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S.B. 235
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Ways and Means

Primary Sponsor: Sen. Roegner

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SUMMARY

- Exempts from sales and use tax all of the following:
 - Electronic tax filing and payment services used in business to report or pay income tax, other than employee withholding, on behalf of an individual.
 - Exempts certain taxable services that might be provided incidentally or supplementally to those electronic tax preparation services.
 - Documentary service charges imposed by motor vehicle and manufactured home dealers.

DETAILED ANALYSIS

Sales and use tax exemptions

Electronic filing fees

The bill exempts from sales and use tax income tax preparation services to electronically file an individual's federal, state, or local income tax return, transmit documents or schedules related to such a return, or electronically remit an individual's tax, provided such services are provided for use in business. The exemption applies only to services rendered on behalf of an individual. Fees charged for submitting returns, documents, or tax payments on behalf of entities that are not a natural person are not subject to the bill's exemption, nor are fees charged to employers for electronically filing or remitting federal, state, or local income tax withholdings on behalf of an employee (referred to in this analysis as "qualifying tax preparation services").¹

¹ R.C. 5739.01(B)(3)(e) and (Y)(2)(I).

Under continuing law, qualifying tax preparation services used outside the business context, i.e., for personal use, are not subject to sales and use tax. However, current law does impose sales and use tax on such services used in business by classifying them as automatic data processing, computer services, or electronic information services (hereafter referred to collectively as “taxable electronic services”).² The bill effectuates the exemption by reclassifying qualifying tax preparation services as personal and professional services, which are not considered taxable electronic services and thus are not subject to sales or use tax, even if they are used in business.

Incidental taxable electronic services exemption

Under continuing law, a “mixed” transaction involving both taxable electronic services and some other kind of service (i.e., a personal or professional service) in the same transaction is not taxable if the purchaser’s “true object” is to receive the benefit of the other service and if the electronic service is only incidental or supplemental to the purchaser’s receipt of the other service.

By classifying qualifying tax preparation services described above as a personal or professional service, the bill exempts otherwise taxable electronic services that are furnished incidentally or supplementally as part of a transaction for those services to the extent those services could be distinguished from and would not otherwise qualify as a qualifying tax preparation service.³

Documentary service charges

The bill also exempts from the sales and use tax documentary service charges on the sale of a motor vehicle by a motor vehicle dealer or a manufactured or mobile home by a manufactured housing dealer.⁴ Under continuing law, a motor vehicle dealer or manufactured housing dealer may charge a consumer a documentary service fee for paper work, title runner expenses, and other costs associated with making financial arrangements for the sale. The fee must not exceed the lesser of \$250, or 10% of the sale price, excluding tax, title, and registration fees.⁵ According to guidance published by the Department of Taxation, documentary service charges are currently included in the price of a motor vehicle or manufactured or mobile home in computing sales or use tax on the transaction.⁶

² See Ohio Department of Taxation, ST 1999-04, [On-line Services and Internet Access](#), updated December 2015 (additional revision pending).

³ R.C. 5739.01(B)(3)(e).

⁴ R.C. 5739.02(B)(58).

⁵ R.C. 1317.07, 4517.261, and 4781.24, not in the bill.

⁶ Ohio Department of Taxation, ST 1982-01, [Documentary Fees](#), updated November 2004.

As is the case for other existing exemptions that apply to all consumers, no exemption certificate is necessary to obtain the bill’s documentary service charge exemption.⁷

HISTORY

Action	Date
Introduced	09-22-21
Reported, S. Ways & Means	01-25-22

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⁷ R.C. 5739.03.