

INTERNATIONAL ALERT

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Ohio sales and use tax compliance change regarding transactions that are exempted from the definition of sales and use taxable "employment services"



International businesses with operations in Ohio need to keep abreast not only of federal tax changes but also Ohio tax changes. Ohio has taxed "employment services" for years, but there are five statutory exceptions that kick a particular service out of the definition of taxable "employment services." The five exempted scenarios are:

- contracting or subcontracting services when the purchaser does not have direct control of the personnel performing the services.
- medical personnel supply services.
- supplying personnel to a buyer under a contract of at least one year that specifies that each employee covered under the contract is assigned to the buyer on a permanent basis.
- employment services between members of an affiliated group of businesses.
- transactions where the personnel provided or supplied by a provider or supplier to a purchaser of an employment service are then provided

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or supplied by the purchaser to a third party as an employment service.

However, the transaction between the purchaser and the third party is a taxable "employment service."

Going forward, if a purchaser of what would have been an "employment service" but for those exceptions purchases such service, **it must provide an exemption certificate to the service provider.** Under newly revised R.C. Section 5739.03(B)(1)(a), "if a consumer claims the transaction is not a taxable sale due to one or more of the exclusions provided under division (JJ)(1) to (5) of Section 5739.01 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax."

It appears that the exemption certificate should be produced (i) when new otherwise taxable services are provided, or (ii) a new invoice is generated by a vendor for an existing service. Our take is that this is a revenue-raiser that the state of Ohio hopes will avoid parties "after the fact" upon audit looking to make arguments as to why a particular service isn't taxable.

For more information please contact [Mark Snider](#), [Dixon Miller](#), or any member of Porter Wright's [International Business & Trade Practice Group](#).

