Final Analysis

Peter A. Cooper *Legislative Service Commission*

Am. Sub. S.B. 143

124th General Assembly
(As Passed by the General Assembly)*

Sens. **Blessing, Amstutz, DiDonato, Mead, Spada, Finan, Harris**

Reps. **Kilbane, Kearns, Metzger, Schuring, Jones**

Effective date: **March 22, 2002, certain provisions effective June 21, 2002, August 1, 2002, and July 1, 2003; contains item veto**

ACT SUMMARY

- Enacts the Simplified Sales and Use Tax Administration Act, a model act recommended by the National Conference of State Legislatures, for the development of a voluntary, streamlined system for the collection of sales and use taxes from remote sellers.

- Requires that the state participate in multi-state discussions to develop the system and review and amend the Streamlined Sales and Use Tax Administration Agreement recommended by NCSL.

- Permits the Tax Commissioner to enter into the Agreement with other states if the final Agreement contains certain standards and establishes requirements with which all states that sign the Agreement must comply.

- Makes changes to state and local sales and use tax laws, effective July 1, 2003, to reflect simplification and administration requirements contained in the model act and interstate Agreement, including establishing uniform standards for exemption certificates and for attributing the source of transactions to taxing jurisdictions; providing monetary allowances to certain vendors; and requiring notice to vendors of local tax rate changes and restricting the frequency of such changes.

* *Additionally, this analysis reflects an item veto by the Governor.*

- Effective August 1, 2002, implements a sales tax sourcing provision for mobile telecommunications service to comply with the federal Mobile Telecommunications Sourcing Act.
- Disallows use tax reporting on the personal income tax return for purchases where tax already has been paid.

TABLE OF CONTENTS

CONTENT AND OPERATION

BACKGROUND OF EFFORT TO COLLECT SALES AND USE TAXES FROM REMOTE SELLERS

Ohio's limited ability to tax remote sellers

With the advent of the Internet, Ohio faces an increasing problem of collecting state and local sales and use taxes from sellers who are not located in Ohio and have practically no physical contacts (nexus) with the state, other than making sales over the Internet to consumers residing in Ohio. 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 unless those sellers have substantial nexus with taxing states.

A number of United States Supreme Court decisions provide guidance for determining the type of contacts a remote seller must have with a state in order to establish substantial nexus and trigger the state's ability to tax the seller. The leading 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 was by common carrier or the United States mail, was free from taxing state-imposed duties to collect sales and use taxes, because the vendor lacked the substantial nexus with the taxing state that is 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 approximately 3,000 North Dakota customers.

NCSL's and the states' answer to losses in sales and use tax revenues

As a result of increased sales via the Internet and plummeting sales and use tax collections in most states, the National Conference of State Legislatures' (NCSL) Executive Committee in 1999 established a Special Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The Task Force examined the collection and nexus issues, and on January 14, 2000, proposed model legislation to assist states in the development of a voluntary, streamlined multi-state sales and use tax collection system 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 streamlined system.

The 123rd General Assembly's reaction to the model legislation was to enact Section 6 of Sub. H.B. 483, effective September 21, 2000, which granted the Tax Commissioner authority to discuss with other states the development of the simplified tax collection system and participate in a pilot project with them. Section 6 of H.B. 483 authorized the Commissioner to address administration of the collection system, and to discuss a mechanism for compensating parties for the development and operation of that system. The Commissioner also could discuss the establishment of minimum statutory measures necessary for state participation and could enter into joint agreements to test methods for simplifying tax administration, so long as the agreements terminated by December 31, 2001.

As the discussions on developing a voluntary, streamlined sales and use tax collection system continued, NCSL's Special Task Force developed, and the NCSL Executive Committee unanimously endorsed on January 27, 2001, the Simplified Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement.[1] NCSL has been urging states to adopt the Act and Agreement in their legislatures, so that in-state and out-of-state merchants are treated in a fair and an equitable manner.

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[1] *At about the same time, the National Governors' Association and others participated in the Streamlined Sales Tax Project, composed largely of state revenue officials. The Project developed a model act and agreement on which NCSL's model act and agreement are based. There are some differences between the documents, namely, the Project's agreement includes provisions regarding uniform definitions, procedures for bad debt deductions, uniform rounding rules, caps and thresholds on rates, and sales tax holidays. This act contains the Project's uniform definition of "delivery charges" (see "**Uniform definition of delivery charges**," below).*

The Simplified Sales and Use Tax Administration Act

The act, by enacting the Simplified Sales and Use Tax Administration Act ("model act"), authorizes the state to participate in the next phase of multi-state discussions, and contains an "outline" of a streamlined sales and use tax collection and administration system. Generally, the model act envisions using advanced technology to collect sales and use taxes. States and sellers voluntarily participate in the simplified system by registering with a central, electronic registration system established by states that are "members" to the Streamlined Sales and Use Tax Agreement.[2] By doing so, the sellers are registered in each of the member states and agree to collect and remit sales and use taxes to the member states. Such a seller pays the taxes by one of the following methods: (1) by having a "certified service provider," which is an agent certified jointly by the member states, perform all of the seller's sales and use tax functions, including remitting the taxes to each member state, (2) by using a "certified automated system," which is software certified jointly by the member states, to calculate the tax imposed by each jurisdiction on a transaction, determine the amount to remit to the appropriate state, and maintain a record of the transaction, with the seller having the responsibility to remit taxes to a state, or (3) by using its own "proprietary system" to calculate the tax due each jurisdiction. This last method may be used only by a seller that has sales in at least five member states, has total sales revenues of at least $500 million, and enters into a performance agreement with the member states.

The Streamlined Sales and Use Tax Agreement

The Streamlined Sales and Use Tax Agreement ("interstate agreement") provides states with the structure to simplify their existing sales and use tax collection systems by changing state statutes to establish the system envisioned by the model act. The interstate agreement requires state-level administration of sales and use taxes; a common tax base for a state and its local taxing jurisdictions; central, online registration for sellers; uniform standards for the administration of exempt sales, tax returns and remittances, and sourcing transactions (designating where a sale occurs); and protection of consumer privacy. States must outline in their statutes any monetary allowances that are to be given to certified service providers and sellers using certified automated systems or proprietary systems.

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[2] *Under Ohio law, "vendor" is the term normally used in the sales tax law for persons in Ohio making sales, and "seller" is the term used in the use tax law for persons outside Ohio making sales to consumers in Ohio. The model act encompasses both: a "seller" is any person making sales, leases, or rentals of personal property or services, regardless of location.*

The interstate agreement also restricts the frequency of changes in local sales and use tax rates, and requires timely notice to sellers of tax rate and boundary changes for local taxing jurisdictions. Under the agreement, state statutes must ensure that seller registration will not be used as a factor in determining a seller's nexus with any state for any other tax.

State action

States that enact the model act before July 1, 2003, are entitled to continue participating in discussions to review and amend the interstate agreement by a simple majority vote, with one vote per state. If a state passes only the model act, the state has until July 1, 2003, to adopt the necessary laws to comply with the interstate agreement. After that date, a state that has not brought its sales and use tax collection system into compliance with the interstate agreement is no longer entitled to participate in amending it or deciding matters regarding joint contracts between complying states and vendors of automated systems.

States that enact the model act and change their laws to comply with the interstate agreement before July 1, 2003, may execute an adopting resolution specifying the proposed date of entry into the interstate agreement. A state must agree to abide by the interstate agreement and provide with the resolution a certification of compliance with the terms of the agreement, citing statutes and regulations supporting compliance. The interstate agreement becomes effective when five states have completed adopting resolutions. States become initial member states by being found in compliance with the agreement by a ¾ vote of the other initial states.

Member states vote whether a petitioning state is in compliance with and becomes a member to the interstate agreement. Member states also organize to govern each state's compliance with the agreement and may take actions necessary to administer the agreement.

The act locates the model act in new R.C. Chapter 5740. The act also amends Ohio's sales and use tax laws and enacts corresponding laws to reflect much of the tax simplification framework contained in the interstate agreement. Most of those changes have a delayed effective date of July 1, 2003.

ENACTMENT OF THE SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT (MODEL ACT)

Ohio's participation in multi-state discussions

(R.C. 5740.01 and 5740.02; Section 6)

The act enacts the model act so that Ohio may continue to participate in the multi-state discussions regarding the development of a streamlined sales and use tax system to reduce the burden and cost for all sellers to collect Ohio's sales and use taxes. The state also must participate in discussions to review and amend the terms of the interstate agreement so that it embodies the requirements set forth for it in the act (see "***Requirements for the interstate agreement***," below). For purposes of these discussions, the Tax Commissioner, or the Commissioner's designee, and two other delegates are to represent Ohio. The Commissioner or the designee is the chairperson of the delegation. The Speaker of the House of Representatives and the President of the Senate each choose one delegate. In all matters where voting by the member states is required to amend the interstate agreement, the chairperson, based on the votes of the majority of the delegation, must cast Ohio's vote.

The state's delegation may participate in discussions only if the discussion meetings comply with requirements similar to Ohio's open meetings law. Specifically, the meetings must be open to the public unless they pertain to proprietary information, personnel matters, purchases or sales of public property, pending legal matters, competitive bidding, certifying service providers, or issues that must be kept confidential under federal or state law. However, the delegation may participate in teleconferences, "special meetings," and meetings of committees or working groups if they are held in accordance with rules governing public participation established by the states implementing the model act.

Authority to enter into the interstate agreement and adopt rules

(R.C. 5740.01(D) and 5740.03; Section 5 (vetoed))

Subject to the act's requirements for the interstate agreement, the Tax Commissioner may enter into the agreement with one or more states.[3] In furtherance of the agreement, the Commissioner may act jointly with other states that have signed the interstate agreement ("member states") to establish standards for certification of service providers and automated systems, establish

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[3] *The Governor vetoed a provision that would have prohibited the Commissioner from entering into the agreement unless the General Assembly first adopted a concurrent resolution authorizing the Commissioner to do so.*

performance standards for multi-state sellers, and procure goods and services. The Commissioner may take other actions reasonably required to implement the model act, including adopting rules.

<u>Requirements for the interstate agreement</u>

(R.C. 5740.05)

Under the act, the Tax Commissioner is prohibited from entering into the interstate agreement unless the agreement requires each member state to meet certain standards outlined below. The agreement must:

(1) Set restrictions to limit over time the number of state sales and use tax rates;

(2) Establish uniform standards for attributing the source of transactions to taxing jurisdictions, for the administration of exempt sales, and for sales and use tax returns and remittances;

(3) Provide a central, electronic registration system that allows a seller to register to collect sales and use taxes for, and remit them to, all member states;

(4) Provide that registration with the central registration system and the collection of sales and use taxes in the member states will not be used as a factor in determining whether the seller has nexus with a state for any tax;

(5) Provide for reduction of the burdens of complying with local sales and use taxes through (a) restricting variances between state and local tax bases, (b) requiring states to administer any sales and use taxes levied by local jurisdictions within the states so that sellers collecting and remitting those taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from, local taxing jurisdictions, (c) restricting the frequency of changes in local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes, and (d) providing notice to sellers and certified service providers of changes in local sales and use tax rates and in the boundaries of local taxing jurisdictions;

(6) Outline any monetary allowances that are to be provided by the member states to sellers or certified service providers. The interstate agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity. The study is to be completed by July 1, 2002.

(7) Require each state to certify compliance with the interstate agreement's terms prior to becoming a member of the agreement, and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(8) Require each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information;

(9) Provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the interstate agreement's administration.

Tax liability for sellers that use certified service providers or automated or proprietary systems

Use of a certified service provider

(R.C. 5740.07(A))

The act provides that a certified service provider is the agent of the seller with whom the provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use taxes due each member state on all sales transactions it processes for the seller. A seller that contracts with a certified service provider is not liable to Ohio for sales or use taxes due on transactions processed by the provider, unless the seller misrepresented the type of tangible personal property or services it sells or committed fraud. In the absence of probable cause to believe that the seller made a material misrepresentation or has committed fraud, the seller is not subject to audit of the transactions processed by the certified service provider, but is subject to audit for transactions that are not processed by the provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly, and the extent to which the seller's transactions are being processed by the provider.

Use of a certified automated system

(R.C. 5740.07(B))

Any person who provides a certified automated system is responsible for the proper functioning of that system and is liable to Ohio for underpayments of the sales and use tax attributable to errors in its functioning. A seller that uses a certified automated system remains responsible and is liable to Ohio for reporting and remitting sales and use taxes.

Use of a proprietary system

(R.C. 5740.07(C))

A seller that has a proprietary system for determining the amount of sales or use tax due on transactions and has signed a performance agreement establishing tax performance standards for that system is liable for the failure of the system to meet the performance standards.

Interstate agreement's relationship to Ohio law

(R.C. 5740.01(E), 5740.04, and 5740.06)

The act provides that no provision of the interstate agreement, in whole or in part, invalidates or amends Ohio law, nor does adoption of the agreement by Ohio amend state law. Implementation in Ohio of any condition of the interstate agreement, whether adopted before, at, or after Ohio's membership in the agreement, must be by the action of Ohio.

Under the act, the interstate agreement is characterized as an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted laws of each member state.

The interstate agreement binds and inures only to the benefit of Ohio and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of Ohio and the other member states and not by the terms of the interstate agreement. ("Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.)

The act further provides that no person has any cause of action or defense under the interstate agreement or by virtue of Ohio's approval of it. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of Ohio, or by any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.

Ohio law, or the application thereof, cannot be declared invalid as to any person or circumstance on the ground that the law or its application is inconsistent with the interstate agreement.

Consumer privacy requirements

(R.C. 5740.08)

The act requires that all certified service providers preserve the privacy of consumers who buy, lease, or rent tangible personal property or services from sellers with whom the provider has contracted for the collection and remittance of sales and use taxes to Ohio. Certified providers also must protect consumer information "in the same manner as required of the [Ohio] Department of Taxation for taxpayer information."[4]

The certified service provider must use a certified automated system to perform sales and use tax calculations, remittances, and reporting that does not retain the personally identifiable information of consumers, except to determine whether a consumer's status or intended use of the goods or services purchased is exempt from the sales or use tax, to investigate fraud by a consumer or seller, or to the extent necessary to ensure the reliability of the providers' technology and certified automated system in performing all of a seller's sales and use tax functions.

A certified service provider must provide technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure, and must provide to consumers clear and conspicuous notice of its information retention and sharing practices, including what information it collects, how the information collected is used, and whether the information is disclosed to other member states. A provider that retains personally identifiable information must notify consumers of its intent to retain that information and must afford consumers reasonable access to their data and the opportunity to correct inaccurately recorded data.

If any person, other than a member state, seeks to discover a consumer's personally identifiable information, a reasonable and timely effort must be made by the certified service provider to notify the consumer of the request.

Notwithstanding the act's privacy provisions, the laws of Ohio regarding the collection, use, and maintenance of confidential taxpayer information remain applicable and binding. The agreement does not enlarge or limit Ohio's authority to do any of the following:

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[4] *Under Ohio law, employees and agents of the Department are expressly prohibited from divulging taxpayer information gained in the course of performing their duties, except in specific situations such as during legal proceedings; they are subject to fines for violating this prohibition.*

(1) Conduct audits or other reviews as provided under the interstate agreement or Ohio law;

(2) Provide records, pursuant to existing law regarding the availability of public records, or to governmental agencies under disclosure laws;

(3) Prevent the disclosure of confidential taxpayer information in accordance with existing state tax laws;

(4) Prevent, consistent with federal law, the disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service;

(5) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

The act's privacy provision does not enlarge or limit the privacy policies of any seller that has selected a certified service provider as its agent to perform all of its sales and use tax functions.

Any certified service provider that fails to comply with this privacy law is subject to investigation by the Tax Commissioner and the Attorney General, and to prosecution by the Attorney General.

COMPONENTS OF THE STREAMLINED SALES AND USE TAX AGREEMENT (INTERSTATE AGREEMENT)

The act amends existing sales and use tax laws and enacts provisions to comply with the interstate agreement.

Uniform standards for attributing the source of transactions to taxing jurisdictions

Under the interstate agreement, member states must have uniform standards for attributing the source of transactions to taxing jurisdictions. These standards are used to determine where a sale occurred (sometimes termed as "the situs of the consummation of the sale"). The sourcing standards apply regardless of the characterization of a product as tangible personal property or a service. The sourcing standards aid a seller in determining the seller's obligation to pay or collect and remit the sales or use tax on the sale of a product, and make no distinctions in attributing the source of a sale based on the type of seller that made the sale or the type of consumer purchasing a product.

Ohio's current sourcing law (R.C. 5739.033) is somewhat different than the uniform sourcing standards proposed by the interstate agreement. Ohio determines where a sale was consummated, depending on whether the sale was tangible personal property or a service, and even makes distinctions among the types of services sold or the type of vendor making the sale--for example, a transient vendor or delivery vendor. The situs of a sale also depends on whether a manufacturer or other consumer is a direct payment permit holder that pays the sales tax directly to the Tax Commissioner because it was impossible for the vendor to determine at the time of purchase the manner in which property or services would be used. The act revises this sourcing law to adopt the uniform sourcing standards in the interstate agreement.

Sourcing standards for most transactions

(R.C. 5739.033(A) and 5741.05(A); Section 3)

Effective July 1, 2003, the act provides that sales are generally determined to be consummated at the vendor's place of business, except for sales of mobile telecommunications service, titled motor vehicles, titled watercraft, and titled outboard motors (the sourcing of these items are discussed below). But when the tangible personal property or service is not received at a vendor's place of business, the act requires that the source of the sale be attributed to the location where the consumer, or a donee designated by the consumer, receives the tangible personal property or service, including the location indicated by instructions for delivery to the consumer or the consumer's donee, known to the vendor. ("Receives" means taking possession of the property or making first use of the service, excluding possession by a shipping company.)

If the above sourcing standards are not applicable, the source of a sale is attributed to the location indicated by an address for the consumer that is available from the vendor's business records that are maintained in the ordinary course of business when use of that address does not constitute bad faith. But if the latter standard is not applicable, the sale is attributed to the location indicated by an address for the consumer obtained during the consummation of the sale, including the address associated with the consumer's payment instrument, if no other address is available, when use of that address does not constitute bad faith.

If none of the above sourcing provisions apply, including in the circumstance where the vendor is without sufficient information to apply any of those standards, the source of the sale is attributed to the address from which tangible personal property was shipped or from which the service was provided, disregarding any location that merely provided the electronic transfer of the property sold or service provided.

Sourcing standards for tangible personal property or services used for business in more than one taxing jurisdiction

(R.C. 5739.033(B) and 5741.05(A); Section 3)

Notwithstanding the above sourcing standards for most transactions, the act requires a manufacturer or other consumer that is not a holder of a direct payment permit, that purchases tangible personal property or a service for use in business, and that knows at the time of purchase that the property or service will be concurrently available for use in more than one taxing jurisdiction, to deliver to the vendor, in conjunction with its purchase, a multiple points of use (MPU) exemption form prescribed by the Tax Commissioner, disclosing this fact. On receipt of the MPU exemption form, the vendor is relieved of its obligation to collect, pay, or remit the tax due, and the consumer must collect, pay, or remit the tax directly to the state.

A consumer that delivers the MPU exemption form to a vendor may use any reasonable, consistent, and uniform method of apportioning the tax due among taxing jurisdictions on the tangible personal property or service that is supported by the consumer's business records as they existed at the time of the sale.

The MPU exemption form remains in effect for all future sales by the vendor to the consumer until it is revoked in writing by the consumer, except as to the consumer's specific apportionment of a subsequent sale and the facts existing at the time of the sale.

These provisions take effect July 1, 2003.

Sourcing standards for direct payment permit holders

(R.C. 5739.031(C), 5739.033(C), and 5741.05(A); Section 3)

The act provides that a person who holds a direct payment permit is not required to deliver a MPU exemption form to a vendor. (The permit holder already pays the sales and use taxes directly to the state because, at the time of purchase, the vendor could not determine the taxing jurisdiction to which the sale should be attributed.) But such a permit holder must use a reasonable, consistent, and uniform method of apportioning the tax due on tangible personal property or a service that will be concurrently available for use in more than one taxing jurisdiction. These provisions take effect July 1, 2003.

Sourcing standards for titled motor vehicles, watercraft, and outboard motors

(R.C. 5741.05(A); Section 3)

Effective July 1, 2003, the act provides that a vendor or seller of motor vehicles, watercraft, or outboard motors required to be titled in Ohio must collect (1) the state sales or use tax and (2) the county tax for the consumer's county of residence.

Subsequent changes in source

(R.C. 5741.05(B); Section 3)

Under the act, a vendor or seller is not responsible for collecting or remitting additional taxes if a consumer subsequently stores, uses, or consumes tangible personal property or a service in another jurisdiction with a rate of state or local use tax that is higher than the amount collected by the vendor or seller under the state or local sales or use tax laws. This provision takes effect July 1, 2003.

Exemption certificates

(R.C. 5739.03 and 5741.02; Section 3)

The interstate agreement calls for uniform administration of exempt sales and contemplates using standard electronic forms by which purchasers may claim sales or use tax exemptions. A purchaser is not required to provide a signature to claim an exemption unless a paper certificate is used. Sellers must maintain records of exempt transactions and provide them to member states when requested.

Effective July 1, 2003, the act revises Ohio's hard-copy exemption certificate process to meet the interstate agreement's provisions. The act requires that exemption certificates be provided either in a hard copy form or electronic form, as prescribed by the Tax Commissioner, and eliminates the signature requirement for exemption certificates involving contractors and contractees. The act requires vendors to maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and to provide the records to the Tax Commissioner on request.

The act further provides that the Tax Commissioner may establish an identification system whereby the Commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor if any sale is claimed to be exempt.

Discounts

(R.C. 5739.12; Section 3)

Continuing law requires that a vendor is entitled to a discount of ¾ of 1% of the amount of sales tax shown to be due on a return if the return is filed, and the tax shown on it is paid, on or before the date the return is required to be filed. The act provides that a vendor is not entitled to the discount if it has selected a certified service provider as its agent to pay sales or use taxes to the state. This provision takes effect July 1, 2003.

Monetary allowances for certified service providers and certain vendors

(R.C. 5739.06 and 5741.12; Section 3)

The interstate agreement requires that member states outline any monetary allowances that are to be provided to certified service providers and vendors or sellers. The allowances are incentives for implementing new technological models and, for a certified service provider, are provided in accordance with the terms of the contract the member states sign with the provider. The allowances are provided to vendors or sellers upon their voluntary registration through the central registration system.

Effective July 1, 2003, the act provides that if the Tax Commissioner enters into the interstate agreement, the Commissioner must provide a monetary allowance from the taxes collected to each of the following:

(1) A certified service provider, in accordance with the interstate agreement and under the terms of the contract signed with the provider;

(2) Any vendor registered under the interstate agreement that selects a certified automated system to perform part of its sales or use tax functions;

(3) Any vendor registered under the interstate agreement that uses a proprietary system to calculate taxes due and that has entered into a performance agreement with member states.

The monetary allowance under item (2) or (3) must be given to a vendor for the period established by, and at the rate set in, the interstate agreement. The allowance is in addition to any discount to which the vendor is entitled. Under the act, sellers under the use tax law are entitled to the same monetary allowances as are vendors under the sales tax law.

Notification of local tax rate or territorial boundary changes

(R.C. 306.73, 5739.04, and 5741.08; Section 3)

The interstate agreement requires that if a state has local jurisdictions that levy a sales or use tax, the state must notify sellers of local tax rate changes and any local boundary changes. Effective July 1, 2003, the act requires a county transit board, a board of trustees of a regional transit authority, or a board of county commissioners operating a transit system to notify the Tax Commissioner immediately of any changes in the transit system's territorial boundaries, if the board levies a sales and use tax.

In turn, on and after July 1, 2003, the act requires the Commissioner to give notification of tax rate and jurisdictional boundary changes. If modification of a county's jurisdictional boundaries or a transit authority's territory results in a change in a local sales or use tax rate, the Commissioner, within 30 days of such change, must notify any vendor that is registered with the central electronic registration system, or the vendor's certified service provider if the vendor has selected one, of such change. The rate change cannot apply until the first day of a calendar quarter following the expiration of 60 days from the date of notice by the Commissioner.

Restrictions on frequency of changes in local tax rates

(R.C. 5739.021, 5739.023, and 5739.026; Section 3)

The interstate agreement requires that member states restrict the frequency of local sales and use tax rate changes to lessen the difficulties faced by sellers when there is a change in a tax rate or base. The agreement proposes to limit the effective date of a local rate change to the first day of a calendar quarter after a minimum of 60 days' notice to sellers. If a purchase is made from a printed catalog listing tax rates that the purchaser used to compute the local tax, the interstate agreement requires that the rate change not take effect until the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

Under current law, a resolution that levies local sales and use taxes becomes effective on the first day of the month specified in the resolution, but not earlier than the first day of the month following the expiration of 60 days from the date of its adoption. Effective July 1, 2003, the act provides instead that the resolution becomes effective on the first day of a calendar quarter following the expiration of 60 days from the date of its adoption. But if a vendor that is registered with the central electronic registration system makes a sale in Ohio by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, the act provides that the tax levied or rate changed cannot apply until the first day of a calendar quarter following the expiration of 120 days from the date of notice by the Tax Commissioner to the vendor, or to the vendor's certified service provider if the vendor has selected one.

Nexus

(R.C. 5703.65 and 5741.01(I)(7); Section 3)

The interstate agreement requires that, for a state to become a member of the agreement, it must revise its laws to provide that registration with the central registration system will not be used as a factor in determining whether a seller has nexus with a state for any tax. To meet this requirement, the act provides that registration with the central registration system cannot be used as a basis for establishing nexus with or in this state for any tax levied by the state or a political subdivision of the state. The act also provides that registration with the central system is not a basis for establishing substantial nexus, notwithstanding a use tax law stating that registration to make sales to persons in this state creates substantial nexus. These provisions take effect July 1, 2003.

Uniform definition of delivery charges

(R.C. 5739.01(H) and 5741.01(G))

The Streamlined Sales and Use Tax Project's interstate agreement presented uniform definitions to simplify the collection of taxes. The act adopts one of those definitions: it excludes delivery charges from the definition of "price" (generally the basis on which the sales and use tax is calculated), if the charges are separately stated on the initial invoice or initial billing rendered by the vendor or seller. The act defines "delivery charges" as charges by the vendor or seller for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.

Reorganization of the lodging taxes

(R.C. 307.671, 307.672, 307.674, 307.695, 351.01, 351.021, 351.03, 351.141, 505.56, 4501.32, 5739.02, 5739.08, and 5739.09)

R.C. 5739.02(A) levies the state sales tax on transactions by which lodging by a hotel is furnished to transient guests. R.C. 5739.02(C) provides that the levy of the state sales tax on lodging does not prevent certain political subdivisions from also levying an excise tax on lodging. Those subdivisions may do so in accordance with R.C. 5739.024. The act moves the R.C. 5739.02(C) provision to R.C. 5739.08, and renumbers R.C. 5739.024 as R.C. 5739.09, so that the lodging tax provisions are contained together in the Revised Code. This simplifies the lodging tax and also clarifies that, for purposes of the model act and interstate agreement, references to the tax levied by R.C. 5739.02 means solely the state sales tax, and does not also refer to the lodging taxes.

MISCELLANEOUS CHANGES TO THE SALES AND USE TAX LAWS

Reporting use tax on income tax return

(R.C. 5747.083)

Currently, the state and county use taxes apply to purchases made outside Ohio if the property or service is used or consumed in Ohio. If the purchaser pays sales tax to the state where the purchase occurs, then use tax is due only to the extent that the state and county use tax is greater than the sales tax paid to the other state. Also under current law, the Tax Commissioner has the authority to prescribe the form of the personal income tax return. The returns for 2000 and 2001 included a line for reporting use taxes due on purchases made outside Ohio but not yet paid to Ohio.

The bill prohibits the Tax Commissioner from requiring a taxpayer to report or pay use tax on a purchase as part of the income tax return if the taxpayer already has paid sales tax to Ohio or another state when the purchase was made. Thus, for example, if a taxpayer were to purchase something in a state outside Ohio and pay 4% sales tax to that other state, the taxpayer could not be required to report the additional 1% in Ohio tax (since the Ohio rate is 5%) or any county use tax on the income tax return.

Attributing the source of mobile telecommunications services to taxing jurisdictions

(R.C. 5739.01(B)(3), (AA), and (WW), 5739.033(D), 5739.034, and 5741.05(A); Section 4)

Continuing law provides that the source of a sale of telecommunications service that originates or terminates in Ohio and is charged in the vendor's records to the consumer's telephone number or account in Ohio, or that both originates and terminates in Ohio, is attributed to the telephone number or account as reflected in the vendor's records. But in 2000, the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116-126, was enacted, which explicitly preempts state sourcing law for mobile telecommunications services, effective August 1, 2002. The federal Act applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services. The federal Act defines "mobile telecommunications service" as commercial mobile radio service--generally, a mobile service that is provided for profit, is interconnected with the public switched network, and is available to the public.

The Mobile Telecommunications Sourcing Act determines how states and local governments are to treat charges for mobile telecommunications services, where such services are deemed to have occurred, and which taxing jurisdictions may tax those services. To comply with the federal Act, the act removes mobile telecommunications service from the existing state telecommunications service sourcing provision and definition, and creates a separate sourcing provision and definition that is consistent with the federal Act. The act requires that, on and after August 1, 2002, if a vendor provides mobile telecommunications service, the situs of all sales of that service is the residential or business street address that is the "customer's place of primary use" of the service that is within the "licensed service area" of the "home service provider" under the federal Act. (The licensed service area is the geographic area in which the home service provider (the facilities-based carrier or reseller with which the customer contracts for service) is authorized by law or contract to provide service to the customer.) The act also provides that the Tax Commissioner may provide an electronic data base to be used by home service providers.

Eliminate residual limited vendor license references

(R.C. 311.37, 311.99, 3715.52, 5739.31, and 5739.99(C)(3))

H.B. 612 of the 123rd General Assembly eliminated the limited vendor license class. Persons who had to obtain that license must now obtain a transient vendor or regular vendor's license. The act eliminates residual references to limited vendors that are still in the law.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	06-28-01	p.	785
Reported, S. Ways and Means	10-03-01	pp.	931-932
Passed Senate (31-1)	10-03-01	p.	934
Reported, H. Ways and Means	10-30-01	p.	1038
Passed House (87-12)	10-31-01	pp.	1054-1062
Concurrence			
House (61-37)	01-29-02	pp.	1308-1332
Senate (32-1)	01-30-02	pp.	1379-1403

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