



Bethany Boyd

Bill Analysis
Legislative Service Commission

Sub. H.B. 429*

127th General Assembly

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

Reps. Gibbs, Schindel, Bolon, Foley, J. Hagan, Letson, Patton, Aslanides, Bacon, Batchelder, Blessing, Chandler, Collier, Combs, Domenick, Fessler, Flowers, Gardner, Hughes, J. McGregor, Raussen, Schneider, Setzer, Wachtmann, Webster

BILL SUMMARY

- Requires vendors to use origin-based sourcing beginning in 2010 for sales occurring entirely within Ohio.
- Discontinues compensation of "impacted" counties for sales tax losses incurred under destination-based sourcing, effective May 1, 2009.
- Discontinues temporary compensation of vendors for complying with destination-based sourcing requirements.
- On and after July 1, 2009, provides for a one-time payment to vendors that have already implemented destination-based sourcing, but that are now required by the bill to convert back to origin-based sourcing for all intrastate sales.
- Provides that a vendor does not have to refund the sales tax on the part of the price consisting of a delivery charge if the delivery charge is not refunded to the consumer.
- Declares an emergency.

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

CONTENT AND OPERATION

Sourcing the location of taxable 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 them 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 a sales order is received. Ohio attempted to amend the SSUTA to allow vendors and sellers that had less than \$500,000 of delivery sales within Ohio to continue origin-based sourcing.¹ If the amendment had been adopted, the Tax Commissioner was required to certify that the amendment was made and enter a determination to that effect in the Commissioner's journal on or before October 1, 2007. This certification, in turn, was needed to trigger two revisions to Ohio sales and use tax laws, which would have allowed vendors and sellers that had less than \$500,000 of delivery sales within Ohio to use origin-based sourcing for all delivery sales, and also would have allowed those sellers to collect the use tax at a rate equal to the sum of the state sales tax and the lowest "piggyback" tax levied by a county or transit authority, to be distributed to the local taxing authorities under a new method. The amendment to the SSUTA was not adopted, so the Commissioner never made the certification.

¹ 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.

Nonetheless, 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.²

Ohio law has not yet been revised to reflect the SSUTA amendment. Current law provides that vendors with total annual delivery sales of \$500,000 or less are permitted to continue origin-based sourcing. Vendors that have total delivery sales of \$500,000 or more must apply destination-based sourcing and must continue to source sales in that manner regardless of the total delivery sales in future years. (Vendors with total annual delivery sales of \$30 million or more are already required to apply destination-based sourcing to their sales under a prior law, and other vendors may have voluntarily converted to destination-based sourcing.)

Proposed change

(R.C. 5739.033(B), 5739.034(E), 5739.213, 5741.03, and 5741.05; Sections 4, 5, and 6; repeal of R.C. 5739.035 and 5740.10)

The bill authorizes vendors currently using origin-based sourcing to continue using that sourcing method for intrastate sales, and permits vendors that have already adopted destination-based sourcing to switch back to origin-based sourcing for intrastate sales before 2010. A vendor switching back before 2010 must do so on the first day of a month. The bill requires all vendors to use origin-based sourcing beginning January 1, 2010, for all intrastate sales, but eliminates origin-based sourcing for sales that are not intrastate, regardless of the level of delivery 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.
- 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

² The sourcing rule amendment to the SSUTA appears in Section 310.1 of the agreement.

location where the consumer receives tangible personal property or a digital 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 property or good, the situs of the transaction is the location where the order is received by the vendor.

The bill eliminates the provisions (R.C. 5741.03(C) and 5741.05(B)) that allow sellers with less than \$500,000 of delivery sales within Ohio to collect the use tax at a rate equal to the sum of the state sales tax and the lowest "piggyback" tax, and that establish the distribution method for those use taxes.

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 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 the 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 multi-county vendor reporting requirements effective May 1, 2009.

Vendor compensation

(R.C. 5703.70; Section 7; repeal of R.C. 5739.123)

Current law

Current law provides for a temporary compensation mechanism for vendors when they first begin implementing destination-based sourcing. A licensed vendor may apply for compensation to assist the vendor in complying with the destination-based sourcing law for the first six months that law applies to the vendor. The compensation is calculated for each county each month of the six-month period, and equals the amount of the tax reported on the vendor's return for sales of property delivered to each county in which the vendor does not have a fixed place of business, up to \$25 per county for each month.

Proposed change

The bill terminates the temporary compensation for vendors, effective January 1, 2010, in conjunction with the bill's requirement that vendors use origin-based sourcing for all intrastate sales beginning January 1, 2010.

One-time payment for converting to origin-based sourcing

(R.C. 5703.70 and 5739.061)

The bill establishes a new compensation plan for vendors that have already implemented destination-based sourcing, but that are now required by the bill to convert back to origin-based sourcing for all intrastate sales. The plan provides that on and after July 1, 2009, a vendor that received temporary compensation for converting to destination-based sourcing under former law repealed by the bill may apply for a one-time payment to assist the vendor in returning to origin-based sourcing for intrastate sales (the Department of Taxation would have records of which vendors received the temporary compensation under the repealed law). The one-time payment equals the actual total costs the vendor incurred in complying with the origin-based sourcing requirements, not to exceed \$1,000 for each vendor that was required by law to convert to destination-based sourcing (because the vendor had total annual delivery sales of \$30 million or more), and \$600 for a vendor that voluntarily elected to convert to destination-based sourcing. In no event may a vendor receive compensation exceeding its total cost of complying with the bill's origin-based sourcing requirements.

To be considered for compensation, the vendor must file an application with the Tax Commissioner on a form prescribed by the Commissioner. The Commissioner must determine the amount of compensation to which the vendor is entitled, and if that amount is equal to or greater than the amount claimed on the application, the Commissioner must certify that amount to the Director of Budget and Management and the Treasurer of State for payment from the General Revenue Fund. If the Commissioner determines that the amount of compensation to which the vendor is entitled is less than the amount claimed on the vendor's application, the Commissioner must follow notice and hearing procedures for applying for tax refunds when the amount of refund is in dispute.

The bill provides that the vendor compensation is not to reduce the amount of revenue that is required under continuing law to be returned each month to counties and transit authorities that levy piggyback sales or use taxes.

Delivery charges

(R.C. 5739.03(F); Section 7)

Current law dictates how a vendor may make refunds of sales tax to consumers when they return tangible personal property on which the sales tax has been paid. Whenever a vendor refunds the "full price" on which the sales tax has been paid, the vendor must also refund the full amount of the tax paid. The "price" includes, among other items, any delivery charges charged by the vendor,

including transportation, shipping, postage, handling, crating, and packing the property (R.C. 5739.01(H), not in the bill).

The bill authorizes a vendor, when making a refund of all but a delivery charge, to retain the amount of the sales tax attributable to the delivery charge if the delivery charge was stated separately. This provision applies the first day of the month that begins after the bill's effective date.

Emergency clause

(Section 9)

The bill takes effect immediately, for the reason that destination-based sourcing is causing counties to lose sales tax revenues on sale orders made by residents of other counties, and an immediate conversion back to origin-based sourcing for intrastate sales is needed to prevent that loss. Although the bill takes immediate effect, some of the provisions are delayed, as explained elsewhere in this analysis.

HISTORY

ACTION	DATE
Introduced	01-10-08
Reported, H. Ways & Means	02-07-08
Passed House (92-1)	02-19-08
Reported, S. Ways & Means & Economic Development	---

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