Bethany Boyd *Legislative Service Commission*

Bill Analysis

S.B. 293

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Authorizes the Tax Commissioner to discuss with other states the development of a voluntary sales and use tax collection system for remote sellers and participate in a pilot project with those states.
- Permits the Tax Commissioner to issue a Joint Request for Information from public and private parties governing specifications for the system.
- Requires that the Tax Commissioner issue two reports on the progress of the multi-state discussions, with the final report due before March 1, 2001.

CONTENT AND OPERATION

Inability to tax remote sellers

With the advent of the Internet, states face the problem of collecting sales or use taxes from remote sellers who are not located in Ohio and have practically no contacts with the state, other than making sales to Ohio consumers over the Internet. The United States Constitution's Commerce Clause, Art. I, § 8, cl. 3, limits state burdens on interstate commerce and bars states from collecting sales or use taxes from remote sellers because such sellers lack the substantial nexus with the taxing states that is required by the Commerce Clause. Ohio recognizes the Commerce Clause, among other constitutional provisions, in R.C. 5739.02(B)(10), which states that the sales tax does not apply to sales not within the taxing power of Ohio under the United States Constitution.

Adding to the difficulty of proving that a remote seller has a substantial nexus with a taxing state are United States Supreme Court decisions that have limited the type of state contacts that trigger the state's ability to tax the remote seller. One such case is *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), which held that a vendor whose only connection with customers in a taxing state is by common carrier or the United States mail is free from state-imposed duties to collect sales and use taxes, because such a vendor lacks the substantial nexus with the taxing state required by the Commerce Clause. The Court came to this conclusion, despite the fact that the remote seller, a mail-order house incorporated in Delaware with no offices or employees in North Dakota, made annual sales by mail of almost $1 million to 3,000 North Dakota customers.

On January 14, 2000, the National Conference of State Legislatures approved proposed model legislation to assist states in the development of a **voluntary**, streamlined multi-state sales and use tax collection system, as a result of increased sales via the Internet and to address the Commerce Clause conflicts that arise when states attempt to collect those taxes from a remote seller. The intent of the model legislation was to authorize the appropriate state authority to participate in discussions with other states to develop the collection system. This bill contains most aspects of the model legislation and grants to the Tax Commissioner the authority to discuss the development of a voluntary collection system with other states and participate in a pilot project with them.

Discussions for development of a sales tax collection system

(Section 1(A))

The bill authorizes the Tax Commissioner to discuss with other states the development of a multi-state, **voluntary**, and simplified system for the collection of the sales and use tax from remote sellers, and its administration. The discussions must focus on a system that will have the capability to determine whether a sale of goods or a service is taxable or tax exempt, the appropriate tax rate that applies to the sale, and the total tax due on the sale. The system must provide a method for collecting and remitting sales and use taxes to Ohio, and may provide compensation for the costs of collecting and remitting such taxes. Discussions between the Tax Commissioner and other states may address the following:

(1) The development of a Joint Request for Information from public and private parties governing the specifications for the system;

(2) The mechanism for compensating parties for the development and operation of the system;

(3) The establishment of minimum statutory measures necessary for state participation;

(4) Methods to preserve confidentiality of taxpayer information and the privacy rights of consumers.

Following these discussions, the Tax Commissioner may issue a Joint Request for Information.

Participation in a pilot project

(Section 1(B) and (C))

Under the bill, the Tax Commissioner may participate in a sales and use tax pilot project with other states and selected businesses to test means for simplifying administration of the sales and use tax, and may enter into joint agreements for that purpose. The agreements must establish provisions for the administration, imposition, and collection of sales and use taxes resulting in revenues paid that are the same as would be paid under the existing sales and use tax law. All such agreements must terminate no later than December 31, 2001.

Parties to the agreements may be exempted from compliance with existing sales and use tax law to the extent a different procedure is required by the agreements, except for confidentiality of taxpayer information. Return information submitted to any party acting for and on behalf of this state under the bill are required to be treated as confidential taxpayer information. Disclosure of confidential taxpayer information necessary under the bill must be pursuant to a written agreement between the party and Tax Commissioner. The party is bound by the same confidentiality requirements that apply to the Department of Taxation and its agents under existing law.

Progress reports regarding the discussions

(Section 1(D))

By November 1, 2000, the Tax Commissioner must provide a report on the progress of multi-state discussions to the Governor, Speaker of the House of Representatives, Senate President, Minority Leaders of the House and Senate, and chairpersons of the House's and Senate's standing committees with primary responsibility for sales and use tax legislation. Not later than March 1, 2001, the Tax Commissioner must provide a final report to these entities on the status of the multi-state discussions. If a proposed system for the collection and administration of sales and use taxes has been agreed upon by participating states, the Tax Commissioner, in the final report, is required to recommend whether Ohio should participate in the system and what legislation is needed to implement it.

HISTORY

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