



S.B. 160

127th General Assembly
(As Introduced)

Sens. Amstutz and Schuring, Spada

BILL SUMMARY

- Repeals the December 31, 2007, deadline for vendors to convert to destination-based sourcing of their sales if they have not already converted.
- Requires vendors using origin-based situsing of their sales to continue to do so.
- Authorizes vendors using destination-based sourcing to convert back to origin-based situsing.
- Requires the Tax Commissioner to develop a plan that permits in-state and out-of-state vendors to elect to collect and remit Ohio use tax at a uniform rate.
- Repeals Ohio's multiple points of use exemption certificate provisions for computer-related sales to business consumers.

CONTENT AND OPERATION

Sales and use tax situsing and sourcing laws

Background

Under current law, an Ohio vendor that sells a taxable good or service to a person in Ohio is required to collect the Ohio sales tax and any sales or use tax imposed by the county or transit authority where the sale is deemed to be taxable under statutory sourcing or "situsing" laws. Until recently, all Ohio vendors determined where an in-state sale was taxable using origin-based situsing. Under origin-based situsing, most sales are deemed to be taxable where the vendor's place of business is located. Accordingly, even if a vendor shipped goods to

customers residing in other counties, the vendor generally needed to know only the state's sales tax rate and that of the county or transit authority where the vendor was located (R.C. 5739.035).

But since 2003, vendors have been required to convert to a new method of determining where a sale is taxable. Under the new law, commonly called destination-based sourcing, a sale generally is deemed to be taxable where the consumer takes possession of the goods, at the consumer's address, or where the service is performed (R.C. 5739.033).¹

Because the destination-based sourcing assigns the tax to the jurisdiction where the consumer takes possession of goods, at the consumer's address, or where the service is performed, a vendor selling to multiple taxing jurisdictions (including other states) must determine the use tax rates of those other jurisdictions. (In Ohio, there are more than 88 jurisdictions authorized to impose a sales and use tax.) To assist vendors with this effort, the Streamlined Sales and Use Tax Agreement (the "Agreement") authorizes vendors to use certified service providers, which calculate the appropriate tax, collect it, and remit it to the appropriate state on the vendor's behalf.

To provide time for vendors to convert to destination-based sourcing and for certified service provider services to be established, Ohio law provides a transition period. The general deadline for conversion to the destination-based rules was May 1, 2006, subject to a significant exception: for vendors whose sales to consumers in other jurisdictions are less than \$30 million per year, a later deadline was set. For these vendors, the deadline to convert to destination-based sourcing depended on the Tax Commissioner's determination that, as of February 1, 2007, certified service provider services were being sufficiently provided. The Tax Commissioner determined that they were not.² As a result, the deadline for those remaining vendors to convert was extended until December 31, 2007.

¹ Destination-based sourcing was enacted as part of Ohio's adoption of the Simplified Sales and Use Tax Administration Act, a model act intended to create a uniform system for collection of sales and use taxes on sales transacted in another state, especially internet, telephone, and mail order sales. The act's operational provisions are set forth in the Streamlined Sales and Use Tax Agreement. Ohio currently is an associate member under the agreement, having enacted laws to implement the agreement but not yet having put the laws into complete effect.

² Ohio Department of Taxation Information Release ST 2007-01, February 2007.

Conversion deadline eliminated

(R.C. 5739.033, 5739.035, and 5739.123)

The bill eliminates the December 31, 2007, conversion deadline. Businesses that have not converted to destination-based sourcing by the bill's effective date are required to continue using origin-based situsing, and vendors that have already converted are authorized, but not required, to return to origin-based situsing. (See **COMMENT**.)

Vendors using destination-based sourcing on the bill's effective date may continue to apply for and receive financial assistance for converting to destination-based sourcing under ongoing law, which provides that financial assistance is available for vendors converting to destination-based sourcing if the vendor was licensed prior to May 1, 2006. The financial assistance is provided for six months and equals the amount of tax the vendor collects per county, per month for sales of tangible personal property delivered to each county in which the vendor does not have a fixed place of business and in which the vendor does not, or is not required to, hold a vendor's license for that business. Compensation is limited to the lesser of the vendor's costs of conversion or \$25 per county, per month.

Tax Commissioner's plan

(R.C. 5741.09)

The bill requires the Tax Commissioner to develop a plan to allow in-state vendors and out-of-state sellers to elect to collect and remit Ohio and local use taxes at a uniform rate, instead of at the several rates in effect in the various counties. The Commissioner's plan also must address how revenue generated from the local portion of the tax would be distributed among counties and transit authorities. Currently, revenue from sales and use taxes levied by a county or transit authority is returned to the county or transit authority less a fee of 1% to fund the state's administrative costs. The bill requires the Tax Commissioner to submit the plan to the General Assembly by January 31, 2008.

Multiple points of use exemption certificate eliminated

(R.C. 5739.03(B)(1), 5739.031(C), 5739.033(D) and (E), and 5741.02(E))

Until recently, the Agreement required a business purchaser to give the seller an exemption certificate claiming multiple points of use (MPU) if the purchaser was buying a digital good, computer software, or a service that would be available for use in more than one jurisdiction at the same time. Delivery of the certificate relieved the seller of its obligation to collect and remit sales tax on the transaction. Instead, the business purchaser was required to remit the sales tax

directly to the state and apportion the tax due among the various jurisdictions where the good or service was to be used. The Streamlined Sales Tax Governing Board recently repealed the MPU provisions of the Agreement and adopted a rule requiring that the Agreement's general destination-based sourcing provisions apply to those transactions. Ohio had adopted the Agreement's MPU provisions.

The bill repeals Ohio's MPU provisions in compliance with the repeal of those provisions in the Agreement.

COMMENT

Elimination of the requirement for all vendors to convert to destination-based sourcing could prevent Ohio from becoming a party to the Agreement and a full member of the Streamlined Sales Tax Governing Board, because destination-based sourcing is required under Section 310 of the Agreement.

HISTORY

ACTION	DATE
Introduced	05-02-07

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