

Ohio General Assembly Votes to Repeal Sales Tax on Employment Services

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Anthony L. Ehler

Hilary J. Houston

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UPDATE (7/1/2021):

Governor DeWine has signed the legislation, which officially repeals the sales tax imposed by Ohio on employment services.

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Original Text (6/29/2021):

Taxpayers have searched for ways around the sales tax imposed by Ohio on employment services for nearly 30 years. That search may now be close to an end. The Ohio House and Senate voted to repeal the tax as part of the State's Budget Bill, H.B. 110. Governor DeWine now has the opportunity to agree or veto that action.

Employment services are taxable services defined in R.C. 5739.01(JJ) as "providing or supplying personnel, on a temporary or long-term basis to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service." Ohio enacted the tax nearly three decades ago on businesses that utilize temporary work forces or "warm body" staff augmentation services as they have come to be known. That sales tax is broadly considered a heavy tax burden on Ohio business and employment, because it is an added 7.5% tax drag unique to Ohio.

Over the years, tax disputes involving employment services have made their way to the Ohio Supreme Court as taxpayers sought relief. In *Bellemar Parts Industries, Inc. v. Tracy* (2000), 88 Ohio St.3d 351, the Court held that purchases of services used to manufacture completed wheel assemblies for sale were simply a flexible, less costly loaned work force which consequently qualified as employment services. The improved, assembled property that was the purchaser's benefit that resulted from the service was deemed unimportant. The Court, having separated the service from the resulting benefit, then determined that these services were not eligible for the manufacturer's exemption. It

was a real blow to the Ohio manufacturing industry. In later years, the Court began to chip away at what services qualify as taxable employment services. Recently, the level of employer supervision or control over assigned workers limited the scope of employment services. *Seaton Corp. v. Testa*, 155 Ohio S.3d 424, 2018-Ohio-4911.

If signed by the Governor, the tax repeal will begin the first full month following the Budget Bill's 90-day effective date. For the businesses and employers that have shouldered the economic burden of the Ohio sales tax on employment services, the potential and hopefully actual repeal will be celebrated. Businesses should consider the repeal as part of any ongoing audit defense, as well as part of future tax compliance. Redrafting terms of service agreements, considering levels of service fees and employee compensation should be part of this effort. Vorys can assist in all of these areas. Please contact Tony Ehler (614.464.8282 or tlehler@vorys.com) or Hilary Houston (614.464.4968 or hjhouston@vorys.com) if you have any questions.