



# Tax *Flash*

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## “Ohio Sales & Use Tax Sourcing Rules - Updated December 1, 2009”

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### **Sourcing**

As part of Ohio’s continued participation in the Streamlined Sales and Use Tax Agreement, a few changes to the way sales of tangible personal property and taxable services are sourced were enacted in H.B. 429 of the 127th General Assembly and will take effect January 1, 2010. These changes, which are found in Ohio Revised Code (R.C.) section 5739.033(B), will allow Ohio to retain origin sourcing for most sales of tangible personal property made by Ohio vendors to Ohio consumers. Other sales will be sourced to the location where the consumer receives the property or service that was sold pursuant to R.C. 5739.033(C). Leases and rentals will continue to be sourced according to the provisions of R.C. 5739.033(I). For the majority of vendors, these changes will mean little, if anything, to their method of doing business.

It is important to remember that sourcing does not determine taxability of the sale or, in the case of an out-of-state seller, whether the seller has nexus and is required to collect Ohio tax. The purpose of sourcing is to determine the location of the sale for sales tax purposes. If a sale is taxable, the sourcing of the sale will determine the appropriate jurisdiction’s tax rate for the seller to charge.

### **Sales of Tangible Personal Property**

Ohio vendors of tangible personal property will source their sales to Ohio consumers to the location where the vendors receive the order from the consumer. For over-the-counter sales made from fixed retail locations, this will be no change from current law. However, those vendors that previously switched to destination sourcing for delivery sales under previous Ohio law will be required to source their sales to the location where the order is received rather than the delivery location.

Vendors that make sales in Ohio, but do not make sales from a fixed location (e.g., transient vendors) will continue to source each sale to the location where the sale takes place.

For remote sales (e.g., mail order, telephone or online sales) made by Ohio vendors to Ohio consumers, the sale will be sourced to the location where the order is received. Note the sourcing is based on where the order is received, which is not necessarily the location from which orders are processed or shipped. If the order is received at a location outside Ohio, or the vendor does not capture the location where the order is received, the sale is treated as a sale from outside Ohio and sourced as noted below.

Sales made by Ohio vendors that the vendor sends or delivers to non-Ohio customers will continue to be treated as sales in interstate commerce and not subject to Ohio tax. However, vendors should check with the states into which they ship to determine if they are required to collect tax for those states.

Sales by out-of-state sellers to Ohio consumers will be sourced to the location where the consumer receives the tangible personal property that was sold. If this is not known to the seller, the seller should use an address of the consumer available from the seller's business records.

## **Providers of Services**

Sales of services should be sourced to the location where the consumer receives the service. Under Ohio law, a service is "received" where the customer makes first use of the service. While this may be somewhat new terminology, it should be little change for most service providers. For example, repair services should be sourced to the location where the consumer gets possession of the repaired object. Data processing services will continue to be sourced to the location of the consumer where the service is received. Exterminating service would continue to be sourced to the location where the eradication of vermin takes place. Recreation and sport club memberships would continue to be sourced to the location of the club where the member makes use of the membership privileges. An employment service provided to a business would be sourced to the location where the employee is posted, if that is known to the service provider. If the location is not known, it would be sourced to the location of the consumer that the provider has in its records.

For sourcing purposes, it does not matter whether the provider of the service is located in Ohio or outside Ohio. The relevant issue is where the consumer receives the service.

## **Compensation**

Vendors of tangible personal property that converted to destination sourcing under prior Ohio law and received compensation for making the change may be eligible for compensation for converting back to origin sourcing.

## **Enforcement**

As noted above, most vendors and sellers will not be required to change their tax collection practices as a result of the changes described above. For those vendors that are required to change their sourcing procedures, the effective date for those changes is Jan. 1, 2010. However, recognizing that these changes may require programming changes or training, the Department of Taxation will not impose penalties on those vendors that are required to change their method of sourcing as a result of H.B. 429, so long as those changes are made by April 1, 2010.

## **Leases of Tangible Personal Property**

H.B. 429 did not change the current sourcing of lease transactions. Generally, leases are sourced to the primary property location of the property at the time the tax is to be paid.

If you have any questions regarding this information release, please contact us at 330-453-7633. Information is also available at the Ohio Web site: [www.tax.ohio.gov](http://www.tax.ohio.gov).