OHIO's statetaxreport

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ODT Consolidating Columbus Operations

The Ohio Department of Taxation (ODT) will be consolidating a significant portion of its operations in Columbus this spring and summer in a recently renovated building that once housed a Lazarus department store at the former Northland Mall site in Columbus.

ODT received permission to enter into a lease for the building on March 14 from a panel of state legislators known as the Controlling Board, which oversees state contracts.

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"This is a significant development in our drive to modernize," said Tax Commissioner William W. Wilkins. "Our existing facilities were becoming a threat to the continued success of providing quality service to Ohio's taxpayers and in helping the state meet its financial obligations. The new facility will greatly enhance our capabilities in both of these areas."

The view of the eastern side of ODT's new building, which formerly housed a department store, in Columbus

The relocation will involve over 790 full-time, 250 intermittent and up to 90 contract employees currently housed in four Columbus buildings; two on Freeway Drive North, the State of Ohio Computer Center (SOCC) and the State Office Tower in Columbus.

The renovated 320,000 square-foot facility is ideal for the department in its efforts to modernize and give employees the tools and space they need to perform to the best of their abilities, according to the Tax Commissioner.

Specifically, the move will encompass all of the operations on Freeway Drive, which includes the processing of tax forms, capture of data and deposits of revenue for the state as well as the audit, compliance, corporate franchise, enforcement, estate tax, forms, personal income, school district and taxpayer services divisions.

From SOCC, information services division staff and operations will move to Northland with the exception of those supporting the mainframe computer and certain other day-to-day operations.

From the State Office Tower in downtown Columbus, the sales tax, revenue accounting and employee development and training divisions will also move to Northland.

The Tax Commissioner said the af-

fected divisions will relocate in segments, beginning in late spring. The income tax division will not move until the current filing season concludes in July.

The new Northland location will allow ODT to meet its needs at a cost that is less per square foot than at the current facilities. Since the newer facility is bigger, there will be an increased overall cost for the department. However, ODT will realize many significant long-term benefits from improved operations at a bigger location, from the sharing of resources and from a stable environment for its employees to perform their duties.

Income Tax Filers Embrace On-Line Filing

With the April 15th income tax filing deadline on us, a record number of Ohio tax filers have embraced technology and gone paperless. Almost 60 percent of Ohio income tax returns through April 1 had been filed electronically, prompting Ohio Tax Commissioner William W. Wilkins to encourage even greater numbers of taxpayers to choose the electronic option. Filing electronically, the Commissioner said, is more convenient for the individual and saves Ohio millions in processing costs.

For the record, nearly 2.1million electronic returns had been filed through April 12 this year, compared to about 1.8 million at the same time last year. Those figures include a 13 percent jump in E-filing and a 43 percent surge in I-filing. The Ohio Department of Taxation (ODT) expects to process more than five million returns during the current tax filing season.

"Taxpayers benefit from filing their Ohio income tax returns electronically by getting refunds back within five to seven days, and they can avoid that long line of last minute taxpayers at the post office trying to get their paper returns in the mail," Commissioner Wilkins stated.

Even those who owe money can benefit from electronic filing because they can file their return anytime and select an electronic payment option that allows them to not have their tax paid until some future day up to and including April 15.

The State of Ohio benefits when taxpayers file electronically because it costs so much less for ODT to process an electronic return compared to a paper one: about $1.15 for electronic vs. about $3 for paper.

"When you process more than five million returns as we do every year, the savings with electronic filing is huge," Wilkins said. "So, I encourage ALL Ohioans: file electronically."

If the taxpayer uses a tax preparer, Wilkins urged the taxpayer to ask their preparer to file electronically. Or, Wilkins noted, a taxpayer can go on-line to the ODT web site at tax.ohio.gov and file their state income tax and – if required – school district income tax using Ohio I-File. Ohio I-File is the electronic system developed by ODT, and it's free to use.

Wilkins noted one advantage of using Ohio I-File or another electronic system is that it will "do your math for you," which eliminates many errors. Last year, ODT processed about 5.2 million returns, of which 47 percent – over 2.4 million – were filed electronically. The department estimated this saved $2.1 million in processing costs.

Citizens can get answers to questions on tax or electronic filing issues by visiting the "The Best Tips for Ohio Taxpayers" page on ODT's web site or calling ODT Taxpayer Services at 1-800-282-1780.

On-Line Cigarette Purchasers Face Excise, Sales Taxes

The Ohio Department of Taxation's Excise Tax Division recently reached out by mail to collect cigarette taxes from about 1,200 Ohio residents who bought untaxed smokes from out-of-state vendors at what seemed like bargain prices.

The bargain? Two vendors operating six or seven Internet web sites sold the cigarettes to Ohio residents, but the vendors did not collect and remit Ohio sales and cigarette excise taxes. The Ohio cigarette excise tax is 55 cents per pack. Now, instead of a bargain, these Internet shoppers are getting bills for the cigarette and sales taxes that weren't included in the purchase price.

The Excise Tax Division got names, addresses and quantities of cigarettes purchased from the vendors, who under federal law are required to provide them. Dale Bischoff, the Excise and Motor Fuel Tax Division administrator, said if all those who got bills pay up, the Ohio Department of Taxation (ODT) will collect about $93,000 in cigarette taxes.

The highest tax bill – $803 – went to a Franklin County resident. Sales of cigarette and other tobacco products generated nearly $557.4 million in tax revenue in Fiscal Year 2004. The tax revenue goes into the state's general fund.

As word about the bills gets out, the number of people who buy cigarettes from sources that do not collect and remit Ohio cigarette and sales taxes should decline, resulting in a corresponding bump in tax revenue in Ohio, according to ODT officials. This effort is also expected to help Ohio vendors who are at a competitive disadvantage with out-of-state vendors that do not collect and remit taxes on their cigarette sales.

The Excise Tax Division's efforts to collect the taxes are part of a continual effort by ODT to make certain people who are supposed to pay taxes do indeed pay them. Another division, Enforcement, also is involved in making sure Ohio's cigarette and other tobacco taxes are paid. Its agents conduct about 100 inspections of retail establishments monthly around Ohio. In fact, the Enforcement Division was formed in the early 1970s to enforce cigarette tax laws. The division's duties have since expanded to include enforcement of other Ohio tax laws.

The levying of cigarette taxes was first authorized in 1931 at two cents per pack. State lawmakers are now looking to raise the tax beyond the current 55 cents per pack.

COMMENTS *from the commissioner*

The Ohio Business Gateway (OBG) has a new addition to its electronic filing services that businesses will find helpful.

Commissioner *Wilkins*

You may recall that OBG was rolled out in 2002. Developed at the direction of Gov. Bob Taft, the Gateway is an automated, one-stop shop on the Internet where businesses can electronically file sales, employer withholding and unemployment compensation taxes as well as workers' compensation premiums.

As of March 30, thanks to a partnership between OBG and Ohio's municipal tax administrators, businesses can now use the Gateway's electronic filing services to begin accessing municipal income tax systems around the state.

This year, OBG will offer forms for extension requests and estimated payments for business net profits taxes and continue to add municipalities to the system. In 2006, expect OBG to add the business net profits tax return. Finally, in 2007-08, OBG is scheduled to add estimated payments and reconciliation reports for employer withholding taxes.

Businesses will find that filing process is quite simple. After setting up a short profile to tell about the municipalities they typically file with and after entering their municipal taxpayer identification numbers, businesses will be ready to file.

When finished, their tax data and Automated Clearing House (ACH) debit payment instructions will be sent directly to the respective municipalities so there will be a clear payment trail to audit. Businesses can even specify the exact date on which their tax data and payment will be sent. One confirmation number assures that their information is reliably delivered to each municipality.

Businesses that need assistance with the system can turn to OBG's support staff for help with the on-line filing process. Local tax administrators will continue to service overall taxpayer accounts and provide businesses with assistance related to municipal income taxes.

The Gateway, which was designed to increase convenience for business taxpayers while saving tax dollars for the state, is growing dramatically. In calendar year 2003, there were 96,709 sales tax reports representing nearly $614.4 million, and 55,114 payroll withholding reports representing just over $195.2 million filed through the Gateway.

Compare that to the upsurge in calendar year 2004 when 186,133 sales tax reports representing nearly $1.6 billion and 135,821 payroll withholding reports representing nearly $372 million came through OBG.

Currently, about 15 percent of sales tax returns and five percent of withholding returns are filed through the Gateway. OBG believes it has significant upside potential as the utilization of these electronic filing services continues to grow. Over $2 billion was filed through the Gateway in 2004 for a total of over $3 billion in filings since inception.

Businesses that use the Gateway are truly helping themselves and the state by reducing the time and expense of completing their tax filings.

Latest Tax Hall of Famer Left Mark on Taxation, Poetry

When friends reminisce about former tax commissioner and tax attorney Edgar L. Lindley, they speak of how deeply he cared about the 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.

Edgar Lindley - former tax commissioner

Lindley was honored as the sixth inductee into the Ohio Tax Hall of Fame at the Ohio Tax Conference on January 27. Lindley's wife, Jean, and daughters, Cindy and Pat, along with their husbands, attended the ceremony.

Lindley began working at the Ohio Department of Taxation in 1949 as a legal researcher. Twenty-six years later, Governor James A. Rhodes appointed him tax commissioner, a post he held for almost eight years before becoming a tax attorney at the Columbus office of Bricker and Eckler until his retirement in 1994. His career also includes a stint as assistant attorney general.

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," he recalled.

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 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 of the poems in the book do reflect his high school days such as when he got his first car.

After the war, Lindley came to Columbus "to try to get some college credit" under the GI Bill. He became involved in learning how to create transcriptions and records of the vinyl variety. He later enrolled in night classes at Franklin University Law School.

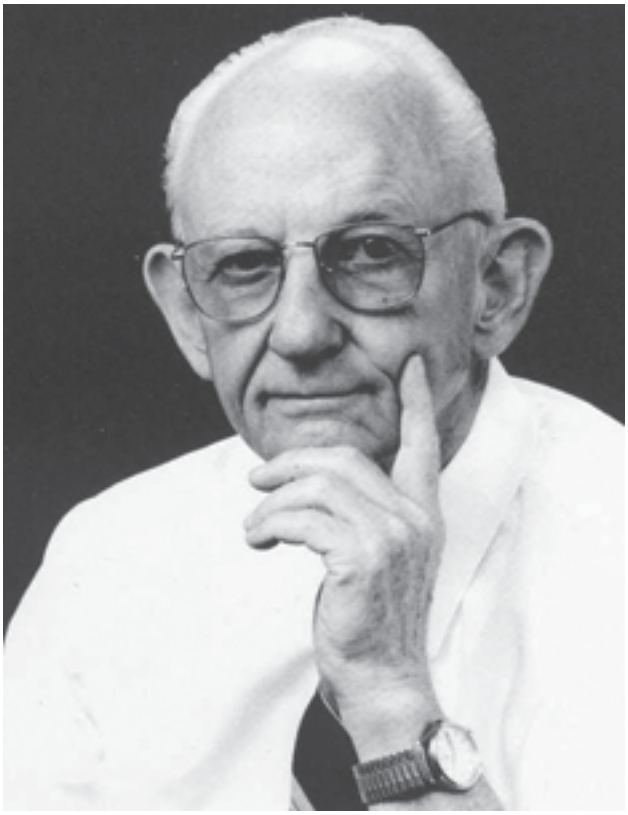
"I got along pretty well in law school and took the opportunity to look for a job, and a friend of mine from law school said why don't you come over to our place" said Lindley.

His friend's place just happened to be 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 until January 1983.

As assistant attorney general and as a private attorney, Lindley is credited with giving thoughtful consideration to tax policy and subjecting conventional thinking about issues to rigorous examination.



Edgar Lindley - Poet

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

Lindley litigated almost 30 cases before the Ohio Supreme Court involving a wide variety of tax issues and represented the tax department before the United States Supreme Court in Reserve Life Insurance Co. v. Bowers. That 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 linchpin of the Supreme Court's current analysis of the personal service exclusion from the sales tax.

Lindley also mentored a number of younger tax professionals, imprinting upon them a dedication to fairness and sound tax policy.

INFORMATION*releases*

The Ohio Department of Taxation recently issued the following information releases as summarized below. To view the releases in their entirety, please visit our web site at tax.ohio.gov and click on "Releases" in the Popular Links section at the top of the home page.

Income Tax

IT 2004-02, CFT 2004-02 - Income and Franchise Tax Updates - December 2004. Sets forth recent changes made to Ohio law and clarifies that Ohio's reciprocity agreements with neighboring states do not apply to certain non-resident owners of pass-through entities and that certain enterprise zone benefits do not apply to Ohio residents subject to Chapter 5747 of the Ohio Revised Code.

Real Property

RP 2004-01 - Amnesty for Real Property Tax Exemption Applications Dismissed Pursuant to Cleveland Clinic Found. v. Wilkins, 103 Ohio St.3d 382 (2004) - December 2004. The purpose of this information release is to address an amnesty provision the General Assembly enacted in Sub. H.B. 362.

Personal Property

PP 2004-02 - New requirements in filing 2005 personal property tax returns - December 2004. The purpose of this information release is to explain the new reporting requirements for the 2005 forms 920 and 945 and to introduce a new extension request form exclusively for new taxpayers.

PP 2005-01 - Valuation of Personal Property in a Lump-Sum Transaction Involving a Complete Business, Division or Entire Plant - January 2005. The purpose of this information release is to provide the valuation method to use for determining the true value of taxable personal property in the years after the establishment of a revised cost basis due to an arm's length transaction.

Corporation Franchise Tax

CFT 2004-03 - Questions Regarding Ohio's Manufacturing Machinery and Equipment Tax Credit - February 2005. Addresses questions the Ohio Department of Taxation has received regarding Ohio's tax credit for purchases of new manufacturing machinery and equipment for use in Ohio.

CFT 2000-01 - IRC Section 482 Study: Taxpayers seeking to Avoid Ohio Corporate Franchise Tax Report Required or Expanded Combinations - January 2005. Clarifies issues regarding the Department's statutory authority under Ohio Revised Code section 5733.052 to either require or to expand Ohio corporation franchise tax combinations.

Sales Tax

ST 2002-04 - Building Maintenance and Janitorial Services - November 2004. Describes the policy the Department of Taxation will use in applying sales tax to building maintenance and janitorial services.

ST 1995-02 – Building Management - November 2004. Address the application of sales and use tax to building

managers.

ST 1995-03 – Cable TV companies - November 2004. For sales and use tax purposes, the Department of Taxation considers companies that provide cable TV service to be rendering a public utility service.

ST 1995-04 - Core Changes - November 2004. Restates the Department's long held position concerning core charges.

ST 1982-01 – Documentary fees - November 2004. Addresses a "documentary fee" charge being made by some auto dealers.

ST 1989-03 – Human Organs and Tissue - November 2004. The transfer of human organs, bone, tissue, blood and blood products for the purpose of injecting, transfusing or transplanting into a human body are not transactions subject to Ohio sales and use taxes.

ST 1994-02 – Fruit Baskets, Holiday Baskets, Decorative Containers - November 2004. Reiterates the Department of Taxation's position regarding the application of sales tax to the sale of fruit baskets, holiday baskets and decorative containers containing food and/or non-food items.

ST 1989-02 – Hearing and Related Devices - November 2004. Clarifies the application or exemption of sales taxes to the sale of prosthetic devices and related devices and supplies.

ST 1995-07 – Investment Metal Bullion and Investment Coins - November 2004. Pertains to the retail sales of jewelry and/or commemorative medallions and the application of the sales tax.

COURT*decisions*

The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court from September through March, 2005. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

Corporation Franchise Tax

New World Communications of Ohio Inc. and WJW Inc. v. Zaino (Mar. 18, 2005), BTA 2003-1732 and 2003-1733

For the period 1995-1998, the taxpayers included the value of their FCC broadcast licenses as goodwill in their calculation of net worth under former Ohio Revised Code 5733.05(A)(4). Under the statute, goodwill was excluded from net worth. On audit, the Tax Commissioner's agents denied this inclusion. The BTA determined that the proper test for determining whether to include an asset such as the broadcast licenses in goodwill is whether it can be valued or purchased and sold separately from other assets. The BTA found that although it was the custom in the industry that such licenses are transferred with other assets, they could be valued separately and therefore were properly excluded from goodwill and included in net worth. The taxpayer appealed this case to the Ohio Supreme Court.

Personal Income Tax

Steven L. & Beatrice Rosedale v. Zaino (Feb. 11, 2005), BTA 2003-2101

Taxpayers sought refunds based on the carry back of a net operating loss from 1997 to 1994 and 1996. The Tax Commissioner allowed the refunds to the extent that the loss reflected a reduction in federal adjusted gross income, but not for amounts exceeding that. The taxpayer sought to apply the full amount of the federal net operating loss (taken against federal taxable income on the federal return) to Ohio adjusted gross income. This was disallowed by the Tax Commissioner. The Tax Commissioner determined that in applying the net operating loss to calculate Ohio tax liability, the loss must first be used to absorb the difference between federal adjusted gross income and federal taxable income before being used to reduce adjusted gross income. The BTA affirmed the Tax Commissioner's final determination of the matter. The taxpayers have appealed to the Ohio Supreme Court.

William F. Lowery v. Wilkins (March 11, 2005), BTA 2004-295

The BTA affirmed a frivolous filing penalty assessed against an income taxpayer who claimed a refund of his entire withholdings on the basis that wages were not income.

Personal Property Tax

Andrew Jergens Company v. Zaino (Feb. 18, 2005), BTA 2002-403 and 614

A manufacturer's personal property tax base was increased on audit to include certain application software such as Microsoft Excel, Microsoft PowerPoint, WordPerfect and Lotus. The manufacturer contended that the software was intangible property and therefore outside the definition of Ohio Revised Code 5701.03(A) which defines personal property as "every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code." The BTA held that "canned" or "off-the-shelf" software is tangible personal property, subject to the personal property tax. The taxpayer has appealed these cases to the Ohio Supreme Court.

Funtime, Inc. v. Wilkins (2004) 105 Ohio St. 3d 1441

Three amusement rides – Grizzly Run, Mind Eraser, and Skyscraper – were purchased by Geauga Lake Amusement Park and installed on its site by contractors during the period 1995 through 1997. Agents of the Tax Commissioner included the purchases in a sales/use tax audit, and the taxpayer appealed, contending that the rides were not personal property, but realty. The Supreme Court held that, under Ohio Revised Code sections 5701.02 and 5701.03, as amended in 1992, 'business fixture' means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty.

The Supreme Court stated that the decisive test of whether property is personal or real is whether it is devoted primarily to the business conducted on the land, or primarily to the use of the land on which the business is conducted. In this case, the court found that the rides were devoted to the business of the amusement park. Accordingly, they are business fixtures, and so retain their classification as personal property. As such, their purchase is subject to sales/use tax.

Terri Johnson v. Zaino (Dec. 3, 2004), BTA 2003-2113; 2004-605

A photographer who was a 50 percent owner and principal operator of a family photography business was assessed personally under Ohio Revised Code 5739.33 for unpaid sales tax. She had operated her business as a Subchapter S corporation, along with two other part-time people who were to have primary responsibility for the business and financial aspects. The BTA rejected the taxpayer's contention that she should not be held liable because she had arranged for the two others to handle the financial matters. The BTA held that the responsibility for discharging sales tax obligations cannot be delegated.

Castle Aviation, Inc. v. Zaino (Jan. 14, 2005), BTA 2003-146

A use tax audit was conducted on the operator of an Ohio air transportation service. The taxpayer contended that its purchases were exempt under Ohio Revised Code 5739.01(E)(2), which provides exemption for purchases directly used in rendering a public utility service. During the audit period, Castle owned or leased eight planes, ranging in size from twin engine pistons to single-engine, turbine-powered aircraft. Castle regularly serviced two customers on a daily or weekly basis. One contract was with the *New York Times* to deliver its newspapers printed in the Canton area to both Toronto, Ontario and Louisville, Kentucky for home delivery, and the second was with Purolator Canada, a delivery service, to regularly transport certain tools from Ohio to a Purolator location in Canada for further delivery. The taxpayer also provided charter services. The BTA found that the taxpayer did not meet the definition of "public utility" as that term has been developed through sales tax case law. Sales tax cases have defined "public utilities" to be those entities which offer their services to the public on an indiscriminate basis. In this case, while the taxpayer advertised its services publicly, it contracted privately with its customers. Moreover, the taxpayer did not offer its services on regularly scheduled flights available to the general, indefinite public. The BTA therefore denied exemption. The taxpayer has appealed this case to the Ohio Supreme Court.

Craig A. Williams v. Zaino (February 18, 2005), BTA 2004-135

A car buyer still owed $6,800 on the vehicle he was trading in on his purchase and asked the dealer to provide him with aloan for that amount. The dealer wrote up the bill of sale for the purchase of the new vehicle and included an additional$6,800 in the price. Sales tax was collected on the price of the vehicle as shown on the bill of sale. The dealer subsequentlyprovided the buyer with a check for $6,800. The buyer filed a refund claim for the sales tax paid on the $6,800. OhioRevised Code 5739.01(H)(1) defines price as "*** the aggregate value in money of anything paid or delivered, ****without any deduction on account of* the property sold, cost of materials used, labor or service cost, interest, *discount paid or allowed after the sale is consummated*, or any other expense." Because the $6,800 additional loan was madeafter the sale was consummated, the BTA affirmed the Tax Commissioner's denial of the claim.

International Paper Corp. v. Zaino (March 11, 2005), BTA 2003-713

A paper manufacturer that bailed paper scrap and shipped it to another plant for an intra-company credit claimed the machinery used in handling the scrap was exempt packaging equipment. However, the BTA rejected this contention because the packaging exemption, Ohio Revised Code 5739.02(B)(15), applies to packaging materials and equipment used to package items for sale. It does not apply to equipment used to package items for intra-company transfers.

Real Property Exemption Cases

Total Health Care Plan Inc. v. Zaino (Dec. 17, 2004), BTA 2003-57

A licensed health maintenance organization (HMO) for low-income Ohioans was taken over by the Ohio Department of Insurance in 1999 after it became insolvent. Title to a parcel of realty which was used by the HMO for office and storage space was transferred from the HMO to a property management company. Subsequently, the Department of Insurance submitted an application on behalf of the HMO for exemption for that parcel. Ohio Revised Code 5715.27(A) provides, in part: (A) The *owner* of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that unpaid taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code. (Emphasis added.) Because the application for exemption was not submitted by the owner (the property management company), the applicant did not have standing and the BTA affirmed the Tax Commissioner's denial of the application for exemption.

Crew Soccer Stadium LLC and Ohio Expositions Commission v. Zaino (Jan. 28, 2005), BTA 2001-368

The Crew Soccer Stadium LLC and the Ohio Exposition Commission applied for exemption under R.C. 5709.081 for the soccer stadium located at the Ohio State Fairgrounds. The code section provides exemption for certainreal and personal

property used as athletic facilities and meeting certain criteria. However, the BTA held that the Columbus Crew Stadium did not qualify for exemption because it was not owned and operated by a political subdivision, or under the control of a political subdivision, nor was the LLC a "public body" as alternatively specified in the statute. The applicant has appealed this case to the Ohio Supreme Court.

TAXenforcementnews

The following convictions were secured by the Enforcement Division of the Ohio Department of Taxation from November and December 2004 and January 2005. Enforcement News is compiled by Robert M. Bray, Administrator, Enforcement Division. Fraud complaints can be e-mailed to Taxenforcement@tax.state.oh.us.

John Gueli, owner and president of Sun Holiday Pools, Inc. in Pataskala and Columbus, was found guilty of seven counts of failure to file sales tax returns and seven counts of filing fraudulent returns. An anonymous complaint was received stating that Sun Holiday Pools was collecting sales tax and not remitting the full amount. A check of the Ohio Department of Taxation's computer system reflected very small amounts of sales tax being reported on the semi-annual returns being filed and no money being remitted with the returns. Mr. Gueli was sentenced to five years of community control sanctions and ordered to pay $297,616.00 in restitution. Due to the failure of his drug test, Mr. Gueli's bond was revoked. He was ordered to be incarcerated in the Licking County Justice Center for ten days.

Delbert W. Lambert, owner of Lambert Food Mart in Zanesville, entered a plea of no contest to six counts of collecting and failing to remit sales tax, ten counts of filing a fraudulent sales tax return and six counts of collecting and failing to remit employee withholding. A search warrant was issued and executed with seven boxes of business records taken. An audit determined that sales tax was underreported by as much as $1,000 to $1,200 per month. On December 20, 2004, Mr. Lambert appeared in Muskingum County Common Pleas Court and was found guilty. He was ordered to pay $50,000 in restitution and to serve three years of community-controlled sanctions and 100 hours of community service. The restitution is to be paid within three years and a lien will be placed on his property. If Mr. Lambert does not meet the requirements of the community-controlled sanctions, he will be ordered to serve 17 months in prison.

Statewide, the Enforcement Division's delinquent program known as "Operation Pay-Up" has resulted in the citation and/or conviction of 802 vendors and caused 5,778 returns to be filed and $4,327,020.50 to be collected as of January 31, 2005.

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

Assorted Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Mario Rameriz	Los Pinos, LLC	Hamilton	1 Count No Cigarette License
Sali Salem	3266 West 117 St., LLC	Cleveland	1 Count No Cigarette License
Sanaa Morgan	Sunrise Food Mart	Cleveland	1 Count No Cigarette License
Paul Remy	Paul's Motor Sales	Chillicothe	1 Count No Cigarette License
Kamlesh Vakli	Rexall Discount	Cleveland	1 Count Retailer in Possession of Cigarettes Not Bearing Tax Stamps
Kiranchandra Shah	Loveland Pony Keg	Loveland	1 Count Retailer in Possession of Cigarettes Not Bearing Tax Stamps

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
John Weber	John Weber Good Food	Wauseon	1 count failure to file sales tax returns
Mario Ramirez	Los Pinos, LLC	Hamilton	1 count failure to file sales tax returns, 1 count failure to collect sales tax
Fieldon Burton	Fieldon Burton	Jamestown	1 count no vendor license
Anna Petry	Magnum Towing	Chesterland	1 count no vendor license
Greg Baher	Greg Baher	Seven Hills	1 count no vendor license
Raymond Shockley	Franklin Auto Repair	Franklin	1 count no vendor license
Jethro Quinn	Jay's Automotive	Middletown	1 count no vendor license
Ladd Kreston	Kaczko, LLC	Mantua	1 count failure to file sales tax returns
John Foy	Patrick J	Collins	2 counts failure to file sales tax returns
Lawrence Hunt	Doll Transportation	Cleveland Heights	1 count failure to file sales tax returns
Rod Ashcraft	Ashcraft Tree Service	Findlay	2 counts failure to file sales tax returns
Charles Clark	Ayers Music	Rock Creek	1 count failure to file sales tax returns
Mark Falcone	L&M Fal Corp.	Lakewood	3 counts failure to file sales tax returns
Kent Gray	Newark Detective Agency	Newark	1 count failure to file sales tax returns
Dennis C. Lange	Dennis Lange	Toledo	1 count failure to file sales tax returns
Roxanne Braatz	Rockies Towing, Inc.	Toledo	1 count failure to file sales tax returns
Katherine Stalnaker	Post, Inc.	Akron	1 count failure to file sales tax returns
Repanzle Sigler	Smoke Shack BBQ	Columbus	1 count failure to file sales tax returns
Delbert W. Lambert	Lambert Food Mart	Zanesville	6 countscollecting and failing to remit sales tax, 10 counts filing fraudulent sales tax returns
John Gueli	Sun Holiday Pools	Pataskala	7 counts collecting and failing to remit sales tax, 7 counts filing fraudulent sales tax returns
K.L. Gattshall	Frosty's Drive Thru	Marion	1 count failure to file sales tax returns
Gloria Savage	Arc Ancient, Inc.	Cleveland	1 count failure to file sales tax returns
Brian Williams	Total Car Care Center	Willowick	1 count failure to file sales tax returns
Michael Howell	Howell's Body & Frame	Brookville	1 count failure to file sales tax returns
G.S. Patel	International Cuisine	Dublin	1 count failure to file sales tax returns
Jamey Hindall	Quality Carpet	Toledo	1 count failure to file sales tax returns
Charles G. Jones	WPI Drive Thru	Bucyrus	2 counts failure to file sales tax returns
Steven Basinger	The Sweeper Shop	Lima	1 count failure to file sales tax returns
Lenny Hildreth	World Energy Systems	Toledo	1 count failure to file sales tax returns
Cynthia Kania	Pig Outs	Monclova	1 count failure to file sales tax returns
A. Joseph Ray Jr.	After 5 Design	Toledo	1 count failure to file sales tax returns
James Mills	Jacquelyn's Gifts	Toledo	1 count failure to file sales tax returns
Patricia Schreffler	Frannie O'Briens	Canton	1 count failure to file sales tax returns
Todd Ewing	Coral Bays Spas	Lima	2 counts failure to file sales tax returns
Christopher Domitio	Swanton Computers	Swanton	1 count failure to file sales tax returns
Soheil Abdel-Rahman	Dollar Daze	Toldeo	1 count failure to file sales tax returns
James Zaleski	Divas	Toledo	1 count failure to file sales tax returns
Cynthia Brubaker	Tech Art Design	Bettsville	1 count failure to file sales tax returns
Todd Shuster	Todd Shuster	Bowling Green	1 count failure to file sales tax returns
Burton Myers	Tip's Auto Service	Upper Sandusky	1 count failure to file sales tax returns

PRO-*files*

By Peter Angus, Legal Counsel, Compliance Division

Commercial Activity Tax, Other Major Changes Expected from Tax Reform

Governor Taft has declared tax reform a top priority in making Ohio economically competitive with surrounding states and improving conditions for business growth and employment. The governor's tax reform package, House Bill 66, will, if passed, transition many Ohio business taxpayers from the current corporation franchise tax and personal property tax to a new tax. It will also eliminate the additional estate tax and provide a 21 percent reduction for personal income taxpayers. The revenue from these taxes will be replaced by a low-rate, broad-based commercial activity tax levied on the gross receipts of most businesses. Here is an overview of the new commercial activity tax (CAT) and other proposals in the currently-pending bill:

■ The CAT will apply to retail, service, manufacturing and other general businesses regardless of the type of organization. Proprietorships, partnerships, LLCs, LPAs and Subchapter-S corporations will become commercial activity taxpayers along with Subchapter-C corporations. Excluded from the CAT will be most public utilities (which will remain subject to the public utility excise tax and public utility property tax), financial institutions (which will remain subject to the corporation franchise tax on the net worth basis), dealers in intangibles (which will remain subject to the dealers in intangibles tax), insurance companies and businesses with less than $40,000 of taxable gross receipts.

■ The tax base of the CAT is business gross receipts, defined as the total amount realized in the ordinary course of business, with deductions for cash discounts allowed and taken, returns and allowances and bad debts. Receipts from sales to out-of-state buyers are not included. Among other items not included in gross receipts are proceeds from businesses' financing and investment transactions, employee compensation, gifts, amounts received by agents in excess of their commissions, tax refunds and sales/use taxes collected by vendors.

■ The tax rate of the CAT is 0.26 percent. For the estimated 270,000 taxpayers with $40,000 to $1 million of gross receipts, the CAT is a minimum fee of $100. For taxpayers with more than $1 million of gross receipts, the tax is $100 on the first $1 million and 0.26 percent on gross receipts over $1 million.

■ The CAT will be phased in over five years while the corporation franchise tax and personal property tax are phased out. Revenues from the CAT are projected to be $265 million in fiscal year 2006, reaching $1.548 billion in fiscal year 2010. Concerns regarding possible "pyramiding" of the CAT through successive pre-consumer transactions have been addressed in the bill by providing for a low tax rate and the phasing out of other taxes - such as franchise and property - which have up to now been embedded as costs in such transactions.

■ Determining which out-of-state businesses are subject to the CAT is simplified by the terms of the bill, which provide clear guidance. An out-of-state business is subject to the CAT if it has over $50,000 in real or personal property in Ohio, or if it has over $50,000 of payroll in Ohio, or if it has over $500,000 in taxable gross receipts in Ohio, or if more than 25 percent of its activity is in Ohio.

■ Rates for the Ohio personal income tax will be reduced 21 percent for all brackets, and a low-income credit will eliminate liability for about 550,000 Ohio taxpayers with less than $10,000 Ohio taxable income. The top income tax rate will be reduced from the current 7.5 percent to 5.925 percent by 2009. Savings to personal income taxpayers will be over $2 billion by 2010.

■ The taxation of accumulated trust income, in effect since 2002 and originally set to expire in 2004, is made permanent in the bill.

■ The corporation franchise tax will be phased out over five years. Corporations will calculate their corporation franchise tax liability and then multiply by 80 percent, 60 percent, 40 percent, 20 percent and zero for years 2006 through 2010, respectively.

■ Under Governor Taft's proposal, personal property tax on new machinery and equipment is immediately exempt. Existing machinery and equipment is phased out through 2007. Inventory tax is phased out from 2008 through 2010, and the exemption for patterns, jigs, dies and drawings is eliminated except for certain utilities. Furniture and fixtures remain subject to personal property tax. The State will reimburse the school districts and local governments for the revenue lost by the reduction of the personal property tax base, using 2004 as a base year and patterning the process after the mechanism that was used for utility deregulation. From fiscal year 2012 through 2020, the reimbursements will be phased out.

■ The proposal also includes a provision for replacing the 1.0 percent sales tax enacted in 2004 with a 0.5 percent sales tax, saving taxpayers $719 million in fiscal year 2006. Cigarette taxes are increased $0.45 per pack and the tax on other tobacco products is increased 17 percent, generating $370 million in fiscal year 2006. The rates for all alcohol beverage taxes, except those on spirituous liquor, are doubled, increasing revenue $50 million in fiscal year 2006.

■ The 10 percent rollback on commercial and industrial real property is eliminated. A real estate transfer tax of one mill, levied by the State, will be collected by county auditors.

■ The additional estate tax, or "sponge" tax, is eliminated effective the date of passage of the bill.

■ The kilowatt hour tax rates are increased by 30 percent, raising $162 million additional revenue in fiscal year 2006. The average residential consumer would see an increase of about $1.40 per month as a result.

The state's budget for the next two fiscal years must be signed into law by Governor Taft no later than June 30 for the fiscal year beginning July 1. The proposals in the bill may be modified by the House of Representatives and the Senate. Both houses must approve the final budget bill. Meanwhile, the Ohio Department of Taxation is taking necessary steps now to prepare for whatever major tax reforms may be implemented.

Tax Calendar at-a-Glance

April	
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
29	Quarterly Income Tax Withholding Returns
May	
13	Monthly Income Tax Withholding Returns
13	Quarterly Estimated Income Tax Return
20	Monthly Kilowatt Hour (KWH) Tax Return
20	Quarterly Natural Gas Distribution (MCF) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer Use and Direct Pay Returns
June	
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

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