OHIO's statetaxreport

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M & E Credit Advisory

Due to the number of questions the Ohio Department of Taxation has received regarding Ohio's tax credit for new manufacturing machinery and equipment, you will find the Information Release ODT recently issued in its entirety below.

CORPORATION FRANCHISE TAX INFORMATION RELEASE–CFT 2004-03
Questions Regarding Ohio's New Manufacturing Machinery and Equipment Tax Credit – R.C. 5733.33 & 5747.31 – September, 2004

This information release is to address questions the Ohio Department of Taxation (ODT) has received regarding Ohio's tax credit for new manufacturing machinery and equipment. At the present time, taxpayers may continue to claim the Ohio tax credit for new manufacturing machinery and equipment as provided for by R.C. 5733.33 as well as other tax credits that ODT directly or indirectly administers.

In *Cuno v. DaimlerChrysler, Inc.* (Sept. 2, 2004), a three-judge panel of the U.S. Sixth Circuit Court of Appeals issued an opinion holding that the Ohio tax credit for new manufacturing machinery and equipment violates the Commerce Clause of the U.S. Constitution and enjoined its enforcement. The state of Ohio will seek review of the court's decision. Because a review of the decision is being made, ODT is not currently enjoined from administering the tax credit. As stated above, ODT is currently allowing taxpayers to claim the credit in those circumstances where purchases of new manufacturing machinery and equipment qualify for the credit under Ohio law. ODT will continue to monitor the situation and issue future notifications to taxpayers and practitioners as the situation warrants.

On September 16, 2004, the Attorney General of the state of Ohio filed a petition for rehearing, which requested that the entire Sixth Circuit review this decision. This petition will stay the mandate while the Sixth Circuit decides whether to rehear the case. Until the court denies the petition for rehearing or a decision is issued by the Sixth Circuit that affirms this decision, the tax credit remains in effect.

If you have questions regarding the legal implications of continuing to claim this or other tax credits, ODT urges you to seek advice from tax counsel.

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COMMENTS *fromthecommissioner*

Commissioner Wilkins

During Fiscal Year 2004 (FY 04) a number of accomplishments were achieved at ODT, some before and some after I became Tax Commissioner. I would like to take this opportunity to highlight some of them.

Electronic Filing

ODT continues to make progress with having more returns filed electronically each filing year. Over 2.4 million or 47 percent of taxpayers chose to file their state returns electronically in 2004 (tax year 2003). Electronic methods include *Ohio I-File*, TeleFile and IRS e-file. It is ODT's goal every year to have fewer taxpayers file paper returns, which are more expensive to process than electronic returns.

Ohio Business Gateway

The Ohio Business Gateway (OBG), launched in April 2002, allows businesses to file and pay certain taxes electronically. It was created to give businesses a break from the burden of bureaucracy and paperwork. During FY 04, more taxes were added to the system, and an additional 32,570 businesses registered to use the OBG. During the fiscal year, there were over 144,000 sales tax reports filed, representing $1.13 billion in tax due. Over 98,000 payroll withholding reports were filed showing $297 million in tax due.

ODT Staff

ODT made progress on the two major human resource challenges facing the department: staff size and succession planning. Over the last fiscal year ODT's staff increased by approximately 70 employees. This Department brings in 93 percent of the non-federal revenue for the state's General Revenue Fund. In order to collect the revenue needed by the state, ODT needs to maintain sufficient staffing levels. ODT's management staff has had significant changes over the last year. I am pleased that these leadership positions have been filled with qualified, high-caliber, internal employees.

ETS

Plans are underway to replace ODT's existing Integrated Tax Administration System (ITAS) with a more flexible and adaptable system, the Enterprise Tax System or ETS. Beginning in the summer of 2006, ETS will help ODT to continue to streamline its systems by consolidating the processes and related functions currently performed by 11 systems.

Ohio Award for Excellence

ODT claimed bragging rights as the only state agency, as a whole, to achieve Tier 2 status in the Ohio Award for Excellence (OAE) program for 2004. The OAE is patterned after the Malcolm Baldrige Award, which recognizes companies that have invested in quality principles and performance excellence. The OAE pursuit affirms ODT's commitment to excellence and to developing and implementing systems that monitor and measure efforts to improve the performance of the Department. ODT will continue the OAE pursuit.

ODT Web Site

Although it debuted in early FY 05, the groundwork for the redesign of ODT's Web site took place in FY 04. What most visitors will note about the site is its new look. Other changes include a forms locator system, which will assist visitors in finding tax forms and The Finder, which will help retailers 'find' the proper sales tax rate to charge on the sale of goods delivered across county lines. A new search engine from Google and a new Listserv system to manage correspondence with our customers will be coming in the months ahead.

Streamlined Sales Tax Project

Ohio made great strides with laying the groundwork for the ongoing Streamlined Sales Tax Project (SSTP). The SSTP is a multi-state initiative to make sales tax laws, rules, and systems more uniform across states and thus easier for retail merchants to collect states' sales taxes.

Getting Taxpayers in Compliance

In order to help all taxpayers comply with the tax laws of Ohio, the Enforcement Division launched several new programs. In addition, the Audit and Compliance Divisions continue to run programs to ensure that taxpayers are paying their fair share. It is our responsibility to do what we can to make sure everyone is complying.

ODT Budget

ODT was given a vote of confidence by Governor Taft when he fully recommended our budget proposal for FY 04-05 in his budget package. ODT received nearly an 8 percent increase (all funds) in its budget for FY 04 and nearly a 2 percent increase (all funds) for FY 05.

Blue Ribbon Task Force

As key participants have acknowledged, ODT is a major player in the efforts of the Governor's Blue Ribbon Task Force on Financing Student Success. ODT's contributions in tax analysis and development of funding options have been instrumental to the work of the task force.

ODT still has a number of projects that are "works in progress," including our commitment to continual improvement in all areas of operation.

Personal Exemption Amount Increased

The personal income tax exemption amount for the taxpayer, spouse, or dependents for tax year 2004 has been set at $1,300. The exemption amount for tax year 2003 was $1,250.

The personal exemption is, by law, adjusted each year for inflation using the Gross Domestic Product (GDP) deflator, as produced by the Bureau of Economic Analysis (BEA) for the period of January 1 to December 31 of the preceding year. The BEA data for this period show an increase in the deflator of 1.8 percent. The law states that the amount of the exemption, once adjusted for the deflator, is rounded upward to the nearest multiple of $50.

New Homestead Income Brackets

The total income brackets for determining homestead exemption eligibility have been increased. The new income brackets and corresponding reduction in taxable value will apply to tax year 2005 (collected in calendar year 2004) for real property and to tax year 2006 (collected in calendar year 2006) for manufactured or mobile homes. The eligible income and reduction in taxable value levels are adjusted for inflation using the Gross Domestic Product (GDP) deflator, as produced by the Bureau of Economic Analysis (BEA) for the period of January 1 to December 31, 2003. The BEA data show the increase in the deflator is 1.8 percent. The homestead exemption is a form of property tax relief for qualified elderly and disabled homeowners. Property tax reductions are granted to low-income homeowners who are 65 or older, or who are permanently and totally disabled.

Total Income	Reduce Taxable/Assessable Value by the Lesser of
Under $13,100	$5,400 or 75% of taxable value
Between $13,100 and $19,200	$3,300 or 60% of taxable value
Between $19,200 and $25,400	$1,000 or 25% of taxable value
More than $25,400	-0-

Notice of Medical Savings Account 2004 Deduction

For tax year 2004, the maximum deduction for contributions to Medical Savings Accounts is $3,643. Last year, the maximum deduction was $3,575. The deduction is based on the previous year's inflation rate for the urban Midwest Region as calculated by the Bureau of Labor Statistics' Consumer Price Index.

Quite the Site

New Web site; new era. On August 5, the Ohio Department of Taxation launched its newly redesigned Web site. That launch effectively also marks the beginning of a new approach to conducting the behind-the-scenes business of managing a Web site.

What most of the public will note most about the site is its new look. Topping the home page are scenes from around Ohio to greet our visitors. Below those scenes, inquiring minds are offered a variety of quick trips to the information or services they need to accomplish their mission.

The central focus of the home page is an invitation to ODT's principal guests – individuals, businesses and tax professionals – to visit sections of the site dedicated to their tax needs for information and services. Also front and center, links to the Ohio Business Gateway and Ohio I-File for those wanting to get right to the business of filing and paying their tax(es) on-line.

The home page contains most every link previously available on the old site, quite a few more, and much greater flexibility to grow and change to meet demands. The **Popular Links** section currently has nine links (the old had four) and can be expanded to hold more. The **What's New!** section can also be expanded to fit the need while the open space below can be used to spotlight programs or other ODT offerings.

Behind and beyond the home page even more has changed and the hits will keep on rollin' into the future. Hit #1 released in August: the **Forms** section has a user-friendly form locator. The user need only type in a tax year, type tax or form number and the system will deliver on the request. No more scrolling down a long laundry list of forms.

Hit #2, hot on the heels of the dynamic Forms section debut – **The Finder** (see article on page 5). The name might sound a little ominous, but The Finder is designed to provide tremendous assistance on-line to taxpayers needing to adapt to the new realities of the Streamlined Sales Tax Project and the change in taxing delivery sales. The Finder will help retailers 'find' the proper sales tax rate to charge on sales of goods delivered across county lines. All the retailer needs to do is type in the customer's address and The Finder will provide and compute the correct tax.

That's not all . . . other features that are expected to be hits with web visitors in the months ahead include the introduction of a new, effective search engine from Google and a new Listserv system to manage correspondence with ODT customers that makes it easier to keep track of tax news that's important to them.

Looking at all this change you might conclude that the Web site and ODT's commitment to expanding its on-line offerings are growing. It's true and it's likely not going to change in the foreseeable future. From a perspective of customer convenience and cost-savings, the Web site is already a critical resource, and with its tremendous potential to simplify life for the taxpayer, expect it to grow even more important in the future.

Streamlined Sales Tax – The Finder is Free

In September 2004, ODT launched a new on-line resource for taxpayers called The Finder. The free resource is designed to help businesses determine the correct sales tax rate and/or tax district for every Ohio taxpayer, according to their address. It's expected that The Finder will primarily be used by businesses that deliver goods to their customers. Businesses can access The Finder by visiting our Web site at tax.ohio.gov.

Developing this system was part of the Streamlined Sales Tax Project (SSTP). It was necessary because, beginning next year, a new Ohio law is prompting a change in the way sales tax is computed on inter-county delivery sales by Ohio vendors. Ohio vendors selling a taxable product in one county and then shipping that product to a customer in another county in Ohio will be required to charge sales tax at the rate existing in the county where the customer takes delivery. Businesses have the option of making the change in collecting the sales tax rate beginning January 1, 2005 or on July 1, 2005 when the law becomes mandatory. Sales tax rates on transactions that take place at the business and don't involve inter-county delivery will remain the same.

As part of the SSTP, participating states are required to maintain tax rate and tax district databases to determine taxing jurisdictions and tax rates. By using The Finder, businesses will have the ability to determine a customer's sales tax rate by entering the customer's five-digit zip code or zip-code plus four. ODT also provides the option of determining tax rates by entering in the customer's address, which is not required by the SSTP.

The Finder allows businesses to enter information regarding the transaction and the sales tax will automatically be calculated. The program can also assist taxpayers in filing tax returns. Businesses can save each transaction in a database (anonymously if they wish). When it is time to file their sales tax return, they will be able to pull up all of the sales in each individual county and see how much sales tax they are required to remit.

Businesses will also have the option of providing ODT with a database of all of their customers. ODT will then upload it to its system, adding the tax rate and county for each of their customers. The database will then be sent back to the business. They can then use it for future sales, which will assist them in easily calculating the tax due for each of their customers.

ODT is trying to make this new change in the law as seamless as possible for taxpayers. The Finder is one of the ways ODT is working to help vendors with this change.

Administrative Changes

Calvin Skaates is the Interim Administrator of the Taxpayer Services Division. Mr. Skaates joined the Department in 1999, working in the Strategic Planning Division. Shortly thereafter, he was transferred to the Taxpayer Services Division where he has worked since. Most recently, Mr. Skaates has focused on coordinating the functions of the Business Taxpayer Service Units, administering the Spectrum software, and facilitating outreach and education initiatives throughout the state.

Chris Kantzer is the new Administrator of the Tax Equalization Division. Mr. Kantzer joined ODT in 1987 and has served in the Office of Chief Counsel as both a staff attorney and a supervisor, specializing in corporation franchise and individual income taxes. Mr. Kantzer's experience with the Department includes preparing final determinations and assisting taxpayers and practitioners on a variety of tax issues, as well as supervising other attorneys.

The new administrator of the Business and Corporate Franchise Tax Division is **Tom Duncan**, who has been an ODT employee since 1974. During his first ten years with ODT, Mr. Duncan served as a field auditor before being promoted to a supervisor and section chief in the Corporate Franchise Tax Audit Division. Prior to this appointment, Mr. Duncan was the Assistant Administrator of the Income and Corporate Franchise Tax Division.

Ohio Tax Hall of Fame Nominations

Don't forget to submit your nomination for Ohio's State and Local Tax Hall of Fame by December 10. The Tax Hall of Fame was created in 2000 to acknowledge those people who have significantly contributed to the development, administration or operation of Ohio's state tax system. Inductees into the Hall of Fame include Stanley Bowers, Addison Dewey, Richard Finan, Ted Clevenger, and I. John "Jack" Reimers.

The next inductee will be announced at the Ohio Tax Conference in January 2005 in Columbus. Nomination forms can be found on our Web site at tax.ohio.gov. The home page contains a link to the form. You can mail your nominations to:

Ohio Department of Taxation
Ohio Tax Commissioner
Attn: Hall of Fame
PO Box 530
Columbus, OH 43216-0530

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

INFORMATION*releases*

The following information releases were issued by the Department over the last several months. The topics addressed are summarized below. Please visit our web site at tax.ohio.gov and click on "Releases" in the "Popular Links" area to view information releases in their entirety.

Corporation Franchise Tax

CFT 2004-02 – The franchise tax effects of the IRS section 338(h)(10) election – Issued June, 2004

The purpose of this information release is to explain how making the Internal Revenue Code (IRC) section 338(h)(10) election impacts the Ohio corporation franchise tax, including certain tax credits. This information release does not change any portion of the Department of Taxation's previously established policy regarding the franchise tax effects of the IRC section 338(h)(10) election.

Motor Fuel Tax

XT 2004-02 – Motor Fuel Tax Increase – June 11, 2004

Last year, Amended Substitute House Bill 87 increased the Ohio motor fuel tax rate from $0.22 to $0.24 per gallon effective July 1, 2003, and from $0.24 to $0.26 per gallon effective July 1, 2004. The motor fuel tax rate **may** increase to $0.28 per gallon on July 1, 2005, depending on changes to the federal highway distribution of the federal motor fuel tax.

Sales Tax

ST 2004-02 – Sourcing Law Change Update – August, 2004

This information release addresses a change in how Ohio sales tax is charged (sourced) on certain transactions involving the sale and delivery of goods and the adoption of a six-month transition period in which to make the change.

REITs, RICs, and REMICs

Except as provided for below, the Tax Commissioner has waived the 2005 reporting requirement for most Real Estate Investment Trusts (REITs), Regulated Investment Companies (RICs), and Real Estate Mortgage Investment Conduits (REMICs). For 2005, principals of these entities are not required to submit lists of names, addresses, and social security or federal identification numbers of investors, shareholders and others who had any interest, or had invested in the entity at any time during the 2003 calendar year.

Such entities are exempt from taxation for the 2005 calendar year as corporations and are exempt from taxation for the same year as dealers in intangibles, even though they will not be submitting reports.

The Tax Commissioner does **not** waive the reporting requirements for franchise tax year 2005 and for dealers in intangibles return year 2005 for any such entity if (1) at least 20 percent of the equity interest of such entity is directly and/or indirectly owned, on a cumulative basis, by a person and/or by that person's related members (see section 5733.042 of the Ohio Revised Code) and (2) that person or any of that person's related members is an entity other than a real estate investment trust whose equity interests are publicly traded or a trust whose beneficial interests are publicly traded.

By March 31, 2005 each entity for which the Tax Commissioner had not waived the reporting requirements must submit the required information only with respect to each investor directly and/or indirectly owning, on a cumulative basis, at least 20 percent of the equity interest of such entity. The entity must submit the information to the following address:

Ohio Department of Taxation
REIT-RIC-REMIC Report
P.O. Box 2619
Columbus, OH 43216-2619

Taxpayers having questions about this matter should contact ODT at (614) 433-7862.

ODT Enforcement Efforts

A top priority of Commissioner Wilkins is to get all taxpayers in compliance with the tax laws of Ohio. Outlined below are some of the programs the Enforcement Division is currently conducting to ensure that taxpayers are in compliance with Ohio tax laws.

Operation Pay-Up Enforcement agents working Operation Pay-Up investigate businesses with active vendors' licenses that have not filed tax returns for at least six months. The purpose of this program is to recover the sales tax that has been collected by businesses and not remitted and bring delinquent taxpayers into compliance. The law requires, and consumers expect, businesses to remit taxes they collect.

The Enforcement Division began this program late in 2003. As of May 2004, over $2.4 million dollars has been recovered by ODT.

Flea Markets Enforcement agents are visiting flea markets and trade shows around the state checking to see that the sellers are licensed vendors with Ohio. The visits were prompted, in part, by complaints from merchants who were properly licensed but were being undersold by unlicensed merchants who weren't collecting tax. Vendors' licenses are required to make retail sales in Ohio, whether by a big department store or a stand at a flea market.

The Enforcement agents first check to make sure a seller has a registered vendor's license. They then pass along notice of that contact to the Compliance Division which verifies that the seller files tax returns and remits any tax due to the state.

Since the initiative began about two months ago, over 60 vendors have been cited for making retail sales without a vendor's license. Enforcement agents say the program has increased awareness of the obligations sellers have to obtain vendors' licenses and remit taxes.

Taxi Cabs Amended Substitute House Bill 95 of the 125th Ohio General Assembly expanded the tax base of the Ohio sales tax to include taxi cab services. As of August 1, 2003 these business people are required to have vendors' licenses and collect sales tax on their fees. Enforcement agents are verifying that these cab drivers are in compliance with the new Ohio law.

Dyed Fuel Program The Enforcement Division enforces Ohio's dyed fuel laws by setting up a specially marked truck along different public roads around the state to test vehicles for red dyed fuel. Ohio law requires vehicles on public roadways to be using clear diesel fuel. Dyed fuel refers to the red dyed diesel fuel used by off-the-road vehicles such as those on farms or construction sites. Dyed diesel fuel is not subject to state tax the way clear diesel fuel is. It is illegal to use dyed fuel in vehicles driven on the state's roads.

Tobacco Inspections The Enforcement Division is also responsible for enforcing Ohio's excise tax on cigarettes and other tobacco products. Since July 1, 2003 the division has conducted inspections at 987 retail locations. These inspections resulted in numerous citations for various tobacco related violations and the seizure of several hundred cartons of untaxed cigarettes and over 50,000 untaxed cigars.

Another facet of the effort to ensure compliance with tobacco related laws is enforcement of the Master Settlement Agreement (MSA). Working with the Excise Tax Division and the Attorney General's office, enforcement agents have been checking retail sites for violations of the agreement, i.e. brands not permitted to be sold in the state of Ohio and sanctioning distributors who refuse to file appropriate tax returns. Since August of 2003, over 15,000 packs of unapproved cigarettes have been confiscated.

Complying with Ohio's tax laws is a matter of fairness to the citizens of this state. Everyone needs to be playing by the same rules. When businesses keep tax money they have collected, they are not only committing a crime, but they are forcing everyone else to pay higher taxes to make up for what they have kept. It is ODT's responsibility to make sure everyone is complying.

Please Note Change of Address

After 32 years of serving taxpayers in the same location, the Dayton Taxpayer Service Center has moved. It is in the same building as before, but in a different location.

The new address for the Dayton Taxpayer Service Center is:

Ohio Department of Taxation
40 S. Main St. 5th Floor
Dayton, OH 45402-2043

COURT*decisions*

The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court during June through August 2004. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

Individual Income Tax

Beier v. Zaino (July 23, 2004), BTA No. 2003-1789

Numerous other cases had the same decision.

In several cases taken to the BTA, the taxpayers received wages but submitted Ohio income tax returns showing zero adjusted gross income. When asked on audit why their adjusted gross income was zero, they responded that it was their position that wages were not includable in income. They were assessed a frivolous filing penalty under Ohio Revised Code 5747.15(A), and the assessments were affirmed by the BTA.

Booth v. Zaino (June 18, 2004), BTA No. 2003-1012

The BTA dismissed the appeal of a taxpayer who was assessed for not paying a tax-due, joint income tax return because the taxpayer had not pre-paid the assessment, as required under Ohio Revised Code 5747.13.

Spence v. Wilkins (June 18, 2004), BTA No. 2004-199

The attempted appeal of a taxpayer in regard to her Ohio income tax was dismissed by the BTA under Ohio Revised Code 5717.02 because there had been no final determination of the matter by the Tax Commissioner.

Personal Property Tax

U.S. Bankcorp Equip. Finance, Inc. v. Zaino (June 30, 2004), BTA No. 2003-1024 & 1025

The lessor of railroad equipment appealed final assessment certificates of valuation which held it liable for personal property tax on the leased equipment. The lessor submitted with its appeal a statement from the lessee that the lessee had paid property tax on the same equipment. The BTA noted that the lessor did not dispute that it was liable for the tax; rather, its objection was that the tax was being paid by the lessee. The BTA ruled that the lessor had not provided evidence that it was not the owner of the property and therefore liable for the tax. The Tax Commissioner's action was affirmed.

Fichtel & Sachs Industries, Inc. v. Zaino (June 30, 2004), BTA No. 2003-408

The taxpayer is a wholesale distributor of automotive parts. During 2000 and 2001, it received shipments from outside Ohio of clutch parts at its Ohio warehouse. The workers at the warehouse assembled clutch kits, consisting of the three major clutch components as well as minor components and lubricants, and packaged them for shipment to customers outside Ohio. The taxpayer claimed the inventory was held for storage only and therefore qualified for a reduced listing percentage under Ohio Revised Code 5711.22. One of the requirements to qualify for the reduced listing percentage is that the property undergo no further manufacturing or processing while in Ohio. The BTA held that the assembling and packaging done by the taxpayer's workers added value to the product and constituted processing, so as to disqualify the taxpayer from claiming all its inventory under the reduced listing percentage. The BTA remanded the case back to the Tax Commissioner for the Commissioner to determine the correct percentage of inventory included in the assembled clutch kits. The Tax Commissioner has appealed this case to the Ohio Supreme Court. The taxpayer has filed a cross appeal.

Brown-Graves Company v. Zaino (July 23, 2004), BTA No. 2003-464

A lumber dealer announced to its customers on December 17, 1999, that it was closing its business and that it would continue operating only to fulfill its existing orders. It listed $0 personal property on its 2000 personal property tax return because it was, on December 31, 1999, engaged exclusively in liquidating. The Tax Commissioner determined that the taxpayer was engaged in business until at least February 15, 2000, when it effectively ceased operations, and assessed accordingly. The BTA determined that, under Ohio Revised Code 5701.08, the taxpayer was still using its property in business on tax listing day, even though it was engaged in liquidating. This case has been appealed to the Summit County Court of Appeals.

Real Property Exemption Cases

Bd. of Ed. of the Columbus City School District v. Zaino (July 30, 2004) BTA No. 2002-1301

The Columbus State Community College District (CSCCD) claimed exemption for 2000 under Ohio Revised Code 3354.15 for a 113-acre golf course which was held in a charitable annuity remainder trust, with CSCCD having the charitable remainder interest. The golf course was operated by a separate corporation which paid rent to CSCCD; CSCCD paid monthly annuity payments to the settlors of the trust. Revised Code 3354.15 provides exemption for real property acquired, owned, or used by a community college district pursuant to provisions of Code Sections 3354.01 to 3354.18. The BTA held that CSCCD did not own, and had not acquired or used the property, and that the exemption was therefore not available to it.

Sales/Use Tax

Chrysler Financial Co., L.L.C. v. Wilkins (2004), 102 Ohio St.3d 443

Chrysler Financial Co. LLC purchased consumer debt from a number of Chrysler dealers. Some of these debts turned out to be uncollectible, and Chrysler Financial Co. LLC accounted for these as bad debts. It sought a refund of the sales tax that had been paid by the consumers and collected by the dealers on the full purchase price of the automobiles. The Supreme Court held that although Chrysler Financial Co. LLC was an assignee of the dealers, it was not the "vendor" within the meaning of Revised Code 5739.01(C) which defines the "vendor" as the person "by whom the transfer effected … by a sale is or is to be made."

Kirk v. Zaino (June 25, 2004), BTA No. 2003-1787

The secretary/treasurer of Hocking Valley Building Products was assessed personally under Ohio Revised Code 5739.33 for unpaid sales tax for the period January through May, 1997. She contended in her notice of appeal that she had resigned her position prior to that period, but her testimony at hearing was that she had resigned at the end of 1997. The BTA held that she had failed to meet her burden of proving error in the Tax Commissioner's final determination. The assessment against her was affirmed.

Reed Elsevier, Inc. v. Zaino (June 30, 2004), BTA No. 2003-1083

The owner of an information services provider (Lexis-Nexis) was assessed use tax on its purchases of temporary employment services during the period 1994-1997. The taxpayer contended that the transactions in question were not subject to sales tax because they constituted the acquisition of services by an independent contractor. Under Ohio Revised Code 5739.01(JJ), to satisfy the definition of 'employment service,' a service must meet three separate requirements: (1) it must provide or supply personnel on a temporary or long-term basis, (2) the personnel must perform work or labor under the supervision or control of another, and (3) the personnel must receive their wages, salary, or other compensation from the provider of the service. Despite the contention of the taxpayer that it did not supervise or control the workers in question, the BTA found that the taxpayer used the temporary employees to fill occasional gaps in its workforce. The workers were supervised in this work by the taxpayer's staff. The services were therefore subject to sales tax.

R & K Entertainment, Inc. v. Zaino (July 16, 2004), BTA No. 2003-103
Jelly Rolls, Inc. v. Zaino (June 30, 2004), BTA No. 2002-1910

Two vendors/liquor permit holders did not maintain primary and secondary records of sales as required by Ohio Revised Code 5739.03. Because there were no reliable primary records of sales by which the proper collection of sales tax could be verified, the auditing agents conducted mark-up analyses of the vendors' purchases. This resulted in an assessment of underpaid sales tax. The vendors objected to the audit methodology, but the BTA affirmed the assessments because the vendors were unable to provide records of sales or to show error in the agents' mark-up methodologies.

Herndon v. Zaino (July 30, 2004), BTA No. 2003-1300

A use tax assessment was affirmed by the BTA against a log home builder which had failed to accrue and pay use tax on a number of its purchases. The taxpayer made several payments after the audit commenced but before the assessment was issued. Under Ohio Revised Code 5739.13(A), these payments did not prevent the assessment of associated penalty and interest. The assessment, including penalty and interest, was affirmed by the BTA.

Keyes v. Zaino (July 30, 2004), BTA No. 2003-1791

A personal liability sales tax assessment against a 40 percent owner who signed the sales tax return for the period in question was affirmed by the BTA.

Block v. Zaino (August 6, 2004), BTA No. 2003-544

The president of Block's Bagels was assessed personally under Ohio Revised Code 5739.33 for unpaid sales tax for the period 1994 through 1998. He contended that the system for collecting and remitting sales tax had been set up prior to his assuming his position as president, and that he did not change anything about the system. He had control over day-to-day operations of the business, including hire/fire authority over those who performed sales tax reporting and remitting, and he had check-writing authority. The BTA held that he had failed to meet his burden of proving error in the Tax Commissioner's final determination. The assessment against him was affirmed.

Beck v. Zaino (August 20, 2004), BTA No. 2003-1257

A provider of electronic security equipment who installed such equipment in the homes and businesses of customers was assessed as a vendor for uncollected/unremitted sales tax. After installation of the equipment, the property owners utilized the systems by contracting with a third party which monitored the electronic signals from the system. The equipment provider acted as a go-between by accepting the initial payment from the customer for the services of the third party monitoring services. When the third party saw a security condition, a predesignated authority, such as a police or fire department, was notified. The provider contended at the BTA that he was not a vendor but a construction contractor. Ohio Revised Code 5739.01(EE) includes within the definition of 'private investigation and security service' the "monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices." The BTA held that the provider was a vendor and therefore responsible for collecting and remitting sales tax on the taxable security services.

Cousino Construction Company v. Zaino (August 20, 2004), BTA No. 2002-919

The BTA held that specialized cleaning services purchased by a builder in reconstructing fire-damaged realty owned by not-for-profit corporations and governmental entities were exempt under Ohio Revised Code 5739.02(B)(13), which exempts from sales tax "building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state" or other non-profit or charitable entities. The case has been appealed to the Ohio Supreme Court.

TAXenforcementnews

The following is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from May through July 2004. Enforcement News is compiled by Robert M. Bray, Administrator, Enforcement Division. Fraud complaints can be e-mailed to Taxenforcement@tax.state.oh.us.

Man Convicted of Fraudulent Refund Scheme

The U.S. Postal authorities notified ODT that they were investigating Kenneth Griffin of Louisville, Kentucky in a country-wide income tax refund scam. Mr. Griffin was using the identification of deceased persons to initiate a fraudulent tax return to obtain a refund. Eight fraudulent refunds were issued in this case totaling $8,131. Mr. Griffin is currently awaiting sentencing on federal mail fraud charges.

Other Recent Enforcement Actions

Abdul Godil of Illinois was found guilty in the Warren County Common Pleas Court of one count of trafficking in tobacco products with intent to avoid tax and one count of failure to possess a consent to transport on December 23, 2003. On that date, agents from ODT's Enforcement Division were called to a scene of a traffic stop. The Ohio State Highway Patrol stopped a white van, occupied by three subjects, for marked lane violations. While questioning the driver, the state trooper observed a large number of boxes marked as assorted brands of cigars in plain view in the van. When the occupants failed to produce appropriate documentation for the cigars, troopers requested assistance from ODT's Enforcement Division. Upon arrival, the Tax Enforcement Agent asked the driver, Abdul Godil, if he could provide any invoices for the tobacco products and Mr. Godil said "No." Mr. Godil is awaiting sentencing on the charges.

John Mays, owner and operator of Barton Carey Medical Products II, on behalf of the corporation pleaded guilty to one count of failure to remit withholding tax and one count of theft. The corporation was fined $15,000 and ordered to pay the state of Ohio the withholding tax owed. The corporation failed to pay over $40,000 in withholding taxes collected from employees. All monies owed were paid prior to sentencing.

The statewide enforcement program targeting delinquent (sales) taxpayers, also known as "Operation Pay-up," has resulted in citations and/or the conviction of 595 vendors, caused 5,176 returns to be filed and a total of $3,650,751 to be collected as of August 31, 2004.

Also, the checking of vendors' licenses at statewide flea markets resulted in 98 convictions of "No Vendors' Licenses."

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

Assorted Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Leonard Spitler	Napoleon Eagles LTD	Napoleon	(1) Count No Cigarette License
Khaled Hawawrak	Amira, Inc.	Columbus	(1) Count No Cigarette License
Lily Yost & Mike Sexton	Tobacco Connection	Middletown	(1) Count No Cigarette License
Sharon Risner	Hook Super X Inc.	Springfield	(1) Count No Cigarette License
Edward Kleppinger	632 Main St.	Toledo	(1) Count Failure to File Other Tobacco Products Return
Milton Saunders	Southern Ohio Cigar Co.	Cincinnati	(1) Count Failure to Mark Invoices
Brad Ruehl	Mello Tobacco LLC	Cincinnati	(1) Count No Cigarette License
Omar Abdelqader	A to Z Wholesale	Canton	(1) Count Distributor Failed to File Monthly Return
Elleni Rice	Daily Stop Food Mart and Deli	Cincinnati	(1) Count No Cigarette License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Mary Lou Saliaris	Portage Entry Marine Inc.	Marblehead	(9) Counts Collecting & Failing to Remit Sales Tax
John Henderson	Mallard Bay Patio & Fireplace 2	Sandusky	(2) Counts Failure To File Sales Tax Returns
Edward McPherson	Main Street Bistro	Lima	(1) Count Failure To File Sales Tax Returns
Melvin Smith	Prism Publishing/ Inkwell	Powell	(1) Count Failure To File Sales Tax Returns
Judy English	Elery Supper Club	Malinta	(1) Count Failure To File Sales Tax Returns
Amy Russell	Mr. Lift LLC	Middletown	(1) Count Failure To File Sales Tax Returns
Arthur Parker, Jr.	Parker's Sport Shop	Piqua	(1) Count Failure To File Sales Tax Returns
Thomas Leitch	Little Sicilys Ent. Inc.	Baltimore	(1) Count Failure To File Sales Tax Returns
Pam Lowery	Pizza Villa	Delaware	(1) Count Failure To File Sales Tax Returns
Anne Grayson	The Collection	Delaware	(1) Count Failure To File Sales Tax Returns
Aoko Kutscher	Bradner Cardinal	Findlay	(1) Count Failure To File Sales Tax Returns
Shane Carucci	Great Scapes Land-scaping & Snowplowing	Hudson	(1) Count Failure To File Sales Tax Returns
Ralph Young	Young New, Used & Abused	Dayton	(1) Count Failure To File Sales Tax Returns
Thomas Rachetter Jr.	Mt. Idy Lanes	Carey	(1) Count Failure To File Sales Tax Returns
Harold Loring	Bud's Tire Shop	Toledo	(1) Count Failure To File Sales Tax Returns
John F. Pletz	Video News Alexis	Toledo	(1) Count Failure To File Sales Tax Returns
D. S. Nelson	Eakin Rd. Tire Shop	Columbus	(1) Count Failure To File Sales Tax Returns
Carol Phillips	Car Jim Curtice	Curtice	(1) Count Failure To File Sales Tax Returns

NAME	BUSINESS	CITY	VIOLATION
Terrence Buzzard	J.R. Buzzard's	Columbus	(1) Count Failure To File Sales Tax Returns
Joseph Borders	Affordable Collision Repair	Columbus	(1) Count Failure To File Sales Tax Returns
Robert Huber	Wood St. Variety Shop	Piqua	(1) Count Failure To File Sales Tax Returns
Connie Black	All About Scrapbooks	Piqua	(1) Count Failure To File Sales Tax Returns
Debbie Piechocki	Cumulus Broadcasting Inc.	Toledo	(2) Counts Failure To File Sales Tax Returns
Rita Jones	Jones Auto Recyclers Inc.	Hamilton	(1) Count Failure To File Sales Tax Returns
Warren T. Lawrence	Austin's Jewelry Store	Toledo	(2) Counts Failure To File Sales Tax Returns
Hakki Mazen	A-Mazin Inc.	Toledo	(1) Count Failure To File Sales Tax Returns
Steven Anderson	Northwest Auto Body	Columbus	(1) Count Failure To File Sales Tax Returns
Corporation	Best Billiards	Cincinnati	(1) Count Failure To File Sales Tax Returns
K. A. Bucholz	Sunsports Surf Co. LLC	Westerville	(1) Count Failure To File Sales Tax Returns
W. K. Hampton	Hampton's Restaurant	Grove City	(1) Count Failure To File Sales Tax Returns
Kathleen Mulligan	Heritage Collection	Middletown	(1) Count Failure To File Sales Tax Returns
John Haker	Middletown Cycle Center	Middletown	(1) Count Failure To File Sales Tax Returns
Melody Edington	All Kinds of Pasta	Oxford	(1) Count Failure To File Sales Tax Returns
Douglas Ewald	Don A. Lee Hallmark	West Chester	(1) Count Failure To File Sales Tax Returns
Douglas Ewald	Don A. Lee Hallmark	Fairfield	(1) Count Failure To File Sales Tax Returns
Walter Bass	High Level Market	Toledo	(1) Count Failure To File Sales Tax Returns
Eric Gutknecht	Bloomtastic	Upper Arlington	(1) Count Failure To File Sales Tax Returns
Mark Hasenmeier	Hasenmeier Towing	Sandusky	(1) Count Failure To File Sales Tax Returns
Cynthia Bryant	Reef Tavern Inc.	Fairfield	(1) Count Failure To File Sales Tax Returns
Keith Hodkinson	The KWH Co.	Tiffin	(1) Count Collecting & Failing to Remit Sales Tax
M. L. Kreidler	Summer Saddlery	Alexandria	(1) Count Failure To File Sales Tax Returns
Beverly Harris	Decorator's Touch	West Chester	(1) Count Failure To File Sales Tax Returns
Barry Gabraith	Westchest Enterprise	West Chester	(1) Count Failure To File Sales Tax Returns
Tim Kawrecki	Tim's Auto Specialist	Toledo	(1) Count Failure To File Sales Tax Returns
Marcia Bakies	Bakie's Drive Thru	Tiffin	(1) Count Failure To File Sales Tax Returns
Donald Merillat	Sandusky County Flea Market	Fremont	(1) Count Failure To Collect Sales Tax
R. L. Sherrick	City Limits Café	Galloway	(1) Count Failure To File Sales Tax Returns
Robert Denslow	Sound Effects	Sandusky	(3) Counts Failure To File Sales Tax Returns
Steven Hochstuhl	Twin City Market & Deli	Hamilton	(1) Count Failure To File Sales Tax Returns
Kyle Hall	Plaza Car Wash West	Lima	(1) Count Failure To File Sales Tax Returns
Chester Bennett	Henry's Restaurant	West Jefferson	(1) Count Failure To File Sales Tax Returns
Marlin Irvin	Chillicothe Body Shop	Chillicothe	(1) Count Failure To File Sales Tax Returns
David Whitely	River East Sales & Service	Toledo	(1) Count Failure To File Sales Tax Returns
Deron Eicher	Ike's Automotive	Hicksville	(3) Counts Failure To File Sales Tax Returns

NAME	BUSINESS	CITY	VIOLATION
Steven Jones	QB One Inc. – Main St.	Hamilton	(1) Count Failure To File Sales Tax Returns
Steven Jones	QB One Inc. – Dixie	Hamilton	(1) Count Failure To File Sales Tax Returns
Robert Morse	Total Performance	Cincinnati	(1) Count Failure To File Sales Tax Returns
Michael Bachert	Mike's Garage	Middletown	(1) Count Failure To File Sales Tax Returns
Aimee Colahan	Aimees Trousseau	Piqua	(1) Count Failure To File Sales Tax Returns
Paul & Christina Argeropolos	Tipp Auto Tech	Troy	(1) Count Failure To File Sales Tax Returns
Roger Tolle	Marion Photo Finisher	Cardington	(1) Count Failure To File Sales Tax Returns
David Clark	Digital Planet	Marion	(1) Count Failure To File Sales Tax Returns
Kathleen Winbourne	K Gees	Delaware	(1) Count Failure To File Sales Tax Returns
Michael Dunaway	Dunaway Embroidery	Marion	(1) Count Failure To File Sales Tax Returns
Nadine Slone	Nadine's Framing	Caledonia	(1) Count Failure To File Sales Tax Returns
Mark Hostetter	Electric Sales & Service	Marion	(1) Count Failure To File Sales Tax Returns
William Avender	More Lasting Impressions Inc.	Piqua	(1) Count Failure To File Sales Tax Returns
Richard Morrison	Dick's Automotive	Covington	(1) Count Failure To File Sales Tax Returns
Alan Teicher	Our Theaters Inc.	Troy	(1) Count Failure To File Sales Tax Returns
D. W. Bailey	Spain's Home Appliances	Marysville	(1) Count Failure To File Sales Tax Returns
Josh Flynn	Flynn Auto Service	New Concord	(2) Counts Failure To File Sales Tax Returns
A. Kaya	Kaya Enterprises	Dayton	(1) Count Failure To File Sales Tax Returns
Doug Collins	Codac Inc.	West Chester	(1) Count Failure To File Sales Tax Returns

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Tax Calendar at-a-Glance

Oct.	
15	Monthly Income Tax Withholding Returns
20	Monthly Kilowatt Hour (KWH) Tax Return
25	Monthly and Semiannual Sales Tax Returns
25	Monthly Consumer Use and Direct Pay Returns
25	Quarterly Consumer Use Tax Returns
25	Quarterly Direct Pay Sales Tax Returns
Nov.	
1	Quarterly Income Tax Withholding Returns
15	Monthly Income Tax Withholding Returns
15	Quarterly Estimated Income Tax Return
22	Monthly Kilowatt Hour (KWH) Tax Return
22	Quarterly Natural Gas Distribution (MCF) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer Use and Direct Pay Returns
Dec.	
15	Monthly Income Tax Withholding Returns
20	Monthly Kilowatt Hour (KWH) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer Use 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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We CARE about the quality of our service.
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Equitable

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