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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 39  
135<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 39's Bill Analysis](#)

**Version:** As Reported by House Ways and Means

**Primary Sponsor:** Sen. Schaffer

**Local Impact Statement Procedure Required:** Yes

Phil Cummins, Senior Economist

### Highlights

- The bill allows a delivery network company (DNC), acting as a marketplace facilitator, to apply for a waiver from the Ohio Tax Commissioner reassigning the obligation for the collection of sales and use tax on goods sold, from the DNC to local merchants (LMs). Following waiver approval, sales and use tax would be collected on all DNC transactions for their delivery network services.
- State and local governments are not expected to incur sales and use tax revenue losses from the bill's changes to payment requirements of DNCs and LMs, with minimal cost anticipated to the Ohio Department of Taxation from administrative processing requirements.
- The bill's changes to law governing property tax complaint filings may tend to reduce revenues of some school districts and local governments.

### Detailed Analysis

#### Network delivery service sales and use taxation

The bill acts to separate the collection of sales and use tax on goods sold by a "local merchant," from "delivery network services" sold by "delivery network companies" acting as marketplace facilitators, which transport goods directly to consumers. All three terms are newly defined by the bill. In general, under current law, delivery charges for the preparation and transportation of tangible personal property, if sold by the seller of that property, are included in the price of a sale and consequently assessed sales and use tax.<sup>1</sup> The exception to this is for

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<sup>1</sup> R.C. 5739.01(H)(1).

delivery charges either not directly imposed by the seller of the purchased goods, or imposed on the transportation of nontaxable items, e.g., food.<sup>2</sup> In the latter case, sales and use tax may be apportioned so as to only collect tax on the share of the delivery charge allocated to the taxable property. The bill changes this for delivery network companies (DNCs) receiving a waiver, making all delivery charges imposed by their company, including those assessed on the transportation of nontaxable items, taxable.

Following receipt of a waiver by a DNC, local merchants (LMs) transacting with that DNC would be required to collect and remit sales and use tax on all taxable goods sold by the LM and delivered by the DNC. As a result, state and local governments are not expected to incur revenue losses from the bill, as the collection of sales and use tax would merely be shifted from the DNC, the marketplace facilitator, to the LM, the marketplace seller. Moreover, some delivery charges previously exempt from taxation, such as those imposed on the conveyance of food, would become taxable for DNCs obtaining a waiver; to the extent the DNCs receiving a waiver do not currently collect tax on the portion of their delivery fees that transport nontaxable items, this may increase tax revenue. Lastly, a minimal cost is anticipated for the Ohio Department of Taxation from administrative processing requirements.

### **Food & delivery services spending**

Ohio households spend, on average, close to \$254 on food prepared and consumed at home and \$89 on food prepared outside the home or delivered, each week.<sup>3</sup> And the sales of third-party delivery services are rising significantly, with leading online grocery companies across the nation generating tens of billions of dollars in e-commerce sales annually.<sup>4</sup> This is not a trend isolated to Ohio, as market research and consulting firms continue to predict strong compound annual growth worldwide for online grocery<sup>5</sup> and restaurant food delivery services.<sup>6</sup> As the share of these services increase, the proportion of Ohio sales and use tax collected through third-party delivery services is expected to rise.

### **Property tax complaint and appeal limits**

The bill strengthens provisions enacted in H.B. 126 of the 134<sup>th</sup> General Assembly. It may tend to reduce property tax revenues to some political subdivisions.

Under the bill, a political subdivision can file a property tax complaint with respect to property the subdivision does not own only if the complaint is based on a sale occurring within the two years preceding the year for which the complaint is filed. Current law requires that the

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<sup>2</sup> Ohio Administrative Code 5703-9-52.

<sup>3</sup> [U.S. Census Bureau](#) Household Pulse Survey, Week 63.

<sup>4</sup> [Statista](#) article entitled “Total grocery e-commerce sales of leading online grocery companies in the United States in 2023,” published March 25, 2024.

<sup>5</sup> [McKinsey & Company](#) article entitled “The next S-curve of growth: Online grocery to 2030,” published March 31, 2022.

<sup>6</sup> [Bloomberg Second Measure](#) article entitled “Which company is winning the restaurant food delivery war?” published April 15, 2024.

property was sold before that year, but does not expressly include any limit on when that sale occurred.

Subdivisions would be specifically required to allow property owners the opportunity to publicly comment on a resolution that would authorize the filing of a complaint against that property.

The bill prohibits a school district from filing a property tax counter-complaint unless the original complaint was filed by the owner or lessee of the property. Under current law, school districts may file a counter-complaint with respect to any complaint, so long as the complaint seeks at least a \$50,000 change in the property's fair market value.

An existing law that generally prohibits political subdivisions from appealing board of revision (BOR) decisions to the Board of Tax Appeals (BTA) is modified to (a) specifically prohibit appeals by third parties who do not own the property subject to the complaint and (b) expressly prohibit a subdivision from appealing a BOR decision on a complaint filed by such a third party.

The bill applies all these changes to original complaints, counter-complaints, or appeals filed on or after the bill's 90-day effective date.

### **Commercial activity tax**

For commercial activity tax purposes, gross receipts from the sale or lease of a motor vehicle must only be situated to Ohio if a certificate of title with an Ohio address is issued for that vehicle. The bill applies retrospectively and prospectively to all tax periods. The fiscal effect is indeterminate.