

OHIO (Revised)

Description and Scope:

This document describes and critiques Ohio's imposition of sales tax on "automatic data processing," "computer services" and "electronic information services."

Definitions and Impositions:

The Ohio sales tax base is largely determined by items that are included and excluded from the statutory definition of "sale."¹

In addition to the inclusion of "specified digital products" under the Streamlined Sales Tax Agreement, the tax base also includes transactions in which "[a]utomatic data processing, computer services, or electronic information services are or are to be provided for use in. business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental."²

"'Automatic data processing' means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data."³

"'Computer services' means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems."⁴

"'Electronic information services' means 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 to be retrieved by a designated recipient with access to the computer equipment."⁵

Automatic data processing, computer services, and electronic information services do not include personal or professional services. Personal or professional services are defined as

¹ Ohio Rev. Code Ann. § 5739.01(B).

² Ohio Rev. Code Ann. § 5739.01(B)(3)(e).

³ Ohio Rev. Code Ann. § 5739.01(Y)(1)(a).

⁴ Ohio Rev. Code Ann. § 5739.01(Y)(1)(b).

⁵ Ohio Rev. Code Ann. § 5739.01(Y)(1)(c).

all services other than automatic data processing, computer services, and electronic information services, and a dozen services are specifically excluded.⁶

“Retail sale” or “sales at retail” includes all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.⁷

“Business” includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. “Business” does not include the activity of a person in managing and investing the person’s own funds.⁸

“Consumer” is defined in detail.⁹ The definition generally describes a consumer as the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom admission is granted.¹⁰

Critique:

Clarity and ease of application;

Ohio’s definitions include multiple limiters. For example, electronic information services is limited to those provided by means of telecommunications equipment. This is further limited to examining or acquiring data stored in or accessible to the computer equipment, or placing data into the computer. But not just placing the data into the computer, placing the data into the computer specifically to be retrieved by the designated recipient. And not just to any designated recipient, but a recipient with access to the computer equipment.

Each of these limiters is both a clarification and a potential point of contention. Limiters make for a narrow, specific, and clear definition initially. Therefore, when these definitions were adopted, their limiters and specificity promoted clarity and ease of application. However, as the characteristics of the targeted products change over time, and as similar products come into being, the same specificity becomes a source of contention rather than of clarity, decreasing clarity and ease of application.

Additionally, the imposition portion creates a double test: the true object test and the incidental or supplemental test. This is problematic. With only a single test, no matter how subjective that test is, if it is not satisfied, it is not satisfied. This brings clarity and ease of application.

⁶ Ohio Rev. Code Ann. § 5739.01(Y)(1)(d) and (Y)(2).

⁷ Ohio Rev. Code Ann. § 5739.01(E).

⁸ Ohio Rev. Code Ann. § 5739.01(F).

⁹ Ohio Rev. Code Ann. § 5739.01(D)(1)-(D)(7).

¹⁰ Ohio Rev. Code Ann. § 5739.01(D)(1).

With two tests, a potential grey area is created. Using automatic data processing as an example, the true object of the transaction must be the receipt of automatic data processing. However, the imposition definition goes on to state “rather than the receipt of personal or professional services to which automatic data processing...[is] incidental or supplemental.” Conceivably, automatic data processing may not be the true object of the transaction but may be more than “incidental or supplemental.” The results of the first test suggest no tax, but the results of the second test suggest taxability. The double test diminishes clarity.

Revenue.generation.or.stability;

This is closely related to the clarity and ease of application criterion above. Ohio’s imposition of tax on the three defined products contributes to revenue generation, especially at the outset. However, reliance on definitions with specificity and multiple limiters may not support tax base stability. In the long term, the specificity may cause even slight changes to products to entirely remove them from the tax base.

One example: electronic information services requires the customer to access computer equipment to either examine or acquire data. This raises the question of whether the customer is examining or acquiring data or receiving a conclusion drawn from the data. The answer depends on the facts and the Ohio Supreme Court answered for one set of facts in a 2008 case.¹¹ The facts and result are not important, what is important is that the more limiters, the more the tax base depends on each taxpayer’s facts, which can evolve.

Compatibility.with.other.elements.of.the.tax.structure;

Ohio’s three terms are categorized as services to ensure compatibility with the rest of the sales tax structure. The defined terms are discrete items that could be plugged into nearly any sales tax regime with minimal amendment. In Ohio, the items were inserted into an existing list of taxable services, ensuring that the accessory provisions in the sales tax were applicable. Additionally, Ohio is a member of the Streamlined Sales Tax system, so it is assumed Ohio’s approach would not violate the Streamlined Sales Tax Agreement.

Most states’ sales tax systems include a list of taxable services, providing an obvious place for the state to insert definitions similar to Ohio’s.

Pyramiding.of.taxes;

Ohio’s approach applies tax to the enumerated items only for “use in business.” Ohio’s imposition applies exclusively to business purchases and therefore leads to pyramiding.

Other.considerations;

The statute applies for “use in business,” and businesses will use products like automatic data processing and computer services across their entire network of business locations. This raises the specter of multiple points of use.

¹¹ Marc.Glassman?Inc.;v.Levin, 119 Ohio St. 3d 254 (2008).