



Sub. H.B. 165

127th General Assembly
(As Reported by H. Ways & Means)

**Reps. Gibbs and J. McGregor, J. Hagan, Adams, Carmichael, Schindel,
Foley, Bolon, Chandler, Miller**

BILL SUMMARY

- Authorizes retail vendors with annual Ohio delivery sales of less than \$500,000 to continue using origin-based sourcing rules for determining the appropriate sales tax jurisdiction in which a sale is taxable.
- Authorizes all retail vendors currently using origin-based sourcing to continue to do so if the Tax Commissioner determines that the Streamlined Sales and Use Tax Agreement does not allow origin-based sourcing by retail vendors with annual Ohio delivery sales of less than \$500,000.
- Authorizes out-of-state sellers with annual Ohio delivery sales of less than \$500,000 to collect Ohio use taxes at a single uniform rate if the Commissioner makes that determination.
- Provides for the distribution of use tax collected at a single uniform rate to counties and transit authorities.

CONTENT AND OPERATION

Background

Simplified sales and use tax administration act

In 2002, the General Assembly amended Ohio's sales and use tax laws and enacted Chapter 5740. to adopt a model act known as the Simplified Sales and Use Tax Administration Act. This act, which has been enacted by several other states, addresses a tax collection issue arising from federal constitutional law. Under U.S. Supreme Court decisions, a state is barred from compelling a seller with no physical presence in the state to collect that state's sales or use tax even if the seller

sells and delivers goods to a customer in that state. The model act addresses this issue by creating a collection system in which sellers voluntarily agree to collect participating states' sales and use tax. The system is intended to simplify the process of determining the tax jurisdiction in which a sale is deemed to be taxable, computing the tax due, and remitting the revenue to the appropriate tax jurisdiction.

State participation in collection system

For a state to participate in the simplified collection system, it must be a full member of the Streamlined Sales and Use Tax Agreement (SSTA), which requires the enactment of certain uniform provisions. One of these provisions addresses how vendors must determine the tax jurisdiction in which a sale is taxable. Under the SSTA, a state must require vendors to determine the appropriate tax jurisdiction by using "destination-based sourcing" rules. Under destination-based sourcing, a sale is generally deemed to occur where the goods or services are received by the customer. Destination-based sourcing rules stand in contrast to Ohio's traditional rules, which are largely origin-based. Under origin-based sourcing, a sale is generally deemed to occur where the vendor is located.

Deadline to comply with SSTA

The SSTA establishes a deadline by which states must comply with all of the agreement's provisions: January 1, 2008. If a state fails to do so, it does not become a full member in the agreement and may not participate in the agreement's simplified collection process.

Ohio has adopted all required provisions, but has not fully implemented destination-based sourcing. While Ohio law has required some vendors to convert from origin-based to destination-based sourcing, it has permitted a significant number of others--vendors with annual delivery sales of less than \$30 million--to continue using origin-based sourcing.¹ Current law requires all vendors who have not yet converted to convert before January 1, 2008.

Ohio's proposed amendment to the SSTA

(R.C. 5740.10)

In the bill, the General Assembly states its intention to become a full member of the SSTA, but also states that Ohio's participation has been jeopardized because the agreement does not resolve sourcing-related issues, and because of the

¹ A "delivery sale" is defined as a taxable sale in which the good or service is delivered to a tax jurisdiction different from the tax jurisdiction in which the vendor is located.

agreement's impact on businesses within and outside Ohio having annual Ohio delivery sales of less than \$500,000.

Ohio has submitted proposed amendments to the SSTA Governing Board that, if adopted by the board, would permit vendors with annual Ohio delivery sales of less than \$100,000 to continue using origin-based sourcing.

Action on the proposed amendment

(R.C. 5740.10)

The bill requires the Tax Commissioner to determine, by October 1, 2007, whether the SSTA Governing Board has amended the SSTA or interpreted it in such a manner that vendors with annual in-state delivery sales of less than \$500,000 may continue using origin-based sourcing. If the Tax Commissioner determines that the SSTA has been so amended or interpreted, the Commissioner must certify the determination by journal entry by October 1, 2007, and provide notice of the determination on the Department of Taxation's web site. The Commissioner must also notify vendors and out-of-state sellers the Commissioner reasonably believes to be affected by the certification.

Certification not made

(R.C. 5739.033)

If the Tax Commissioner does not make the certification, the bill permits vendors who have not converted to destination-based sourcing to continue sourcing their sales using origin-based rules. Vendors are permitted, however, to voluntarily convert to destination-based sourcing. If a vendor does convert, the vendor may not later convert back to origin-based rules. Vendors who have already converted must continue to use destination-based rules. Without a change in the SSTA, Ohio would become noncompliant with the agreement on January 1, 2008.

Certification made

(R.C. 5739.033(B)(3) to (5))

If the Tax Commissioner makes the certification, Ohio apparently would enter into full compliance with the SSTA. Vendors with annual Ohio delivery sales of \$500,000 or more would be required to convert to destination-based sourcing by January 1, 2008, if they have not already done so. If the certification is made, the bill prescribes several other consequences as described below.

Vendors with delivery sales under \$500,000

(R.C. 5739.033(B)(3) to (5))

In the case of certification, and consistent with the amended or newly interpreted SSTA, the bill authorizes a vendor with annual Ohio delivery sales of less than \$500,000 in 2007 and thereafter to continue using origin-based sourcing rules. The vendor may continue using origin-based sourcing rules so long as its delivery sales in Ohio for a calendar year never reach the \$500,000 threshold. If the vendor reaches the threshold, it must convert to destination-based sourcing.

The bill also permits vendors to convert to destination-based sourcing voluntarily. If the vendor converts, however, the vendor may not later convert back to origin-based sourcing.

Refunds and additional liability

(R.C. 5739.035(I)(2) and (3))

A purchaser may claim a partial tax refund or may owe additional tax under certain circumstances if the Tax Commissioner makes the certification. A purchaser may claim a refund if the sale is a delivery sale by a vendor authorized to use origin-based sourcing and the tax collected and remitted is greater than the tax that would have been due if the sale had been sourced to the tax jurisdiction where the purchaser received the goods or service. The refund equals the difference between the two amounts. A refund is available only if the vendor's invoice or other similar document includes the notice described below. The refund must be claimed in the manner in which refunds are claimed under current law.

A purchaser is subject to additional liability if property is purchased from a vendor authorized to use origin-based sourcing, the purchaser removes the property from the tax jurisdiction where the purchaser received the property, and the tax the vendor collected and remitted is less than the tax that would have been due if the sale had been sourced to the tax jurisdiction where the purchaser takes the property. This additional liability also applies if the purchase is made from an out-of-state seller with annual Ohio delivery sales of less than \$500,000.

Notice requirement

(R.C. 5739.035(I)(1))

Each vendor authorized to use origin-based sourcing must indicate clearly on the invoice or other similar document that the vendor is permitted to source its sales using origin-based rules, and that the purchaser may claim a partial refund or

may be liable for additional tax, as explained above. If the vendor fails to provide this notice, the vendor must begin using destination-based sourcing rules for all subsequent sales, and must cease using origin-based sourcing.

Out-of-state sellers with delivery sales under \$500,000

(R.C. 5741.05(B) and (C))

If the Tax Commissioner certifies that vendors with annual in-state delivery sales of less than \$500,000 are permitted to use origin-based sourcing rules, out-of-state sellers with Ohio delivery sales of less than \$500,000 for 2007 and thereafter may collect Ohio use taxes at a single uniform rate equal to the state tax rate plus the lowest combined rate of tax levied in any tax jurisdiction (i.e., county or transit authority) in Ohio. If the out-of-state seller exceeds the \$500,000 Ohio delivery sale threshold, the seller must collect use tax at the varying local rates.

Out-of-state sellers authorized to collect Ohio use tax at the single uniform rate must clearly indicate on each invoice or other similar document that the seller is authorized to collect use tax at the single rate and that the purchaser may be liable for additional use tax if the purchaser removes the property from the tax jurisdiction in which the purchaser receives the property to a tax jurisdiction with a higher tax rate. The bill does not specify any legal consequence for the seller's failure to provide this notice.

The bill permits an out-of-state seller authorized to collect Ohio use taxes at a single rate to voluntarily collect taxes at the varying local rates. If the seller does so, it may not later return to collecting at the single rate.

Distribution of revenue

(R.C. 5741.03)

The bill requires a percentage of the revenue collected by out-of-state sellers from taxes paid at the single uniform rate to be distributed each year to the counties and transit authorities that levy a use tax. The percentage to be distributed equals the total sales and use tax revenue distributed to counties and transit authorities in the calendar year that ended in the preceding fiscal year, divided by the sum of the total sales and use tax revenue distributed to those counties and transit authorities in that calendar year plus the total revenue collected in that calendar year from the state sales and use taxes.

From the amount required to be distributed to all counties and transit authorities each year, the bill requires each county and transit authority to receive a monthly distribution equal to one-twelfth of a percentage of the total yearly distribution. The percentage equals the total sales and use tax revenue distributed

to the county or transit authority in the calendar year that ended in the preceding fiscal year, divided by the total sales and use tax revenue distributed to all counties and transit authorities in that calendar year.²

With respect to all other revenue generated by local use taxes, the bill requires all revenue to be credited to the General Revenue Fund. From the General Revenue Fund, the funds are transferred to the Local Sales Tax Administrative Fund and the Permissive Tax Distribution Fund according to current law. From the Permissive Tax Distribution Fund, revenues are distributed to local tax jurisdictions according to current law.

Vendor and out-of-state seller liability

(R.C. 5739.035(J) and 5741.05(C)(3))

The bill states that vendors using origin-based sourcing and sellers collecting use tax at the single uniform rate remain liable for taxes not collected and any penalties, interest, or other charges imposed by law if the vendor was not authorized to use origin-based sourcing, or if the seller was not authorized to collect use taxes at the single uniform rate.

HISTORY

ACTION	DATE
Introduced	04-18-07
Reported, H. Ways & Means	06-14-07

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² A corrective amendment is needed to clarify that the monthly distribution of the yearly amount required to be distributed to a county or transit authority is equal to one-twelfth of the yearly amount.