

OHIO's



statetaxreport

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Ohio Department of Taxation

Winter 2001



Time is running out! Don't forget the Ohio Tax Amnesty Program ends soon. Applications and payments must be received or postmarked by January 15, 2002. Visit our website or call 1-800-304-3211 for more information.

Budget Fix Brings Tax Changes

Submitted by Michael Adelman, Administrator, Legislation Division

There has been considerable legislative activity with the passage of Am. Sub. H.B. 405. This budget-balancing legislation includes eliminating certain tax-loopholes and accelerating some tax collections. The legislation also incorporates provisions from H.B. 6, including the corporate franchise net worth exemption for high-technology start-up companies and a job retention tax credit for certain large employers. Major taxation provisions are discussed below.

Summary of Tax Changes	Revenue Impact	
	FY 2002	FY 2003
Dealers in Intangibles	\$ 0	\$ 41,000,000
Tobacco Stamp Discount	\$ 3,500,000	\$ 6,300,000
Sales/Use Tax – Up Front Leases	\$ 71,600,000	\$ 185,100,000
Economic Development Provisions		
Net Worth Exemption	\$ 0	\$ (2,000,000)
Job Retention Tax Credit	\$ 0	\$ (3,600,000)

DEALERS IN INTANGIBLES

Financial institution and insurance company subsidiaries – Eliminates the tax avoidance involving certain dealers in intangibles that are subsidiaries of financial institutions and insurance companies. Currently, the dealers in intangibles tax is imposed on those businesses that engage in lending money and in buying, selling or discounting intangibles such as mortgages, stocks, and bonds. Some financial institutions and insurance companies have sheltered assets from taxation by investing in subsidiary dealers and claiming that the *National City v. Porterfield* decision exempts such dealers from taxes. Beginning in 2003, these subsidiary dealers will be required to pay the tax at the current rate of 8 mills and the financial institutions that own dealers will receive a credit. The Department is effectively precluded from auditing past years on this point, thereby foregoing

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substantial past liability. Changes were also made to the brokerage fee situsing law, which determines the amount of a broker-dealer's gross receipts that are subject to Ohio tax. The former law sitused gross receipts (i.e. commissions) from these trades based on the location of where the transaction originated and was consummated. The statute had provided that gross receipts from a transaction that originated at one office and consummated at another office were to be divided "equitably" between the offices. The bill situs these trades based on the customer's billing address.

SALES & USE TAX

Up-Front Sales Taxation of Leases – Provides for the up-front collection of sales and use taxes on leases for passenger cars, light trucks, watercraft, aircraft, and tangible personal property used in business. This change affects the timing of the tax payment, not the taxability of the transaction. Current exemptions for tangible personal property used in business (e.g. property used in agriculture, manufacturing, mining, and food preparation) will be unaffected by this change, and these kinds of property will remain exempt. Under current law, the tax is based on the amount of each periodic lease payment and is due when the payment is made. The legislation imposes the tax on the sum of the entire stream of lease payments at the inception of the lease. This up-front collection applies to new leases or renewals entered into on or after February 1, 2002.

Sales Tax Holiday Study - Creates a committee to study the economic effects of a sales tax holiday. The committee will consist of eleven members including the Tax Commissioner and three each from the House and Senate. Other members include a representative for the retail merchants, the Ohio Manufacturers Association, consumer advocacy groups, and a county commissioner. The committee is directed to issue a report to the General Assembly by March 1, 2002. However, if the federal government enacts a national sales tax holiday, then the committee need not issue a report.

EXCISE TAXES

Tobacco Stamp Discount - Reduces the discount tobacco wholesalers receive for affixing tax stamps to cigarette products from 3.6% to 1.8%. The markup for wholesalers increases from 2 percent to 2.5 percent. These provisions are effective immediately.

CORPORATE FRANCHISE AND INDIVIDUAL INCOME TAXES

Qualified Financial Institutions – Makes permanent the deposits factor for qualified financial institutions and amends the definition of qualified financial institution. Currently, a qualified institution may apportion net worth based on a single deposits factor for tax years 1998 through 2003. The bill removes reference to specific years thereby making the alternative calculation permanent. Changes also were made so that in order to meet the definition of a qualified institution, a financial institution that meets the other requirements of a "qualified institution" as set forth in 5733.056(A)(15), need now have only 9% of its deposits in Ohio, instead of 10%.

Net Worth Exemption - Creates a net worth tax exemption for high-technology start-ups. Under existing law, corporate franchise tax liability is the greater of two calculations: either the amount based upon the corporation's net income or net worth. The legislation provides an exemption that establishes a zero net worth for new "high-technology" businesses; tax liability for these corporations will be based solely upon net income. High-technology businesses generally include those engaged in research and development, technology transfer, information technology, biotechnology, or the application of new technology. Businesses can qualify for the exemption only in their first three years of existence. The exemption is available only for tax years 2003 through 2007.

Job Retention Credit – Creates a new nonrefundable credit for corporate and non-corporate taxpayers for the purpose of fostering job retention in Ohio. Eligibility is based upon the taxpayer, at a single site, making a capital investment of at least \$200 million over a three-year period and retaining at least 1,000 full-time employ-

ees. The amount of the credit may not exceed 75% of the Ohio income tax withheld from all full-time employees at the project site. The credit begins in tax year 2003 and is limited to a period of up to ten years.

PROPERTY TAXES

Edison Center Real Property Tax Exemption - Makes changes to the real property taxation of land owned by Edison Centers. The legislation exempts vacant land owned by a nonprofit Edison Center, until the property is sold or leased. Once the land is leased or sold a subsequent property's tax status will depend on its use, as in current law.

Camp Perry Real Property Tax Exemption - Exempts from taxation all tangible personal property held by the corporation under the federal charter. Current law only exempts from taxation tangible personal property that is surplus property, as defined by federal law, of the federally chartered, nonprofit Corporation for the Promotion of Rifle Practice and Firearms Safety. The corporation runs the Civilian Marksmanship Program at Camp Perry.

GENERAL

Local Government Fund - The bill modifies the "freeze" imposed on the Local Government Funds by H.B. 94. Based on the latest revenue projections, the H.B. 94 freeze could actually end up costing the GRF money, rather than benefiting the GRF. To prevent that outcome, H.B. 405 specifies that the LGFs will receive the lower of the H.B. 94 freeze levels or the amount that, notwithstanding H.B. 94, would have been distributed by formula.

Ohio Tax Conference

The Ohio Tax Conference—otherwise modestly known as 'The One Conference You Cannot Afford to Miss'—is only a short time away. The 11th annual conference, sponsored by the Ohio Department of Taxation and the Ohio Chamber of Commerce, will be held on January 24-25, 2002 at the Hyatt Regency in Columbus.

In uncertain economic times, state and local taxation becomes far more important. Public policy makers are forced to deal with shortfalls in state and local tax revenue. The Ohio Department of Taxation and the Ohio Chamber of Commerce understand that, in our current economic difficulties, Ohio's policy makers are looking to Ohio business to work with government to maintain essential government services and a strong, growing economy. Now, more than ever, the Ohio Tax Conference offers you important opportunities to learn about Ohio's tax system and interact with Ohio's tax officials.

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 Ohio Department of Taxation's massive reorganization, taxation of e-commerce, major nexus trends, tax incentives/exemptions, recession and taxes, and manufacturing tax issues.

Some of the speakers for the conference include: Professor Richard Pomp, University of Connecticut Law School; Paul Frankel, Partner, Morrison & Foerster, New York; Diann Smith, Vice President & Counsel, Committee on State Taxation, Washington, D.C.; Dan Bucks, Executive Director, Multistate Tax Commission, Washington, D.C.; and Harley Duncan, Executive Director, Federation of Tax Administrators, Washington, D.C.

Ohio Tax Commissioner Thomas Zaino will address attendees during the luncheon on January 24. Commissioner Zaino will discuss the reorganization of the Department of Taxation, budget outlook and developments. The next inductee into the Ohio Tax Hall of Fame will also be announced. Neal Arnold is the luncheon keynote speaker on January 25. Mr. Arnold is the Executive Vice President and Chief Financial Officer for Fifth Third Bank headquartered in Cincinnati. The luncheon address is entitled, "2002 Economic Outlook—Recovery or Recession?"

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 \$445 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 18, 2002.

COMMENTS *from the commissioner*



Commissioner Zaino

Income tax season is right around the corner. More than seven million tax forms are ready for distribution, and Departmental employees are completing the final tasks to get ready for the filing season.

Each year, we become more and more electronic. In an effort to have fifty percent of Ohioans file their state income tax forms electronically, the Department has packaged the 2001 individual income tax booklet with the TeleFile booklet. To file electronically, taxpayers have the option of filing by telephone (TeleFile) or through the Internet (E-File). These two methods are more convenient for the taxpayer, while saving the state of Ohio money in processing costs.

Last year, TeleFile returns increased 11 percent over the previous year. Since TeleFile was first introduced statewide in 1998, the qualifications have changed each year, making more taxpayers eligible to use this quick and easy filing method. The income cap for TeleFilers is now \$999,999.

E-File returns jumped almost 30 percent last year. This “paperless” option is available to all taxpayers. Taxpayers continue to become more comfortable and proficient with E-Filing. To E-File, taxpayers may use their personal computer and approved tax preparation software (listed on our website), or they can use an authorized E-File provider (their tax preparer) to file their federal, state, and school district income tax returns electronically.

Choosing either TeleFile or E-File is the fastest way to get a refund. Taxpayers will have their refund in two weeks or less. By selecting direct deposit, taxpayers will receive their refund in their bank account within 7-10 days. Both of these filing methods save time and money for taxpayers and the state of Ohio.

Both the IT-1040 and IT-1040EZ are also available as fill-in forms on our web site.

Taxpayers will again have the option of paying their tax due with a credit card. The private vendor, approved by the state and the IRS, will collect a small convenience fee.

Two law changes may reduce the taxes of Ohio taxpayers:

- the personal and dependent exemption is increased to \$1,150 for 2001; and,
- tuition expenses for the first two years of post secondary education paid to an Ohio educational institution may be deducted if you qualify.

For those taxpayers with questions or needing help, the Department offers numerous options for contacting us. They can e-mail us through the Department’s website (www.state.oh.us/tax), call us at 1-800-282-1780, or visit one of our eight Taxpayer Service Centers in Ohio. Taxpayers can also find assistance, tax forms, instructions and answers to frequently asked questions by visiting our website.

With the different filing options available, taxpayers can choose which one works best for them. We will continue to encourage the use of E-File and TeleFile, which benefits both taxpayers and the state of Ohio. We hope they will contact us through e-mail, or any other method, if they need assistance.

House Bill 202

After several months of meeting and preparing, in January the state of Ohio is launching a pilot program allowing small businesses to file and pay certain taxes electronically. *Ohio Business Gateway*, as the program is called, is an effort to give businesses a break from the burden of bureaucracy and paperwork. The taxes involved are sales tax and employer withholding tax (ODT), unemployment tax (Ohio Department of Job and Family Services), and workers' compensation premiums (Bureau of Workers' Compensation). Last December, Governor Taft asked Tax Commissioner Tom Zaino to chair an Interagency Cabinet Team to address and implement House Bill 202 (122nd General Assembly), which called for more efficiency in the process of filing forms with the state of Ohio. The end result will be a single reporting and payment system for Ohio businesses.

There are a number of people and agencies involved with this project. Members of the Interagency Cabinet Team include Secretary of State Kenneth Blackwell, Bureau of Workers' Compensation Administrator James Conrad, Department of Job and Family Services Director Tom Hayes, Department of Administrative Services Director Scott Johnson, Governor's Office staff, along with Department of Taxation employees.

Based on its work, the team recommended a Three-Phase Action Plan, with Phase I being the above-mentioned pilot program. This program will offer small businesses a single, electronic method to report and pay sales tax, employer withholding tax, unemployment compensation tax, and workers' compensation premiums via one location on the Internet. The State Portal (Ohio's home page—www.ohio.gov) will be the location where the small business will visit to file and pay these taxes. The system will be easily accessible through an icon on the portal.

Currently, businesses operating in Ohio must frequently report and make payment to multiple state agencies. Often, the information filed with each agency is duplicative and the due dates for making reports and payments to these agencies are inconsistent with each other. Businesses are forced to dedicate significant amounts of time and resources to comply with these reporting and payment requirements. This first phase of House Bill 202 will simplify the process.

Phase II is an evaluation and possible expansion of the filing system implemented in Phase I. By July 1, 2003, the team will complete a detailed analysis of the benefits that would accrue from operational changes and law changes that would align reporting requirements of the agencies, thereby facilitating expansion of the pilot program to all Ohio businesses.

Phase III is an implementation of the changes suggested by the Phase II work-plan. It might also include adding on-line registration of new business with the Secretary of State and reporting requirements of other state agencies. The goal for the completion of Phase III is January 1, 2005.

Commissioner Zaino said, "Being a part of this team has been a rewarding experience knowing that it will ease taxpayer compliance. As you can see, House Bill 202 supports ODT's mission of *providing quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.*"

Please Note

Due to budget constraints, extended hours will not be offered for Income Tax filing assistance this year. The only extended hours that will be offered will be for amnesty. The extended hours will be January 7 - 11, 8:00 a.m. - 7:00 p.m., January 12, 8:30 a.m. - 12:30 p.m., and January 14 - 15, 8:00 a.m. - 7:00 p.m.

PRO-files

Practitioners Encouraged to Help with Tax Compliance Issue

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

For as long as anyone with ODT can remember, there has been a non-compliance rate among vendors of 5% to 8% per month. With a population of 300,000 vendors, this works out to about 15,000 non-filers per month. When these non-filers are billed, about half respond with returns, some with final returns canceling their licenses. The remaining 7,500 are billed again and about 1,000 of these respond. Those not responding are assessed for estimated sales tax, along with interest and penalties, and all but about 2,000 or so respond to the assessments, many with zero-sales returns and/or a final return. Assessments against the 2,000 who do not respond are turned over to the Ohio Attorney General for collection.

Each year about 20,000 people or corporations take out new vendor's licenses, and about the same number are cancelled. Regular vendor's licenses are sold by county auditors for a \$25.00 fee. The auditors provide ODT with copies of the applications, which are used to generate new vendor packets, including the first return. Efforts to enhance vendor compliance and lower non-filing are underway in two areas: taxpayer education and on-line filing. Recently, on a trial basis, ODT agents began calling new vendors to review with them their responsibilities. The conversations with new vendors have revealed some surprises. A number of people obtain vendor's licenses not for the purposes of making retail sales, but to show as a "credential" for admittance to various "wholesale" distributors. This, of course, is not permitted under Section 5739.19 of the Ohio Revised Code, which requires revocation of vendor's licenses not used in making retail sales. Exemption from sales tax is normally established with exemption certificates.

It is advisable for ODT agents and practitioners to remind new vendors of the requirement to file returns, even if there have been no sales. Second, vendors should be reminded of the need to provide ODT with address changes so they can receive timely updates on rate changes, law changes and other requirements.

Beginning early 2002, ODT's website (www.state.oh.us/tax) will have a page where vendors will be able to file certain sales tax returns. This should greatly ease the filing burden for many small vendors. Please watch the website for further details.

Practitioners are encouraged to assist new and existing vendors with their compliance responsibilities. Practitioners with suggestions for enhancing compliance in this area should contact Peter Angus, Problem Resolution Officer, at (614) 644-6896.

Improving Revenue Service

The Internal Revenue Service has announced that it is adjusting the hours of operation of its toll-free telephone site to better serve taxpayers. IRS customer service representatives are now available between the hours of 7 a.m. and 10 p.m., local time, Monday through Friday. Previously, the telephone assistance line was staffed around the clock. The change will make more customer service representatives available to taxpayers during the peak hours.

The change will affect the main customer service number, 800-829-1040, and other account-related numbers published in IRS notices. During the tax filing season, the IRS will add a 9 a.m. to 5 p.m., local time, Saturday service. Automated toll-free lines and the IRS website (www.irs.gov) will remain available to the public 24 hours a day, seven days a week.

Price for Bulking Up

As our paper, printing and postage costs have increased over the past few years, we have been looking for ways to save money while improving or maintaining our customer service. As a result, we are now charging for bulk orders of tax forms. As an alternative, we are offering the most popular forms free of charge on a compact disk (CD). This CD contains numerous forms, including personal income, school district income, corporation franchise, employer withholding, business personal property and sales tax forms and instructions. Many of the forms will be provided in fill-in format so you can complete them on your computer, print them out, sign them and send them in. These forms are also available on our web site at www.state.oh.us/tax.

To obtain a copy of the CD, please write to Ohio Department of Taxation, Forms Purchasing, 990 Freeway Drive North, Columbus, Ohio 43229. To receive a bulk order form, visit our web site under the forms section, or write to the above address.

An eBusiness First

Submitted by Dick Beckner, Administrator, Excise and Motor Fuel Tax Division

The Excise and Motor Fuel Tax Division and the Information Services Division have just completed the first direct Internet filing and payment system for ODT. On November 20, one natural gas distribution (MCF) tax and four kilowatt hour (KWH) tax returns were filed and paid via the Internet by four pilot taxpayers. The payments totaled \$10,726,111. All of the pilot taxpayers said the system was easy to use.

The KWH tax became effective May 1, 2001; the MCF tax on July 1, 2001. Deputy Tax Commissioner Pat McAndrew planned from the beginning to use these taxes to develop an Internet filing and ACH (Automated Clearing House) payment system that would be the prototype for other taxes. This was then expanded to include the Treasurer of State, Office of Budget and Management and the Department of Administrative Services to develop Internet ACH debit policies and procedures for all state agencies. While each tax is unique, the basic concept and procedures will apply to future Internet tax filing and payment systems. ODT anticipates that all KWH and MCF taxpayers will be using the Internet system by March 2002.

The project involving the dedication, hard work and cooperation of more than twenty-five people in four state agencies is providing the foundation for future ODT eBusiness applications.

And the Rate Is . . .

The interest rate charged by the state of Ohio for delinquent taxes and tax assessments will be **seven percent** per annum during calendar year 2002. The rate was certified and announced in October by Tax Commissioner Zaino and will take effect January 1, 2002. Last year's rate was nine percent.

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 seven-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.

INTERNET *update*



New information and services recently added to the Ohio Department of Taxation's web site (www.state.oh.us/tax) include:

Draft Forms

A new draft forms page has been added to the Department's website. Even though these forms are not finalized, they are put on the web site for two main reasons: 1) to allow practitioners and third party vendors to see the forms ahead of time, making them aware of changes, and 2) to provide another opportunity for taxpayers to review the forms and provide input for changes, corrections, better layout, etc. Draft forms have been set up for income, corporate franchise, sales, and school district income taxes.

Electronic Documents

The following "electronic service type" documents have been added to the web site on the business and practitioner pages. (These documents are updated/published on our site each filing season.)

- * Electronic return file specifications and record layout for individual and school district income tax returns.
- * Practitioner's electronic filing booklet.

Excise and Motor Fuel Tax Returns

Numerous Excise and Motor Fuel Tax Returns are now available on the Internet, including alcoholic beverage tax forms, cigarette tax forms, and fuel use tax forms.

How Are We Doing?

Taxpayers now have the opportunity to complete an on-line survey, giving the Department feedback in a number of different areas.

Frequently Asked Questions

Many taxes now list their FAQ's on the Internet site for taxpayer convenience. The new categories for FAQ's are: Fuel Use and IFTA, Motor Fuel, Other Tobacco Products, and Cigarettes.

More Fill-in Forms

Taxpayers and practitioners will benefit with the easy fill-in forms available on the Internet. Fill-in tax returns were available last year for income tax and petitions for reassessment. This year we have added more fill-in forms for income, sales, and personal property tax forms.

Coming Soon

Municipal Income Tax Forms

On January 1, the Department's web site will contain information on the municipal income tax systems of all 543 municipal corporations in Ohio with an income tax. For those municipalities without a web site, the Department will provide a web page containing forms, along with other pertinent information for the municipality. For those municipalities with a web presence, ODT will provide a link from its web site to theirs.

Annual Report

The 2001 Annual Report will soon be available on our Internet site.

An Excellent Pursuit

Submitted by Tim Meyer, Office of Performance Excellence

Earlier this year, the Ohio Department of Taxation (ODT) committed itself to a path of progress and a journey expected to take several years. At the end of the path: the Ohio Award for Excellence (OAE) and a Department fully focused on delivering first-rate services. The OAE is patterned after the Malcom Baldrige National Quality Award. Congress established the award program in 1987 to recognize U.S. organizations for their achievements in quality and business performance and to raise awareness about the importance of quality and performance excellence.

Winning the award is a goal, but most important to the Department in applying for the award is the feedback given during the process. Examiners provide guidance on how to do things better.

The “Intent to Apply” application, the first step, was delivered to OAE officials in July. The application includes a list of locations, the number of employees in each location, and a five-page Organizational Profile providing a snap shot of ODT and its functions.

Commissioner Zaino led a management team that assembled and submitted the 32-page OAE application. Each category of the OAE Criteria is assigned to a “Category Champion,” the person responsible for completing the category. The assigned category champions are: Leadership – **Commissioner Zaino**; Strategic Planning – Deputy Tax Commissioner **Boris Slogar**; Customer Focus – Deputy Tax Commissioner **Jim Lawrence**; Information & Analysis – Chief Legal Counsel **Fred Nicely**; Human Resources – Deputy Tax Commissioner **Clare Long**; Process Management – Deputy Tax Commissioner **Pat McAndrew**; and Results – Deputy Tax Commissioner **Carol Bessey**.

A team of examiners from OAE will review and score the application and conduct site visits to some ODT offices in March. They will verify and clarify the information in our application. We will receive a feedback report from OAE examiners on our strengths and weaknesses in each category. We will use that information to improve our processes within the agency.

More information about OAE, including the government criteria (the questions answered in our application), can be found at www.oae.org. Watch for updates on the Department’s quest for the OAE Award and feedback in future issues of the *Ohio’s State Tax Report*.

Personal Property Tax Guidelines Going Electronic

The 2002 Personal Property Tax Returns will be on the Internet and most will be in fill-in format. The tax rate booklet is also on the Internet, as well as the Guidelines for Filing Ohio Personal Property Tax Returns booklet. These two booklets will not be printed this year as a result of this accomplishment.

Also available on the Internet are the County Auditor Bulletins, Administrative Rules and a link to the County Auditor Association of Ohio allowing the taxpayer or practitioner to contact a county directly to obtain desired information.

ODT's New Frontier

The Ohio Department of Taxation (ODT) has a new responsibility that will make life a little easier for everyone who pays municipal income tax.

On January 1, the Department will roll out a new section on its Internet web site containing information on the municipal income tax systems of all 543 municipal corporations in Ohio with an income tax.

This web initiative was prompted by House Bill 477, which directs the municipalities to put their income tax information – forms, rules, regulations, ordinances — on the Internet. For those municipalities without a web site, the bill requires ODT to provide a web page for the hosting of municipal income tax information. For those municipalities with a web presence, ODT must provide a link from its web site to theirs.

The intent of the bill's Internet mandate is to improve access to municipal income tax systems, particularly for businesses operating in multiple locations in Ohio and having to comply with differing laws in the many jurisdictions.

To date, more than 100 municipal corporations, including both cities and villages, are asking ODT to host their income tax information. The Department, as allowed by the law, is charging an annual fee of \$100 to help defray the cost of setting up the site.

Sales and Use Tax Returns: Bunching is Better

Submitted by Timothy Sachs, Sales and Use Tax Division

As reported in the last issue, certain Sales and Use tax returns for the year 2002 will change. These changes are for the ST 10 G, for multi-location vendors; ST 10 T, Transient and Service vendors; ST 10 D, Delivery vendors; and UT 1018, for out-state Sellers, which will be combined into one return, the Universal Sales Tax Return, form UST-1. Also, use tax returns, UT 1014, for registered Consumers and ST 902 A, for Direct Pay Permit holders, will be combined into one return, the Universal Use Tax Return, form UUT-1.

Taxpayers that file these returns on a monthly basis will receive the new booklet in January. Quarterly returns will be mailed in March, and semiannual returns will be mailed in June.

There will be a short and long form version of each return. The short form will be mailed to those taxpayers that reported sales or purchases in nine or less different counties in the previous year. Other taxpayers, including new accounts, will receive the long form.

The long form version of the returns will be included on the Ohio Tax Forms CD (see article on page 7), as well as the Department of Taxation's website, www.state.oh.us/tax.

Lima Office Closed

Due to recent budget cuts, the Ohio Department of Taxation was forced to review our operations. As a result, the Lima Taxpayer Service Center was closed permanently on November 9, 2001. This will be the only TPS Center closed at this time. There are still eight in-state and three out-of-state Taxpayer Service Centers providing on-site taxpayer assistance.

COURT *decisions*

The following are significant court decisions announced in September, October and November, 2001. Court decisions are compiled by Peter Angus, Esq., CPA, Problem Resolution Officer.



CORPORATE FRANCHISE TAX

The U.S. Supreme Court denied review of the following case, decided earlier this year by the Ohio Supreme Court:

Farm Credit Services of Mid-America v. Zaino (2001), 91 Ohio St. 3d 564

An agricultural credit association (“ACA”) sought exemption from corporate franchise tax, contending that it was, and is, a federal instrumentality. It based this contention on the fact that the entities which had merged to form the ACA were federal instrumentalities under the federal Farm Credit Services Act. However, the federal statute does not provide that ACA’s are federal instrumentalities, and the Court therefore rejected the contention that the ACA was exempt from Ohio corporate franchise tax.

LSDHC Corp. v. Tracy (Nov. 9, 2001), BTA 98-896

Lear, Siegler, Seymour Corp. v. Tracy (Nov. 9, 2001), BTA 98-897

The BTA held that corporate franchise tax assessments against corporations who did business and had income in Ohio during 1992 but not 1993 were not liable for 1993 Ohio corporate franchise tax under Public Law 86-272. That statute provides, in general, that a state may not impose an income-based tax on a corporation whose only contact with the state during the “taxable year” is mere solicitation of sales of tangible personal property. The BTA held that, for purposes of interpreting Public Law 86-272, “taxable year” is the year the tax is payable, which under the Ohio statute is known as the “tax year.” These cases have been appealed to the Ohio Supreme Court.

PERSONAL PROPERTY TAX

Oasis Corporation v. Tracy (Sept. 21, 2001), BTA 98-940

The taxpayer, a manufacturer of drinking fountain and other equipment, contended that the inventory valuation reflected in the final assessment was incorrect. It was allowed by the BTA to establish the value by means of the gross margin method which the BTA described as follows: “The ending inventory for the prior year is used as a starting point for the next year. Additions are made monthly for material purchased, direct labor and manufacturing related expenses. The ending inventory for the current year is deducted from annual total manufacturing cost to arrive at the annual cost of sales. The annual cost of sales is then divided by annual total sales to arrive at an annual cost of sales percentage. This percentage is applied to sales on a monthly basis. The amount so determined is deducted from monthly beginning inventory, as is out-of-state inventory, to arrive at the monthly value of Ohio inventory.”

TAMCO Distributors Co. v. Zaino (Nov. 2, 2001), BTA 99-461

A warehouse corporation which was a wholly-owned subsidiary of Phar-Mor, a retail corporation, claimed reduction in the value of merchandise which it contended was held for storage only and not used in business pursuant to Revised Code 5701.08(B). The related Ohio Administrative Code Section 5703-3-21 provides, among other criteria, that merchandise will qualify under the statute if it is to be shipped, without processing, to the taxpayer or persons other than “customers” at locations outside this state for use, processing, or sale. The merchandise stored in the warehouses was ordered by Phar-Mor employees and delivered to various out-of-state Phar-Mor retail stores. The BTA held that the retail stores were not “customers” within the meaning of the statute and the rule because the warehouse corporation was part of the parent’s corporate structure performing the purchasing, storage and distribution service on behalf of the overall business entity.

REAL PROPERTY TAX

Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino (2001) 93 Ohio St. 3d 231

The Supreme Court held that the Tax Commissioner has jurisdiction under Revised Code 5715.27 to hear a complaint, in this case filed by a board of education, challenging the continued exemption of property located in a Community Reinvestment Area, authorized pursuant to Revised Code 3735.65.

Cleveland Municipal School District Board of Education v. Lawrence (Nov. 23, 2001), BTA 99-708

The exemption for a parking lot owned by a hospital and used by its employees was upheld by the BTA based on evidence showing that providing free parking was essential to the hospital's operations in recruiting and retaining qualified employees.

Licking County Park District v. Zaino (Oct. 26, 2001), BTA 00-138

The BTA held that the public purpose exemption of Revised Code 5709.08 was lost when park district property was leased to a farmer for agricultural purposes under terms which were economically favorable to the park district and the arrangement was not merely for purposes of maintaining the property.

Oikos Community Development Corporation v. Zaino (Nov. 9, 2001), BTA 00-2037

An application for exemption for single-family and multi-family residential housing units owned by a charitable organization for rent to low-income families was denied because such a use is not exclusively charitable, as required for exemption by Revised Code 5709.12.

SALES/USE/EXCISE TAXES

Q3 Stamped Metal Inc. v. Zaino (2001) 92 Ohio St. 3d 493

A manufacturer of stamped sheet metal products contended that its forklift trucks used to remove and replace dies on the presses were excepted from sales/use tax. The forklifts were used when the presses were not in operation. Because Revised Code 5739.011(B)(4) excepts only those items used during the manufacturing operation, the forklifts did not qualify for exception from taxation, according to the Supreme Court. The Court did except welding equipment, including welding goggles used to protect workers' eyes, because they are necessary for the continuation of the manufacturing operation.

Appleton Papers Inc. v. Tracy (Oct. 5, 2001) BTA 98-1444

A paper manufacturer contended that the air conditioning systems used in its drive rooms were excepted from use tax. The drive rooms contained transformers, motor controls, switchgear and starters which controlled some manufacturing equipment. Revised Code 5739.011(C) excepts from sales/use tax equipment "used for ventilation, dust or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur." The BTA held that the taxpayer had not demonstrated that the cooling was essential for production to occur, and so denied the claim for exception from use tax. The taxpayer's contention regarding its fly ash system was denied because the taxpayer failed to present evidence showing a use excepted from sales / use tax.

Frank G. Doyle dba Ad Mail v. Tracy (Aug. 10, 2001), BTA 98-131

The taxpayer's business consisted of soliciting advertising from merchants in the Cincinnati area, printing packets of ads and delivering them free of charge to residents. Upon audit, a test check was performed and it was determined that 33% of the taxpayer's costs were taxable, and 45% of his sales of advertising were taxable. At the BTA hearing the taxpayer contended, among other things, that the transactions were personal or professional services not subject to tax. The BTA held that the customers (merchants) were not seeking personal or professional services, but rather the advertising packets. Some of the taxpayer's sales were nontaxable under Revised

Code 5739.02(B)(37), which provides exemption for newspaper inserts, catalogues, coupons, flyers, gift certificates or other advertising material that prices and describes tangible personal property offered for sale.

Shugarman Surgical Supply, Inc. v. Tracy (Sept. 21, 2001), BTA 97-1537

A sales tax audit was conducted on a vendor of medical supplies. The vendor did not obtain exemption certificates or letters of usage from its customers, but at the BTA hearing it had a former employee testify concerning the possible uses of items sold. The BTA held that this was inadequate under the provisions of Revised Code 5739.02(B), which specifies that exemption certificates or letters of usage are to be used to establish exemption. Only those items for which the only possible uses are exempt were allowed by the BTA, *i.e.*, adult diapers and prosthetic bras. This case has been appealed to the Ohio Supreme Court.

SALES/USE/EXCISE TAX – JURISDICTIONAL & PENALTY ISSUES

Hone & Son Trucking Co. v. Zaino (Aug. 10, 2001), BTA 00-602

Itaf Darwish dba Nevada Food Market v. Zaino (Oct. 5, 2001) BTA 01-340

Larry Marshall dba Larry Marshall Janitorial v. Tracy (Aug. 10, 2001), BTA 98-923

Lowes Window Cleaning, Inc. v. Zaino (Oct. 19, 2001), BTA 99-1849

The BTA held that it had no jurisdiction to review issues raised in the notice of appeal to the BTA which were not raised to the Tax Commissioner in the petition for reassessment. In *Hone*, the BTA held that the Tax Commissioner does not have the authority to remit pre-assessment interest. In *Larry Marshall* and *Lowes Window Cleaning, Inc.* the BTA also held there was no abuse of discretion in the Tax Commissioner's failing to remit the penalty imposed under Ohio Revised Code 5739.13. An abuse of discretion will be found only if it is shown that "the act is fostered by perversity of will, passion or prejudice."

SALES/USE TAX - VENDOR AUDITS

A&J Food Mart, Inc. v. Zaino (Aug. 17, 2001), BTA 99-1608

Brandy's Inc. v. Zaino (Oct. 12, 2001), BTA 99-2089 App. to Hancock Cty. Ct. App.

M.D.B. Inc. v. Zaino (Oct. 26, 2001), BTA 01-421

Nawal Inc. v. Zaino (Sept. 7, 2001), BTA 99-1665

Shaks-Korner, Inc. v. Zaino (Sept. 7, 2001) BTA 99-1442

Tulat A. Suleiman v. Zaino (Nov. 2, 2001), BTA 99-1823

These cases involved vendors who failed to maintain sales records as required by Ohio Revised Code 5739.01. Audits of their businesses were conducted using information regarding their purchases of inventory items. The taxpayers objected to the audit methodology and results, but the BTA upheld the actions of the Tax Commissioner's agents. In *Shaks-Korner, Inc.*, the BTA remanded the case to have sales of lottery tickets and check-cashing commissions removed from the calculated gross sales.

SALES/USE AND WITHHOLDING TAX - RESPONSIBLE PARTY CASES

Gary D. Helf, Responsible Party of Cleveland Trinidad Paving Co. v. Tracy (Aug. 10, 2001) BTA 98-1302

The BTA held personally liable for unremitted sales tax the corporate president and majority shareholder who admitted having check-signing authority which he previously had exercised in paying corporate obligations, including sales tax liabilities.

Kenneth A. Nimon, Responsible Party of Nimon Company v. Zaino (Aug. 10, 2001), BTA 00-969

The BTA held personally liable for unremitted sales tax the corporate president who had check signing authority, despite his contention that he had delegated some of the corporate fiscal duties. This decision has been appealed to the Lorain County Court of Appeals.

Michael O. Williams v. Zaino (Nov. 2, 2001), BTA 01-51

The BTA held personally liable for unremitted withholding tax the corporate vice-president and one-third shareholder whose responsibilities included preparing and signing the yearly recap for withholding tax.

OHIO legislative update

The following is a summary of tax-related legislation enacted by the 124th General Assembly.

<u>Bill Number</u>	<u>Effective</u>	<u>Description</u>
H.B. 9	3/27/01 & 6/26/01*	Subjects natural gas suppliers and governmental aggregators to certification by PUCO and authorizes competitive services.
H.B. 94	6/6/01	<p>Biennial Operating Budget Bill</p> <p>The following are some of the tax-related actions contained in H.B. 94:</p> <ul style="list-style-type: none"> •Freezes amounts deposited into and distributed from local government distribution funds at fiscal year 2001 levels. •Grants amnesty for certain delinquent state taxes, tangible personal property taxes, and permissive county sales taxes, allowing outstanding tax delinquencies to be paid without associated penalties and one-half of the accrued interest. Taxpayers must apply for amnesty and pay the delinquent tax and interest between October 15, 2001 and January 15, 2002. •Disallows the exclusion of net management fees from an investment pass-through entity's withholding tax base if they exceed 5% of the entity's net income. (ORC 5733.401) •Clarifies that income items received by a nonresident taxpayer are not excluded for the purpose of computing the nonresident credit if they are received indirectly through an investment pass-through entity on account of its ownership of another pass-through entity if that entity's income items do not represent excludable investment pass-through entity income. (ORC 5747.221) •Modifies how certain transferor/transferee corporations are taxed when all of their assets are transferred to another corporation during 2001. (ORC 5733.053, 5733.06) •Delays the claiming of the tax credit for job training expenses for two years. (ORC 5729.07, 5725.31, 5733.42, 5747.39) Note: If a taxpayer applies for a credit before 6-30-01, the Director of ODJFS may grant a tax credit certificate that can be applied beginning 2004. •Delays commencement of the corporation franchise tax credit for qualified research expenses until tax year 2004, but allows corporations with taxable years that end prior to July 1, 2001, to claim the credit for tax year 2002. (ORC 5733.351) •Exempts from the sales tax local telephone calls made from coin-operated telephones and paid for with coin. (ORC 5739.02) •Makes the option of selling delinquent tax certificates through negotiation rather than public auction available to the county treasurer of any county with a population over 200,000 persons. (ORC 5721.30) Note: Grants local governments permissive authority.

H.B. 94 (cont'd.)

- Makes various changes in the manner in which school districts and other local taxing districts are compensated for the reduction in property tax collections from electric companies and natural gas companies resulting from the reductions in the property tax assessment rate. (ORC 5727.84 to 5727.87)
- Authorizes a county special tax levy for the combined purposes of a 9-1-1- system and a countywide public safety communications system. (ORC 5705.19) Note: Grants local governments permissive authority.
- Clarifies that all estates exempted from the estate tax need not file an estate tax return. (ORC 5731.21)
- Extends through 2003 the availability of an alternative deposit based method of determining the corporation franchise tax base of qualified financial institutions. (ORC 5733.056)
- Clarifies aspects of the excise tax (KWH tax) on electricity as paid by large electricity users that self-assess the tax. (ORC 5727.81)
- Specifies a new beginning date for the excise tax on natural gas (MCF tax). The tax will be levied on natural gas volumes billed beginning with the measurement period that includes July 1, 2001. (ORC 5727.811)

H.B. 299 6/29/01**Budget Corrective Bill**

School District Income Tax added to the amnesty program.

*Some of the provisions in H.B. 9 became effective on March 27, 2001, while others became effective on June 26, 2001.

Using Approved Delivery Services

The Tax Commissioner recently approved another authorized delivery service company - UPS. (Federal Express is the other authorized delivery service company.) Through House Bill 612, 123rd General Assembly, the options for delivering materials were expanded beyond the U.S. Postal Service. The authorization of a delivery service only applies to certain services of an authorized company. Failure to use one of the approved delivery services may jeopardize your appeal.

The general information release on the Department's website reflects the following authorized delivery services:

<u>Company</u>	<u>Delivery Service</u>	<u>Company</u>	<u>Delivery Service</u>
UPS	UPS Next Day Air	FedEx	FedEx Priority Overnight
UPS	UPS Next Day Air Saver	FedEx	FedEx Standard Overnight
UPS	UPS 2nd Day Air	FedEx	FedEx 2 Day
UPS	UPS 2nd Day Air A.M.		

TAX enforcement news

The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from August through October, 2001. Tax Enforcement News is compiled by Robert M. Bray, Assistant Administrator, Enforcement Division. Fraud complaints can be e-mailed to the Enforcement Division at Enforcement@tax.state.oh.us.

George Barhooome of Youngstown pleaded guilty in Summit County Common Pleas Court to one count of intent to avoid payment of other tobacco products tax—attempt. The Cleveland Enforcement Unit received a call from the Twinsburg Police Department. Mr. Barhooome was stopped by the Twinsburg Police Department for a traffic violation. A subsequent search warrant yielded several hundred untaxed cigars. The judge placed Mr. Barhooome on one-year probation. The Ohio Department of Taxation received \$2,331 for payment of the tax owed on the cigars.



Leonard and Elaine Longer of Sandusky each pleaded guilty in Erie County Common Pleas Court to fifteen counts of collecting and failing to remit sales tax and one count of theft. Both were sentenced to three years probation and ordered to pay the state of Ohio \$55,033 in tax owed. The Longers operated the Red Roof Inn in Sandusky. The investigation led to a search warrant for sales records, which indicated \$55,033 was collected and not remitted to the state of Ohio. They were indicted by the Erie County Grand Jury in June on the charges. A check for \$55,033 was presented at the time of the plea.

Elijah Cornett of Hamilton pleaded guilty in the Butler County Common Pleas Court to one count of improper filing of reports, returns and payments. Mr. Cornett was ordered to pay \$7,732 for sales tax which was collected and not remitted. Mr. Cornett owns Puds Marathon in Hamilton. The Cincinnati Taxpayer Service Center alerted the Cincinnati Enforcement Division that the state of Ohio possibly was not receiving all of the sales tax which had been collected. An investigation led to a search warrant being obtained for sales records. The subsequent review of the sales records led to the conviction. A check for \$7,732 was received the day of the court hearing.

Alfred Hammond pleaded guilty in the Lucas County Common Pleas Court to four counts of collecting and failing to remit sales tax. Mr. Hammond was ordered to pay the state of Ohio the full amount of restitution owed. Mr. Hammond will be sentenced at a later date. A tip was received from the Toledo Taxpayer Service Center indicating Mr. Hammond was not paying sales tax which he was collecting. The investigation led to a search warrant for the business. Sales records were obtained and reviewed and results indicated \$22,248 in sales tax was collected and not remitted. A check for \$22,248 plus penalty and interest was received the day of the court hearing.

Jodella Simpson of Columbus pleaded guilty in the Franklin County Common Pleas Court to two counts of filing fraudulent income tax returns. The Franklin County Prosecutor's Office notified the Columbus Enforcement Division and said Ms. Simpson was a suspect in an embezzlement case. A subsequent investigation uncovered Ms. Simpson failure to declare over \$430,000 over a three-year period. Ms. Simpson was sentenced to three years in prison for the tax charge along with guilty pleas to theft and forgery in the same case.

Steve Nowak of Akron pleaded guilty in the Summit County Common Pleas Court to two counts of under reporting income for the years 1998 and 1999. He also pleaded to two counts of forgery and one count of unauthorized use of property relating to the same case. The Summit County Prosecutor's Office notified the Cleveland

Enforcement Division that Mr. Nowak had been diverting funds from his employer for personal use. He will be sentenced in December.

Randall Phalin of Painesville pleaded guilty in the Lake County Common Pleas Court to one count of filing a fraudulent income tax return and other charges brought by the Lake County Prosecutor's Office. He was sentenced to two years on all charges. The Lake County Prosecutor's Office contacted the Cleveland Enforcement Division and advised Mr. Phalin was being investigated by a Task Force relating to the sale of "pull tab" tickets throughout Northeastern Ohio. An investigation led to the subsequent conviction in court.

Other Activities

Between October 15 and November 1, the Enforcement Division conducted 249 "Retail Cigarette and Other Tobacco Products" inspections throughout Ohio. Various tobacco licenses were checked along with invoices and any other tobacco related requirements.

As of the end of October, 514 vehicles were inspected under the division's "Dyed Fuel" testing program. There have been two violations during this period.

The Enforcement Division has recovered \$800,456 for the state of Ohio as a result of various investigations. It is expected the division will be responsible for over 1.2 million taxpayer dollars at the end of the current fiscal year.

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

Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Gregory George	Tri-Vending	Various locations Belmont County	No Cigarette License
Richard Byczek	Jack's Deli Ridge & Day Marathon	Sandusky Highland Heights	No Cigarette License Retailer must have stamped cigarettes
Mohammed Jallaq	Mid American Grocery Perkins Shell	Columbus Sandusky	No Cigarette License No Cigarette License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Chandra Kumar Sinnadurai	Seaway Marine	Toledo	Failure to file sales tax returns
Betty Runion	Betty's Pie House	Tiffin	Failure to file sales tax returns
Donald Hall	Warehouse Antique Mall	Bowling Green	No vendor's license/failure to collect tax
Baye Perry	The Next Level	Toledo	Failure to file returns/failure to collect tax
David Beck	Three Sphinx Inc.	Cleveland	Failure to file sales tax return—attempt
Glenn Bigley	Alternative Computers	Maumee	Failure to file sales tax return
Kim Johnston	Double K Bassets	Napoleon	Failure to file sales tax return
Kelly Cartwright	Kelly's Automotive & Kelly's Northtowne Video	Tiffin	Failure to file sales tax return Failure to file sales tax return

INFORMATION *releases*

CORPORATE FRANCHISE TAX

Corporate Franchise Tax–Nexus Standards–September, 2001

This information release describes the standards the Department of Taxation will apply to determine whether an out-of-state corporation is subject to the corporate franchise tax, either under the net worth basis or the net income basis.

PERSONAL INCOME TAX

Pass-Through Entity Tax–Nexus Standards–September, 2001

This information release describes the standards the Department of Taxation will apply to determine whether a pass-through entity has nexus with Ohio, thus possibly making the entity subject to the pass-through entity tax, which became effective on January 1, 1998.

Personal Income Tax–Nexus Standards–September, 2001

This information release describes the standards the Department of Taxation will apply to determine whether a nonresident is subject to Ohio's personal income tax. A resident of this state is always subject to the personal income tax regardless of where the individual earns or receives income.

Proper Completion of Form IT-4–August 31, 2001

This information release explains how employers should determine if their employees have properly completed an Ohio Withholding Exemption Certificate (Form IT-4) and advises employers what steps to take if an employee submits an improperly completed Form IT-4.

SALES AND USE TAX

Sales and Use Tax–Use Tax Nexus Standards–September, 2001

This information release describes the standards the Department of Taxation will apply to determine whether an out-of-state seller is required to collect Ohio's use tax. This release only addresses the circumstances in which an out-of-state seller can be required to collect and remit Ohio's use tax from its customers in this state. This information release does not relieve any person of their use tax obligations as a consumer.

Visit the Department's web site (www.state.oh.us/tax) to view the information releases in their entirety.

Tax Calendar at-a-Glance

Jan.	
15	Monthly Income Tax Withholding Return
15	Quarterly Estimated Income Tax Return
22	Monthly Kilowatt Hour (KWH) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer and Direct Pay Returns
23	Quarterly Consumer Use Tax Return
23	Quarterly Direct Pay Return
24-25	Ohio Tax Conference, Columbus, Ohio
31	Quarterly Income Tax Withholding Return
31	Annual Corporation Franchise Tax Return or Estimated Return
31	Employer Annual Reconciliation of Income Tax Withheld
Feb.	
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
28	Annual Wage and Tax Statements (Withholding Report)
March	
15	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour (KWH) Tax Return
25	Monthly and Semiannual Sales Tax Returns
25	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.

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