STATE OF OHIO

Executive Department

OFFICE OF THE GOVERNOR

Columbus

RECEIVED
JAN 04 2017
SECRETARY OF STATE

VETO MESSAGE

STATEMENT OF THE REASONS FOR THE VETO OF ITEM IN AMENDED SUBSTITUTE HOUSE BILL 384

JANUARY 4, 2017

Pursuant to Article II, Section 16 of the Ohio Constitution, which states that the Governor may disapprove any items in a bill making an appropriation of money, I hereby disapprove the following item contained in Amended Substitute House Bill 384 and set forth below the reasons for so doing. The text I am disapproving is identified in this message by reference to the corresponding page and boxed text of the bill.

ITEM NUMBER 1

On page 1, delete the boxed text.
On page 19, delete the boxed text.
On page 20, delete the boxed text.
On page 21, delete the boxed text.
On page 22, delete the boxed text.
On page 23, delete the boxed text.
On page 24, delete the boxed text.
On page 25, delete the boxed text.
On page 26, delete the boxed text.
On page 27, delete the boxed text.
On page 28, delete the boxed text.
On page 29, delete the boxed text.
On page 30, delete the boxed text.
On page 62, delete the boxed text.

Tax Exemptions on Digital Audio Works

Vending is a valued industry in Ohio, but there is no justification for granting a narrow subset of this industry—digital jukeboxes—a tax exemption. Adequate ability exists for the vending industry to collect and remit its required sales tax. Further, this broadly drafted exemption could potentially have the unintended consequence of negating the state's tax on all digital audio products (i.e., downloaded books, movies, and music). Therefore, this veto is the public interest.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus this 4th day of January, Two Thousand Seventeen.

John R. Kasich, Governor

This will acknowledge the receipt of a copy of this veto message of Amended Substitute House Bill 384 that was disapproved in part by Governor John R. Kasich on January 4, 2017.

Name and Title of Officer

Date and Time of Receipt

(131st General Assembly)
(Amended Substitute House Bill Number 384)

AN ACT

To amend sections 117.46, 117.461, 117.462, 117.463, 117.47, 117.471, 117.472, 122.076, 149.431, 3333.93, 3345.202, 5709.084, 5717.04, 5726.01, 5727.111, and 5739.02; to enact sections 117.464, 117.465, 3333.172, and 3345.203 of the Revised Code; to amend Section 369.453 of Am. Sub. H.B. 64 of the 131st General Assembly; to amend Section 369.10 of Am. Sub. H.B. 64 of the 131st General Assembly, as subsequently amended; to amend Sections 273.10, 273.30, and 287.10 of Am. Sub. S.B. 260 of the 131st General Assembly, as subsequently amended; to amend Sections 207.60, 223.10, and 233.10 of S.B. 310 of the 131st General Assembly; and to amend Sections 221.10 and 239.10 of S.B. 310 of the 131st General Assembly, as subsequently amended, to specify that state institutions of higher education may be subject to performance audits conducted by the Auditor of State, to make changes to the operation of state programs, to modify the state tax laws, and to make capital and operating appropriations. JRK

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 117.46, 117.461, 117.462, 117.463, 117.47, 117.471, 117.472, 122.076, 149.431, 3333.93, 3345.202, 5709.084, 5717.04, 5726.01, 5727.111, and 5739.02 be amended and sections 117.464, 117.465, 3333.172, and 3345.203 of the Revised Code be enacted to read as follows: JRK

Sec. 117.46. Each biennium the auditor of state shall conduct a minimum of four performance ~~audit of a minimum of four state agencies~~audits under this section. ~~At~~ Except as otherwise provided in this section, at least two of the audits shall be of state agencies selected from a list comprised of the administrative departments listed in section 121.02 of the Revised Code and the department of education and at least two of the audits shall be of other state agencies. At the auditor of state's discretion, the auditor of state may conduct a performance audit of a state institution of higher education as one of the four required performance audits. The offices of the attorney general, auditor of state, governor, secretary of state, and treasurer of state and agencies of the legislative and judicial branches ~~shall~~ are not ~~be~~ subject to an audit under this section.

The auditor shall select each agency or institution to be audited and shall determine whether to audit the entire agency or institution or a portion of the agency or institution by auditing one or more programs, offices, boards, councils, or other entities within that agency or institution. The auditor shall make the selection and determination in consultation with the governor and the speaker and minority leader of the house of representatives and president and minority leader of the senate.

An audit of a portion of an agency or institution shall be ~~considered an audit of one agency or~~

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(4) For tax year 2007 and thereafter, pursuant to division (H) of section 5711.22 of the Revised Code.

(C) Twenty-five per cent in the case of (1) a natural gas company~~.~~ or (2) a water-works company for taxable property first subject to taxation in this state for tax year 2017 and thereafter;

(D) Eighty-eight per cent in the case of a pipe-line company, a water-works company for taxable property first subject to taxation in this state before tax year 2017, or a heating company;

(E)(1) For tax year 2005, eighty-eight per cent in the case of the taxable transmission and distribution property of an electric company, and twenty-five per cent for all its other taxable property;

(2) For tax year 2006 and each tax year thereafter, in the case of an electric company, eighty-five per cent in the case of its taxable transmission and distribution property and its energy conversion equipment, and twenty-four per cent for all its other taxable property.

(F)(1) Twenty-five per cent in the case of an interexchange telecommunications company for tax years before tax year 2007;

(2) Pursuant to division (H) of section 5711.22 of the Revised Code for tax year 2007 and thereafter.

(G) Twenty-five per cent in the case of a water transportation company;

(H) For tax year 2011 and each tax year thereafter in the case of an energy company, twenty-four per cent in the case of its taxable production equipment, and eighty-five per cent for all its other taxable property.

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

(2) In the case of the lease or rental, with a fixed term of more than thirty days or an indefinite term with a minimum period of more than thirty days, of any motor vehicles designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee or renter primarily for business purposes, the tax shall be collected by the vendor at the time the lease or rental is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee or renter under the lease agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee or renter. In the case of an open-end lease or rental, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due.

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The above boxed and initialed text was disapproved.

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As used in this division, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.

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

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

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

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

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

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

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

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

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

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

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

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

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Date: 1-4-12

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

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

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

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

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

(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. JRK

"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 in music, dramatics, the arts, and related fields

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are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

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

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections 5501.70 to 5501.83 of the Revised Code; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

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

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

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

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

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

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

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

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

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

(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;

(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;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property.

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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.

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

(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.

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

(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:

(a) To prepare food for human consumption for sale;

(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;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

(28) Sales of animals by nonprofit animal adoption services or county humane societies;

(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;

(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(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;

(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;

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

(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use

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of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) or (n) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.

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

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

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

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

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

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

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

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

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(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.

(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;

(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

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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 designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

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

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

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

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

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

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

(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; JRK

(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;

(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;

(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;

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

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

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

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

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

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

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

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

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.

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

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

(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where

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telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

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

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

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

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

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

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

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

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

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

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(51) Any transfer or lease of tangible personal property between the state and JobsOhio in

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accordance with section 4313.02 of the Revised Code.

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

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

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

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

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

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

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

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

(55) Sales of a digital audio work electronically transferred for use in or for delivery through use of a machine that accepts direct cash payments or direct payments by a financial transaction device to operate and that operates primarily for the purpose of providing entertainment or amusement, such as a jukebox, music machine, or other similar machine. As used in division (B)(55) of this section, "financial transaction device" has the same meaning as in section 113.40 of the Revised Code.

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

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

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an

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additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code. JRK

SECTION 2. That existing sections 117.46, 117.461, 117.462, 117.463, 117.47, 117.471, 117.472, 122.076, 149.431, 3333.172, 3333.93, 3345.202, 5709.084, 5717.04, 5726.01, 5727.111, and 5739.02 of the Revised Code are hereby repealed. JRK

SECTION 3. The amendment of section 3333.93 of the Revised Code by this act is not intended to supersede the repeal of that section on December 31, 2019, as prescribed by Section 125.10 of Sub. H.B. 340 of the 131st General Assembly.

SECTION 4. The amendment by this act of section 5726.01 of the Revised Code is intended to be remedial in nature and to clarify the law as it existed prior to the enactment of this act and shall be construed accordingly. That amendment shall apply to tax years beginning on or after January 1, 2014.

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SECTION 5. The amendment by this act of section 5739.02 of the Revised Code applies beginning on the first day of the first month that begins after the effective date of this act.

SECTION 6. (A) As used in this section, "impacted city" has the same meaning as in section 1728.01 of the Revised Code.

(B) Notwithstanding the requirement under division (B) of section 5709.40 of the Revised Code that an ordinance designate the specific public improvements made, to be made, or in the process of being made by a municipal corporation that directly benefit one or more parcels identified in the ordinance, not later than June 30, 2017, the legislative authority of an impacted city may include a determination in an ordinance adopted under section 5709.40 of the Revised Code that satisfactory provision has been made for the public improvement needs of the parcels identified in the ordinance and may specify other public improvements made, to be made, or in the process of being made in the impacted city that do not directly benefit the parcels identified in the ordinance but are in support of urban redevelopment within the meaning of section 5709.41 of the Revised Code.

(C) Not later than September 30, 2017, a New Community Authority organized under Chapter 349. of the Revised Code may enter into a contract with an impacted city, pursuant to section 349.13 of the Revised Code, or with the developer of the New Community Authority to provide for the payment or reimbursement of certain fees, costs, and other expenses associated with services rendered by the impacted city or with public improvements made, to be made, or in the process of being made within the impacted city, including any such services ~~or public improvements that are~~ rendered or made outside of the new community district or that are ~~not part of the Authority's new~~

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simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 5739.02 of the Revised Code as amended by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of the 131st General Assembly.

Section 273.30 of Am. Sub. S.B. 260 of the 131st General Assembly as amended by Sub. H.B. 390 and S.B. 310, both of the 131st General Assembly.

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