



Sub. H.B. 429

127th General Assembly
(As Reported by H. Ways & Means)

Reps. Gibbs, Schindel, Bolon, Foley, J. Hagan, Letson, Patton

BILL SUMMARY

- Requires vendors to use origin-based sourcing beginning in 2010 for sales occurring entirely within Ohio.
- Discontinues compensation of counties for sales tax losses incurred under destination-based sourcing, effective May 1, 2009.
- Authorizes the Tax Commissioner to compensate vendors required to convert from destination-based to origin-based sourcing for transactions occurring within Ohio.

CONTENT AND OPERATION

Sourcing the taxable location of sales

Current law

(R.C. 5739.033 and 5739.035)

Current law prescribes rules for assigning where a sale is deemed to have occurred to determine the appropriate taxing jurisdiction (i.e., state and county or transit authority) for the purpose of sales and use taxes. The rules are instrumental in ensuring that vendors collecting the tax collect it at the appropriate rate and that the proper taxing authority receives the revenue. Ohio's rules have been amended occasionally over the preceding several years in an effort to conform Ohio's rules to the sourcing rules prescribed under the multi-state Streamlined Sales and Use Tax Agreement (SSUTA), of which Ohio is currently an associate member. The SSUTA's rules are intended to provide a uniform set of tax sourcing rules for vendors participating in the SSUTA.

Until recently, the SSUTA required, as a condition for full membership, that a state's sourcing rules be "destination-based," whereby a sale generally is

deemed to occur where the goods or services are received by the customer. Destination-based sourcing rules stand in contrast to Ohio's traditional rules, which are largely origin-based. Under origin-based sourcing, a sale is generally deemed to occur where the vendor is located or the order is received. In December 2007, the SSUTA was amended to permit member states with local taxing jurisdictions to apply a version of origin-based sourcing to transactions occurring wholly within the state (i.e., when an order for property is received by the vendor in the same state where the purchaser receives the property) if certain other conditions are satisfied.¹

Under current law, beginning in 2008, vendors with total annual delivery sales of \$500,000 or less are permitted to apply origin-based sourcing.² This continuation of origin-based sourcing was permitted only if the Tax Commissioner made a finding that the SSUTA, as of October 1, 2007, permitted vendors with \$500,000 or less in delivery sales to continue to use origin-based sourcing. (The Commissioner found that the SSUTA did not permit that class of vendors to use origin-based sourcing.) Current law requires all vendors having a higher volume of delivery sales to apply destination-based sourcing independent of the Commissioner's finding.

Proposed change

(R.C. 5739.033(B); Sections 4 and 6)

The bill authorizes vendors currently using origin-based sourcing to continue using that sourcing method for intrastate sales, and authorizes vendors that have already adopted destination-based sourcing to switch back to origin-based sourcing for intrastate sales before 2010. The bill requires all vendors to use origin-based sourcing beginning January 1, 2010, for all intrastate sales. The bill incorporates the origin-based sourcing rule amendment to the SSUTA into R.C. 5739.033 and includes the following provisions, which the SSUTA requires as conditions for member states to allow origin-based sourcing for intrastate sales:

- Section 5739.033(B)(1)(c) requires vendors to use a record-keeping system that captures the location where the order is received for calculating sales tax.

¹ The sourcing rule amendment to the SSUTA appears in Section 310.1 of the agreement.

² A "delivery sale" is a sale of tangible personal property or a service that is received by a consumer in a taxing jurisdiction that is not the taxing jurisdiction in which the vendor has a fixed place of business.

- Section 5739.033(B)(2) is a safe harbor provision that protects a consumer from additional sales tax liability when a consumer remits sales tax to a vendor in an amount invoiced by the vendor based on the location where the consumer receives the good, or where the vendor receives the order.
- Section 5739.033(B)(3) specifies the determination of where an order is received. Under the bill, an order is received at the location where a vendor initially receives all information necessary to determine whether the order can be accepted, and not where the order may be subsequently accepted, completed, or fulfilled.
- Section 5739.033(B)(4) provides for sourcing a single transaction involving both a good and a service that under the rules would be sourced to more than one jurisdiction. For such a sale, if a service is billed on the same invoice or statement as the good, the situs of the transaction is the location where the order is received by the vendor.

County compensation

(R.C. 5739.24; Section 3)

Current law

Under current law, some counties that incur significant revenue losses from the conversion to destination-based sourcing rules are entitled to compensation for some of the loss. Specifically, counties with a 2000 census population of less than 75,000 people (designated "impacted counties") that incur sales tax revenue losses of at least 4% due to the implementation of destination-based sourcing are entitled to compensation from the general revenue fund. The compensation is paid from sales and use tax revenue received by other counties experiencing revenue gains from the conversion ("windfall counties"). The estimate of losses is derived from reports that multi-county vendors ("master account holders") must file with the Department of Taxation.

Twice each year, the Tax Commissioner must determine the amount of sales tax revenue collected in a county in accordance with the destination-based sourcing law and compare that amount to the revenue the county would have received if origin-based sourcing law had applied. If a county is an impacted county and the amount the county would have received under origin-based sourcing is at least 4% greater than the amount it actually received under destination-based sourcing, the county is entitled to compensation in such an amount that it would receive 98% of the estimated revenue it would have received under origin-based sourcing. Payments must be made before May 1 (or May 2 in

a leap year) and October 30 and are included with a county's monthly sales and use tax disbursement.

If the Commissioner determines that a county collected more taxes under the destination-based sourcing law than it would have collected if taxes had been paid under the origin-based sourcing law, the county's monthly sales and use tax disbursement is reduced. The reduction for a county equals its proportion of the total excess received by all windfall counties multiplied by the amount needed to reimburse the impacted counties entitled to compensation.

Proposed change

The bill terminates the compensation for impacted counties, the required offsets for windfall counties, and all related vendor reporting requirements effective May 1, 2009.

Compensation for converting to origin-based sourcing

(Section 5)

Under the bill, the Tax Commissioner is authorized to devise and implement a plan to compensate vendors that had adopted destination-based sourcing under prior enactments and are required by the bill to convert back to origin-based sourcing for intrastate transactions.

HISTORY

| ACTION | DATE |
|---------------------------|----------|
| Introduced | 01-10-08 |
| Reported, H. Ways & Means | 02-07-08 |

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