



Joseph D. Heller

Final Analysis
Legislative Service Commission

Sub. H.B. 157

127th General Assembly
(As Passed by the General Assembly)

Reps. Hughes, Bupp, Schindel, Huffman, J. McGregor, Seitz, Combs, Miller, Collier, Fende, Evans, Widener, Latta, Setzer, Stebelton, Uecker, Yuko, Adams, Luckie, Gibbs, Aslanides, Bacon, Batchelder, Bolon, Book, Boyd, Brady, Brown, Budish, Coley, Distel, Domenick, Dyer, Flowers, Foley, Garrison, Gerberry, R. Hagan, Harwood, Lundy, Mandel, Oelslager, Otterman, Patton, Sayre, D. Stewart, Wachtmann, B. Williams, Zehringer

Sens. Amstutz, Spada, Schaffer, Harris, Sawyer, Faber, Austria, Fedor

Effective date: March 24, 2008; certain provisions effective December 21, 2007

ACT SUMMARY

- Directs the Tax Commissioner to include on state income tax returns a box that a taxpayer may check to authorize a paid tax preparer to speak to the Department of Taxation about certain matters concerning the return.
- Authorizes a sales and use tax exemption for sales of property used or consumed in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.
- Incorporates into Ohio's tax laws Internal Revenue Code changes made since December 28, 2006, and permits a taxpayer whose taxable year ends after that date, but before the effective date of the incorporated changes, to elect to apply the Internal Revenue Code as it existed before that effective date.
- Revises the date by which and time period for which title insurance agents or agencies must have an annual independent review made of their escrow, settlement, closing, and security deposit accounts.

CONTENT AND OPERATION

Income tax return communications

Prior law

Prior law generally prohibited the Department of Taxation and its employees and agents from disclosing taxpayer information. (R.C. 5703.21 and 5747.18.) This prohibition apparently extended to communications with a person representing the taxpayer (e.g., attorney, accountant, bookkeeper, or other tax practitioner) unless the taxpayer specifically authorized the Department to communicate with the taxpayer's representative. Prior law provided a specific and exclusive means for taxpayers to authorize the Department to communicate with taxpayer representatives: a form designating a particular person as the taxpayer's representative--Ohio Form TBOR 1, Declaration of Tax Representative, or its equivalent. (See R.C. 5703.51(F).)

New authorization

(R.C. 5747.08(K))

The act provides a means for a taxpayer to authorize communication between a paid income tax return preparer and the Department of Taxation without need for the TBOR 1 form. The act directs the Tax Commissioner to include on each income tax return a box the taxpayer may check to authorize the Department to contact the paid tax preparer who prepared the return concerning questions that might arise during the processing of the return.

By checking the box, the taxpayer authorizes the preparer only to provide the Department with information that is missing from the return, to contact the Department for information about the processing of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation the taxpayer has received from the Department and has shown to the preparer. The return or the instructions accompanying the return must inform the taxpayer of the authority the taxpayer is conferring by checking the box.

Sales tax exemption for property used in electronic publishing

(R.C. 5739.01(B)(3)(u), (Y)(1), and (LLL) and 5739.02(B)(42)(n); Section 3)

The act creates a sales and use tax exemption for sales of property where the purchaser's purpose is to use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by "electronic

publishing." The act defines "electronic publishing" as providing access to one or more of the following primarily for business customers, including the federal government or a state government or political subdivision thereof, to conduct research: news; business, financial, legal, consumer, or credit materials; editorials, columns, reader commentary, or features; photos or images; archival or research material; legal notices, identity verification, or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other similar information that has been gathered and made available by the provider to the consumer in an electronic format. Providing electronic publishing includes the functions necessary for the acquisition, formatting, editing, storage, and dissemination of data or information that is the subject of a sale.

Continuing law (R.C. 5739.01(B)(3)(e)) levies sales and use taxes on transactions by which "electronic information services" are provided for use in business, except for such transactions that occur between members of an affiliated group (one person owns or controls the business operation of another member of the group). Under prior law, most forms of electronic publishing fell within the definition of electronic information services (see **COMMENT**, below). Because the act creates a tax exemption for sales of property used in electronic publishing, the act provides that electronic information services no longer include electronic publishing for transactions occurring on or after the effective date of the change. All transactions by which electronic publishing service is provided to a business consumer will continue to be taxable except when transacted between members of an affiliated group.

Situsing electronic publishing service sales

(R.C. 5739.035(E))

The act specifies that for purposes of determining the taxing district in which a sale of electronic publishing service occurs and the concurrent tax rate that applies to the sale, the situs of the sale is the location of the consumer where the electronic publishing service is performed or received, as under prior law.

Incorporation of changes to the Internal Revenue Code

(R.C. 5701.11; Section 3)

Because Ohio's tax law incorporates some provisions of federal law, ongoing Ohio law specifies the version of federal law that is incorporated, since federal law is susceptible to being amended frequently. Specifically, under prior law, a reference in the tax title (Title 57) of the Ohio Revised Code to the Internal Revenue Code (IRC) or other laws of the United States meant those laws as they existed on December 28, 2006, unless the Revised Code section contained a date

certain that specified the day, month, and year. (December 28, 2006, is the effective date of H.B. 699 of the 126th General Assembly, a reappropriations act.)

Under the act, all changes to the IRC or other laws of the United States between December 28, 2006, and the act's effective date will be incorporated into all references to those laws in the Revised Code's tax title. As under prior law, this incorporation does not apply to references to the IRC or federal laws as of a date certain specifying the day, month, and year.

Prior law authorized a taxpayer whose taxable year ended in 2006 and before December 28, 2006, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied before that date. The election was available to taxpayers subject to the corporation franchise tax or personal income tax and to electric companies subject to municipal income tax.

The act revises this election so that it may be made for a taxpayer's taxable year ending after December 28, 2006, but before the act's effective date. The act retains the provision specifying that similar elections made under prior versions of R.C. 5701.11 remain effective for the taxable years to which the previous elections applied.

First annual independent review date for certain title insurance agent accounts

(R.C. 3953.33)

Title insurance agents or agencies that handle escrow, settlement, closing, or security deposit accounts are required by continuing law to have an annual independent review made of those accounts on a fiscal year basis within 90 days after the close of the previous fiscal year.

The act revises the date by which title insurance agents or agencies must have annual independent reviews made of those accounts, and changes the time period for which the reviews must be made. The review must be made on or before December 31 each year for the 12-month period ending the previous August 31.

COMMENT

Under continuing law, sales of "electronic information services" provided for use in business, when the true object of the transaction is the receipt by the consumer of those services rather than the receipt of personal or professional services to which the electronic information services are incidental, are subject to the sales and use tax. But transactions involving electronic information services between members of an affiliated group are exempt from the tax. "Electronic

information services" is providing access to computer equipment by means of telecommunications equipment for either examining or acquiring data stored in or accessible to the computer equipment, or placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

Providers of electronic information services receive a refund of 25% of the sales and use taxes they pay on purchases of computers, computer peripherals, software, telecommunications equipment, and similar property, primarily used to acquire, process, or store information for use by business customers or to transmit or disseminate the information to such customers, the services of installing or repairing such property, and agreements to repair or maintain such property (R.C. 5739.071). Under the act, providers of electronic publishing would no longer be eligible for this refund because of the act's sales and use tax exemption for property used in electronic publishing.

HISTORY

ACTION	DATE
Introduced	04-17-07
Reported, H. Ways & Means	06-14-07
Passed House (97-0)	06-26-07
Reported, S. Ways & Means & Economic Development	10-31-07
Passed Senate (30-0)	11-14-07
House concurred in Senate amendments (93-2)	12-04-07

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