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Ohio service providers have plenty riding on sales tax



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Ohio's budget legislation, House Bill 64, contains important changes to the state's tax structure that could have an impact on many businesses.

While the bill is just a starting point and is sure to change during the legislative process, it incorporates Gov. John Kasich's proposals released in his Blueprint for a New Ohio. If enacted in its current form, there would be an increase in sales, severance and commercial activity taxes, along with an overall reduction in personal income tax.

The state portion of the sales tax would increase to 6.25 percent from 5.75 percent, and the base of goods and services on which sales tax applies would be expanded. The changes to the taxation of goods are fairly minor. But for services, some would be subject to state sales tax for the first time. These include cable service, travel and parking, and transactions involving bad debts.

More important for most businesses, sales tax would also be imposed on certain business service providers, regardless of the service provider's profession, including:

- research and public opinion polling services,

- public relations services,
- lobbying services, and
- management consulting services,

defined as an "activity that provides advice and assistance to businesses and other organizations on business issues."

Imposing sales tax on these business-to-business services, "regardless of the profession of the provider of the service" as stated in the bill, could be troubling for Ohio businesses.

It is impossible to quantify the magnitude of the sales tax expansion without knowing the intent behind the broad language and how it would be interpreted by the Department of Taxation. First, the language could be viewed to mean what it says – that the sales tax will apply only to those professionals who are specifically hired to provide certain services, like an attorney who acts as a debt collector or a consulting firm asked to analyze a particular project.

But the intent and impact could be much broader. The bill could be a way for Kasich to implement the taxing scheme he failed to push through the legislature in 2013. Under his last budget proposal, legal and accounting services would have been explicitly subjected to sales tax, through a provision that directly named those services for taxation.

The governor's proposed 2013 sales tax expansion created an uproar and was struck from the budget by the legislature. H.B. 64's more nuanced language could be a way for him to broadly expand the sales tax to many business services without drawing as much direct opposition to the change. The open-ended language could be used to give the Department of Taxation

license to create regulations broadly imposing sales tax on accounting, legal and many other business-to-business services, without triggering as much debate among legislators.

Regardless of the intent, if enacted as written, H.B. 64 likely opens the door for the collection of sales tax on some portion of accounting, legal and other consulting services. This would create a significant number of problems. First and foremost, Ohio individuals and businesses would have an incentive to hire accountants, lawyers and consultants from outside the state, significantly distorting the market. Even if these sales were supposed to be sourced to Ohio and subject to taxation, service providers outside Ohio would be at a substantial price advantage. Enforcement of the tax would intrude on client confidentiality because it would necessarily include an investigation as to what kind of advice was provided to clients by the service provider. The budget bill fails to tackle these major issues.

If the past is any indication of the future, H.B. 64 will be modified before it is enacted into law. Although it's impossible to predict how much of Kasich's proposal will be enacted, one thing is clear: Ohio's tax structure is likely to continue to change.

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