

# Taxability of Electronic Information Services Computer Services and Automatic Data Processing

**Keith Wilson**, Assistant Administrator, Sales & Use  
Tax, Business Tax Division

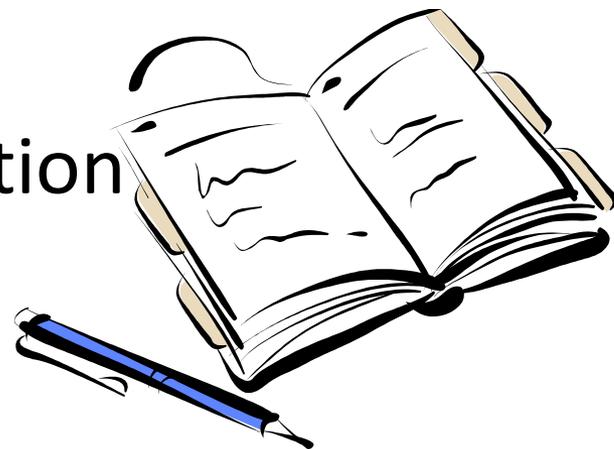
**Phyllis J. Shambaugh**, Counsel Sales & Use Tax,  
Business Tax Division



Department of  
Taxation

# Agenda for Today's Presentation

- What are Electronic Information Services?
- What is Automatic Data Processing?
- What are Computer Services?
- How Do I Source Services?
- What is Multiple Points of Use?
- Questions



# What Services Are Taxable?

- Automatic data processing, computer services, and electronic information services provided for use in a business. R.C. 5739.01(B)(3)(e)
- Transaction is not taxable if the true object is the receipt of personal or professional services to which the data processing, computer services, or electronic information services are incidental or supplemental. Ohio Admin. Code 5703-9-46

# Electronic Information Services

## Definition—R.C. 5739.01(Y)(1)(a)

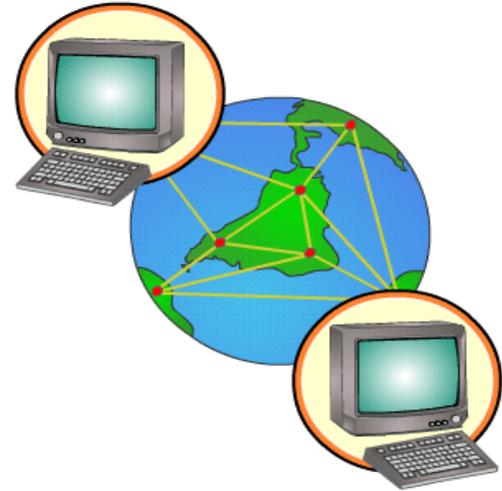
Providing access to computer equipment for the purpose of either:

- Examining or acquiring data stored in the computer equipment; or
- Placing data in the computer equipment to be accessed by others.

# Electronic Information Services

## Examples:

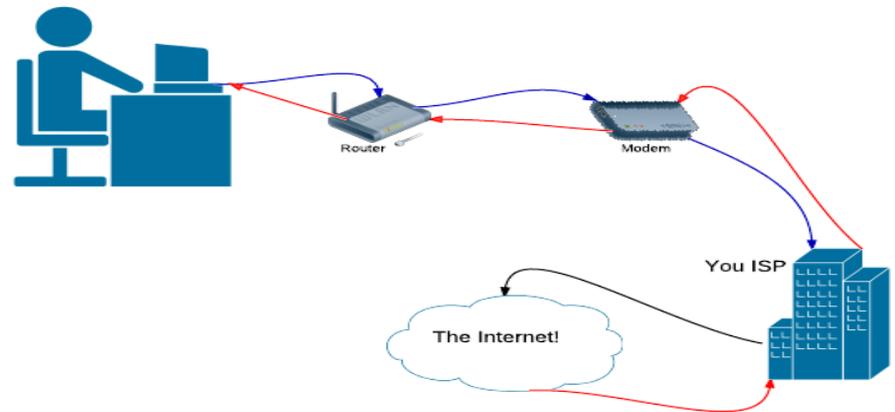
- Internet access
- Service to remotely access your office computer
- Webinars
- Email service



# Electronic Information Services

Is the vendor providing access to computer equipment so you can examine data? Or so you can place data into computer?

- If so, service is taxable if used in business.



# Automatic Data Processing

## Definition—R.C. 5739.01(Y)(1)(a)

Processing others data or providing access to computer equipment for the purpose of processing data

- If benefit of service is received in Ohio, it is taxable.

# Automatic Data Processing

## Examples:

- Software as a service (SAAS)

➤ “Software in the cloud”

- Is SAAS the provision of a service or the licensing or rental of tangible personal property (prewritten software)?

➤ In Ohio, it is taxed as a service

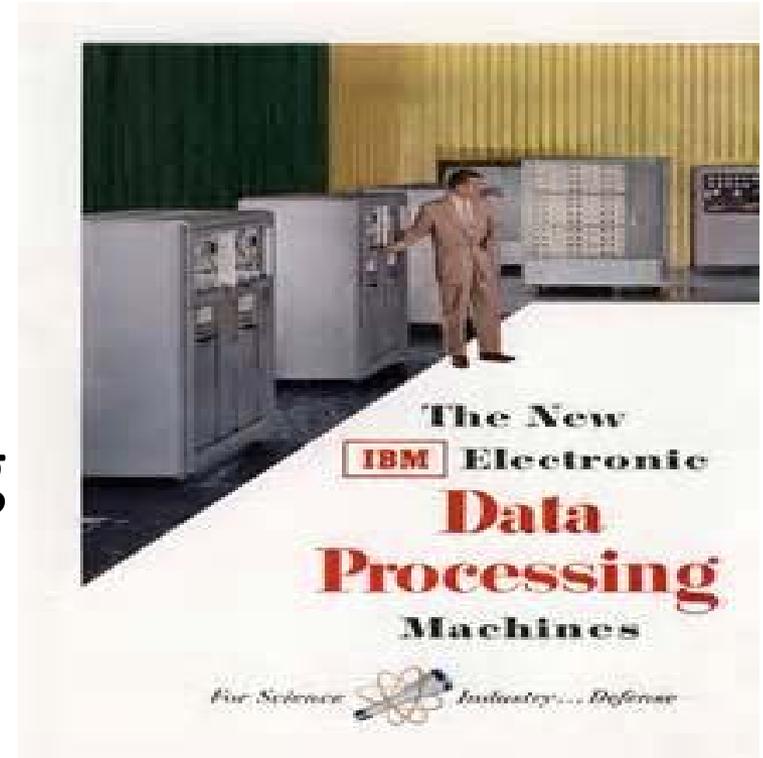


# Automatic Data Processing

Is the vendor processing  
your raw data?  
If so, it is taxable.

➤ Examples:

- ❖ Payroll processing
- ❖ Billing services



# Computer Services

“Computer services” means:

- specifying computer hardware configurations and evaluating technical processing characteristics,
- computer programming, and
- training of computer programmers and operators.



Taxable only if performed in conjunction with the sale of computer equipment or system software

# Computer Services

Specifying computer hardware configurations includes:

- Instructing others in the proper set-up, installation, and start-up of computer hardware.



# Computer Services

Evaluating technical processing characteristics includes:

- Reviewing, testing or otherwise ascertaining the operating capacity or characteristics of computer hardware or systems software.
- It does not include conducting feasibility studies or analysis of hardware or software needs or alternatives



# Computer Services

Computer programming includes:

- Writing, changing, debugging, or installing systems software; or

Training computer programmers and operators in the operation and use of computer equipment and its system software.

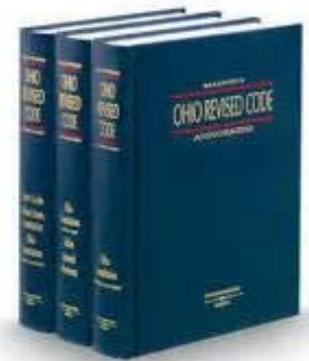
See Ohio Admin. Code 5703-9-46



# Sourcing

Services are sourced according to the criteria set forth in R.C. 5739.033(C)

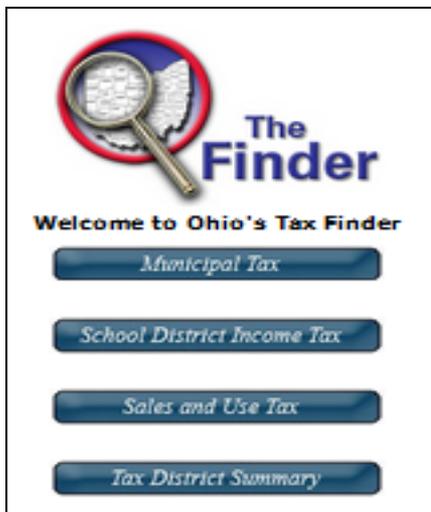
- If the consumer receives the service at the vendor's place of business — source to the place of business
- If the service is not received at the vendor's place of business — source to the location known to the vendor where the consumer receives the service



# Sourcing

Why is sourcing important?

- Ohio allows counties to enact an additional local sales and use tax
- Sourcing determines the proper tax rate
- The Finder—online tool for determining tax rate
  - An app for determining tax rate is now available



**Lookup By Address**

**Address:**  ?

**Suite, Apt, Lot:**  ?

**City:**  ?

**State:**

**Zip Code:** (Note: Zip + 4 is optional)  -  ?

**Date of Sale:** 2 / 23 / 2015 ?

**Taxable Amount:** \$  ?

denotes a required field.

**Sales Tax Rate Finder**

To determine sales tax rate, enter address below...

Street

City

Zip

or, tap below for current location.

List

# Sourcing

ADP & EIS are sourced to the location where the consumer receives the benefit of the service.

- An Ohio company that accesses software as a service from its Ohio office receives the benefit in Ohio.
- An Ohio company that accesses EIS from its Ohio office receives the benefit in Ohio.



# Multiple Points of Use Exemption Certificate

What if I use the software or electronic services in more than one state?

- Ohio allows consumer to apportion usage using multiple points of use exemption certificate. R.C. 5739.033(D)
- Consumer required to provide vendor a multiple points of use exemption certificate
- If vendor receives fully completed MPU, vendor relieved of liability of collecting and remitting tax on that sale
- Consumer is required to pay use tax to the appropriate jurisdictions



# Multiple Points of Use Exemption Certificate

- Consumer can use any reasonable, consistent, and uniform method of apportionment
- Common method to apportion usage
  - Unassigned users plus Ohio users divided by total users

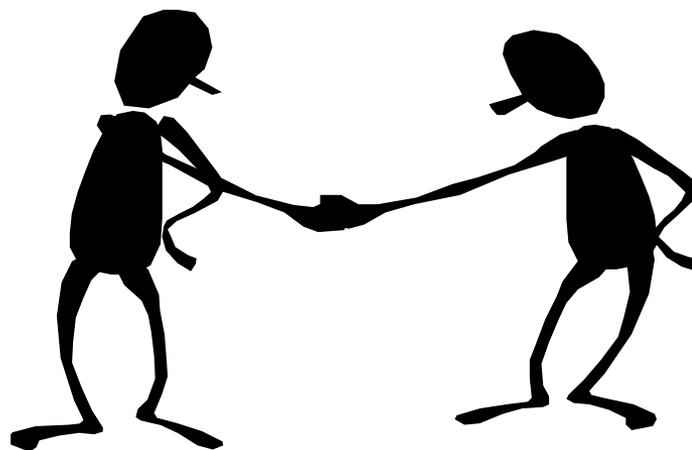
# Voluntary Disclosure Agreements

- Already registered taxpayers may come forward
- Generally a three year look back on uncollected sales tax and unreported use tax
  - No penalty, but interest must be paid
- Tax collected not remitted
  - Unlimited look back, 10% penalty plus interest
- VDA application (ST VDA)
  - Available on the Department's website at [tax.ohio.gov](http://tax.ohio.gov)
  - May be emailed to the VDA mailbox



# Voluntary Disclosure Agreements

- Initial VDA application may be anonymous
- VDA application must be submitted prior to any oral or written contact by the Department.
- Taxpayer must disclose the taxable purchases to the tax commissioner



# Voluntary Disclosure Agreements

- Taxpayer must make a non-refundable payment of the tax and interest
- Taxpayer must register and file for appropriate sales and use tax accounts
- Tax commissioner will forego previously unbilled sales/use tax liability prior to the disclosure period
- Tax commissioner will forgo penalties except in case of tax collected/not remitted
- Tax commissioner may audit the disclosure period

# Advantages to a Voluntary Disclosure Agreement

- Waive civil and criminal penalties (except for tax collected, but not remitted)
- Limit liabilities to the voluntary disclosure period (except for sales tax collected, but not remitted)
- Not disclose the company's identity to other parties (except as provided/allowed)
- Allow the company to remain anonymous, if desired, until the signed agreement is returned



# How Do I Stay Up to Date on Use Tax Law?



<http://tax.ohio.gov/ohtaxalert.aspx>

# How Do I Contact the Department?



## General Information for Sales & Use Tax

- Phone: 1-888-405-4039
- P.O. Box 530, Columbus, OH 43215
- Or visit [tax.ohio.gov](http://tax.ohio.gov)

# Questions



- Phyllis Shambaugh
  - 614-466-4974
  - phyllis.shambaugh@tax.state.oh.us
- Keith Wilson
  - 614-466-6743
  - keith.wilson@tax.state.oh.us