

State Tax Report

What's Inside . . .

*Taxpayer Service
Legislation*

*Comments from the
Commissioner*

*Legislation Chief
Named*

Current Forms

*Streamlined Sales
Tax System*

Legislative Update

*Information
Releases*

Taxing a Trust

The Department recently issued an information release entitled, "Grantor Trust Provisions Take Precedence Over Electing Small Business Trust (ESBT) Provisions." This release addresses which Internal Revenue Code sections take priority: the "grantor trust" rules under IRC section 671 or the ESBT rules under IRC sections 641(c) and 1361(e). The Department has concluded that the grantor trust rules prevail. It is understood that the IRS will adopt a similar position later this year in the form of proposed regulations.

As such, if the grantor trust rules treat an individual or estate as the owner of all or a portion of an ESBT, then such individual or estate must include in his, her or its federal adjusted gross income or Ohio taxable income all relevant S corporation pass-through items as if the individual or estate were the owner of the S corporation stock actually owned by the ESBT. The Department will apply this interpretation of the Code for individual and estate taxable years beginning after December 31, 1999, with respect to S corporations whose taxable years also begin after December 31, 1999.

The Department has received mixed comments from tax practitioners about this policy. Some are pleased with the Department's stance because the use of an ESBT which also meets the definition of a grantor trust was perceived to be an abusive tax shelter and technically incorrect. Yet others believe that it was inappropriate for the Department to adopt this interpretation.

The Department's mission states that we will provide quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law. Implementing this policy is an example of providing taxpayer service and applying the tax law fairly. The prospective application of the Department's interpretation (post-1999) allows tax practitioners and taxpayers sufficient notice to plan with respect to this matter. Further, by enforcing the tax law, we are ensuring that a business formed as an S corporation bears the same tax burden as a similar business that adopts a partnership or sole proprietorship structure.

The information has been posted on the Department's website (www.state.oh.us/tax/) under "Information Releases: Individual Income Tax ."

Taxpayer Service Legislation Introduced

The Taxpayer Service Bill, House Bill 612, was introduced on March 16, 2000. As mentioned in previous issues of the *Ohio's State Tax Report*, the Department has been working on legislation to improve taxpayer service and tax administration by addressing certain technical, procedural and policy issues to which the Department is bound by law, but which provide undue burden on the taxpayers, the Department, or both.

Governor Taft is a strong supporter of this effort to make Ohio tax law more taxpayer friendly. Representative Gregory Jolivette, a Republican from Hamilton, Ohio, is the bill's sponsor.

There are numerous parts to this bill. Unfortunately, there isn't room in this publication to list all of the proposed changes. Below is a brief summary of the key components of this legislation:

◆ Increase Appeal Periods from 30 to 60 Days

Currently, taxpayers have only 30 days to file appeals with our administrative hearing board and the Board of Tax Appeals (BTA). Taxpayers and their representatives have contended for some time that 30 days is insufficient time in which to prepare a thorough appeal. Therefore, the bill will increase these appeal periods to 60 days. This change will not apply to appeals from a county Board of Revision to the BTA.

◆ Eliminate Prepayment in Penalty-Only Appeals

Under current law, taxpayers must pre-pay assessed penalty in order to appeal the penalty for personal income tax and corporate franchise tax. The bill removes this prepayment requirement in cases where the only objection is to the penalty itself (not the tax or interest).

◆ Mandatory Penalty Provisions Made Permissive

The bill gives the Tax Commissioner discretionary authority regarding the imposition of penalties upon assessment. Currently, penalties must be imposed by the Tax Commissioner upon assessment; then, the taxpayer may make a formal appeal of the assessment in order to get the penalties abated by the Tax Commissioner. This provision will eliminate many penalty-only appeals to the Department's Hearing Board.

◆ Provide for Tax Return Rounding

The bill gives the Tax Commissioner authority to require that taxpayers round cents to the nearest whole dollar on tax returns. This change will have no measurable impact on

tax liabilities, but will increase the Department's data entry efficiency and lower the cost of administration.

◆ Expansion of Electronic Signature Authority

Under current law, the Tax Commissioner has authority to prescribe a signature format for the personal income tax. The bill expands that authority to all taxes administered by the Tax Commissioner and will facilitate our development of electronic filing for these other taxes.

◆ Increased Thresholds for Electronic Payment of Taxes

Under current law, businesses with an annual sales tax liability of \$600,000 or more are required to remit their monthly sales tax *via* electronic funds transfer ("EFT"). Businesses with an employer withholding tax liability of \$180,000 or more must also remit *via* EFT. The bill proposes to lower these thresholds to \$60,000 for sales tax and to \$84,000 for withholding tax. EFT filing is more efficient and cost effective for taxpayers and government.

◆ Sales Tax Vendor's License Changes

The bill eliminates the vendor's license renewal requirement and the \$10.00 renewal fee. The renewal serves no substantive purpose, yet adds significant paperwork for both taxpayers and the Department. This change will cost the state approximately \$2.7 million per year.

Additionally, under current law, vendors changing their business location are required to obtain a new vendor's license. The bill eliminates this requirement if the address change is within the same county.

◆ Changes to the Sales and Use Tax 60-Day Documentation Requirement

After an audit, Ohio-based businesses have 60 days to provide documentation of tax-exempt sales under current law. Out-of-state vendors have no deadline. The bill extends the time limit to 120 days for Ohio-based businesses and subjects out-of-state vendors to the same 120-day time limit.

◆ Estimated Tax Payment Requirements Eased

Under current law, taxpayers with a tax liability of \$300 or more (after withholding) are required to file quarterly estimated tax returns and payments. The \$300 threshold was established in 1984. The bill raises this filing requirement threshold to \$500. This change will reduce by 60,000 (15 percent) the number of taxpayers required to file

(Cont'd. on page 3)

Comments from the Commissioner



As you may have heard, on December 23, 1999 several utility company lawsuits were settled. Through the lawsuits, nineteen electric and telephone utilities were seeking \$3.9 billion in tax refunds. If the utilities were successful on appeal, the resulting refunds could have severely hurt school funding across the state.

The utility companies' claims challenged the State's tax laws and *Tax Commissioner Rulings* related to various tax exemptions and the taxable value of property. They related to personal property taxes paid as far back as 1989.

If the utility companies had won their lawsuits, local school districts and governments, which receive the property taxes, would have had to pay back the \$3.9 billion of taxes and interest. Because of the potential funding risk to schools and local governments, Governor Bob Taft directed me to explore settlement opportunities with the utilities.

I believe the settlements occurred because all of the parties involved received some benefit. This settlement is a win-win settlement for taxpayers and the utility companies with

perhaps the biggest winners being Ohio schools and local government. It would have been devastating financially if schools and local governments would have had to refund all of that money. These agreements eliminate the large potential refunds facing school districts and local governments. They also provide revenue stability for the future, which is crucial for schools. This settlement removes most of that threat and clears up many of the legal issues and confusion that prompted these lawsuits in the first place.

While a few utility claims remain outstanding, most of the companies have dropped requests for refunds in exchange for clarity on how Ohio's tax laws will be applied in the future. That results in tax reductions next year of approximately \$60 million statewide. By comparison, in 1999, utilities paid more than \$1 billion in personal property taxes.

The settlements were endorsed by the Ohio School Boards Association, the County Commissioners' Association of Ohio, the County Auditors' Association of Ohio, and the Buckeye Association of School Administrators. I applaud the efforts of everyone that helped make the settlements possible.

Legislation Chief Named

Ohio Tax Commissioner Thomas Zaino appointed Michael J. Adelman to lead the Legislation Division at the Department of Taxation.

Mr. Adelman is responsible for managing all aspects of the Division that deals directly with the Ohio General Assembly on issues ranging from tax policy and legislation to constituent concerns. Commissioner Zaino said, "He knows the system and the people who make it work. On top of that, he truly enjoys the issues and challenges of taxation. He's a wonderful addition to our team."

Mr. Adelman comes to Taxation from the Ohio Office of Budget and Management (OBM) where he served as a Budget/Management Analyst since 1996. Prior to OBM, Mr. Adelman worked for the Ohio Board of Regents and the Republican Caucus in the Ohio House.

An Ohio University graduate, Mr. Adelman has a Master's degree in Public Administration and a Bachelor's in Political Science.

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quarterly personal and school district income tax payments.

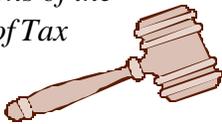
◆ Personal Property Tax Depreciation Rates

A provision is added to provide the Commissioner with authority to adopt rules for determining the true value of personal property, and provides that changes to depreciation schedules would be prospective in nature. This change will allow the Department to update our depreciation schedules, as necessary, while safeguarding local governments from possible negative retroactive impacts of such updates.

Watch for developments on this legislation in future issues of the *Ohio's State Tax Report*. A web-link to view the full text of H.B. 612 is available on the Department's home page at www.state.oh.us/tax/.

Court Decisions

The following are significant decisions of the Ohio Supreme Court and the Board of Tax Appeals (BTA) announced in November and December 1999 and January 2000 in the area of Sales & Use, Franchise and Income Taxes. Court decisions are compiled by Anthony Long and Mark Hawkins, Legal Division.



SALES & USE TAX

Maxxim Med., Inc. v. Tracy (1999), 87 Ohio St.3d 337. Maxxim sells and leases transcutaneous electrical nerve stimulators (TENS) and neuromuscular stimulators (NMES). The case was remanded to the BTA to determine if the TENS and NMES aided perambulation within the meaning of R.C. 5739.02(B)(19) exempting them from sales tax. BTA held that such units could be used either in a tax exempt manner or in a taxable manner. Because of multiple uses for the units the BTA held that the appellant must present evidence of the actual use by the end user to qualify the units for tax exemption. The BTA found that the appellant failed to meet this burden. The Court agreed stating that because the units are not exempt regardless of their use the appellant must collect the tax or provide certificates of exemption or letters of usage to account for the failure to collect the tax.

TV Fanfare Publications, Inc. v. Tracy (1999), 87 Ohio St.3d 165.

The appellant organizes various types of advertising promotions. The Court held that production charges for placing advertising materials on shopping carts are taxable, but the charges for placement of the advertising are not taxable. Also, until July 18, 1990 when Am.S.B. No. 303 became effective, transactions in which magazines and register tapes were distributed to patrons of grocery stores were taxable, and the appellant should have collected the tax.

Newfield Publications, Inc. v. Tracy (1999), 87 Ohio St.3d 150.

The Court, relying on *Union Carbide Corp. v. Limbach* (1992), 62 Ohio St.3d 548, ruled equipment that conveys products to be shipped to packages for placement therein is exempt under the packaging exemption found at R.C. 5739.02(B)(15).

American Watchmakers-Clockmakers Institute, Inc. v. Tracy (Nov. 12, 1999), BTA No. 98-400 [Appealed to Hamilton Cty. Ct. of Appeals.]

The appellant was assessed tax for costs to produce a magazine distributed to its members as part of their dues. The BTA held that the appellant was engaged only in the distribution of the magazine and that it was not the consumer of the items used in the production of printed matter and, therefore, did not qualify for the sales tax exemption provided by either R.C. 5739.01(E)(7) or (E)(8).

Associated Paper Stock, Inc. v. Tracy (Dec. 10, 1999), BTA No. 98-390.

The BTA held that the appellant met the statutory requirements of R.C. 5739.01(Z). Accordingly, the appellant's equipment used in its transportation-for-hire business was exempt from sales tax.

Wilnet, Inc. v. Tracy (Jan. 14, 2000), BTA No. 97-93.

After examining the evidence the BTA ruled that when the appellant bought a plane in 1991 it intended to use it for business purposes. Therefore, in accordance with *Fliteways, Inc. v. Lindley* (1981), 65 Ohio St.2d 21, the plane was subject to use tax when it came to Ohio in 1992.

USS/Kobe Steel Co. v. Tracy (Jan. 14, 2000), BTA No. 98-731.

A steel manufacturer objected to the taxation of bins and hoppers used to handle and transport coal and coke. The BTA determined that the coke serves a dual purpose (fuel and raw material). Accordingly pursuant to R.C. 5739.011(B)(9) the bins at the screening station were exempt. The BTA also found that the coal bins exempt from taxation because the bins commit the coal to the manufacturing process. The BTA also ruled that moisture analyzers were exempt from sales tax because they were used to test raw materials. Finally, the appellant established that charges for communication services were electronic information services between members of an affiliated group. The BTA ruled the communication charges were not subject to tax under R.C. 5739.01(B)(3)(e).

FRANCHISE TAX

Keycorp v. Tracy (1999), 87 Ohio St.3d 238.

The appellant is a bank holding company owning both

(Cont'd. on page 5)

Practitioners Reminded to Use Most Current Forms

It is imperative that tax practitioners use the most current versions of Ohio tax forms when filing returns for taxpayers. Using outdated forms not only inhibits the processing of tax returns, but can also delay the issuance of any refunds that taxpayers may be due.

Below is a list of frequently filed forms. Please be sure that you are using the most current versions by visiting our website at www.state.oh.us/tax/ or by calling the Forms and Internet Division at (614) 433-7632.

INDIVIDUAL INCOME TAX

| | |
|-----------|--|
| IT-1040 | 1999 Individual Income Tax Return |
| IT-1040EZ | 1999 Individual Income Tax Return |
| IT-1040X | Amended Income Tax Return (Rev. 11/98) |
| IT-1040ES | 2000 Individual Income Tax Estimated Payment Voucher |
| IT-40P | 1999 Income Tax Payment Voucher |

SCHOOL DISTRICT INCOME TAX

| | |
|-------|--|
| SD100 | 1999 School District Income Tax Return |
|-------|--|

| | |
|---------|---|
| SD-40P | 1999 School District Income Tax Payment Voucher |
| SD-100X | Amended School District Income Tax Return (Rev. 11/98) |
| SD100ES | 2000 School District Income Tax Estimated Payment Voucher |

CORPORATE FRANCHISE TAX

| | |
|--------------------|--|
| FT-1120 | 2000 Corporate Franchise Tax Report |
| FT-1120 E/ER/EX | Estimated Corporate Franchise Tax Payment Voucher (Rev. 12/99) |

EMPLOYER WITHHOLDING TAX

| | |
|--------|--|
| IT-501 | Employer's Payment of Ohio Tax Withheld |
| IT-941 | Ohio Employer's Annual Reconciliation of Income Tax Withheld |

Tax practitioners may also request forms by calling our toll-free Forms Line at 1-800-282-1782. Through this service, taxpayers have the option of receiving forms by mail or by facsimile (fax machine).

(Cont'd. from page 4)

banking and nonbanking subsidiaries. Originally it appealed two issues to the BTA. The first issue, whether it was a quiescent holding company, was resolved in its favor and was not appealed by the Commissioner. The second issue, whether repurchase agreements, eurodollar deposits, cash deposits, and certificates of deposit were excluded in determining the value of its issued and outstanding shares of stock. The BTA held that they were not excludable. The Court ruled that the instruments mentioned above were not investments in the issued indebtedness of the appellant and therefore cannot be excluded under former R.C. 5733.05(A)(5)(c).

INCOME TAX

Agley v. Tracy (1999) 87 Ohio St.3d 265.

Appellants were shareholders in Subchapter S corporations that were organized and existed in Michigan and conducted business in Ohio. The appellants were not domiciled in or residents of Ohio. The Court held that their distributive share of the S corporations' income is subject

to Ohio income tax. The Court rejected the argument that the income was not apportionable (nonbusiness income); that the Tax Commissioner had no statutory authority to levy taxes for the years at issue; and that the taxation of this income violated Section 381, Title 15, U.S. Code.

Kemppel v. Tracy (Jan. 21, 2000), BTA No. 98-698.

Nonresident shareholders of an Ohio S corporation are subject to income tax in Ohio on the entire amounts of their distributive share income. The corporation in question was sold and the issue was whether goodwill was subject to tax as a business income. The BTA found the definition of business income to be similar to the UDIPTA definition, and based upon court decisions from other jurisdictions, ruled that the Ohio definition included both a transactional and functional test. The BTA then held that the income arising from the sale of the business, including the appreciation attributed to goodwill, was business income and apportionable under R.C. 5747.21.

Tax Enforcement News

The following information is a sample of convictions secured by the Enforcement Division of the Department from November, 1999 through January, 2000. Tax Enforcement News is compiled by Robert M. Bray, Enforcement Division.

John Mays of Perrysburg pleaded guilty to failing to file withholding returns and failing to remit withholding taxes. He collected and failed to remit \$42,593. He was sentenced in Wood County and ordered to pay full restitution, serve two years community service (probation), and spend 30 days in jail. Mr. Mays also has to complete 100 hours of community service.

Mr. Mays owns *Barton Carey Medical Products* in Perrysburg. Records showed withholding was collected from employees and not remitted to the State of Ohio. A

search warrant was executed and payroll records were obtained, which led to the subsequent charges and conviction.

Kevin Shoun of Greenville, Tennessee, pleaded guilty to two counts of possession of untaxed cigarettes in Lake Township, Ohio. Mr. Shoun was transporting untaxed cigarettes in his semi-truck from Kentucky to a truck stop in Northwest Ohio. Toledo Enforcement agents learned of the violation and charged Mr. Shoun.

Trudy Nelson, MD of Lima pleaded guilty to one count of failing to file Ohio income tax returns. She also pleaded guilty to unrelated criminal charges involving the dispensing of prescription drugs. This investigation was worked in conjunction with the Drug Enforcement Agency. An investigation and search warrant led to the charges and conviction.

Assorted Tobacco Violation Convictions:

| | | |
|--------------------------|----------------|------------------------------|
| Bhaveshkumar Patel | Columbus, Ohio | No Cigarette License |
| Nasir Mahmoud | Columbus, Ohio | Failure to Maintain Invoices |
| Hussein Khalil | Columbus, Ohio | No "Other Tobacco" License |
| Bernie and Nancy Kessler | Bucyrus, Ohio | Failure to Maintain Invoices |

Assorted Vendor Violation Convictions:

| | | |
|-----------------|-------------------|-----------------------------------|
| Terry Polley | Piketon, Ohio | No Vendor's License |
| Gholam Dogam | Columbus, Ohio | No Vendor's License |
| Phillip Brannon | Sylvania, Ohio | Failure to File Sales Tax Returns |
| Glen Neamond | Circleville, Ohio | No Vendor's License |

General Enforcement Activities:

Tobacco Confiscated:

504 cigars
160 packs of untaxed cigarettes
63 packs of "foreign" cigarettes

Various probation departments have sent \$34,568 to the Ohio Department of Taxation for taxes owed based on convictions by the Department.

Streamlined Sales Tax System

The National Conference of State Legislatures (NCSL) has drafted model legislation to simplify sales tax collection. The draft legislation authorizes states to hold discussions on incorporating a voluntary, streamlined, multi-state system for the collection and administration of existing sales and use taxes. While the model legislation has been drafted with remote sales in mind, a streamlined system could also be extended to traditional "bricks and mortar" retailers.

The model legislation has been endorsed by many associa-

tions (the National Governors' Association, National League of Cities, and National Association of Counties). It is expected that some states will pass the model legislation into law by the end of the year.

A news release was issued on January 20, 2000, entitled, "NCSL Adopts Model Legislation to Simplify Sales Tax Collection." Visit NCSL's website at www.ncsl.org/ to see the release in its entirety.

Voluntary Disclosure of Ohio Tax Liabilities

The Department is frequently contacted by practitioners or businesses that have discovered Ohio tax liabilities for past periods and wish to resolve those issues and comply prospectively without the risks normally associated with audit and assessment. Taxpayers may be eligible for voluntary disclosure if they notify the Department of their intentions prior to audit contact or criminal investigation. Ohio law does not specifically address voluntary disclosure, however, guidelines have been established for taxpayers to approach the department and negotiate anonymously in order to resolve several types of liabilities including sales & use, corporate franchise, employer withholding, individual income, personal property and excise taxes. Depending upon the type of tax, generally taxpayers will be required to pay from 3 to 5 years back tax, plus interest. However, in cases where a "trust tax" has been collected and not remitted, there is no limit to the back taxes that must be paid.

Practitioners wishing to propose voluntary disclosure should contact one or more of the following individuals depending upon the type of liability their client may have.

| | | |
|--------------------------|-------------------------------|----------------|
| Sales & Use Tax | Bill Marshall or Marsha Hanes | (614) 466-4810 |
| Corporate Franchise Tax | Ron Pottorf or Tom Duncan | (614) 433-7659 |
| Pass Through Entities | Jim Baumann or Mike Maurer | (614) 433-7603 |
| Employer Withholding Tax | Jim Baumann or Joy Bennett | (614) 433-7603 |
| Individual Income | Jim Baumann or Joy Bennett | (614) 433-7603 |
| Personal Property Tax | Ed Gifford | (614) 466-3280 |
| Excise Taxes | Dick Beckner | (614) 466-3794 |

Taxpayers concerned about liability in several states may wish to contact the Multistate Tax Commission (MTC) National Nexus Program in order to propose a multistate resolution. MTC will act as liaison with all states the taxpayer wishes to contact. This consolidated approach alleviates the necessity of dealing with each of the states individually. To contact the MTC, please call Thomas K. E. Shimkin at (202) 508-3800.

Legislative Update

| <u>Bill Number</u> | <u>Effective</u> | <u>Description</u> |
|--------------------|------------------|---|
| H.B. 76 | 11/03/1999 | Exempts from the calculation of a subdivision's debt limit a specified portion of the principal amount of securities issued for permanent improvements if payments, in lieu of taxes, are pledged to repay securities. |
| H.B. 78 | 3/17/2000 | Modifies the General Corporation Law, including modifications to alter the requirements for the formation of a corporation. |
| H.B. 220 | 11/02/1999 | Exempts school-district-issued securities from debt limits to the extent certain payments, in lieu of taxes, are pledged to repaying the securities. |
| H.B. 268 | 8/16/1999 | Clarifies that the ballot language concerning renewal of a school district income tax include a statement that the proposed tax is a renewal and to allow school district emergency levies to be placed on the ballot at specified special elections. |
| H.B. 384 | 11/24/1999 | Increases the Ohio coal tax credit for electric companies burning Ohio coal from \$1 to \$3 per ton. |
| S.B. 78 | 12/16/1999 | Grants members of the public the option of choosing the medium in which they will receive copies of public records. |

Information Releases

The following Information Releases are currently available from the Income Tax Audit Division:

Grantor Trust Provisions Take Precedence Over ESBT Provisions--January, 2000

(See article on front page)

DRAFT--IRC Section 482 Study: Safe Harbor to Avoid Ohio Corporate Franchise Tax Report Required Combinations

Several Ohio tax practitioners have expressed their concerns regarding the Department's statutory authority under Ohio Revised Code ("ORC") section 5733.052 either to require or to expand Ohio corporation franchise tax combinations. While ORC section 5733.052(A) provides the tax commissioner with the "discretion" either to combine or to expand a combination, ORC section 5733.052(C) states as follows:

"No combination of net income under division (A) of this section shall be required unless the tax commissioner determines that, in order to properly reflect income, such a combination is necessary because of intercorporate transactions and the tax liability imposed by section 5733.06 of the Revised Code."

DRAFT--Passive Investment Company ("PIC") Adjustments — Ohio Revised Code Section 5733.042

Division (C)(1) of Ohio Revised Code ("ORC") section 5733.042 generally requires that a corporation add interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to any related

member whose activities in any one state are primarily limited to the following two groups of activities: (i) the maintenance and management of intangible investments or of the intangible investments of corporations, business trusts, or other entities registered as investment companies under the "Investment Company Act of 1940" and (ii) the collection and distribution of the income from such investments or from tangible property physically located outside such state.

The following Information Releases are currently available from the Sales & Use Tax Division:

Prepaid Telephone Calling Cards and Authorization Numbers--November, 1999

Amended Substitute Senate Bill 173 of the 122nd General Assembly made certain prospective changes in Ohio sales tax law which will become effective on January 1, 2000. These changes will affect the sales and use tax treatment of prepaid telephone calling cards or authorization numbers. This release is intended to explain the application of Ohio sales tax to these transactions.

Federal Luxury Tax--Revised January, 2000

Effective January 1, 1991, the Federal government imposed an excise tax on certain "luxury" goods. This release gives the respective tax rates and threshold amounts for the different time periods.

To request copies of the income tax releases, contact the Income Tax Audit Division at (614) 433-7617. For copies of the sales & use tax releases, contact the Sales & Use Tax Division at (614) 466-7351. They are also available on our website at www.state.oh.us/tax/

Tax Talk Draws Record Crowd

Attendees at the 2000 Ohio Tax Conference learned about the hot tax issues for the new millennium from leading tax experts in Ohio and around the nation. The Ohio Department of Taxation and the Ohio Chamber of Commerce co-sponsored the conference, held on January 19-20, at the Hyatt Regency in Columbus. More than 500 tax professionals attended the conference--a record turnout.

Douglas Lindholm, Esq., President and Executive Director, Committee on State Taxation (COST) was the luncheon speaker on January 19, talking about *Major State*

and Local Taxation Issues for the New Millennium. Ohio Tax Commissioner Thomas Zaino delivered the luncheon address on January 20. Commissioner Zaino discussed the Department's 1999 achievements and described the pending taxpayer service legislation. (An article regarding this legislation is in this issue as well as the Winter, 1999 *Ohio's State Tax Report*.) The well-received conference covered issues such as sales tax simplification, municipal tax reform, corporate franchise tax, nexus/internet tax freedom, and the kilowatt hour tax.

Questions and Answers

Jim Baumann, Administrator of the Income Tax Audit Division, has recently received the following two questions from taxpayers regarding medical care insurance premium deductions. In case any of you receive similar questions, we thought it might be helpful to share some answers.

One question pertained to a "more than 2% shareholder of an S corporation" whose corporation provides health insurance for the shareholder who is also an employee of the S corporation.

Question: Can such taxpayers claim the ORC section 5747.01(A)(11)(a) deduction (the medical care insurance premium deduction on line 1 of the worksheet on the left hand side of page 18 of the 1999 form IT-1040 instructions) with respect to premiums paid by the S corporation-employer where such amounts, pursuant to the IRC, are included in "total wages/compensation" on the W-2? The inquiry states that 60% of such amounts do qualify for the "self-employed health insurance deduction" appearing on line 28 of the 1999 IRS form 1040.

Answer: If a "more than 2% shareholder of an S corporation" whose corporation provides health insurance for the shareholder-employee is eligible to claim the deduction on line 28 on the front page of the 1999 IRS form 1040 (commonly referred to as a "self-employed health insurance deduction"), then such individual will not be considered an "employee" for purposes of the Ohio medical care insurance premium deduction and can claim the Ohio deduction

(line 41 on the 1999 Ohio form IT-1040) to the extent such amounts have not already been deducted in computing FAGI or OAGI.

Question: Is the portion of the medical insurance premium paid by retired teachers, retired state employees, retired private sector employees, etc. deductible under section 5747.01(A)(11)(a) of the ORC (see line 1 of the worksheet)?

Answer: (1) Under various court cases the employer-employee relationship continues into retirement for purposes of this deduction and (2) the retiree's employer, i.e., the school district, the private sector employer, etc. has subsidized and/or continues to subsidize a portion of the medical care insurance coverage. As such, the portion of the medical care insurance premium which the STRS, PERS, private sector plan, etc. retiree pays is not deductible as a health insurance premium on line 1 of the worksheet since the retiree's employer is subsidizing the health plan covering the retiree. However, such amounts would qualify for the ORC section 5747.01(A)(11)(b) net excess medical care deduction and would be part of the amount shown on line 2 of the worksheet.

While ORC section 5747.01(A)(11)(a) denies the deduction for medical care insurance if the taxpayer is eligible to participate in any employer-maintained subsidized health plan, this limitation does not apply to the deduction for qualified long-term care insurance.

Reporting Requirements Waived for RICs, REITs & REMICs

The Tax Commissioner has waived the 2000 reporting requirement for Real Estate Investment Trusts (REITs), Regulated Investment Companies (RICs) and Real Estate Mortgage Investment Conduits (REMICs). For 2000, principals of these entities are not required to submit any list of names, addresses, and social security or federal identification numbers of investors, shareholders and others who had any interest, or had invested, in the entity at any time during the 1999 calendar year.

Such entities are exempt from taxation for the 2000 calendar year as corporations and are exempt from taxation for the same year as dealers in intangibles, even though they will not be submitting reports.

Copies of the 2000 edition of *Ohio's Taxes: A Brief Summary of Major State and Local Taxes in Ohio* are now available. Please request your copy by returning this form to the address listed below, or contact us by e-mail at Carol_Wentzel@tax.state.oh.us

The Ohio Department of Taxation
Tax Analysis Division
P.O. Box 530
Columbus, Ohio 43216-0530
(614) 466-3960

Name _____

Company _____

Address _____

City, State _____

Zip Code _____

Ohio Department of Taxation
 P.O. Box 530
 Columbus, Ohio 43216-0530

TAX CALENDAR AT-A-GLANCE

April

17 Monthly Income Tax Withholding Return
 17 Quarterly Estimated Income Tax Return
 17 Annual Income Tax Return
 24 Monthly and Semi-annual Sales Tax Returns
 24 Monthly Consumer and Direct Pay Returns
 24 Quarterly Consumer Use Tax Returns
 24 Quarterly Direct Pay Sales Tax Return

May

1 Quarterly Income Tax Withholding Return
 1 First-Half Single County Personal Property Tax Return
 15 Monthly Income Tax Withholding Return
 23 Monthly and Semi-annual 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
 23 Monthly and Semi-annual Sales Tax Returns
 23 Monthly Consumer and Direct Pay Returns

New on the Internet

The following items have recently been added to the Department's internet site at www.state.oh.us/tax/

- New for Developers, Practitioners, and Businesses
 Check out our new Electronic Services page for information on Electronic Filing, scannable forms, magnetic media, and more!
- News Release page
- 1999 Business Tax Guide
- Tax forms for filing during 2000

Ohio's State Tax Report is published only as an information service. The articles it contains do not represent official opinions of the Ohio Tax Commissioner. Letters to the editor should be addressed to the Ohio Department of Taxation, P.O. Box 530, Columbus, OH 43216-0530. www.state.oh.us/tax/

Governor Bob Taft
 Tax Commissioner Thomas M. Zaino

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