# OHIO's statetaxreport

No. 66 Ohio Department of Taxation Winter 2002


## COMMENTS *fromthecommissioner*

*Commissioner Zaino*

As quickly as time goes by, it is not surprising to find ourselves ready to begin another filing season. Ohio Department of Taxation employees are completing the final tasks to gear up for the 2003 filing season.

Last year, 36 percent of Ohioans filed their income tax returns electronically, using either *TeleFile* or *IRS e-file*. I would like to see 50 percent of returns filed electronically this year. Returns filed electronically are less expensive to process, while they ease the filing process for taxpayers. Paper returns cost approximately $3.00 to process, whereas electronic returns on average cost $0.64 to process.

In an effort to have more taxpayers file electronically, ODT is offering a third paperless filing option this year: *Ohio I-File*. Beginning in early January, this new system will be easily accessible through our web site and will be available to file Ohio income tax returns. The only requirement for taxpayers taking advantage of this user-friendly system is that they filed an Ohio income tax return last year.

Choosing to file a paperless return will result in quick refunds. Taxpayers using *Ohio I-File, IRS e-file* or *TeleFile* will receive their refunds within 14-21 days. Taxpayers filing electronically and selecting the direct deposit option will receive their refunds in their bank accounts within 7-10 days, or sooner. Those taxpayers who file early using *Ohio I-File* or *TeleFile* and owe tax, have the option to post-date an electronic check to April 15 or mail a check by April 15.

Again, taxpayers will have the option of paying their tax due with a credit card. The private vendor, which has been approved by the state and the IRS, will charge a convenience fee. New this year, Visa is among the accepted credit cards, joining MasterCard, Discover, and American Express.

## What's Up Inside . . .

Like last year, ODT is packaging the 2002 Individual Income Tax booklet with the *TeleFile* booklet to prompt more Ohioans to file electronically. In order to be eligible to *TeleFile*, taxpayers must receive the *TeleFile* booklet in the mail, while meeting other qualifications, which are outlined in the booklet.

Another change this year is that the personal and dependent exemption amount has been increased to $1,200 for 2002, from $1,150 for 2001.

Taxpayers filing using either *TeleFile* or *Ohio I-File* should be advised not to wait until April 15 to file, as they may not be successful. Last year, the *TeleFile* system was swamped with calls on April 14 and 15 with approximately 48,000 filing successfully on the last two days.

For those taxpayers who have questions or need help, the Department has numerous ways for them to contact us. They can call us at 1-800-282-1780, visit a Taxpayer Service Center, or e-mail us through the Department's web site, which is a service well received by taxpayers.

With the different filing options available, taxpayers can choose which one works best for them. We will continue to encourage the use of *TeleFile*, *IRS e-file*, and the new *Ohio I-File*. All three of these electronic filing methods benefit both taxpayers and the state of Ohio. We hope they will contact us through e-mail or any other method, if they need assistance.

## *Changes at the Top*

The Ohio Department of Taxation faces a great challenge as many of the most experienced employees are nearing retirement. ODT has responded to this by implementing a Succession Planning Team, which has been working with Division Administrators to identify critical positions in the Department and helping them plan for the future.

Recently, Deputy Tax Commissioner Jim Lawrence retired. Due to budget constraints, this position will not be filled, making it necessary to shift responsibilities among the existing Deputy Tax Commissioners.

Deputy Tax Commissioner Boris Slogar now oversees the following divisions: Budget & Fiscal Division, Employee Development and Training Division, and Taxpayer Services/Compliance Division. Deputy Tax Commissioner Pat McAndrew is responsible for the Operations and Support Division, Audit Division, Excise and Motor Fuel Tax Division, Sales and Use Tax Division, Estate Tax Division, and the Property Tax Divisions. Deputy Tax Commissioner Clare Long oversees the Human Resources Division and the Enforcement Division.

Deputy Tax Commissioner Carol Bessey will continue to oversee the Tax Analysis Division, Legislation Division, and Communications Office. Chief Information Officer Gil Ashbridge remains over the Information Services Division, while Chief Legal Counsel Fred Nicely supervises the Tax Appeals Division and the Appeals Management Division.

Prior to Mr. Lawrence's retirement, the Deputy Tax Commissioners adopting new divisions worked with the previous Deputy to become more familiar with each division. Commissioner Zaino said, "I believe these changes will ensure ODT's ability to fulfill its mission and achieve its goals. I am confident that our services to Ohio's taxpayers will not be negatively impacted by this transition."

## Committee to Study State and Local Taxes

You may recall that in the Fall issue of the *Ohio's State Tax Report*, Commissioner Zaino discussed the Committee to Study State and Local Taxes in his column. The Committee was created as part of Amended Substitute Senate Bill 261, the Budget Corrective Bill.

The five major duties of the Committee include the following:

1) Make a study of the current state and local tax structure;
2) Examine the tax 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.

Over the last several months, the Committee has met weekly. During the meetings, national and local tax policy experts have provided insightful information. The Committee also solicited interested parties to provide written testimony. Those who submitted written testimony by November 12 were then given the opportunity to provide ten-minute oral testimony in November.

The Committee held its final meeting of the year on December 3. Committee Chair Thomas Zaino took the opportunity to review what has been discussed since the Committee began meeting, addressing the recurring theme of broadening the tax base while lowering the tax rate. Over the coming months, the Committee will research suggestions and issue a final report no later than March 1, 2003. This report will summarize the Committee's review of the tax structure and will provide recommendations for improvements, which must be revenue neutral in the aggregate.

For more information about the Committee to Study State and Local Taxes, please visit the web site at www.state.oh.us/tax/taxstudy/taxstudy.htm. The web site contains the authorizing legislation, a list of the members, previous speakers and their testimony, as well as other general information.

## Interest Rate Announced

The interest rate charged by the state of Ohio during calendar year 2003 for delinquent taxes and tax assessments will be **six percent** per annum. The rate was certified and announced in October by Tax Commissioner Zaino and will take effect January 1, 2003. Last year's rate was seven 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 six-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, severance, pass-through entity, other tobacco products, tire fee, fuel use, kilowatt hour and natural gas distribution.

# 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 12th annual conference, sponsored by the Ohio Department of Taxation and the Ohio Chamber of Commerce, will be held on January 28-29, 2003 at the Hyatt Regency in Columbus.

The theme for this year's conference is effective tax management in Ohio's weakened economy. In challenging economic times, effective state and local tax management within business and industry becomes a corporate priority. Smart management of taxes means fewer layoffs and more cash to continue to operate the business. By attending this conference, you can learn best how to survive tough economic times. You will not only learn valuable tax saving tips to help you cut costs, but you will also receive invaluable information on how state and local governments need to raise revenue fairly.

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 effective tax management strategies; The Committee to Study State & Local Taxes; major Ohio sales & use, income & franchise and personal property tax issues; mulitstate income and sales tax issues; and, Ohio's new trust tax.

Some of the speakers for the conference include: Bobby Burgner, Senior Tax Counsel and Director - State and Local Taxes, General Electric Company; Doug Lindholm, President and Executive Director, Council On State Taxation (COST), Washington, D.C.; Dan Bucks, Executive Director, Multistate Tax Commission (MTC), Washington, D.C.; and Harley Duncan, Executive Director, Federation of Tax Administrators (FTA), Washington, D.C. Some of the other speakers include Ohio state legislators, representatives from neighboring states' taxation departments, local law firm employees, along with numerous speakers from the Ohio Department of Taxation.

James Coons is the luncheon keynote speaker on January 28. Mr. Coons is the Senior Vice President and Chief Economist for Hunington National Bank in Columbus. The luncheon address is entitled, "2003 Economic Forecast – Will the Economy Continue to be Weak?" Ohio Tax Commissioner Thomas Zaino will address attendees during the luncheon on January 29. Commissioner Zaino will discuss current issues with the Ohio Department of Taxation. The next inductee into the Ohio Tax Hall of Fame will also be announced.

The cost of the conference is $595 per person. This fee includes tuition, a comprehensive set of manuals, two luncheons, and a reception. If your organization sends two to five persons, the rate is $495 per person. For six or more attendees, the fee is $395 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 or register on-line at www.MECseminars.com. Registration is requested by January 22, 2003.

# Listing Percentage Decrease for Inventories

*By Rick Anthony, Personal Property Tax Administrator*

Amended Substitute House Bill 283 passed by the 123rd General Assembly amended Section 5711.22 ORC allowing for a yearly reduction of the inventory listing percentage if certain conditions are met. In order for the reduction to occur, collections from the second preceding year exceed collections for the third preceding year. The first year in which the reduction could take place was tax year 2002. Therefore, collections for tax year 2000 had to exceed collections for tax year 1999. This occurred and the listing percentage for inventory for tax year 2002 was 24%. This requirement was met again for tax year 2003. The listing percentage for inventory has been reduced from 24% in 2002 to **23% for the 2003 tax return**.

# OHIO*legislativeupdate*

*By Michael Adelman, Legislation Division Administrator*

In its December session, the General Assembly enacted two bills of particular interest to ODT – House Bill 675, the Capital Budget Bill, and Amended Substitute Senate Bill 180, creating the Ohio Venture Capital Program.

House Bill 675 included several tax-related changes. The most significant changes involve corrections to the trust taxation provisions, enacted earlier in the year. These include a modification to the definition of qualifying trust amount, deleting some unintended consequences for certain trusts (including, but not limited to, charitable trusts, charitable remainder trusts, designated settlement trusts and funds), and providing for the allocation and apportionment of trust income for certain trusts. The bill also modified trust residency rules. These changes were necessary to preserve the revenue estimates related to the new tax on trusts, part of the proceeds of which would pay the interest on the capital projects included in the bill.

House Bill 675 makes a number of other tax-related changes. First, it expands the population eligible for the Job Retention Tax Credit. This is accomplished by permitting certain non-manufacturers to claim it, lowering the minimum level of qualifying investment, expanding the project site radius, and allowing the capitalized costs of basic research and new product development to be included in the calculation of minimum investment.

Second, it amends the statute requiring ODT to provide an estimate of public expenditures related to ballot initiatives. House Bill 675 changes this statute to instead require the Office of Budget and Management (OBM) to provide estimates on expenditure-related ballot issues, which reflects OBM's area of expertise; ODT will continue to estimate ballot issues related to the levying of taxes.

Third, the bill clarifies that interest is still applicable with respect to the corporation franchise tax estimated payment safe harbor statute. Fourth, because sales tax statutes modified in two bills enacted earlier in the year could not be reconciled, House Bill 675 includes necessary changes to harmonize these provisions.

Fifth, House Bill 675 eliminates the requirement that county boards of revision send all notices of their certifications to the Tax Commissioner; the Commissioner may now request the certifications as needed. Finally, the bill includes a clarification regarding the thresholds below which there is no need to file an estate tax return.

Amended Substitute Senate Bill 180 is intended to stimulate a more substantial venture capital fund market in Ohio. The bill establishes the Ohio Venture Capital Authority (OVCA), consisting of nine members, including the Tax Commissioner and Director of Development as *ex officio* non-voting members. The OVCA will direct the program's investment policy and will choose not more than two program administrators, the investment professionals that will carry out the program as fund managers.

These fund managers will borrow up to $100 million that will be available for investments in private venture capital funds that specialize in "seed" and early-stage business development. These loans will be backed by tax credits, which will be issued by the OVCA to the lenders in the event that the returns to the program are insufficient. The tax credits may be claimed against the personal income, corporation franchise, or the domestic and foreign insurance taxes, beginning in the fifth year of the program.

Amended Substitute Senate Bill 180 was also the vehicle for other changes to Ohio tax law. Among these was a provision to allow the Tax Commissioner to notify auditors, and county auditors to notify political subdivisions of property tax exemption applications for pollution control property. The bill also allows certain commercial property owners to file new property assessment complaints with the county board of revision.

Finally, the bill includes a provision that generally limits or prohibits municipal income taxation of an individual's distributive share of S Corporation income. Cities that taxed certain S Corporation distributive shares as of December 6, 2002 to a greater extent than permitted under this provision may continue to tax to such greater extent only if voters approve in the November 2003 election.

## *Wanted: Filer's Opinions*

Income Tax customers will see a new wrinkle in their 2002 state of Ohio Individual Income Tax booklet. Inside the back cover, they will find an invitation to answer a customer service survey. Those who want to participate in the survey are directed to call toll-free (1-800-925-0377) or visit ODT's web site.

The survey was developed by a core project team, which included staff from ODT's Information Services Division and the Income Tax business staff, according to Tammy Robinson, the team leader.

"For something so small, it has a lot of detail to it," Tammy said after getting input from all the parties about their income tax tasks. The survey will be on the Department's web site and interactive voice response (IVR) system on and after January 9, 2003. That is the day the Department opens its *TeleFile* system to begin accepting 2002 personal income tax returns.

The Department's largest customer base, personal income tax filers, will be asked five questions:

*1) Were the instructions clear and understandable?*
*2) What method did you use to send your 2002 Income Tax Return?*
Mail___ Telephone____ Internet ____
Electronically through a tax preparer ____ Did not send because I was not required to file ____
*3) Was the return easy to complete?*
*4) Did you need to contact the Department of Taxation for assistance in filing your 2002 Income Tax return?*
*5) If you needed assistance, was the service satisfactory?*

Questions 1, 3 and 5 allow respondents to answer: "Yes," "Somewhat" or "No." Question 4 allows a "Yes" or "No" answer.

The survey is an outgrowth of the effort to bring the Department and its procedures up to Ohio Award for Excellence (OAE) standards. "Through this survey and others like it, we hope to gain knowledge of easier and more convenient ways for customers to meet their tax obligations, resolve issues and problems and access Department services and information," Tammy said.

## *It's Often Called the Piggyback Tax*

*By Tim Sachs, Sales and Use Tax Division*

Did you know that when sales tax is collected on the purchase of goods and services, the state of Ohio does not retain all of that money? A part of the collection is submitted to counties and to regional transit authorities.

Provisions in the Ohio Revised Code allow counties and transit authorities to enact sales and use taxes for their use in addition to the state rate of five percent. These taxes are called permissive taxes or piggyback taxes. A county may enact them, but is not required to. Currently, the lowest combined state and local rate in Ohio is 5.25 percent, while the highest is 7.0 percent.

How do these taxes come about? They are not voted by the Ohio General Assembly, nor approved by the governor. County commissioners and regional transit authorities' legislative authority are required to pass resolutions to enact the tax. While under some circumstances the county commissioners may immediately levy a county tax, ordinarily the county or regional transit authority must direct the board of elections to place the issue before the public for a vote of approval.

When the county commissioners pass resolutions, they are required by statute to notify the tax commissioner by a specific date. This lead-time allows the Sales Tax Division to prepare and order notices to advise registered vendors and sellers about the rate change. However, there is no requirement in the Revised Code for the transit authorities to notify the commissioner.

For the November 5 election, there were ten proposals on the ballot; eight for counties and two for transit authorities. Only four of the county proposals passed and neither of the transit authorities. The four that passed were for renewals of existing levies. Those counties will not realize an increase in the tax rate.

# INFORMATION*releases*

The following information releases were issued by the Department in the last several months. The topics addressed are summarized below. Please visit our web site at www.state.oh.us/tax and click on "Practitioner" and scroll down to the lower left-hand portion of the web page. Then click on "Information Releases" to view all the information releases in their entirety.

***Excise and Motor Fuel Tax***

**Cigarette & Other Tobacco Products**

*Notice about Master Cigarette Settlement Agreement (MSA) Reporting* – October 18, 2002

There are several new signatories to the Cigarette Master Settlement Agreement. Their brands listed in the information release should no longer be reported on your Master Settlement Agreement Report (Form ET-60). This change is effective immediately and is retroactive to July 1, 2000.

***Sales and Use Tax***

*Building Maintenance and Janitorial Services* – Updated November 2002

Supersedes the information release dated September 2000.

The purpose of this information release is to describe the policy the Department of Taxation will use in applying sales tax to building maintenance and janitorial services.

*Recreation and Sports Club Service* – Updated July 2002

Supersedes the information release dated April 1993.

The purpose of this information release is to describe the policy the Department of Taxation will use in applying sales tax to memberships in recreation and sports clubs.

# PRO-*files*

## *Vendors and Employers Have New Filing Options*

*By Peter Angus, Esq., CPA, Problem Resolution Officer*

Starting January, 2003, the Ohio Department of Taxation will be offering vendors and employers new options for meeting their filing obligations. Vendors will have two methods of filing their sales tax returns, aside from the traditional paper forms. The first is TeleFile by means of a touch-tone phone. Vendors wishing to use *TeleFile* should familiarize themselves with the process by reading page 4 of their tax form booklet, filling out the worksheet contained in the booklet, and then calling the Department's special toll-free number: 1-800-304-3211. An interactive menu guides vendors through the TeleFile process. TeleFile provides vendors with a fast, easy and free method to comply with their filing obligations.

The second new filing option is for both vendors and employers. It is available through the *Ohio Business Gateway*, which can be linked from Ohio.gov. Employers and vendors can file and pay their sales tax, withholding tax, unemployment tax and worker's compensation premiums all at this one site on the Internet. Taxpayers who wish to take advantage of this new opportunity can establish their accounts by following the prompts on the site. After each filing session on the *Ohio Business Gateway*, taxpayers are provided with a confirmation which they can print out and save.

These new options will provide faster and better service to Ohio vendors and employers, and will allow the state to reduce processing costs. We hope you and your clients will take advantage of these filing enhancements. As always, please let us know how we can serve you better.

## *Ohio Business Gateway*

*By Dave Stone, Administrator, Sales and Use Tax Division*

The Ohio Department of Taxation will offer the option of filing returns and making payments on the Internet to all vendors and employers in 2003. ODT is one of the four participating agencies in the *Ohio Business Gateway* at the present time. Early in 2002 regular vendors who filed separate returns for each of their locations and employers with annual state income tax withholdings less than $84,000 were allowed to file and pay returns electronically on the *Gateway*. Beginning in January, 2003, all vendors, including vendors using one of the various "long form" returns, (statewide cumulative returns or other returns that require vendors to allocate taxes by the state's 88 counties), and all employers regardless of annual payroll tax liabilities will be able to use the *Ohio Business Gateway*.

There are benefits to Ohio businesses and the Department of Taxation with electronic tax return filing. It is safe, easy, and inexpensive. No formal agreement is required as is the case with normal EFT (Electronic Funds Transfer) methods that involve written agreements and some set-up with the state treasurer's office. Paper sales tax returns postmarked on the due dates are penalized with late charges and interest since those returns are required by law to be received on the due dates. Businesses can use the *Gateway* to file their returns on the last minutes of the due dates so that their returns and payments will be treated as timely filed.

Further, because the *Ohio Business Gateway* guides businesses in the preparation of their returns, careless errors or omissions which might otherwise generate tax deficiency notices from the Department of Taxation are avoided.

# New Tax on Resident Trusts and New Fiduciary Form for Estates and Trusts

## Who Must File a Return

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 or more of the following requirements:

- The trust resides in Ohio;
- The trust earns or receives income in Ohio;
- 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.

**Exception:** Charitable remainder trusts and retirement trusts are exempt from the filing requirement.

## Tax Rates

The same income brackets and tax rates that apply to the Ohio taxable income of individuals apply to the Ohio taxable income of estates and to the modified Ohio taxable income of trusts subject to Ohio income tax.

## Income Taxed to the Trust

The income tax imposed on the fiduciary shall apply to the trust's modified Ohio taxable income. The tax is reduced by the trust resident credit and by allowable business credits from Schedule E.

## Income Taxed to the Estate

The income tax imposed on the fiduciary shall apply to the estate's Ohio taxable income. The tax is reduced by the Schedule B credits; the Schedule C resident credit; the Schedule D nonresident credits; and the allowable business credits from Schedule E.

## Most Common Situations for Trusts

**General rules:**

- A nonresident trust investing **only** in savings accounts, certificates of deposit, stocks, bonds, commercial paper and/or mutual funds generally <u>will not owe</u> any Ohio income tax.
- A resident trust investing only in savings accounts, certificates of deposit, stocks, bonds, commercial paper and/or mutual funds <u>will owe</u> Ohio income tax if the trust had federal taxable income after distributions to beneficiaries. The tax on each resident trust will generally be based upon the trust's federal taxable income plus or minus various modifications.

The tax forms will be available in late January. If you have any questions, please call James Baumann at (614) 433-7603.

# COURT*decisions*

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

## Sales and Use Tax Cases

### *Shugarman Surgical Supply, Inc. v. Zaino,* 97 Ohio St.3d 183

The sales of a retail supplier of medical equipment were audited and, since the retailer did not have exemption certificates for any of the sales on which no sales tax was collected, a sixty-day letter was issued, giving the retailer that amount of time to present letters of usage from its customers. The retailer provided one letter, but contended that it was not required to obtain evidence of exemption for most of its sales because they involved equipment on which sales tax is never due. However, the Supreme Court held that for equipment such as apnea monitors, lift chairs, patient lifts, raised toilets, bedpans and commodes, chuk pads, tub benches and rails, breast pumps, suction machines and supplies, and transcutaneous electrical nerve stimulators ("TENS") it was necessary to obtain exemption certificates at the time of sale because such items were not necessarily always used in an exempt manner. The retailer's contention that the sample period used in the audit was unrepresentative was not accepted by the court because the retailer had specified the sample period in a written agreement prior to the audit.

### *Kelleys Island Caddy Shack, Inc. v. Zaino,* 96 Ohio St.3d 375

A vendor on Kelleys Island contended that the resort area tax (Ohio Revised Code 5739.101) violates the Uniformity Clause of the Ohio Constitution because, as a practical matter, it only applies to a few limited areas in Ohio. The resort area tax is an excise tax which municipalities may levy on vendors in a resort area. The statute defines a resort area as one meeting the following criteria:

(1) According to statistics published by the federal government based on data compiled during the most recent decennial census of the United States, at least sixty-two per cent of total housing units in the municipal corporation or township are classified as 'for seasonal, recreational, or occasional use';
(2) Entertainment and recreational facilities are provided within the municipal corporation or township that are primarily intended to provide seasonal leisure time activities for persons other than permanent residents of the municipal corporation or township;
(3) The municipal corporation or township experiences seasonal peaks of employment and demand for government services as a direct result of the seasonal population increase.

The court held there was no violation of the Uniformity Clause because the statute could apply to several areas throughout Ohio, even though only three localities currently fit within the criteria.

### *Moulton Gas Service, Inc. v. Zaino,* 97 Ohio St.3d 48

A propane retailer used trucks with specially mounted propane tanks to deliver fuel to customers. The Tax Commissioner assessed the tanks, but not the truck chassis. The retailer contended that the tanks were actually packages and therefore entitled to exemption under Ohio Revised Code 5739.02(B)(15). The court rejected this contention and also held that bulk tanks used to store liquid propane transferred from truck tanks cannot be considered packaging equipment and are therefore not exempt under R.C. 5739.02(B)(15) as machinery or equipment used primarily in packaging tangible personal property sold at retail. Similarly, labor charges for installing and repairing the tanks and the equipment used to transfer the propane to and from the tanks were held subject to use tax.

**_J & L Power Equipment, Inc. v. Tracy_ (Sept. 6, 2002), BTA 97-A-535**

The BTA held that estopple does not apply against the State or its agents, and so a statement allegedly made by a sales tax agent to the effect that the taxpayer should discard its exemption certificates was not allowed as a defense to the sales tax assessment subsequently issued after the audit. The BTA also held that equipment used to mow fence and barnyard areas on farms was excepted from sales tax as directly used in agriculture. This case has been appealed to the Ohio Supreme Court.

**_Haessly Hardwood Lumber Company v. Zaino_ (Sept. 20, 2002) BTA 00-1623**

A hardwood manufacturer contended that several assessed items were excepted under Ohio Revised Code 5739.011 as manufacturing equipment. Saw sharpening equipment was held by the BTA to be excepted because it was used for more than mere maintenance; it actually remanufactured the saw blades. A silo used to store sawdust which would later be sold was not excepted because equipment used to store goods in a marketable state until time of sale are taxable under the statute. Stone used to pave a truck parking lot and concrete used to construct entrance ramps were held to be incorporated into the realty and therefore taxable. The BTA rejected the contention that the stone and concrete ramps were business fixtures and therefore excepted personalty.

**_Abaza-MJR, Inc. v. Zaino_ (Sept. 20, 2002) BTA 01-1367**

The BTA affirmed the Tax Commissioner's dismissal under Ohio Revised Code 5739.13(B) of a petition which failed to specify the objections to the assessment. The petition stated that the petitioner "disagrees with the above-mentioned assessment on several grounds." The BTA held that such language does not satisfy the statutory requirement that the petition should "indicate the objections of the party assessed."

**_General Motors Corporation v. Zaino_ (Oct. 4, 2002) BTA 97-168 & 97-169**

During the period January 1, 1993 through July 22, 1994, the sales/use tax exemption for purchases of materials and services used by a warrantor in fulfilling warranties provided with the original purchase was suspended. An automobile manufacturer contended that its purchases of materials and services used in fulfilling warranties during this period were nonetheless exempt for a number of reasons, *all of which were rejected by the BTA*: (1) Because motor vehicles are excluded from the definition of personal property under Ohio Revised Code 5701.03, use tax may not be levied on repairs to them; (2) Because the manufacturer did not itself acquire the materials or services used in making the warranty repairs (it reimbursed dealers for doing so), it did not use the materials/services and therefore should not be liable for use tax on same; (3) For similar reasons, the manufacturer contended it was not the consumer of the materials/services. This case has been appealed to the Ohio Supreme Court.

**_Mitsubishi Motor Sales of America, Inc. v. Zaino_ (Oct. 11, 2002), BTA 01-181**

Ohio Revised Code 5739.01(E)(13) provides an exception from sales tax for material and services purchased to fulfill warranties provided to buyers as part of the purchase price. The Department of Taxation assessed the taxpayer, an automobile manufacturer, on its purchases of materials and services used in fulfilling "goodwill warranties" for the period July 1, 1995 through June 30, 1998. Goodwill warranties are warranties which are presented by the buyers *after* the warranty period specified in the warranty agreement, but which involve defects or problems which developed *during* the warranty period. Because the warranty agreement requires the manufacturer to correct certain mechanical problems occurring within the warranty period, the manufacturer is under an obligation to provide the warranty service even if the matter is presented after the period. Therefore, the BTA held that its purchases of materials and services used in fulfilling these warranty claims are excepted.

**_Sunbelt Transportation Services, Inc. v. Zaino_ (Oct. 30, 2002), BTA 01-997**
**_TLI Incorporated v. Zaino_ (Oct. 30, 2002), BTA 01-1006**

Personnel service companies were assessed under Ohio Revised Code 5739.01(B)(3)(k) for unpaid sales tax on transactions in which truck drivers were provided to trucking companies. The companies contended that the transactions were excepted because the personnel companies, rather than the trucking companies, had control over the employees' day-to-day activities. However, the BTA found that the trucking companies had control over the hours, method, and means by which the drivers performed their job duties, and therefore the drivers were temporary employees of the trucking companies. The transactions did not meet the exceptions provided in the statute because the drivers were not independent contractors, and they were not assigned pursuant to a contract for a term of more than one year that specified that each driver was permanently assigned. The BTA therefore held the transactions were subject to sales tax.

**_James G. Dawson v. Zaino_ (Nov. 1, 2002), BTA 02-784**

The taxpayer purchased a telephone at Best Buy for $149.99 and paid sales tax on that amount. He sent in a rebate claim to the telephone manufacturer and received $50.00. He submitted a refund claim to the Department of Taxation for the amount of sales tax attributable to the $50.00 which had been rebated. The claim was denied, and the taxpayer appealed to the BTA. The BTA affirmed the denial, because Ohio Revised Code 5739.07 does not provide for the Department to make refunds directly to consumers when the tax has been collected and remitted by a vendor except under limited circumstances, not present here. Moreover, the BTA held that even if the taxpayer were permitted under the statute to maintain the refund claim, it would be denied because Ohio Revised Code 5739.01(H) includes in the definition of "price" everything paid "without any deduction on account of …discount paid or allowed after the sale is consummated."

**_Aeroquip Corporation v. Zaino_ (Nov. 15, 2002), BTA 00-161**

A manufacturer of numerous items for the aircraft and automotive industries was assessed on the purchase of several items of equipment used in its Van Wert plant. A conveyor which transported raw material (bar stock) to a saw was excepted as equipment which transports material in a continuous manufacturing operation. Air make-up units and dust removal units which served the entire plant were held taxable; to qualify for exception under 5739.11(C)(5), ventilation equipment must provide total regulation in a special and limited area of a manufacturing facility where such regulation is necessary for production to occur. The cleaning room ventilation met this criteria and was therefore excepted. The taxpayer contended that its carousels, power conveyors, totes, turntables, gravity conveyors and computer systems were, together, an integrated packaging system and exempt under Ohio Revised Code 5739.02(B)(15). The BTA rejected this contention, as the taxpayer had not established that the various pieces of equipment constituted an integrated system.

**_John H. Shafer v. Tracy_ (Nov. 22, 2002), BTA 98-696**

A construction company corporate officer who, at various times during the audit period held the positions of controller, vice-president of finance, and officer manager, was held liable under Ohio Revised Code 5739.33 for sales tax collected by the corporation but not remitted to the state. The officer had check-signing authority and did, in fact, sign checks. The portion of the assessment based on use tax not paid on purchases under the company's direct payment permit was cancelled by the BTA since there was incomplete evidence linking the officer to the responsibility for making those payments. The officer contended that the lapse of 14 years between the audit period and the assessment against him was cause to set aside the assessment, but the BTA declined to do so since there is no such precedent in Ohio Supreme Court cases.

## Personal Property Tax Cases

**_Rumpke Waste, Inc. v. Tracy_ (Nov. 15, 2002) BTA 98-1199, 98-1200, 98-1201, 99-1696**

The taxpayer is a residential waste collector. The back-end equipment mounted on its trucks to facilitate the loading and unloading of waste was assessed. The taxpayer contended the equipment was not personal property under Ohio Revised Code 5701.03(A), which excludes licensed motor vehicles from the definition of personal property. The BTA held that the equipment was not inherently part of the trucks in that it did not facilitate the actual transportation of the waste. Rather, the equipment was used in loading and unloading the waste. And, even though the equipment was included in the weight of the vehicles for the purposes of registration, the equipment was not part of the motor vehicles *per se* and was therefore subject to personal property tax.

## Real Property Exemption Cases

***Bethesda Healthcare, Inc. v. Zaino* (Sept. 20, 2002), BTA 00-1591**

An operating company for Bethesda Healthcare, Inc. managed the healthcare area, for which exemption was sought under Ohio Revised Code 5709.12 and related sections. The BTA found that the healthcare area was operated generally as a for-profit fitness center and so exemption was denied except for an outdoor running track which was made available to the public. This case has been appealed to the Ohio Supreme Court.

***Techsolve, Inc. v. Zaino* (Sept. 20, 2002) BTA 01-528 & 01-529**

A charitable institution sought exemption under Ohio Revised Code 5709.12 and related sections for vacant land which it intended to develop into industrial parks pursuant to an urban renewal plan for the City of Cincinnati. The BTA held that the vacant land did not qualify for exemption because it was not used for any charitable purpose.

***University of Cincinnati Medical Associates, Inc. v. Zaino* (Oct. 4, 2002), BTA 99-1411 & 99-1412 & 99-1413**

A medical office building owned by an IRC 501(C)(3) corporation formed by the University of Cincinnati and leased to medical practice corporations of the University was held by the BTA not to be exempt because ownership was not by a state university, as required for exemption under Ohio Revised Code 3345.17, nor was the use of the building charitable, as required for exemption under Revised Code 5709.12. These cases have been appealed to the Ohio Supreme Court.

***Gospel Tabernacle Church of The Christian and Missionary Alliance Church v. Zaino* (Oct. 25, 2002), BTA 02-680**

Vacant land owned by a church was claimed to be exempt under Ohio Revised Code 5709.07, as property used for, or in support of, a house of public worship. However, the land was used for agricultural purposes, rent free, by a local farmer. The BTA held that the use was not "exclusively for public worship" as the statute requires for exemption, and the property was therefore not exempt.

## *Digital Survey Results*

The Digital State Survey results were recently released in the Taxation category and Ohio ranked first, up from 26th the previous year. It should be noted that ten states share the number one position. In the past, Ohio has received several top ten rankings for various areas on the survey, but this is the first number one ranking.

The survey, in its fifth year, examines the use of digital technology to better deliver service to citizens in eight separate categories: E-commerce & Business Regulation, Taxation & Revenue, Social Services, Law Enforcement & the Courts, Digital Democracy, Management & Administration, Education and Geographic Information Systems (GIS)/Transportation.

Additional information can be found on the Center for Digital Government's web site at www.centerdigitalgov.com.

# TAX*enforcementnews*

*The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from August through October, 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.*

Dawn Logwood pleaded guilty in the Franklin County Common Pleas Court to one count of false filing of an income tax return. She also pleaded guilty to one count of theft for embezzlement. An Enforcement Division agent of ODT spoke with the Franklin County Prosecutor regarding Ms. Logwood. Ms. Logwood worked for a Columbus area attorney during 1997, 1998 and 1999 and embezzled money from three trust funds.

Ruth M. Scott was found guilty on one count of fraudulent filing of her 2000 Ohio income tax return. As a result of an investigation initiated by the Ohio State Highway Patrol, the Enforcement Division of ODT learned that Ms. Scott, an Ohio Department of Taxation employee, altered taxpayer payment checks. These checks were then diverted and monies used as personal income for Ms. Scott. ODT reviewed Ms. Scott's W-2 and IT-1040 for tax year 2000. It was determined that the money stolen from taxpayers was not claimed as income for that year.

Steven D. Schwartz, owner of Schwartz Mobile Homes Inc., pleaded guilty in the Tuscarawas County Common Pleas Court to six counts of filing false or fraudulent sales tax returns – attempt. ODT was notified by the Tuscarawas County Auditor's office that a check received from Schwartz Homes was not good and other counties could possibly have received bad checks. Records were subpoenaed to determine if the proper amount of sales tax and employee withholding tax was collected and remitted to the state. It was determined that the employer was current with his withholding returns and remitted payments.

Rose Nassar, owner of U.S. Mini Market, pleaded guilty in Butler County Common Pleas Court to one count of failure to post a license. ODT was contacted by the Hamilton Police Department that a Hamilton City Council member received two packs of cigarettes with Kentucky tax stamps attached to the bottom. A routine inspection by ODT Enforcement Agents uncovered cigars, cigarettes and chewing tobacco with no evidence of taxes being paid.

Osama Nassar, joint owner of U.S. Mini Market, also pleaded guilty in Butler County Common Pleas Court to one count of duty to affix stamps and two counts of dealer must keep records.

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

## *Cigarette Violations*

| NAME | BUSINESS | CITY | VIOLATION |
|---|---|---|---|
| Rose & Osama Nassar | U.S. Mini Market | Hamilton | (1) Count –Failure To Post License |
| | Fassett Mini Mart | Toledo | (1) Count – No Cigarette License |
| J. Marroquin | Premier Bedding | Toledo | (1) Count – No Vendor's License |
| Paul Hart | Hart's Corner/ Cheaper Cigarettes | Chesapeake | (1) Count – Retailer In Possession Of Cigarettes Not Bearing Tax Stamps |
| Jeffrey L. Bowers | | New Albany | (1) Count – Dealer Must Keep Records |

## *Assorted Sales Tax Violations*

| NAME | BUSINESS | CITY | VIOLATION |
|---|---|---|---|
| George Peeling | Peeling Lawnmower Service | Beavercreek | (1) Count Failure To Collect Sales Tax |
| William Parkins | Choo Choo Freddy's | Elida | (2) Counts Failure To File Sales Tax Returns |
| Patrick Chiappone | South Town Flea Market | Zanesville | (2) Counts Failure To File Sales Tax Returns<br>(1) Count Failure To Collect Sales Tax |
| Kenneth Molik | Fat Dad's Custom Cycles | Toledo | (2) Counts Failure To File Sales Tax Returns |
| Janet Stansberry | D & J Custom Auto Interior | Bucyrus | (1) Count Failure To File Sales Tax Returns<br>(1) Count – Failure To Collect Sales Tax |

## *Tax Calendar at-a-Glance*

**Jan.**

| | |
|---|---|
| 15 | Monthly Income Tax Withholding Return |
| 15 | Quarterly Estimated Income Tax Return |
| 20 | Monthly Kilowatt Hour (KWH) Tax Return |
| 23 | Monthly and Semiannual Sales Tax Returns |
| 23 | Monthly Consumer and Direct Pay Returns |
| 23 | Quarterly Consumer Use Tax Return |
| 23 | Quarterly Direct Pay Return |
| 31 | Quarterly Income Tax Withholding Return |
| 31 | Annual Corporation Franchise Tax Return or Estimated Return |
| 31 | Employer Annual Reconciliation of Income Tax Withheld |

**Feb.**

| | |
|---|---|
| 18 | Monthly Income Tax Withholding Return |
| 20 | Monthly Kilowatt Hour (KWH) Tax Return |
| 20 | Quarterly Natural Gas Distribution (MCF) Tax Return |
| 24 | Monthly and Semiannual Sales Tax Returns |
| 24 | Monthly Consumer and Direct Pay Returns |
| 28 | Annual Wage and Tax Statements (Withholding Report) |

**March**

| | |
|---|---|
| 17 | Monthly Income Tax Withholding Return |
| 20 | Monthly Kilowatt Hour (KWH) Tax Return |
| 24 | Monthly and Semiannual Sales Tax Returns |
| 24 | 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*

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