

OHIO's



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COMMENTS *from the commissioner*



Commissioner Zaino

In a letter accompanying his budget proposal for the 2004-2005 biennium, Governor Taft wrote, "We must begin the task of reforming and modernizing our tax code. My budget includes a tax reform package that will simplify the code, broaden the base, lower certain rates, and treat business and individuals equitably." With that said, I would like to address why tax reform is necessary and what the Governor has proposed in his budget.

The national recession is having a dramatic impact on Ohio's economy. Unfortunately, the recovery has been slower than expected, and tax receipts have not met expectations. State spending on Medicaid continues to soar, while spending for prisons and education is growing rapidly. To balance Ohio's budget, we have depleted the rainy day fund, used tobacco funds (which must be repaid in 2013), increased some taxes, and significantly cut spending. Even after all that, Ohio continues to face a huge deficit in the next two fiscal years.

The flip side of these budget challenges is opportunity. We now have the opportunity to get Ohio's fiscal house in order for the long term. One of the ways we can do this is to reform and modernize our tax system. Ohio's tax system remains firmly rooted in the prior century, reflecting an economy of those times, but not of the present. The economy, accounting practices, financial practices, and business structures have all changed radically from the time when the structure of Ohio's tax system was created.

The result of the changes in the economy, without parallel changes in the tax system include:

- Some sectors of the economy – e.g., goods-producing sectors – are relatively overtaxed, while the ever-growing service sector is lightly taxed;

What's Up Inside . . .

Ohio I-File 3

2002 Accomplishments 4

Legislative Update 5

Cigarette Revenues 6

Ohio Business Gateway 6

Information Releases 7

PRO-Files 8

Ohio Tax Conference 8

Administrative Changes 9

Court Decisions 10

Streamlined Sales Tax 12

ODT Mourns 13

Small Business Workshops . . . 14

Tax Enforcement News 16

Tax Calendar at-a-Glance 17

- Some corporations pay high income taxes while other corporations, through the use of complicated structures and sophisticated transactions, pay very little or no tax;
- Different companies that provide the same services are taxed differently; and
- The tax system fails to generate sufficient revenues to pay for the government services that the public desires and expects.

As you may recall, Senate Bill 261, the budget corrective bill, created The Committee to Study State and Local Taxes. The Committee consisted of nine members, including three members each from the Ohio Senate and Ohio House of Representatives, Director of the Office of Budget and Management, Director of Development, and the Tax Commissioner. The Committee examined Ohio's tax structure by focusing on the Guiding Principles of Tax Policy. Governor Taft incorporated many of the improvement options identified by the Committee in his budget proposal. This is the first time in Ohio history that recommendations from a tax study committee have been so comprehensively proposed in law changes. The Committee's recommendations are available at the Ohio Department of Taxation web site, www.state.oh.us/tax/taxstudy/taxstudy.htm.

The Committee confirmed that, in many areas, the Ohio tax system does not meet the five Guiding Principles of a quality state and local tax structure: simplicity, equity, stability, neutrality, and competitiveness. These principles of a quality tax system provide the basic standard for the consideration of reforming and modernizing Ohio's tax law.

The budget introduced by Governor Taft starts Ohio on the path of fundamental tax reform. The overriding theme of this reform is *to broaden the tax base and lower the tax rates*. A broader tax base **simplifies** the tax system by eliminating hard to understand exceptions about the applicability of the tax system. This also enhances **equity**, leveling the playing field for industries and taxpayers. **Stability** is aided by capturing a broader piece of economic activity. By adopting a broader tax base and lower tax rate, the incentive to enter into complex legal structures and sophisticated tax planning is mitigated, thereby enhancing **neutrality**. Finally, lower tax rates make Ohio more **competitive** with other states that currently impose lower tax rates.

The specific tax reform proposals in this budget are concentrated in four primary areas.

1. Corporation Franchise Tax Reform: The tax reform package seeks to shore up the eroding corporate franchise tax, making it fairer – particularly among corporations of different sizes and compositions – and more productive. In the long term, the base broadening efforts are combined with tax rate reductions.
2. Sales & Use Tax Reform: The tax reform package seeks to ensure the long-term integrity of the sales and use tax system by modernizing the tax and capturing a portion of the growing service economy.
3. Personal Income Tax Reform: The tax reform package seeks to broaden the personal income tax base and reduce all state income tax rates. This will ensure the ability of Ohio to attract high-wage jobs, which benefit all Ohioans and Ohio's overall economy.
4. Municipal Income Tax Reform & Simplification: The tax reform package seeks to reduce the anti-competitiveness aspects of Ohio's municipal income tax system while preserving the local authority for cities to enforce their tax laws and enact their own tax rates.

For a complete list of reform elements, click [here](#).

Now the legislative process begins. Balancing the budget for this new biennium is a massive project, and obviously will not be agreed upon by state legislators and Governor Taft overnight. Over the next several months, the entire budget bill will be debated, with sections being changed, added or deleted. For example, if the General Assembly enacts a one-cent sales tax increase, then aspects of the tax reforms could be accelerated, such as the tax rate reductions. As you probably know, the Governor is required to sign the budget bill no later than June 30, since it becomes effective on July 1, 2003.

Ohio I-File

New this tax filing year is Ohio I-File, which allows taxpayers to file their Ohio individual income tax returns online and for free. As of March 14, over 63,000 Ohioans chose to use Ohio I-File.

To use Ohio I-File, all taxpayers have to do is logon to ODT's web site (www.state.oh.us/tax), and follow the instructions for Ohio I-File. On average, it is taking taxpayers only ten minutes to complete the filing process. There is nothing to buy and there are no filing fees.

Some of the benefits to using I-File include:

- Ohio I-File performs mathematical calculations for you, thereby reducing the chance for error;
- Ohio I-File eliminates the need for you to search through an instruction booklet for help. Users can simply click on the “?” for the line item instructions;
- Ohio I-File will speed up your filing process. After filing, you will immediately receive a unique confirmation number that lets you know you have filed; and
- Ohio I-File will allow for refunds to be received in as few as seven to ten days from the date you file.

Ohio I-File was created to continue to increase the number of “paperless” returns filed. In 2002, almost 40 percent of Ohio income tax returns were filed using an electronic method (TeleFile and e-file). Each year ODT continues to increase the percentage of paperless returns, which are less expensive to process. Paper returns cost about \$3.00 to process, while electronic, or paperless returns, cost an average of \$.67 to process. These cost-saving measures are especially important during tight budget times like the present.

Compliments for Ohio I-File are pouring in. One taxpayer said, “Just wanted to say thank you for getting this service set-up. I think it's wonderful for people like me in the military to make it easier to file.” Another one said, “I think this service is great. It was easy to use, fast, and free. Thank you.” One other taxpayer said, “I just wanted to thank you for making a user-friendly tax filing web site. I look forward to using it next year.” Is this taxpayer looking forward to filing her taxes next year already? This system must be even better than we thought!

Watch for final numbers on all of the filing methods used by Ohio taxpayers in the next issue of *Ohio's State Tax Report*.

2002 Accomplishments

During 2002, a number of accomplishments were achieved at ODT. Following is a brief summary of many of the Department's accomplishments during the year.

Improving Taxpayer Services: Round 2 – Governor Taft signed (6/7/02) the second Taxpayer Services Bill, Senate Bill 200, implementing additional measures to make Ohio's tax system more taxpayer friendly and efficient. Among the many improvements, the law allows consumers to obtain sales and use tax refunds directly from the Department of Taxation and expands the use of direct pay permits to non-manufacturers.

Tax Relief for Struggling Taxpayers: Offers in Compromise – Governor Taft endorsed and approved (3/14/02) House Bill 396, creating the Offers in Compromise program that applies to certain situations in which taxpayers can settle outstanding tax liabilities. The program establishes guidelines spelling out circumstances when the Department of Taxation and Ohio Attorney General can accept payment offers that are less than the amount of tax owed. The program mirrors a similar program available through the IRS and should result in increased collections of delinquent taxes.

Protection for Ohio Retailers: Streamlined Sales Tax Law – Governor Taft approved (3/22/02) legislation allowing Ohio's participation in an effort to provide important protections to Ohio retailers. Ohio is now among the more than 30 states working to develop a streamlined sales tax system that would bring fairness to the retail playing field. Currently, many Internet retailers do not collect sales tax while Ohio retailers do. That competitive disadvantage for Ohio retailers would be eliminated in a streamlined sales tax environment in which all retailers would charge and collect state sales taxes.

A Healthier Ohio: Raising the Cost of Smoking Cigarettes – Governor Taft approved increasing the state's cigarette tax from \$0.24/pack to \$0.55/pack in an effort to responsibly address Ohio's budget deficit as well as helping discourage Ohioans from smoking by raising the price of cigarettes.

Pursuing Excellence: Ohio Award for Excellence – The Ohio Department of Taxation, in its first year of participation, earned first-tier status with the Ohio Award for Excellence program. This achievement recognizes the Department's commitment to developing and implementing systems that monitor and measure efforts to improve the performance of the department. The Ohio Award for Excellence is patterned after the Malcolm Baldrige Award, which recognizes companies that have invested in quality principles and performance excellence.

Achieving Excellence: ODT is the Only – The Ohio Department of Taxation became the only tax department in the country with an internationally accredited Tax Enforcement Division. The Commission on Accreditation of Law Enforcement Agencies granted accreditation to the Tax Enforcement Division for adopting standards and practices meant to ensure the highest degree of professionalism in the conduct of law enforcement.

Tax Relief for Business Will Make Ohio More Competitive – The Tax Commissioner shortened the depreciation schedule for stand-alone computers from eight to five years, beginning in tax/calendar year 2003. The major benefits of this change are that it will save Ohio business taxpayers an estimated \$12 million annually and make Ohio more competitive with neighboring states that allow similar, shortened depreciation schedules.

Innovation Recognized and Awarded – The Ohio Department of Taxation in 2002 was recognized as an Agency of the Year for its commitment and contributions to the Innovation Ohio Program. Innovation Ohio is designed to encourage state employees to develop ideas for improving services and lowering costs in state government.

Tax Technology Tops – Ohio in 2002 was ranked first nationally (up from 26th) in a survey of tax departments for the use of digital technology in delivering services to taxpayers. The survey is conducted annually by The Center for Digital Government. (Note: Ohio is one of 10 states to have received the #1 ranking.)

Amnesty Program for Delinquent Taxes – Governor Taft authorized a three month amnesty period during which taxpayers could apply to pay their delinquent tax obligations in full without incurring the normal penalties. The amnesty program ended successfully in January 2002 with collections of delinquent tax exceeding \$48 million. Of that total, the state share tops \$33 million while local governments will receive more than \$15 million.

Ohio Business Gateway – Governor Taft's initiative to streamline and simplify business tax filing came on-line in (calendar year) 2002 as the *Ohio Business Gateway*. Ohio businesses can now file and pay on-line their workers' compensation, payroll withholding, sales and unemployment taxes.

Commissioner Zaino said, "We are here to serve the citizens of Ohio, and that is what we are doing when we make strides like we did in 2002. I know that ODT employees will continue to work together, accomplishing even more in 2003."

OHIO legislative update

By Mark Aiken, Legislation Division

The Ohio General Assembly enacted Amended Substitute House Bill 40 that was introduced to close an estimated \$720 million shortfall in the Fiscal Year 2003 state budget. Governor Taft signed the bill on March 7, 2003.

Among the numerous provisions, the bill requires an accelerated payment schedule for the remittance of sales and use taxes by Ohio vendors, out-of-state sellers, direct payment permit holders, and consumer use account holders that are required to remit by electronic funds transfer (EFT). Under existing law, payment by EFT is required when liabilities equal or exceed \$60,000 per year.

Beginning in April, vendors and out-of-state sellers who are required to pay by EFT will make three payments during the same month that the taxes are collected. These payments must be made on or before the 11th, 18th, and 25th of the month, based on either the taxes collected during the preceding week or equal to one-fourth of the tax liability for the same month in the preceding year. The remaining amount is due with the filing of the return on the 23rd of the following month. Direct pay permit holders and consumer use account holders must remit on the 11th, 18th, and 25th of the month an amount equal to one-fourth of total tax liability for the same month in the preceding year, with the remainder due with the filing of the return on the 23rd of the following month. The law authorizes the Tax Commissioner to impose penalties of up to 10% for each amount not timely paid electronically.

The bill also provides for a temporary increase in the vendor discount rate from 0.75% to 1.1%. The increased discount will apply to Ohio vendors and out-of-state sellers who timely file and pay their returns in May and June 2003. The increased discount rate does not apply to tax collected and paid to Ohio Clerks of Courts for titles to motor vehicles, watercraft, or outboard motors. The discount is scheduled to return to 0.75% for the June 2003 period, for returns due July 23, 2003, and thereafter.

Cigarette Revenues

Due to the unhealthy economic climate and to help balance Ohio's budget, Governor Taft approved increasing the state's cigarette excise tax from \$0.24 to \$0.55 per pack. The tax increase was part of a "budget corrective" bill, Senate Bill 261 of the 124th General Assembly. The cigarette tax increase became effective on July 1, 2002.

When comparing the first eight months since the tax increase became effective (July 1, 2002 - February 28, 2003) to the same eight months of last fiscal year (July 1, 2001 - February 28, 2002), revenues are up, while consumption is down. Revenue raised during the first eight months in FY 2002 was \$158 million, while revenue raised thus far in FY 2003 is \$329 million, an increase of \$171 million. Even though revenue is up, consumption is down. When comparing the same periods, 660,015,370 units (packs) of cigarettes were sold in FY 2002, while 599,294,688 units have been sold in FY 2003, a decrease of 60,720,682.

Excluded in the figures above is the money generated from the cigarette floor tax. Retailers were required to pay the tax increase on their cigarette inventory as of July 1, 2002. Over \$33 million has been paid as a result of this requirement. It was estimated that the state would receive \$19 million from the cigarette floor tax.

As with all tax increases, estimates were calculated before the increase became law. The Office of Budget and Management projected that during the first eight months of FY 2003 the state excise tax on cigarettes and other tobacco products would generate \$351 million. The actual amount for all excise taxes on cigarettes and other tobacco products is \$380 million, a positive variance of \$29 million.

Ohio Business Gateway

As you may recall, ODT offers vendors and employers the option of filing certain returns and making payments on the Internet through the *Ohio Business Gateway*.

Recently added to the *Ohio Business Gateway* is the Ohio Department of Commerce's Negative (NONE) Unclaimed Funds Report.

Coming soon are two new enhancements for filers using *Ohio Business Gateway*, which will include the credit card payment option and the delayed Automated Clearing House (ACH) option. Filers will be able to pay using their credit cards and they will also be able to file early, without paying the tax owed until the due date.

One option that is currently being explored is simplifying the registration page and the flow of the application. Users of the system have voiced their opinions and have said that a simpler registration page and a simpler process flow would be beneficial.

Many taxpayers are taking advantage of *Ohio Business Gateway*. During calendar year 2002, approximately \$16 million in tax was paid using the *Gateway* compared to approximately \$30 million in tax in only the first two months of 2003. The increase is credited to more marketing and the pilot paperless program for Franklin County vendors.

If you haven't already registered, it would be beneficial for you to consider doing so. To access *Ohio Business Gateway*, visit ODT's web site at www.state.oh.us/tax or visit the state of Ohio's web site at www.ohio.gov. For questions or assistance regarding *Ohio Business Gateway*, please call the help desk at 1-866-OHIO-GOV (1-866-644-6468).

INFORMATION *releases*

The following information releases were issued by the Department in the last several months. The topics addressed are summarized below. Please visit our web site at www.state.oh.us/tax and click on "Practitioner" and scroll down to the lower left-hand portion of the web page. Then click on "Information Releases" to view all the information releases in their entirety.

GENERAL INFORMATION RELEASES

Modified Appeal Procedures – Corrected Assessments – December 16, 2002

G 2002-01

This information release summarizes the changes to the appeal procedures provided for in the Ohio Revised Code section 5703.60 that were enacted in Substitute Senate Bill 200. These procedures apply to most tax assessments issued by the Ohio Department of Taxation on and after September 6, 2002.

CORPORATE FRANCHISE TAX/PERSONAL INCOME TAX

Ohio Bonus Depreciation Adjustments and the Internal Revenue Code's Passive Activity Loss, Basis Limitation and At-Risk Rules – November 7, 2002

PI & CFT 2002-02

The purpose of this information release is to outline how taxpayers claim IRC section 168(k) bonus depreciation for federal income tax purposes.

EXCISE & MOTOR FUEL TAX

Cigarettes and Other Tobacco Products

Notice About Master Cigarette Settlement Agreement (MSA) – January 6, 2003

XT 2003-01

This release contains information about default judgements issued by the Franklin County Court of Common Pleas at the request of the Ohio Attorney General, complaints filed by the Ohio Attorney General's office, and a new signatory added to the Master Cigarette Settlement Agreement.

PERSONAL PROPERTY TAX

New Valuation Schedule for Stand-Alone Computers – February 14, 2003

PP 2003-01

The purpose of this information release is to explain the new personal property tax valuation schedule for stand-alone computers. The new true value schedule can be used for stand-alone computers beginning with the 2003 tax year.

SALES AND USE TAX

Landscaping and Lawn Care Services – January, 2003 – Revised

ST 2003-02

This release deals with the application of Ohio sales and use tax to landscaping and lawn care services. It revises and replaces the release issued in April 1993 so as to incorporate changes made to the law relating to service providers. An exception from the tax was added with House Bill 215 (effective 9/29/97) and serves to limit the general application of the sales tax on service providers.

PRO-files

NOL Carrybacks

By Peter Angus, Esq., CPA, Problem Resolution Officer

Practitioners and taxpayers have sometimes had questions about the application of the net operating loss (NOL) provisions for Ohio income tax purposes. NOL carrybacks are available for personal income taxpayers, but not for corporate franchise taxpayers. Although an NOL may reduce a taxpayer's federal liability to zero, often some Ohio tax liability will remain.

If a taxpayer has elected for federal purposes to carry back an NOL for five years, the taxpayer must make the same election for Ohio income tax purposes. The election is made by filing an amended Ohio return reflecting the five-year carryback. A request for refund generally must be filed within four years of the date of overpayment. But if the refund request is due to an adjustment to the taxpayer's federal liability, the request may be made within sixty days after receiving the federal refund or a statement of agreement from the IRS.

For Ohio personal income tax purposes, the NOL carryback is limited in any year to the amount needed to reduce federal adjusted gross income down to the sum of federal itemized deductions, or the standard deduction, plus the personal and dependent federal deduction. This results in federal taxable income, after application of the NOL deduction, of zero. However, this does not necessarily reduce the Ohio taxable income to zero.

The federal carryback calculation is made on Schedule B of IRS Form 1045. On line 1 of Schedule B for the fifth year preceding the NOL tax year, the NOL is entered. On lines 2 through 7 of Schedule B, the taxpayer enters federal taxable income before the NOL carryback plus any net capital loss deduction plus an adjusted amount of itemized deductions plus personal exemptions, as well as other adjustments. These amounts are subtracted from the NOL to arrive at "modified taxable income" on Schedule B. Generally, the federal "modified taxable income" calculated on Schedule B will be the amended adjusted gross income for Ohio purposes.

For example, a taxpayer had an NOL of \$4,000,000 in 2002. On IRS Form 1045, Schedule B, line 1 for 1997, the fifth year preceding tax year 2002, the taxpayer will enter \$4,000,000. If, for 1997, the taxpayer had federal taxable income (before the NOL carryback) of \$500,000, adjusted itemized deductions of \$50,000, and personal exemptions of \$4,000, the federal modified taxable income would be \$554,000 and the NOL carryover to the next year, 1998, would be \$3,446,000. The amended 1997 Ohio income tax return would show \$554,000 as "federal adjusted gross income, as amended" on line 1, and the Ohio tax would be calculated accordingly.

Ohio Tax Conference

By Peter Angus, Esq., CPA, Problem Resolution Officer

The 12th Annual Ohio Tax Conference was held on January 28 and 29 in Columbus. Over 700 people attended the event, which is co-sponsored by ODT and the Ohio Chamber of Commerce.

Conference presenters covered a wide range of issues, such as "Tax Issues Impacting Ohio Manufacturers," "Sales & Use Tax Audits and Refunds," "Ohio's New Trust Tax," "Navigating Related Party Rules for Corporate Franchise Tax," "Ohio Tax Incentives," "Impacting Your Bottom Line: Personal Property Tax," "Ohio Tax Roundtable," "Sales & Use Tax Compliance and Direct Pay Agreements," "Resolving a Tax Problem," "Issues in Public Utilities," "Dealers in Intangibles Tax," "Navigating the Ohio Department of Taxation," and "Retail Sector Issues."

During the conference, two new inductees to the Ohio Tax Hall of Fame were announced. Senator Richard Finan, who retired from the Ohio General Assembly at the end of 2002, was honored for his extensive work as a legislator.

During his tenure in the General Assembly, Senator Finan was the primary sponsor of 81 bills which became law. Of these, 33 involved state / local taxation and they cover every topic from procedural reforms to emergency budgetary measures. For example, Senator Finan is responsible for legislation which improved the procedures by which taxpayers seek review of assessments at the Tax Commissioner level. Senator Finan wrote legislation improving appeal procedures at county boards of revision, and at the Board of Tax Appeals. He was the primary sponsor of the "bright line" legislation which clarified residency for income tax purposes, and he has authored legislation which provides credits to businesses that create and retain jobs in Ohio. More recently, as president of the National Conference of State Legislators and as Ohio Senate President, he has been a driving force in the Streamlined Sales Tax Project which will simplify compliance requirements for vendors.

The second inductee to the Hall of Fame was Ted B. Clevenger (1942-2000) who passed away from cancer. Mr. Clevenger was a Columbus attorney who worked closely with the Ohio Chamber of Commerce to establish the Ohio Tax Conference in 1992. That conference was attended by 115 participants. He also worked with former Tax Commissioner Roger Tracy in greatly expanding the conference to what it is today.

Mr. Clevenger's professional resume included many successful outcomes before various county boards of revision, the Ohio Supreme Court and the Ohio Board of Tax Appeals. As important as his career accomplishments were, it was his personal qualities that left the greatest impression on those he worked with. In presenting the award, Dan Navin of the Ohio Chamber of Commerce said, "Ted was the consummate professional, a man of unquestioned integrity, and a man who rightly deserves his place in the Ohio Tax Hall of Fame."

Administrative Changes

Robert Bray is the new Administrator of the Enforcement Division. Mr. Bray served as Acting Administrator for the last year. Mr. Bray has been with the Department for 18 years, all with the Enforcement Division. He began his career as an Enforcement Agent before being promoted to Enforcement Supervisor. He was later promoted to Assistant Administrator before becoming the Acting Administrator.

Upon Bonnie Reed's retirement in December, Mark Walker is now serving as the interim Administrator of the Taxpayer Services Division. Mr. Walker joined ODT in 1979. He began his career as a Tax Commissioner Agent, being promoted over the years, until most recently serving as Assistant Administrator under Ms. Reed.

Connie Poliseno is serving as the interim Administrator of the Sales and Use Tax Division. David Stone, the previous Administrator, retired from ODT at the end of February. Ms. Poliseno began her career with ODT in 1973 before leaving to work for the Ohio Attorney General's Office in the claims section from 1974-1985. She returned to ODT in 1985 and was promoted to Assistant Administrator in 1998.

Joining ODT's Tax Commissioner's administrative staff is Bryan Hairston. Prior to joining the Department in February, Mr. Hairston was the tax director for the city of Gahanna since 1989. He is working directly with Pat McAndrew, who is the Deputy Tax Commissioner for Tax Services.

COURT *decisions*

The following are significant court decisions of the Board of Tax Appeals (BTA) announced in December 2002, and January and February 2003. These informational summaries of tax decisions are compiled by Peter Angus, Esq., CPA, Problem Resolution Officer.



PERSONAL INCOME TAX CASES

Glenn and Audrey Altschuld v. Zaino (Feb. 14, 2003) BTA 2002-736

The taxpayers received a payment in 1991 and claimed a lump sum retirement credit of \$4,500 on their 1991 Ohio return. On review by an agent of the Department of Taxation, the credit was disallowed because the payment received by the taxpayers had not been a lump sum retirement payment. The taxpayer appealed the denial of the credit, contending that he had been given erroneous advice by an agent of the Department when he prepared his original 1991 Ohio return. The BTA held that even if an agent had given erroneous advice when the taxpayer prepared his return, it would not relieve the taxpayer of his liability.

William L. and Tina M. Lonabarger v. Zaino (Jan. 17, 2003) BTA 2002-1308

The BTA dismissed an appeal by taxpayers regarding an assessment for tax year 1991 because the taxpayers had failed to prepay the assessment as required by Ohio Revised Code 5747.13.

Terry J. Persun v. Zaino (Feb. 14, 2003) BTA 2002-1080

For tax year 2000, the taxpayer received a W-2 showing wages, but he submitted to the IRS a federal income tax return showing zero wages and zero adjusted gross income. He submitted to the Ohio Department of Taxation a return showing zero adjusted gross income and claiming the full amount of his withholdings as a refund. The Department issued an assessment against the taxpayer and he submitted a petition contending, among other things, that his wages were not income. He further contended that filing his return reflecting no wages was not frivolous and should not subject him to the \$500 penalty levied under Ohio Revised Code 5747.15. The assessment was affirmed by the Tax Commissioner and the BTA.

PERSONAL PROPERTY TAX CASES

Parisi Transportation Co. v. Zaino (Nov.29, 2002) BTA 1999-690

The BTA affirmed the classification of refrigeration units on semi-trailers as personal property. Although licensed motor vehicles are excluded from the definition of personal property under Ohio Revised Code 5701.03(A), the refrigeration units are not included within the exclusion because they are not inherently part of the trailer and are not used as part of the motor vehicle for motor vehicle purposes. This case has been appealed to the Ohio Supreme Court.

MB Operating Co. v. Tracy (Jan. 17, 2003) BTA 1998-302, 303, 304

The BTA affirmed the classification of gathering lines used in oil fields as personal property rather than realty, as contended by the taxpayer. The BTA found that the main function of the gathering pipelines is to transport gas to customers. Under Ohio Revised Code 5701.02 and 5701.03, the gathering pipelines were held to be personal property for tax years 1992 through 1996.

PUBLIC UTILITY PROPERTY TAX CASES

ANR Pipeline Co. v. Zaino (Dec. 6, 2002) BTA 2000-43

The BTA affirmed the Tax Commissioner's final determination despite the taxpayer's assertion that the assessment rates prescribed in Ohio Revised Code 5727.111(B) violate the Equal Protection Clause of the U.S. Constitution. The taxpayer did not appear at the BTA hearing to present a factual basis for its assertion.

DEALERS IN INTANGIBLES TAX CASES

***Stateco Financial Services, Inc. v. Zaino* (Dec. 6, 2002) BTA 2000-810, 2001-335, 6**

A second tier subsidiary of an insurance company was held liable for the dealers in intangible tax despite its contention that Ohio Revised Code 5725.25 should bar the imposition of the tax on it. R.C. 5727.25 provides, in part, that:

the tax provided for by sections 5725.01 to 5725.26 of the Revised Code shall be in lieu of all other taxes on the other property and assets of such domestic insurance company, except as provided in division (B) of this section, and of all other taxes, charges, and excises on such domestic insurance companies, and all other taxes on the stockholders, members, or policyholders of such company by reason of their stock or other interest in such insurance company...

The BTA held that although the statute would prevent the imposition of the tax on a first tier subsidiary of an insurance company (i.e., on the other property and assets of the insurance company), the general rule is that exceptions to taxation must be strictly construed.

REAL PROPERTY EXEMPTIONS

***The Performing Arts of Metropolitan Toledo, Inc., and Gomez Enterprises, A Limited Partnership v. Zaino* (Dec. 20, 2002), BTA 01-977**

A decision on this matter was originally issued on September 6, 2002. That decision was subsequently withdrawn pursuant to a motion for reconsideration filed on behalf of the Tax Commissioner. A building owned by a for-profit limited partnership and leased for use as a public charter school was exempted by the BTA because, under Ohio Revised Code 5709.07, it is the use of the property, not the ownership, which determines whether an exemption is available. In this case, the building was used as a public charter school building, and so the statutory requirement was fulfilled despite the fact that the building was owned by a private, for-profit partnership.

***Cleveland Clinic Foundation v. Lawrence* (Jan. 3, 2003) BTA 1999-1006**

An entity exempt under Internal Revenue Code 501(c)(3) leased vacant ground for 50 years from a private owner and built a building to be used in its operations. The lease provides that the building is to remain the property of the lessee unless/until the lessee does not operate pursuant to the lease provisions. The lessee is required under the terms of the lease to pay all real estate taxes. The BTA held that the lessee may file an application for exemption of the realty under Ohio Revised Code 5715.27(A), which provides that "The owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation..."

***Greater Life Assembly Inc. v. Zaino* (Jan.10, 2003) BTA 2002-878**

The taxpayer, a religious organization, applied for exemption of 14 acres and buildings under Ohio Revised Code 5709.07(A)(2), which exempts 'houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use and enjoyment.' The Tax Commissioner allowed the exemption for the building which was used as a church, as well as approximately 7 acres used for drives, parking lots and grounds. Exemption was denied for the rest of the acreage because there was no evidence to show that it was used "exclusively for public worship." The BTA affirmed the Commissioner's determination, because there was no evidence adduced at the BTA hearing which would support a finding of exemption.

***Vandalia Church of the Nazarene v. Zaino* (Jan. 17, 2003) BTA 2001-883**

Soccer and baseball fields located on property owned by a church and adjacent to its worship center were not exempt under Ohio Revised Code 5709.02(A)(2). The statute requires that property be used exclusively for public worship in order to qualify for exemption.

SALES AND USE TAX CASES

M&L Salami, Inc. v. Zaino (Dec. 6, 2002) BTA 2002-3

Agents of the Tax Commissioner performed a sales tax audit on a convenience store after a routine review of reported sales revealed an unusually high ratio of exempt sales to gross sales. Since the taxpayer had not maintained adequate sales records, the audit was conducted using a sample period. The taxpayer contended that the gross sales used in the audit were too high; however, the gross sales figures were those reported by the taxpayer on its returns. The taxpayer also contended that the taxable/exempt ratio used in the audit was too high; however, the audit methodology was affirmed by the BTA because the taxpayer was unable to provide any credible evidence to substantiate its assertion.

Automotive Warranty Corporation of America v. Zaino (Dec. 20, 2002) BTA 2000-920

An Alabama company which sold automotive repair warranties through the mail and reimbursed customers for their covered expenses was held liable for use tax on its sales because Ohio Revised Code 5739.01(B)(7) includes within the definition of "sale" warranty service agreements. The taxpayer's contention that it had no nexus with Ohio was rejected because the taxpayer had registered to do business with the Secretary of State of Ohio.

Brandia Graves, d.b.a. Unique Fashions v. Zaino (Dec. 20, 2002) BTA 2002-478

A vendor provided her sales figures to her accountant who prepared returns and took the amount of tax from the vendor, to be remitted to the State. However, the accountant embezzled the money and did not remit the sales tax. The vendor was assessed for the unpaid sales tax. The BTA affirmed the assessment, despite the vendor's assertion that she had paid the sales tax to her accountant for forwarding to the State. The BTA held that the vendor remained liable for ensuring that the sales tax was remitted.

Chrysler Financial Company L.L.C. v. Zaino (Jan. 3, 2002) BTA 2001-36

A finance company which purchased accounts receivable from retailers of automobiles, watercraft, and other items claimed a sales/use tax refund under Ohio Revised Code 5739.121. That section allows vendors to claim a deduction for bad debts for sales made on a credit basis which later become uncollectable. The BTA held that the purchaser of the accounts receivable could not avail itself of the provisions of O.R.C. 5739.121 because it was not the vendor.

Cheryl & Stephen Schwind v. Zaino (Jan. 17, 2003) BTA 2002-807

Taxpayers purchased a boat in Illinois in 1996 and did not pay sales tax. The boat was later used in Ohio. When assessed for Ohio use tax on the boat, the taxpayers contended that the Department of Taxation should have contacted them sooner about the matter, and that it was an abuse of discretion not to remit the entire penalty on the assessment. The BTA affirmed the assessment, and held that no abuse of discretion had been shown regarding failure to remit the entire penalty.

Streamlined Sales Tax Update

By Bill Riesenberger, Sales and Use Tax

On November 12, 2002, the Streamlined Sales and Use Tax Agreement was adopted by the Implementing States. The vote was 31-0 with one abstention. Since that time, the states have been working to amend their laws to conform to the terms of the Agreement. By its own terms, the Agreement will become effective only when a minimum of ten states, with at least twenty percent of the population of all states that have a sales tax, have brought their laws and procedures into conformity with Agreement. Those states that complete these steps will become member states. Currently at least sixteen states have introduced legislation to make necessary law changes.

As yet, the Streamlined changes have not been introduced in Ohio. This Department is working to draft necessary amendments to comply with the Streamlined Agreement and legislation should be introduced soon.

Enabling legislation that will allow Ohio to join the Streamlined System once it conforms to the terms of the Agreement was enacted in 2002 in S.B. 143 of the 124th General Assembly. Once the necessary changes are made, Ohio will need to apply to the Implementing States or, if the Agreement is already effective, the member states. In the application, Ohio will need to show that its laws, rules and policies are in substantial compliance with each of the requirements of the Agreement.

The major provisions of the Agreement include state-level administration of sales and use taxes, uniform state and local sales and use tax bases, and limitations on the frequency of local rate changes. The Agreement also provides for uniform sourcing of sales so that sellers will know what jurisdiction's tax to collect, and uniform bad debt provisions. The Agreement also provides a number of uniform definitions that states must use. For example, if a state wishes to have an exemption for food, it must use the same definition of food all other member states use. The Agreement allows for sales tax holidays and requires states that have holidays to adopt uniform definitions and procedures for implementing those holidays.

The Streamlined System will also simplify the mechanics of tax collection. An online registration system will allow sellers to register with all member states. The system will also provide simplified and uniform return filing and tax remittance rules for all member states.

For more information on the Streamlined System, please check out the Streamlined Sales Tax Project website at www.streamlinedsalestax.org.

ODT Mourns

On December 19, the Ohio Department of Taxation not only lost a valuable employee, but also a friend. Ronald Hohman passed away December 19 at the age of 52 after a brief battle with cancer. He was with ODT 29 years, most recently as Executive Administrator of Property Taxes.

Administrator Shelley Wilson said, "To many of us in the Division of Tax Equalization, Ron was more than our leader; he was our mentor and friend. His experience, intelligence, and thoughtful guidance set a new standard for the administration of local taxes. Perhaps his greatest gift was his ability to reach practical and effective solutions for school districts, local government agencies, and taxpayers alike. We will miss his wisdom."

Commissioner Zaino said, "I quickly came to respect Ron and his abilities. He readily accepted new challenges. Although he was quiet and mild mannered, he was extremely effective and a great manager. The love and respect he earned from so many people is the true testament to his greatness."

Ron is survived by his wife of 28 years, Diane; their children Ben F., Allison J., and Zach P.; and his mother Regina. Ron is also survived by numerous siblings.

Small Business Tax Workshops

New or prospective small business owners and self-employed persons can learn about their tax rights and responsibilities by attending the next Small Business Tax Workshop. These workshops are offered free of charge and are sponsored by the Internal Revenue Service and the Ohio Department of Taxation. Most workshops are being offered in cooperation with Ohio Department of Development, Small Business Development Centers, that provide professional, in-depth counseling and training to entrepreneurs and fosters a strong climate for small business growth.

Workshops are designed to provide a general overview of business taxes. Participants receive a business tax kit that contains forms and publications necessary for complying with business tax requirements. Several types of workshops are offered. General Business workshops are designed to provide a general overview of business taxes, types of business and business structures, advantages and disadvantages of each type, tax filing requirements, record keeping, estimated tax requirements and employment taxes. The Ohio Department of Taxation participates in General Business workshops.

Please note: This schedule is subject to change. Cancellations may occur and other workshops may be scheduled throughout the year. For the latest updates, call the number listed for the workshop you are interested in attending. If you are unable to attend a workshop after registering, please call and cancel. Class sizes are limited and others are waiting for reservations. Following is a list of classes scheduled from May through December 2003.

BUTLER COUNTY

August 26, 9:00 a.m. – 4:30 p.m.

General Business Tax Workshop

Butler Technology & Career Development School
Educational Resource Center
3603 Hamilton-Middletown Road (RT 4)
Hamilton, OH 45011
To register, call (513) 844-1500 or (513) 844-8100

CLARK COUNTY

June 13 and November 14, 9 a.m. – 4:30 p.m.

General Business Tax Workshop

Small Business Development Center
300 East Auburn Avenue
Springfield, OH 45505
To register, call (937) 322-7821 or mail to above address

CLERMONT COUNTY

June 19, 9:00 a.m. – 4:30 p.m.

General Business Tax Workshop

Clermont County Chamber of Commerce
553 Chamber Drive
Milford, OH 45150
To register, call (513) 576-5000 or fax (513) 576-5001

DELAWARE COUNTY**June 4 and October 1, 9 a.m. – 4:30 p.m.****General Business Tax Workshop**

Delaware JVS

4565 Columbus Pike, Board Room

Delaware, OH 43015

To register, call (740) 548-0708 Ext. 3222

GUERNSEY COUNTY**May 13 and September 23, 9 a.m. – 4:30 p.m.****General Business Tax Workshop**

Guernsey County Opportunity E.O.R.T.C.

St. Rt. 660 – 9900 Brick Church Road

Cambridge, OH 43725

To register, call OMEGA/SBDC (740) 439-4471

LUCAS COUNTY**July 10 and November 14, 9 a.m. – 4:30 p.m.****General Business Tax Workshop**

Toledo Area Chamber of Commerce

300 Madison Avenue, 8th Floor, Room 807

Toledo, OH 43604

To register, call (419) 243-8191 Ext. 267

STARK COUNTY**June 12 and November 12, 9 a.m. – 4:30 p.m.****General Business Tax Workshop**

Kent Stark Small Business Development Center

Kent State University – Stark Campus

6000 Frank Avenue. N.W.

Library Conference Room

Canton, OH 44720

To register, call (330) 244-3279

TUSCARAWAS COUNTY**June 11, August 6, October 22,****All 9 a.m. – 4:30 p.m.****General Business Tax Workshops**

Kent State University – Tuscarawas Campus

330 University Drive NE

New Philadelphia, OH 44663

To register, call (330) 308-7434

FRANKLIN COUNTY**June 4, July 23, August 13, September 24,
October 14, November 12 and December 17,
All 9 a.m. – 4:30 p.m. (lunch is on your own)****General Business Tax Workshops**

All at the Columbus Metropolitan Library

96 S. Grant Avenue, Main Auditorium

Columbus, OH 43215

To register, call (614) 225-6910

HAMILTON COUNTY**June 4, 8 a.m. – 4:30 p.m.****General Business Tax Workshop**

Hamilton County Development Company

1776 Mentor Avenue, Ste 160

Cincinnati, OH 45212

To register, call (513) 631-8292

October 8, 9:00 a.m. – 4:00 p.m.**General Business Tax Workshop**

SBDC at University of Cincinnati

7162 Reading Road, 7th Fl. Conference Rm.

Cincinnati, OH 45237

To register, call (513) 556-2072

MUSKINGUM COUNTY**May 23, 1- 4 p.m.****General Business Tax Workshop**

Ohio University

1425 Newark Road

Room 173 – Ellison Hall

Zanesville, OH 43701

To register, call (740) 439-4471

SUMMIT COUNTY**June 4 and September 12, 9:00 a.m. – 4:00 p.m.****General Business Tax Workshop**

Ohio Small Business Development Center

at the Greater Akron Chamber

1 Cascade Plaza, 17th Floor

Akron, OH 44308

To register, call (330) 379-3170

WARREN COUNTY**September 4, 9:00 a.m. – 4:00 p.m.****General Business Tax Workshop**

Warren County SBDC

Old Courthouse, Young Conference Rm. (3rd Floor)

300 E. Silver Street

Lebanon, OH 45036

To register, call (513) 695-1224

TAX enforcement news

The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from November and December, 2002 and January, 2003. Tax Enforcement News is compiled by Diann L. Hamilton, Management Analyst Supervisor, and Robert M. Bray, Administrator, Enforcement Division. Fraud complaints can be e-mailed to the Enforcement Division at Enforcement@tax.state.oh.us.

Scott Bennett, d.b.a. Nature's Grounds Care/Bennett's Lawn Perfection Inc., located in Findlay, was found guilty in the Findlay Municipal Court of one count of no vendor's license and four counts of failure to file sales tax returns. Mr. Bennett was also indicted on two counts of collecting and failing to remit sales tax and aggravated theft in the Hancock County Common Pleas Court. The filing history was reviewed and it was learned that Nature's Grounds Care had not filed a sales tax return nor remitted sales tax to the state of Ohio. Mr. Bennett was fined \$250 for each count plus costs. The total fines and costs were \$1701. Mr. Bennett was sentenced to 30 days in jail, 25 suspended. Five days satisfied with 40 hours community service with Hancock County Litter Board. Mr. Bennett was also ordered to pay \$194,883 restitution.

Harbi Mustafa and 3215 Fulton Ave. Inc. d.b.a. "Metro Distributors," in Cleveland, pleaded guilty in the Cuyahoga Common Pleas Court to one count each of prohibition against making a false return and trafficking in tobacco products with intent to avoid tax. ODT received information that Metro Distributors was under-reporting the OTP (Other Tobacco Products) tax. A grand jury subpoena was obtained and a preliminary total showed that Metro Distributing did not claim all purchases of OTP. The court sentenced Mr. Mustafa to five years community service control under the supervision of the Adult Probation Department with certain conditions. Defendant is to make restitution of \$328,039, plus late charges and interest, for a total of \$562,287.

The following tables are summaries of convictions concerning cigarette and sales tax violations.

Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Raj N. Goyal	Short Stop	Sylvania	(1) Count Attempt To Commit An Offense
Thomas J. Hutton	Hutton Pharmacy	Toledo	(1) Count Selling Cigarettes Without A License
Albert Andrako	Portage Beverage Center	Oak Harbor	(1) Count Selling Cigarettes Without A License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Amy Silvestri	Sylvester's Greenhouse	Sylvania	(1) Count Failure To File Sales Tax Returns (1) Count Failure To Collect Sales Tax
Deron Eicher	Ike's Automotive	Hicksville	(2) Counts Failure To File Sales Tax Returns
Ismail Sharif	Summit Diner	Toledo	(1) Count Failure To File Sales Tax Returns
Robert Ickes		New Philadelphia	(1) Count Failing To Collect Sales Tax (1) Count Selling Without A Vendor's License

Tax Calendar at-a-Glance

April

- 15** Monthly Income Tax Withholding Return
- 15** Quarterly Estimated Income Tax Return
- 15** Annual Income Tax Return
- 21** Monthly Kilowatt Hour (KWH) 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
- 20** Monthly Kilowatt Hour (KWH) Tax Return
- 20** Quarterly Natural Gas Distribution (MCF) Tax Return
- 23** Monthly and Semiannual Sales Tax Returns
- 23** Monthly Consumer and Direct Pay Returns

June

- 2** Annual or Estimated Corporation Franchise Tax Return
- 15** Monthly Income Tax Withholding Return
- 15** Quarterly Estimated Income Tax Return
- 20** Monthly Kilowatt Hour (KWH) Tax Return
- 23** Monthly and Semiannual Sales Tax Returns
- 23** Monthly Consumer and Direct Pay Returns

Our Mission:

To provide quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.

Our Motto:

We CARE about the quality of our service.

Courteous

Accurate

Responsive

Equitable

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