Sub. S.B. 26*

126th General Assembly
(As Reported by H. Ways and Means)

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

BILL SUMMARY

- Delays the date when sales tax-collecting vendors must convert from the origin-based sourcing rules to the destination-based rules for the purpose of determining the appropriate sales tax jurisdiction where a sale is taxable, from July 1, 2005, to May 1, 2006.

- Provides an additional one-year delay for vendors with 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 delivery sales of less than $30 million in 2005 and less than $5 million in 2006, instituting destination-based sourcing for such vendors on January 1, 2008.

- Makes conforming delays in the payment of compensation to smaller counties affected by the transition to destination-based sourcing rules and to vendors affected by that transition.

- Makes technical adjustments to two sales tax exemption-related definitions to conform the definitions to corresponding definitions in the Streamlined Sales and Use Tax Agreement.

- Makes several other technical changes in the sales tax law.

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* *This analysis was prepared before the report of the House Ways and Means Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Overview

The bill addresses Ohio's transition from origin-based sourcing to destination-based sourcing of sales made by vendors, which, under current law, is scheduled to occur July 1, 2005. In conjunction with that transition, the bill allows certain vendors 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 current law, the origin-based sourcing requirements (R.C. 5739.035) apply to sales made before July 1, 2005, and the destination-based sourcing law (R.C. 5739.033) applies to sales made on and after that date. Continuing law also provides that on and after January 1, 2005, any vendor may irrevocably *elect* to comply with the destination-based sourcing law for all of the vendor's sales and places of business in Ohio.

For some vendors, the bill implements the destination-based sourcing law on May 1, 2006, but for vendors with "delivery sales" that do not exceed specific dollar limits during 2005 and 2006, the bill delays implementation of destination-based sourcing until as late as January 1, 2008. The bill defines a "delivery sale" as the 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 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 bill, or until January 1, 2008, when the transition plan ends.

The transition period 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 2005 of less than $30 million and 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.

If a vendor's delivery sales are $30 million or more in 2005 but less than $5 million in 2006, the vendor is not permitted to switch back to origin-based sourcing during the May 1 to December 31, 2007, period.

Beginning January 1, 2008, all vendors must apply the destination-based sourcing rules to determine the proper jurisdiction where a sale is taxable. The transition rules apply only for the purpose of determining the jurisdiction where a sale is taxable when the sales tax applies (which typically is when the vendor making the sale is in Ohio). The transition rules do not apply for the purpose of determining where the use tax applies, which typically is when an out-of-state vendor is required to or voluntarily collects use tax on a sale to someone in Ohio.

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 excepts 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 bill repeals this provision.

Delay in timing of impacted county compensation

(R.C. 5739.24)

The bill changes certain other dates to conform with the delay in the conversion from origin-based to destination-based sourcing rules. The dates on which compensation is to be paid to counties for the effect of the conversion on their sales tax revenue is delayed to 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 a county's revenue. The compensation is payable to counties with a population less than 75,000 and experiencing a reduction of 4% or more in revenue attributable to the conversion. Also, the Tax Commissioner must determine county eligibility for compensation by the end of July and January instead of the end of June and December, and the determination is to be based on reported sales taxes, rather than actual collections as under current law.

Vendor transition cost compensation

(R.C. 5739.123)

Current law provides compensation to vendors affected by the conversion from origin-based sourcing rules to destination-based sourcing rules. The compensation is available during the first six months after a vendor becomes subject to the destination-based rules. The compensation is available only for the sales tax reported by a vendor for sales in a county where the vendor delivered property but where the vendor did not have a fixed place of business. The compensation is for sales tax reported on such sales, up to $25 per month per county. To receive compensation, a vendor must have a vendor's license before July 1, 2005, the date on which the sourcing rules are scheduled to change under current law.

The bill changes the date on which a vendor must have a vendor's license in order to claim such compensation, from July 1, 2005, to May 1, 2006, to conform that date to the date the bill proposes for the new sourcing rule change. The bill also changes the basis on which the compensation is payable, from the sales tax reported, to sales tax actually collected, from sales involving delivery of property to a county where the vendor does not have a fixed place of business. The bill 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)

The bill requires sales of one form of mobile telecommunications service--prepaid telecommunications service--to be sourced under the extended origin-based sourcing rules if the extension otherwise would apply because of the bill's extension of the origin-based rules to April 30, 2006, or because of the further extension for vendors having delivery sales less than $30 million in 2005 or less than $5 million in 2006. But, as under current 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 bill adds references to the Streamlined Sales and Use Tax Agreement's governing board in the law requiring the state'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 bill 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 bill specifies that neither of the terms includes the other, a specification that is made under the agreement.

Effective date

(Section 3)

The bill provides that its provisions are not subject to the referendum and go into immediate effect because the 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	---		---

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