



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 224*

132nd General Assembly
(As Reported by S. Finance)

Sens. Eklund, Coley, Huffman

BILL SUMMARY

- Exempts from sales and use tax exports that are in Ohio only temporarily for storage and package consolidation before being delivered to a foreign citizen.
 - Declares an emergency.
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CONTENT AND OPERATION

Sales and use tax exemption for exports temporarily stored in Ohio

The bill authorizes a sales and use tax exemption for exports that are delivered into Ohio only for temporary storage and package consolidation before being shipped to a foreign citizen.

Under continuing law, state and local sales taxes apply to the sale of goods and certain taxable services within the state. The use tax complements the sales tax, and applies when goods or services are purchased outside of, but used, consumed, or stored in Ohio. The use tax is levied at the same rate as state and local sales taxes.

Several courts have considered when the use tax applies to goods that are shipped through or exported from Ohio, and not used here permanently. Under the U.S. Constitution, a state may not levy a tax on exports¹ or impose a "direct burden on

* This analysis was prepared before the report of the Senate Finance Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

¹ Article I, Section 10 of the U.S. Constitution (the "Import-Export Clause") prohibits states from "lay[ing] any imposts or duties on imports or exports"

foreign or interstate commerce."² Consequently, a use tax cannot apply to goods that solely travel through a state in the stream of commerce, or in the "export stream."³ However, if goods in interstate commerce are "halted temporarily" in Ohio, or if the process of exporting a good is not "continuous," the use tax applies unless the use is specifically exempted by law.⁴

The bill provides an exception to this general rule for exports that pause in Ohio for the sole purpose of temporary storage and package consolidation. To qualify, the goods must be delivered into this state only for that purpose, and must be shipped to the foreign address of a person that is not a U.S. citizen. While in Ohio, the goods may be held in storage for up to 60 days, and must be held by an individual or business that is not related to the purchaser.⁵ Goods that are required to be registered or licensed under Ohio law do not qualify for the exception.⁶

Effective date

The bill applies on and after October 1, 2017, and declares that it is an emergency measure as it is necessary to prevent imminent business closures.⁷

HISTORY

ACTION	DATE
Introduced	10-26-17
Reported, S. Finance	---

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² Article I, Section 8 of the U.S. Constitution (the "Commerce Clause") grants Congress the exclusive power to "regulate commerce with foreign nations and among the several states," and thereby prohibits a state from imposing "direct burdens on interstate commerce." *Quill Corp. v. N.D.*, 504 U.S. 298 (1992).

³ *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 65 (1974) (finding that computers manufactured for export, and stored in an Ohio warehouse awaiting international shipment, were subject to Ohio's use tax).

⁴ *Beatrice Foods Co. v. Lindley*, 70 Ohio St.2d 29, 33 (1982) and *Kosydar*, quoting *Coe v. Errol*, 116 U.S. 517, 527 (1886).

⁵ Generally, a person is regarded as "related" to a business if one holds a certain substantial level of ownership stake in the other.

⁶ R.C. 5739.02(B)(56).

⁷ Sections 3 and 5.

