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Bill Analysis
Legislative Service Commission

H.B. 429
127th General Assembly
(As Introduced)

Rep. Gibbs

BILL SUMMARY

- Authorizes vendors currently required to use destination-based sourcing (for determining the appropriate sales tax jurisdiction) to revert back to origin-based sourcing beginning in 2009.
- Discontinues compensation of counties for sales tax losses incurred under destination-based sourcing, effective May 1, 2009.

CONTENT AND OPERATION

Sourcing the taxable location of sales

Current law

(R.C. 5739.033 and 5739.035)

Current law prescribes rules for assigning where a sale is deemed to have occurred to determine the appropriate taxing jurisdiction (i.e., state and county or transit authority) for the purpose of sales and use taxes. The rules are instrumental in ensuring that vendors collecting the tax collect it at the appropriate rate and that the proper taxing authority receives the revenue. Ohio's rules have been amended occasionally over the preceding several years in an effort to conform Ohio's rules to the sourcing rules prescribed under the multi-state Streamlined Sales and Use Tax Agreement (SSUTA), of which Ohio is currently an associate member. The SSUTA's rules are intended to provide a uniform set of tax sourcing rules for vendors participating in the SSUTA.

Until recently, the SSUTA required, as a condition for full membership, that a state's sourcing rules be "destination-based," whereby a sale generally is 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 or the order is received. In December 2007, the SSUTA was amended to permit member states with local taxing jurisdictions to apply a version of origin-based sourcing to transactions occurring wholly within the state (i.e., when an order for property is received by the vendor in the same state where the purchaser receives the property) if certain other conditions are satisfied.¹

Under current law, beginning in 2008, vendors with total annual delivery sales of \$500,000 or less are permitted to apply origin-based sourcing.² This continuation of origin-based sourcing was permitted only if the Tax Commissioner made a finding that the SSUTA, as of October 1, 2007, permitted vendors with \$500,000 or less in delivery sales to continue to use origin-based sourcing. (The Commissioner found that the SSUTA did not permit that class of vendors to use origin-based sourcing.) Current law requires all vendors having a higher volume of delivery sales to apply destination-based sourcing independent of the Commissioner's finding.

Proposed change

(R.C. 5739.033(B)(2))

The bill authorizes vendors that had not yet converted to destination-based sourcing when the Tax Commissioner would have made the October 2007 finding to continue to use origin-based sourcing. The bill also authorizes any vendor currently required to use destination-based sourcing to revert back to using origin-based sourcing beginning January 1, 2009, but vendors would not be required to revert.

County compensation

(R.C. 5739.24; Section 3)

Current law

Under current law, some counties that incur significant revenue losses from the conversion to destination-based sourcing rules are entitled to compensation for some of the loss. Specifically, counties with a 2000 census population of less than 75,000 people (designated "impacted counties") that incur sales tax revenue losses

¹ The sourcing rule amendment to the SSUTA appears in Section 310.1 of the agreement.

² A "delivery sale" is a sale of tangible personal property or a service that is received by a consumer in a taxing jurisdiction that is not the taxing jurisdiction in which the vendor has a fixed place of business.

of at least 4% due to the implementation of destination-based sourcing are entitled to compensation from the general revenue fund. The compensation is paid from sales and use tax revenue received by other counties experiencing revenue gains from the conversion ("windfall counties"). The estimate of losses is derived from reports that multi-county vendors ("master account holders") must file with the Department of Taxation.

Twice each year, the Tax Commissioner must determine the amount of sales tax revenue collected in a county in accordance with the destination-based sourcing law and compare that amount to the revenue the county would have received if origin-based sourcing law had applied. If a county is an impacted county and the amount the county would have received under origin-based sourcing is at least 4% greater than the amount it actually received under destination-based sourcing, the county is entitled to compensation in such an amount that it would receive 98% of the estimated revenue it would have received under origin-based sourcing. Payments must be made before May 1 (or May 2 in a leap year) and October 30 and are included with a county's monthly sales and use tax disbursement.

If the Commissioner determines that a county collected more taxes under the destination-based sourcing law than it would have collected if taxes had been paid under the origin-based sourcing law, the county's monthly sales and use tax disbursement is reduced. The reduction for a county equals its proportion of the total excess received by all windfall counties multiplied by the amount needed to reimburse the impacted counties entitled to compensation.

Proposed change

The bill terminates the compensation for impacted counties, the required offsets for windfall counties, and all related vendor reporting requirements effective May 1, 2009.

HISTORY

ACTION	DATE
Introduced	01-10-08

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