

State and Local Tax Alert: Digital Advertising Services Targeted for Ohio Sales Tax

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The Ohio Department of Taxation recently issued an updated Information Release that unmistakably targets digital advertising fees for imposition of sales tax. Traditional advertising services placed through TV/radio broadcasts or through newsprint have never been subject to sales tax. That result is likely to continue so long as the advertisements are placed using traditional methods (*i.e.*, providing a physical tape or transmitting data for broadcast without being given access to the service provider's database). However, in its December, 2015 Information Release, the Department relies on a change in the tax laws from over 25 years ago as authority to impose tax on services such as inventory advertising, online chat features and lead generation services that occur when a business receives electronic access to a service provider's database to control, manipulate or download information about the business and/or the inventory it offers for sale. In such cases, the fee charged by the provider to receive, host and make that information available to the public is being treated as an "electronic information service"...a service defined as subject to sales tax. **Think digital advertising over the internet as taxable!**

It is unclear at present whether the Department's recently updated policy has its basis in longstanding audit policy or whether it reflects a new analysis of a two-decades old definition or whether other factors are at play. Certainly, the prior version of this Release made no specific mention of this topic. Moreover, web-hosting services traditionally have been treated as nontaxable services.

What is clear is the direct and present risk this Department position presents to businesses located within or doing business in Ohio. Digital advertising is increasing at a tremendous rate. With its updated Release, the Department is taking aim at this growing area of commerce. Depending upon your business model, the amount of tax could be significant and compliance could be challenging with issues like unbundling taxable/nontaxable services and situsing. With the audit look-back period being four years, businesses should double check their compliance procedures and audit risks.

The Vorys State and Local Tax Group is the largest of any law firm in the state. It has represented taxpayers for decades on sales tax issues just like those discussed above. If you would like to discuss this matter further, please contact Tony Ehler, 614.464.8282, tlehler@vorys.com, or Dave Froling, 614.464.3022, dafroling@vorys.com.