materials, labels, and labeling 371
materials, and "packaging" means placing therein. 372

(25) (a) Sales of water to a consumer for residential use; 373

(b) Sales of water by a nonprofit corporation engaged 374
exclusively in the treatment, distribution, and sale of water to 375
consumers, if such water is delivered to consumers through pipes 376
or tubing. 377

(26) Fees charged for inspection or reinspection of motor 378
vehicles under section 3704.14 of the Revised Code; 379

(27) Sales to persons licensed to conduct a food service 380
operation pursuant to section 3717.43 of the Revised Code, of 381

tangible personal property primarily used directly for the	382
following:	383
(a) To prepare food for human consumption for sale;	384
(b) To preserve food that has been or will be prepared for	385
human consumption for sale by the food service operator, not	386
including tangible personal property used to display food for	387
selection by the consumer;	388
(c) To clean tangible personal property used to prepare or	389
serve food for human consumption for sale.	390
(28) Sales of animals by nonprofit animal adoption	391
services or county humane societies;	392
(29) Sales of services to a corporation described in	393
division (A) of section 5709.72 of the Revised Code, and sales	394
of tangible personal property that qualifies for exemption from	395
taxation under section 5709.72 of the Revised Code;	396
(30) Sales and installation of agricultural land tile, as	397
defined in division (B) (5) (a) of section 5739.01 of the Revised	398
Code;	399
(31) Sales and erection or installation of portable grain	400
bins, as defined in division (B) (5) (b) of section 5739.01 of the	401
Revised Code;	402
(32) The sale, lease, repair, and maintenance of, parts	403
for, or items attached to or incorporated in, motor vehicles	404
that are primarily used for transporting tangible personal	405
property belonging to others by a person engaged in highway	406
transportation for hire, except for packages and packaging used	407
for the transportation of tangible personal property;	408
(33) Sales to the state headquarters of any veterans'	409

organization in this state that is either incorporated and 410
issued a charter by the congress of the United States or is 411
recognized by the United States veterans administration, for use 412
by the headquarters; 413

(34) Sales to a telecommunications service vendor, mobile 414
telecommunications service vendor, or satellite broadcasting 415
service vendor of tangible personal property and services used 416
directly and primarily in transmitting, receiving, switching, or 417
recording any interactive, one- or two-way electromagnetic 418
communications, including voice, image, data, and information, 419
through the use of any medium, including, but not limited to, 420
poles, wires, cables, switching equipment, computers, and record 421
storage devices and media, and component parts for the tangible 422
personal property. The exemption provided in this division shall 423
be in lieu of all other exemptions under division (B) (42) (a) or 424
(n) of this section to which the vendor may otherwise be 425
entitled, based upon the use of the thing purchased in providing 426
the telecommunications, mobile telecommunications, or satellite 427
broadcasting service. 428

(35) (a) Sales where the purpose of the consumer is to use 429
or consume the things transferred in making retail sales and 430
consisting of newspaper inserts, catalogues, coupons, flyers, 431
gift certificates, or other advertising material that prices and 432
describes tangible personal property offered for retail sale. 433

(b) Sales to direct marketing vendors of preliminary 434
materials such as photographs, artwork, and typesetting that 435
will be used in printing advertising material; and of printed 436
matter that offers free merchandise or chances to win sweepstake 437
prizes and that is mailed to potential customers with 438
advertising material described in division (B) (35) (a) of this 439

section; 440

(c) Sales of equipment such as telephones, computers, 441
facsimile machines, and similar tangible personal property 442
primarily used to accept orders for direct marketing retail 443
sales. 444

(d) Sales of automatic food vending machines that preserve 445
food with a shelf life of forty-five days or less by 446
refrigeration and dispense it to the consumer. 447

For purposes of division (B) (35) of this section, "direct 448
marketing" means the method of selling where consumers order 449
tangible personal property by United States mail, delivery 450
service, or telecommunication and the vendor delivers or ships 451
the tangible personal property sold to the consumer from a 452
warehouse, catalogue distribution center, or similar fulfillment 453
facility by means of the United States mail, delivery service, 454
or common carrier. 455

(36) Sales to a person engaged in the business of 456
horticulture or producing livestock of materials to be 457
incorporated into a horticulture structure or livestock 458
structure; 459

(37) Sales of personal computers, computer monitors, 460
computer keyboards, modems, and other peripheral computer 461
equipment to an individual who is licensed or certified to teach 462
in an elementary or a secondary school in this state for use by 463
that individual in preparation for teaching elementary or 464
secondary school students; 465

(38) Sales of tangible personal property that is not 466
required to be registered or licensed under the laws of this 467
state to a citizen of a foreign nation that is not a citizen of 468

the United States, provided the property is delivered to a 469
person in this state that is not a related member of the 470
purchaser, is physically present in this state for the sole 471
purpose of temporary storage and package consolidation, and is 472
subsequently delivered to the purchaser at a delivery address in 473
a foreign nation. As used in division (B) (38) of this section, 474
"related member" has the same meaning as in section 5733.042 of 475
the Revised Code, and "temporary storage" means the storage of 476
tangible personal property for a period of not more than sixty 477
days. 478

(39) Sales of used manufactured homes and used mobile 479
homes, as defined in section 5739.0210 of the Revised Code, made 480
on or after January 1, 2000; 481

(40) Sales of tangible personal property and services to a 482
provider of electricity used or consumed directly and primarily 483
in generating, transmitting, or distributing electricity for use 484
by others, including property that is or is to be incorporated 485
into and will become a part of the consumer's production, 486
transmission, or distribution system and that retains its 487
classification as tangible personal property after 488
incorporation; fuel or power used in the production, 489
transmission, or distribution of electricity; energy conversion 490
equipment as defined in section 5727.01 of the Revised Code; and 491
tangible personal property and services used in the repair and 492
maintenance of the production, transmission, or distribution 493
system, including only those motor vehicles as are specially 494
designed and equipped for such use. The exemption provided in 495
this division shall be in lieu of all other exemptions in 496
division (B) (42) (a) or (n) of this section to which a provider 497
of electricity may otherwise be entitled based on the use of the 498
tangible personal property or service purchased in generating, 499

transmitting, or distributing electricity. 500

(41) Sales to a person providing services under division 501
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 502
personal property and services used directly and primarily in 503
providing taxable services under that section. 504

(42) Sales where the purpose of the purchaser is to do any 505
of the following: 506

(a) To incorporate the thing transferred as a material or 507
a part into tangible personal property to be produced for sale 508
by manufacturing, assembling, processing, or refining; or to use 509
or consume the thing transferred directly in producing tangible 510
personal property for sale by mining, including, without 511
limitation, the extraction from the earth of all substances that 512
are classed geologically as minerals, or directly in the 513
rendition of a public utility service, except that the sales tax 514
levied by this section shall be collected upon all meals, 515
drinks, and food for human consumption sold when transporting 516
persons. This paragraph does not exempt from "retail sale" or 517
"sales at retail" the sale of tangible personal property that is 518
to be incorporated into a structure or improvement to real 519
property. 520

(b) To hold the thing transferred as security for the 521
performance of an obligation of the vendor; 522

(c) To resell, hold, use, or consume the thing transferred 523
as evidence of a contract of insurance; 524

(d) To use or consume the thing directly in commercial 525
fishing; 526

(e) To incorporate the thing transferred as a material or 527
a part into, or to use or consume the thing transferred directly 528

in the production of, magazines distributed as controlled 529
circulation publications; 530

(f) To use or consume the thing transferred in the 531
production and preparation in suitable condition for market and 532
sale of printed, imprinted, overprinted, lithographic, 533
multilithic, blueprinted, photostatic, or other productions or 534
reproductions of written or graphic matter; 535

(g) To use the thing transferred, as described in section 536
5739.011 of the Revised Code, primarily in a manufacturing 537
operation to produce tangible personal property for sale; 538

(h) To use the benefit of a warranty, maintenance or 539
service contract, or similar agreement, as described in division 540
(B) (7) of section 5739.01 of the Revised Code, to repair or 541
maintain tangible personal property, if all of the property that 542
is the subject of the warranty, contract, or agreement would not 543
be subject to the tax imposed by this section; 544

(i) To use the thing transferred as qualified research and 545
development equipment; 546

(j) To use or consume the thing transferred primarily in 547
storing, transporting, mailing, or otherwise handling purchased 548
sales inventory in a warehouse, distribution center, or similar 549
facility when the inventory is primarily distributed outside 550
this state to retail stores of the person who owns or controls 551
the warehouse, distribution center, or similar facility, to 552
retail stores of an affiliated group of which that person is a 553
member, or by means of direct marketing. This division does not 554
apply to motor vehicles registered for operation on the public 555
highways. As used in this division, "affiliated group" has the 556
same meaning as in division (B) (3) (e) of section 5739.01 of the 557

Revised Code and "direct marketing" has the same meaning as in 558
division (B) (35) of this section. 559

(k) To use or consume the thing transferred to fulfill a 560
contractual obligation incurred by a warrantor pursuant to a 561
warranty provided as a part of the price of the tangible 562
personal property sold or by a vendor of a warranty, maintenance 563
or service contract, or similar agreement the provision of which 564
is defined as a sale under division (B) (7) of section 5739.01 of 565
the Revised Code; 566

(l) To use or consume the thing transferred in the 567
production of a newspaper for distribution to the public; 568

(m) To use tangible personal property to perform a service 569
listed in division (B) (3) of section 5739.01 of the Revised 570
Code, if the property is or is to be permanently transferred to 571
the consumer of the service as an integral part of the 572
performance of the service; 573

(n) To use or consume the thing transferred primarily in 574
producing tangible personal property for sale by farming, 575
agriculture, horticulture, or floriculture. Persons engaged in 576
rendering farming, agriculture, horticulture, or floriculture 577
services for others are deemed engaged primarily in farming, 578
agriculture, horticulture, or floriculture. This paragraph does 579
not exempt from "retail sale" or "sales at retail" the sale of 580
tangible personal property that is to be incorporated into a 581
structure or improvement to real property. 582

A consumer that complies with division (B) (1) (c) of 583
section 5739.03 of the Revised Code is presumed to purchase the 584
following items with the purpose to use or consume those items 585
primarily in producing tangible personal property for sale by 586

farming, agriculture, horticulture, or floriculture: 587

(i) Trailers, as defined in section 4501.01 of the Revised 588
 Code, but excluding vehicles designed to transport watercraft; 589

(ii) Utility vehicles, as defined in section 4501.01 of 590
 the Revised Code; 591

(iii) All-purpose vehicles, as defined in section 4519.01 592
 of the Revised Code; 593

(iv) Compact tractors, as defined in section 1353.01 of 594
 the Revised Code. 595

 (o) To use or consume the thing transferred in acquiring, 596
 formatting, editing, storing, and disseminating data or 597
 information by electronic publishing; 598

 (p) To provide the thing transferred to the owner or 599
 lessee of a motor vehicle that is being repaired or serviced, if 600
 the thing transferred is a rented motor vehicle and the 601
 purchaser is reimbursed for the cost of the rented motor vehicle 602
 by a manufacturer, warrantor, or provider of a maintenance, 603
 service, or other similar contract or agreement, with respect to 604
 the motor vehicle that is being repaired or serviced; 605

 (q) To use or consume the thing transferred directly in 606
 production of crude oil and natural gas for sale. Persons 607
 engaged in rendering production services for others are deemed 608
 engaged in production. 609

 As used in division (B) (42) (q) of this section, 610
 "production" means operations and tangible personal property 611
 directly used to expose and evaluate an underground reservoir 612
 that may contain hydrocarbon resources, prepare the wellbore for 613
 production, and lift and control all substances yielded by the 614

reservoir to the surface of the earth. 615

(i) For the purposes of division (B) (42) (q) of this 616
section, the "thing transferred" includes, but is not limited 617
to, any of the following: 618

(I) Services provided in the construction of permanent 619
access roads, services provided in the construction of the well 620
site, and services provided in the construction of temporary 621
impoundments; 622

(II) Equipment and rigging used for the specific purpose 623
of creating with integrity a wellbore pathway to underground 624
reservoirs; 625

(III) Drilling and workover services used to work within a 626
subsurface wellbore, and tangible personal property directly 627
used in providing such services; 628

(IV) Casing, tubulars, and float and centralizing 629
equipment; 630

(V) Trailers to which production equipment is attached; 631

(VI) Well completion services, including cementing of 632
casing, and tangible personal property directly used in 633
providing such services; 634

(VII) Wireline evaluation, mud logging, and perforation 635
services, and tangible personal property directly used in 636
providing such services; 637

(VIII) Reservoir stimulation, hydraulic fracturing, and 638
acidizing services, and tangible personal property directly used 639
in providing such services, including all material pumped 640
downhole; 641

(IX) Pressure pumping equipment;	642
(X) Artificial lift systems equipment;	643
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	644 645 646
(XII) Tangible personal property directly used to control production equipment.	647 648
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	649 650 651
(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;	652 653 654
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	655 656 657
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	658 659 660
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	661 662 663 664
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	665 666 667 668

(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	669 670
(VII) Well site fencing, lighting, or security systems;	671
(VIII) Communication devices or services;	672
(IX) Office supplies;	673
(X) Trailers used as offices or lodging;	674
(XI) Motor vehicles of any kind;	675
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	676 677
(XIII) Tangible personal property used primarily as a safety device;	678 679
(XIV) Data collection or monitoring devices;	680
(XV) Access ladders, stairs, or platforms attached to storage tanks.	681 682
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	683 684 685 686 687
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section.	688 689 690 691
As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.	692 693 694

(43) Sales conducted through a coin operated device that 695
activates vacuum equipment or equipment that dispenses water, 696
whether or not in combination with soap or other cleaning agents 697
or wax, to the consumer for the consumer's use on the premises 698
in washing, cleaning, or waxing a motor vehicle, provided no 699
other personal property or personal service is provided as part 700
of the transaction. 701

(44) Sales of replacement and modification parts for 702
engines, airframes, instruments, and interiors in, and paint 703
for, aircraft used primarily in a fractional aircraft ownership 704
program, and sales of services for the repair, modification, and 705
maintenance of such aircraft, and machinery, equipment, and 706
supplies primarily used to provide those services. 707

(45) Sales of telecommunications service that is used 708
directly and primarily to perform the functions of a call 709
center. As used in this division, "call center" means any 710
physical location where telephone calls are placed or received 711
in high volume for the purpose of making sales, marketing, 712
customer service, technical support, or other specialized 713
business activity, and that employs at least fifty individuals 714
that engage in call center activities on a full-time basis, or 715
sufficient individuals to fill fifty full-time equivalent 716
positions. 717

(46) Sales by a telecommunications service vendor of 900 718
service to a subscriber. This division does not apply to 719
information services. 720

(47) Sales of value-added non-voice data service. This 721
division does not apply to any similar service that is not 722
otherwise a telecommunications service. 723

(48) Sales of feminine hygiene products.	724
(49) Sales of materials, parts, equipment, or engines used	725
in the repair or maintenance of aircraft or avionics systems of	726
such aircraft, and sales of repair, remodeling, replacement, or	727
maintenance services in this state performed on aircraft or on	728
an aircraft's avionics, engine, or component materials or parts.	729
As used in division (B) (49) of this section, "aircraft" means	730
aircraft of more than six thousand pounds maximum certified	731
takeoff weight or used exclusively in general aviation.	732
(50) Sales of full flight simulators that are used for	733
pilot or flight-crew training, sales of repair or replacement	734
parts or components, and sales of repair or maintenance services	735
for such full flight simulators. "Full flight simulator" means a	736
replica of a specific type, or make, model, and series of	737
aircraft cockpit. It includes the assemblage of equipment and	738
computer programs necessary to represent aircraft operations in	739
ground and flight conditions, a visual system providing an out-	740
of-the-cockpit view, and a system that provides cues at least	741
equivalent to those of a three-degree-of-freedom motion system,	742
and has the full range of capabilities of the systems installed	743
in the device as described in appendices A and B of part 60 of	744
chapter 1 of title 14 of the Code of Federal Regulations.	745
(51) Any transfer or lease of tangible personal property	746
between the state and JobsOhio in accordance with section	747
4313.02 of the Revised Code.	748
(52) (a) Sales to a qualifying corporation.	749
(b) As used in division (B) (52) of this section:	750
(i) "Qualifying corporation" means a nonprofit corporation	751
organized in this state that leases from an eligible county	752

land, buildings, structures, fixtures, and improvements to the 753
land that are part of or used in a public recreational facility 754
used by a major league professional athletic team or a class A 755
to class AAA minor league affiliate of a major league 756
professional athletic team for a significant portion of the 757
team's home schedule, provided the following apply: 758

(I) The facility is leased from the eligible county 759
pursuant to a lease that requires substantially all of the 760
revenue from the operation of the business or activity conducted 761
by the nonprofit corporation at the facility in excess of 762
operating costs, capital expenditures, and reserves to be paid 763
to the eligible county at least once per calendar year. 764

(II) Upon dissolution and liquidation of the nonprofit 765
corporation, all of its net assets are distributable to the 766
board of commissioners of the eligible county from which the 767
corporation leases the facility. 768

(ii) "Eligible county" has the same meaning as in section 769
307.695 of the Revised Code. 770

(53) Sales to or by a cable service provider, video 771
service provider, or radio or television broadcast station 772
regulated by the federal government of cable service or 773
programming, video service or programming, audio service or 774
programming, or electronically transferred digital audiovisual 775
or audio work. As used in division (B) (53) of this section, 776
"cable service" and "cable service provider" have the same 777
meanings as in section 1332.01 of the Revised Code, and "video 778
service," "video service provider," and "video programming" have 779
the same meanings as in section 1332.21 of the Revised Code. 780

(54) Sales of a digital audio work electronically 781

transferred for delivery through use of a machine, such as a 782
juke box, that does all of the following: 783

(a) Accepts direct payments to operate; 784

(b) Automatically plays a selected digital audio work for 785
a single play upon receipt of a payment described in division 786
(B) (54) (a) of this section; 787

(c) Operates exclusively for the purpose of playing 788
digital audio works in a commercial establishment. 789

(55) (a) Sales of the following occurring on the first 790
Friday of August and the following Saturday and Sunday of any 791
year, except in 2024 or any subsequent year in which a sales tax 792
holiday is held pursuant to section 5739.41 of the Revised Code: 793

(i) An item of clothing, the price of which is seventy- 794
five dollars or less; 795

(ii) An item of school supplies, the price of which is 796
twenty dollars or less; 797

(iii) An item of school instructional material, the price 798
of which is twenty dollars or less. 799

(b) As used in division (B) (55) of this section: 800

(i) "Clothing" means all human wearing apparel suitable 801
for general use. "Clothing" includes, but is not limited to, 802
aprons, household and shop; athletic supporters; baby receiving 803
blankets; bathing suits and caps; beach capes and coats; belts 804
and suspenders; boots; coats and jackets; costumes; diapers, 805
children and adult, including disposable diapers; earmuffs; 806
footlets; formal wear; garters and garter belts; girdles; gloves 807
and mittens for general use; hats and caps; hosiery; insoles for 808
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 809

rubber pants; sandals; scarves; shoes and shoe laces; slippers; 810
sneakers; socks and stockings; steel-toed shoes; underwear; 811
uniforms, athletic and nonathletic; and wedding apparel. 812
"Clothing" does not include items purchased for use in a trade 813
or business; clothing accessories or equipment; protective 814
equipment; sports or recreational equipment; belt buckles sold 815
separately; costume masks sold separately; patches and emblems 816
sold separately; sewing equipment and supplies including, but 817
not limited to, knitting needles, patterns, pins, scissors, 818
sewing machines, sewing needles, tape measures, and thimbles; 819
and sewing materials that become part of "clothing" including, 820
but not limited to, buttons, fabric, lace, thread, yarn, and 821
zippers. 822

(ii) "School supplies" means items commonly used by a 823
student in a course of study. "School supplies" includes only 824
the following items: binders; book bags; calculators; cellophane 825
tape; blackboard chalk; compasses; composition books; crayons; 826
erasers; folders, expandable, pocket, plastic, and manila; glue, 827
paste, and paste sticks; highlighters; index cards; index card 828
boxes; legal pads; lunch boxes; markers; notebooks; paper, 829
loose-leaf ruled notebook paper, copy paper, graph paper, 830
tracing paper, manila paper, colored paper, poster board, and 831
construction paper; pencil boxes and other school supply boxes; 832
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 833
and writing tablets. "School supplies" does not include any item 834
purchased for use in a trade or business. 835

(iii) "School instructional material" means written 836
material commonly used by a student in a course of study as a 837
reference and to learn the subject being taught. "School 838
instructional material" includes only the following items: 839
reference books, reference maps and globes, textbooks, and 840

workbooks. "School instructional material" does not include any 841
material purchased for use in a trade or business. 842

(56) (a) Sales of adult diapers or incontinence underpads 843
sold pursuant to a prescription, for the benefit of a medicaid 844
recipient with a diagnosis of incontinence, and by a medicaid 845
provider that maintains a valid provider agreement under section 846
5164.30 of the Revised Code with the department of medicaid, 847
provided that the medicaid program covers diapers or 848
incontinence underpads as an incontinence garment. 849

(b) As used in division (B) (56) (a) of this section, 850
"incontinence underpad" means an absorbent product, not worn on 851
the body, designed to protect furniture or other tangible 852
personal property from soiling or damage due to human 853
incontinence. 854

(57) Sales of investment metal bullion and investment 855
coins. "Investment metal bullion" means any bullion described in 856
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 857
whether that bullion is in the physical possession of a trustee. 858
"Investment coin" means any coin composed primarily of gold, 859
silver, platinum, or palladium. 860

(58) Sales of tangible personal property used primarily 861
for any of the following purposes by a megaproject operator at 862
the site of a megaproject that satisfies the criteria described 863
in division (A) (11) (a) (ii) of section 122.17 of the Revised 864
Code, provided that the sale occurs during the period that the 865
megaproject operator has an agreement for such megaproject with 866
the tax credit authority under division (D) of section 122.17 of 867
the Revised Code that remains in effect and has not expired or 868
been terminated: 869

(a) To store, transmit, convey, distribute, recycle, 870
circulate, or clean water, steam, or other gases used in or 871
produced as a result of manufacturing activity, including items 872
that support or aid in the operation of such property; 873

(b) To clean or prepare inventory, at any stage of storage 874
or production, or equipment used in a manufacturing activity, 875
including chemicals, solvents, catalysts, soaps, and other items 876
that support or aid in the operation of property; 877

(c) To regulate, treat, filter, condition, improve, clean, 878
maintain, or monitor environmental conditions within areas where 879
manufacturing activities take place; 880

(d) To handle, transport, or convey inventory during 881
production or manufacturing. 882

(59) Documentary services charges imposed pursuant to 883
section 4517.261 or 4781.24 of the Revised Code. 884

(60) Sales of children's diapers. 885

(61) Sales of therapeutic or preventative creams and wipes 886
marketed primarily for use on the skin of children. 887

(62) Sales of a child restraint device or booster seat 888
that meets the national highway traffic safety administration 889
standard for child restraint systems under 49 C.F.R. 571.213. 890

(63) Sales of cribs intended to provide sleeping 891
accommodations for children that comply with the United States 892
consumer product safety commission's safety standard for full- 893
size baby cribs under 16 C.F.R. 1219 or the commission's safety 894
standard for non-full-size baby cribs under 16 C.F.R. 1220. 895

(64) Sales of strollers meant for transporting children 896
from infancy to about thirty-six months of age that meet the 897

United States consumer product safety commission safety standard 898
for carriages and strollers under 16 C.F.R. 1227.2. 899

(65) The fee imposed by section 3743.22 of the Revised 900
Code, if it is separately stated on the invoice, bill of sale, 901
or similar document given by the vendor to the consumer for a 902
retail sale made in this state. 903

(66) Sales of eligible tangible personal property 904
occurring during the period of a sales tax holiday held pursuant 905
to section 5739.41 of the Revised Code. 906

(C) For the purpose of the proper administration of this 907
chapter, and to prevent the evasion of the tax, it is presumed 908
that all sales made in this state are subject to the tax until 909
the contrary is established. 910

(D) The tax collected by the vendor from the consumer 911
under this chapter is not part of the price, but is a tax 912
collection for the benefit of the state, and of counties levying 913
an additional sales tax pursuant to section 5739.021 or 5739.026 914
of the Revised Code and of transit authorities levying an 915
additional sales tax pursuant to section 5739.023 of the Revised 916
Code. Except for the discount authorized under section 5739.12 917
of the Revised Code and the effects of any rounding pursuant to 918
section 5703.055 of the Revised Code, no person other than the 919
state or such a county or transit authority shall derive any 920
benefit from the collection or payment of the tax levied by this 921
section or section 5739.021, 5739.023, or 5739.026 of the 922
Revised Code. 923

Sec. 5739.03. (A) Except as provided in section 5739.05 or 924
section 5739.051 of the Revised Code, the tax imposed by or 925
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 926

the Revised Code shall be paid by the consumer to the vendor, 927
and each vendor shall collect from the consumer, as a trustee 928
for the state of Ohio, the full and exact amount of the tax 929
payable on each taxable sale, in the manner and at the times 930
provided as follows: 931

(1) If the price is, at or prior to the provision of the 932
service or the delivery of possession of the thing sold to the 933
consumer, paid in currency passed from hand to hand by the 934
consumer or the consumer's agent to the vendor or the vendor's 935
agent, the vendor or the vendor's agent shall collect the tax 936
with and at the same time as the price; 937

(2) If the price is otherwise paid or to be paid, the 938
vendor or the vendor's agent shall, at or prior to the provision 939
of the service or the delivery of possession of the thing sold 940
to the consumer, charge the tax imposed by or pursuant to 941
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 942
Code to the account of the consumer, which amount shall be 943
collected by the vendor from the consumer in addition to the 944
price. Such sale shall be reported on and the amount of the tax 945
applicable thereto shall be remitted with the return for the 946
period in which the sale is made, and the amount of the tax 947
shall become a legal charge in favor of the vendor and against 948
the consumer. 949

(B) (1) (a) If any sale is claimed to be exempt under 950
division (E) of section 5739.01 of the Revised Code or under 951
section 5739.02 of the Revised Code, with the exception of 952
divisions (B) (1) to (11), (28), (48), (55), (59), or (66) of 953
section 5739.02 of the Revised Code, the consumer must provide 954
to the vendor, and the vendor must obtain from the consumer, a 955
certificate specifying the reason that the sale is not legally 956

subject to the tax. The certificate shall be in such form, and 957
shall be provided either in a hard copy form or electronic form, 958
as the tax commissioner prescribes. 959

(b) A vendor that obtains a fully completed exemption 960
certificate from a consumer is relieved of liability for 961
collecting and remitting tax on any sale covered by that 962
certificate. If it is determined the exemption was improperly 963
claimed, the consumer shall be liable for any tax due on that 964
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 965
Chapter 5741. of the Revised Code. Relief under this division 966
from liability does not apply to any of the following: 967

(i) A vendor that fraudulently fails to collect tax; 968

(ii) A vendor that solicits consumers to participate in 969
the unlawful claim of an exemption; 970

(iii) A vendor that accepts an exemption certificate from 971
a consumer that claims an exemption based on who purchases or 972
who sells property or a service, when the subject of the 973
transaction sought to be covered by the exemption certificate is 974
actually received by the consumer at a location operated by the 975
vendor in this state, and this state has posted to its web site 976
an exemption certificate form that clearly and affirmatively 977
indicates that the claimed exemption is not available in this 978
state; 979

(iv) A vendor that accepts an exemption certificate from a 980
consumer who claims a multiple points of use exemption under 981
division (D) of section 5739.033 of the Revised Code, if the 982
item purchased is tangible personal property, other than 983
prewritten computer software. 984

(c) If a sale is claimed to be exempt under division (B) 985

(42) (n) of section 5739.02 of the Revised Code on the basis of 986
the presumption described in that division, the consumer shall 987
provide to the vendor, and the vendor shall obtain from the 988
consumer, either of the following: 989

(i) Copies of a schedule F, as that term is defined in 990
section 718.01 of the Revised Code, filed by the consumer for 991
the three most recent preceding federal taxable years for which 992
federal income tax returns were due pursuant to sections 6072 993
and 6081 of the Internal Revenue Code; 994

(ii) A certificate, prescribed and issued by the tax 995
commissioner, verifying that the consumer has filed a schedule F 996
for each of those taxable years. 997

No other documentation or explanation shall be required by 998
the vendor or tax commissioner for the consumer to benefit from 999
that presumption. 1000

(2) The vendor shall maintain records, including exemption 1001
certificates, of all sales on which a consumer has claimed an 1002
exemption, and provide them to the tax commissioner on request. 1003

(3) The tax commissioner may establish an identification 1004
system whereby the commissioner issues an identification number 1005
to a consumer that is exempt from payment of the tax. The 1006
consumer must present the number to the vendor, if any sale is 1007
claimed to be exempt as provided in this section. 1008

(4) If no certificate is provided or obtained within 1009
ninety days after the date on which such sale is consummated, it 1010
shall be presumed that the tax applies. Failure to have so 1011
provided or obtained a certificate shall not preclude a vendor, 1012
within one hundred twenty days after the tax commissioner gives 1013
written notice of intent to levy an assessment, from either 1014

establishing that the sale is not subject to the tax, or 1015
obtaining, in good faith, a fully completed exemption 1016
certificate. 1017

(5) Certificates need not be obtained nor provided where 1018
the identity of the consumer is such that the transaction is 1019
never subject to the tax imposed or where the item of tangible 1020
personal property sold or the service provided is never subject 1021
to the tax imposed, regardless of use, or when the sale is in 1022
interstate commerce. 1023

(6) If a transaction is claimed to be exempt under 1024
division (B)(13) of section 5739.02 of the Revised Code, the 1025
contractor shall obtain certification of the claimed exemption 1026
from the contractee. This certification shall be in addition to 1027
an exemption certificate provided by the contractor to the 1028
vendor. A contractee that provides a certification under this 1029
division shall be deemed to be the consumer of all items 1030
purchased by the contractor under the claim of exemption, if it 1031
is subsequently determined that the exemption is not properly 1032
claimed. The certification shall be in such form as the tax 1033
commissioner prescribes. 1034

(C) As used in this division, "contractee" means a person 1035
who seeks to enter or enters into a contract or agreement with a 1036
contractor or vendor for the construction of real property or 1037
for the sale and installation onto real property of tangible 1038
personal property. 1039

Any contractor or vendor may request from any contractee a 1040
certification of what portion of the property to be transferred 1041
under such contract or agreement is to be incorporated into the 1042
realty and what portion will retain its status as tangible 1043
personal property after installation is completed. The 1044

contractor or vendor shall request the certification by 1045
certified mail delivered to the contractee, return receipt 1046
requested. Upon receipt of such request and prior to entering 1047
into the contract or agreement, the contractee shall provide to 1048
the contractor or vendor a certification sufficiently detailed 1049
to enable the contractor or vendor to ascertain the resulting 1050
classification of all materials purchased or fabricated by the 1051
contractor or vendor and transferred to the contractee. This 1052
requirement applies to a contractee regardless of whether the 1053
contractee holds a direct payment permit under section 5739.031 1054
of the Revised Code or provides to the contractor or vendor an 1055
exemption certificate as provided under this section. 1056

For the purposes of the taxes levied by this chapter and 1057
Chapter 5741. of the Revised Code, the contractor or vendor may 1058
in good faith rely on the contractee's certification. 1059
Notwithstanding division (B) of section 5739.01 of the Revised 1060
Code, if the tax commissioner determines that certain property 1061
certified by the contractee as tangible personal property 1062
pursuant to this division is, in fact, real property, the 1063
contractee shall be considered to be the consumer of all 1064
materials so incorporated into that real property and shall be 1065
liable for the applicable tax, and the contractor or vendor 1066
shall be excused from any liability on those materials. 1067

If a contractee fails to provide such certification upon 1068
the request of the contractor or vendor, the contractor or 1069
vendor shall comply with the provisions of this chapter and 1070
Chapter 5741. of the Revised Code without the certification. If 1071
the tax commissioner determines that such compliance has been 1072
performed in good faith and that certain property treated as 1073
tangible personal property by the contractor or vendor is, in 1074
fact, real property, the contractee shall be considered to be 1075

the consumer of all materials so incorporated into that real 1076
property and shall be liable for the applicable tax, and the 1077
construction contractor or vendor shall be excused from any 1078
liability on those materials. 1079

This division does not apply to any contract or agreement 1080
where the tax commissioner determines as a fact that a 1081
certification under this division was made solely on the 1082
decision or advice of the contractor or vendor. 1083

(D) Notwithstanding division (B) of section 5739.01 of the 1084
Revised Code, whenever the total rate of tax imposed under this 1085
chapter is increased after the date after a construction 1086
contract is entered into, the contractee shall reimburse the 1087
construction contractor for any additional tax paid on tangible 1088
property consumed or services received pursuant to the contract. 1089

(E) A vendor who files a petition for reassessment 1090
contesting the assessment of tax on sales for which the vendor 1091
obtained no valid exemption certificates and for which the 1092
vendor failed to establish that the sales were properly not 1093
subject to the tax during the one-hundred-twenty-day period 1094
allowed under division (B) of this section, may present to the 1095
tax commissioner additional evidence to prove that the sales 1096
were properly subject to a claim of exception or exemption. The 1097
vendor shall file such evidence within ninety days of the 1098
receipt by the vendor of the notice of assessment, except that, 1099
upon application and for reasonable cause, the period for 1100
submitting such evidence shall be extended thirty days. 1101

The commissioner shall consider such additional evidence 1102
in reaching the final determination on the assessment and 1103
petition for reassessment. 1104

(F) Whenever a vendor refunds the price, minus any 1105
separately stated delivery charge, of an item of tangible 1106
personal property on which the tax imposed under this chapter 1107
has been paid, the vendor shall also refund the amount of tax 1108
paid, minus the amount of tax attributable to the delivery 1109
charge. 1110

Section 2. That existing sections 5739.02 and 5739.03 of 1111
the Revised Code are hereby repealed. 1112

Section 3. The amendment of sections 5739.02 and 5739.03 1113
of the Revised Code by this act applies on and after the first 1114
day of the first month that begins after the effective date of 1115
this section. 1116