



Am. Sub. S.B. 26
126th General Assembly
(As Passed by the General Assembly)

Sens. Amstutz, Austria, Clancy, Carey, Coughlin, Gardner, Goodman, Harris, Hottinger, Jacobson, Mumper, Padgett, Schuring, Spada, Wachtmann, Zurz, Cates, Grendell, Niehaus

Reps. Hagan, Gibbs, Aslanides, Barrett, Brinkman, Buehrer, Calvert, Carmichael, Cassell, Coley, Collier, Daniels, DeBose, Distel, Domenick, C. Evans, D. Evans, Faber, Fessler, Flowers, Gilb, Hoops, Hughes, Key, Latta, Law, Martin, McGregor, Miller, Oelslager, Otterman, T. Patton, Raga, Raussen, Reidelbach, Reinhard, Schlichter, Schneider, Seaver, Seitz, Setzer, G. Smith, Taylor, Wagner, Wagoner, Walcher, White, Widowfield, Willamowski

Effective date: *

ACT SUMMARY

- Delays the date, from July 1, 2005, to May 1, 2006, when vendors must convert from origin-based situsing to destination-based sourcing for the purpose of determining the appropriate sales tax jurisdiction in which a sale occurred and is taxable.
- Provides an additional one-year delay for vendors with taxable delivery sales of less than \$30 million in 2005, instituting destination-based sourcing for such vendors on May 1, 2007.
- Provides an additional seven-month delay for vendors with taxable delivery sales of less than \$5 million in 2006, instituting destination-based sourcing for such vendors on January 1, 2008.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Makes conforming delays in the payment of compensation to smaller, impacted counties affected by the transition to destination-based sourcing and to certain vendors affected by that transition.
- Makes technical adjustments to two sales tax exemption-related definitions to conform them to corresponding definitions in the Streamlined Sales and Use Tax Agreement.
- Makes several other technical changes in the sales tax law.

CONTENT AND OPERATION

Overview

The act addresses Ohio's transition from origin-based situsing to destination-based sourcing of sales made by vendors, which, under prior law, was scheduled to occur July 1, 2005. In conjunction with that transition, the act allows vendors with limited Ohio taxable sales to implement destination-based sourcing at a later time.

Transition plan for implementing destination-based sourcing

(R.C. 5739.033(A) and (B) and 5739.035; Section 3)

Under prior law, the origin-based situsing requirements (R.C. 5739.035) applied to sales made before July 1, 2005, and the destination-based sourcing law (R.C. 5739.033) applied to sales made on and after that date. On and after January 1, 2005, any vendor could irrevocably *elect* to comply with the destination-based sourcing law for all of the vendor's sales and places of business in Ohio.

The act delays implementation of the destination-based sourcing law until May 1, 2006, but for vendors with "delivery sales" that do not exceed specific dollar limits during 2005 and 2006, the act establishes a transition plan that delays implementation of destination-based sourcing until as late as January 1, 2008. The act defines a "delivery sale" as the taxable sale of tangible personal property or a service that is received by a consumer (or by a donee designated by a consumer) in a taxing jurisdiction, normally another county, in which the vendor does not have a fixed place of business. Vendors with limited delivery sales will continue to follow the origin-based situsing law until they exceed the dollar limits established by the act, or until January 1, 2008, when the transition plan ends.

The transition plan for destination-based sourcing is as follows:

? A vendor with total delivery sales in 2005 of less than \$30 million does not have to begin sourcing its sales under the destination-based sourcing law until May 1, 2007.

? A vendor with total delivery sales in 2006 of less than \$5 million does not have to begin sourcing its sales under the destination-based sourcing law until January 1, 2008.

Once a vendor's total delivery sales exceed \$30 million in 2005 or \$5 million in 2006, the vendor must begin sourcing its sales under the destination-based sourcing law and is not permitted to switch back to origin-based situsing during the May 1, 2006, to December 31, 2007, period.

Beginning January 1, 2008, all vendors must comply with the destination-based sourcing law to determine where a sale occurred for sales tax purposes. The transition plan does not apply for the purpose of determining the jurisdiction for which sellers must collect use taxes.

The transition plan and the Streamlined Sales and Use Tax Agreement

(R.C. 5740.10)

Sub. S.B. 218 of the 125th General Assembly required the Tax Commissioner to work with the states implementing the Streamlined Sales and Use Tax Agreement to amend it to allow origin-based situsing for vendors with limited Ohio taxable sales, as defined by the Commissioner. Under that act, if the Agreement is amended or the change in sourcing is otherwise allowed without amendment of the Agreement, the Commissioner must adopt a rule that exempts that type of vendor from destination-based sourcing, but that otherwise keeps Ohio in substantial compliance with the Agreement. Accordingly, Governor Taft, Senate President Harris, and House Speaker Husted, by letter dated January 5, 2005, requested that the conforming states and Streamlined Sales Tax Project representatives consider amending the Agreement to establish a longer transition period to implement destination-based sourcing or to create a permanent *de minimis* exemption for small retailers.

The act repeals this provision because the act enacts the sourcing delays requested for vendors with limited Ohio taxable sales.

Delay in compensating impacted counties

(R.C. 5739.24)

The act changes certain other dates in current law to conform with the delay in the conversion from origin-based situsing to destination-based sourcing. The

dates on which compensation is to be paid to impacted counties for the effect of the conversion on their sales tax revenue is delayed until 2006, as is the associated semiannual reporting requirements for certain multi-county vendors whose reports are used to compute the effects of the conversion on county revenues. (The compensation is payable to "impacted" counties with a population of less than 75,000 that experience a reduction of 4% or more in revenue attributable to the conversion.) Also, the Tax Commissioner must determine county eligibility for compensation within 75 days of the end of July and January instead of the end of June and December, and the determination is to be based on sales taxes received by the county, rather than sales taxes collected, as under prior law.

Vendor compensation for implementing destination-based sourcing

(R.C. 5739.123)

Continuing law provides temporary compensation to vendors affected by the transition from origin-based situsing to destination-based sourcing. The compensation is available during the first six months after a vendor becomes subject to destination-based sourcing, and is equal to the amount of sales taxes reported on the vendor's return for sales of tangible personal property delivered to each county in which the vendor does not have a fixed place of business, not to exceed \$25 per month per county. To receive compensation under prior law, a vendor had to hold a vendor's license that was issued before July 1, 2005, the date on which the sourcing law was scheduled to change.

The act revises the date on which a vendor must hold a vendor's license in order to claim compensation, from July 1, 2005, to May 1, 2006, to conform with the date the act implements destination-based sourcing. The act also changes the basis on which the compensation is payable, from the sales taxes reported on a return, to sales taxes actually collected, from sales involving delivery of property to a county where the vendor does not have a fixed place of business. The act clarifies that the application for compensation must be filed within 60 days after the end of the sales tax reporting period that includes the last day of the six-month compensation period, instead of within 60 days of the end of that six-month period.

Mobile telecommunications service

(R.C. 5739.034(E)(3))

The act permits sales of one form of mobile telecommunications service--prepaid telecommunications service--to be sitused under the extended origin-based situsing law if the extension otherwise would apply because of the act's extension of origin-based situsing to April 30, 2006, or because of the further extension for vendors having delivery sales of less than \$30 million in 2005 or less than \$5

million in 2006. But, as under continuing law, the vendor of the service may choose to source the sale to the location associated with the mobile telephone number.

State's participation in Agreement's governing board

(R.C. 5740.02)

The act adds references to the Streamlined Sales and Use Tax Agreement's governing board in the law requiring Ohio's participation in meetings of the Agreement's implementing states. The governing board is defined as the body that is responsible for the administration and operation of the Agreement.

Technical definition change

(R.C. 5739.01(HHH) and (III))

The act clarifies two sales tax-related definitions to conform them with the definitions in the Streamlined Sales and Use Tax Agreement: "durable medical equipment" and "mobility enhancing equipment." Although the current definitions of these terms are the same as in the Agreement, the act specifies that neither of the terms includes the other, a specification that is made under the Agreement.

Effective date

(Section 3)

The act provides that its provisions are not subject to the referendum and go into immediate effect because its provisions provide for or are essential to the implementation of a tax levy.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-26-05	p. 109
Reported, S. Ways & Means & Economic Development	04-12-05	pp. 379-380
Passed Senate (32-0)	04-12-05	pp. 382-383
Reported, H. Ways & Means	05-03-05	pp. 736-737
Passed House (96-0)	05-10-05	pp. 773-774
Senate concurred in House amendments (32-0)	05-11-05	pp. 500-501

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