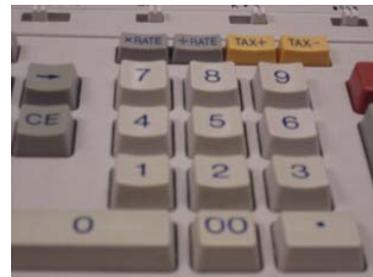


Proposed Ohio Sales Tax Broadens the Base

by Gary M. Harden



Professional fees, software licenses, digital transfers, recreation and sports club fees are among the many targets of sweeping tax changes proposed to Ohio's sales and use tax. The budget bill introduced into the Ohio House ([HB 59](#)) would start from the premise that all services are taxable, subject to a few express exceptions for "necessities of life" such as health care, education, residential rentals, day care and trash removal. Since all remaining services are taxed, the bill removes what now is a short list of expressly taxable services.

Fees, retainers, commissions and any other consideration paid for an act is defined as a taxable service. Many issues suggested by this initial draft of the budget bill should be addressed, including for example the timing of the taxable moment when a refundable retainer is paid.

Beyond services, other base broadening measures are sure to draw comment, including access fees to fitness facilities, recreation and sports clubs. Consider the pervasive effect of a tax that can reach even an afternoon's workout. Perhaps more controversial, and potentially more lucrative for the state, are the provisions taxing licenses and transfers of digital property and intellectual property. How will a broad sales tax affect job creation in Ohio? Will it work at cross purposes with Ohio's investment in its "Third Frontier" and other programs to attract businesses and jobs heavily dependent upon development of intellectual property? A tax when this investment in IP is monetized in a sale or license to a customer would leave an Ohio business at a comparative disadvantage when competing with a business in another state. Will IP developed in Ohio shift to operating businesses that monetize it elsewhere? The answer to these questions get to the core of a policy shift.

The expanded sales tax is linked with a proposed 20% reduction in personal income tax rates over three years. Like the repeal of the state corporate franchise tax in lieu of a broad based commercial activity tax or "CAT" in 2005, the policy behind the revenue side of this budget bill appears to be the same: shift from an income and property ownership platform to a consumption platform. Consumption taxes are less complex (having fewer exclusions, deductions and credits), cost the state less to administer, have fewer constitutional nexus problems and are more broadly based reaching new taxpayers like never before.

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758

This is not the first time that Ohio has proposed a broad excise tax. Previous bills, like the one in 1997, have sought to tax more services and failed. In addition to the policy considerations addressed above, we should expect to revisit those raised by earlier General Assemblies, including among them:

- The regressive nature of a sales tax that imposes the same rate on taxpayers without distinction, as compared to a graduated income tax that imposes higher rates on those with greater means.
- The economic barrier that such a tax can impose upon small businesses which must rely upon external accounting, architecture, engineering, marketing, financing, real estate, legal and other advisors and service providers in order to start and develop their businesses.
- The effect on society of an increased economic barrier to the right to legal counsel for those who must stretch their funds in order to exercise their constitutional rights.

The biennial budget bill is among the longest addressed by the General Assembly, and because of that, sometimes provisions go unnoticed until they come into law. We expect that will not be the case with the proposed sales tax provisions. This is the first version of the bill and likely many changes will take place between now and its passage. We will be watching as the policy debate comes together between now and July 1. For information regarding these proposed sales tax changes, or any other questions, please contact [Gary M. Harden](#) or one of our other attorneys.

Disclaimer

The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.