



Sub. S.B. 26*

126th General Assembly

(As Reported by S. Ways & Means & Economic Development)

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

BILL SUMMARY

- Delays and phases-in the implementation of destination-based sourcing of sales for vendors with delivery sales that are made to other counties or states and that do not exceed specific dollar limits.
- Requires that all vendors follow destination-based sourcing on and after January 1, 2009, regardless of the amount of their delivery sales.

CONTENT AND OPERATION

Overview

The bill addresses Ohio's transition from origin-based situsing to destination-based sourcing of sales made by vendors, which 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 continuing law, the origin-based situsing 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

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

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 July 1, 2005, but for vendors with "delivery sales" that do not exceed specific dollar limits, the bill delays implementation of that law until January 1, 2009 (see **COMMENT**). 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, 2009, when the transition plan ends.

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

? A vendor with total delivery sales in calendar year 2004 that are less than \$2 million does not have to begin sourcing its sales under the destination-based sourcing law until January 1, 2007.

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

? A vendor with total delivery sales in calendar year 2007 that are less than \$500,000 does not have to begin sourcing its sales under the destination-based sourcing law until January 1, 2009.

If, in any given calendar year, a vendor exceeds the dollar limit that applies to that year, the vendor must begin sourcing its sales under the destination-based sourcing law and continue sourcing its sales in that manner, regardless of the amount of total delivery sales in future years. Ultimately, all vendors commence destination-based sourcing on January 1, 2009.

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 (see Exhibit A).

The bill maintains this provision, but applies it to vendors that have "delivery sales" and uses the definition of that term as it is defined by the bill for purposes of the transition plan. The bill eliminates the requirement that the Tax Commissioner adopt a rule that exempts vendors with limited sales from destination-based sourcing because, if the bill is enacted, there is no need to adopt the rule.

Miscellaneous

(R.C. 5739.031(C), 5739.033(A), 5739.034(E)(3), and 5739.123(A))

Under the bill, the transition plan discussed above does not apply in determining the jurisdiction for which sellers are required to collect use taxes under the use tax law. Sellers must determine the jurisdiction for which to collect use taxes under the destination-based sourcing law.

The bill clarifies that mobile telecommunications service that is a prepaid telecommunications service must be sourced under the destination-based sourcing law, unless the vendor is permitted under the transition plan to continue to source its sales under the origin-based situsing law.

The bill makes other technical changes in light of the transition plan for phasing-in destination-based sourcing.

COMMENT

Establishing a transition plan for implementing destination-based sourcing places Ohio at risk of being out of compliance with the Streamlined Sales and Use Tax Agreement. The Agreement requires that states bring their laws, rules, regulations, and policies into substantial compliance with each of its provisions. Unless the Agreement, as it currently stands, were amended, the transition plan might not be in substantial compliance with the Agreement's sourcing provision.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|----------|---------------|
| Introduced | 01-26-05 | p. 109 |
| Reported, S. Ways & Means & Economic Development | ---- | ---- |

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