

Most Paid Tax Preparers Now Required to File Electronically

A state law enacted in 2008 requires most paid tax preparers to electronically file their clients' state income tax returns beginning Jan. 1, 2010.

The law applies to paid tax preparers who filed more than 75 tax returns during the 2008 calendar year or during any subsequent year. The requirement was supported by the Department of Taxation primarily as a way to cut down on government processing costs. At least 19 other states have already enacted some form of an electronic filing requirement for paid preparers, and a requirement is also being considered on the federal level.

Electronic filing also produces tangible benefits for taxpayers. It cuts down on errors associated with pen-and-paper returns, for example. Also, when returns are filed electronically, income tax refunds are usually available by electronic deposit within seven days – much faster than with paper returns.

Acceptable methods for electronically filing the 2009 IT 1040 are:

- The IRS federal/state e-file program. This includes any of the tax software vendor products which the tax commissioner has approved. Most of these products are already in use by the tax professional community. A list of products approved by the tax commissioner is available on the department's Web site.
- Ohio I-File. I-File is a Web-based tool for filing state income tax and school district income tax returns. The software's wizard asks a series of questions, then compiles a return based on those answers.
- Ohio eForms. Through eForms, taxpayers can complete Adobe Acrobat versions of all major state and school district income tax forms online, much as one would on paper. Taxpayers or preparers can then print, save or submit the return directly to us.

Electronic filing has grown in popularity over the years; in Ohio, close to two-thirds of state income tax returns are now filed by a paperless method. The department hopes the new requirement will boost that number further.

The Ohio Department of Taxation has been working closely with tax professionals, professional organizations and trade associations in helping preparers meet the electronic filing requirement.

Any preparer can petition the tax commissioner to opt out if the tax preparer can demonstrate just cause. The tax commissioner is sensitive to issues that may warrant opt-out consideration. However, merely not wanting to participate does not constitute just cause.

The law also provides that the tax commissioner may impose a \$50 penalty for each return above 75 that is not filed, but should have been filed, by electronic technology. School district income tax returns, amended returns, and electronic tax payments are not currently part of this requirement.

More information on each electronic filing option is available on the Ohio Department of Taxation's [income tax electronic filing page](#).

The department has also developed a list of [frequently asked questions](#) designed specifically for tax preparers. Preparers with additional questions may visit the [Contact us](#) section of our Web site and submit an inquiry. Preparers with further questions may also contact Electronic Filing Manager Karen Fisk at (614) 466-0197. 

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Commissioner's Column

End of Century-Old Taxes Enhances Ohio's Business Climate



Commissioner Levin

As you are probably aware, state leaders decided last fall to temporarily postpone a state income tax cut originally planned for 2009.

This decision garnered a sizable amount of media attention, and that's understandable. Our state constitution requires that the state budget be balanced. By deciding to temporarily maintain income tax rates at 2008 levels, rather than reduce them for 2009, state leaders were able to close an \$851 million budget gap that had emerged because of an unexpected court decision.

Unfortunately, lost in this focus on one particular tax change is the fact that Ohio has recently undergone a much larger package of tax changes that has significantly lowered the burden on state taxes on Ohio's citizens. In fact, the past five years have seen one of the most sweeping packages of tax reforms and reductions in state history. These changes, launched in 2005 while Bob Taft was governor, have been largely brought to completion during the Strickland administration. They include:

- a 17 percent reduction in individual income tax rates. A family of four earning \$60,000 will save about \$350 this year thanks to four previous rate reductions. A fifth income tax cut (planned for 2009) is now set for 2011.
- elimination of Ohio's century-old corporation franchise tax on net profits or net worth. For nearly all corporations, this tax is a thing of the past. The last payments were due last year.
- elimination of tangible personal property taxes on business machinery, equipment and inventory that dated back to well before the Civil War.
- a new commercial activity tax (CAT) that, in total, imposes less than half the burden of the two major business taxes it replaced.

Overall, these changes represent the largest cut in state taxes in about 70 years, with taxpayers in line to save about \$2.1 billion this year alone. Income tax rates are now the lowest since 1981.

Also, thanks to the business tax changes, Ohio is one of two states that no longer taxes business personal property or corporation profits. This means a competitive advantage for Ohio that should bear more fruit once the national recession clears.

In fact, these changes are collectively so monumental that some questioned at the time whether or not state leaders would be able to follow through with them. After

all, it was a five-year plan that would require signoff by three general assemblies and two administrations before it could be completed.

The skepticism was understandable, considering how long business leaders and other experts had been calling for some of these tax changes. More than 40 years ago, a select panel to study Ohio taxes described the tangible personal property tax on businesses as the single most hated element of the state and local tax system.

"The tax tends to penalize the firm that installs costly new equipment," the Ohio Tax Study Commission noted. Yet "the health of the state's economy depends on the ability of its industry to keep abreast of the advance of modern technology and to remain competitive with industry in other states."

That was in 1967. In 1994 and again in 2003, similar committees called for the complete elimination of this tax, which experts argued heavily penalized businesses that choose to invest in Ohio. These wishes have come true. In 2009, for the first time in 163 years, Ohio businesses no longer faced a general tax on the value of personal property, such as machinery and equipment.

Of all the tax law changes outlined in House Bill 66 in 2005, more than 90 percent are now fully phased in. Through two administrations and three general assemblies, Ohio has largely stayed the course on this plan.

It hasn't been easy. The national recession has compounded the effect of these reforms, dramatically reducing tax revenue. In 2009, overall tax collections into the state's general fund fell by an astounding 12 percent. For this year, general tax collections are projected to fall to where they were seven years ago.

This has forced many difficult budget decisions, since state government's expenditures cannot exceed available revenues. Since the start of 2007, for example, state government has reduced its workforce by close to 5,000 positions. Those who remain are required to take ten unpaid "cost savings" days this year and next. So there has been real sacrifice.

I sense real excitement among business leaders about these tax reforms. In Northwest Ohio, economic development leaders tell me the elimination of property taxes on business inventory should help their efforts to lure employers such as distribution centers to the Interstate 75 and Ohio Turnpike corridors. In Columbus, the president of the Ohio Manufacturers' Association recently told the *Columbus Dispatch* that Ohio has "a tax structure right now that beats anybody."

I share this enthusiasm. Looking ahead, I believe these tax changes will make a significant and lasting contribution to the growth and prosperity of our state. 

Court Decision Upholds Commercial Activity Tax

The Ohio Supreme Court ruled Sept. 17 that the state's commercial activity tax (CAT) is not a tax on the sale or purchase of food and does not violate provisions of the Ohio Constitution that prohibit such a tax.

In its 6-1 decision, the Court specifically clarified that the CAT "is a tax on the privilege of doing business" and the "fact that the tax is measured by gross receipts that include proceeds from the sale of food does not affect the constitutionality of (the CAT)."

The court's ruling in the *Ohio Grocers Association v. Levin* case overturns a lower court decision and protects about \$188 million in revenue generated annually from the tax and, more broadly, preserves a package of state tax reforms that were enacted in 2005

"This decision is an important victory for those who are working to improve Ohio's business tax climate and lower the tax burden in Ohio," said Tax Commissioner Richard A. Levin. "Had this case gone the other way, all of these changes to Ohio's tax laws may have been at risk."

In addition to the commercial activity tax, the 2005

tax reforms include a substantial cut in income tax rates, the elimination of a tax on corporation profits and the elimination of property taxes on business machinery, equipment and inventory. Overall, these tax law changes enacted in 2005 are providing \$2.1 billion in annual tax relief.

On Sept. 2, 2008, the 10th District Court of Appeals issued a decision that the CAT may not be imposed on gross receipts derived from the sale of food for consumption off the premises. The Tax Commissioner, through the Attorney General's Office, filed a motion for a stay of the judgment so the State could appeal the decision to the Ohio Supreme Court. The case was argued in front of the Ohio Supreme Court on Sept. 1, 2009.

Taxpayers should have continued to file all applicable returns and make all applicable payments for the CAT. However, if taxpayers have not been in full compliance with this requirement, they should come forward to amend their returns. Taxpayers with questions may call the CAT Division of Ohio Department of Taxation toll-free at (888) 722-8829. 

Popularity of Paperless Income Tax Filing Continues to Grow

The percentage of taxpayers who use computers or telephones to file their Ohio income tax returns hit a record high of 66 percent last year, and a new electronic filing mandate on tax preparers filing high volumes of returns is expected to drive that percentage higher. Del Harlan, executive administrator of Personal and School District Income Tax, said paperless income tax filing increased three percent in 2009 over the previous year. Noting that this increase represents "good growth," Harlan said more people, particularly those expecting refunds, have concluded that paperless filing turnaround times are much faster than paper.

With a new electronic-filing mandate in place on tax preparers who file more than 75 income tax returns, Harlan conservatively predicted that the paperless growth rate would be about five percent higher in 2010 than last year.

While paperless filing has increased, the total number of Ohio personal income tax returns filed this year declined after hitting a record high the previous year. Through Nov. 24, 2009, the department had processed 5,447,271 personal income tax returns, down 104,030 from last year at the same time.

Harlan said Ohio is not the only state that experienced a decline in income tax returns being filed. All of Ohio's neighbors have also seen declines. He attributed the decline to the economy. Two years ago, he noted, that the total for Ohio represented the "biggest year we have ever had" in terms of individual income tax returns filed.

The number of people filing their income tax returns through TeleFile, the first type of electronic filing ever offered at the department, was again down this year, dropping to under 100,000 for the first time since being introduced.

Nevertheless, Harlan said TeleFile remains an important paperless filing option that will be maintained. Without it, he explained, many of those who use this method, would go back to filing paper returns instead of using a computer. "It's important because of the cost savings of processing the return," he said.

As for school district income tax returns, 740,891 had been filed as of Nov. 24, 2009, up 29,014 over the previous year. Of those, just over 60 percent have been filed through paperless means. "They like the electronic method. It's easier," Del said about school district income tax filers.

Harlan said more schools districts are adopting this form of revenue and that growth has helped increase the total volume of returns filed.

Another increase in school district income tax returns is expected this year year, according to Harlan, as another four or five school districts have added them to their revenue mix. With an earned income option now available to school districts, he predicted that more school districts would turn to this form of revenue. 



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 2009 through December 2009. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

Corporation Franchise Tax

D&M Enterprises Inc. v. Levin (Sept. 15, 2009), BTA #2009-652

The Tax Commissioner assessed a corporation for failure to file a corporation franchise tax report for tax year 2006 based on taxable year 2005. The assessment was made using estimated amounts. The corporation was in a Chapter 7 bankruptcy action. The corporation did not file a return when it petitioned for reassessment, nor did it pay the amount required under Revised Code 5733.11(E) (2) to establish jurisdiction for review. Accordingly, the BTA affirmed the Tax Commissioner's dismissal of the matter.

Commercial Activity Tax

Ohio Grocers Association, et. al. v. Levin, 123 Ohio St.3d 303, 2009-Ohio-4872

Ohio's commercial activity tax (CAT), Revised Code 5751.02 et seq., was enacted in 2005. The CAT is levied on persons for the privilege of doing business in the state of Ohio and is measured by taxable gross receipts. In an action originally brought in common pleas court by the Ohio Grocers Association, the Supreme Court held that the commercial activity tax is not tax on the sale or purchase of food and therefore does not violate Section 3(C) or 13, Article XII, of the Ohio Constitution, as the association had asserted. The court held that the commercial activity tax is a tax on the privilege of doing business and the fact that the tax is measured by gross receipts that include proceeds from sales of food does not affect the constitutionality of the tax.

Ohio Farmers Foodservice, et. al., v. Wilkins. (Sept. 29, 2009) No. 09 CV 682273

The original complaint requested equitable relief based on the 10th District Court of Appeals decision in *Ohio Grocers Assoc., et. al. v. Wilkins.* 897 N.E.2d 188 (Ohio App. 10th Dist., Sept. 2, 2008). Subsequently, the

case was stayed pending the outcome of *Ohio Grocers Assoc., et. al. v. Levin.* The parties stipulated to a dismissal after the Ohio Supreme Court reversed the above-cited case.

Overstock.com, Inc. v. Levin (July 28, 2009) No. 08CVH 16412

The Franklin County Court of Common Pleas dismissed a challenge to the commercial activity tax (CAT) for lack of standing and for justiciability. The Ohio Department of Taxation (ODT) sent Overstock.com letters requesting that it register for the CAT because ODT believed that Overstock.com had more than \$500,000 in annual taxable gross receipts, therefore subjecting Overstock.com to the CAT. Overstock.com filed suit based on the perceived "threat" of estimated assessments. The court held that Overstock.com had adequate remedies available to it through the administrative review process within ODT and the BTA.

Employer Withholding

Gerhart Auto Repair Ltd. v. Levin (Dec. 29, 2009), BTA #2009-1390

Austintown Ambulatory v. Levin (Nov. 10, 2009), BTA 2009-696

In these two cases, employers' purported notices of appeal to the BTA concerning assessments for withholding taxes were dismissed because the employers failed to serve notices of appeal with the Tax Commissioner, as required by Ohio Revised Code 5717.02.

Sigma Capital, Inc. v. Levin (Dec. 8, 2009), BTA 2009-2330

A purported appeal to the BTA was dismissed upon the motion of the Tax Commissioner because the taxpayer had not pursued legal review with the Tax Commissioner on the matter and received a final determination. For taxes administered by the Tax Commissioner, only matters which are the subject of a final determination may be appealed to the BTA under Revised Code 5717.02.

Excise Tax

Jack Ceccarelli v. Levin (Nov. 10, 2009), BTA 2007-391

A responsible party of a corporation which owed delinquent motor fuel tax contended that the assessment against him was barred by the four-year statute of limitations of Revised Code 5735.12. The delinquent periods were April–August, 2000. The assessments for \$665,797 against the corporation were issued in 2002 and were not paid. The assessment against the responsible party was issued in 2007. The BTA held that the assessment was not

barred by the four-year statute, because that applies only to motor fuel dealers, i.e., the entity, not to responsible parties within the entity. Mr. Ceccarelli has appealed the BTA decision to the Ohio Supreme Court.

Exemption Certificate

Liberty Waste Transportation LLC v. Levin (Sept. 22, 2009), BTA #2007-236

A waste material handling company provided its customers on the East Coast of the U.S. with containers which the customers filled with waste. The company picked up the containers periodically, loaded the material onto railcars, and had the material shipped to Ohio where it was interred in landfills. The company sought water pollution control exemption certificates for its railcars and waste containers. Revised Code 5709.20(L) provides, in part, that "Industrial water pollution control facility" means any property designed, constructed, or installed for the primary purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of this state...." Revised Code 6111.01(C) defines "industrial waste" as "any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade or business...." The BTA held that the company had failed to show that the equipment and the waste were of such a nature that they came within these definitions. The containers and railcars were not shown to have been designed and constructed for the specific purpose of handling industrial waste, as opposed to waste in general. Further, the waste was not shown to have resulted from a process of industry, manufacture, etc, as the statute specifies. Accordingly, the BTA affirmed the Tax Commissioner's denial of the application for exemption certificates. Liberty Waste Transportation has appealed the BTA decision to the Franklin County Court of Appeals (10th District).

Personal Income Tax

Robin S. Turner v. Levin (Sept. 15, 2009), BTA #2007-768

A taxpayer who contended that wages are not income filed a return showing -0- adjusted gross income, although his W-2 indicated a substantial wage income. The Tax Commissioner imposed a penalty for filing a false or fraudulent return, and the taxpayer appealed. The BTA affirmed the penalty because the taxpayer had not shown that there was an abuse of discretion on the part of the Tax Commis-

sioner in imposing the penalty. Mr. Turner appealed to the Ohio Supreme Court. The Court dismissed the appeal on March 16, 2010.

William J. Ross v. Levin (July 14, 2009), BTA #2007-117

An individual was assessed personally under Revised Code 5747.06 for personal income tax withholding owed but not paid by Fairport Yachts, LLC. The individual testified at the BTA hearing that the records of the LLC were lost in a flood. He indicated that he was counsel to an investment company which had invested in Fairport Yachts, LLC, and that it was common for him to accept the position of president in investee companies. Additionally, he was named as president in the corporate charter filed with the Ohio Secretary of State. On these facts, the BTA affirmed the assessment against him for unpaid income tax withholding.

Anthony F. Ditz v. Levin (June 30, 2009), BTA #2007-998

The BTA affirmed a \$200 late filing penalty against a taxpayer who was assessed for not reporting all of his income on his Ohio income tax return. The taxpayer contended that he did not receive a bill before he was assessed. The BTA found that the Tax Commissioner had not abused his discretion in affirming the penalty.

Personal Property Tax

Trunkline Gas Co. v. Wilkins; Panhandle Eastern v. Wilkins (July 7, 2009), BTA #2005-578, 579

A gas pipeline company originally recorded new personal property on its books for a pipeline which it constructed with another gas pipeline company. Later it sought to change the entry on its books to "contribution in aid of construction" and classify it as an intangible. The BTA held that the taxpayer had not met its burden of proving its assertion regarding the classification of the property as tangible or intangible by providing probative, contemporaneous evidence. Accordingly, the assessment was affirmed.

Vince Lamberjack, dba Lamberjack's Marina and Cottages v. Levin (Nov. 17, 2009), BTA 2007-286

The owner of a marina appealed the final determination in which the value of some of his unreported business property was established on audit. The owner testified as to the condition of various pieces of equipment. The BTA found that there was no pumpout system, and so that was removed from the audit. The value of a crane was reduced based on testimony of the owner. The values of the remainder of the business property were affirmed by the BTA.

Real Property Tax

Ohio Apt. Association v. Levin (July 22, 2009), 122 Ohio St.3d 1231

An apartment owners association brought an action in the Board of Tax Appeals challenging the Ohio Administrative Code provisions promulgated under Ohio Revised Code 319.302. Those provisions limit the 10-percent property-tax reduction to property that is "not intended primarily for use in a business activity." As they affect residential apartments, the statute and the administrative rules distinguish between one- to three-family dwellings, which enjoy the tax reduction; and dwellings for four or more families, which do not. The apartment owners alleged that this distinction violates the tax uniformity and equal protection provisions of the Ohio Constitution. The Board of Tax Appeals had found the rules to be reasonable and the Ohio Apartment Association had appealed the Board's decision to the Ohio Supreme Court. While at the Court, the Tax Commissioner moved that the appeal be dismissed but the Ohio Supreme Court held that the apartment owners had alleged at least one constitutional issue, and the matter therefore should be heard and decided by the Court.

NBC-USA Housing v. Wilkins (July 14, 2009), BTA #2007-110

A charitable entity which existed, in part, for the stated purpose of securing and operating resident apartments for aged and needy persons sought exemption from taxation under Revised Code 5709.12. The entity showed that the rent received from tenants was intended to be at or below cost, and in no event to result in a profit, and that it expected that some persons unable to pay the full rental would be assisted by subventions from corporate funds. The entity showed that its primary purpose is to use the subject property as federally subsidized residential housing. The BTA held that this use does not qualify for an exemption under Revised Code 5709.12. NBC-USA Housing has appealed to the Ohio Supreme Court.

Trinity Fellowship Church v. Levin (June 23, 2009), BTA #2007-566

A church sought exemption under Ohio Revised Code 5709.07(A)(2) for two parcels of realty adjacent to its church building. One parcel was used for extra parking and the other was not yet developed but there was planning for it to be used for either athletic fields or an amphitheatre. Revised Code 5709.07(A)(2) exempts from taxation "houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment ***." The BTA affirmed the Tax Com-

missioner's final determination which granted the application as to the two acres being used for parking and denied the application as to the remaining acreage, indicating that that portion of the subject property was not currently or prospectively being used for public worship as of the relevant 2004 tax lien date.

Hough Area Partners in Progress Community Development v. Levin (June 16, 2009), BTA #2007-1238;
Consortium for Economic & Community Development Inc. v. Levin (June 16, 2009), BTA #2007-1217

In these two cases the BTA dismissed purported appeals for lack of jurisdiction. The property owners asserted that their property qualified for real property exemption because they had obtained exempt status from the IRS. In responding to the Tax Commissioner's motions to dismiss, the BTA held that the property owners had not complied with Ohio Revised Code 5717.02 by stating what errors they were complaining of in the Commissioner's final determinations.

Anderson/Maltbie Partnership et. al. v. Wilkins (Aug. 18, 2009), BTA #2007-11

A for-profit corporation leased real property to a charter school for use as a school building. The corporation sought exemption for the property under Ohio Revised Code 5709.07(A)(1) which exempts "Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit." The BTA held that this exemption applies in this situation to the leased buildings, even though the corporation was, in fact, deriving a profit from the rental. The Tax Commissioner has appealed the BTA decision to the Ohio Supreme Court.

Sales/Use Tax

Clarence W. Dorsz v. Wilkins (Aug. 18, 2009), BTA #2007-68

A vendor who operated a drive-through beer and convenience store reported unusually low amounts of taxable sales compared to similar businesses. Agents of the Tax Commissioner audited the business and found that the records were inadequate to substantiate the level of sales and tax reported. The agents therefore obtained information from the vendor's suppliers and developed estimated gross sales figures and taxable percentages. On appeal of the resulting assessment, the vendor objected to the audit methodology, but the BTA upheld the audit and affirmed

the action of the Tax Commissioner's agents based on information provided.

Kennard J. Wonnascott v. Levin (Aug. 4, 2009), BTA #2007-1375

A vendor who provided window cleaning services and did repair jobs was assessed for failure to file a sales tax return. Subsequently, he filed a return but did not pay the amount he reported as sales tax due. He filed a petition for reassessment contending that window washing is not a taxable service. The Tax Commissioner affirmed the assessment because providing janitorial services, including washing windows, is within the definition of taxable sales. At the BTA, the vendor objected to the penalty imposed. However the BTA found no abuse of discretion on the part of the Tax Commissioner in the penalty assessed, and so affirmed.

Global Knowledge Training LLC v. Levin (July 28, 2009), BTA #2006-471

A computer training company was assessed for use tax on its sales of computer training services during an audit period covering 1997-2000. Ohio Revised Code 5739.01(Y) (1)(b) defines as a taxable sale "training computer programmers and operators, provided in conjunction with and to support the sale, lease or operation of taxable computer equipment or systems." The company argued that its training was not provided to support the sale or lease of computer equipment. The BTA held that as long as the training was to support the operation of such equipment, the training came within the definition. The company also argued that its training on routers and switches should not be included in the definition, because these devices are not computer equipment. The BTA disagreed and held that the training on operation of routers and switches was included in the definition of computer equipment or systems. Global Knowledge has appealed to the Ohio Supreme Court

IBM Corp. and IBM Credit Corp. v. Levin (June 23, 2009), BTA #2007-1140, 1141, 1143

The BTA held that no interest is payable by the State on sales tax refunds made pursuant to Revised Code 5739.071, which provides for refunds of 25% of the sales/use tax paid on the purchase of computers and peripheral equipment used to provide electronic information services. The statute authorizing the refunds does not contain authority for paying interest. IBM has appealed to the Ohio Supreme Court.

Kimberly Wood v. Levin (Nov. 10, 2009), BTA #2008-1988

A vendor was assessed for unpaid sales tax plus penalty and interest. The Tax Commissioner affirmed penalties based on the filing record of the vendor. In her appeal to the BTA, the vendor sought additional penalty relief.

The BTA held that the vendor had not demonstrated that there had been an abuse of discretion on the part of the Tax Commissioner, and therefore the BTA had not basis to order additional penalty relief.

Jason Rutkowski v. Levin (Dec. 8, 2009), BTA #2009-1879

A purported appeal of a sales tax assessment was dismissed because the taxpayer failed to attach a copy of the final determination to its notice of appeal filed with the Tax Commissioner, as required by Revised Code 5717.02.

A.K.J. Inc. v. Wilkins (Dec. 29, 2009), BTA #2006-929

In response to an assessment for sales and use tax on its purchases, a taxpayer filed a petition for reassessment stating, in pertinent part, "All transactions against which the Department assessed a tax are exempt from taxation under Chapters 5739 and 5741 of the Ohio Revised Code. Accordingly, I also object to the imposition of penalty and interest." On appeal to the BTA, the Tax Commissioner contended that the BTA did not have jurisdiction of the matter because the taxpayer had failed to comply with Revised Code 5739.13, which provides, in part: "The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination." The BTA held that the taxpayer had not "indicated the objections" with sufficient specificity to grant jurisdiction. The final determination of the Tax Commissioner was therefore affirmed. AKJ has appealed to the Cuyahoga County Court of Appeals (8th District).

School District Income Tax

Steven and John Vijan v. Levin (Dec. 8, 2009), BTA 2009-830

The BTA dismissed a purported appeal on a school district income tax assessment because the taxpayers had not prepaid the assessment as required by Ohio Revised Code 5747.13. 

Tax Enforcement News

The following convictions were received by the Enforcement Division of the Ohio Department of Taxation from May through October 2009. Enforcement News is compiled by Robert M. Bray, administrator of the Enforcement Division. Fraud complaints can be e-mailed to taxenforcement@tax.state.oh.us



During the period, the Enforcement Division executed one search warrant, conducted 619 retail tobacco inspections and collected \$3,107,496 in taxes owed.

Agents Find Cigarettes Without Tax Stamps

An anonymous complaint in May 2008 resulted in the seizure and the ultimate destruction of unstamped cigarettes. Shadi Taha, of Cleveland, was originally indicted by the Cuyahoga County Grand Jury for one count of possession of cigarettes not bearing the required tax stamps. The investigation revealed that Mr. Taha would randomly insert untaxed cigarettes along with otherwise legal shipments. The 1,413 single packs of cigarettes that were seized were ultimately destroyed as the result of the sentencing agreement. Mr. Taha was placed in the diversion program and ordered to pay \$2,253 in excise taxes.

Agencies Cooperate to Uncover Untaxed Cigars

As the result of a complaint referred by the Ohio Department of Public Safety, Taxation enforcement agents found that United Wholesale in Cleveland was selling untaxed other tobacco products from its store location. The investigation led to the execution of a search warrant at the business location. Mousa Kassis pleaded guilty in Cuyahoga County Common Pleas Court to one count of trafficking in tobacco with the intention of avoiding payment of tax, which is a felony of the 4th degree. The court him to pay \$61,120 in restitution to the State of Ohio.

Failure to Remit Withholding Expedites Conviction

The Bureau of Workers Compensation alerted tax enforcement agents regarding possible improprieties with the withholding accounts of Wano Expediting, of Haskins.

Owner Wayne McGaha pleaded guilty to one count of failure to file withholding returns, one count of theft and one count of workers' compensation fraud. He was sentenced to five years community control and ordered to pay restitution in the amount of \$87,125 to the appropriate state agencies.

Cigars Found with No Taxes Paid

A routine tobacco inspection by tax enforcement agents uncovered untaxed cigars and led to the felony conviction of a tobacco distributor in Akron. Fawaz Youssef pleaded guilty in Summit County Common Pleas Court to one count of distribution of tobacco products with the intent to avoid the tax, a felony of the fourth degree. Youssef was given a suspended sentence of one year in prison and 18 months of community control. Agents seized 18,000 cigars as part of their investigation.

Alert Discovery by Enforcement Agents Leads to Conviction

On a routine tobacco inspection, enforcement agents alertly noticed conflicting information on the liquor permit and vendor license of a Sandusky business called Butts and More. An investigation followed, including the execution of a search warrant, which led to the conviction of the owner, Debbie Pribanic, on one count of collecting and failing to remit sales tax, a fourth-degree felony. Pribanic entered and successfully completed the diversion program in the Erie County Common Pleas Court and also paid back all sales tax owed.

Former University Comptroller Files False Return

State Highway Patrol officials were contacted by a college in Ohio regarding bookkeeping discrepancies by a former comptroller. Multiple agencies conducted an investigation leading to the conviction of Darrel Isaacs, of Huber Heights, on one count of tampering with records and one count of theft in office, both third-degree felonies. Isaacs was the comptroller at Edison Community College and had altered paperwork regarding withholding taxes to his advantage. In addition to 300 hours of community service, the former comptroller was required to serve three years of community control and ordered to pay \$13,095 in restitution.

Routine Tobacco Inspection Results in Charges

A routine tobacco inspection by tax enforcement agents led to significant charges against a Cincinnati company for failing to pay taxes. M & L Murphy Inc. pleaded guilty to one count of possession of other tobacco products without taxes paid, one count of collecting and failing to remit sales tax, both fourth-degree felonies, and one count of no other tobacco products distributor's license, a fourth-degree misdemeanor. The Clermont County Common Pleas

Court ordered the company to pay restitution to the State of Ohio \$13,510 and a fine of \$ 2,250.

IRS Tip Helps Taxation Discover Pool Hall's Sales Tax Offense

An IRS agent contacted the department about the results of his investigation of 8 Ball and Wings in Trotwood. Tax enforcement agents obtained a search warrant, reviewed the company's records and found the business had failed to remit sales taxes it had collected. Todd Hicks, the owner, pleaded guilty in Montgomery County Common Pleas Court to three counts of theft by deception, a fifth-degree felony. He was sentenced to five years probation. The judge also ordered the seizure of \$14,769 from the business to pay back taxes owed.

Auto Repair Shop Owner Convicted

A tip from another law enforcement agency led to the conviction of a Cleveland area car repair business. David Pysell pleaded guilty in Cuyahoga County Common Pleas Court to one count of aggravated theft of sales tax and nine counts of tampering with records (both third-degree felonies). The court also ordered Pysell to pay \$131,677 to the state in sales tax. Enforcement agents assisted Cleveland Metroparks in the execution of a search warrant where sales records were recovered.

Carpet Outlet Owner Pleads Guilty

Jeffrey Hudson, owner and operator of Discount Carpet Outlet in Willoughby, pleaded guilty in Lake County Common Pleas Court to two counts of attempted tampering with records and one count of collecting and failing to remit sales tax, all fourth-degree felonies. He was sentenced to 45 days in jail and placed on five years of probation regarding his scheme to underreport his sales tax. Records reviewed by the department indicated that he failed to pay \$ 200,403 in sales tax collected from customers.

Company Admits to Trafficking in Untaxed Tobacco

JSJ Enterprises of Cleveland pleaded guilty in Cuyahoga County Common Pleas Court to four counts of trafficking in tobacco with intent to avoid the tax, a fourth-degree felony. While conducting a search warrant on an unrelated case, tax enforcement agents found that JSJ purchased tobacco and did not remit the excise taxes owed. The corporation was ordered to pay \$ 213,471 to the state in taxes owed.

Barnesville Business Guilty of Sales Tax Charge

During an investigation of M & S Auto in Barnesville, tax enforcement agents found that the business had collected and failed to remit sales and withholding taxes. Mark Eikenberry pleaded guilty in the Belmont County

Common Pleas Court to this fifth-degree felony charge. He was sentenced to three years community control, one year of supervised probation and 200 hours of community service. He was also ordered to pay the state \$80,434 in taxes owed.

Lack of Vendor's License Alerts Department to Tax Irregularities

An alert auditor at the department discovered that a business was operating without a vendor's license and referred the case to the Enforcement Division. Further investigation led to the conviction of Carlton Smith, owner of Body Werkes in Springboro, on tax violations. Smith pleaded guilty in Warren County Common Pleas Court to collecting and failing to remit sales tax, a fourth degree felony. He was sentenced to five years community control and ordered to pay the state \$30,170 in sales taxes owed.

Auto Clinic Runs Afoul of Tax Laws

Mark Heindel, owner and operator of Dr. Del's Auto Clinic Sales and Service of Sylvania, pleaded guilty in Lucas County Common Pleas Court to one count of theft regarding sales tax which was collected and not remitted to the state. Tax enforcement agents discovered Heindel had not filed sales tax returns for many periods which led to an investigation and conviction. He was sentenced to a suspended three-month jail sentence and 50 hours of community service. He was ordered to undergo random urinalysis and breathalyzer tests and to pay \$27,685 to the state as well as court costs.

Wood County Business Owner Sentenced on Sales Tax Charge

Kathleen Bowes, owner of Emma Louise's Baby News pleaded guilty in Wood County Common Pleas Court to one count of failure to file sales tax returns and one count of theft. An investigation found Bowes had collected, but failed to remit sales tax over a long period of time. She was sentenced to one year of community control, six months in prison (suspended) and ordered to pay restitution in the amount of \$ 42,339 to the state for taxes owed.

Tree Service Ordered to Pay Back Taxes

A citizen complaint lead to an investigation into Ackley Tree Service, of Springfield. A review of the records of the business resulted in the conviction of Arley Ackely, owner, on theft charges, a fourth-degree felony. Ackely was sentenced to five years community control and required to pay the state \$55,114 in taxes owed. 

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
Minuteman Press	Cuyahoga	Strongsville	Two counts failure to file sales tax returns
John Ortiz	Cuyahoga	Cleveland	Two counts failure to file sales tax returns
Sunrise Tanning	Lucas	Toledo	One count failure to file sales tax returns
Findlay Oil Company	Hancock	Findlay	One count failure to file sales tax returns
Geisha Computers Inc.	Hamilton	Cincinnati	One count failure to file sales tax returns
Bellaire Enterprises	Cuyahoga	Cleveland	Two counts failure to file sales tax returns
Omar Cortez	Tuscarawas	New Philadelphia	One count failure to file sales tax returns One count no vendor's license
Max Replay	Williams	Edgerton	Two counts failure to file sales tax returns
Uptown Beverage	Mahoning	Youngstown	One count disorderly conduct (reduced from failure to file sales tax returns)
Edgar Viera	Cuyahoga	Cleveland	One count failure to file sales tax returns
Mathew Wissel	Cuyahoga	Cleveland	One count failure to file sales tax returns
Tom's Automotive	Henry	Swanton	One count failure to file sales tax returns
Taylor Graphics	Williams	Bryan	One count failure to file sales tax returns
Clifford Norton Studios	Cuyahoga	Warrensville Heights	One count failure to file sales tax returns
Alfred Klinger	Lorain	North Ridgeville	One count failure to file sales tax returns
CB's the Beat	Wood	Bowling Green	Two counts failure to file sales tax returns

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
CB-CB's Apparel	Wood	Bowling Green	Two counts failure to file sales tax returns
Lakeview Carryout	Mercer	Celina	One count failure to file sales tax returns
Sunrise Tanning	Lucas	Toledo	One count failure to file sales tax returns
TCR Pizza LLC	Cuyahoga	Maple Heights	Three counts failure to file sales tax returns
Lori Brown	Seneca	Tiffin	Two counts failure to file sales tax returns
West End Tavern	Putnam	Columbus Grove	One count failure to file sales tax returns
C & C Repairs	Union	Marysville	One count failure to file sales tax returns
Mr. T's House of Fabrication	Summit	Barberton	One count failure to file sales tax returns One count no vendor's license
Simons Tree Services	Summit	Barberton	Two counts failure to file sales tax returns
Knotty Pine	Auglaize	Wapakoneta	One count failure to file sales tax returns
Mariann Terwilliger	Cuyahoga	North Olmstead	One count vendor to collect sales tax
The Sweet Spot	Erie	Sandusky	One count no vendor's license
Stimmel's	Wood	Bowling Green	Two counts failure to file sales tax returns
Techmaster Collision	Lucas	Toledo	One count failure to file sales tax returns
In the Flesh (Marroquin)	Defiance	Defiance	One count failure to file sales tax returns
Kari McFarlan	Wood	Bowling Green	One count failure to file sales tax returns

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
Sharon's Cleaning	Portage	Aurora	Two counts failure to file sales tax returns
Puff N Stuff	Franklin	Columbus	One count failure to file sales tax returns (bond forfeiture)
Rickey T. Kemper	Muskingum	Zanesville	One count no vendor's license
J & J Super Valu	Richland	Mansfield	One count failure to file sales tax returns
Jack's Body Shop	Guernsey	Kimbolto	One count failure to file sales tax returns One count no vendor's license
Toot N Tell	Auglaize	Wapakoneta	Two counts failure to file sales tax returns
Bienvenido Cabrera	Franklin	Galloway	One count failure to file sales tax returns
Midwest Game Co.	Summit	Akron	One count failure to file sales tax returns One count no vendor's license
Sticks	Franklin	Columbus	One count failure to file sales tax returns
J & M LLC	Cuyahoga	Lakewood	One count failure to file sales tax returns
Stephanie L. Ward	Franklin	Dublin	One count failure to file sales tax returns (bond forfeiture)
Adams Fish House	Hamilton	Cincinnati	One count failure to file sales tax returns
Michael McClain	Ashland	Loudonville	Two counts failure to file sales tax returns
Brian Howard	Lucas	Maumee	One count failure to file sales tax returns
Shelley's Marathon	Licking	Johnstown	One count failure to file sales tax returns
SAPJA Inc.	Warren	Lebanon	One count failure to file sales tax returns

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
Kuss Consulting	Lucas	Toledo	One count failure to file sales tax returns
Charles Adams	Franklin	Grove City	One count failure to file sales tax returns
Lyons Studio	Summit	Akron	Two counts failure to file sales tax returns
David Mastrey	Mahoning	Campbell	One count failure to file sales tax returns (attempt)
Thomas Witten	Lorain	Lorain	One count failure to file sales tax returns
McKenzie's Flowers	Wood	Weston	One count failure to file sales tax returns
Richard Armstrong	Medina	Seville	Two counts failure to file sales tax returns
Jamie Huber	Hamilton	Cincinnati	One count failure to file sales tax returns
Sign Source LLC	Auglaize	New Knoxville	Two counts failure to file sales tax returns
Darby Building Supplies	Allen	Lima	Two counts failure to file sales tax returns
5171 LLC	Summit	Richfield	One count failure to file sales tax returns One count no vendor's license
Django Hendrix	Butler	Hamilton	One count no vendor's license
Sunrise Café	Ashtabula	Geneva	Two counts failure to file sales tax returns
Douglas Yates	Cuyahoga	North Olmsted	Two counts failure to file sales tax returns
Daddy – Oh's	Lucas	Toledo	One count failure to file sales tax returns
In the Flesh (Mehring)	Defiance	Defiance	One count failure to file sales tax returns

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
Denny Boyer	Muskingum	Zanesville	One count no vendor's license
Mailco Inc.	Hamilton	Cincinnati	One count failure to file sales tax returns
Strater Cleaners	Lucas	Toledo	One count failure to file sales tax returns
Krocker's Lawn & Garden	Tuscarawas	Dover	One count failure to file sales tax returns
Weitzel Inc.	Hamilton	Cleves	One count failure to file sales tax returns
Sherie Hess	Carroll	Carrollton	One count failure to file sales tax returns
Dynamic Tire USA	Tuscarawas	Gnadenhutten	One count failure to file sales tax returns
Troy Pike Flea Marke	Montgomery	Huber Heights	One count no vendor's license
Kerry Hartzog	Logan	Lakeview	One count failure to file sales tax returns
Kimberly Dible	Seneca	Fostoria	Two counts failure to file sales tax returns
Lance Hoffman	Cuyahoga	Middleburg Heights	Two counts failure to file sales tax returns
Top Notch	Trumbull	Niles	Two counts failure to file sales tax returns
Donald Goins	Muskingum	Zanesville	One count no vendor's license
Meeker Enterprises	Wyandot	Upper Sandusky	Two counts failure to file sales tax returns
Janis Clark	Fulton	Swanton	One count failure to file sales tax returns

Assorted Sales/Withholding Tax Violations

Business	County	City	Violation
C & C Repairs	Union	Plain City	One count failure to file sales tax returns
April's Greenhouse	Defiance	Defiance	One count failure to file sales tax returns
Robert Pasqual	Columbiana	Salem	One count failure to file sales tax returns

Cigarette/Other Tobacco Products Violations

Business	County	City	Violation
PaPa Smokes	Lake	Mentor on the Lake	One count no other tobacco products license
Rami Jallaq	Franklin	Columbus	One count no cigarette license
Lakeside Plaza LLC	Madison	London	One count no cigarette license
Good Fella's Drive Thru	Madison	London	One count no cigarette license
Pal Shishu	Mahoning	Youngstown	One count no cigarette license
The Sweet Spot	Erie	Sandusky	One count no cigarette license
Tienda De La Raza	Butler	Middletown	One count failure to maintain tobacco purchase records
Amir Bagheri	Mahoning	Youngstown	One count no cigarette license (attempt)
Lee Gas Mart	Cuyahoga	Cleveland	One count illegal distribution of cigarettes
Chuckie's Market	Cuyahoga	Cleveland	One count disorderly conduct (reduced from tobacco charge)

Cigarette/Other Tobacco Products Violations

Business	County	City	Violation
Adam Fadwa LLC	Summit	Akron	One count no cigarette license
Louie's Drive Thru	Summit	Akron	One count no cigarette license
High Point Marathon 2	Cuyahoga	Parma	One count failure to maintain tobacco invoices
West Side Health Care	Hamilton	Cincinnati	One count retailer in possession of untaxed cigarettes One count falsification
In and Out Market	Stark	Canton	One count selling single cigarettes
Hall of Fame Mart	Stark	Canton	One count selling single cigarettes
Erste Inc.	Stark	Canton	One count no cigarette license
King's Karryout	Summit	Akron	One count no cigarette license One count tobacco purchases limited to licensed dealers
Empress	Summit	Akron	One count no cigarette license
Little Mike's	Summit	Akron	One count selling single cigarettes
Kelly's Carryout	Summit	Akron	One count selling single cigarettes

Assorted Dyed Fuel Violations

Business	County	City	Violation
Timothy Mundy	Greene	Spring Valley	One count using untaxed fuel on the highway
Berry Well Service	Delaware	Delaware	One count using untaxed fuel on the highway

Calendar at-a-glance

J	
March	
15	Monthly Income Tax Withholding Return
22	Monthly Kilowatt Hour Tax Return
23	Monthly Sales Tax Return
23	Monthly Consumer Use and Direct Pay Return
April	
15	Annual Individual Income Tax Return
15	Monthly Income Tax Withholding Return
15	Quarterly Estimated Income Tax Return
20	Monthly Kilowatt Hour Tax Return
23	Monthly Sales Tax Return
23	Monthly Consumer Use and Direct Pay Return
23	Quarterly Consumer and Direct Pay Return
30	Quarterly Income Tax Withholding Return
May	
10	Quarterly Commercial Activity Tax Return
10	Annual Commercial Activity Tax Return
17	Monthly Income Tax Withholding Return
20	Monthly Kilowatt Hour Tax Return
20	Quarterly Natural Gas Distribution Tax Return
24	Monthly Sales Tax Return
24	Monthly Consumer Use and Direct Pay Return

The Ohio Department of Taxation's mission is to provide quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.

The Ohio State Tax Report is published by the Ohio Department of Taxation as an information source. The articles it contains do not represent official opinions of the Ohio Tax Commissioner.

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