



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 466 of the 131st G.A.

**Date:** May 9, 2016

**Status:** As Passed by the House

**Sponsor:** Rep. R. Smith

**Local Impact Statement Procedure Required:** Yes

**Contents:** To specifically exempt from the sales and use tax digital advertising services and certain taxable electronic services that might be provided incidentally to digital advertising services

### State Fiscal Highlights

- Specifically exempting digital advertising services and certain taxable electronic services that might be provided incidentally to digital advertising services will reduce sales tax receipts by an indeterminate amount. The revenue loss depends on the extent to which the Ohio Department of Taxation successfully implemented its recently released information bulletin regarding electronic information services.

### Local Fiscal Highlights

- The sales and use tax is a GRF tax, and the Local Government Fund (LGF) and Public Library Fund (PLF) receive 1.66% and 1.70%, respectively, of GRF taxes during FY 2016 and FY 2017. The PLF share will revert to 1.66% beginning in FY 2018 under current law. Enacting H.B. 466 will reduce LGF and PLF receipts by an indeterminate amount.

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### Detailed Fiscal Analysis

H.B. 466 specifically exempts from the sales and use tax digital advertising services and certain taxable electronic services that might be provided incidentally to digital advertising services. Although some services satisfying the bill's definition of digital advertising services may currently qualify as a personal or professional service, the bill explicitly classifies all digital advertising services as a personal or professional service, effectively exempting all digital advertising services from sales and use tax.

Personal or professional services are not subject to the sales and use tax, but some digital advertising services could be regarded as "electronic information services," which are taxable under current law. In December 2015, the Ohio Department of

Taxation updated an information release<sup>1</sup> to stipulate that some digital advertising transactions are taxable to the extent an Internet access provider or online service provider "is providing its service to a consumer for the consumer's use in business." According to the Department of Taxation, the updated information release "is not a result of any change in Ohio sales and use tax law nor does it reflect any change in the application of the law."

LSC can only speculate on the fiscal impact of H.B. 466 because there are no reliable statistics on the subcomponent of digital advertising that overlaps with electronic information services. LSC cannot quantify how much revenue was collected by the Department of Taxation prior to its December 2015 information release. Some businesses consuming these electronic information services may have remitted the use tax on their own accord, but businesses providing the service may not have collected the sales tax, which could lead to future tax enforcement actions. Furthermore, LSC is unclear which types of digital advertising (e.g., email marketing, social media marketing, display advertising, search engine optimization, pay-per-click, and other performance-based search engine marketing) could be construed to have electronic information services as the "true object" of the transaction. A Department of Taxation official reports that the Department's analysis also concludes that the bill will result in an indeterminate revenue loss.

If imminent and ongoing tax enforcement actions by the Department raise revenue, those indeterminate tax revenue amounts would be foregone by the enactment of H.B. 466. The sales and use tax is a GRF tax, and the Local Government Fund (LGF) and Public Library Fund (PLF) receive 1.66% and 1.70%, respectively, of GRF taxes during FY 2016 and FY 2017. The PLF share will revert to 1.66% beginning in FY 2018 under current law. Enacting H.B. 466 will reduce LGF and PLF receipts by an indeterminate amount.

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<sup>1</sup> "On-line Services and Internet Access," ST 1999-04, Department of Taxation (issued January 1999, updated December 2015), available at [http://www.tax.ohio.gov/sales\\_and\\_use/information\\_releases/index\\_sales.aspx](http://www.tax.ohio.gov/sales_and_use/information_releases/index_sales.aspx).