

Ohio's

State Tax Report

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**What's
Inside . . .**

**2001 Tax
Conference**

New Interest Rate

**Annual Report Now
Available**

**Comments from the
Commissioner**

Internet Update

Court Cases

**Representing Your
Client**

Electric Restructuring

–Submitted by Fred Nicely, Chief Legal Counsel

January 1, 2001 marks the start of a new era of choice for consumers of electricity. Beginning next year, all customers of investor-owned electric companies will be able to select an electric supplier they think is best. Even if they don't change suppliers, customers will still see some savings. That is because investor-owned electric companies are being required to reduce their rates for residential customers by five percent on the generation portion of the bill (approximately three percent of the cost paid for electricity). Regardless of who the customer picks, the electricity delivered to their home will still be distributed by their current electric company. The electric company, however, may spin off portions of its business and separate its generation, transmission and distribution services into separate legal entities.

Restructuring this industry required changes to Ohio's tax law. The current 4.75 percent public utility excise tax (gross receipts tax) and a personal property tax assessment rate of 100 percent imposed on an investor-owned electric company's generation property will not work in a restructured environment. There are several reasons for this, primarily involving nexus (an electric supplier may not have enough contacts with the state for the state to impose a tax) and competition issues (electric companies in this state with generating capability will be competing with generation companies in other states).

The electric restructuring law, Senate Bill 3, takes care of these tax issues by eliminating the public utility excise tax and reducing the assessment rate on all of an electric company's property, excluding transmission and distribution property, to a 25 percent assessment rate – the same rate imposed on non-utility businesses in this state. In place of taxes imposed before Senate Bill 3, both rural municipal and investor-owned electric companies will be subject to a kilowatt hour (kWh) tax. In addition, the investor-owned electric companies will be subject to the State's corporation franchise tax and income taxes imposed by the municipalities in this state.

Revenue from the replacement kWh tax is distributed to the state, local governments and schools based on any revenue loss they had from the elimination of the public utility excise tax and the reduced assessment rate. For the first five years, schools and local governments will be made whole – they are guaranteed no reduction in tax revenues. After the first five years, the percentage of revenue from the kWh tax going to local governments and schools will stay the same, but the amount of money received by each school and local government may change.

Senate Bill 3 made several other changes to Ohio's tax code, Title 57, to address tax issues and electric restructuring. With electricity no longer defined as personal property, changes were made to some sales tax provisions. In the corporation franchise tax, two special provisions were inserted: 1) to situs the transmission,

(Electric Restructuring–cont'd. on page 6)

Don't Miss Out

It's the one conference you cannot afford to miss—the Ohio Tax Conference. The 10th annual conference, sponsored by the Ohio Department of Taxation and the Ohio Chamber of Commerce, will be held January 17-18, 2001 at the Hyatt Regency in Columbus.

Attendees will obtain the most reliable tax information from Ohio's premier tax experts and many of the leading experts in the nation. The conference will cover issues such as the streamlined sales tax system, sales tax simplification, manufacturing issues, e-commerce/Nexus, issues in surrounding states, tax incentives, and tax disputes, appeals, and audits.

Speakers for the conference include: Professor Richard Pomp, University of Connecticut; Paul Frankel, a partner in

the New York law firm of Morrison & Foerster; Dr. Martin Regalia, one of the nation's most respected economists; Joe Crosby, Committee on State Taxation; Frank Julian, Federated; and, Harley Duncan, Federation of Tax Administrators. Ohio Tax Commissioner Thomas Zaino will address attendees during the luncheon on January 17. The luncheon keynote speaker on January 18 will be Dr. Regalia.

The cost of the conference is \$495 per person. This fee includes tuition, a comprehensive manual, two luncheons, and a reception. If your organization sends three or more representatives, there is a special team rate of \$420 per person. For more information, call the Ohio Chamber of Commerce at 1-800-OCC-1893. To register for the conference, call the Manufacturers' Education Council at (614) 229-7990. Registration is requested by January 11, 2001.

Openings On-Line —Submitted by Chuck Kumpar, Human Resources Division

The Department of Taxation now accepts applications for employment on the Internet. The Department is also putting all external job vacancy notices on-line. Ohio enjoys a very high employment rate and this method of making the general public aware of employment opportunities in a tight labor market is key to maintaining quality staffing.

Since implementing this process, approximately 80% of all external applicants have applied on-line. The Department has received over 275 applications via this electronic procedure. This process has been especially successful with

applications for those individuals seeking positions with our Information Services Division.

Posting opportunities on-line has been very successful. Individuals can access the on-line application procedure at www.state.oh.us. Go to "Job Opportunities," and then to "Job Openings." For more information, contact the Department's Human Resources Office at (614) 466-3020 or the State's Centralized Recruiting Office at (614) 466-4026.

Interest Rate Announced

The interest rate charged by the State of Ohio for delinquent taxes and tax assessments will be **nine percent** per annum during calendar year 2001. The rate was certified and announced in October by Tax Commissioner Zaino and will take effect January 1, 2001.

State law mandates that every October the Tax Commissioner compute the interest rate for the following calendar year. The rate equals the federal short-term interest rate in July, plus three percent. Interest is charged on money taxpayers owe to the State for underpayment or late payment of taxes, other tax delinquencies and tax assessments. The State also applies this rate to any money it may owe individuals or businesses for overdue payments.

The nine-percent rate will apply to tax sections of the Ohio Revised Code requiring computation of an annual interest rate. Taxes affected are personal income, real estate, personal property, estate, sales and use, cigarette, alcoholic beverages, motor vehicle fuel, corporation franchise, public utility, and severance.

Order Yours Today

Copies of the 2000 Annual Report are now available. Please request your copy by returning this form to the address listed below, or contact us by e-mail at carol_wentzel@tax.state.oh.us:

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

Name _____

Company _____

Address _____

City, State _____

Zip Code _____

Comments from the Commissioner

Thomas M. Zaino, Ohio Tax Commissioner



As you may recall, the last edition of the *Ohio's State Tax Report* (Fall, 2000) included a brief summary of the changes made to the 2000 individual income tax form. To provide taxpayers with the best possible service, we have been working to make filing tax returns as simple and convenient as possible. As Tax Commissioner, I want to talk about many of the filing conveniences we offer.

For taxpayers who need help or have questions, we are offering more types of assistance than ever. We have changed our telephone system to answer calls more quickly. The hours when help is available are also being expanded. Our central Taxpayer Services Division will be augmented by agents from our District Offices. From January 16–April 16, 2001, our Taxpayer Assistance line, 1-800-282-1780, will be open from 8:00 a.m. to 7:00 p.m. Monday–Friday. The line will be open on Saturday from 8:30 a.m. to 12:30 p.m. Personal assistance is available at our District Offices in nine Ohio cities, and at IRS offices located in Cincinnati, Cleveland, Columbus, Dayton, Lima, and Toledo. Hours at the IRS offices are 8:30–4:30 Monday–Friday, with extended hours until 6:30 p.m. on Tuesday and Thursday. Saturday hours are 8:00 a.m. – 12:00 (noon). We also have a phone number for practitioners to use, (614) 728-1055, which will be open from 8:00 a.m. to 5:00 p.m., Monday – Friday.

Taxpayers can also find assistance, tax forms, instructions and answers to frequently asked questions by visiting our website at www.state.oh.us/tax. New this year is our ability to respond to inquiries by e-mail. Taxpayers may leave their inquiry in our e-mail box at the website. We will respond with the answer.

For those taxpayers who are due a refund and want it quickly, we encourage filing their return electronically. E-filing is the fastest way to receive a refund. Last year, almost 900,000 Ohioans e-filed their returns. Taxpayers may either use their personal computer and approved tax preparation software (listed on our website), or use an authorized E-File provider (their tax preparer) to E-File their federal, state, and school district income tax returns. There is usually a charge by the provider for this service. E-Filing allows the taxpayer to receive confirmation that their federal and state returns were accepted from their software provider or tax preparer.

Selecting the option to have a refund directly deposited into a bank account will also expedite taxpayers getting their refund. Last year, the majority of taxpayers who e-filed and had their refund directly deposited received it in under twelve days. By comparison, taxpayers may wait several weeks for their refund if they file a paper return and request a paper check.

Also, don't forget the new convenience of paying tax due by credit card. Just remember that the vendor providing the service will collect a small convenience fee. This private vendor has been approved by the state, as well as the IRS.

Beginning this year, we are providing the most commonly used forms in a new and convenient format, CD-Rom. Copies of this CD were mailed to practitioners in mid-December. If you did not receive one, and would like the CD, please write to: Ohio Department of Taxation, Forms Request, P.O. Box 2476, Columbus, Ohio 43216-2476.

With these added filing conveniences, we continue to fulfill our mission of providing quality service to Ohio taxpayers.

An Internet Revival

The Ohio Department of Taxation's internet website is heading for an overhaul. When all is done, the site, which opened for business in October, 1996, will have a new look, new functions and new energy.

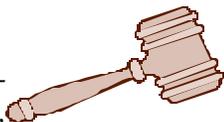
One goal of reorganizing the website is to keep it current. That goal became essential with the passage of the Taxpayer Services Bill (House Bill 612). That bill retired the Department's Murdoch Journal, but not the legal requirement to make directives, bulletins and informational documents publicly available. The Journal used to fulfill that requirement; now the Department's website will.

The system for updating the site involves a partnership

between all of the divisions in the Department. The details of the website project are still being worked out, but a key component is the appointment of internet liaisons, who will represent each of the divisions. Those more than 20 liaisons met December 6 for a briefing that touched on the scope of the website project and the responsibilities of the liaisons for the internet. The liaisons will, collectively, act as a feeder system for the web. Each will be monitoring activities in their division, with an eye out for developments or projects that need posting on the website.

The internet channel will be an increasingly important medium for conducting business with our customers. It is the hope of the Department that the internet will be a valuable resource, furthering the mission of providing quality services.

Court Decisions



The following are significant decisions of the Ohio Supreme Court, Court of Appeals, and the Board of Tax Appeals (BTA) announced in October and November, 2000 in the area of Franchise, and Sales and Use taxes. Court decisions are compiled by Anthony Long, Legal Division.

FRANCHISE TAX

Emerson Elec. Co. v. Tracy (2000), 90 Ohio St. 3d 157, motion for reconsideration denied.

In a 4-3 decision the Court ruled the deduction limitation for foreign source dividends found at R.C. 5733.04(I)(2)(c) unconstitutionally discriminated against foreign commerce in violation of the United States Constitution's Foreign Commerce Clause.

SALES & USE TAX

Findlay Truck Line, Inc. v. Tracy (Nov. 24, 2000), BTA No. 97-1167.

The appellant transports grocery products and "back-hauls" commodities for tire manufacturers. The Board ruled that the truck/trailer cleaning services performed maintained the trucks/trailers and qualified for exemption under R.C. 5739.02(B)(33). The Board also ruled that purchase of

pallets or pallet repair services were not entitled to exemption either under R.C. 5739.02(B)(33) (the pallets were not incorporated into the trucks) or R.C. 5739.02(B)(15) (the appellant isn't a manufacturer or retailer).

Corporate Staffing Resources, Inc. v. Tracy (Oct. 27, 2000), BTA No. 97-538.

Appellant furnished personnel to others for various tasks related to the maintenance and repair of computer components. The appellant filed a refund for taxes it collected on its employment service contracts. The Board found the services to be taxable employment services under R.C. 5739.01(JJ), but did not qualify for any exclusions listed in subsections of (JJ). The Board relying on *Bellemar Parts Industries, Inc. v. Tracy* (2000), 88 Ohio St. 3d 351, rejected other claims of tax exception raised by the appellant.

Rumpke Container Inc., et al. v. Tracy (Oct. 27, 2000), BTA Nos. 98-1254, and 98-1257 through 98-1264.

The Board concluded that the appellant's were not providing transportation services for hire as contemplated by R.C. 5739.01 and, therefore, the purchases under review were not entitled to the tax exemption found at R.C. 5739.02(B)(33).

PRO-Files

Representing Your Client –Submitted by Peter Angus, Esq., CPA, Problem Resolution Officer

The Department is adopting a new form and a new process for enabling tax professionals to access confidential client information. When tax professionals need copies of returns or audits from the Department of Taxation, they are asked to provide a completed "Authorization of Representative" form, also known as Form TBOR-1 (available on the Department's website, www.state.oh.us/tax). The form is needed because Ohio Revised Code 5703.21 and other statutes prohibit employees of the Department from making unauthorized disclosure of taxpayer information. A few facts about the newly revised form may be helpful for practitioners:

- The new TBOR-1 will be centrally filed in the Department's Legal Division. A database, available to Department employees, is being created and mounted on a Department-wide LAN. The database will include information from all TBOR-1's on file, as well as a scanned copy of the document itself. This will allow practitioners to discuss their client's matter with various Department offices, if necessary, after filing only one TBOR-1.
- New language in the TBOR-1 is intended to make clear to taxpayers that they will be bound by the acts of their representative, even if that means an increase in tax liability.
- If several practitioners from a firm will be assisting with a client's tax matter, it is helpful if all of their names are listed on the TBOR-1 so that they will each be included in the database. This may prevent delays in the firm's obtaining information from the Department later on.
- The new TBOR-1's will expire in one year unless another time limit is specified. The default time limit will allow the Department to periodically purge unneeded documents from the database.
- Although information may still be obtained under previously filed TBOR-1's, practitioners are encouraged to use the new version so that the data can be entered in the database.

Tax Enforcement News

The following information is a list of convictions secured by the Enforcement Division of the Department during October and November, 2000. Tax Enforcement News is compiled by Robert M. Bray, Enforcement Division.

The former owner of two IGA supermarkets in Northern Ohio was sentenced in November for defrauding the state of hundreds of thousands of dollars in sales tax. Michael Bush will spend a year in the Lorain Correctional Institute, while his wife, Debra, was put on probation for three years. They were also ordered to pay \$300,000 in restitution to the state. Sales tax reports were falsified repeatedly over a period of four years. In 1999, a former employee tipped off authorities of the allegations of not remitting the total amount of tax due.

Edward Nearingdner, owner and operator of Lake Distribution located in St. Marys, pleaded guilty to one count of falsification in the Celina Municipal Court. He was sentenced to ten days in jail, which was suspended on the condition that Mr. Nearingdner remains in tax compliance for two years. Earlier, Mr. Nearingdner had his vendor's license suspended pursuant to the Habitual Offender's Program. An investigation indicated Mr. Nearingdner was not in compliance with the program and he was subsequently criminally charged.

Mohamed Ghanem, owner and operator of Karim Wholesale located in Cleveland, pleaded guilty to filing a fraudulent return in the Cuyahoga County Common Pleas Court. He was sentenced to six months in jail (suspended) and fined \$500. Mr. Ghanem also paid \$8,301 in excise tax owed. Mr. Ghanem filed questionable returns in regards to the purchase

of cigars without paying the appropriate excise taxes. An investigation revealed that cigars were being sent to the business location from out-of-state.

Shannon Bonifant, owner and operator of Westside Drive Thru located in Dover, was found guilty in the New Philadelphia Municipal Court to one count of distributing other tobacco products without a distributor's license. Ms. Bonifant paid a \$100 fine and \$1,429 in tax owed the day of court. Over 1,300 cigars were also forfeited to the Department of Taxation. A routine retail tobacco inspection discovered cigars on which no excise tax was paid. This led to the charge and conviction.

Brad Kelley, owner and operator of The Carriage House in Lima, pleaded guilty to one count of operating a retail business while under suspension. Sentencing is scheduled for a later date. The Department of Taxation placed the Carriage House on the Habitual Offender's Program. The vendor's license was suspended for failure to pay appropriate sales taxes. An investigation indicated the location remained in business, leading to the charge and conviction.

Hani Ottallah, owner and operator of Unity Wholesale located in Cleveland, pleaded guilty to filing fraudulent returns in the Cuyahoga County Common Pleas Court. He was sentenced to six months in jail (suspended) and placed on 90 days probation. Mr. Ottallah also paid \$10,272 in excise tax owed. Mr. Ottallah filed questionable returns in regards to the purchase of cigars without paying the appropriate excise tax. An investigation led to the uncovering of cigars purchased from out-of-state and being sent to the business location.

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

Tobacco Charges

NAME	BUSINESS	CITY	VIOLATION
Douglas Dumire	Dumire's BP	Napoleon	No cigarette license
Amvets #1313		Napoleon	No cigarette license
Mukhless Mustafa		Cleveland	Failure to post license
Carol Kortokrax	Pin-A-Rama Lanes	Antwerp	No cigarette license
Judy English	Elery Supper Club	Napoleon	No cigarette license

Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Lizabeth Swantack	Tee Time With Liz	Toledo	2 counts – failure to file sales tax returns
Rescue Rooter		Columbus	No Vendor's License
Lyle Lenhart	Manatee Motors	Toledo	4 counts – failure to file sales tax returns
Cynthia Maze	Twice But Nice	Toledo	1 count – failure to file sales tax returns
George Medina	Medina's Body Shop	Napoleon	1 count – failure to file sales tax returns
Gerald Metcalf	Budget Cabinets	Toledo	3 counts – failure to file sales tax returns

Ohio Department of Taxation
P.O. Box 530
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TAX CALENDAR AT-A-GLANCE

January

16	Monthly Income Tax Withholding Return
16	Quarterly Estimated Income Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer and Direct Pay Returns
23	Quarterly Consumer Use Tax Return
23	Quarterly Direct Pay Return
31	Quarterly Income Tax Withholding Return
31	Annual Corporation Franchise Tax Return or Estimated Return
31	Employer Annual Reconciliation of Income Tax Withheld

February

15	Monthly Income Tax Withholding Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer and Direct Pay Returns
28	Annual Wage and Tax Statements (Withholding Report)

March

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

(Electric Restructuring—cont'd. from front page)

distribution and sale of electricity; and 2) the other addresses an accounting issue faced by the investor-owned electric companies. Also new, realizing it would be difficult for the investor-owned electric companies to comply with the filing requirements of all the municipalities, electric companies will now file their municipal income tax returns and payments with the Department of Taxation. The Department will distribute the municipal income tax to each municipality.

Due to the complexity of these changes made in the electric restructuring bill, some adjustments with the tax changes in the bill are currently being made. Most of the changes related to how large industrial users are subject to paying the replacement kWh tax. These changes will be ironed out shortly. Stay tuned for future developments.

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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