

Ohio's

State Tax Report

No. 56
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Taxpayer Services Bill Wins Unanimous Support

Governor Taft is expected to sign House Bill 612, the Taxpayer Services bill, early this summer. Both the Ohio House of Representatives and the Ohio Senate unanimously passed the bill without any amendments.

"I strongly believe that the changes in this bill will help Ohio's small businesses and all taxpayers," commented Commissioner Zaino. "This bill says that we are listening and following through with change. I would like the taxpayers of Ohio to know that the Department is here to work with them and ease compliance, while fairly applying the tax law."

"Because of the support of Governor Taft, Representative Greg Jolivette, the bill's sponsor, and House and Senate Leadership, the bill was able to sail through both chambers of the legislature, without any amendments being added. I am very appreciative that the legislature quickly passed the bill and helped us accomplish one of our major goals. I am also extremely pleased and proud for everyone involved, especially the members of my staff who worked very hard on this bill."

A brief summary of the bill was included in the Spring, 2000 issue of the *Ohio's State Tax Report*, while a general introduction and purpose of the bill was in the Winter, 1999 edition. As you may recall from those articles, one of Commissioner Zaino's top priorities is developing a true taxpayer service approach in the way the Department conducts business with Ohio taxpayers and their representatives. After conducting a survey and receiving over 1,300 comments and ideas on how to improve Ohio's tax system, Commissioner Zaino appointed an internal Implementation Team (I-Team) to evaluate the ideas, rank their importance, and draft proposed legislation that would allow the Department to implement the better ideas. To develop the legislation, the ideas were evaluated against the following five standards:

- 1) Ease compliance for taxpayers;
- 2) Ease administration for the Department of Taxation;
- 3) Eliminate obsolete provisions;
- 4) Make no substantive tax law change; and
- 5) Be substantially revenue neutral.

The I-Team worked with a number of agencies, officials, and associations who would be effected by the legislation. They were all extremely helpful and very supportive in reviewing the legislation and providing positive feedback. Many changes were incorporated into the bill as a result of their review.

The bill contains over 30 changes to Ohio's tax law. These changes truly make Ohio's tax law more taxpayer friendly. On page 3 is a listing of the major topics of House Bill 612. For details or to view the bill in its entirety, please visit our website at www.state.oh.us/tax/.

(Bill-cont'd. on page 3)

Managing Changes

The Ohio Department of Taxation, as a result of restructuring, has a new look to its management team. On March 3, 2000 Commissioner Zaino appointed **Fred Nicely** Chief Legal Counsel. Mr. Nicely has been with the Department for nearly 13 years, previously serving as Administrator of Public Utility Personal Property Tax. He played a key role in the Department's negotiations of the public utility tax settlements this past December.

As Chief Legal Counsel, Mr. Nicely will have the Legal Division reporting to him. In an effort to promote communication among divisions, he will also coordinate the various Division legal counsels. Mr. Nicely will manage and plan the Department's litigation efforts, ensure record retention compliance, and represent the Department at the Multistate Tax Commission.

Jim Kamerick has been promoted to the position of Executive Administrator. Previously, Mr. Kamerick was the Administrator of the Service Center Division. A 28-year Department veteran, Mr. Kamerick will now oversee the Service Center, Forms Division, and Personal Income Tax Division. Mr. Kamerick's main responsibility is to develop the management team in the Service Center and oversee the expanding role of the Service Center.

Ronald F. Hohman was promoted to the position of Executive Administrator of Property Tax. An employee of the Department for more than 26 years, Mr. Hohman was most recently Administrator of the Tax Equalization Division. In his new role, he will oversee three divisions: Personal Property Tax, Public Utility Personal Property Tax, and Tax Equalization. As Executive Administrator, Mr. Hohman's job will be to provide mentoring to the three new property tax Administrators. He will also oversee the development of the staff in these divisions, ensuring the transfer of knowledge and experience of those nearing retirement.

Estate Tax Cuts Await Governor's Signature

--Submitted by Debra Dunkerly and Marc Friedman, Estate Tax Division

Substitute Senate Bill 108 as passed by the 123rd General Assembly results in significant tax cuts to the Ohio Estate Tax. Currently the estate tax credit is \$500. For dates of death on or after January 1, 2001 but before January 1, 2002, the estate tax credit is increased to \$6,600. For dates of death on or after January 1, 2002, the estate tax credit increases to \$13,900. The effect of these credit increases is to zero out, in 2001, the bottom three brackets of the estate tax table. For dates of death on or after January 1, 2002, the effect of these credit increases is to zero out the bottom four tax brackets and a portion of the fifth bracket of the estate tax table. For dates of death in 2001, no estate tax return will be required to be filed if the gross estate is \$200,000 or less. For dates of death in 2002 and after, no estate tax return will be required

Rick Anthony is the new Personal Property Tax Division Administrator. Prior to his appointment, Mr. Anthony was the Assistant Administrator of the Excise and Motor Fuel Tax Division for the past 3 years. He has been with the Department for 20 years. Mr. Anthony is a past chairman of the Federation of Tax Administrators Tobacco Tax Section and is a current member of the IFTA (International Fuel Tax Agreement) Audit Committee.

The new Public Utility Personal Property Tax Division Administrator is **Bill Peters**. Mr. Peters started with the Department in 1972. He has been in the Public Utility Tax Division since 1980 and prior to this promotion was a Section Supervisor in the division.

Commissioner Zaino has appointed **Shelley Wilson** the Administrator of the Division of Tax Equalization. Ms. Wilson has been an Assistant Administrator of this division since joining the Department in 1996. Prior to working for the Department, Ms. Wilson served for 16 years in the direct administration of the real property tax in Franklin County.

Leslie Akers is now the Legislation Division Legal Counsel. Among her new duties is expanding the flow of information on legislation throughout the Department. Ms. Akers will work closely with other division counsels, as well as the Chief Legal Counsel. Ms. Akers has been a Department employee for 13 years, working in the Legislation and Communication Division for the past seven years.

Commissioner Zaino said, "Obviously, I am very pleased with our new selections for the administrative positions in the Department. All of these individuals are very talented, knowledgeable, and hard-working. I strongly believe that each employee selected will have a positive effect on the Department, helping us to achieve our goals and fulfill our mission."

to be filed if the gross estate is \$338,000 or less. The increased estate exemption equivalents are projected to eliminate estate tax return filings for 63% of all estates with dates of death in 2001 and for 78% of all estates with dates of death on or after January 1, 2002.

In addition to the credit increases, Substitute Senate Bill 108 also enacts Section 5731.20 which permits a deduction for qualified family business interests. As long as the family business meets the qualifications set forth in Section 2057 IRC, the estate may claim an Ohio deduction for that family-owned interest. The election for Ohio can be made even though no election is made at the federal level.

Comments from the Commissioner



I am pleased to report a record number of Ohio taxpayers chose to file their income tax returns electronically or by telephone this year. Through April 17, the Department received more than 1.36 million 'paperless' returns. Last year, electronic and Tele-file returns totaled 1.05 million.

With 300,000 fewer paper returns filed this year, the Department—and Ohio taxpayers—are saving more than \$475,000 in processing costs. Electronic returns cost \$.30 each to process; Tele-file returns about \$.40; and paper returns about \$.71.

Offering the direct deposit option for the first time this year brought in an additional \$86,000 in savings. State Auditor Jim Petro says making a direct electronic deposit is \$.40 cheaper than issuing a paper check. More than 215,000 taxpayers chose to have their refund deposited directly into their checking or savings account.

I'm very pleased with the increase in electronic filing. Each year, people are more comfortable and proficient with

computers. As that trend continues, so will our increases in electronic and tele-filing. I also credit increased promotion for raising taxpayer awareness and acceptance by the practitioner community as reasons for the surge in electronic filings. Tax practitioners prepare about fifty percent of Ohio returns.

Among the states with an income tax, only California had more state e-file returns than Ohio. More than 900,000 Ohio taxpayers filed electronically. Georgia, Michigan and North Carolina rounded out the top five.

Nationally, Ohio ranked fifth according to the IRS (through April 17) in the number of federal income tax returns filed electronically with 1,545,953. California was first with 3,000,875 e-file returns followed by Texas, Florida and New York.

Across the U.S., tax administrators are reporting an average 30% increase from last year in the number of paperless returns. I am optimistic and hopeful that the numbers will continue to rise each filing season.

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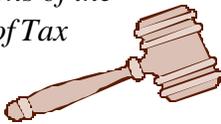
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Court Decisions

The following are significant decisions of the Ohio Supreme Court and the Board of Tax Appeals (BTA) announced in February, March, and April, 2000 in the area of Sales & Use, Personal Property, Public Utility, and Withholding taxes. Court decisions are compiled by Anthony Long and Mark Hawkins, Legal Division.



SALES AND USE TAX

Bellemar Parts Industries, Inc. v. Tracy (2000), 88 Ohio St.3d 351. (For more information, please see page 5)

The Court held that the benefit of the services provided by temporary employees is the labor of those employees not the product of their work. That benefit, combined with the appellant's materials and the labor of permanent employees created the item sold. The Court then concluded that the appellant was the consumer of the services and could not claim the benefit was resold in the same form. The Court also rejected the idea that the services were "things transferred" in the context of the manufacturing exception found at R.C. 5739.01(E)(9).

E.T.S., Inc. v. Tracy (Apr. 14, 2000), BTA No. 97-1613
The Board vacated the assessment after holding that the appellant provided engineering services on a contract basis, not taxable employment services. See R.C. 5739.01(JJ)(1).

Labor Pool of Cincinnati, Inc., et. al. v. Tracy (Apr. 14, 2000), BTA Nos. 98-491 and 98-761.

Based upon the evidence presented the Board held that the contracts for employment services did not meet the statutory requirement of one-year duration. See R.C. 5739.01(JJ)(3). The Board did find the exemption certificates valid and reversed the Commissioner's decision to assess the appellant for transactions covered by those certificates.

Success Employment Service, Inc. v. Tracy (Apr. 14, 2000), BTA No. 98-489.

The Board held that core employees provided to the taxpayer's client were permanently assigned and any tax paid on those contracts should be refunded. See, also, *Labor Pool of Cincinnati v. Tracy* (Apr. 14, 2000), BTA No. 98-493.

Q3 Stamped Metal, Inc. v. Tracy (Apr. 14, 2000) BTA No. 98-506. (Appealed to the Ohio Supreme Court)

The Board held contracts for personnel were not subject to sales tax pursuant to R.C. 5739.01(JJ)(3); that a die setting forklift was not subject to sales tax because it was necessary for the functioning of production machinery and the

continuation of the manufacturing operation; and that welding glasses, based upon the testimony of an employee, were excepted from sales tax under R.C. 5739.011(B)(4).

Harsco v. Tracy (Apr. 14, 2000), BTA Nos. 98-358 and 359.

The Board ruled that the appellant's manufacturing operation began at the time molten slag is poured into slag pots. Accordingly, the slag pots and repairs to slag pot carriers are exempt from sales/use tax pursuant to R.C. 5739.01(E)(9).

Laurel Transportation, Inc. v. Tracy (Apr. 28, 2000), BTA No. 97-1617. (Appealed to the Ohio Supreme Court)

The Board ruled that use tax was improperly assessed on an airplane purchased for the purpose of leasing it to others. The Board found persuasive the management fees paid to a separate company for maintaining the plane and the fact that users had control of the plane, including the right to use a pilot not employed by the management company.

Landmark Plastic Corp. v. Lawrence (Mar. 31, 2000), BTA No. 99-499.

Board ruled that the dust collection equipment was scrap recycling equipment and excepted from sales tax pursuant to R.C. 5739.09(E) and 5739.011(B)(7). The Board also ruled that cranes used to install tooling and molds are excepted from sales tax because they are necessary for the functioning of production machinery and continuation of its manufacturing operation. R.C. 5739.011(B)(4).

Memorial Park Golf Club, Inc. v. Lawrence (Mar. 31, 2000), BTA No. 99-633.

The Board concluded that the appellant did not have an agency relationship with the park district, and, therefore, had to pay sales tax on equipment and supplies it purchased for the golf course.

PERSONAL PROPERTY TAX

Aristech Chemical Corp. v. Tracy (Mar. 17, 2000), BTA No. 97-586. (Appealed to the Ohio Supreme Court)

The Board found that an appraisal that ignores a recent purchase of either stock or assets without some justification is not competent or probative evidence of value. The Board then held that the purchase price as allocated under APB 16 represented true value of the personalty. The Board did remove railcars not in Ohio on the tax listing date.

Bank One Capital Corp. v. Tracy (Feb. 18, 2000), BTA Nos. 96-646, and 647.

The appellant's unamortized goodwill account balance cannot be deducted in calculating the corporation's fair value for Ohio dealers in intangibles tax purposes.

(Court Cases—cont'd. on page 10)

The Bellemar Parts Industries Inc. v. Tracy

--Submitted by David Boeder, Sales & Use Tax

In a decision affecting a number of Ohio providers of employment service and their manufacturing clients, the Ohio Supreme Court recently ruled that the benefit of employment service was not resold by a manufacturer, nor was it used primarily in a manufacturing operation for sale. The ruling was issued on April 12, 2000 in *Bellemar Parts Industries, Inc. v Tracy* (2000), 88 Ohio St. 3d 351.

The syllabus of this case reads, "Purchase of temporary employment services not excepted from sales tax under the resale exception set forth in R.C. 5739.01(E)(1) or manufacturing exception contained in R.C. 5739.01(E)(9)." At issue before the Court was the taxability of the purchase by Bellemar of employee labor from other companies. The employees worked at the discretion of Bellemar, performing manufacturing and assembly line work in the production of wheel assemblies for automobile manufacturers. The majority of the Court concluded that the "most obvious" benefit of the employment service was the labor consumed by Bellemar in manufacturing the wheel assemblies, and this benefit was found not to have been resold to its customers in the same form. Also, the Court concluded that the employment service was not a "thing transferred" as anticipated in Section 5739.01(E) of the Revised Code and thus did not qualify for

the manufacturing exception in division (9) of that section.

Over the last few years, the Sales & Use Tax Division received and accumulated a large number of refund claims for tax paid on employment service purchased by manufacturers. Many were assigned a state file number and accumulated pending release of the Court's determination. Review and processing of those claims has resumed. Taxpayers should expect to be contacted by letter in the next couple of months. If the basis for the claim(s) corresponds with the reasoning denied by the Court, a letter denying the claim will be mailed together with a form to obtain the taxpayer's agreement or disagreement with the denial.

The Department of Taxation will grant a temporary grace period from penalties to all taxpayers who have failed to report and remit sales or use tax on purchased employment services. This temporary grace period begins immediately and will remain open until December 31, 2000. The grace period will apply only to purchases of employment services made prior to June 1, 2000. For more information regarding rules for this grace period, as well as the overall case, please see our *Bellemar Parts Industries, Inc.* information release available on our website at www.state.oh.us/tax/

Information Releases

The Income Tax Audit Division recently issued the following Information Release:

Medical Care Expense Deduction—ORC Section 5747.01(A)(11)

The Personal Income Tax Audit Division has received several inquiries pertaining to the medical care expense deduction under Ohio Revised Code ("ORC") section

5747.01(A)(11) in connection with medical care insurance premiums. The information release outlines the inquiries and the Department's response to each one.

To view the information release, visit our website at www.state.oh.us/tax/. The Department is no longer mailing information releases, but is sending them electronically. To receive the electronic format of future information releases, please e-mail Peggy_Tope@tax.state.oh.us.

Governor Taft Appoints Tax Employees

Commissioner Zaino has been appointed to serve as a member of the Governor's Council on Electronic Commerce by Governor Taft. Also serving on the Council is former Deputy Tax Commissioner **Greg Jackson**, who is now the Chief Information Officer for the State of Ohio.

The purpose of the Council is to provide leadership to implement electronic commerce throughout state government. Some of the responsibilities include:

- 1) Developing a strategic plan for electronic delivery of state services;
- 2) Helping agencies post their most frequently requested forms on-line, becoming accessible to customers by e-mail by December 31, 2000, and making key services available on-line by December 31, 2001;

3) Re-inventing the state's home page to allow customers to search by services offered, rather than by department; and

4) Creating a "One Stop, E-Shop," permitting businesses to do business with the state through a single on-line form.

Commissioner Zaino is very pleased with this appointment. "This brings the Department of Taxation to the front-line of technology."

Governor Bob Taft also recently announced appointments to the newly created Motor Carrier Advisory Committee. **Dick Beckner**, Administrator of Excise and Motor Fuel Tax Division, was one of the appointees. The committee will address issues relating to safety, technology, and uniformity in regulations for the motor carrier industry.

Tax Enforcement News

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

Mark Bittner of Cleveland pleaded guilty to theft of sales tax money. He collected and failed to remit \$6,555 in state sales tax. Mr. Bittner was sentenced to six months in jail (suspended) and will do three years community service as a condition of probation. He was also ordered to pay the \$6,555 in sales tax owed. Mr. Bittner owns *Allmark Carpets* located in Cleveland. A complaint was filed with the Department indicating Mr. Bittner was not paying sales tax he had collected. An investigation led to a search warrant being conducted at the business. Several tax paid invoices were recovered leading to the charges and subsequent conviction.

Beverly Kunkle of Columbus pleaded guilty to two counts of filing fraudulent income tax returns. Sentencing is set for a later date. This case was investigated in conjunction with the Franklin County Prosecutor's Office. The case involves embezzlement from a Columbus area business. Ms. Kunkle also pleaded guilty to one count of theft.

Paul Tomann of Cleveland pleaded guilty in Cuyahoga County Common Pleas Court to filing a false sales tax return. He was given one year probation and ordered to pay the State of Ohio \$3,351 for sales tax collected and not paid. Mr. Tomann owns and operates *All Nation Foreign Car Parts* in Cleveland. Mr. Tomann had previously been in the Habitual Offender Program (HOP)* for failing to file sales tax returns. Undercover purchases were conducted and the subsequent charges filed.

*For more information on HOP, see article on page 11.

Girard Cleveland Street Corp. of Toledo pleaded no contest and was found guilty in Lucas County Common Pleas Court of one count of retailer in possession of untaxed other tobacco products (cigars). The Department of Public Safety (Liquor Enforcement) executed a search warrant at the

business. Untaxed cigars were discovered, resulting in the charge and conviction.

Ronald Silver and Vern Glassman, owners of Heights Interiors, Inc. in Cleveland, pleaded guilty to one count of filing a false sales tax return. An enforcement referral was initiated from the Cleveland district tax office indicating the business had not filed or paid sales tax collected over a period of two years. An investigation led to the charge and conviction. A check for \$139,887, covering tax due, penalties, and interest, was given to the State at the court hearing.

Cindy Wade of Gallipolis pleaded guilty to one count of trafficking in cigarettes to avoid the tax. She was sentenced to eighteen months in jail. This case was investigated with the Ohio Bureau of Criminal Identification and Investigation (BCI) and was a part of a larger investigation by law enforcement agencies in the Gallipolis area.

Samuel King of Steubenville pleaded guilty in Jefferson County Common Pleas Court to one count of collecting withholding tax and not remitting, and one count of filing a fraudulent Ohio income tax return. He was sentenced to eighteen months in jail on the charges. The Jefferson County Sheriff's Department notified the Department's Enforcement Division that Mr. King was involved in a fraudulent mortgage scheme. Information from a search of his business indicated Mr. King had collected withholding from employees and failed to remit the money to the State of Ohio. Information was also obtained indicating Mr. King did not claim his entire income during one of the years in the investigation.

Valarie Basham of Perrysburg pleaded guilty to theft of tax money. Sales tax exceeding \$83,600 was collected and not remitted to the State of Ohio. Sentencing is scheduled for June. Ms. Basham operated *Stoney Ridge Communications* in Perrysburg. An investigation resulted in a search warrant being conducted. Information obtained during the search led to the charge and conviction.

Assorted Sales Tax Violation Convictions:

Phillip Brannon	Sylvania	Failure to file sales tax returns
Gerald Metcalf	Toledo	No vendor's license
Stephen Szczepaniak	Toledo	Failure to file sales tax returns
Robert Mullholand	Sandusky	Failure to file sales tax returns
Tim Halbisen	Sandusky	Failure to file sales tax returns
Dale Depew	Tiffin	Failure to file sales tax returns
Dennis Burkett	Tiffin	Failure to file sales tax returns
Oriki Inc	Sandusky	Failure to file sales tax returns

(Enforcement—cont'd. on next page)

(Enforcement—cont'd. from previous page)

Assorted Tobacco Violation Convictions

Ali Alawi	Cleveland	No cigarette license
Ray Arab	Toledo	No cigarette license
Greg Delelles (M&G Vend.)	Toledo	No cigarette license
Gay Sanders	Sandusky	No cigarette license
Comfort Inn North	Toledo	No cigarette license
Fred Archer	Circleville	Retailer processing unstamped cigarettes
David Hix	Waverly	No cigarette license
Michael Marougi	Toledo	No cigarette license
Husam Syouf	Toledo	Retailer processing unstamped cigarettes Dealer must keep records
Muntaser Muntaser	Cleveland	Retailer processing unstamped cigarettes

Tax Fraud Hotline Opens

The Ohio Department of Taxation has initiated a toll-free phone number for reporting tax fraud. In the first thirty days, there have been 72 calls placed to this number. Although most were seeking taxpayer assistance, there were tips received that the Enforcement Division is now investigating. Anyone knowing of any tax fraud, please contact the Enforcement Division at **1-800-757-6091**. This number is answered Monday through Friday, 8:00 a.m. to 5:00 p.m.

Ohio Legislative Update

The following is a summary of tax-related legislation recently enacted by the 123rd General Assembly.

<u>Bill Number</u>	<u>Effective</u>	<u>Description</u>
H.B. 177	5/17/00	Prohibits switching a consumers' preferred provider of natural gas or public telecommunications service without obtaining verified consent.
H.B. 262	6/08/00	Prohibits the Ohio Department of Taxation from including social security numbers on the outside of materials mailed to taxpayers. (It should be noted that the Department removed social security numbers from the income tax booklets for tax year 1999, before it was required.)
H.B. 477	7/26/00	Modifies the authority of municipal corporations to impose income taxes.
H.B. 612		Taxpayer Services Bill—see article on front page.
S.B. 108		Estate Tax Cuts—see article on page 2.
S.B. 161	6/08/00	Authorizes the Ohio Tuition Trust Authority to establish a variable college savings program. The bill allows a tax deduction of up to \$2,000 per beneficiary for purchases of tuition credits and contributions to variable college savings program accounts.
S.B. 221	7/26/00	Maintains the disability deduction for elderly persons who previously qualified for the Ohio Energy Credit Program.

DeRolph Decision

On May 11, the Ohio Supreme Court again held Ohio's method of funding public schools unconstitutional in the case *DeRolph v. State*. The Court gave state lawmakers until June, 2001 to comply with the court's March, 1997 decision that a new school funding system must be developed.

Once again, the Court found that there is too much reliance

on local property taxes to fund public schools. It was stated in the 1997 decision that, "local property taxes could no longer be the primary means of providing for a thorough and efficient system of schools." The Ohio Department of Taxation expects the General Assembly to be looking into issues relating to property taxes and school funding.

Small Business Tax Workshops Offered

If you are a new or prospective small business owner or if you are self-employed, now is the time to take advantage of our Small Business Tax Workshops. You can learn about your tax rights and responsibilities in these **FREE** workshops sponsored by the **Internal Revenue Service** and the **Ohio Department of Taxation**. Most workshops are being offered in cooperation with the **Ohio Department of Development**, Small Business Development Centers.

Workshops are designed to provide a general overview of business taxes. Participants will receive workbooks and a business tax kit which contain forms and publications necessary for complying with business tax requirements.

Allen County:

Perry Building
545 West Market Street
3rd Floor Conference Room
Lima, OH
 October 27

Athens County:

Small Business Development Center
Technology & Enterprise Building, Suite 174
20 East Circle Drive
Athens, OH
 November 1

Butler County:

Butler County Joint Vocational School
Boyd Educational Resource Center
3603 Hamilton-Middletown Road (Route 4)
Hamilton, OH
 July 7
 November 16

Clark County:

Small Business Development Center
300 East Auburn Avenue
Springfield, OH
 November 3

Clermont County:

Eastgate Offices of U.C.-Clermont College
555 Cincinnati-Batavia Pike
Room C-3
Eastgate, OH
 May 9
 September 19

Following is a list of classes presently scheduled through January, 2001. The classes run from 9:00 a.m.- 4:30 p.m. This schedule is subject to change—cancellations may occur and other workshops may be scheduled throughout the year. To register for one of these workshops, or for the latest updates, call (513) 263-4773, 24 hours a day, 7 days a week. After being connected to the automated attendant, press "2" and leave the registration information or listen to the recorded message for Small Business Tax Workshop updates. For additional information, you can call the IRS at 1-800-829-1040; the Ohio Department of Taxation at 1-800-282-1780; or the One Stop Business Center at 1-800-248-4040. If you are unable to attend after registering, please call to cancel. Class sizes are limited and others are waiting for reservations.

Cuyahoga County:

Federal Office Building
1240 East 9th Street
Cleveland, OH
 July 19, Room 769
 August 16, Room 769
 September 20, Room 1627
 October 18, Room 1627
 November 15, Room 1627
 December 13, Room 1627
 January 10, 2001, Room 1627

Erie County:

Erie County Office Building
247 Columbus Avenue
Third Floor—Commissioner's Chamber
Sandusky, OH
 September 13

Franklin County:

Greater Columbus Chamber of Commerce
37 North High Street
First Floor Conference Center
Columbus, OH
 October 25

Columbus Main Public Library

96 South Grant Avenue, Main Auditorium
Columbus, OH
 June 30
 August 2
 September 15
 December 1
 January 11, 2001

(Workshops—cont'd. on next page)

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Geauga County:

**Kent State University-Geauga Campus
1411 Claridon-Troy Road
Burton, OH
July 21
November 17**

Greene County:

**Greene County Career Center
2960 West Enon Road
Xenia, OH
September 22
January 12, 2001**

Hamilton County:

**Federal Office Building
550 Main Street, Room 5519
Cincinnati, OH
August 25
October 26**

Hamilton County Development Company

**1776 Mentor Avenue
Norwood, OH
November 29**

Ohio Department of Taxation

**900 Dalton Avenue at West 8th Street
Cincinnati, OH
July 20
September 29
January 4, 2001**

Highland County:

**Southern State Community College
100 Hobart Drive—Board Room
Hillsboro, OH
August 3**

Logan County:

**Ohio Hi-Point Career Center
Education Technology Center
2280 State Route 540
Bellefontaine, OH
November 2**

Lucas County:

**Edison Plaza
300 Madison Avenue—8th Floor—Room 807
Toledo, OH
July 7
October 4
January 12, 2001**

Mahoning County:

**Small Business Development Center
Youngstown Business Incubator
241 Federal Plaza West
Youngstown, OH
October 13**

Montgomery County:

**Dayton Convention Center
1 Chamber Plaza—5th and Main Streets
Room 208
Dayton, OH
June 28
August 11
October 13
December 6**

Richland County:

**Mansfield-Richland Incubator
201 East 5th Street - 2nd Floor Conference Room
Mansfield, OH
October 18**

Scioto County:

**W. Gordon Ryan Library
103 State Route 728
Lucasville, OH
July 28**

Stark County:

**Kent State University—Stark Campus
6000 Frank Avenue, N.W.—SBDC—Main Hall
Canton, OH
July 14
November 15**

Summit County:

**Akron Regional Development Board
One Cascade Plaza, 8th Floor
Corner of Bowery & South Main Streets
Akron, OH
October 11**

Tuscarawas County:

**Kent State University—Tuscarawas Campus
SBDC—330 University Drive, NE
New Philadelphia, OH
September 20
January 4, 2001**

PRO-Files -- Submitted by Peter Angus, Esq.

In my first six months in the position of P.R.O. (Problem Resolution Officer), I have received about 250 calls and letters, of which about 10% have been from tax professionals. The suggestions and comments of the tax professionals are usually incisive and helpful. I would like to share a few of the best:

Kathleen Hughes, CPA, Springfield, reported that clients of hers had received notices from the Department indicating that they might be entitled to refunds because of overpayments of estimated income tax. Verification of certain information was requested. Ms. Hughes suggested that more information be provided in the Department's notices, such as the amount of overpayment, so that the taxpayers would be better able to respond. In this regard, two actions are being taken by the Department: an upgrade in the data entry process is being planned which will reduce errors in entering estimated payment information, and the notices are being revised to provide taxpayers with more information.

Robert Martin, CPA, Cleveland, suggested that the Department use acknowledgement cards when it is anticipated that it will take the Department longer than 30 days to respond to taxpayers' correspondence relating to billings and assessments. Mr. Martin noted that the IRS uses such cards. By way of background, the Department issues about 800,000 bills and 400,000 assessments per year, and receives correspondence on about half of these. Several processing upgrades are being planned to enhance the Department's ability to respond timely to correspondence. Meanwhile, Mr. Martin's suggestion, along with others, is being considered.

Bob Huelskamp, CPA, Dayton, in helping clients understand the assessments for withholding tax penalties they had received, found it useful to explain that there is a penalty for failure to timely file a required return (Ohio Revised Code 5747.15(A)(1)) and a separate penalty for failure to pay the amount due (5747.15(A)(2)), and that both of these penalties may be reflected in one assessment.

Several tax professionals have raised questions regarding the Department's use of the "Tax Information Authorization and Declaration of Representative" form, known as TBOR-1 (<http://www.state.oh.us/tax/forms/tbor1.pdf>).

Practitioners often believe that the TBOR-1 is an agency agreement between them and their client. This is understandable, as the language of the TBOR-1 seems to strongly indicate that an agency relationship is being created ("...I authorize the tax practitioner listed below to represent me during any audit conducted by the Ohio Department of Taxation or during any proceedings with the Department.") However, employees of the Department have been hesitant to accept the TBOR-1 as conclusive evidence of a binding agency relationship where the consequences of the practitioner's actions may adversely affect the taxpayer. For example, an application for a personal property tax final assessment extends the statute of limitations and opens the taxpayer to an increased assessment after the time when the tax year would otherwise be closed. In other cases, the Department has been presented with TBOR-1's signed several years prior by practitioners who wanted taxpayer information. Since Department employees are accountable under strict confidentiality laws, they will, in such cases, ask for a more recently dated form to insure that the authorization by the taxpayer is continuing.

There is a consensus that many of these problems can be resolved by changing the TBOR-1. This is currently being done. The next version of the TBOR-1 will include an explanation of the extent of the authority granted, the term, and an acknowledgement by the principal of the potential liabilities that the agent may by his/her actions create for the principal. It will also include a space for the taxpayer to restrict the authority granted. Watch for the new form on our Website.

Comments may be submitted to:
Peter_Angus@tax.state.oh.us

(Court Cases—cont'd. from page 4)

PUBLIC UTILITY EXCISE TAX

Ohio Power Company v. Tracy (Apr. 28, 2000), BTA No. 98-191.

The appellant excluded from its gross receipts sales of transmission services to AMP-Ohio. The Board held that the sales were not interstate transactions under R.C. 5727.33(B)(1). The Board did find that the sales were resold and properly excluded pursuant to R.C. 5727.33(B)(5).

WITHHOLDING TAX

Brantman v. Tracy (Apr. 28, 2000), BTA No. 98-719.

Upheld an officer liability assessment against a general partner of a partnership, which controlled all the funds flowing into the corporation. The appellant also had the ability to negotiate payment of employment taxes due the federal government.

The Ohio HOP

It's not a dance; it's an effort to get Ohio retailers to understand their trust tax responsibilities.

The Habitual Offenders Program (HOP), developed by the Department of Taxation, uses education and, when necessary, enforcement to ensure compliance with sales tax law.

HOP began in 1987 targeting vendors with a history of not filing sales tax returns or not sending in tax they collected. Measuring revenue recovered, HOP's aim has been true. The program has recovered more than \$800 million in sales tax, saving retailers from incurring more than \$400 million in penalties.

Most Ohio vendors will never experience the HOP. Ohio has approximately 260,000 active vendor's licenses. About 10,000 have gone through the program.

Vendors in the HOP are initially contacted because they have failed to file or pay for two consecutive months or three months out of twelve. That initial contact is the first of the program's five steps:

Step 1 – A certified letter is sent to the vendor requesting compliance.

Step 2 – A tax agent will visit the non-compliant vendor and work to correct the tax problem.

Step 3 – Another letter is sent, notifying the vendor that

their license will be suspended in ten days.

Step 4 – An intent to suspend notice is delivered to the vendor. The Tax Commissioner will hold a hearing and issue a final determination to suspend the vendor's license if payment of tax and applicable charges is not made.

Step 5 – The business is closed.

The nature of the HOP includes little discretion and no exceptions. The steps are progressive and inexorable.

Retailers who have their vendor's license suspended are monitored. If they conduct business while suspended, they are subject to 4th degree felony charges.

Retail activity may resume if the vendor pays the tax due on the returns that prompted the suspension, a late charge (the greater of 10% or \$50) and, if relevant, a bad check charge. Making good at this stage will allow the vendor to avoid being assessed and facing a penalty equal to 50% of the amount owed.

Over the years, about half of the 700 businesses closed by HOP actions have eventually reopened. Vendors who are called before the Commissioner on subsequent occasions will also be required to post security equal to one year's tax liability.

VITA is Vital

The Volunteer Income Tax Assistance and Tax Counseling for the Elderly (VITA / TCE) are programs sponsored nationwide by the IRS. These programs provide free tax assistance for individuals of low to moderate income, those with disabilities, non-English speaking taxpayers, and the elderly who cannot afford to pay for assistance. All assistance is provided by trained volunteers. The Department of Taxation trains and provides instructional materials for trainers, who then train volunteers. Volunteers alert taxpayers to special credits and deductions for which they may be eligible, as well as preparing their federal return at no cost.

Several years ago, the VITA / TCE office of the IRS joined forces with the Ohio Department of Taxation to provide Ohio income tax filing assistance to this same group of individuals at all of the Ohio VITA / TCE sites. VITA / TCE sites can be found in community centers, libraries, churches, shopping malls, retirement homes, etc. through-

out Ohio. Tax Counseling for the Elderly, (TCE) is designed primarily for persons 60 years or older, particularly those who are confined to their residences or retirement communities. Volunteers travel to taxpayers' homes if they are unable to come to a local TCE site.

During 1999 (filing for tax year 1998) the following statistics were compiled:

- 105,194 people were assisted
- 2,020 people volunteered
- 669 different sites were utilized

Statistics for 2000 (tax year 1999) are still being compiled.

The IRS and the Department would like to thank all of the VITA volunteers who have worked so hard to provide a wonderful, free service to those citizens of Ohio who need it most!

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

TAX CALENDAR AT-A-GLANCE

July

- 17 Monthly Income Tax Withholding Return
- 24 Monthly and Semiannual Sales Tax Returns
- 24 Monthly Consumer and Direct Pay Returns
- 24 Quarterly Consumer Use Tax Returns
- 24 Quarterly Direct Pay Sales Tax Return

August

- 15 Monthly Income Tax Withholding Return
- 23 Monthly and Semiannual Sales Tax Returns
- 23 Monthly Consumer and Direct Pay Returns

September

- 15 Monthly Income Tax Withholding Return
- 15 Quarterly Estimated Income Tax Return
- 25 Monthly and Semiannual Sales Tax Returns
- 25 Monthly Consumer and Direct Pay Returns

Streamlined Sales Tax System

At the beginning of the year, the National Conference of State Legislators (NCSL) drafted model legislation calling on states to work together to simplify sales tax collections. House Bill 483, which incorporates this model legislation, has been passed by the Ohio General Assembly. Pursuant to the bill, Ohio will be able to work with other states on the simplification plan and on the development of a pilot program to test a multi-state system for the collection and administration of existing sales and use taxes. NCSL expects a number of states to pass this type of legislation by the end of this year.

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

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