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Streamlined Sales Tax Update: Ohio Retains Origin Sourcing for Intrastate Sales of Tangible Personal Property

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As a result of several legislative changes and much debate, Ohio has been able to retain origin sourcing for solely intrastate sales and still participate in the Streamlined Sales and Use Tax Agreement (“Agreement”). The Ohio Department of Taxation recently issued an information release to let Ohio vendors know that they can retain origin sourcing on sales to Ohio consumers.¹ This article provides an overview of the Streamlined Sales Tax Project and summarizes Ohio’s sourcing rules effective January 1, 2010.

Streamlined Sales Tax Project, Agreement, and Governing Board

In March 2000, the Streamlined Sales Tax Project was organized to simplify the collection and administration of sales and use taxes by retailers and states. The goal of the resulting Agreement—the cooperative effort of 44 states, the District of Columbia, local governments, and the business community—was to minimize costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states.

To date, 23 states have passed legislation to conform to the Agreement: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The Project evolved into the Streamlined Sales Tax Governing Board, which is composed of representatives from member states and associate member states;² the State and Local Advisory Council; and the Business Advisory Council. The State and Local Advisory Council advises the Governing Board on matters pertaining to the administration of the Agreement, including admission of states into membership,

¹ Information Release ST 2009-03 – Sales and Use Tax: Sourcing Changes Explained (Dec. 2009).

² Bylaws of the Streamlined Sales Tax Governing Board (“Bylaws”), Article Three, available at http://www.streamlinedsalestax.org/uploads/downloads/Bylaws/SST_Bylaws_05_12_09.pdf (all web sites herein last visited March 8, 2010).

noncompliance, interpretations, and revisions or additions to the Agreement.³ The Business Advisory Council also advises the Governing Board and is composed of business representatives.⁴ Only the Governing Board has voting rights and can amend the Agreement.

Sourcing of Sales Under the Agreement—A Twisted Path for Ohio

For sales tax purposes, “sourcing” means determining which state or local jurisdiction has the right to tax the retail sale. As originally written, the Agreement required sellers to adopt a destination-based sourcing rule for all sales—intrastate and interstate—in order to become a full member under the Agreement. In other words, the state’s law had to source all sales to the location where the purchaser received the tangible personal property. The Agreement’s required destination sourcing was opposed by Ohio since the Agreement’s inception, due to difficulties faced by sellers in complying with destination sourcing and potential local-government revenue shifts.⁵

In Ohio, counties are permitted to enact a local sales tax, so the sales tax rate varies from county to county. Since Ohio has 88 counties, determining the correct sales tax rate based on the destination of the tangible personal property is burdensome for small vendors. Recognizing this, Ohio lawmakers initially delayed the transition to destination sourcing from January 1, 2005 to January 1, 2008.⁶

During February 2006, Ohio proposed that the Governing Board amend the Agreement to allow states with local sales and use taxes to opt out of the destination-sourcing provisions and adopt separate sourcing rules for sales if the order is received in the same state in which the purchaser receives the tangible personal property.⁷ The Governing Board rejected Ohio’s proposed amendment. In response to concerns raised by small businesses in June 2007, the Ohio General Assembly made Ohio’s adoption of destination sourcing contingent on the Governing Board’s amending the Agreement by October 1, 2007 to provide an exception from destination sourcing for vendors with delivery sales of less than \$500,000 in the prior calendar year.⁸ The Governing Board did not adopt such an amendment by the deadline, so vendors that had not switched to

³ Bylaws, Article 8A.

⁴ Bylaws, Article 8B.

⁵ Ohio Department of Taxation, October 1, 2007, News Release, available at http://www.tax.ohio.gov/divisions/communications/news_releases/index.stm.

⁶ Ohio Rev. Code § 5739.033(A) as amended by Am. Sub. S.B. 26.

⁷ Summary of Ohio Proposed Amendment to Sections 308 and 310 of the Streamlined Sales and Use Tax Agreement, February 16, 2006, available at <http://www.tax.ohio.gov/channels/business/documents/BulletsforproposedOhioamendment.pdf>.

⁸ Ohio Rev. Code § 5740.10.

destination sourcing were permitted to continue to source delivery sales on an origin basis.

In December 2007, the Governing Board amended the Agreement to allow states that source intrastate sales on an origin basis to become full members of the Agreement in 2010 if at least five states that were not full members on December 31, 2007 were found to be in substantial compliance with the Agreement except for destination sourcing.⁹ As a result, the Ohio General Assembly enacted H.B. 429 to keep origin sourcing for intrastate sales.

Ohio’s Sourcing Rules—Then and Now

Prior Sourcing Rules

Prior to H.B. 429, vendors with delivery sales within Ohio of less than \$500,000 per year were allowed to use origin sourcing. Conversely, vendors with \$500,000 or more in annual Ohio delivery sales were required to use destination sourcing.

Sourcing Rules Effective January 1, 2010

Under Ohio Rev. Code § 5739.033(B)(1), as amended by H.B. 429, all intrastate sales are sourced to “the location where the vendor receives an order.” An order is received at the physical location where the vendor initially receives all information to determine whether the order can be accepted.¹⁰ For example, if the vendor requires a credit check on all orders before acceptance, the location where the credit check is conducted is considered to be the location where the order is received for purposes of calculating the sales tax. If the vendor does not have a record-keeping system that captures the location where the order is received, the vendor cannot use origin sourcing.¹¹

Sales by out-of-state vendors to Ohio consumers are sourced to the location where the consumer receives the tangible personal property.¹² If the vendor does not know the location of receipt, the retailer can source the sale to the address available for the consumer from the vendor’s records maintained in the ordinary course of business, as long as the use of that address is not in bad faith.

⁹ Agreement § 310.1(D).

¹⁰ Ohio Rev. Code § 5739.033(B)(3).

¹¹ Ohio Rev. Code § 5739.033(B)(1)(c).

¹² Ohio Rev. Code § 5739.033(C)(2). “Receive” does not include possession by a shipping company on behalf of the consumer. Ohio Rev. Code § 5739.033(C)(6).

In conjunction with the information release, the Ohio Department of Taxation also issued a handy sourcing chart for vendors. The sourcing chart is available at the Department's web site.¹³



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http://www.tax.ohio.gov/divisions/communications/information_releases/sales/st_2009_03_sourcing_chart.stm.