

State seeks to collect sales tax

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With the recent vote by Lake County commissioners to raise the county's total sales tax rate from 6.25 percent to 6.75 percent, Ohio's sales and service tax again is in the news.

So is the state's campaign to bring its legal weight to bear against individuals and businesses whose failure to make required payments to the Ohio Department of Taxation accounts for a shortfall in sales tax receipts officially placed at \$416.6 million.

According to records provided by the office of Ohio Attorney General Mike DeWine and analyzed by The News-Herald, sales tax delinquencies as of Feb. 1 are slightly more than \$28 million in Lake County and just under \$6 million in Geauga County.

Those totals, statewide and in the two counties, are roughly the same as they were in January 2006, when The News-Herald last published a article about sales tax delinquencies.

DeWine is unhappy with this state of affairs.

"The law is clear on how this money should be handled," he said.

"These people and companies have no right to withhold payment (to the Ohio Department of Taxation). All taxpayers will be and should be indignant about other people not paying their taxes."

The sales tax has a statewide base rate of 5.5 percent. It is a so-called "trust tax," levied at the point of sale.

After the sale, the merchant is bound by law to remit to the state all money collected for sales tax. Also in accordance with state law, an estimated 244,000 individuals and businesses have purchased \$25 vendor licenses and registered with the Ohio Department of Taxation.

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In fiscal year 2011 — July 1, 2010 through June 30, 2011 — the state collected a total of \$7.768 billion in sales and use taxes. It is the second-largest revenue-producer for the state after individual income tax.

The state keeps the lion's share of sales tax receipts, with counties and local governments receiving money generated by the tax beyond the 5.5 percent reserved for the state.

Lake County Commissioner Ray Sines said he had no idea the county's delinquency total was so high when the commissioners raised the sales tax.

"The way I look at it, it's theft," Sines said of sales tax delinquency.

Gary Gudmundson, director of communications for the Ohio Department of Taxation, said the department "aggressively pursues" delinquencies.

Since 2006, the first notice of delinquency is sent out 25 days after the due date. Before 2006, the lag time was 50 days. After 45 days of delinquency the account is certified and turned over to the Attorney General's office.

"Merchants need to remember this isn't their money. It's the taxpayers' money," Gudmundson said. "We expect every dollar to come through. When that doesn't happen, it's troubling."

The Attorney General's Office uses special counsels in all of Ohio's 88 counties to deal with delinquent accounts. For fiscal year 2012, the special counsel for Lake and Geauga counties is Casey P. O'Brien of the Petersen & Ibold firm in Chardon.

DeWine said special counsels are not on retainers. Instead, the fee they are paid is based on the amount of delinquencies they recover through payment plans, wage garnishment and other legal avenues. Individuals and businesses with sales tax delinquencies also can be hit with liens and repossessions.

"Are we happy with where we are? No. We are constantly re-assessing the collection process and trying to do it better," DeWine said. "We need to make sure the collector gets the right information."

An estimated 5 to 10 percent of registered individuals and businesses are delinquent in their monthly or quarterly Ohio sales tax payments.

"That's the way it is with a lot of things in life," DeWine said. "The vast majority of people out there are law-abiding. You also have people who are trying to game the system."

On the spreadsheet forms examined by The News-Herald, there are thousands of line entries for delinquencies in Lake and Geauga counties. Some are single entries with delinquencies of just a few dollars. Other delinquencies sprawl over 30 or more lines and, when totaled, run into the hundreds of thousands of dollars.

Dan Powers, owner of Powers Landscaping Inc. of Chardon, agreed to talk about his company's delinquency of \$125,562.04.

"I've had to deal with liens and garnishments," Powers said. "It would help to get this economy back and moving. When that happens, I think we'll be able to work through this and get it paid off relatively quickly."

DeWine said he is "generally not sympathetic at all" when apprised of explanations given by people for their going delinquent on sales tax payments.

Nor is he willing to write off

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a permanent level of sales tax delinquencies as the price of doing business in a state as large as Ohio.

"That money is still owed and should be paid," DeWine said.

"We'd like to collect every dollar, of course. Will we ever get that balance down to zero? That won't happen. Some of this debt is very, very old. The older the debt, the less likely we are to collect."

DeWine said that at present, Ohio law does not allow for the filing of criminal charges against individuals responsible for sales tax delinquencies.

"We have a principal in this country, dating back to colonial times, that we don't put people in prison for debts," he said.

However, DeWine said he is open to the argument that the more egregious examples of sales tax delinquency in Ohio rise to the level of criminal acts.

"Certainly, damage has been done to the state and to taxpayers," DeWine said. "You would need to have evidence presented in court that establishes intent at the time funds are withheld. The legislature might be able to look at that and craft a statute."