

OHIO'S



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Ohio Department of Taxation

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Stepping In; Stepping Up

Slogar Named Deputy; Ashbridge Named CIO

To enable the Ohio Department of Taxation to achieve its goal of enhancing taxpayer service, modernizing its operations and addressing human resource development issues, Commissioner Tom Zaino created two new positions. They are Deputy Tax Commissioner for Performance Excellence and Chief Information Officer.

Boris Slogar, P.E., is the Deputy Tax Commissioner for Performance Excellence for the Ohio Department of Taxation. Mr. Slogar, who joined the Department in February, assists Commissioner Zaino in a number of capacities. His main duty is leading the Department's new Performance Excellence Division, which is responsible for:

–Overseeing the Department's performance excellence initiatives;

–Coordinating and submitting the Department's application for the Ohio Award for Excellence (OAE) for purposes of improving customer and taxpayer service, increasing efficiency, and reducing operating costs;

–Implementing all improvements necessary to qualify for OAE; and

–Developing and implementing the Department's effort to create and sustain a high performance workplace.

Previously, Mr. Slogar worked at the Ohio Department of Natural Resources as an Engineering Manager. He is a Certified Member of the Ohio Award for Excellence Board of Examiners, is an OAE Examiner Instructor, and is a Member of the OAE Council.

Commissioner Zaino said, "I'm very pleased to have Boris on board. I have known Boris personally for several years and he understands my approach and my commitment to quality and excellence."

Later this year, the Department will launch an e-Government initiative which will increase the importance of technology in the Department's operations. To ensure success with this initiative, Commissioner Zaino created the position of Chief Information Officer (CIO). In March, Gil Ashbridge began his new role as CIO.

Mr. Ashbridge started with the Department in 1973. He began his career here as a tax agent, working his way up through numerous other positions over the years. He, most recently, had been serving as Administrator of the Department's Information Services Division.

"The role of CIO will be new and challenging for Gil, but his knowledge of the Department's business operations and his IT experience make him the right person for this job."

These new positions will assist the Department in fulfilling its mission of providing quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.

Beckner Named IFTA President

Richard Beckner, administrator of the Excise and Motor Fuel Tax Division, has been elected to a one-year term as president of the board of trustees of the International Fuel Tax Association, Inc. (IFTA). IFTA is a multi-jurisdictional fuel tax collection organization that oversees an agreement which allows a commercial trucker traveling through many jurisdictions to pay fuel use taxes in a base state. The base state then distributes fuel tax revenues to the jurisdictions in which the truck operated. The 48 contiguous U.S. states and 10 Canadian provinces are currently members of IFTA.

Mr. Beckner has served on the IFTA board since 1997. He said the goal of the organization is to provide the information and services necessary for the various jurisdictions to effec-

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Mission: Simplify

An effort to give businesses a break from the burden of bureaucracy and paperwork is taking shape. Commissioner Zaino and others across state government have been working to implement House Bill 202 (122nd General Assembly) which called for more efficiency in the process of filing forms with the state of Ohio. On February 15, Commissioner Tom Zaino gave Governor Bob Taft a plan to meet that mandate and make it easier to do business in Ohio.

Currently, businesses operating in Ohio must frequently report and make payments to multiple state agencies. Further, the information filed with each agency is often redundant and the due dates for making reports and payments to these agencies are inconsistent with each other. Businesses must dedicate significant amounts of time and resources to comply with these reporting and payment requirements.

Last December, Governor Taft asked Commissioner Zaino to chair an Interagency Cabinet Team to address the paperwork problem and H.B. 202. The goal of this Team was to develop an action plan for implementing the charge of H.B. 202: i.e., to provide a single reporting and payment system for Ohio businesses.

With Commissioner Zaino, members of the Interagency Cabinet Team include Secretary of State Kenneth Blackwell, several department Directors, Governor's office staff, Taxation staff, and other interested parties. The Team met numerous times between December and February.

Based on its work, the Team recommended a Three Phase Action Plan. Phase I provides immediate and significant benefits by establishing a new Pilot Program for nearly 200,000 Ohio small businesses to simultaneously report and pay liabilities associated with Workers' Compensation, Unemployment Tax, Withholding Tax and Sales Tax via the Internet beginning January, 2002. This approach complements and supports the State's long-term web portal strategy, which would offer one central location where customers can access all state resources over the internet. Phase II involves studying the benefits of operational changes and possible future law changes needed to permit expansion of the Pilot Program and development of an implementation workplan. Phase III involves implementing the Phase II workplan, which could provide for a single paper form, add other agencies to the program, and permit an on-line registration system for new businesses.

In addition, the Governor asked the Small Business Advisory Council to create a technical advisory group to consult with the Interagency Team regarding specific changes that will reduce this administrative burden on small businesses. Commissioner Zaino reports that the representatives from Ohio small businesses are supportive of this Three Phase Action Plan.

Commissioner Zaino said, "I strongly believe that the Action Plan is a prudent and cost-effective approach to providing the benefits envisioned by H.B. 202."

INTERNET *update*

Check out the Department of Taxation's new and improved website (www.state.oh.us/tax). The site was recently redesigned to make it more user-friendly. To go along with the Department's website there is an updated *What's New* section on the home page. There are three new topics under this section.

1) *Check the status of your Income Tax refund online.* No longer do taxpayers who have access to the internet need to call the Department to find out the status of their refund. All they need to do is enter their social security number, along with the amount of their refund to find out when they will receive their refund.

2) *Need tax help? E-mail us directly with your specific tax*

questions. As discussed in previous issues of the *Ohio's State Tax Report*, taxpayers have the option to e-mail their tax questions to the Department. Feedback from taxpayers about this service has been very positive.

3) *Pay your individual and school district income tax by credit card.* For the first time, taxpayers can pay their individual and school district income tax by credit card. There is a direct link from the Department's website to the vendor supplying this service. (The vendor charges a 2% convenience fee.)

The *Frequently Asked Questions* sections for the different tax types have also been updated. Remember to visit and utilize the Department's user-friendly website.

Remember to Round

The Tax Commissioner, exercising new legislative authority, required rounding on the Ohio individual income tax return, school district income tax return, and corporate franchise tax return. The forms for these returns have zeros in the cents column, indicating

that the dollar amount must be rounded. Rounding on the withholding returns (IT-501 and IT-941) is an option this year, but it is being reevaluated for future years.

COMMENTS *from the commissioner*



Commissioner Zaino

In January, 2000, a seventeen-member team from the Department of Taxation met for a retreat to develop a Strategic Vision for the Department to enable us to address many of the Department's human resource issues and enhance our ability to perform our Mission. In general, the Strategic Vision calls on us to increase our efficiency and effectiveness by breaking down artificial barriers created by our structure. I

want to take this opportunity to update you on where we stand organizationally.

To increase our efficiency and effectiveness, the Retreat Team concluded that additional functionalization of the Department is necessary. Numerous I-Teams (Implementation Teams) were created and we have implemented or are now starting to implement many of their suggestions. In order to make the necessary changes, the Department must undergo some organizational changes.

As you read earlier (page 1), the changes have yielded the appointment of one new Deputy Tax Commissioner, Boris Slogar, and a Chief Information Officer (CIO), Gil Ashbridge, who will report directly to me. The CIO's sole responsibility will be to manage our technology initiatives in coordination with our business units. The new Deputy Tax Commissioner will lead our Performance Excellence Division, which will oversee the Department's performance excellence initiatives (including our participation in the Ohio Award for Excellence Program) for purposes of increasing efficiency, improving taxpayer service, and reducing operating costs. The areas of Administration (Deputy Tax Commissioner Clare Long) and Tax Policy (Deputy Tax Commissioner Carol Bessey) will remain unchanged.

Jim Lawrence will be the Deputy Tax Commissioner of Tax Operations. Eventually, this will include all of the tax operating divisions. It will be the responsibility of each of the tax operating divisions to own, control and coordinate the programs related to their taxes. Pat McAndrew will be the Deputy Tax Commissioner of Tax Services, which will include the newly created Taxpayer Services & Review Division and the Audit Division, along with other existing service divisions. It will be the responsibility of each Tax Service Division to provide their specialized services to the operating divisions in a cost effective manner. In other words, the tax operating divisions will out-source many of the functions which are common to several divisions, while retaining responsibility for all other aspects of their tax. This will

ensure that nothing falls through the cracks, yet permits us to achieve the cost savings and efficiencies associated with functionalization.

The Audit Division will be responsible for performing corporate franchise, personal property, and sales/use tax audits. It will also have Audit Selection, Audit Review and Audit Resolution sections for each of these taxes. The District Offices (minus the Audit Agents) will initially report to Pat McAndrew. Eventually, the District Offices and the Taxpayer Services Division will be merged to create the new Taxpayer Services and Review Division, which will coordinate all our taxpayer service functions statewide, and support our review programs, such as the Habitual Offenders Program (HOP).

Based on recommendations from the Legal I-Team, another major change is with the Office of Chief Counsel. Each operating division will be assigned a legal counsel who will have solid-line reporting to Fred Nicely, the Department's Chief Counsel, and dotted-line reporting to each division's Administrator. This change will facilitate communication among our various operations and permit us to develop more uniform policies among our different taxes. The Legal Division is also being revamped to empower our hearing officers to better manage our documents for public access, and to more effectively manage our litigation strategy.

Another change is with the revised Tax Commissioner Agent Series and the new Auditor Series. We have worked closely with our management team and the Union to develop new specifications to create better defined career opportunities for all our tax professionals. The Department of Administrative Services is currently in the process of writing the classification specifications for these new positions, based on our joint efforts with the Union. This spring, we will begin by offering our Tax Commissioner Agent (TCA) 4's and 5's the opportunity to become audit agents. Then, after evaluating our staffing needs for the Audit Division and the Taxpayer Services & Review Division, we will post positions in these areas to address our needs. We are in the process of finalizing similar changes for our supervisors.

This reorganization is a huge undertaking, which will take time. Not only do structural changes need to be made, but new positions need to be filled and roles need redefined. These changes are the result of overwhelming support by individuals representing a wide cross-section of the Department. I continue to strongly believe that the Strategic Vision developed at the Retreat will greatly benefit both our employees and the taxpayers of Ohio. I appreciate your support and patience as we roll-out these changes.

COURT *decisions*

The following are significant decisions of the Ohio Supreme Court, Court of Appeals, and the Board of Tax Appeals (BTA) announced in December, 2000 through February, 2001 in the areas of Corporation Franchise, Personal Property, Real Property, and Sales and Use taxes. Court decisions are compiled by Peter Angus, Esq., CPA, Problem Resolution Officer.

CORPORATION FRANCHISE TAX

Delta Airlines, Inc. v. Tracy (Jan. 12, 2001), BTA Nos. 96-471, 472

For taxable years 1988-91, capital gains resulting from sales of aircraft outside Ohio were included, on audit, in the apportionable income of a corporate franchise taxpayer under Ohio Administrative Code Section 5703-5-09(H), which provides that "Capital gains attributable to the disposition of aircraft shall be treated as apportionable income rather than allocable income." The taxpayer contended that this Administrative Code provision conflicts with – and is therefore invalid under – the requirement of Ohio Revised Code 5733.051(D) that capital gains be allocated rather than apportioned. In support of the audit, the Commissioner cited the provisions of R.C. 5733.05(B)(2)(d), which permit him to include one or more additional factors to represent the taxpayer's allocated or apportioned base in Ohio if the provisions of R.C. 5733.05(B) do not fairly represent the extent of the taxpayer's business activity in Ohio. The BTA found that the Commissioner had not shown that the provisions of R.C. 5733.05(B) failed to represent the extent of the taxpayer's business in Ohio, and had not demonstrated that the provisions of Administrative Code Section 5703-5-09(H) were specifically tailored to this taxpayer's situation. Lacking such evidence, **the BTA found** the application of Administrative Code Section 5703-5-09(H) to the taxpayer's reporting of capital gains from sales outside Ohio to be an unlawful extension of the Commissioner's grant of authority.

Federal Express Corp. v. Tracy (Jan. 12, 2001), BTA No. 96-589

The inclusion, on audit, in apportionable



income of capital gains on the sales of aircraft outside Ohio was **reversed by the BTA** under the reasoning set forth in *Delta Airlines, Inc. v. Tracy* (Jan. 12, 2001), BTA Nos. 96-471, 472.

PERSONAL PROPERTY TAX

Centerior Fuel Corp. v. Zaino (2001), 90 Ohio St. 3d 540

The taxpayer was a lessor of nuclear fuel rods to electric public utility companies. On filing its personal property tax returns for tax years 1990-1995, the taxpayer excluded its capitalized construction interest costs from the book value of the rods. On audit, these interest costs were added back into the valuation. Under R.C. 5711.21(C), the true value of personal property leased to a public utility and used by it directly in the rendition of a public utility service is to be determined in the same manner as the true value of such property owned by a public utility. Under 5727.11(G), capitalized construction interest is not included in the true value of personal property of public utilities. **The Supreme Court therefore held** that capitalized construction cost interest is not includable in the true value computation of property leased to a public utility for use by it directly in rendering a public utility service.

B.J. Alan Co. v. Zaino (Jan. 26, 2001) BTA No. 99-448

The taxpayer, a fireworks distributor, contended that a portion of its property was not taxable because it was not used in business, but was held for storage only and for shipment outside Ohio. R.C. 5701.08(B)(1) provides an exception from the definition of "used in business" for property which is to be shipped from a

warehouse or place of storage in Ohio to the owner of the property or persons other than customers at locations outside this state for use, processing, or sale. In this case, the fireworks at the taxpayer's Ohio facility were taken from master cartons, combined in assortments, wrapped, placed into boxes, and shipped. **The BTA held** that this combining of the various fireworks into packages constituted processing, and the property therefore did not qualify for the "storage only" exception.

Rosemont Industries v. Tracy (Dec. 8, 2000), BTA No. 97-1311

In 1987, the taxpayer submitted to the Hamilton County Commissioners a proposed enterprise zone agreement authorized under R.C. 5709.62(B). The proposal included estimates of the amounts which would be invested in real and personal property. The estimate for machinery and fixtures was \$10,000; the total was estimated at \$540,000. Subsequently, the City Council of Reading approved and consented to the proposed agreement and the Hamilton County Commissioners passed a resolution acknowledging receipt of the proposal. The taxpayer and the Commissioners entered into an agreement in which the total cost of the facility was set forth, subject to 20% variance. The taxpayer was granted a tax exemption pursuant to R.C. 5709.63(A)(1) of 50% of the tangible personal property first used in business in Ohio. On audit for tax years 1993 and 1994, the exemption for machinery and equipment was allowed only to the extent of 50% of \$12,000, which was comprised of the \$10,000 estimate in the proposal plus 20%. The taxpayer contended that no limit should be applied because the agreement itself did not include the breakout figure of \$10,000 for machinery and equipment, but only provided the total estimate of \$540,000. **The BTA agreed** that no limit could be placed on the 50% exemption for machinery and equipment because no such limit had been expressly incorporated in the estimates in the enterprise zone agreement.

(Court Decisions—cont'd. on page 9)

A Bow to Bowers

A former Ohio Tax Commissioner was selected as the first inductee into the brand new Ohio Tax Hall of Fame during a special ceremony at the annual Ohio Tax Conference held in Columbus in January.

Current Ohio Tax Commissioner Thomas Zaino announced the inductee, Stanley J. Bowers. Mr. Bowers died in 1992. Ruth Bowers, his widow, and their grandson, Fred Nicely, accepted the award. Fred is Chief Counsel of the Department of Taxation.

Commissioner Zaino said the purpose of the Ohio Tax Hall of Fame is to recognize the people whose contributions to Ohio's state and local tax systems span decades, and he said Mr. Bowers certainly was one of those people. The Hall of Fame is jointly sponsored by the Department and the Ohio Chamber of Commerce.

The Commissioner noted that Mr. Bowers had a career spanning 56 years as a state tax examiner, tax commissioner, and a private practitioner. He also served as president of several national tax organizations and was an active speaker and a writer.

Mr. Bowers was born in Pickaway County in 1912 and lived much of his life in the Pickaway County community of Ashville. He studied engineering at Ohio Northern University and worked summers on passenger liners that sailed around the world.

He was still in college when the Great Depression hit, and had to drop out and get a job to finance his education. He heard about an opening as a tax agent for the State of Ohio and had to overcome a big stumbling block to get the job: tax examiners at that time were required to have an automo-

bile. He did obtain an auto and started working as a state tax agent in 1933. He was one of three tax agents at the Department. Their main duties were to administer the corporate franchise and personal property taxes. In response to the Great Depression, the Ohio General Assembly enacted new taxes on motor fuel, cigarettes and theater admissions. Later in the 1930's, sales and use taxes were enacted. By then Mr. Bowers was one of about 900 employed by the Taxation Department, which is about three-quarters of the number of employees at the Department today.

Mr. Bowers worked, and at the same time, studied accounting and law at Franklin University. He earned a law degree in 1939 and was admitted to the Ohio Bar in 1940. He spent several years as an assistant attorney general in the 1940's, and then returned to the Department of Taxation as head of the personal property tax division. He subsequently spent nine years as a deputy tax commissioner under two commissioners, Emory Glander (later an attorney in private practice) and John Peck (later a U.S. district court judge).

Mr. Bowers went on to serve as tax commissioner under four governors, 1954-63. He left state service in 1963 after 30 years and began private practice as an attorney in the Columbus firm of Caren and Bowers. He was executive director of the National Tax Institute of America until 1987. He also was counsel for the Ohio Manufacturers' Association.

Future nominations to the Hall of Fame should be submitted to the Ohio Department of Taxation by Sept. 30 of each year. Additional information may be obtained by contacting the Department.

Tax Calendar at-a-glance

April

- 16 Monthly Income Tax Withholding Return
- 16 Quarterly Estimated Income Tax Return
- 16 Annual Income Tax Return
- 23 Monthly and Semiannual Sales Tax Returns
- 23 Monthly Consumer and Direct Pay Returns
- 23 Quarterly Consumer Use Tax Returns
- 23 Quarterly Direct Pay Sales Tax Return
- 30 Quarterly Income Tax Withholding Return
- 30 First-Half Single County Personal Property Tax Return

May

- 15 Monthly Income Tax Withholding Return
- 23 Monthly and Semiannual Sales Tax Returns
- 23 Monthly Consumer and Direct Pay Returns
- 31 Annual or Estimated Corporation Franchise Tax Return

June

- 15 Monthly Income Tax Withholding Return
- 15 Quarterly Estimated Income Tax Return
- 20 Monthly Kilowatt Hour (kWh) Tax Return (electric distribution companies)*
- 20 Monthly Kilowatt Hour (kWh) Tax Return (self-assessing purchaser)*
- 25 Monthly and Semiannual Sales Tax Returns
- 25 Monthly Consumer and Direct Pay Returns

*This is the first month the monthly kilowatt hour (kWh) tax return is required to be filed. The reporting period is for May, 2001.

Please Note

A recent issue of a professional association periodical erroneously reports that Governor Taft recently signed Senate Bill 331, 123rd General Assembly, to allow taxpayers to file *married filing single* with Ohio even if the filing status with the IRS is *married filing jointly*. Please note that the Governor did not sign any such legislation.

TAX enforcement news

The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from December, 2000 through February, 2001. Tax Enforcement News is compiled by Robert M. Bray, Enforcement Division. Direct fraud complaints can be e-mailed to the Enforcement Division at Enforcement@tax.state.oh.us.

Super Quick Inc. of Portsmouth was found guilty of selling cigarettes without tax stamps and selling cigarettes without a retail cigarette license. Enforcement agents received a tip indicating SuperQuick Inc. was selling "grey market" cigarettes, which are cigarettes destined for export to other countries. Several packs of cigarettes were confiscated and charges filed. The corporation was fined \$200 and ordered to pay court costs.

The following tables are summaries of convictions concerning the sales tax violations and tobacco charges.



Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Michael Howell	Howell's Body Shop	Dayton	1 count – failure to file sales tax returns
William Shabeans	Nite Kap Inn	Oregon	1 count – failure to file sales tax returns 1 count – no vendor's license
William Ohls	Suburban Windows	Toledo	2 counts – failure to file sales tax returns
Peter Pavlik	GPV Performance	Garfield	1 count – failure to file sales tax returns
Clyde Diner LLC	Clyde Diner LLC	Clyde	2 counts – failure to file sales tax returns
Darrell Walton	Taco Bell	Ottawa	2 counts – failure to file sales tax returns
Gregory Sanford	Gregory Landscape	Leroy	1 count – failure to file sales tax returns
Sean Flanagan	Flanagan's Pub	Bellaire	1 count – failure to file sales tax returns
Linda Stacy	Danlin's Corner Grill	Bowling Green	1 count – failure to file sales tax returns
Alfred Q. Hammond	Quinsey's Automotive	Toledo	2 counts – failure to file sales tax returns
Robert Hammer	Pizza Place	Bowling Green	1 count – failure to file sales tax returns
Steven Vaculick	Creekside Irrigation	Toledo	1 count – failure to file sales tax returns

Tobacco Violations

NAME	BUSINESS	CITY	VIOLATION
415 S. Main Corp.	Mike's Lottery	Bellefontaine	Failure to provide tobacco invoices
Lisa Bratton	Redpaws Inc.	Xenia	Selling cigarettes without a license
Motter & Slesman Enterprises Inc.	Mike's Place	Bryan	Selling cigarettes without a license
Douglas Kanag Sr.	Smoke Shack	Toledo	Failure to provide tobacco invoices
Basem Mufleh	Delux Vending	Toledo	Selling cigarettes without a license
Ronald Gorney	Rod's Bar & Grill	Toledo	Selling cigarettes without a license

(Beckner—cont'd. from front page)

tively and efficiently administer their IFTA programs. Part of that effort includes offering training and seminars for tax professionals from various states and the Cana-

dian provinces that administer the program.

Mr. Beckner has been with the Department since 1969 and the administrator of Excise and Motor Fuel Tax since 1985. He

has a Bachelor degree in Business Administration from Otterbein College in Westerville, and a Master of Business Administration (MBA) from Xavier University in Cincinnati.

PRO-files

Income Tax for Military Personnel

Submitted by Peter Angus, Esq., CPA, Problem Resolution Officer

Questions sometimes arise concerning the way Ohio income tax affects military people. There are a couple exemptions from income tax for military people stationed in combat zones, but aside from those, Ohio residents who are in the military pay Ohio income tax the same as everybody else. Some states provide an across-the-board exemption for military people, but Ohio does not.

The question that frequently comes up is the effect of the Soldiers and Sailors Relief Act of 1941. That is an act of the U.S. Congress, and it says that a state cannot force a person to be a resident merely because s/he is stationed in that state by the military. For example, if a resident of Alabama joins the Air Force and is stationed at Wright Patterson Air Force Base in Ohio, Ohio cannot force that person to become an Ohio resident and pay Ohio income tax.

The person remains an Alabama resident and is liable for Alabama income tax. (The Act does not apply to the spouse or dependents of the military person.)

Likewise, an Ohio resident who joins the military remains an Ohio resident wherever s/he goes, unless or until s/he changes state of residence. Ohio law provides that those who meet the following three requirements will be considered non-Ohio residents: (1) having an abode outside Ohio during the entire taxable year, (2) spending no more than 120 days in Ohio during the taxable year and (3) attaching to the tax return a statement, signed under penalties of perjury, declaring that s/he was not domiciled in Ohio at any time during the taxable year and that s/he meets requirements (1) and (2).

A non-Ohio resident stationed in Ohio should complete Form IT-10 (found in the

back of the income tax booklet) and indicate that s/he is not subject to Ohio income tax because s/he is a resident of another state and his/her only income is military pay.

A taxpayer's decision to file as a non-Ohio resident should be made after consideration of voting rights and resident tuition rights. Information on these issues may be obtained from the Ohio Secretary of State and the Ohio Board of Regents, respectively. Contact information is available from links shown on the state of Ohio home page, www.state.oh.us.

If an individual who has Ohio withholdings files as a non-Ohio resident, s/he should use Ohio Form IT-1040 (not IT-1040EZ, which is for full-year Ohio residents only). On Schedule D of IT-1040 the non-resident credit is calculated. If the person was a non-Ohio resident for the entire year, the calculation yields 100%, which is then multiplied by the Ohio income tax, for a full credit. On the other hand, non-Ohio residents are liable for any income earned or received in Ohio, such as rents or royalties on Ohio property.

Sales Tax Division Revises Guidelines for Managed Audits and Voluntary Disclosures

Submitted by Marsha Hanes, Assistant Administrator, Sales and Use Tax Division

Effective April 1, 2001, the Ohio Department of Taxation, Sales and Use Tax Division's guidelines for Managed Audits and Voluntary Disclosures will change. Thousands of taxpayers have taken advantage of these programs in order to avoid payment of penalties on past liabilities and to more easily comply with their sales and use tax obligations in the future.

A Managed Audit may be used when a sales or use tax deficiency is recognized and the taxpayer's records must be examined in order to determine the amount of tax due. The taxpayer is permitted to audit their own records under the guidance of the tax agent to ascertain and resolve the liability by voluntary payment of tax and interest without imposition of penalty.

A Voluntary Disclosure Agreement can be used in some cases where a business or tax practitioner discovers a past liability and the taxpayer wishes to resolve it without the burdens normally associated with a tax audit. Under this program, taxpayers or their practitioner may deal with department personnel anonymously and qualify for reduced audit exposure and resolution by payment of tax and interest without imposition of penalty, provided they have not already been contacted for audit.

The changes in these two programs involve interest due on unpaid taxes. Standardized interest computations for Managed Audits and Voluntary Disclosures will go into effect April 1, 2001.

To initiate a Managed Audit, a taxpayer/

practitioner must make a written request for the audit prior to any audit notification by the department. The request should contain a brief description of the proposal (including the name of the taxpayer and person who made the contact, the location(s) to be covered, license/account, and any other pertinent data) and the signature of a responsible company employee or tax practitioner with due authority.

To initiate a Voluntary Disclosure, taxpayers/practitioners should contact Marsha Hanes or William Marshall with the Sales and Use Tax Division at (614) 466-4810. A file number will be assigned and you will be expected to provide details of the circumstances.

Imposition of Penalty Worksheet

Submitted by Fred Nicely, Chief Counsel

The Ohio Department of Taxation has devised a standardized worksheet to determine when penalties should be imposed in order to use the same penalty guidelines with different taxes. This worksheet will be used by Department tax agents and auditors beginning as early as April, 2001.

The worksheet will be used to determine whether a penalty should be imposed, and if so, the penalty rate when a tax liability is assessed on a field or desk audit. Please note: this worksheet does not apply to audits or assessments that are part of an automated billing and assessment process (including

compliance assessment programs). In addition, this penalty worksheet does not apply to real property tax, personal property tax or public utility personal property tax penalties. Separate instructions address the imposition or remission of additional charges for late filing/tax payment of those taxes.

In using the worksheet, the tax agent/auditor is to check all boxes that apply. The tax agent/auditor must follow the definitions of the terms to determine which boxes need to be checked. Notes must be provided to document the reason each box is checked. This worksheet only addresses the imposi-

tion of penalty for a taxpayer failing to pay the correct amount of tax. It does not address all penalties, such as fraud penalties. The imposition of the other types of penalties should only be made under the guidelines of the tax administrator in charge of the assessed tax. While the tax agent/auditor must closely follow this worksheet, special circumstances may exist that must be documented in writing to justify a deviation from the penalty indicated by this worksheet.

Please contact Fred Nicely, Chief Counsel for the Ohio Department of Taxation, with questions at (614) 466-2166.

Automatic Penalty Criteria	Check	Penalty	Notes (Attach additional notes as needed)
Non-Remittance of Trust Tax		35%	
Willful Non-Collection of Tax on Sales		35%	
Non-Compliance		7.5%	
Audit Compliance Agreement Breach ¹		See Agreement	
Non-Automatic Penalty Criteria	Check	Notes	
Tax Compliance Issues			
Tax Audit Compliance Under 90%			
Tax Audit Compliance Under 75%			
Tax Audit Compliance Under 60%			
Poor Prior Audit Compliance Improvement			
Records Not Made Available During Audit			
Unsatisfactory Audit Responsiveness			
Other:			
Other:			
Total Non-Automatic Penalty Checkmarks			
Total Overall Penalty (Add automatic & non-automatic penalties):		Note – 35% trust tax penalty only applies to trust tax portion of the assessment	

Non-Automatic Checkmarks Penalty Imposition²

0-2 checkmarks = no penalty

3 checkmarks = 5% penalty (If non-compliance automatic penalty criterion box is checked, the total penalty for the non-compliance penalty criterion and the non-automatic penalty criteria is 10%.)

4 checkmarks = 10% penalty (If non-compliance automatic penalty criterion box is checked, the total penalty for the non-compliance penalty criterion and the non-automatic penalty criteria is 15%.)

5 or more checkmarks = 15% penalty (If non-compliance automatic penalty criterion box is checked, the total penalty is still 15%.)

¹See the compliance agreement for specific penalty provisions.

²Imposition of the penalty may not exceed that provided by law (certain taxes have a double interest penalty provision rather than imposing a penalty up to 15%—in those instances the lesser of the double interest penalty or the penalty percentage from this worksheet should be imposed).

(Court Decisions—cont'd. from page 4)

REAL PROPERTY EXEMPTION CASES

Columbus City School Dist. Bd. Of Education v. Zaino (2001), 90 Ohio St. 3d 496

The City Council of Columbus authorized the mayor to enter an agreement with a not-for-profit corporation, designating it an agency and instrumentality for economic development. The city loaned the corporation money with which it purchased realty for a business park. The corporation's requests for exemption of the real property under R.C. 5708 were granted, and the Columbus Board of Education appealed. The BTA held the property to be exempt as used exclusively for a public purpose. **The Supreme Court reversed**, finding that the BTA's ultimate finding of fact supporting exemption - that the corporation acted as the city's agent in purchasing the property - was not supported by the basic facts in the record. The Court held that there was no evidence that the city authorized the corporation to act as its agent for the purchase of the property in question.

Miami Valley Regional Transit Authority v. Zaino (Feb. 8, 2001), BTA No. 99-1595

The Miami Valley Regional Transit Authority (MVRTA) was the lessee of a parcel of realty which it used as a park and ride area. The term of the lease was for 75 years, with two 15-year renewals. The MVRTA prepaid the lease and was responsible under the lease for real estate taxes, and for making any improvements to the property. The improvements, except for paving, were to be removed at the end of the lease term. The MVRTA sought exemption for the property under R.C. 5708. The Tax Commissioner determined that he had no jurisdiction to consider the application because MVRTA was not the owner of the property. **The BTA reversed**, holding that under the terms of the lease, MVRTA was the property owner in the context of R.C. 5715.27, and the property was used by MVRTA for a public purpose, as a regional transit authority, under R.C. 5709.121(A)(2).

World Harvest Church of God v. Zaino (Jan. 26, 2001), BTA No. 99-1914

A religious organization sought exemption for an acre of real property along with the buildings located thereon, including a

parsonage, a storage garage, a pavilion and a playground. **The BTA affirmed** the Commissioner's denial of exemption, as the taxpayer had not shown that the property was used exclusively for public worship under R.C. 5709.07.

SALES AND USE TAX

Aeroquip Corp. v. Tracy (Dec. 15, 2000) BTA No. 97-1612

A manufacturer of automobile and aircraft components objected to a number of items assessed in a use tax audit of its purchases. Under R.C. 5739.011(B)(2), the BTA excepted cranes used to unload steel from incoming trucks as well as to transport it between manufacturing stages. The steel entered the continuous manufacturing operation when it was initially stenciled with the taxpayer's logo. Although the steel was at times placed into temporary storage between manufacturing steps, the BTA, applying a "quantified primary use" test, found that 75% to 80% of the cranes' use was in the taxpayer's continuous manufacturing operation. Bar carts, used to hold steel stock after stenciling and between machining processes, were held to be excepted from taxation under R.C. 5739.011(B)(2) as used in a continuous manufacturing operation. A mist collection system, used to collect and filter it for reuse coolant oil from milling machines, was held to be excepted under R.C. 5739.011(B)(10) and not taxable as waste handling equipment, although the system also removed small metal chips from the coolant. Similarly, a chip recovery system, used to remove metal chips from coolant used in machining, was held to be excepted on the basis of Example 36 of Ohio Administrative Code 5703-9-21. Although one of the system's uses was to remove 160,000 pounds of chips per week from the used coolant, the BTA held that the primary use was to recycle the coolant. Economically, the savings in coolant outweighed the revenue from the sale of the chips. A furnace chart monitor was held excepted under R.C. 5739.011(B)(10) as equipment otherwise necessary for the functioning of production machinery and equipment and in the continuation of the manufacturing operation.

A dust collection system used in a hose assembly area to minimize contamination of the product was held taxable because the taxpayer did not meet its two-fold burden

under R.C. 5739.011(C) of showing that the system provided total environmental regulation of a special and limited area, and that the environmental regulation was necessary for production to occur. Similarly, a scrubber system which pulled caustic fumes from tanks and removed them was not excepted under R.C. 5739.011(C).

A CAD/CAM system used to produce drawings used by production personnel was held taxable. A transportation logistics software package purchased by the taxpayer was held exempt as customized application software under Ohio Administrative Code 5703-9-46. Purchases for the repair and maintenance of an oscilloscope used to test product were excepted under R.C. 5739.011(B)(6) and (11).

Key Services Corp. v. Tracy (Feb. 2, 2001), BTA No. 98-553

The BTA held that a corporation which performed electronic information services ("EIS") for affiliated corporations did not qualify for the refund of 25% of its equipment used in EIS under R.C. 5739.071(A) because transactions between members of affiliated groups are not sales under R.C. 5739.01(B)(3)(e). Therefore, the taxpayer was not a provider of EIS within the meaning of R.C. 5739.01(X) and R.C. 5739.071(A).

Meijer, Inc. v. Tracy (Feb. 8, 2001), BTA No. 97-1618

The "direct use in making retail sales" exception expired December 31, 1992 under Am. Sub. H.B. 904. The taxpayer contracted with a number of its suppliers for purchases prior to that date, but the items were not received at the taxpayer's locations in Ohio until after that date. **The BTA held** that the taxpayer was not entitled to the "direct use in making retail sales" exception because under R.C. 5741.01, the incidence of tax is on the use of the items, not the point where mutual obligations to purchase and sell are exchanged.

Fitting / dressing rooms were held to be taxable and not exempt as purchases for "resale" to customers trying on garments. Large conveyors used to transport inventory were classified as personalty rather than realty because another business occupying the realty could conceivably remove them and use the space in another manner.



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Information Releases

The following information releases have been issued by the Department in the last several months. The topics addressed are summarized below. Please visit our website at www.state.oh.us/tax and click on "Practitioner" and then on "Information Releases" under the "Releases" link to view the information releases in their entirety.

INCOME TAX AUDIT

Ohio and School District Income Tax Withholding Payment and Filing Schedule Compensation Paid During the Year 2001—October 20, 2000

House Bill 612 revised the Ohio and School District Income Tax withholding tax payment and filing requirements for Ohio employers (see Ohio Revised Code section 5747.07 as amended). Set forth in the informational release is a chart with the changes in the payment and filing requirements for compensation paid in the year 2001.

EXCISE & MOTOR FUEL TAX

Monthly Reporting Problems for All Licensed Motor Fuel Exporters—November 9, 2000

In the Department's review of the monthly exporter's report, recurring reporting problems have been noticed. The information release outlines the requirements.

Tank Truck Movements from One Terminal to Another Terminal—January 11, 2001

The Department has become aware that some motor fuel dealers are pulling fuel through the loading rack at one terminal and transporting the fuel via a tanker truck to another terminal. The information release outlines the proper way to report this on the monthly motor fuel tax returns.

Proper Terminal Reporting—February 15, 2001

Discusses the proper reporting for terminal-to-terminal fuel movements via pipeline, barge or railroad tank cars and position holder disbursements.

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