

Sales Tax Collection Rules Won't Change

Ohio retailers who engage in delivery sales will not be required to change the way they calculate sales taxes starting January 1.

On October 1, Ohio Tax Commissioner Richard A. Levin determined that the Governing Board of the Streamlined Sales and Use Tax Agreement had not approved changes sought by the Ohio General Assembly earlier this year to exempt small retailers from destination sourcing of the sales tax.

As a result, no Ohio retailers will be required to change the way they calculate sales taxes at the end of the year. A few dozen of Ohio's largest delivery sellers – those with more than \$30 million in delivery sales annually – will continue to calculate sales taxes based on the destination of the sale as well as smaller delivery sellers who have voluntarily converted to destination sourcing. All others may continue calculating the tax based on rates at the origin of the sale.

"The bottom line here is that nothing changes for Ohio retailers," Levin said.

State government had long been looking at moving retailers from origin-based to destination-based sourcing of the state sales tax in order to make Ohio a full member of the Streamlined Sales and Use Tax Agreement. The agreement is an effort to harmonize sales tax rules across state lines and eventually put states in position to start collecting sales taxes on sales from out of state businesses – particularly catalog and Internet sales.

In May 2006, businesses with more than \$30 million in delivery sales switched to destination sourcing, and state law at that time called for other retailers with delivery sales to follow suit by January 1, 2008.

But with small business owners expressing concern about the complexity of calculating sales tax rates based on the destination of sales, the General Assembly relaxed the requirement last summer. Language included in the state budget bill would have moved other retailers to destination sourcing only if retailers with less than \$500,000 in annual delivery sales were exempted.

Ohio could not win agreement for such an exemption during a recent meeting in Kansas City, Kan. of the Governing Board of the streamlined sales tax effort. Work on possible alternatives also failed to bear fruit.

The three months since our last issue were marked by the passing of two former state tax commissioners with a combined 16 years of leading the agency. Ohio Department of Taxation employees recall the accomplishments of the late Ed Lindley and Roger Tracy and what it was like to work under these former leaders of the department. See story on page 4.

Levin said he would still like to find a way to make Ohio a full member of the streamlined sales tax effort, but that he is also sensitive to the needs of small business.

"The goal here is to level the playing field and make sure Ohio retailers are on an equal footing with out-of-state competitors," Levin said. "Ohio businesses should not be at a disadvantage to out-of-state retailers when it comes to selling to Ohio residents." 

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Commissioner's Column

One of the most significant tax provisions in the state budget that was recently signed into law by Governor Ted Strickland was the expansion of the homestead exemption for senior citizens.

Previously, eligibility for the homestead exemption was restricted through a complex income-based formula that disqualified most senior citizens. For example, during the 2006 tax year, any senior citizen or disabled Ohioan with household income of more than \$26,200 per year did not qualify for the homestead exemption.

The state budget bill, signed into law on June 30, did away with tiered benefits in favor of a full \$25,000 exemption for all who qualify. Although the amount of savings varies from community to community based on local tax rates, it is expected to average about \$400 per homeowner.

This new homestead exemption will deliver real tax relief for hundreds of thousands of senior citizens who never before qualified. However, homeowners who weren't previously eligible for the homestead exemption



Tax Commissioner Richard Levin

had to apply with their county auditors by Oct. 1 to ensure that this new tax break would be applied to their property tax bills payable in 2008.

I am happy to report that senior citizens have gotten the word. By Oct. 1, some 565,614 Ohio homeowners had applied for the expanded homestead exemption. When you add in the 222,090 homeowners who were already receiving the homestead exemption under the old law, the total number of homeowners who will see real property tax savings in 2008 is 787,704.

One of my most enjoyable projects as tax commissioner so far has been working with Governor Ted Strickland and the Ohio General Assembly in proposing, enacting and implementing this property tax relief for all senior citizen homeowners in Ohio. Sometimes, taxpayers are not too happy to hear from the Department of Taxation. It's nice to have good news – and for nearly three quarters of a million senior citizen homeowners, this was very good news. ❤️



Levin discusses the expanded exemption with senior citizens in Montgomery County.

Budget Bill Includes Tax Law Changes

While an unprecedented expansion of the home-
stead exemption gained most of the media
attention last spring and summer, the two-year
budget bill signed into law by Governor Ted Strickland on
June 30 made a number of other significant changes to
Ohio's tax laws.

Perhaps of greatest significance is what the budget bill,
House Bill 119, did not change. The governor's budget plan
embraced the sweeping tax reforms enacted in 2005 with
no significant exemptions, deductions or credits added to
any components of the tax reforms.

As a result, personal income taxpayers are still in line
for a 21 percent, across the board tax cut when new rates
are fully phased in for the 2009 tax year. Meanwhile, the
corporation franchise tax and tangible personal property
tax are still in the process of being phased out for most
businesses in favor of a new commercial activity tax (CAT)
with a low rate and a broad base.

Still, H.B. 119 did include a substantial number of chang-
es to Ohio's tax code. Among them:

Personal Income Tax

- A new personal income tax deduction of up to \$10,000 was created to help defray certain expenses incurred while making an organ donation.
- A new, temporary, nonrefundable tax credit against both the personal income tax and corporate franchise tax was created for retail service stations located in Ohio that sell alternative fuel.
- Municipal tax administrators are now permitted to publish statistics and aggregate tax information, so long as the statistics do not disclose particular taxpayer information.

Sales and Use Tax

- The Ohio sales tax will now be applied to motor vehicle purchases made by nonresidents of Ohio from certain other states. Nonresidents will be required to pay Ohio sales tax on their vehicle purchases if the consumer's home state does the following: (1) collects sales tax from Ohio residents for motor vehicle purchases; and (2) offers a credit for taxes paid in Ohio. Under this provision, residents of Arizona, California, Florida, Indiana, Massachusetts, Michigan, South Carolina and Washington will be among those subject to the nonresident motor vehicle sales tax. This sales tax change does not apply to leased vehicles.

- The vendor discount rate was returned from the temporary 0.9 percent rate to the permanent statutory rate of 0.75 percent for vendors who remit the sales tax in a timely manner.
- The current electronic funds transfer (EFT) remittance schedules were replaced with a single uniform schedule for all taxpayers required to remit the sales and use tax by EFT.
- The tax commissioner was authorized to require any taxpayer that is required to remit the sales and use tax by EFT to also file returns and reports electronically in a manner prescribed by the commissioner, including through the Ohio Business Gateway.

Excise Tax

- The \$300 per month excise and use tax exemption for cigarettes brought into Ohio for personal consumption was repealed.
- The rate of the kilowatt hour tax levied on the total electricity price component that is paid by a self-assessing commercial or industrial user was reduced from 4.0 percent to 3.5 percent beginning in fiscal year 2009.
- The temporary 0.9 percent motor fuel retailer discount created in House Bill 67 (the transportation budget for fiscal years 2008-2009), was converted to a discount for motor fuel dealers since they are required to remit the motor fuel tax.

Commercial Activity Tax

- The temporary two-year CAT exclusion for gross receipts derived from motor fuel was allowed to expire.

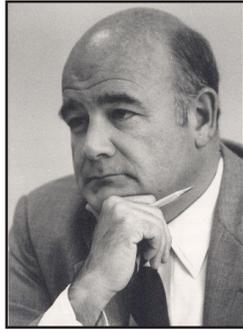
Other Tax Credits

- The eligibility requirements for the job retention tax credit were expanded to allow a company to qualify for the credit even if the company contracts with an unrelated third-party entity to build a new headquarters and make other significant capital investments.
- Pass-through entity (PTE) owners were allowed to elect to apply the job credits against the entity's commercial activity tax liability or against the income tax liability of the PTE owners. 

Ohio Department of Taxation Says Good-Bye to Two Former Leaders



Ed Lindley



Roger Tracy

The Ohio Department of Taxation (ODT) recently lost two friends and former tax commissioners in Ed Lindley and Roger Tracy. Although they led ODT in vastly different eras, both were remembered for serving as shining examples for department employees striving to meet the high expectations that each set.

Lindley passed away August 6 at the age of 85. He served as tax commissioner from 1975 until 1983 under Governor James A. Rhodes. Tracy passed away September 26. He served as tax commissioner for eight years under Governor George Voinovich from 1991 until 1999.

Ed Lindley (1922-2007)

When friends reminisce about Lindley, they speak of how deeply he cared about tax laws being applied fairly and accurately. They also describe their former colleague as being an accomplished individual because of the depth of his personal experiences and interests beyond his long career in taxation.

Lindley began working at the Ohio Department of Taxation in 1949 as a legal researcher. Twenty-six years later, Governor Rhodes appointed him tax commissioner.

"He was one of the wisest men I've ever met," said Bill Feldman, an attorney in ODT's Office of Chief Counsel who worked in the department during Lindley's tenure. Feldman also remembered how Lindley took many of the young attorneys at ODT "under his wing" as a mentor during the early stages of their careers.

Julie Carpenter, who retired in 2005 as the administrator of ODT's Forms Division and who also worked in ODT's Tax Research Division during the 1970s, had fond memories of Lindley, noting that "he was easy to work for and had a great sense of humor."

Current Tax Commissioner Richard A. Levin was chief of ODT's Research Division when Lindley was commissioner. He remembered his legal acumen, his quietly

effective style and also his dry sense of humor. "He was always calling me into his office to talk about legislators' tax ideas," Levin stated. "One day he said, 'I'm always asking you these questions. During the off season, when the legislature's not in session, I want you and your staff to come up with all the questions and answers that could possibly be asked and put them in the computer so we have them for next season.'"

"He couldn't understand why we couldn't possibly come up with every question," the current commissioner remembered with a chuckle.

Once he left the department in 1983, Mr. Lindley joined the Columbus law firm of Bricker and Eckler, where he practiced until he retired to his Worthington home in 1994.

Lindley proved, however, to be as zealous an advocate for his clients as he was exacting as commissioner. "I had a couple of exuberant tax agents who were auditing one of his clients in Florida," recalled Jim Bauman, who retired in 2005 as administrator of ODT's Income Tax Division. "He wasn't going to let them look at anything until he could be present. 'Tell them to go the beach,' he told me," Bauman said with a laugh.

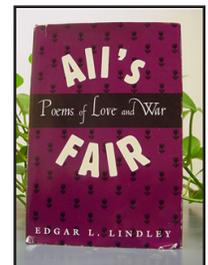
Lindley litigated almost 30 cases before the Ohio Supreme Court involving a wide variety of tax issues. He represented the tax department before the United States Supreme Court in *Reserve Life Insurance Co. v. Bowers*. That decision and many other cases he litigated still stand as landmarks of Ohio tax law.

As a member of the board of editors of the *Ohio Tax Review*, Lindley extended his critical analysis on a variety of Ohio tax issues and contributed many articles, one of which served as the lynch-pin of the Supreme Court's current analysis of the personal service exclusion from the sales tax. He also mentored a number of younger tax professionals, imprinting upon them a dedication to fairness and sound tax policy.

Lindley was also a U.S. Marine fighter pilot in World War II, flying the inverted-gull-winged fighter plane known as the Corsair in close air support of American soldiers on the ground in such Pacific theater hot spots as Okinawa. "When (superiors) felt the need they would call and ask for our services, which we were prepared to do by delivering bombs or machine gun fire," recalled Lindley during a 2005 interview.

Some of that war experience is reflected in a 1996 book of poems Lindley wrote called "All's Fair – Poems of Love and War." In the introduction, he writes of how his book reflects a "schism" in the life of one who has experienced the horrors of war and the poetry of living.

Lindley fondly recalled in 2005 that his initial foray into poetry was dictated by "a very good English teacher" at his West Virginia high school. Although



none of those early poems appear in the book, he said some reflect high school memories such as getting his first car.

After the war, Lindley came to Columbus “to try to get some college credit” under the GI Bill. He later enrolled in night classes at Franklin University Law School.

“I got along pretty well in law school and took the opportunity to look for a job, and a friend of mine from law school said why don’t you come over to our place” said Lindley. “His ‘place’ was the Columbus office of the Ohio Department of Taxation.”

The department hired Lindley in 1949 to do legal research. “My services grew and expanded,” he said. “Whenever there was something new, I was eager to participate in it.”

Lindley’s career in taxation spanned over 40 years in the public and private sectors. He was serving as deputy tax commissioner when Governor Rhodes appointed him tax commissioner in mid-1975, a post he held through January 1983.

To this day, some of Lindley’s colleagues at the department can still remember him discussing this or that legal issue with a co-worker on their way out of his Rhodes Tower office after a long day of work.

Throughout his career in taxation, Lindley is credited with giving thoughtful consideration to tax policy and subjecting conventional thinking about issues to rigorous examination. His career lasted long enough for him to be able to wax philosophically about how taxes change and evolve over time. Colleagues remember him comparing a newly-enacted tax to a pyramid in having a broad and pristine base in the beginning with few exemptions, credits and loopholes. Over time, the pyramid changes as its formerly wide base narrows under the weight of legislative action and court decisions. Eventually the tax like the pyramid, now standing on its point, collapses because it is no longer serving its original purpose. In its place, a new pyramid or tax emerges, standing firmly on a broad base.

When asked in 2005 whether this concept still has relevance, Lindley would only say that it is sometimes easier to think up things than to put them into practice.

Lindley was honored in 2005 as the sixth inductee into the Ohio Tax Hall of Fame at the Ohio Tax Conference. Lindley’s wife Jean and daughters Cindy and Pat and their husbands attended the ceremony.

Roger Tracy (1938 - 2007)

Tracy, who passed away September 26, was remembered by ODT employees as an honest and principled public servant with high expectations for the department he led throughout the Voinovich administration from 1991 to early 1999.

Tracy turned 69 years of age on the day he died, following a five-year battle against three cancers.

“Many of us knew Commissioner Tracy well and have plenty of personal memories to share,” current Ohio Tax Commissioner Richard A. Levin said upon learning of Tracy’s passing. “In my mind, one of his legacies as tax commissioner was his commitment to investing in information technology and finding innovative ways for the department to administer Ohio’s tax laws more efficiently.”

As tax commissioner, Tracy also encouraged the founding of the Ohio Tax Conference 17 years ago. The annual conference is now one of the premier events of its kind in the United States and draws almost 1,000 attendees from all over the nation each year.

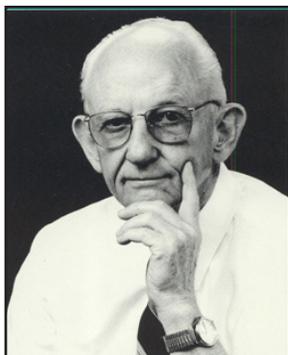
“Roger was a passionate person who had high expectations not only for himself, but also for his staff,” said Shelley Wilson, executive administrator in the ODT Tax Equalization Division. “I’m sure many of us can recall defending a decision to him. He was definitely the kind of boss who inspired you to do your best. You were expected to do your research and consider all the possibilities before choosing a course of action.”

“One thing I always respected about Roger was his honesty,” said Robert Everhart, assistant administrator in the ODT Tax Equalization Division. Everhart served as Tracy’s chief deputy at the county auditor’s office. “You never had to worry about working with Roger. He always said if it’s in the good book we can do it, if not, we can’t...He was a great person to work for.”

Everhart and other employees also remembered Tracy for a temper that could become white hot in a second and lead him to fire you in the morning and hire you back in the afternoon after he had cooled down.

But underneath the tough exterior was a man of decency, Leslie Akers, an ODT attorney, remembered.

“Roger Tracy was a demanding person to work for, but on a personal level, he was gold,” Akers said. “During the time that I was going through cancer treatments, the various operations, etc., Roger made sure the department held my job for me (not just an equivalent). When I was well enough to work, I could come in or work at home, whatever it took to support me.”



Ed Lindley



Roger Tracy and Leslie Akers

James Newcomer, an attorney in ODT's Bankruptcy Division, met Tracy in 1958 when they both attended Miami University.

"After Miami, Roger and I were classmates at the OSU law school. Roger got me interested in politics and public service, and I worked for his late father, state Auditor Roger W. Tracy Sr., first in the records division and later as an examiner in the Bureau of Inspection and Supervision of Public Offices."

As tax commissioner, Tracy approved the establishment of the bankruptcy division to improve the department's service to taxpayer/debtors and other stakeholders in the ever increasing number of bankruptcy cases, Newcomer recalled.

"As a friend, colleague and confidant Roger was unsurpassed," Newcomer said. "He was honest, loyal, straight forward, passionate and principled. I will greatly miss him, and I'm sure the many others whose lives Roger touched and impacted will also miss him and cherish their memories of him."

John Meekins, of ODT's Communications Division, knew Tracy before his days as Franklin County auditor when Meekins was as a reporter for the old Columbus Citizen-Journal newspaper.

"I'm pleased that the last time I saw Roger, he joked how much he'd enjoyed some of our experiences together, he as county auditor and me a newspaper reporter," Meekins said. "He remembered those times and laughed about them as did I. Politicians like Roger could be dead serious at times, but generally being around people like him was always a lot of fun."

"The county auditor was a major cog in the operation of county government, and when I needed something, if Roger had it, he would always get it for me and quickly,"

Meekins said. "He was open, honest and highly ethical."

On more than one occasion, Tracy said he was in politics by avocation, not by accident – and probably because of his family's long history of involvement in the political life of Ohio.

His grandfather, Joseph T. Tracy, served as state auditor from 1921-37, and his father, Roger W. Tracy, was state treasurer from 1951-59 and state auditor from 1963 until he died in office in 1964.

In 1956, Tracy graduated from Grandview Heights High School in suburban Columbus. Four years later, he graduated from Miami University and went on to earn a juris doctor degree from the Ohio State University College of Law in 1963.

He got his start in public service in the Ohio House of Representatives, where he served from 1967 to 1971 as a member of the Finance Appropriations, Taxation and State Government committees and chairman of the Public Improvements Inspection Committee.

Tracy ran unsuccessfully for state auditor in 1970 and again in 1974. He launched short-lived campaigns for state treasurer in 1986 and 1998. He was superintendent of the Savings and Loan Association of Ohio from 1975 to 1978.

He served as Franklin County auditor from 1979 to 1985 and as Franklin County commissioner from 1985 to 1989. Since 1999, he had been a member of the Ohio State Personnel Board of Review.

Other posts for Tracy included serving as vice president of the Federation of Tax Commissioners and as president of the Midwest Association of Tax Commissioners. 

IRS E-Newsletter Launched, Aimed at Small Businesses

The IRS has started a new service, e-News for Small Business. Distributed every Wednesday, the electronic newsletter is designed to bring timely, useful tax information directly to the small business owner's computer on topics such as:

- Important, upcoming tax dates
- What's new on the IRS Web site
- Reminders and tips to assist businesses with tax compliance
- IRS news releases and special IRS announcements

The e-News provides relevant IRS tax information in a convenient format. It also includes "Useful Links" that quickly direct business owners to some of the most useful information on IRS.gov for both large and small businesses as well as the self-employed.

The E-News service is free. Additional information and subscription sign-up are available at: www.irs.gov. 

Legal Update



The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court from June 2007 through August 2007. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

Tax Cases Decided June, July, August, 2007

Commercial Activity Tax

Ohio Grocers Association et al v. Wilkins (August 24, 2007) Franklin County Common Pleas Case #06CVH02-2278

The Ohio Grocers Association and others brought an action against the Tax Commissioner to determine the constitutionality of the commercial activity tax. Article XII, Section 3 of the Ohio Constitution provides that "no excise

tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold." The Grocers Association contended that the commercial activity tax violated this provision because the tax is a tax on sales, including the sales of food. The court held that the commercial activity tax is not a tax on food or on any specific transactions; rather, it is an excise tax on the privilege of doing business, measured by gross sales during a specified period of time. As such, it does not violate the Ohio Constitution's prohibition against taxing food. The Grocers Association and other plaintiffs have appealed this decision to the Franklin County Court of Appeals.

Personal Income Tax

Rome P. and Margaret F. Busa v. Levin (August 17, 2007) BTA #2007-269

In this case and several similar cases, the Board of Tax Appeals (BTA) applied the Ohio Supreme Court's holding in *Knust v. Wilkins* (2006) 111 Ohio St.3d 331. In that decision, the court determined that income earned by a grantor trust is taxable to the grantor rather than to the trust itself, even if the trust is an "electing small business trust." The Busas and others have appealed the decision to the Ohio Supreme Court.

Gary L. Cummings v. Wilkins (July 20, 2007) BTA #2006-744

In this case and several similar cases, the Board of Tax Appeals affirmed the Tax Commissioner's dismissals of petitions for reassessment because the taxpayers did not comply with Ohio Revised Code 5747.13(E), which requires, as a jurisdictional prerequisite, prepayment of assessed tax and interest in cases where the taxpayers have not filed their returns at the time of assessment.

Robert Hutchinson v. Wilkins (July 6, 2007) BTA #2006-1067

The Board of Tax Appeals found no abuse of discretion in the Tax Commissioner's failure to remove the penalty on an assessment for 2002 income tax where the taxpayer had filed his return two-and-a-half years late and had not paid the tax and interest at the time of the assessment.

Jonathan B. and Donna L. Kristosik v. Levin (June 15, 2007) BTA #2007-182

The taxpayers' appeal to the Board of Tax Appeals (BTA) requested that the tax liens placed on their property be removed pursuant to an order of the bankruptcy court in their Chapter 7 bankruptcy proceeding. The BTA found that the taxpayers had failed to invoke its jurisdiction under Ohio Revised Code 5717.02 because their purported appeal was not from a final determination of the Tax Commissioner.

Personal Property Tax

The Mead Corporation v. Wilkins (June 15, 2007) BTA 2005-787

In a personal property tax assessment for 2000, the Tax Commissioner affirmed the use of Class Life II (6 years to 8.4 years) in making the “true value” calculation for office computers owned by the taxpayer. The taxpayer contended that the use of Class Life II produced an unjust and unreasonable result, and that Class Life I (less than 6 years) should instead have been used. The taxpayer presented evidence to show that for the year at issue 84% of the computers were less than five years old. However, additional evidence showed that many of the new computers were purchased in anticipation of the Y2K issue in the run-up to 2000. The age of the computers on hand was therefore not indicative of the expected life. The Board of Tax Appeals affirmed the Tax Commissioner’s final determination.

Public Utility Personal Property Tax

Ohio Bell Telephone Company v. Wilkins (August 31, 2007) BTA #2005-202

The Tax Commissioner issued preliminary assessment certificates for 2003 to a telephone company, increasing the true value of its public utility personal property to more accurately reflect the values that the telephone company had published in its annual report for that year. In response, the company submitted a petition and included a depreciation replacement cost study which supported a lower valuation. The Tax Commissioner rejected the findings of that study for various reasons set forth in a final determination. On appeal to the Board of Tax Appeals (BTA), the telephone company presented a new appraisal study of its property. The BTA allowed the appraisal study and testimony of the appraiser as evidence over the objections of the Tax Commissioner. On the basis of the study and the testimony, the BTA determined a lower true value for the company’s personal property. Additionally, the BTA allowed the removal of unused wires (“spare pairs”) from the company’s tax base, as these are not used in business. The Tax Commissioner has appealed the decision to the Ohio Supreme Court.

Real Property Tax Exemption

Private Duty Services v. Zaino (August 31, 2007) BTA #2004-688

An organization providing charitable services including adult day care, passport, private duty nursing, aide and homemaker and visiting nurse services sought exemption of certain real property under Ohio Revised Code section

5709.12, which provides that real “property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” In this case, the building for which exemption was sought was used partly by the applicant and partly by its sister organizations, which were also rendering charitable services. The Board of Tax Appeals (BTA) summarized the facts thus: “The evidence in the record here demonstrates that the three corporations share a common origin, that they have overlapping resources, services and purposes, that they provide services without regard to a patient’s ability to pay and that no patients have been denied services due to their inability to pay.” On these facts, the BTA found that although the property was not exclusively used by the applicant, it was used exclusively for charitable purposes, fulfilling the requirements for exemption under the statute.

Glass City Christian Fellowship v. Wilkins (August 24, 2007) BTA #2006-2349

The taxpayer acquired title to real property in Lucas County on March 31, 2003 and filed an application for exemption with the county auditor on January 12, 2004. At that time there were unpaid taxes for 2003 on the property which had attached before the taxpayer acquired the property. Ohio Revised Code 5713.08 (A) provides, in part, as follows:

The commissioner shall not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer certifying one of the following:

(1) That all taxes, assessments, interest and penalties levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed, except for such taxes, interest and penalties that may be remitted under division (B) of this section;

Ohio Revised Code 5713.08(B), referenced above, provides:

(B) Any taxes, interest and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as provided in division (A) of section 5713.081 of the Revised Code.

Because the unpaid taxes for 2003 were unremittable on January 12, 2004, the Board of Tax Appeals affirmed the Tax Commissioner’s final determination which held that the Commissioner had no jurisdiction to consider the matter.

Hang Tran v. Wilkins (August 17, 2007) BTA #2007-582

The taxpayer was assessed a penalty under Ohio Revised Code section 323.121 for late payment of her 2003 real property tax. The tax was due February 2, 2004 (full amount or first installment) and June 28, 2004 (second installment). The taxpayer made payment on November 15, 2004. The tax bill had been erroneously sent by the county

auditor to the taxpayer's former bank. For the period at issue, Ohio Revised Code 5715.39 allowed for penalty remission in four specific circumstances: (1) error on the part of the county auditor or county treasurer which prevents a taxpayer from timely making payment; (2) failure of a taxpayer to receive a tax bill, if the taxpayer subsequently makes payment within 30 days of the due date; (3) death, serious injury or confinement in a hospital within 60 days preceding the tax due date, if the tax is subsequently paid within 60 days after the due date; (4) deposit of payment in the mail in time to be postmarked on or before the due date. The Tax Commissioner denied penalty relief because the facts did not support remission under any of the four circumstances described in the statute. The Board of Tax Appeals affirmed. (See *Eugene Goldberg*, below, for discussion of the amended version of Ohio Revised Code 5715.39.)

Munsee Delaware Indian Nation USA v. Wilkins (August 17, 2007) BTA #2006-1231

The taxpayer sought exemption for certain real property under Ohio Revised Code section 5715.27. The taxpayer contended that, as an Indian tribe, it is not subject to taxation by Ohio since Ohio has not legislatively accepted jurisdiction of Indian tribes, and since the federal government by treaty agreed that Indian lands are not to be taxed. The Tax Commissioner dismissed the application because the taxpayer had not complied with Ohio Revised Code section 5713.08, which requires payment of all taxes, penalties and interest before an application for exemption can be considered. The Board of Tax Appeals noted that it does not have jurisdiction to consider constitutional or treaty issues and affirmed the dismissal of the application.

St. Stephen Orthodox Church v. Levin (August 10, 2007) BTA #2007-113

The taxpayer sought exemption for certain real property under Ohio Revised Code section 5715.27. The taxpayer took title to the property on November 4, 2004. In its application, the taxpayer sought remission of taxes which attached prior to that date. Such taxes are unremittable. (See *Glass City Christian Fellowship*, above.) The Tax Commissioner dismissed the application because the taxpayer had not complied with Ohio Revised Code section 5713.08, which requires payment of all taxes, penalties and interest before an application for exemption can be considered. The Board of Tax Appeals affirmed.

88/96 LP and Community Housing Network, its General Partner v. Wilkins (July 20, 2007) BTA #2005-55

The partnership agreement of a limited partnership

which included both a limited/for-profit partner and a general/non-profit partner stated that the purpose of the business of the limited partnership was to acquire and operate certain property as low income housing. It applied for exemption for the property under Ohio Revised Code section 5709.12, which provides that real "property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." The Tax Commissioner denied the exemption because the property was owned, in part, by a for-profit entity. The Board of Tax Appeals reversed, holding that it is not necessary that the owner be non-profit, as long as it is an "institution" and the use of the property is "exclusively charitable," as in this case.

City of Lakewood v. Wilkins (June 29, 2007) BTA #2006-412

The City of Lakewood purchased a property for the purpose of doing environmental remediation. Later, after the city had sold the property, it applied for exemption and remission of past due taxes. The Tax Commissioner dismissed the application because it was not filed by the current owner, as required by Ohio Revised Code 5717.27(A). The Board of Tax Appeals affirmed.

Allshred Services v. Wilkins (June 29, 2007) BTA #2007-70

Allshred Services filed an application for exemption of real property, which was titled in the name of another corporation. Allshred presented evidence to show that it and the other corporation were principally owned by the same individual. The Tax Commissioner dismissed the application because it was not filed by the current owner, as required by Ohio Revised Code 5717.27(A). The Board of Tax Appeals affirmed.

Eugene Goldberg v. Wilkins (June 22, 2007) BTA #2006-405

The taxpayer's real property taxes were due on January 20, 2005 but were not paid until February 15, 2005. A 10 percent penalty was assessed. The taxpayer requested remission of penalty, stating that he was late in paying because he was stressed out due to his recent retirement. Ohio Revised Code section 5715.39(C) was enacted in 2003 as an addition to the real property tax penalty remission statute. It vests authority in the county boards of revision to grant remission under certain circumstances. R.C. 5715.39(C) provides as follows: "The board of revision shall remit a penalty for late payment of any real property taxes or manufactured homes taxes if, in cases other than those described in division (B)(1) to (4) of this section, the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." The county board of revision denied the taxpayer's request in this case. The Board of Tax Appeals (BTA) found that the



taxpayer's appeal to the Tax Commissioner was untimely, since it was more than 60 days after the board of revision's mailing of its decision. The BTA therefore held that the appeal to the Tax Commissioner should have been dismissed.

Greater Life Gospel Center, Inc. v. Wilkins (June 15, 2007) BTA #2006-2360

The Tax Commissioner dismissed an application for exemption for lack of jurisdiction under Ohio Revised Code 5713.08, because there were unpaid tax liens on the property at the time the application was submitted. The Board of Tax Appeals affirmed.

Seyed Allameh v. Wilkins (June 1, 2007) BTA #2006-1351, 2006-1547, 2006-1548

A taxpayer sought penalty relief under the provisions of Ohio Revised Code 5715.39, which allows for penalty remission in cases where the taxpayer fails to receive a tax bill, if the taxpayer subsequently makes payment within 30 days of the due date. However, in this case the taxpayer did not make payment within that time. Therefore, the Tax Commissioner denied penalty relief, and the Board of Tax Appeals affirmed.

Sales Tax

Levi Miller v. Wilkins (July 6, 2007) BTA #2007-217

A vendor who had reported no taxable sales since 1999 and who had not filed sales tax returns since 2004 objected to having his vendors license revoked. Ohio Revised Code 5739.19 provides that the Tax Commissioner may revoke a vendor's license if it is determined that the vendor has no need for the license because the vendor is not engaged in making taxable retail sales. The Board of Tax Appeals dismissed the vendor's appeal for lack of jurisdiction because the vendor had not filed a copy of the notice of appeal with the Tax Commissioner, as required by Ohio Revised Code 5703.17.

Jeffrey Zetkulich v. Wilkins (June 15, 2007) BTA #2006-Z-69

A partner in a partnership, which was assessed sales tax, filed an appeal to the BTA to have his personal liability resolved. Since the assessment against the partner had been canceled by the Tax Commissioner, there was no jurisdiction for the Board of Tax Appeals to grant the appeal. It was therefore dismissed.

Sufyan Abdallah v. Wilkins (June 22, 2007) BTA 2006-275

The person who identified himself to a tax agent in August 2004 as president of a corporation operating a carryout was assessed personally for unpaid sales tax under the provisions of Ohio Revised Code 5739.33. The assessment was for 2001 through the first half of 2004. The taxpayer contended in his notice of appeal that he had sold the business in late 2003, but the taxpayer waived hearing

and presented no evidence on the matter. The Board of Tax Appeals (BTA) held that unsubstantiated statements in a notice of appeal do not constitute evidence. Moreover, evidence in the file indicated that the taxpayer was in control of the business in August 2004 when the audit was conducted. Accordingly, the BTA affirmed the Tax Commissioner's final determination holding the taxpayer personally liable.

UMC Industries Inc. v. Levin (June 22, 2007) BTA 2007-173

The BTA found that the taxpayer had failed to invoke the jurisdiction of the Board of Tax Appeals under Ohio Revised Code 5717.02 because its purported appeal was not from a final determination of the Tax Commissioner.



Tax Enforcement News



The following convictions were secured by the Enforcement Division of the Ohio Department of Taxation from May through July 2007. Enforcement News is compiled by Robert M. Bray, administrator of ODT's Enforcement Division. Fraud complaints can be e-mailed to Taxenforcement@tax.state.oh.us.

Daniel E. Kinane Jr., owner of Omega Supply, in Miamisburg, entered a guilty plea to four counts of trafficking with intent to avoid paying tax on other tobacco products, a fourth-degree felony.

During a routine cigarette inspection it was discovered that invoices for other tobacco products supplied by Omega Supply did not contain a tax-paid license number. Consequently a search warrant was conducted and records were seized.

After pleading guilty, Kinane was sentenced to 18 months in jail and was prohibited from engaging in sale of tobacco products in Ohio. He was ordered to immediately pay \$20,000 in back taxes and to pay another \$58,550 later in subsequent monthly increments of \$200. In addition, Kinane's driver's license was suspended for 30 days with work privileges, and he was ordered to attend a chemical dependency program. The evidence seized in the case was destroyed.

Jennifer and Barry Dotzauer, of Brown County, pleaded guilty to thirty-one counts of tampering with records, a third-degree felony. The couple avoided paying \$315,843.30 in Ohio sales taxes on motor vehicles that they purchased in Ohio, but which were sold in Australia.

Cigarette Violations

Name	Business	City	Violation
Pamela Ferguson	O'Flaherty Marathon	Carey	1 count no cigarette license
Michael Gavericks	Sunoco Stringtown	Grove City	1 count no cigarette license
Jallaq Nafez	Orders Road Sunoco	Grove City	1 count no cigarette license
Issam Yassin	Lights Drive Thru	Columbus	1 count no cigarette license
Mamoun Alghzawi	Grove City Sunoco	Grove City	1 count no cigarette license
James Sautter	Sautter's Food Center	Waterville	1 count no cigarette license
William Clark	Bullseye Amusement	Germantown	3 counts no cigarette license
Craig Ray	CSR Sidney, Inc.	Sidney	1 count marking of invoices
Jessica A. Auchi	Jessica A. Auchi	Cincinnati	1 count retailer in possession of untaxed cigarettes
Shehzad Ghaz	Shehzad Ghazi	Beavercreek	1 count retailer in possession of untaxed cigarettes

Cigarette Violations

Name	Business	City	Violation
Edward Faulkner	Edward Faulkner	Hamilton	1 count failure to maintain cigarette purchase records
Chamkaur Singh	Chamkaur Singh	Hamilton	1 count failure to maintain cigarette purchase records
Premal Chheda	Prem Tobacco	Columbus	1 count failure to maintain other tobacco purchase records
Mary Vollrath	Mary Vollrath	Cincinnati	1 count attempt to traffic in cigarettes without a license.
Ayman A. Al-Ramahi	Ayman A. Al-Ramahi	Cincinnati	1 count attempt to traffic in cigarettes without a license 1 count selling single stick cigarettes
Ibrahim Al Ghazwi	Ibrahim Al Ghazwi	Fairfield	1 count selling single stick cigarettes
Hardeep Singh	Hardeep Singh	Cincinnati	1 count selling single stick cigarettes
Nidal Khrais	Nidal Khrais	Cincinnati	1 count persistent disorderly conduct

Assorted Sales Tax Violations

Name	Business	City	Violation
Premal Chheda	Prem Tobacco	Columbus	1 count failure to file sales tax returns
Thomas Lindsley	Robert's Men Wear	Sylvania	1 count failure to file sales tax returns
Nagham Keriko	East River Mini Mart	Toledo	1 count failure to file sales tax returns
Pamela Ferguson	O'Flaherty Marathon	Carey	1 count failure to file sales tax returns
Lakeshore Sports Center, Inc.	Lakeshore Sports Center, LLC	Ashland	1 count failure to file sales tax returns
Peter Hashier	Peter Hashier	Avon Lake	1 count failure to file sales tax returns
Tina Stevens	Adagio Day Spa	Maumee	1 count failure to file sales tax returns
Darmesh Patel	Days Inn Ashland	Ashland	1 count failure to file sales tax returns
Terry Carico	Ivals Body Shop	Sandusky	1 count failure to file sales tax returns
Gary Markus	Markus Office Equipment & Supply Co.	Cincinnati	1 count failure to file sales tax returns
John Mohr	Staddon/Mohr LLC	Dayton	1 count failure to file sales tax returns
Judy Roberts	O'Neys	Dayton	1 count failure to file sales tax returns
Donald E. Zang Jr.	Donald E. Zang Jr.	Cincinnati	1 count failure to file sales tax returns
Bubacarr Tunkara	Bubacarr Tunkara	Cincinnati	1 count failure to file sales tax returns

Assorted Sales Tax Violations

Name	Business	City	Violation
Donald Perin Jr.	Donald Perin Jr.	Marion	1 count failure to file sales tax returns
John K. Waller	American Mall Citgo	Lima	1 count failure to file sales tax returns
Andrew Carl	Marino Supply	Toledo	1 count failure to file sales tax returns
William Roth	Bill's Mobile Home Service	McClure	1 count failure to file sales tax returns
Promotional Concepts LLC	Promotional Concepts LLC	Sandusky	1 count failure to file sales tax returns
Douglas Eshelman	Windy Point Carry Out	Celina	1 count failure to file sales tax returns
Daniel Sweeney	Brennan Maintenance	Mentor	2 counts failure to file sales tax returns
Francisco Trevino	Trevino Body Shop	Fremont	1 count failure to file sales tax returns
Thomas Gregory Jr.	Gregoryfilms	Youngstown	2 counts failure to file sales tax returns
Carmen McGarry	True Tread Tire	Youngstown	2 counts failure to file sales tax returns
Robert Scott	Tom's Family Restaurant, Inc.	Oregon	2 counts failure to file sales tax returns
Amie Van Hove	Ward Furniture Co.	Ashland	2 counts failure to file sales tax returns
Mary Moran	Island Shoppe	St. Marys	2 counts failure to file sales tax returns
Joan Triplett	Henry's Appliance & Giftwares	Toledo	2 counts failure to file sales tax returns
Clay A. Keim	C.A, Customs	Fremont	2 counts failure to file sales tax returns
Edwin C. Serrick	Edwin C. Serrick	Fremont	2 counts failure to file sales tax returns
Jeffrey Laurendeau	Rainbow Lounge	Fremont	2 counts failure to file sales tax returns
Joseph Havens	Auto-Tech Collision	Fremont	2 counts failure to file sales tax returns
Richard Getter	Richard Getter	Dayton	2 counts failure to file sales tax returns
Wayne LeMaster	Wayne LeMaster	Wooster	2 counts failure to file sales tax returns
Sandra Schlosser	Cattails	Napoleon	2 counts failure to file sales tax returns
Miladys Ocasio	Miladys Ocasio	Youngstown	2 counts failure to file sales tax returns
Kathy Sano	Shinano, Inc.	Richmond	3 counts failure to file sales tax returns
Harry Burke	Harry Burke	Ashland	1 count failure to file sales tax returns 1 count no vendor license
Julio Volquez	La Garu Towing	Hamilton	1 count failure to file sales tax returns 1 count no vendor license
Vitor Abreu	Vitor Abreu	Cincinnati	1 count no vendor license
Steven Fisher	Steven Fisher	Akron	1 count no vendor license

Assorted Sales Tax Violations

Name	Business	City	Violation
William Erby	Erbyland, LLC	Dayton	1 count no vendor license
Edward Morris	Custom Tatts	Middletown	1 count no vendor license
Jessica A. Auchi	Jessica A. Auchi	Cincinnati	1 count failure to collect sales tax
Saleh Albawared	Linden Marathon	Columbus	1 count failure to collect sales tax
James Olman	Sam's Quick Mart	Cincinnati	1 count disorderly conduct

Assorted Withholding Tax Violations

Name	Business	City	Violation
Vitor Abreu	Vitor Abreu	Cincinnati	1 count failure to withhold employee payroll compensation

Assorted Dyed Fuel Violations

Name	Business	City	Violation
Terrill Dillinger	84 Lumber	Macedonia	1 count using dyed fuel on the highway
Jason Ponder	Jason Ponder	Hamilton	1 count using dyed fuel on the highway

Calendar at-a-glance

Oct.	
15	Monthly Income Tax Withholding Return
15	Annual Income Tax Return with Federal Extension
22	Monthly Kilowatt Hour Tax Return
23	Monthly Sales Tax Return
23	Monthly Consumer Use and Direct Pay Return
23	Quarterly Consumer Use Tax Return
23	Quarterly Direct Pay Sales Tax Return
31	Quarterly Income Tax Withholding Return
Nov.	
9	Quarterly Commercial Activity Tax Return
15	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour (KWH) Tax Return
20	Quarterly Natural Gas Distribution Tax Return
23	Monthly Sales Tax Return
23	Monthly Consumer Use and Direct Pay Return
Dec.	
17	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour (KWH) Return
24	Monthly Sales Tax Return
24	Monthly Consumer Use and Direct Pay Return

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.

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Responsive

Equitable

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*Ohio Department of Taxation,
P.O. Box 530, Columbus, Ohio 43216-0530.
or e-mailed at: tax.ohio.gov*

Governor Ted Strickland

Tax Commissioner Richard Levin

Comm. DirectorJohn Kohlstrand

EditorHoward Wheat

WriterJohn Meekins

WriterMichael McKinney

DesignerRebecca Chambers

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