

## **ST 1993-01 - Employment Placement Service - April 1993, Revised November 2012**

On January 1, 1993, employment placement service became a transaction subject to Ohio sales tax. See Ohio Revised Code (“R.C.”) 5739.01(B)(3)(e) (“sale” and “selling” include “employment placement service.”) That service is defined in Section 5739.01 (KK)) as “locating or finding employment for a person or finding or locating an employee to fill an available position.” This information release provides guidance regarding the application of sales tax to the provision of employment placement services. The November, 2012 revision does not reflect any change in the Department’s policy regarding this service. It merely addresses H.B. 508’s elimination of the service vendor license.

The following services are taxable employment placement services:

- Securing employment for a person;
- Finding an employee for an employer; or
- Locating a position for a person.

Here are some frequently asked questions and answers regarding licensing and tax collection.

### **1) If I provide an employment placement service, must I have a license and if so what type of license is required? How do I get one?**

Yes. An employment placement provider located in Ohio must obtain a regular county vendor's license from the county auditor’s office in the county where its business is located. Vendor’s licenses can also be obtained via the Ohio Business Gateway at [business.ohio.gov](http://business.ohio.gov).

### **2) If my business is headquartered in another state but I provide employment placement service at locations in Ohio, must I collect Ohio tax?**

Yes. You must register as an out-of-state seller, and collect and remit use tax on this service if the service is provided in Ohio. To register, go to the Ohio Business Gateway at [business.ohio.gov](http://business.ohio.gov).

### **3) Is my need to register based upon the total amount of sales which I make?**

No. This service is taxable regardless of the amount of business conducted.

### **4) When is the tax on employment placement service to be reported?**

The tax on the service must be reported on the return covering the period when the sale is made. A sale is made when performance of the service is provided or when the price is paid, whichever is first. If acceptance of an individual and payment of the fee is contingent upon the results of a trial period evaluation, the tax on the service is not due until the individual is accepted. If the fee

is due upon acceptance without such contingency, but may be fully refunded within a specified time after placement, the tax is due when the individual is placed or the fee is paid, whichever is first.

#### **6) What price should I use in calculating the amount of tax to be charged?**

The total amount billed to the client for the employment service is the “price,” even though you may choose to separate certain reimbursable costs, such as travel expenses.

#### **7) What rate of tax should be charged?**

The rate of taxation for a service depends upon the county where the client receives the benefit of your service; that is, where the employee is assigned for an employer-client or where the employee resides for an employee-client. The proper sales tax rate can be found on the Department’s website at [http://tax.ohio.gov/online\\_services/thefinder.stm](http://tax.ohio.gov/online_services/thefinder.stm).

If you provide a placement to an employer-client for locations in more than one county, you will need to separate the placement charges for each county and bill tax based on the appropriate rate for each county involved.

#### **8) How will I report the tax collected on this service?**

Sales tax returns must be filed electronically via the Ohio Business Gateway at [business.ohio.gov](http://business.ohio.gov). A return must be filed, even if you made no sales during the period to be reported.

You are entitled to a 3/4 of 1% (.0075) discount on the tax to be paid, if tax returns are timely filed with full payment of the amount due.

Vendors who fail to file returns on time or who do not remit the amount due with filed returns are subject to a late filing charge of \$50 or 10% of the tax due, whichever is greater. If assessed, there is a 50% penalty on any tax collected that was not paid. Failing to remit sales tax collected is a fourth degree felony.

#### **9) Am I entitled to claim exemption on the purchase of any other taxable service?**

If you purchase an “employment placement service” for the purpose of reselling that service to a client, you may claim “resale” from that service supplier. However, you must properly charge tax on the total price of the employment placement service you provide.

Example: Company A, an employment placement service provider, has a client looking for an engineer. Company B, also in that business, has a qualified candidate. They agree to split the fee if B’s candidate is hired. Company A may claim exemption from tax on its transaction with Company B based on its resale of B’s service. However, Company A must collect tax on the entire charge for the placement.

**10) If an employment placement service is provided to a client that claims to be nontaxable, what proof does the law require?**

If the client is never subject to tax, such as the U.S. government; the state of Ohio; or a city, county or other political subdivision of this state, a copy of the sales invoice is all that is needed, provided that the name and address of the client are clearly identified.

If the employer-client is claiming that the use of the service is not subject to tax or that it is a nonprofit charitable organization, a qualifying state veterans' organization headquarters, or an organization described in section 5709.72 of the Revised Code, obtain a fully completed exemption certificate from the client and keep it in your files. If the client claims to hold a direct payment authority with Ohio, the client must furnish evidence of the authority. (A direct payment authority number is always 98-six digits.)

Note: An employee-client cannot claim exemption based on his or her placement with an exempt organization.

**11) What are my responsibilities if the consumer refuses to pay tax?**

As a provider of a taxable service, you are responsible for charging, collecting and remitting tax. If the purchaser of your service has no valid reason for not paying tax, you may pursue collection as you would any unpaid debt. R.C. 5739.26 and 5741.19 state, "No consumer shall refuse to pay the full and exact tax as required by ...[statute], or refuse to comply with such sections and the rules and regulations of the tax commissioner, or present to the vendor a false certificate indicating that the sale is not subject to tax."

**EXAMPLES OF EMPLOYMENT PLACEMENT TRANSACTIONS AND THEIR TAX TREATMENT:**

***FEE PAID BY THE EMPLOYEE:***

EXAMPLE #1 Ohio or Out-of-State Employer  
Ohio Resident  
Ohio Job

The fee paid by the employee is taxable at the rate in effect in the county where the employee lives when the job is found because the benefit of the service is received there.

EXAMPLE #2 Ohio or Out-of-State Employer  
Out-of-State Resident  
Ohio Job

The fee paid by the employee is not taxable because the out-of-state resident is considered to have received the benefit of the employment service in the other state.

EXAMPLE #3 Ohio or Out-of-State Employer  
Ohio Resident  
Out-of-State Job

As with the analysis of Example 1, the fee paid by the employee is taxable at the rate in effect in the county where the employee lives when the job is found because the benefit of the service is received there.

***FEE PAID BY EMPLOYER:***

EXAMPLE #4 Ohio or Out-of-State Employer  
Ohio Resident  
Ohio Job

This transaction is taxable at the rate in effect in the county where the employee's post of duty is or is to be.

EXAMPLE #5 Ohio or Out-of-State Employer  
Out-of-State Resident  
Ohio Job

The analysis is the same as Example #4

EXAMPLE #6 Ohio or Out-of-State Employer  
Ohio Resident  
Out-of-State Job

The fee paid for this job placement is not taxable because the benefit of the service received by the employer is not in Ohio.

If the employer pays the employment placement provider an annual retainer, that retainer is subject to tax since the payment of the retainer anticipates the rendering of a taxable service. If in-state and out-of-state placements occur, that portion of the retainer which applies to Ohio placements is taxable and can be calculated based upon the ratio of other fees generated by the service provider for Ohio placement to all placement fees generated by the service provider. If the other fees are not related to the salary/wage of the positions filled, the allocation can be based upon the number of Ohio placements to all placements.

If you have any questions regarding this matter, you should call us at 1-888-405-4039.

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