

# OHIO's



## statetaxreport

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Ohio Department of Taxation

Spring 2004

### ***Changes at the Top***

William W. Wilkins became Ohio's Tax Commissioner on January 12. Since that time, he has been busy appointing his top-level staff.

Fred Nicely was named Deputy Tax Commissioner – Office of Chief Legal Counsel. Mr. Nicely began his career at ODT nearly 17 years ago. He will oversee the Office of Chief Counsel, Taxpayer Appeals, Appeals Management, Bankruptcy, Enforcement and the Communications Office. Mr. Nicely will continue to serve as Chief Counsel for the Department.

Commissioner Wilkins appointed Rick Anthony as Deputy Tax Commissioner of Tax Services. Mr. Anthony joined ODT in 1980, working his way through the ranks over the years. Prior to this appointment, Mr. Anthony was the Executive Administrator over the three Property Tax divisions.

Fred Church was appointed to the position of Deputy Tax Commissioner of Tax Policy by Commissioner Wilkins. Mr. Church joined ODT in 2000 as Chief Policy Advisor and in 2002 became the Administrator of Tax Analysis.

Commissioner Wilkins named Mark Walker the Executive Administrator of Compliance and Taxpayer Services. Mr. Walker has been an ODT employee for over 24 years. Prior to this appointment, Mr. Walker was the Administrator of the Taxpayer Services Division.

Commissioner Wilkins recently named Francie Adams the Executive Administrator of Human Resources and Employee Development and Training. Ms. Adams began her career at ODT in 1976. Most recently, she was the Administrator of Human Resources.

Shelley Wilson is the new Executive Administrator of Property Taxes. Joining ODT in 1996, Ms. Wilson began her career here as an Assistant Administrator in the Tax Equalization Division. In 2000, she was

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named the Administrator of the division. Ms. Wilson will oversee the Tax Equalization and Personal Property Tax Divisions.

The new Executive Administrator of Operations and Support is Tom Snyder. Mr. Snyder joined ODT in 1985 as a field agent in the Excise Tax Division. Most recently, he was the Assistant Administrator of Personal Property Tax. Mr. Snyder's new duties will include overseeing the Forms Division, Income & Corporation Franchise Tax Division and the Processing Center.

Toni Lintner-Sutton recently joined the Department as the Executive Assistant to Commissioner Wilkins.

Other administrative changes in the Department include:

Allen Lenko is the Administrator of the Strategic Development and Business Analysis Unit. Mr. Lenko began his career at ODT in 1987. Prior to this appointment, he was the Acting Assistant Administrator of the Compliance Division.

Martha West is the new Administrator of the Information Services Division (ISD). Ms. West has been with ODT for nine years, all of which were spent working in ISD. Prior to being named administrator, she was the manager for distributor servers in ODT and the manager of the security group.

Greg Stratton is the new administrator of the Facilities Management Division. In his new role, Mr. Stratton will oversee the Department's facilities planning and maintenance, security management, mail and delivery services, office equipment and central supplies.

## ***New FAQ Section***

The FAQ (Frequently Asked Questions) section of ODT's site has been completely updated and upgraded.

Thanks to suggestions from taxpayers and employees, the FAQ section is much more useful. It is now **SEARCHABLE** and vastly easier to access and use because it is now supported by an industry standard web help authoring tool – *RoboHelp*.

As many of you know, FAQs can be a tremendous resource. If you haven't visited ODT's FAQs recently, now would be a great time to refresh your memory on all the information available in our questions and answers section.

This switch is a great step forward but only one of many planned for the web site. ODT will soon be rolling out a newly redesigned home page and during the year will be significantly increasing the body of information and services available via the ODT web site. If you have suggestions for ways to enhance our site, please let us know by e-mailing us from our web site. Look for the "E-Mail Us" link found at the top, right-hand corner of our home page (tax.ohio.gov).

## ***Ohio I-File/Ohio ePayment***

This year, taxpayers can file and pay their taxes electronically. First offered last year, *Ohio I-File* is the Ohio Department of Taxation's on-line service for filing the Ohio Individual Income Tax Return, Form IT-1040. It is a fast, free and secure method of filing. New this year is *Ohio ePayment*, which is ODT's individual income tax on-line payment service. This secure, on-line payment service allows taxpayers to pay their Ohio individual income and Ohio individual school district income tax return payments, estimates, extension to file payments, bill payments and assessment payments using an electronic check or credit card.

Some of the benefits of *Ohio I-File* include:

- *Ohio I-File* performs calculations for you, reducing the need to use the tax tables or manually perform mathematical calculations thereby reducing the chance for error.
- *Ohio I-File* will speed up your filing process.
- *Ohio I-File* will let you print your return as filed so that you will have a copy for your records.
- *Ohio I-File* is paperless. You no longer need to send us a copy of your return or your W-2's.
- *Ohio I-File* will allow for refunds to be received in as little as seven to ten days from the date you file.

Some of the benefits of using *Ohio ePayment* are:

- *Ohio ePayment* is paperless. You no longer need to send paper documentation if you pay electronically.
- *Ohio ePayment* allows you to pay your taxes 24 hours a day, 7 days a week, increasing flexibility for you. In addition, when paying by electronic check you may be allowed to postdate your payment up to 90 days (but no later than the due date).
- *Ohio ePayment* will let you print confirmation of payment so you have a copy for your records.
- *Ohio ePayment* provides line-by-line instructions.

For more information on both *Ohio I-File* and *Ohio ePayment*, please visit ODT's web site at [tax.ohio.gov](http://tax.ohio.gov) and click on the *Ohio I-File* box at the bottom, right-hand corner.

## ***Call for Help***

The individual income tax and corporation franchise tax "Special Handling" forms have recently been updated and renamed to more accurately reflect their purpose. The IT-Flag and FT-Flag are now "IT-Help" and "FT-Help."

Taxpayers may attach the bright green (IT-Help) or bright pink (FT-Help) forms to their returns to let the department know that the enclosed tax forms require special handling. Individual taxpayers may need to let us know that their form is an amended return or that it contains a fiduciary income tax return (IT-Help). Or corporate taxpayers may be filing a combined report or an exit tax report (FT-Help). The brightly-colored forms will "Help" call attention to these special returns so they can be separated from other forms and reviewed on an individual basis.

The IT-Help and FT-Help forms are available on our web site, although we do request that the forms be printed out on green or pink paper so they will stand out from other forms.

## ***School Funding: The Tax Factor***

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Key participants acknowledge that the Ohio Department of Taxation is a major player in the efforts of the Blue Ribbon Task Force on Financing Student Success, but cracking the school funding dilemma is proving to be a very tough nut.

Ohio Tax Commissioner William Wilkins, who chairs the task force, called ODT's contributions in tax analysis and development of funding options "invaluable," but cautioned that finding an answer that pleases all sides in the long-running saga will likely be elusive.

"I think we can come up with a solution that will be constitutional," he said. "Will everybody be happy? No."

Task force committees have been meeting twice monthly, the Commissioner said, with a meeting of all members scheduled for April 1. Commissioner Wilkins plans to wrap up the task force's work this spring, and provide a report and recommendations to Governor Bob Taft.

Two similar proposals that change the way schools are currently funded have been developed by ODT and the Ohio School Boards Association (OSBA). Both would shift the payment of 20 mills of all property tax revenue from the local taxing districts to the state level. Beyond that, the ODT proposal calls for transferring the payment of all tangible personal property taxes to the state. The revenue would then be re-distributed to provide the same basic level of funding for all school districts.

ODT is well-represented on the task force. Besides the Tax Commissioner, Deputy Tax Commissioner of Tax Policy Fred Church is also a member. Tax Analysis Assistant Administrator Mike Sobul has provided the staff support for the revenue and taxation committee.

Currently, all school districts begin with a base amount of \$5,058 in per-pupil aid, the cost of which is split between the state and the school district. Nearly 46 percent of funding comes from the state and a little over 48 percent from the local level, while the federal government provides about 6 percent.

Local districts can increase their funding either by voter approval of additional property tax levies or a school district income tax. Out of 612 school districts in Ohio, currently 133 levy an income tax.

Advocates of change in school funding contend, however, that the existing funding formula leads to an over-reliance on property taxes, creating disparities between affluent and less affluent districts.

According to Mr. Sobul, the ODT and OSBA proposals would both require the state to fund 100 percent of the cost of basic state aid for all school districts. The proposals differ in that ODT favors leaving three "inside" mills in each district to pay for "categoricals" (special education, gifted education, vocational education, and transportation) while OSBA proposes state funding for these same areas at 100 percent. The proposals also contain "hold harmless" provisions to prevent districts from losing revenue, he said.

Another committee of the task force, the funding for success committee, is looking at possibly changing the formula for calculating basic aid, which would then likely change some features of the funding proposals, Mr. Sobul said. "The key is what the basic aid level is," he stated. But he also believes that the ideas proposed provide a more fair foundation for school funding. "It also evens out, under our plan, the sources of inequality in the property system," he said.

Other possibilities, Commissioner Wilkins stated, call for a "growing" mill to take advantage of increases in local

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property value, rather than incorporating current property tax reduction factors.

Whatever proposal ends up being formally made, work on the school funding issue has taken up “not an insignificant” amount of time for Mr. Sobul, he said. But this time spent by the members of ODT has been vital to the members of the task force as they work to reach a solution.

“Between providing staff and support to the task force, the tax department has been heavily involved, I’d say as heavy as anybody,” said Paul Marshall, the task force’s executive director. “There’s no other place you’re going to get that kind of expertise.”

But whether the efforts of ODT, or the task force as a whole, will bear fruit for Ohio schools remains an open question. The impetus for changing the school funding system, known as the DeRolph case after a lawsuit filed by a parent in 1992, resulted in four separate Ohio Supreme Court decisions declaring the state’s system of school funding unconstitutional and ordering the General Assembly to fix it. Ohio is one of more than 40 states facing legal challenges to school funding systems.

School advocacy groups have recommended that states devote more general revenue to schools to compensate for property tax inequities. Some reform has already taken place in Ohio, by the commitment of \$10.2 billion over 12 years for school construction and renovation across the state – in conjunction with local matches totaling \$12.9 billion – through the Ohio School Facilities Commission.

Meanwhile, however, some members of the Ohio House of Representatives have publicly expressed a reluctance for the tangible property tax re-allocation plan, maintaining that it would disadvantage suburban areas which have experienced rapid business growth.

The task force’s members realize that the final recommendation probably won’t please all stakeholders. “I hope everybody looks at this and says it’s an improvement, but we’re not going to thrill everybody,” Mr. Marshall commented. “We won’t solve this for all time, but I think there’s a strong commitment to improving it, and I think we can improve it quite a bit.”

Governor Taft appointed the task force on July 29, and it held its first meeting August 7. It is comprised of 34 members drawn from state government, business, and education communities, including school administrators and unions. In addition to the revenue and taxation and funding for success committees, it also contains an operations and efficiency committee. Commissioner Wilkins was selected to chair the task force while previously employed in the private sector. Former Tax Commissioner Tom Zaino is also an original member of the task force.

### ***Motor Fuel Tax Rates Changing***

The surcharge applicable to vehicles subject to the motor fuel use tax will be reduced from 3 cents per gallon to 2 cents per gallon on July 1, 2004.

The motor fuel tax rate (the tax that is paid at the pump) will increase from 24 cents per gallon to 26 cents per gallon on that same day.

## **2003 Annual Report Now Available**

The *2003 Annual Report* is now available. The new edition contains all of the revenue data and tax information that members of both government and the public have come to expect – along with a bit of nostalgia in a bicentennial history of 200 years of taxation.

The design concept of this year's report is Ohio's Bicentennial. In addition to pictures and historical graphics of scenes and people to illustrate the various taxes, there is a special section, "*Ohio Taxes Through Time*," exploring the role of taxes during Ohio's transition from territory to one of this country's most significant states. The 166-page report is an all-inclusive publication of ODT, documenting the tax laws and receipts of Ohio.

To view the report, visit our web site at [tax.ohio.gov](http://tax.ohio.gov) and click on the *Research* tab and you will find the *2003 Annual Report* under *Publications*. To request a hard copy, e-mail us from our web site. Look for the "E-Mail Us" link found at the top, right-hand corner of the home page.

# **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 [tax.ohio.gov](http://tax.ohio.gov) and click on "Releases" at the top of the home page to view all the information releases in their entirety.

### ***OHIO INCOME TAX – INDIVIDUAL***

*Recent Federal Law Change Affecting Military Servicemembers Requires Modification To Year 2003 Ohio Income Tax Return* – February, 2004

Recently-enacted federal law, Servicemembers Civil Relief Act, requires modifications to Ohio's year 2003 Ohio income tax return, Ohio Form IT-1040. Section 511(d) of that act states, "A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction."

### ***PERSONAL PROPERTY TAX***

*Taxation on Software* – February 14, 2004

This information release addresses the taxability of software for personal property tax purposes for both general business taxpayers and public utilities.

### ***SALES TAX***

*Landscaping, Lawn Care Services and Snow Removal* – Revised January, 2004

This release deals with the application of Ohio sales and use tax to landscaping, lawn care, and snow removal services. It revises and replaces the revised release issued in January 2003 so as to incorporate changes made to the law relating to snow removal in Amended Substitute House Bill 95 (effective July 1, 2003).

*Towing Service* – Revised February, 2004

**Updated - Supersedes Information Release dated August 1, 2003. Questions 3, 6, 10, & 11 revised. Questions 17 & 18 added.**

The purpose of this release is to provide information to vendors and consumers to assist them in meeting their obligations under the tax. Amended Substitute House Bill 95 of the 125th Ohio General Assembly included several expansions to the sales tax base including motor vehicle towing services.

## ***New Inductee into Ohio Tax Hall of Fame Announced***

The 13th Annual Ohio Tax Conference was held on January 20 and 21 in Columbus. Over 670 people attended the conference this year. It is co-sponsored by ODT and the Ohio Chamber of Commerce.

Attendees received tax information from Ohio and many of the nation's premier tax experts. The conference covered issues such as effective business tax planning and management; major changes in Ohio's business taxes contained in Ohio's FY 2004-5 budget; business income tax issues; recent tax reforms; nexus policies; and multi-state sales tax issues and federalism.

During the conference, a new inductee to the Ohio State and Local Tax Hall of Fame was announced. This year's inductee is I. John "Jack" Reimers, former president of the Ohio Chamber of Commerce and a prominent tax specialist for nearly 40 years.

Ohio Tax Commissioner William Wilkins said, "Jack Reimers was one of the pre-eminent business tax experts in Ohio during his many years at the Ohio Chamber. He is highly deserving of this recognition."

During his tenure at the chamber, Mr. Reimers was among the most influential business voices on issues involving government debt and state and local taxes. He lectured on business taxation before many audiences, taught several courses in state and local taxation and served on the Committee on State Taxation, an affiliate organization of the Council of State Chambers of Commerce.

One of the major accomplishments of his 30-plus years with the chamber was his leadership in the fight to reduce the business personal property tax assessment level from 70 percent to the current 25 percent of true value. He also protected the interests of the business community when Ohio instituted the individual income tax during the early 1970s.

Mr. Reimers joined the Ohio Chamber in 1963 holding various positions until 1987 when he was named president. Mr. Reimers retired in 1993.

### ***Tax Rules Now Available on ODT Web Site***

New to ODT's web site is a Rules section. The purpose of this page is to provide the public with proposed and effective rules pertaining to Ohio Administrative Code 5703. The page will continuously be updated so you no longer need to wait for the rules to be published elsewhere.

Taxpayers can select one of three options on the page:

- Proposed Tax Rules – Not in Effect
- Final Tax Rules – in Effect
- Anderson's Ohio Administrative Code (This links taxpayers directly to Anderson's Ohio Administrative Code.)

Visit ODT's web site at [tax.ohio.gov](http://tax.ohio.gov), select "Practitioner" then "Ohio Administrative Code (Rules) - Proposed Rules and Final Rules" under "Laws and Rules."

# PRO-files

## Effects of the 2003 Servicemembers Civil Relief Act on Ohio Income Tax ...and Other Information for Servicemembers

By Peter Angus, Legal Counsel, Compliance Division

In December 2003, Congress passed and the President signed the Servicemembers Civil Relief Act. This act provides a number of financial protections for military servicemembers, including certain limitations on state taxes. Section 511(d) of the act provides: "A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction." Ohio is one of 19 states which subjects the full adjusted gross income of nonresidents to tax, but then gives a credit against the tax in proportion to the income not earned or received in Ohio. This has the effect of subjecting the nonresident's remaining income from such sources as Ohio rental property, or the income of the nonresident's Ohio spouse, to the higher income tax rates. The Servicemembers Civil Relief Act requires a change to this method for taxable years 2003 and following. Details of how these changes should be reported on the Ohio income tax return are available on the Department of Taxation's new web site page: *Military Taxpayers! Your Guide to Ohio and U.S. Income Taxes*.

*Military Taxpayers! Your Guide to Ohio and U.S. Income Taxes* can be found under "What's New?" on the ODT web site. Clicking on the guide directs service members to separate pages for state and federal tax information. The state page spells out the rules governing military service, tax responsibility, and residency information for service members whose home of record is Ohio. In short, if Ohio is entered as the state of legal residence in a service member's military personnel record, taxes are withheld and paid the same as other Ohio residents. The page also provides general information for service members stationed in Ohio on active duty, and for their spouses. While the state does not tax military pay of nonresident service members, any income earned in Ohio other than as a service member is taxed by the state, as is non-military income earned by the spouse. Links take the military taxpayer to the appropriate forms.

The state page also lets members of the National Guard and Reserves who are called to active duty know the special provisions they are entitled to regarding filing and payment extensions for both income and property taxes.

All service members are entitled to tax relief for pay earned in a combat zone. Ohio mirrors the federal tax laws regarding combat service, and accordingly, pay earned in a combat zone is excluded from income taxes. The guide explains federal tax rules by taking service members to the Internal Revenue Service military web page. This page has links to detailed information on designated combat zones, combat zone pay exclusions, filing extensions, and tax provisions affecting military families.

*Military Taxpayers! Your Guide to Ohio and U.S. Income Taxes* gives service members and their families a valuable overview both of their tax responsibilities and the special tax relief provisions affecting the military.

### **Web Address**

Please note that ODT's web address (URL) has changed. It is now **tax.ohio.gov**

# COURT *decisions*

The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court during December 2003 and January and February 2004. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.



## CORPORATION FRANCHISE TAX

*Federated Department Stores v. Zaino* (January 9, 2004), BTA 2002-103

The taxpayer's 1993 corporation franchise tax report, which showed a negative net worth of \$334,536,641 as of the first day of its fiscal year, February 1, 1992, was audited and adjustments were made based on information in its annual reports and SEC filings. That information resulted in an audit finding of a net worth of \$430,069,566. The taxpayer presented evidence to show that the information relied upon by the auditors reflected "fresh-start" values after it emerged from bankruptcy on February 4, 1992, but that its separate set of books kept according to GAAP were used in preparing its corporation franchise tax report. The BTA agreed that the taxpayer's GAAP-based accounting records were the proper basis for its corporation franchise tax report, and the Tax Commissioner's final determination was reversed. This case has been appealed to the Ohio Supreme Court.

## PERSONAL PROPERTY TAX

*DeWeese v. Zaino* (2003), 100 Ohio St.3d 324

Intercounty personal property tax returns filed by Honda of America Mfg., Inc. for 1996-1998 were audited by the Tax Commissioner's agents. Amended assessment certificates were issued based on those audits. The taxpayer filed petitions for reassessment contending that (1) capitalized interest should not have been taxed, (2) the value of repair parts and small tools should be reduced, (3) certain property should have been classified as exempt patterns, jigs, dies, and drawings, and (4) certain property should have been classified as intangible software. The Tax Commissioner issued a final determination denying all substantive issues raised by the taxpayer. The taxpayer appealed the final determination regarding these issues to the BTA under the provisions of Ohio Revised Code 5717.02. The BTA has not ruled on that notice of appeal by the taxpayer. The auditors of Shelby, Logan and Union counties also filed appeals with the BTA, contending that the Tax Commissioner had erroneously exempted certain assets, including items said to be patterns, jigs, and dies, from taxation. The taxpayer moved to dismiss their appeals. The BTA granted the taxpayer's motion to dismiss the auditors' appeals, ruling that the auditors' appeals went beyond the issues determined by the Tax Commissioner in his final determination. The Supreme Court upheld the dismissal, holding that appeals to the BTA are confined to issues addressed by the Tax Commissioner in his final determination.

*Honda of America Mfg., Inc. v. Zaino* (January 9, 2003), BTA 2003-93

The taxpayer applied for an air pollution control certificate for a new bumper cleaning facility it constructed at its East Liberty plant in 1994. The new facility used water and detergent instead of the chemical TCA which had been used up to that time. The application was referred by the Tax Commissioner to the Ohio Environmental Protection Agency (EPA) under the provisions of R.C. 5709.21. The EPA concluded that information in the application was inadequate to support issuing a certificate, and recommended denying the application. The Tax Commissioner did deny the certificate. The BTA affirmed this action, finding that the primary purpose of the new facility was to further the process of the manufacture of auto components, not to control air pollution.

*MascoTech, Inc. v. Zaino* (February 6, 2004), BTA 2002-976

Subsequent to having work done on several of its machines, the taxpayer assigned the cost to Class Life I rather than the class life of the machines themselves, Class Life V. On audit, the Tax Commissioner's agent reclassified the cost to Class Life V. The taxpayer sought to show that not all of the cost necessarily increased the value of the

machines. Because the taxpayer failed to prove that the work had been repairs and not rebuilds, and did not prove a value other than what was shown on its books, the BTA affirmed the Tax Commissioner's final determination.

### INDIVIDUAL INCOME TAX

*Todd Detering v. Zaino* (December 12, 2003), BTA 2003-757

A taxpayer who received a W-2 showing wages reported zero income on his federal and Ohio returns. He claimed a refund of the full amount of his Ohio withholdings. The Tax Commissioner denied the refund and assessed a \$500.00 frivolous filing penalty. The BTA affirmed the Tax Commissioner's actions.

*Daniel L. Gifford v. Zaino* (December 12, 2003), BTA 2002-1222

A taxpayer was assessed for not filing a 1997 Ohio income tax return. He contended that he was not an Ohio resident during the year. He left his home in Cincinnati in late 1996 to manage restaurants owned by his employer outside Ohio. He returned to Ohio for two weeks in January, 1997 for a vacation, and also returned in November, 1997 to occupy an apartment where he has resided since. He retained his Ohio driver's license and his Ohio voter's registration during the period he was outside Ohio. On these facts, the BTA held that the taxpayer had not overcome the presumption of correctness of the assessment, and affirmed.

### REAL PROPERTY TAX EXEMPTIONS

*Zion Evangelical Lutheran Church v. Zaino* (February 6, 2004), BTA 2003-876

In March, 1999, the taxpayer filed an application for exemption for 1999, and a request for remission of tax and penalties for 1996-1998. In January, 2000, the Tax Commissioner issued a journal entry granting the request for exemption, but not addressing the request for remission for 1996-1998. The taxpayer did not appeal from that journal entry. In December, 2000, the taxpayer filed an application for exemption for 2000 and requested remission for previous years. However, the BTA held here was no jurisdiction under Ohio Revised Code 5715.27(A) to consider the application for remission because such a request must be made through an application for exemption, and exemption had already been granted for 1999 and years following.

*City of Zanesville v. Zaino* (December 12, 2003), BTA 2003-155 thru 2003-165

The city of Zanesville sought exemption under R.C. 5709.08 for certain parcels of real estate said to be used for a public roadway. The Tax Commissioner, acting under R.C. 57115.27, 5713.08 and 5713.081, dismissed the applications for exemption because there were unpaid taxes due upon the parcels. The BTA affirmed the Tax Commissioner's actions.

*Miracit Development Corporation v. Zaino* (February 27, 2004), BTA 2002-1313

A not-for-profit corporation formed by a church acquired a day care operation, including the realty, which was operated by another not-for-profit corporation. The taxpayer claimed exemption for the real property under Ohio R.C. 5709.12, which provides that "real...property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." The day care center in question served the neighborhood population, received most of its funding from governmental agencies, and charged private-pay parents no more than subsidized parents. However, the center had no written criteria to determine "low income." Further, there was inconsistent testimony regarding the percentage of low-income families served by the center. Since the operation of a day care center is not, in and of itself, a charitable use, the BTA affirmed the Tax Commissioner's denial of exemption.

*Columbus City School Dist. Bd. of Edn. v. Wilkins* (2004), 101 Ohio St.3d 112

In 1996, subsequent to asbestos removal and other renovations of the property occupied by the Adam's Mark Hotel in Columbus, the director of the Ohio EPA issued a covenant not to sue to the property owner and certified a copy to the Tax Commissioner. As required under R.C. 5709.87, the Tax Commissioner issued a final determination stating that the increase in value of the property was to be entered on the county exempt list of property and remain there until the end of the tenth year after the date of the final determination. The Columbus City School District

Board of Education filed an appeal of this final determination with the BTA, contending that it had not been properly notified of the action. The Board of Education also contended that the exemption should only apply to the improvements relating to the removal of hazardous materials. The BTA and the Supreme Court held that there is no requirement in R.C. 5709.87 to provide notice to the Board of Education, and that the exemption of property contained in the final determination of the Tax Commissioner issued under the statute is not limited to improvements resulting from environmental remediation.

### SALES / USE TAXES

*Dairy Farmers of Am., Inc. v. Wilkins* (2004), 101 Ohio St.3d 100

An agricultural cooperative purchased raw milk from its farmer-members and processed it into dairy products for sale. The cooperative was assessed sales/use tax on cleaning materials used to disinfect the processing equipment. Under Ohio R.C. 5739.011(C)(8), materials used to clean manufacturing equipment are taxable. However, under R.C. 5739.02(B)(17), property used directly in production by farming or agriculture of property for sale is exempt. The Supreme Court held that the cooperative was engaged in agriculture or in the rendering of agricultural services for others and that, accordingly, the cleaning materials used on processing equipment were exempt.

*H.R. Options, Inc. v. Zaino* (2004), 100 Ohio St.3d 373

An employment services provider hired employees to fulfill the staffing needs of its clients. The employment service provider billed the clients for reimbursement of the wages and all other costs (taxes, FICA, etc.) it paid as the employer. As compensation for its services, the provider also charged its clients a fee, which was a mark-up based on the wages paid to the employee. The provider and the five clients it had in Ohio entered into written agreements that provided that the clients desired to retain the provider as the common-law employer of employees with appropriate qualifications and skills to provide services to be utilized by the clients. The agreements further provided that the clients would refer candidates to the provider for employment. The provider did not fill the employment needs of any of its clients from its own pool of available employees. Most of the agreements between the provider and its clients provided for a term of two or three years. However, some of the contracts included the right to terminate 30 days after written notice. The Supreme Court held that these activities constituted an employment service under Ohio R.C. 5739.01(JJ), which defines the term "employment service" as "providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service."

The employment service provider contended that even though it was providing employment services, it was excluded from sales tax under R.C. 5739.01(JJ)(3), because the following two elements were present: (1) there was a contract of at least one year between the service provider and the purchaser, and (2) there was a contract that specified that each employee covered under the contract was assigned to the purchaser on a permanent basis. The Court held that both the contract, along with the facts and circumstances of the assignment, should permit the Tax Commissioner's agent to determine permanency. The actual length of the employee's assignment is only one of the factors to be used. Where the assignment is of a seasonal nature or serves to meet short-term workload conditions, these factors are also relevant. The Supreme Court reversed and remanded the BTA's decision to have the taxability of the contracts determined consistent with the Court's holding.

*Datta Corporation, dba Britton's Market v. Zaino* (January 23, 2004), BTA 2003-107

An agent of the Tax Commissioner audited a vendor who did not maintain primary sales records as required by R.C. 5739.11. The audit was conducted by analyzing the purchases the vendor had made during one of the years in the audit period. Gross sales were determined by applying mark-up percentages to the various categories of purchases. Although the vendor testified at the BTA hearing that the audit mark-up rates were too high for some categories of purchases, he was unable to provide substantiating documentation, and the Tax Commissioner's final determination was affirmed.

*Messina Floor Covering, Inc. v. Zaino* (January 23, 2004), BTA 2002-1284

An audit of the sales records of a floor covering installer resulted in an assessment on some sales of carpeting. The vendor contended that some of the sales and installation transactions were for vinyl flooring, not carpeting. Although the installation of vinyl flooring may be a construction contract under which the installer would owe sales/use tax on his/her purchase of materials, under R.C. 5739.01 the installation of carpeting is never a construction contract, so sales/use tax is due on the transaction between the installer and the consumer. The BTA affirmed the assessment.

*Nabil Nasrallah, Responsible Party for Nabil Enterprises, Inc. v. Zaino* (December 12, 2003), BTA 2002-1602  
The BTA affirmed an assessment for personal liability for sales tax, issued under R.C. 5739.33, against a corporate vice president who had check-signing authority and who had previously signed sales tax returns.

### PERSONAL PROPERTY TAX

*SCM Chemicals, Inc. v. Zaino* (January 23, 2004), BTA 2002-319

In 1998 the taxpayer sought refunds of personal property tax paid on certain of its property listed on its 1994 and 1995 returns. The taxpayer had applied for, and received in 1995, 1996 and 1997, pollution control certificates for the various items of property. The certificates had effective dates prior to the tax years at issue. The Tax Commissioner treated the requests for refunds as applications for final assessment under R.C. 5711.25. As such, the applications were dismissed by the Commissioner as untimely. The BTA affirmed the dismissals insofar as the property covered by the certificates issued in 1995 and 1996, but held that the Commissioner should have considered the application relating to property covered by the certificate issued in 1997, because that certificate was issued after the period for filing a refund claim had expired. This case has been appealed to the Ohio Supreme Court.

## ***All Cigarette Purchases Subject to Tax***

ODT is stepping up its efforts to collect excise and sales taxes on cigarettes purchased by Ohio residents from Internet web sites or mail order companies. What this means is that Ohio citizens who buy cigarettes from Internet or other companies out of Ohio, for which state excise and sales taxes have not been collected and remitted to the state of Ohio, will be billed for those taxes.

“We are building a computer database now that includes names, addresses and quantities of cigarettes purchased by Ohio citizens from these sources,” said Dale Bischoff, administrator of the Excise and Motor Fuel Tax Division. “As we get this information, we send these citizens tax bills.”

Under federal law, companies that sell cigarettes into Ohio from outside of the state must provide ODT with the information it needs to collect excise and sales taxes on those purchases.

The Ohio excise tax on a pack of cigarettes is 55 cents. Sales tax can be up to 8 percent on the total purchase, depending on the county in which the cigarettes are delivered. A pack of cigarettes can cost from \$3.50 to \$3.75 or as much as \$40 per carton for popular brands of cigarettes purchased over-the-counter in many retail stores around the state. Those prices include excise and sales taxes.

“We’ve seen all sorts of advertisements in newspapers and on the Internet advertising cigarettes at far below these normal retail prices,” Mr. Bischoff said. “That can only mean companies placing the ads are not collecting excise and sales taxes. So, if these companies don’t collect and remit those taxes, this Department will work to collect the taxes due from the customers.”

Mr. Bischoff concluded by saying: “People who buy their cigarettes from these out-of-state sources need to know we will find them and we will collect the tax. So, they shouldn’t be surprised when they get a bill.”

# TAX enforcement news

*The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation in November and December 2003 and January 2004. Tax Enforcement News is compiled by Robert M. Bray, Administrator, Enforcement Division. Fraud complaints can be e-mailed to the Enforcement Division at [Taxenforcement@tax.state.oh.us](mailto:Taxenforcement@tax.state.oh.us).*

Scott Bennett, dba Nature's Ground, of Findlay, Ohio, was convicted in Hancock County Common Pleas Court of two counts of failing to remit state sales tax, both fourth-degree felonies. The judge ordered restitution of \$194,883 for sales tax collected and not remitted. In addition, the judge ordered Mr. Bennett to reimburse the ODT Enforcement Division \$3,587 for the cost of its investigation. Mr. Bennett was sentenced to community control and 120 days in jail, with the first 30 days being served in the Hancock County Rehabilitation Center. Thereafter, Mr. Bennett must wear an ankle device for the remaining 90 days. Mr. Bennett will be placed on a curfew to be set by the probation department and will be paying \$88,000 up front with 60 monthly restitution payments of \$1,800. The judge made it clear if Mr. Bennett fails to uphold any of these conditions, he will have his probation revoked and be given two 17 month prison terms to be served concurrently. ODT received information from its Toledo Taxpayer Service Center that invoices from the business showed sales tax was collected. Nature's Ground has a vendor's license, but it never filed a return. Records indicated that on three occasions the business filed withholding but remitted zero. The business was checked and found to be in operation. Search warrants were executed on both locations, confiscating business records and original invoices from each location. Records seized indicated Nature's Ground had not filed a sales tax return nor remitted sales tax to the state of Ohio since obtaining a vendor's license. Records indicated \$194,883 in sales tax was collected but not remitted to the state of Ohio.

Garry Ward, owner and operator of The Original Garry's Plantland Inc. of Cincinnati, Ohio, was indicted by the Clermont County Grand Jury on 26 counts of collecting and failing to remit sales tax (Felony 4), 11 counts of collecting and failing to remit withholding tax (Felony 5), 1 count of aggravated theft over \$100,000 (Felony 3) and 11 counts of tampering with records maintained by a government agency (Felony 3). ODT received a complaint on the aforementioned business alleging various tax violations. A search was conducted at the business and the home of Garry Ward. Records were seized and analyzed, which resulted in the above indictments. Seized records reflected \$173,098 in sales tax collected and not remitted and \$14,697 of withholding tax collected and not remitted for a total of \$187,795 in tax which was not remitted to the state of Ohio.

Gary and Angela Bartlett, owners of Garan Enterprises Inc., were indicted by the Fayette County Grand Jury on a total of 133 counts (Gary Bartlett on 105 counts of failure to remit sales tax and Angela Bartlett on 14 counts of failure to remit sales tax and the business, Garan Enterprises Inc., on 14 counts of failure to remit sales tax). Enforcement agents received information from the Columbus Taxpayer Service Center resulting in a search warrant being issued. The analysis of seized records revealed a total of \$86,158 in sales tax collected and not remitted.

## **Dyed Motor Fuel Violations**

The following individuals were convicted for using untaxed motor fuel (dyed) on the highway:

1. Russell Daniels, Kingston, Ohio was fined \$500 with \$400 suspended.
2. John W. Parrett, Columbus, Ohio was fined \$500 with \$400 suspended.
3. Carl W. Henderson II, Bainbridge, Ohio was fined \$500

Dyed fuel enforcement agents were conducting motor fuel inspections for the presence of dyed fuel. All were found to have dyed fuel in their tanks and all were issued summons for using untaxed motor fuel (dyed) on the highway.

The statewide Enforcement Delinquent Program, Operation Pay Up, has cited and/or convicted 142 vendors, caused 2,263 returns to be filed and a total of \$852,322 to be collected as of February 23, 2004.

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

### ***Assorted Cigarette Violations***

<b>NAME</b>	<b>BUSINESS</b>	<b>CITY</b>	<b>VIOLATION</b>
Richard Wheeler	Perry Valley Garage	Nashport	(1) Count – No Cigarette License
Richard A. Weber	Weber's Market & Drive-Thru	Marietta	(1) Count – No Cigarette License
Hasan Fawzi Jalaq	West 8 <sup>th</sup> Enterprises Inc.	Cincinnati	(1) Count – No Cigarette License
Herschel J. Tritt	Jersey Deli Market	Columbus	(1) Count – No Cigarette License
Bernard J. Bininger	Bininger's Drive-Thru East	Dublin	(1) Count – No Cigarette License
Chelliah S. Rajah	Eelam Inc.	Dublin	(1) Count – No Cigarette License
Salah A. Soboh	Horizon Petroleum Inc.	Pataskala	(1) Count – No Cigarette License
Hector Villarreal	El Regio	Columbus	(1) Count – No Cigarette License

### ***Assorted Sales Tax Violations***

<b>NAME</b>	<b>BUSINESS</b>	<b>CITY</b>	<b>VIOLATION</b>
Tom Whalen	Whalen East. Inc.	Buckeye Lake	(5) Counts Failure To File Sales Tax Returns
Gary Farris	G & J Auto Detailing	Sheffield Lake	(1) Count Failure To File Sales Tax Return
N. D. Cutright	Frankfort Florist	Frankfort	(1) Count Failure To File Sales Tax Return
A. Potts	Howell's Market	Londonderry	(1) Count Failure To File Sales Tax Return
Douglas Berger	Great Lakes Avionics	Cleveland	(1) Count Failure To File Sales Tax Return
Hatem Sanvaya	Pre Cell II	Toledo	(2) Counts Failure To File Sales Tax Returns
Jimmy Morehouse	Morehouse Welding	Milford	(1) Count Failure To File Sales Tax Return
Douglas D. Humphrey	52 Auto Sales	New Richmond	(1) Count Failure To File Sales Tax Return
Sharon Butler	Ohio Custom Computer	Fairborn	(1) Count Failure To File Sales Tax Return
Paul H. Clark	Clark Auto	Wakeman	(1) Count Failure To File Sales Tax Return
Christopher Meyers	Meyer's Care & Truck Sales	Pandora	(1) Count Failure To File Sales Tax Return
Brian R. Jones	B & K Company	Massillon	(1) Count Failure To File Sales Tax Return
Kendall Peil	Toledo Cut Stone	Toledo	(1) Count Failure To File Sales Tax Return
Diana M. Lafferty	Recycled Kidz	Sullivan	(1) Count Failure To File Sales Tax Return
James B. Sumner	Mechanics Plus	Cincinnati	(1) Count Failure To File Sales Tax Return
Robert Minnie Jr.	Double E Cafe	Williamsburg	(1) Count Failure To File Sales Tax Return
Brenda Brumley	Colors Apply Professionally	Bethel	(1) Count Failure To File Sales Tax Return
Raymond Murray	The Woodworks	Milford	(1) Count Failure To File Sales Tax Return
Gary Popp	Gateway Inn	Batavia	(1) Count Failure To File Sales Tax Return

**Assorted Sales Tax Violations Cont'd.**

<b>NAME</b>	<b>BUSINESS</b>	<b>CITY</b>	<b>VIOLATION</b>
Jeff & Pricilla Johnson	Zip Printing	Bethel	(1) Count Failure To File Sales Tax Return
	Los Amigos	Toledo	(3) Counts Failure To File Sales Tax Returns
Gary Baker	G & K Sales & Service Inc.	North Ridgeville	(1) Count Failure To File Sales Tax Return
Henry Hardin	Sherrill Harden Funeral Home	Toledo	(1) Count Failure To File Sales Tax Return
Joyce Bowels	Joy's Tire & Car Care Center	Toledo	(2) Counts Failure To File Sales Tax Returns
Charles A. Todd	Todd's Office Supplies	Pickerington	(1) Count Failure To File Sales Tax Return
Christine Whisman	C & C Collectables	Aberdeen	(1) Count Failure To File Sales Tax Return
Terry E. Sams	Skyline Choice Cable	Sardinia	(1) Count Failure To File Sales Tax Return
John Richey	Richey Automotive	Bethel	(1) Count Failure To File Sales Tax Return
Gregory K. Applegate	Applegate Auto Service	Ripley	(1) Count Failure To File Sales Tax Return
Chad Benschneider	Benschneider Auto Sales	Payne	(2) Counts Failure To File Sales Tax Returns
Thomas L. Kish, Jr.	CA Technologies	Toledo	(1) Count Failure To File Sales Tax Return
Terry L. McKenney	McKenney Nursery	Defiance	(2) Counts Failure To File Sales Tax Returns
Juan Alvarez	El Jalapeno Mexican Restaurant	VanWert	(2) Counts Failure To File Sales Tax Returns
Sharon S. Downard	Southside S & S LLC	Defiance	(2) Counts Failure To File Sales Tax Returns
Mark Sinnott	Body Mender's Collision	Union Furnace	(1) Count Failure To File Sales Tax Return
James Horn	Buckeye Staffing	Columbus	(1) Count Failure To File Sales Tax Return
Mary R. Stoller	Night & Day	Bryan	(2) Counts Failure To File Sales Tax Returns
Roberta Pontius	Ryo & Myo Smoke Shop	Bowling Green	(1) Count Failure To File Sales Tax Return
Jacquelynne Yenkin	Fair Avenue Gifts	Columbus	(1) Count Failure To File Sales Tax Return
Sandra Price	Tia's	Toledo	(1) Count Failure To File Sales Tax Return
Lisa Brenneman & Aaron Mills	Estate Management Group Inc.	Delaware	(1) Count No Vendor's License
Cory Michael Williams	Dive Gilboa	Gilboa	(1) Count No Vendor's License
	Tech 1 Auto Body & Repair	Columbus	(1) Count No Vendor's License
Mohamed O. Bah	Krayket's Mohamed O. Bah	Cincinnati	(1) Count No Vendor's License
Ishmael Newsom	Williams Road Automotive	Columbus	(1) Count No 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
- 20** 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 Return
- 23** Quarterly Direct Pay Sales Tax Return
- 30** Quarterly Income Tax Withholding Return
- 30** Tangible Personal Property Tax Return (without extension)

### **May**

- 17** Monthly Income Tax Withholding Return
- 20** Monthly Kilowatt-Hour (KWH) Tax Return
- 20** Quarterly Natural Gas Distribution (MCF) Tax Return
- 24** Monthly and Semiannual Sales Tax Returns
- 24** Monthly Consumer and Direct Pay Returns

### **June**

- 1** Annual Corporation Franchise Tax Return or Estimated Return
- 15** Monthly Income Tax Withholding Return
- 15** Quarterly Estimated Income Tax Return
- 15** Tangible Personal Property Tax Return (if extension granted)
- 21** 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.*

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*Accurate*

*Responsive*

*Equitable*

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