OHIO's statetaxreport

No. 65 | Ohio Department of Taxation | Fall 2002

Department Earns Accreditation

The Ohio Department of Taxation (ODT) has become the first tax department in the country with an internationally accredited law enforcement unit. The national Commission on Accreditation of Law Enforcement Agencies (CALEA) awarded accreditation to ODT's Enforcement Division at the group's annual meeting in Cleveland in late July. The Enforcement Division investigates and assists prosecutions of all criminal violations of state tax law, including those involving sales, tobacco, motor fuel and income/withholding taxes.

"We are extremely proud of this designation," said Ohio Tax Commissioner Thomas Zaino. "It assures that the citizens of Ohio are served by a tax enforcement group that adheres to the highest law enforcement standards."

Robert Bray, Acting Chief of the Enforcement Division, said the Division's goal is to provide quality investigative and enforcement services for ODT, and that the "law enforcement accreditation process is an excellent way to incorporate that goal in all aspects of our operation." Mr. Bray noted it took three years for the Division to meet all the CALEA standards and it must continue to meet those standards since "re-accreditation will occur in three years."

"Ohio taxpayers are our customers," Mr. Bray said. "One of their primary concerns is that everyone pays their fair share. We concentrate on those who intentionally and criminally dodge that responsibility."

CALEA was created in 1979 by several police agencies to administer an accreditation process meant to foster professional excellence in law enforcement management and service delivery. Less than five percent of the law enforcement agencies in the country have earned CALEA accreditation. The ODT Enforcement Division has 18 tax agents who are certified peace officers.

What's Up Inside . . .

COMMENTS fromthecommissioner

Commissioner Zaino

The Committee to Study State and Local Taxes was created as part of Amended Substitute Senate Bill 261, the Budget Corrective Bill. As Ohio Tax Commissioner, I was pleased to see this Committee formed. The law provides that the Committee consist of nine members, made up of the Ohio Tax Commissioner, Director of Budget and Management, Director of Development and three members each from the Ohio House of Representatives and the Ohio Senate. The members include: Director Tom Johnson, Director Bruce Johnson, Senator Bill Harris, Vice-Chair, Senator David Goodman, Senator Eric Fingerhut, Representative Kirk Schuring, Representative Sally Conway Kilbane, Representative Ed Jerse, and myself, as Chair. (I was very honored to have my fellow Committee members select me as the chair.)

In the past there have been three similar committees. In 1967 there was the Ohio Tax Study Commission; in 1982 there was the Joint Committee to Study State Taxes; and in 1995 the Commission to Study the Ohio Economy and Tax Structure ("Blue Ribbon Commission") was created. Not all of the recommendations from these past committees were adopted, but numerous proposals from each were enacted, influencing Ohio's current tax system. For example, the 1982 study recommended ODT establish permanent auditing operations in other states to audit corporations doing business in Ohio. This recommendation resulted in offices opening in Chicago, New York, and California.

This new Committee has five major duties. They include:

1) Make a study of the current state and local tax structure;
2) Examine the structure with attention to equity, simplicity, stability, neutrality, and competitiveness (i.e., ODT's Guiding Principles of Tax Policy);
3) Identify obstacles to the Guiding Principles;
4) Analyze who bears the ultimate burden with respect to any particular tax; and,
5) Evaluate priorities in the tax structure.

As mentioned above, the Committee will examine the structure by focusing on the Guiding Principles of Tax Policy. At times these principles may conflict or compete with each other. (For example, we may sacrifice some simplicity in the interest of equity.) Hopefully, these principles are familiar to you, but I would still like to highlight them.

Simplicity. Our tax system should be easy to understand and administer, while minimizing compliance and administrative costs.

Equity and Fairness. Our tax system should impose similar tax burdens on similarly situated taxpayers, while recognizing differing abilities to pay. It should also fairly distribute tax liabilities across all sectors of the economy.

Stable and Sufficient Revenue. Our tax system exists to fund government services, providing adequate revenues in both good and bad economic times.

Neutrality. Our tax system should not unduly influence economic behavior.

Competitiveness. Our tax system represents a meaningful part of this state's living, working, and business environment. The tax system should not impose an excess burden on taxpayers, particularly as compared to the tax systems of other states.

The Committee first met on July 16 and has met weekly since early August. During the meetings, national and local tax policy experts have provided insightful information. To help the Committee in its deliberations, all state agencies and local governments are required to comply promptly with requests by the Committee for data or other information.

A web site was created for this Committee (see story on page 7). It is a repository of the Committee's activities and a channel for you to monitor and respond to the business being conducted. I encourage you to offer your insight on what barriers to the guiding principles exist within Ohio's state and local tax system. We also welcome ideas to overcome those barriers in a revenue neutral manner. The Committee will accept written testimony until November 12, 2002. Anyone that has provided such written testimony through me or the web site will have an opportunity to provide ten-minute oral testimony on November 19 or 26.

The Committee is required to issue a final report by March 1, 2003. The report will summarize the Committee's review of the tax structure and will provide recommendations for improvements. Watch future issues of the *Ohio's State Tax Report,* as well as the web site, for information regarding The Committee to Study State and Local Taxes.

Personal Exemption Amount Increased

The personal income tax exemption amount for the taxpayer, spouse, and dependents for tax year 2002 has been increased to $1,200. The exemption amount for tax year 2001 was $1,150.

The personal exemption is, by law, adjusted each year for inflation using the Gross Domestic Product (GDP) deflator, as produced by the Bureau of Economic Analysis (BEA) for the period of January 1 to December 31, 2001. The BEA data for this period suggest a deflator of 2.4 percent. The law states that the amount of the exemption, once adjusted for the deflator, is rounded upward to the nearest multiple of $50.

New Homestead Income Brackets

The total eligible income brackets for the homestead exemption schedules are increased. The revised income brackets and corresponding reduction in taxable value apply to tax year 2003 (collected in calendar year 2004) for real property and to tax year 2004 (collected in calendar year 2004) for manufactured or mobile homes. The eligible income brackets and the corresponding reduction in taxable value are adjusted for inflation using the Gross Domestic Product (GDP) deflator, as produced by the Bureau of Economic Analysis (BEA) for the period of January 1 to December 31, 2001. The BEA data for this period suggest a deflator of 2.4 percent. The homestead exemption is a form of property tax relief for qualified elderly and disabled homeowners. Property tax reductions are granted to low-income homeowners who are either 65 years of age or older, or who are permanently and totally disabled. This exemption includes manufactured homes.

Total Income	**Reduce Taxable/Assessable Value by the Lesser of**
Under $12,800	$5,200 or 75% of taxable value
Between $12,800 and $18,700	$3,200 or 60% of taxable value
Between $18,700 and $24,700	$1,000 or 25% of taxable value
More than $24,700	-0-

Applications for the homestead exemption are available at all county auditors' offices.

Streamlined Sales Tax Brief Summary

Submitted by Fred Church, Administrator, Tax Analysis Division

The Streamlined Sales Tax Project (SSTP) was organized by state governments in March, 2000. With help from the private sector (retailers, trade associations, manufacturers, direct marketers, and others), the project has spent the past 2 1/2 years working to simplify and modernize sales and use tax collection and administration.

Ohio's participation in the project has unfolded in two stages. House Bill 483 of the 123rd General Assembly allowed the Tax Commissioner or his designees to engage in discussions with other states about the "development of a multi-state, voluntary, and simplified system for the collection of the sales and use tax from remote sellers, and administration of such tax." Accordingly, Bill Marshall and Bill Riesenberger from the sales tax division spent many months in multi-state working groups trying to develop uniform definitions of products, uniform procedures for situsing of sales, uniform registration procedures, and a myriad of other provisions to promote simplicity and uniformity.

In January of 2001, the SSTP approved both a model act and a model agreement. The model act was a piece of enabling legislation for the state legislatures to adopt, which would allow the state to enter into a multi-state agreement with one or more states to simplify and modernize sales and use tax administration. The act did not require any modification of a state's actual sales and use tax law. The model agreement, in contrast, would require states to amend their sales and use tax laws to come into conformity with the simplification and uniformity proposals.

Later that same month, the National Conference of State Legislatures (NCSL) passed its own version of the model act and model agreement. Passage of either the SSTP model act or the NCSL model act became the "entry ticket" into further participation in formulating the multi-state agreement. Specifically, states that passed the model act became "implementing states" and, starting in November of 2001 these states began meeting to put together the final multi-state agreement (the earlier model agreements were the starting points for the Implementing States).

Ohio's first meeting as an Implementing State was in March of 2002. Ohio became an implementing state when the Governor signed Senate Bill 143 that month. SB 143 actually was more than just the model act – it also contained some provisions from the interstate agreement as it stood at that time. The most important of those provisions in SB 143, at least from a fiscal standpoint, were those adopting a destination basis for situsing sales, and those limiting the frequency and timing of local tax rate changes (these changes do not take effect until July of 2003).

After sorting through a number of complex and sometimes controversial issues, the Implementing States group, which now numbers 34 states and the District of Columbia, developed a proposed interstate agreement. Specifically, at the eighth and most recent meeting in Philadelphia, concluded on September 13, the delegates voted on and approved the last sections of the agreement that had not yet been put to a vote. The next meeting of the Implementing States will be in November 2002, where delegates will vote on whether to accept the agreement as a whole. A three-fifths supermajority will be required for passage.

Although the interstate agreement is now scheduled for an up-or-down vote, there are still issues to be resolved. For one, the delegates still have to review the Library of Definitions, an appendix to the agreement that contains most of the uniform definitions (food, clothing, etc.). All the definitions have already been approved, but the drafting committee made language changes subsequent to the approval votes that the delegates need to review and approve.

A provision of particular importance to Ohio is part of the current draft agreement but so far has eluded consensus. At the April meeting in Michigan, the Implementing States voted 13-10 to allow two rounding algorithms. States can either round to the nearest cent ("5/4" rounding) or round up to the next cent (as Ohio, Maryland, Florida, and Vermont do). That decision was reversed in the just-concluded Philadelphia meeting on a 15-14 vote. The agreement now provides for only one rounding rule, rounding to the nearest cent. This imposes a significant revenue loss on the states listed (Ohio and its local subdivisions are currently projected to lose about $45 million annually if 5/4 rounding is imposed on them).

If the current interstate agreement is in fact approved at the November meeting of the Implementing States, it is then up to the states to go back and modify their sales and use tax laws to come into conformity with the agreement. According to the language of the agreement itself, the agreement becomes binding and takes effect when at least 10 states comprising at least 20 percent of the population of all states that impose a state sales tax have petitioned for membership and have been found to have modified their laws so that they are in compliance with the requirements of the agreement.

At this point it is very hard to predict when the 10 state, 20 percent of population standard might be met. Many of the Implementing States attained their status by passing only the model act, and so would have to pass all the elements of the interstate agreement "from scratch." (Of course, states differ in how close their existing sales tax systems are to the streamlined model system, and thus differ in how many changes they need to make.) Other states, like Ohio, passed some of the elements of the agreement already but have many more that need approval. Relatively few states are in the position of Minnesota or North Carolina, having already passed most of the agreement's provisions.

Computer Depreciation

Submitted by Rick Anthony, Administrator, Personal Property Tax

The Ohio Department of Taxation shortened the depreciation schedule used to determine true value for personal property tax purposes for stand-alone computers effective with the 2003 tax year. A major benefit to this change is that it will save taxpayers an estimated $12 million annually and make Ohio more competitive with other states.

The change will allow depreciation for stand-alone computers over five years rather than the eight years required under the previous depreciation schedule. The shortened depreciation schedule means taxable value drops faster, which results in lower personal property taxes for businesses since those taxes are calculated on the value of business equipment and machinery. While impacting local governments, we estimate that the new schedule will only reduce the revenue that local governments and schools receive from personal property taxes by about one-half of one percent. Schools will recover approximately 35 to 40 percent of lost personal property tax revenue through the state aid formula.

The new depreciation schedule makes Ohio more competitive since the new schedule will be comparable to most surrounding states including Michigan, Kentucky and West Virginia. Ohio law grants the Department the authority to change the depreciation schedules used to determine value for personal property taxes when a change is appropriate. The new schedule is effective only on a prospective basis, starting with tax returns filed for the 2003 tax year.

Stand-alone computers include computers, as well as related hardware and peripheral equipment, used for general business purposes such as data processing, payroll, tracking sales data, maintaining accounting information and tracking orders. Computers used as part of the manufacturing process or to provide public utility services will continue to be valued using the depreciation schedule for that process.

PRO-files

ODT Receives Pledge to Excellence Award, Continues Quality Journey

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

The Ohio Department of Taxation (ODT) was recognized on September 13, 2002 with a Pledge to Excellence Award from the Ohio Award for Excellence (OAE) program. The OAE is a cooperative business, academic, labor, government, health care and not-for-profit initiative designed to promote quality awareness, leadership, and operations performance throughout the state. Through its council and its 150 volunteer examiners, it helps organizations improve performance by utilizing the criteria developed for the Malcolm Baldrige National Quality Award.

The Department of Taxation submitted its application in November, 2001. In March, 2002, a team of OAE examiners visited the Department and interviewed a number of people to gain a further understanding of the facts set forth in the application. The team presented its report to the Department in May, 2002. Some of the key findings include the following:

ODT's Strengths

- Performance measures, though early in development, are systematically being developed, deployed, and analyzed.
- ODT does a good job of listening and gathering information from our customers. This is accomplished by: talking to people at conferences and meetings, surveying, benchmarking, and using consultants.
- The Interactive Voice Response System (IVR) gives customers good access to answers to common questions and the ability to speak with agents. Correspondence with customers includes appropriate fax and phone numbers and our web site address.
- Agents are empowered to address customer complaints. The PRO Office is available to address those complaints that our front-line staff may not be able to handle. Customer requests for assistance can be routed by e-mail.
- We solicit feedback with select customers through the e-mail system, our web site survey, post-audit survey, and post-meeting, workshop, and conference surveys.

ODT's Opportunities for Improvement

- Involve customers and stakeholders more in the design of new systems and processes.
- Enhance transfer of learning from past projects (ensure that lessons learned are shared).
- Give a higher priority to succession planning to ensure that training is in alignment with future staffing needs.
- Place in service and monitor performance measures which provide results regarding the effectiveness of training programs, the cost/benefit of training offered, and the overall effectiveness of cross-training.
- Include performance measure benchmarking and the setting of goals to identify when a process is "in-control" and functioning normally, and when it is not.

In June, 2002, ODT established the following seven teams to address, in part, the opportunities that the OAE examiners identified in their feedback report:

- Data Accessibility: to identify methods to make data more accessible to ODT's various operations and include an examination of ODT's document handling processes.
- E-File and Electronic Registration: to identify methods to pursue the goal of encouraging more paperless filing and creating an online registration system.

- Modernize the Tax Code: to emphasize a primary ODT goal of modernizing the Ohio's tax code in light of the current economy.
- Voice of the Customer: to study current systems and processes in place to solicit the voice of the customer and recommend either the modification of current systems or the creation of new systems, if necessary.
- Business Process Improvement/Reengineering: to address various operational improvement initiatives, including the adoption of an audit management system, the pushing of budgets down to the division level and the development of a centralized policy-making process.
- Quality Process Review: to standardize and simplify ODT's tax documents as well as to establish a process to review the quality of all ODT documents.
- Employee Development: to extend the goal of developing ODT employees through the continued development of a new training program. The program focuses on management and employee development and implementation of succession planning.

The Committee to Study State and Local Taxes Web Site

The Ohio Department of Taxation web site has a new boarder. Check out our home page and you'll find a link to the freshly minted web site for The Committee to Study State and Local Taxes. The Committee's web site is acting as a repository of the Committee's activities and a channel for the public to monitor and respond to the business being conducted. The web site will keep up to date with testimony and evidence submitted to the Committee and allow interested parties to e-mail their own comments and ideas for improving Ohio's state and local tax system. The Committee will accept written testimony until November 12, 2002. Anyone providing such written testimony through Commissioner Zaino (the chair) or the web site will have an opportunity to provide ten-minute oral testimony on November 19 or 26.

The web site can also be accessed from links posted on the web sites of the General Assembly, the Department of Development, the Office of Budget and Management, and soon, the State's home page. Please visit the web site and consider submitting your own recommendations for improving the tax system.

Notice of Medical Savings Account 2002 Deduction

For tax year 2002, the maximum deduction for contributions to Medical Savings Accounts is $3,533. Last year, the maximum deduction was $3,440. The deduction is based on the previous year's inflation rate as calculated from the Consumer Price Index for the urban Midwest Region produced by the Bureau of Labor Statistics.

Ohio Recognized As Among the Best

CIO magazine recently cited Ohio as one of the nation's best when it comes to developing new applications for the Internet. State online programs are among those cited in the 15th Annual CIO-100 Awards. *Ohio Business Gateway* and the state's main web portal were singled out as two examples of innovative integration. *Ohio Business Gateway* is the new Internet-based system that allows businesses to file taxes and other reports using their computers.

Commissioner Zaino said, "I am very excited about *Ohio Business Gateway*. This service gives businesses a break from the burden of bureaucracy and paperwork, in turn saving them time and money. We have received positive feedback from users of *Ohio Business Gateway*."

Bills Guided Successfully Through Legislature

Submitted by Gloria Gardner, Legislation Division

The Ohio Department of Taxation's Legislation Division successfully guided a number of bills through the Ohio General Assembly over the past year. In addition to working with the many divisions to develop Department initiatives into legislation – e.g. Taxpayer Services, Offers in Compromise, and Streamlined Sales Tax – staff worked on two budget-balancing bills that included tax-related provisions.

The first budget-balancing bill, House Bill 405, included changes to the dealers in intangibles tax, the timing of sales taxation of leases, and the tobacco stamp discount. The other budget-balancing bill, Senate Bill 261, included a cigarette tax rate increase, new taxes on trust income, and created The Committee to Study State and Local Taxes.

The Taxpayer Services Bill II, Senate Bill 200 (see story on page 9), was enacted in March after a unanimous "yes" vote by the Ohio Senate and a lone "no" vote in the Ohio House. You may recall that the first Taxpayer Services Bill, House Bill 612 (123rd General Assembly), became effective on September 29, 2000.

The new Offers in Compromise legislation, House Bill 396, breezed through both Ohio legislative chambers becoming effective in June. Steve Hall, Assistant Counsel to the Tax Commissioner, spearheaded the Department's efforts to work with the Ohio Attorney General (AG) in developing the legislation. The program enables the State to make compromises on Ohio tax liabilities similar to the IRS' Offers in Compromise program, which allows cases to be settled for less than the assessed amount, based on extenuating circumstances.

Under previous Ohio law, the Department and the AG could "adjust any claim in such a manner as was equitable." However, the term "equitable" was ambiguous. The new law spells out situations when the State may consider compromises: i.e., if doubts exist that the tax liability is correct; if it is doubtful the taxpayer could ever pay the amount of tax owed; or if an exceptional circumstance exists. Furthermore, the legislation accomplishes one of Commissioner Zaino's goals of modernizing the tax statutes. If the law is more specific, it is simpler to administer and easier for taxpayers and tax practitioners to understand, which improves compliance. The Department is currently working with the AG to develop guidelines for the program.

The Streamlined Sales Tax legislation, Senate Bill 143, became effective in March after considerable discussion in both houses. Senate Bill 143 enacted legislation recommended by the National Conference of State Legislatures (NCSL) for the development of a voluntary, streamlined system for the collection of sales and use taxes from remote sellers. Thirty-four states and the District of Columbia officially joined the implementing states through legislative enactment. The bill authorizes the Department to continue to participate in multi-state discussions to develop the system.

Ohio must also participate in discussions to review and amend the terms of the Interstate Agreement for the program. Among the provisions included in the base agreement are limiting the frequency of local tax rate changes; establishing uniform standards for exemption certificates and for sourcing transactions to taxing jurisdictions; and providing monetary allowances to certain vendors. Ohio, as one of the Implementing States, participated in discussions about additional provisions such as uniform definitions, governance, and telecommunications sourcing.

The Implementing States are on an aggressive timetable to develop the terms of the final agreement so that states can begin drafting conforming legislation this fall. Ohio's sales and use tax laws will need to be amended to reflect the tax simplification framework contained in the Agreement. Most of those changes have an effective date of July 1, 2003.

Another Taxpayer Services Bill Is Passed

Submitted by Leslie Akers, Legislation Division

Senate Bill 200, the Department's second Taxpayer Services Bill, became effective on September 6, 2002. The main purpose of this bill, sponsored by Senator Robert Spada, is to improve taxpayer service and tax administration by addressing certain technical, procedural and policy issues to which the Department is bound by law, but which provide undue burdens on the taxpayers, the Department, or both. Making these changes involved numerous interested parties, including the Ohio Chamber of Commerce, Ohio State Bar Association, and the Ohio Trucking Association. The Ohio Chamber, Ohio Bar Association and the Ohio Society of Certified Public Accountants testified in support of the bill.

Some of the key features of the bill include:

Creating Assessment Correction Notices. This will allow taxpayers and Taxation employees to resolve issues concerning the taxpayer's liability earlier in the appeals process.

Net Operating Loss. The bill increases the net operating loss carryover period from 15 to 20 years, consistent with federal law.

Safe Harbor Corporate Franchise Tax Language. If the taxpayer pays 100% of the previous year's tax liability or 90% of the current year's tax liability, whichever is less, the penalty for underpaying estimated tax is avoided.

Relief from Personal Liability. Current law holds an employee liable for the income tax even where the employer withheld the tax from the employee's paycheck but did not remit it to the state. This change relieves the employee from the tax liability under that circumstance except where there is evidence of collusion between the employer and employee.

Expanding the Disclosure of Information Regarding Vendors Licenses, Seller's Use Tax Accounts and Direct Pay Permits. Frequently, taxpayers want to verify that a vendor or seller is registered to collect and remit Ohio sales and use taxes. Current law restricts the information the Department may share with taxpayers. This change allows the Department to disclose the business name, identifying account number, street address, and whether the account is inactive or active.

Expanding the Use of Direct Pay Permits. This change expands availability of direct pay permits to additional large consumers who would then pay the tax directly to the state. This can simplify the payment of the tax for these larger companies (traditionally manufacturers and construction contractors).

Allowing Consumers to Apply Directly to the Department for Sales and Use Tax Refunds Under Certain Circumstances. This eliminates the step of going through the vendor to obtain a refund.

Providing Certainty for the Situsing of Mobile Telecommunications Services. The bill incorporates the federal Mobile Telecommunications Sourcing Act, bringing Ohio laws into conformity.

To view the bill in its entirety, visit our web site at www.state.oh.us/tax, click on *Government* and then on *Approved Tax Bills.*

INFORMATIONreleases

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

Corporate Franchise Tax

Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending 2001 and Thereafter – July 31, 2002

For Ohio taxpayers claiming bonus depreciation under Internal Revenue Code ("IRC") section 168(k), Amended Substitute Senate Bill 261, 124th General Assembly, made significant changes in the amount of allowable depreciation expense deductions for taxable years ending after September 10, 2001. This new law applies to the following taxpayers:

- Corporation franchise taxpayers (filing Ohio form FT-1120),
- Individual income taxpayers (filing Ohio forms IT-1040 and IT-1040ES),
- Individual school district income taxpayers (Ohio forms SD-100 and SD-100ES),
- Estate income taxpayers (filing Ohio forms IT-1041E and IT-1041E-ES),
- Trust income taxpayers (filing Ohio forms IT-1041T and IT-1041T-ES — for taxable years beginning in 2002, 2003, and 2004 only), and
- Pass-through entity taxpayers (filing Ohio forms IT-1140 and IT-1140ES or Ohio forms IT-4708 and IT-4708ES).

Excise and Motor Fuel Tax

Alcoholic Beverages

Alcoholic Beverage Reporting Changes for Out-of-State Wine Suppliers – July 24, 2002

Currently the Department of Commerce, Division of Liquor Control, requires two copies of the invoices for wine bottled outside of Ohio and shipped into Ohio and intended for sale in Ohio to be provided to the Ohio Department of Taxation. Substitute House Bill Number 371, 124th General Assembly, transfers the responsibility for administering this program to the Department of Taxation.

Cigarettes & Other Tobacco Products

New Product Subject to the Other Tobacco Products Tax and Restrictions on Cigarette Sales and Packaging – September 3, 2002

Ariva is a new product being distributed in Ohio that is made from 100 percent tobacco and is in the form of a mint. This product and any similar products are subject to the Ohio other tobacco products tax at the rate of 17 percent of the wholesale price.

Ohio Income Tax

Personal

Net Operating Loss Carryback Five-Year Rule – August 12, 2002

In accordance with Amended Substitute Senate Bill 261, 124th General Assembly, if a taxpayer (individual, estate or trust) elected for federal purposes to carry back a net operating loss (NOL) for five years, the taxpayer must make the same election for Ohio tax purposes. We will not require a separate statement. The taxpayer may indicate its election to use the five-year method by filing an amended return reflecting the five-year NOL carryback calculation.

Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending 2001 and Thereafter – July 31, 2002
See description above under Corporation Franchise Tax.

ESBT Audit Initiative – July 3, 2002
The Ohio Department of Taxation initiated an audit program to identify and assess individuals who are not "adding back" to their federal adjusted gross income ("FAGI") their distributive shares of S corporation profit which they receive via a trust qualifying as both an electing small business trust ("ESBT") and a grantor trust. This audit initiative is based upon the Department's January 19, 2000 information release directing taxpayers to make the add-back to the extent taxpayers did not include such amounts in their FAGI. Effective for post-1999 taxable years, the information release provides detailed authority supporting the required add-back.

Estate (Income Reporting)

Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending 2001 and Thereafter – July 31, 2002
See description above under Corporation Franchise Tax.

Trusts

Income Tax on Trusts – Questions and Answers – September 12, 2002
Recently-enacted law now imposes Ohio income tax on trusts. The Department received many questions regarding this estimated income tax requirement. Set forth in the information release are the most frequently asked questions and the Department's answers.

Newly-Enacted Ohio Law Imposes State Income Tax on Trusts – July 31, 2002
Recently enacted Ohio law, Amended Substitute Senate Bill No. 261, 124th General Assembly, imposes for taxable years beginning in 2002, 2003, and 2004 an income tax on most trusts meeting any one of the following requirements:

- The trust resides in Ohio, or
- The trust earns or receives income in Ohio, or
- The trust earns or receives lottery winnings, prizes, or awards paid by the Ohio Lottery Commission, or
- The trust otherwise has nexus with or in Ohio under the Constitution of the United States.

Offers in Compromise Update

House Bill 396 became effective on June 13, 2002. Formalizing Ohio's Offers in Compromise program, the bill provides that, with respect to a delinquent tax matter certified to the attorney general for collection, the tax commissioner and the attorney general may compromise the claim for less than its full amount and may consider a proposed payment plan.

ODT and the Attorney General's Office worked together to outline the parameters of the program. An information release will soon be available, explaining the details of the program. This public document will be available on the Attorney General's web site at www.ag.state.oh.us and through a link from ODT's web site (www.state.oh.us/tax). In the coming months, you will also find a form to complete to submit an offer.

COURT*decisions*

The following are significant court decisions of the Ohio Supreme Court and Board of Tax Appeals (BTA) announced in May, June, July, and August, 2002. These informational summaries of tax decisions are compiled by Peter Angus, Esq., CPA, Problem Resolution Officer.

Corporate Franchise Tax

A.H. Robins Company, Inc. v. Tracy (June 14, 2002), BTA 97-1215

On July 26, 1988 the United States Bankruptcy Court confirmed the plan of reorganization of the original A.H. Robins Company (hereafter referred to as Robins I). In substance, the plan permitted American Home Products Corporation to acquire Robins I in exchange for funds that Robins I used to finance a trust which paid certain product liability claimants of Robins I. For the purpose of effectuating its acquisition of Robins I, American Home Products formed a wholly-owned subsidiary, *new* A.H. Robins Company, Inc. (hereafter referred to as the taxpayer). On December 15, 1989, Robins I merged into the taxpayer in an IRC section 368(a)(1)(G) and 368(a)(2)(B) tax free reorganization. Robins I filed a purported 1990 Ohio franchise tax report based on the period January 1, 1989 through the December 15, 1989 merger date. The purported franchise report reflected a $52.8 million Ohio net operating loss (NOL) for the period January 1, 1989 through December 15, 1989. The taxpayer (that is, *new* A.H. Robins Company, Inc.), having qualified to do business in Ohio, filed franchise tax reports for tax years 1990 through 1993 and on those reports claimed as a deduction an Ohio NOL carryforward from Robins I for the period January 1, 1989 through December 15, 1989 and the Ohio NOL carryforwards for Robins I during earlier taxable years.

Upon audit the Department allowed the taxpayer's NOL deduction for the losses incurred by Robins I for the tax years in which Robins I was a taxpayer subject to the franchise tax (that is, for the taxable years ending in 1988 and earlier). However, the Department disallowed the taxpayer's NOL deduction for the losses incurred by Robins I during the period January 1, 1989 through the December 15, 1989 merger date because Robins I was not a taxpayer for tax year 1990 and thus the period January 1 1989 to December 15, 1989 was not a taxable year for which an NOL was to be computed. The Board then proceeded to the issue of whether the taxpayer succeeded to the Ohio NOL reported by Robins I for the period January 1, 1989 to December 15, 1989. The BTA agreed with the Tax Commissioner and held that the taxpayer did not succeed to the Ohio NOL of Robins I generated during the period January 1, 1989 to December 15, 1989 because Robins I did not have an Ohio NOL net operating loss for that period to which the taxpayer could succeed and use. This was so, according to the Board, because Robins I did not exist on January 1, 1990, and consequently the period January 1, 1989 through December 15, 1989 was not a *taxable year*. *Appealed to Franklin County Court of Appeals, July 12, 2002, Case No. 02 APH 07-0759.*

Dayton Country Club, Inc. v. Zaino (July 24, 2002), BTA 01-140

A country club was organized as a for-profit corporation in 1922. In 1945, its articles of incorporation were amended to permit the sale of shares to members without price restriction. In 1961, the articles were amended to prohibit the distribution of dividends, except dividends in liquidation of the corporation. The taxpayer contended that it was in reality a not-for-profit corporation, and therefore entitled to a refund of corporate franchise tax that it had paid because the Ohio corporate franchise tax does not apply to non-profits. The BTA affirmed the denial of the refund claim, holding that the amendments to the articles limiting the nature of dividends that the corporation could make did not transform it into a non-profit corporation.

Staubitz Sheet Metal Works, Inc. (May 17, 2002), BTA 02-80

The BTA affirmed the dismissal of a 1998 corporate franchise tax refund claim which was filed April 4, 2001, because it was filed more than three years after the original return, which was filed March 26, 1998. The Ohio

Revised Code requires a corporation to make an application for refund within three years from the date of the illegal, erroneous or excessive payment of the tax.

Excise Taxes

Campus Bus Service v. Zaino (May 3, 2002), BTA 00-1030, 00-1031

The taxpayer is a bus service owned and operated by Kent State University. It filed a refund claim under Ohio Revised Code 5735.142 for taxes paid on fuel used to operate the buses. That section provides an exemption for fuel used by public transportation systems providing transit service. Revised Code 5735.01(Q) defines a transit bus as one used on a regular and continuing basis by or for a county, municipal corporation or county transit board. Because the taxpayer did not have any formal agreement to provide transit service for a county or municipal corporation, its buses did not meet the definition of "transit buses" and it was therefore not entitled to the motor vehicle fuel tax exemption. *Appealed to the Ohio Supreme Court, May 31, 2002, Case No. 02-914.*

Casey Jones Convenient Stores, Inc. v. Tracy (June 7, 2002), BTA 98-963

The taxpayer was formerly a motor vehicle fuel dealer. In an audit for motor vehicle fuel tax compliance, seventeen unreported shipments were discovered by cross-checking the taxpayer's records with the records of the taxpayer's suppliers. The taxpayer contended that there was double billing in one case, and that they had not received the shipments in the other cases. The invoice that was double billed was removed from the audit. Several other shipments were removed from the audit, because receipt was made by someone not related to the taxpayer. The BTA affirmed the remainder of the audit.

Personal Income Tax

David & Patricia Gordon v. Zaino (May 3, 2002) BTA 00-95, 00-97

As a result of an investigation conducted by the Columbus Police Department, information was uncovered which indicated that the taxpayers substantially underreported their earnings on their Ohio income tax returns for 1992, 1993 and 1994. Business records maintained by the taxpayers while operating a house of prostitution, along with bank deposits and records of purchases, showed that the taxpayers underreported their income by approximately $30,000 to $40,000 per year. They were assessed on this basis. The BTA affirmed the assessments over the taxpayers' objections, holding that the assessments were not time barred because the taxpayers' original returns were fraudulent. Since the taxpayers were not able to provide evidence to overcome the presumption of correctness which attaches to an assessment, the assessment was affirmed.

Jennifer Wumer v. Zaino (May 24, 2002), BTA 01-995

Taxpayer was assessed tax, penalty and interest for a miscalculation of the child care credit on her 1997 Ohio income tax return. The credit is limited to 25% of the federal credit for taxpayers with less than $40,000. The BTA affirmed the assessment and found that there was no abuse of discretion in not remitting penalty because the taxpayer did not respond to requests for information.

Personal Property Tax

DVI Financial Services Inc. v. Zaino (June 28, 2002), BTA 01-1020

A lessor of equipment requested a refund of personal property tax on six items of leased property on which it contended tax had been paid by both it and its lessees. Ohio Administrative Code 5703-3-14 provides, in part, that leased property is taxable to the lessor "when the lessee is not obligated to purchase the property. If the lessee is obligated to purchase the property, the lessee shall be deemed to be the owner of such property…" In the leases at issue, the terms were ambiguous, providing that the "Lessee shall have no right, title, equity or interest in the Equipment and no right or option to purchase or otherwise acquire title to or ownership of the Equipment" and also, "…at the end of each …term, Lessor will sell all, but not part of, the Equipment …and transfer title to Lessee for the consideration of One Dollar…" The BTA affirmed the denial of the refund claim because the taxpayer had not established that the same property reflected on its return was that same as reflected on the returns of its lessees.

Public Utilities Tax

GTE North Inc. v. Zaino (2002), 96 Ohio St. 3d 9

The taxpayer, a telephone company as defined in Ohio Revised Code 5727.01(D)(2), contended that the difference in rates of taxation prescribed for telephone companies and for interexchange telecommunication companies violated the Equal Protection Clauses of the Ohio and U.S. Constitutions. The court held that although the two types of companies competed for some of the same business, a rational basis for differentiating between the two types of companies does exist, i.e., the interexchange companies with which the taxpayer competes for intraLATA (Local Access and Transport Area) calls do not provide local telephone service and, correspondingly, the taxpayer and other telephone companies are not authorized to provide interLATA toll calls. Because the two types of companies are not similarly situated, the taxpayer's challenge on the basis of the Equal Protection Clause was rejected by the court.

Real Property Exemptions

Grandview Hospital and Medical Center v. Zaino (June 28, 2002), Court of Appeals of Montgomery County, Case 19141

The taxpayer, a charitable institution, applied for exemption for property which was rented to some of its residents, interns and medical students at the rate of $250 per month. Under Ohio Revised Code 5709.12 and 5709.121, exemption is available to a charitable institution's property if it is used "in furtherance of or incidental to" the charitable purpose. The court held that the use of the residences to house on-call doctors is in furtherance of the hospital's charitable purpose of caring for indigent patients. Exemption for the property was therefore granted.

Cincinnati Community Kollel v. Zaino (June 14, 2002), BTA 99-1578, 99-1579

A non-profit center for religious study applied for exemption under Ohio Revised Code 5709.121(B) for a multi-unit residential center used to house scholars rent-free while doing studies at the institution. The BTA noted that exemption under the statute requires an inquiry first as to the character of the institution, and second as to the use of the property. The BTA found that the institution provided self-directed study to improve the knowledge of its scholars about religious teachings. No degree or formal course of study exists. The BTA therefore held that the institution is neither an "educational institution" nor a "charitable institution" within the meaning of the statute. Because the property does not belong to the type of institution described in the statute, it cannot qualify for exemption thereunder, regardless of what the use of the property is. The BTA therefore affirmed the denial of the exemption.

Columbus City School Bd. of Ed. v. Lawrence (August 2, 2002), BTA 99-703

During 1996, the owner of the Adam's Mark Hotel in Columbus removed hazardous materials as part of a renovation of the property. Pursuant to Ohio Revised Code 5709.87, the Director of the Ohio EPA on December 20, 1996 issued the owner a covenant not to sue and certified this to the Tax Commissioner three days later. The Tax Commissioner on December 30, 1996, issued a final determination exempting the improvements from real and personal property taxation for tax years 1996 through 2005. The Columbus City Board of Education appealed, contending that it was not notified of the actions of the Director of the Ohio EPA and that the value of property exempted improperly included more than the improvement relating to the removal of hazardous materials. The BTA held that the statute does not provide for the notification of the local board of education, and that the statute does not limit the exemption to the increase in value related to the removal of hazardous materials. *Appealed to the Ohio Supreme Court, September 3, 2002, Case No. 02-1525.*

Columbus City School Bd. of Ed. v. Zaino (August 2, 2002), BTA 00-948

In a companion case to BTA 99-703, the BTA held that the Tax Commissioner has jurisdiction to consider a complaint against the exemption of property which has been granted exemption under Ohio Revised Code 5709.87. The matter was remanded by the BTA to the Tax Commissioner. *Appealed to the Ohio Supreme Court, September 3, 2002, Case No. 02-1516.*

Hope Temple Inc. v. Zaino (July 26, 2002), BTA 01-1211

The portion of a house owned by a religious organization and used to house travelling clergy was claimed to be exempt under Ohio Revised Code 5709.07, which provides exemption for "real property that is owned and operated by a church that is primarily used for church retreats or church camping, and that is not used as a permanent residence." The BTA denied the exemption, holding that the only evidence in the record was that the subject property was used as a residence, and had not been used for a church retreat or church camp.

Jubilee Christian Fellowship, Inc. v. Tracy (May 17, 2002), BTA 99-239

A building leased by a religious institution from private owners and used as a "house used exclusively for public worship" was granted exemption under Ohio Revised Code 5709.07. Unlike property which is "attached to [houses of public worship] that is not leased or otherwise used with a view to profit", houses of public worship may be leased and still enjoy the exemption under Revised Code 5709.07.

North Coast Community Homes Inc. v. Zaino (August 16, 2002), BTA 01-1065

The BTA held that a building leased from a for-profit corporation and used to provide housing for mentally retarded adults was exempt under Ohio Revised Code 5709.12 which provides exemption for "real and personal property belonging to institutions that is used exclusively for charitable purposes…" The BTA held that it was not necessary that the owner of the leased property be a charitable institution, as long as the property is used exclusively for charitable purposes. *Appealed to the Ohio Supreme Court, September 16, 2002, Case No. 02-1599.*

Pleasant Run Farms Civic Association v. Zaino (August 30, 2002), BTA 02-207

The swimming pool and hiking trails belonging to a non-profit civic association which was comprised of subdivision property owners were held to be exempt under Ohio Revised Code 5709.12 because they belong to an institution and are used exclusively for charitable purposes. The pool and green areas are available to the public.

Real Property, Board of Revision Case

Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (2002), 96 Ohio St. 3d 165

The Lake County Board of Revision mailed notices of its valuation of the Perry Nuclear Power Plant to the plant's owners on July 25, 2000, and mailed notice to the local school district shortly afterward. The Board of Revision sent notice to the Tax Commissioner on October 6, 2000. The power plant's owners filed notices of appeal with the Board of Revision and the Board of Tax Appeals within 17 days of the mailing to the Tax Commissioner. The Board of Tax Appeals determined it was without jurisdiction to hear the appeal, saying the power plant's owners should have filed their appeals within 30 days of July 25. The court held that under Ohio Revised Code 5715.20, the 30-day period for filing appeals under 5717.01 does not begin to run until the Board of Revision serves notice of its decision upon all parties, including the Tax Commissioner. The matter was remanded to the Board of Tax Appeals for further review. The court stated that its decision is to apply only prospectively; any appeal that has been completed before the date of this decision shall remain final, but for those appeals still pending or not yet filed, the R.C. 5717.01 30-day appeal time shall be calculated from the date of the latest certified mailing required by R.C. 5715.20.

Sales and Use Tax

Americas Directories, Inc. v. Zaino (June 21, 2002), BTA 02-6

A printer of telephone directories objected to the assessment of use tax on its storage of directories in Ohio. Because the taxpayer did not present evidence to show error, the assessment was affirmed.

Bleile Supply Co. v. Tracy (August 9, 2002), BTA 97-1696

In a review of a "sixty-day letter audit" of retail sales, the BTA held that the vendor has a duty to establish the exempt use of the items for which it did not collect and remit sales tax. Testimony by an employee of the vendor of his second-hand knowledge about the use of products was not sufficient to establish exemption.

Frank Byrne v. Zaino (May 17, 2002), BTA 00-355

A gun dealer who failed to keep primary or secondary sales records was audited for sales tax compliance. The Tax Commissioner's agent used the taxpayer's records of purchases to establish gross sales. Guns sold to other dealers were removed, and the sales price for the remaining guns and accessories was determined by applying a 25% markup rate. This rate was based on interviews with similar dealers. The taxpayer contended that the markup rate was too high, and he presented his own analysis. However, because the taxpayer's analysis related to periods outside the audit period, it was disallowed and the assessment was affirmed. *Appealed to the Portage County Court of Appeals, June 17, 2002.*

Dairy Farmers of America Inc. v. Zaino (July 12, 2002), BTA 01-378

The BTA held that supplies used to clean the processing equipment of a dairy farmers cooperative were excepted for the same reasons given in *Farmers Dairy Foods Inc. v. Zaino* (June 21, 2002), BTA 97-167, below. *Appealed to the Ohio Supreme Court, July 22, 2002, Case No. 02-1261*

Dave's Drive Thru, Inc. v. Zaino (June 28, 2002), BTA 01-71

The BTA affirmed a sales tax assessment against a vendor who failed to keep primary or secondary records of sales. The assessment was based on a mark-up of purchases of taxable inventory items. The taxpayer's objections concerning the audit methodology were rejected because the taxpayer failed to provide probative evidence showing error.

Farmers Dairy Foods Inc. v. Zaino (June 21, 2002), BTA 97-167

A cooperative of dairy farmers which processed milk into various products contended that its clean-in-place equipment was excepted from use tax as equipment used in agriculture or as equipment used in rendering agricultural service for others under Ohio Revised Code 5739.01(E)(2). Revised Code 5739.011(C)(9) provides that property used to clean, repair or maintain equipment used in a manufacturing operation is taxable. The BTA held that the taxpayer was engaged in agriculture or in rendering agricultural services for others, and its purchases of equipment and supplies for the clean-in-place system were therefore excepted from use tax. *Appealed to the Ohio Supreme Court, July 22, 2002, Case No. 02-1276.*

Richard Gallagher v. Zaino (June 21, 2002), BTA 01-509

A brother of a deceased owner of a bar was held to be not a responsible party for unpaid sales tax under Ohio Revised Code 5739.33 because he was neither an officer nor an employee of the corporation. He was a beneficiary of the estate of his brother and, during the winding up of the estate, helped at the bar and signed sales tax returns.

James Heine v. Zaino (June 14, 2002), BTA 01-587

A 50% owner and corporate secretary who signed the vendor's license application and all sales tax returns was held liable by the BTA as a party responsible for unpaid sales tax under Ohio Revised Code 5739.33.

Kennedy Manufacturing Co. v. Zaino (May 17, 2002), BTA 02-212

The BTA affirmed the dismissal of a petition for reassessment which was filed several days past the 60-day period provided in Ohio Revised Code 5739.13(B), because compliance with core jurisdictional requirements is a prerequisite for the Tax Commissioner to consider the petition.

Maintenance Unlimited Inc. v. Zaino (August 9, 2002), BTA 00-1861

A landscape contractor contended that some of the sales for which it was assessed were not taxable landscaping services but tree removal and site preparation services. Ohio Revised Code 5739.01(DD) includes within the definition of "landscaping and lawn care service" the "services of … removing, cutting…trees… or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purposes…" The BTA held that in those instances where the taxpayer removed trees and stumps to prepare the land for building and not for ornamental purposes, the transactions were not within the definition of taxable landscaping services.

Mike's Food Market v. Zaino (July 12, 2002), BTA 02-4

A convenience store was audited for sales tax compliance and, because it did not have primary or secondary records of sales as required by statute, the audit was conducted using a mark-up analysis of its purchases of inventory items. The BTA upheld the assessment because the taxpayer did not provide competent, probative evidence that the Tax Commissioner's final determination affirming the assessment was in error.

H.R. Options, Inc. v. Zaino (August 2, 2002), BTA 01-808

A firm which provided payroll services to companies with limited human resource departments was assessed sales tax under Ohio Revised Code 5739.019B)(3)(k) as a provider of employment services. The BTA held that the services of paying employees and keeping payroll records for companies that do not have human resource departments or have not committed to a permanent hire do not comprise providing or supplying employment services.

R.K.E. Trucking, Inc. v. Zaino (May 24, 2002), BTA 98-1316

Trucks used by the taxpayer to deliver gravel sold to construction companies were held not exempt under Ohio Revised Code 5739.02(B)(33) because that section applies to vehicles used in transportation for hire of property belonging to others for a consideration. In this case, the gravel trucks were not primarily used in hauling property belonging to others. Rather, the trucks were used to deliver products that the taxpayer was selling or reselling. This case was appealed to the Ohio Supreme Court on June 21, 2002. *Appealed to the Ohio Supreme Court, June 21, 2002, Case No. 02-1048.*

Kirk & Timothy Roland v. Zaino (May 17, 2002), BTA 00-767

Taxpayers operated a furniture store and were audited for sales tax compliance. Because the primary and secondary records required to be kept by vendors under Ohio Revised Code 5739.11 were incomplete, the Tax Commissioner's agents reviewed other records. Significant discrepancies were found between the amounts reported for sales on the taxpayers' sales tax returns and the amounts reported for sales on the taxpayers' federal partnership income tax returns. The amounts on the partnership returns were close to the amounts reflected on the taxpayers' bank deposit receipts. Accordingly, the taxpayers' gross sales were adjusted and sales tax was assessed on the increased amount. The BTA upheld this audit methodology and affirmed the assessment.

Sanitary Products of Mansfield v. Zaino (June 28, 2002), BTA 01-803, 01-804

In an audit conducted on the sales of a janitorial supplier an agreement was made between the taxpayer and the Tax Commissioner's agent which provided that the error rate determined upon review of a two-month sample period would be applied over the entire audit period. The taxpayer contended that the agreement and the audit were flawed in that the customers represented in the sample period do not have uniform buying habits over the entire audit period. Since the taxpayer was unable to demonstrate error in the audit, and since the taxpayer had agreed to the audit methodology, the BTA upheld the audit methodology.

Standards Testing Laboratories, Inc. v. Tracy (July 12, 2002), BTA 98-617

A company engaged in the business of testing products contended that the tires and related supplies which it purchased were excepted from sales tax as purchases for resale under Ohio Revised Code 5739.01(E)(1). The taxpayer purchased the tires after receiving an order for testing from a customer. The tires were marked to identify the customer; the customers were billed for the tires and for disposal when the testing was complete. Although the customers never took possession of the tires, the BTA held that title to the tires transferred to the customers. Therefore, the resale exception did apply. *Appealed to the Ohio Supreme Court, August 12, 2002, Case No. 02-1420.*

Welch's Golf Carts, Inc. v. Zaino (May 24, 2002), BTA 01-344

A golf cart manufacturer claimed that its truck on which it paid sales tax was exempt under Ohio Revised Code 5739.02(B)(33) as a vehicle used in highway transportation for hire. The taxpayer contended that it used the truck to transport parts owned by others to customers. The invoices presented by the taxpayer with its notice of appeal appeared to involve warranty work. There was no clear showing that the taxpayer was using the truck primarily to transport the property of others for consideration. Accordingly, the BTA affirmed the denial of the taxpayer's refund claim.

TAX*enforcement*news

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

Brenda I. Johnson, President of Carpenter's Son Cleaning Service, pleaded no contest to collecting and failing to remit sales tax – attempt. Restitution was ordered in the amount of $47,469 and was paid by Ms. Johnson at sentencing. Information was received in our Toledo office that Carpenter's Son Cleaning Service had not filed a sales tax return since July of 1998. The investigation led to a search warrant for the business. A review of the records resulted in the tax liability and subsequent conviction.

Don R. Carnes, operator/driver of a 1999 International, registered to R. W. Teisinger Excavating, was discovered using untaxed diesel fuel on the highway. Agents from the Ohio Department of Taxation, Dyed Fuel Enforcement Unit, were conducting motor fuel inspections. During the inspection, agents visually identified the fuel to be dyed. Samples were taken and resulted in a conviction in the Zanesville Municipal Court. Mr. Carnes was fined $100 plus court costs.

Donna J. Sparks pleaded guilty to two counts of failure to file income tax and three counts of fraudulent filing of income tax in Ross County Common Pleas Court. The Ohio Department of Taxation, Criminal Enforcement Division, received a telephone complaint from a detective of the Ross County Sheriff's Department stating the suspect, who was taking care of an elderly woman, began to write checks to herself from the victim's checking account. The suspect admitted to taking the money and not claiming it on her income tax. Ms. Sparks was sentenced to ten months in prison on the tax charges. She was also sentenced to three years on related charges from the Ross County Sheriff's Department.

Olinda Williams, doing business as Hilltop Discount Store, located in Cincinnati, pleaded no contest to selling cigarettes not bearing Ohio tax stamps and was found guilty in Hamilton County Common Pleas Court. She was fined $40. A routine inspection by Tax Enforcement agents uncovered 26 packs of Kentucky stamped cigarettes.

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

Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
	Clark #901	Toledo	(1) Count -No Cigarette License
Fred Archer	South End Market	Circleville	(1) Count – Trafficking in Cigarettes Without a License
	ASAD Wholesale	Cincinnati	(1) Count – Failure to Post License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Geizle Spearman	Starlite Promotions	Toledo	(2) Counts Failure To File Sales Tax Returns
Peggy Brennan	B & H Auto Center	Zanesville	(2) Counts Failure To File Sales Tax Returns
Lawrence Karow	Brew Ha Ha	Toledo	(1) Count Failure To File Sales Tax Returns
Laura Macioce	Belle Flora	Whitehall	(1) Count Failure To File Sales Tax Return
Darrin Hildebrand	Sandusky Bay Cigars	Sandusky	(1) Count Operating Without a Vendor's License
Raymond L. Cooper	Pataskala Paving	Pataskala	(2) Counts Prohibition Against False Certificates
Kevin J. Matthews	(Same as above)	(Same as above)	(2) Counts Prohibition Against False Certificates
B. Perry	The Next Level	Toledo	(1) Count Failure To Collect Sales Tax (1) Count Failure To File Sales Tax Returns
Kenneth Molek	Fat Dad's Custom Cycles	Toledo	(2) Counts Failure To File Sales Tax Returns

Ohio Tax Hall of Fame

Don't forget to submit your nomination for Ohio's State and Local Tax Hall of Fame by the end of October. The Ohio State and Local Tax Hall of Fame was created in 2000 to acknowledge those people who have significantly contributed to the development, administration or operation of Ohio's state tax system.

The next inductee will be announced at the Ohio Tax Conference in January, 2003 in Columbus. Nomination forms can be found on our web site at www.state.oh.us/tax. The home page contains a link to the form. You can e-mail your nominations to james_lawrence@tax.state.oh.us or you can mail them to:

Ohio Department of Taxation
Tax Commissioner Thomas Zaino
30 East Broad Street, 22nd Floor
Columbus, Ohio 43215

The Ohio State and Local Tax Hall of Fame is jointly sponsored by the Ohio Department of Taxation and the Ohio Chamber of Commerce.

Small Business Tax Workshops Offered

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

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

Several types of workshops are offered. General Business workshops are designed to provide a general overview of business taxes, types of businesses and business structures, advantages and disadvantages of each type, tax filing requirements, record keeping, estimated tax requirements and employment taxes. The Ohio Department of Taxation participates in General Business workshops.

Specialized workshops are generally shorter in duration and are designed to address a specific type of business entity, occupation, or issue. Examples include: Schedule C/Sole Proprietorships, Employment Taxes, and Home-Based Businesses, such as day-care providers and direct sellers.

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

Following is a list of classes scheduled through January, 2003.

Athens County
November 7, 2002, 9:00 a.m. – 4:30 p.m.
General Business Tax Workshop
Ohio SBDC at Ohio University
Enterprise and Technology Building
20 East Circle Drive, Suite 174
Athens, OH 45701
To register, call (740) 593-1797.

Butler County
November 14, 2002, 9:00 a.m. – 4:30 p.m.
General Business Tax Workshop
Butler Co. Joint Vocational School
Boyd Educational Resource Center
3603 Hamilton-Middletown Road
Hamilton, OH
To register, call (513) 844-1500.

Belmont County
October 25, 2002, 8:30 a.m. – 11:30 a.m.
Schedule C/Sole Proprietor
Ohio University Eastern
45425 National Road
St. Clairsville, OH 43950
To register, call (740) 699-2502.

Clark County
November 15, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Small Business Development Center
300 East Auburn Avenue
Springfield, OH 45505
To register, call (937) 322-7821 or mail to above address.

Cuyahoga County
November 20, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Small Business Development Center
Cuyahoga Community College
Unified Technologies Center
2415 Woodland Avenue
Cleveland, OH 44115
To register, call (216) 987-3075.

Hamilton County
November 1, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Hamilton County Development Company
1776 Mentor Avenue
Norwood, OH 45212
To register, call (513) 631-8292.

Logan County
November 14, 2002, 9 a.m. - 4:30 p.m.
General Business Tax Workshop
Ohio Hi-Point Career Center
2280 SR 540
Bellefontaine, OH 43311
To register, call (937) 599-6275.

Marion County
October 9, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Marion Area Chamber of Commerce
208 South Prospect Street
Conference Room
Marion, OH 43302
To register, call (740) 387-0188 or mail to above address.

Montgomery County
October 8, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Ohio SBDC at Wright State University
Center of Small Business Assistance
College of Business
120 Rike Hall, Room 219
Dayton, OH 45435
To register, call (937) 775-3487 or mail to above address.

Franklin County
October 9, 2002
January 8, 2003
Both 9 a.m. – 4:30 p.m.
General Business Tax Workshops
Workshops held at the Columbus Metropolitan Library
96 S. Grant Avenue, Main Auditorium
Columbus, OH
To register, call (614) 225-6910.

Hocking County
October 23, 2002, 1 p.m. – 5 p.m.
Schedule C & E Filers
Logan-Hocking Public Library
230 East Main Street
Logan, OH
To register, call (740) 385-6836.

Lucas County
October 4, 2002
January 9, 2003
Both 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Toledo Area Chamber of Commerce
300 Madison Avenue, 8th Floor, Room 807
Toledo, OH 43604
To register, call (419) 243-8191 or mail to above address.

Miami County
December 12, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Upper Valley JVS, Applied Technology Center
ATC Building
8811 Career Drive
Piqua, OH 45356
To register, call (937) 778-8419 or toll-free,
1-800-589-6963 or mail to above address.

Muskingum County
October 22, 2002, 5 p.m. – 8 p.m.
Starting a Business and Limited Liability Corporations
Ohio University Zanesville
1425 Newark Road
Room T-430
Zanesville, OH 43701
To register, call (740) 439-4471.

Richland County
October 10, 2002, 9a.m. – 4:30p.m.
General Business Tax Workshop
Advance Tech. Training Center
169 Mansfield Avenue
Shelby, OH
To register, call (419) 755-4800 or mail to Jim Stoner
Ohio SBDC at North Central State, Enskat Center
1310 W. Fourth Street, Mansfield, OH 44906.

Summit County
October 8, 2002, 9:00 a.m. – 4:30 p.m.
General Business Tax Workshop
Ohio Small Business Development Center at the
Greater Akron Chamber
1 Cascade Plaza, 17th Floor
Akron, OH 44308
To register, call (330) 379-3170.

Union County
October 10, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Union County Chamber of Commerce
227 E. Fifth Street
Marysville, OH 43040
To register, call (937) 642-6279.

Stark County
November 12, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Kent Stark Small Business Development Center
Kent State University – Stark Campus
6000 Frank Avenue. N.W.
Library Conference Room
Canton, OH 44720
To register, call (330) 244-3296.

Tuscarawas County
December 4, 2002, 9 a.m. – 4:30 p.m.
General Business Tax Workshop
Kent State University – Tuscarawas Campus
330 University Drive NE
New Philadelphia, OH 44663
To register, call (330) 308-7479.

Tax Calendar at-a-Glance

Oct.	
15	Monthly Income Tax Withholding Return
21	Monthly Kilowatt Hour (KWH) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer and Direct Pay Returns
23	Quarterly Consumer Use Tax Returns
23	Quarterly Direct Pay Sales Tax Return
Nov.	
15	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour (KWH) Tax Return
20	Quarterly Natural Gas Distribution (MCF) Tax Return
25	Monthly and Semiannual Sales Tax Returns
25	Monthly Consumer and Direct Pay Returns
Dec.	
16	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour (KWH) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer and Direct Pay Returns

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

Our Motto:
We CARE about the quality of our service.
Courteous
Accurate
Responsive
Equitable

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

The Ohio Department of Taxation is an Equal Opportunity Employer.