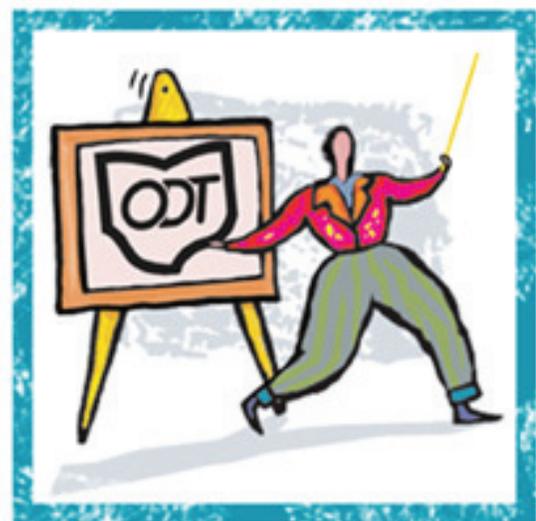


### Small Business Workshops Scheduled

New or prospective small business owners and self-employed persons can learn about their tax rights and responsibilities by attending the next Small Business Tax Workshop. These workshops are offered free of charge and are sponsored by the Internal Revenue Service and the Ohio Department of Taxation (ODT). Most workshops are being offered in cooperation with Ohio's Small Business Development Centers.



The workshops are scheduled in counties that cover each of the state's regions and are designed to provide a general overview of business taxes. This year, workshops are scheduled in several counties. Some larger counties are hosting more than one workshop. Participants receive workbooks and a business tax kit that contain forms and publications necessary for complying with business tax requirements.

Please note that the following schedule is subject to change. Cancellations may also occur and other workshops may be scheduled throughout the year. For the latest updates call the number listed for the workshop you are interested in attending.

If you are unable to attend a workshop after registering, please call and cancel. Class sizes are limited and others are waiting for reservations.

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The workshops will feature information on:

### **Types of businesses & business structure, including:**

- Sole Proprietor
- Sub S-Corporation
- Partnership
- C-Corporation
- Advantages/disadvantages of each type
- Federal tax filing requirements
- Recordkeeping
- Preparation of Schedule C and SE
- Estimated tax requirements
- Employment taxes

### **Ohio business taxes, including:**

- Sales Tax
- Personal Property Tax
- State Tax Withholding

### **Schedule:**

#### **Butler County**

General Business Workshops  
September 27 and October 24, 2007  
9 a.m. – 4 p.m.  
BizTech Center  
20 High St  
Hamilton, OH 45011  
To register, phone 513-737-6543,  
fax 513-737-6755 or  
online at [www.biztechcenter.com](http://www.biztechcenter.com) or e-mail [mcol-  
lmer@biztechcenter.com](mailto:mcol-<br/>lmer@biztechcenter.com)

#### **Clark County**

General Business Workshop  
November 16, 2007  
9 a.m. – 4 p.m.  
Small Business Development Center  
300 East Auburn Ave  
Springfield, OH 45505  
To register, phone 937-322-7821 or  
e-mail [joann@smbusdev.org](mailto:joann@smbusdev.org)

#### **Clermont County**

General Business Workshop  
September 26, 2007 9 a.m. – 4 p.m.  
Clermont County Chamber of Commerce  
553 Chamber Dr  
Milford, OH 45150  
To register, phone 513-576-5000 or  
e-mail [john.melvin@clermontchamber.com](mailto:john.melvin@clermontchamber.com)

#### **Franklin County**

General Business Workshops  
August 21, September 18,  
October 23, November 20 and December 18, 2007  
All 9 a.m. – 4 p.m.  
All workshops held at the:  
CEWD Building  
315 Cleveland Ave Third Floor Classroom  
Columbus, OH 43215  
To register, phone 614-287-5300 or  
online at [www.sbdc.csc.edu](http://www.sbdc.csc.edu) and click on  
upcoming courses

#### **Gallia County**

General Business Workshop  
October 24, 2007 9 a.m. – 3 p.m.  
C.H. McKenzie Agricultural Center  
111 Jackson Pike Suite 1572  
Gallipolis, OH 45631  
To register, phone 740-289-3727 ext. 111 or  
e-mail [jbauman@ag.osu.edu](mailto:jbauman@ag.osu.edu)

#### **Hamilton County**

General Business Workshop  
August 8, 2007 9 a.m. – 5 p.m.  
University of Cincinnati Campus  
College of Business  
Room 107, Lindner Hall  
Corner of Martin Luther King Dr & Campus Green Dr.  
Cincinnati, OH 45221  
To register, phone 513-556-2072 or e-mail [jessica.  
linburg@uc.edu](mailto:jessica.<br/>linburg@uc.edu)

**Lucas County**

General Business Workshops

September 21 and December 14, 2007

9 a.m. – 4 p.m.

Toledo Regional Chamber of Commerce

300 Madison Ave, Enterprise Suite 200

Toledo, OH 43604

To register, phone 419-243-8191 ext. 225 or e-mail  
christine.bailey@toledochamber.com

**Ross County**

General Business Workshop

January 31, 2008 9 a.m. – 3 p.m.

Ross County Service Center

475 Western Ave, Conference Room D

Chillicothe, OH 45601

To register, phone 740-289-3727 ext. 111 or e-mail  
jbauman@ag.osu.edu



*Commissioner's Column***ODT Computer Integration Effort on Track***Commissioner Levin*

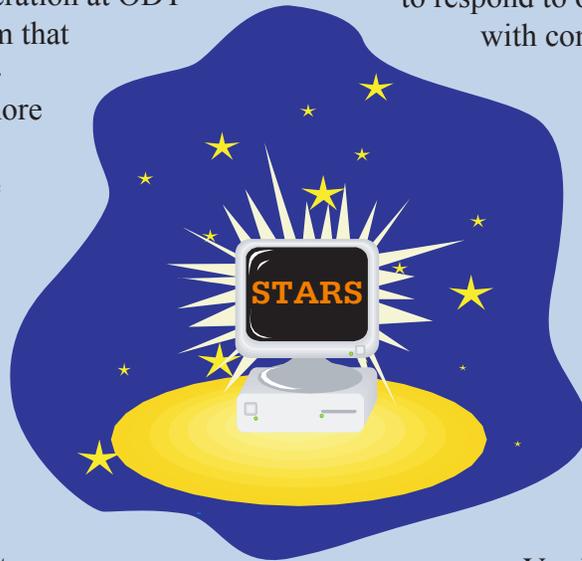
The state budget will be tight for the next two years, and the same is true for the department's budget.

However, I am very excited to let you know that the department's initiative of the

State Taxation Accounting and Revenue System (STARS) Project was included in the state's budget that was recently passed by the General Assembly and signed into law by Governor Strickland.

The STARS Project will consolidate 27 different computer systems (tax specific and/or tax function) currently in operation at ODT into one integrated system that will help us improve customer service, produce more revenue for the state and make our processes more efficient.

The STARS Project will also make life easier for ODT employees in many ways. Here are some examples: all tax administration will be housed in one system that will offer a consolidated view of the taxpayer; enhancements will be made in tax operations (improved customer service, processing efficiencies, compliance enforcement and reporting) and there will be more self-service opportunities for taxpayers, which will free up employees to do other tasks.



To fund the first phase of STARS, the plan calls for the issuance of \$20 million in Certificates of Participation (COP) in the upcoming fiscal year that began on July 1. A COP is essentially a lease-purchase instrument, which functions similarly to bonds. When they have been used in Ohio – primarily to finance the leasing of modular classrooms for schools – they have been well received by investors, and we expect that to continue in our case. A lot of what we will be financing through the issuance of our COP is software.

In the current marketplace, there are several vendors that develop and install integrated tax systems and many are already involved with similar projects across the nation. We expect several vendors to respond to our Request for Proposal (RFP) with competitive bids.

In the meantime, we are finalizing the RFP so it can be issued in draft form. Once the draft RFP is issued, potential vendors will give us their feedback. The department's STARS team will then meet with state Office of Information Technology officials to go over the vendors' comments, make modifications to the RFP based on their feedback and reissue the RFP.

Vendors will then submit bids and our STARS team will review and score them and select a vendor.

Once a vendor is selected and on site, it is anticipated it will take four to four and one-half years to complete the project. So while STARS won't be accomplished overnight, it is exciting that we are so close to taking that all-important first step.

# Ohio Gets Jump on Other States with Paperless Auditing

Ohio has taken the lead nationally in developing a new paperless auditing system that is conservatively expected to save hundreds of thousands of dollars annually and make the entire auditing process much more efficient for Ohio Department of Taxation (ODT) employees who work with audits, as well as with taxpayers who are undergoing an audit.

“When I go to meetings attended by tax people from a lot of other states and tell them where we are in paperless auditing, they can’t believe it,” said Russ Hupp, an ODT Audit Division administrator. He along with Brad Tomlinson, an ODT Audit Division assistant administrator and manager of the Computer Assisted Audit Group (CAAG), discussed and demonstrated the new paperless audit system at the annual ODT auditors’ meetings in Columbus this spring.

Ohio’s State Tax Report posed a number of questions to Hupp about the paperless auditing system. His responses are below.

## What is the paperless audit project?

Once OFAST (Office Field Audit Support Tool) was developed (a five-year process) and eCopy scanning software was purchased, it was only logical to marry the two technologies. The eCopy system is essential to the paperless audit. It is used to scan support documentation for the audit that is placed into the electronic file (e.g., OFAST zip file). That file is transmitted to the taxpayer using the Secure File Transfer System (an Internet site, accessible by any computer, provided a user name has been issued from the department’s Information Services Division) and stored into Central Location (an electronic storage server for completed audit files) once the audit is finished.

Basically, the goal is to eliminate much of the “hard” paper files when we audit. OFAST calculates the

tax and creates PDF work papers. Auditors scan all supporting documentation and save it within a file structure in the OFAST “zip” file.

## When did it start?

About one year ago is when we began to experiment with the idea.

## Who will benefit from it?

The benefits are numerous. The department will benefit by greatly reducing the cost of performing audits as savings will result on labor, materials and postage costs. Also, more audits can be performed since individual audits will require less time to complete. The enhancements to our Central Location server will further increase efficiency since the completed audit file will be more accessible (by anyone with access) through searching the system and retrieving a copy of the file, instead of going to a file room, pulling the file, referring the file, transporting the file and continually tracking it.

The taxpayers will benefit by receiving better customer service since the turn-around time in performing an audit will be much quicker once other related projects come online. For instance, by using the Secure File Transfer System that we have also been developing, we can transfer the entire audit file to the taxpayer in a secure environment, much like an Internet banking Web site. Also, large data files can easily be transferred using this system, thereby further expediting the audit process.

### **Errata:**

*An earlier version of the Ohio State Tax Report included an incorrect estimate of the potential savings to be delivered through the move to paperless auditing. The savings is difficult to pinpoint, but it is conservatively expected to save hundreds of thousands of dollars annually in postage, copying and labor costs.*

### **How will they benefit from it?**

In addition to the things mentioned above, since we will be doing our preliminary and final proposals using the Secure File Transfer System, the taxpayer and our auditors will immediately be able to discuss and resolve some issues prior to any legal actions. This would also be a savings for the taxpayers and the department.

### **How will it impact the department?**

Using the various systems associated with the paperless audit, the department will be affected in several areas. Not only will millions of dollars be saved within the Audit Division, the Taxpayer Services and Compliance Divisions will also be positively affected. Since paper files will be eventually eliminated, all costs associated with handling, storing and tracking paper files will be eliminated. Eventually, the cost of certified mail used to mail assessments will also be eliminated through use of the Secure File Transfer System. This system will provide us with an exact date and time that a taxpayer "receives" the assessment, and at several dollars each for certified mail and the associated receipt, this is a very significant cost savings.

### **Will all the auditors have to use it? And all the business taxpayers?**

We are planning to gradually require all audits to be conducted using the paperless procedures. The business community will be offered this option to receive their audit results; however, if the taxpayer requests that paper results be supplied, we will print the nec-

essary work papers to convey our findings. Most of the larger taxpayers will embrace the paperless audit. Many taxpayers are experiencing cut backs and limited staff; anything that would expedite the audit process would be welcomed.

### **Are there any limitations with it?**

So far our Information Services Division team that has been building all parts of the process has been able to overcome limitations. Currently, Central Location will be able to hold a file of 1GB in size. This is a huge file. The IRS received a file from a taxpayer, transmitted to them in a paperless format of around 600MB. This would equate to over 25,000 pieces of paper. At 1GB, our system will hold around 40,000 pages of information per audit.

### **How secure is it?**

Each system utilizes user and password protection. The Secure File Transfer System uses bank Web site security standards.

### **When will implementation begin?**

We have instructed those of our staff that are comfortable with paperless to go forward and submit audits to reviewers using this method. After the Central Location enhancements are finalized (slated for August 24), we plan to continue a gradual phase-in, requiring all audits to be paperless by the beginning of 2008. We are currently finalizing procedures that involve other divisions to ensure that assessments are completed and refunds are issued in a timely fashion.

# 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 March 2007 through May 2007. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

## Dealer in Intangibles Tax

**UBS Financial Services, Inc. f/k/a/ PaineWebber, Inc. v. Zaino (May 25, 2007), BTA #2003-1139**

The taxpayer is a dealer in intangibles engaged in brokering various investment and capital products to its clients. Under Ohio Revised Code 5725.13, the property of a dealer in intangibles is listed and assessed at its fair value and the dealer is taxed on that value. The tax base of dealers having offices within and outside Ohio is allocated based on the gross receipts of the offices. The BTA accepted the Tax Commissioner's position that "receipts" means the amount of gain or loss on transactions, not gross receipts or sales. The taxpayer sought to exclude from its net worth the value of its landlord's contributions to leasehold improvements. The BTA rejected this because the improvements became a part of the taxpayer's net worth, regardless of whether a discount was given by the landlord as part of the lease agreement. The taxpayer sought to raise a refund



issue in the context of the assessment and appeal, but the BTA held that the Tax Commissioner lacked jurisdiction to consider the matter without a refund claim having been filed. This case has been appealed to the Ohio Supreme Court.

## Personal Property **Smucker v. Levin (2007), 113 Ohio St. 3d 337**

In a reorganization involving the acquisition of a new product line, a food manufacturer created a limited liability company (LLC) on May 1, 2002 and transferred assets to it. As a new taxpayer, the LLC was required under Ohio Revised Code 5711.04(B) to file its first personal property tax return within 90 days of commencing business. The return was filed about 14 months late. The return for the next year was filed about three months late. Late filing penalties of 15 percent and 10 percent were assessed under Revised Code 5711.27 for 2002 and 2003, respectively. The statute authorizes penalties up to 50 percent. The taxpayer requested abatement of the penalties, contending that its property valuations were not available in time to file the returns

by the statutory deadlines. The Tax Commissioner denied the abatement request because the taxpayer had more than one late return in a five-year period. The Board of Tax Appeals and the Supreme Court found no abuse of discretion in the Commissioner's action.

## Treasure Chest Advertising Company v. Wilkins (March 9, 2007), BTA #2003-285

**Vertis, Inc. v. Wilkins (March 9, 2007), BTA #2004-381**

In these two cases, printers of newspaper advertising inserts claimed that some of their machinery, including their printing presses, was subject to the Class Life II depreciation schedule on the "302 Computation", rather than the longer Class Life IV, as set forth by the Department of Taxation. The taxpayers contended that the shorter class life was justified based on special or unusual circumstances because their printing equipment was used on a 24-hour basis. At the BTA hearing, a witness for the taxpayers testified that while printers in general do not operate 24/7, the newspaper advertising printing segment of the industry does because of the cost of carrying the capital equipment. The witness also testified that their average press ran about seven or eight years between rebuilds. The BTA held that these facts did not justify a departure from the prescribed Class Life IV.

On another matter, the BTA held that the taxpayers had failed to establish that some of the property listed in their inventory was property leased from others.

**Rumpke Waste, Inc. and Rumpke Container Service, Inc. v. Wilkins (March 30, 2007), BTA #2004-477, 2004-479**

A waste disposal company was assessed personal property tax on the equipment used on its garbage trucks. The company contended that some of the equipment was not subject to personal property tax because Ohio Revised Code 5701.03(A) provides that personal property does not include registered motor vehicles. The BTA referred to prior decisions and found that the question of whether equipment is properly considered part of the motor vehicle can be resolved by determining if the equipment is (1) an integral part of the truck, (2) permanent or detachable from the truck, (3) functioning as part of the truck for truck uses, or as machinery for special uses and results, (4) carrying the truck load or assisting in doing so, or is merely an object transported. Using this analytical framework, the BTA held that the front forks and arms and the hoist systems used to lift and dump garbage containers into the truck are not part of the vehicle. The packing blades, slide panels, tailgate units and top door assemblies function as parts of the trucks because they contain the loads and

prevent waste from blowing out of the trucks; these items are not subject to personal property tax. The power take-offs and hydraulic pumps provide power for items classified both as part of the vehicle and for items classified as taxable tangible personal property. Based on the relative amount of usage for the power take-offs and pumps, they are classified as part of the motor vehicle. Included in the tax base is freight for parts ordered by the company which became taxable tangible personal property.

**Rent-Way Inc. v. Wilkins (April 13, 2007), BTA #2004-331**

A rent-to-own company appealed final certificates of valuation issued by the Tax Commissioner, seeking a shorter class life for its schedule 4 short-term rental property. It used Class Life III in reporting true value on its 2000 and 2001 returns and Class Life V on its 2002 return. The BTA observed that the burden on a taxpayer challenging the results of the "302 computation" is (1) to prove that special or unusual circumstances exist, (2) to prove that the "302 computation" produces an unjust or unreasonable result, or (3) to prove by direct evidence the true value of the property. The taxpayer submitted a disposal analysis prepared by a consultant in an accounting firm. Testimony by the consultant disclosed that his firm was to receive 25% to 30% of any tax savings which resulted from the BTA's reliance upon the disposal analysis. There was no underlying

documentation provided by the taxpayer to support the position advocated through the use of the disposal analysis. Based on this, the BTA gave the disposal study minimum evidentiary weight and affirmed the Tax Commissioner's action.

**MCI Metro Access Transmission Services, LLC, and MCI WorldCom Network Services, Inc. v. Wilkins (April 13, 2007), BTA #2004-749, 2004-750**

The appellants are a telephone company and an interexchange telecommunications company. The appellants are wholly-owned subsidiaries of MCI, Inc., formerly WorldCom, Inc. which was in bankruptcy in mid-2002. They filed 2003 personal property tax returns in which they listed by acquisition year and original acquisition cost their Ohio taxable and exempt property. The appellants claimed that the net book value of their assets should be about two-thirds less than the amount which results from the prescribed true value calculation. The basis for this contention was that the parent corporation's assets were written down by about two-thirds of value due to impairment. The BTA affirmed the Tax Commissioner's final determination because the appellants presented virtually no evidence to substantiate the contentions. This case has been appealed to the Franklin County Court of Appeals.

**Carlisle Equipment Group, L.P. v. Wilkins (May 25, 2007), BTA #2004-913**

A new business did not file a new business tangible personal property tax return within 90 days of the start of business as required by Ohio Revised Code 5711.04. The taxpayer was assessed based on a start date of July 1, 1999, at which time it had considerable tangible personal property. The taxpayer contended that it actually first engaged in business in Ohio on June 15, 1999, at which time it had only two pieces of construction equipment. The BTA determined that the actual start date was July 1, 1999, based on information in the taxpayer's application for a consumer's use tax account and statements by the company's employees.

**Personal Income Tax**

**Jack E. and Virginia V. Caldwell v. Wilkins (March 2, 2007) BTA #2006-548**

In this case and three similar cases, the BTA held that income earned by a grantor trust is taxable to the grantor rather than to the trust itself, even if the trust is an electing small business trust (ESBT). The BTA held that this result is mandated by *Knust v. Wilkins* (2006), 111 Ohio St. 3d 331. The taxpayers have appealed the BTA rulings to the Ohio Supreme Court.

**Roy L. Morrow and Candace H. Morrow v. Wilkins (May 4, 2007),**

**BTA #2007-154 Robert J. & Carol W. Stoll v. Wilkins (April 6, 2007), BTA #2006-281**

The BTA affirmed the Tax Commissioner's dismissal of petitions for reassessment regarding income tax assessments because the taxpayers had not paid the tax and interest assessed before or at the time the petitions were filed, although in one case payment was made several days after the petition was filed. Because Ohio Revised Code 5747.13 requires payment at the time the petition is submitted, the Tax Commissioner determined that there was no jurisdiction to consider the matters. The BTA affirmed.

**Real Property**

**Community Health Professionals Inc. v. Levin (2007), 113 Ohio St. 3d 432**

A charitable community health organization sought exemption under Ohio Revised Code 5709.12 and 5709.121 for a building and the two-acre tract on which it was located. Part of the building was used by the organization and part was leased to two other charitable organizations, which used the space for administrative offices and an adult day care. The Supreme Court held that no exemption was available under Revised Code 5709.12, which requires the property to be used exclusively for charitable purposes because the organization leased part of the building. However, the Court found that exemption is available under Revised Code 5709.121, which exempts

property owned by a charitable or educational institution which "is made available under the direction or control of such institution \* \* \* for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit." The court held that, "It is the use of property rather than the fact that revenues are collected and received from property which is controlling."

**Cincinnati Cmty. Kollel v. Levin (2007), 113 Ohio St. 3d 138**

An institute for the advanced study of religious texts provides in-depth training to four students at a time, who stay with their families in an apartment building, for which the institute sought exemption under Ohio Revised Code 5709.121. The four students teach religion classes to people of various ages in the community. The institute does not grant degrees. The Tax Commissioner denied the exemption, and the Board of Tax Appeals affirmed that denial, on the basis that the institute was not an "educational institution". The Supreme Court reversed, holding that to meet the statutory definition "an institution must be marked by the presence of both students and teachers, offer educational opportunities to the public, involve the transfer of knowledge and skills in one or more structured classes rather than in merely social activities, and have as its primary function the presentation of formal instruction." Having found that the institute is an

“educational institution”, the Court remanded the matter to the Board of Tax Appeals to determine if the apartment building is used in an exempt manner.

**Girl Scouts v. Levin (2007), 113 Ohio St. 3d 24**

A Girl Scout council owned a building, a part of which was occupied by a store selling Girl Scout uniforms and equipment. The council sought exemption for the part of the building used as a store under Revised Code 5709.12(B), which provides exemption for real and tangible personal property belonging to institutions that is used in furtherance of or incidental to its charitable, educational or public purposes and not with the view to profit. In this case, since the store operated without a view to profit and sold items merely as an accommodation to its members, the Supreme Court held that the exemption applied.

**City of Toledo, a Municipal Corporation, and Toledo-Lucas County Port Authority, and Larry Kaczala, Lucas County Auditor v. McAndrew (April 20, 2007), BTA #2004-183**

Property owned by the City of Toledo was leased to the U.S. government in 1956 for a twenty-five-year term, with options for renewals which were exercised and continue to be in effect. The property is used as an Ohio Air National Guard base. In 1994 the Lucas County Auditor's office recorded

improvements on this property, split-listed these improvements and mistakenly sent real property tax bills for the improvements to the Toledo-Lucas County Port Authority, which sent the bills to a port authority lessor, BAX Global, Inc., which paid the bills every year until the error was realized in 2003. The City of Toledo sought exemption of the property and remission of taxes and penalties for years 1994 through 2001. The Tax Commissioner granted exemption for 2003 and remitted taxes, penalties and interest for years 2000 through 2002. The BTA found that the City of Toledo, in submitting its application on March 19, 2003 seeking exemption for 2002, had not complied with Ohio Revised Code 5715.27(F), which requires that the application be filed by December 31 of the year for which exemption is requested. The BTA found that the Tax Commissioner had no jurisdiction to consider the application, and remanded the matter to the Tax Commissioner to dismiss. This case has been appealed to the Ohio Supreme Court.

**Sylvania Church of God v. Wilkins (May 4, 2007), BTA #2006-48**

A church acquired real property on January 26, 2005 and submitted an application for exemption on November 17, 2005. The Tax Commissioner denied the application as premature since the application was filed for the year in which the property was acquired.

Although the church contended that the Ohio Revised Code does not require ownership of the subject property on tax lien date (January 1) the BTA held that Revised Code 5713.08(B) limits the taxes which may be remitted by the Tax Commissioner to those which attached after acquisition of the property by the applicant seeking exemption. This case has been appealed to the Ohio Supreme Court.

**Sales & Use Tax**

**Ameritech Publishing, Inc. v. Wilkins (March 2, 2007), BTA #2005-238**

A publisher/distributor of telephone directories compiled telephone customer data and sent it to its printer in Illinois. The printer created the directories and sent them via independent transportation companies to customers' homes and businesses, some of which were in Ohio. Most customers were not charged for the directories. For a number of years the publisher accrued and paid Ohio use tax on its purchase of paper and the printing services of the Illinois printer attributable to directories distributed in Ohio. In a refund to recover the Ohio use tax paid, the publisher contended that it had erroneously paid tax on its purchases. The Tax Commissioner denied the refund, finding that the use tax was properly paid on directories consumed by the publisher in Ohio. The BTA found that over the years the publisher had measured the use tax base by the amount it paid the printer for paper, printing services and other supplies, and this was an

appropriate method of complying with its use tax liabilities.

**Inverness Club v. Wilkins (May 11, 2007), BTA #2004-338**

In the 1990s a country club embarked on a renovation of its golf course. The renovation involved removing a hill, installing over 30,000-feet of drainage, changing 57 bunkers and reconstructing 37 tees. Yardage was added to the course. A construction contract was entered into between the country club and a golf construction company. The Tax Commissioner audited the country club and issued a use tax assessment for tax not paid on the club's purchase of the golf course renovation, which the Commissioner held to be taxable lawn care and landscaping services. The BTA held that the reconstruction of the golf course was a construction project, not landscaping, and that the bunkers and tees are not personal property used in business but are part of the land itself.

**George Cross v. Wilkins (May 4, 2007), BTA #2004-780**

In 1998, an Ohio resident who lived part-time in Florida executed a document by which he leased for 25 months from a New York corporation a 66-foot sport-fishing boat for an upfront fee of \$700,000, with an option to purchase for an additional \$100,000. An insurance document named the taxpayer and the New York corporation as the insured beneficiaries. No sales or use tax was paid to any jurisdiction on this transaction. The taxpayer

rented a dockage space for the boat at an Ohio marina for the 1999 summer season. No logbooks or invoices were available to substantiate any business conducted in renting or chartering the boat during 1999. The taxpayer sold the boat in Florida in 2000. The Tax Commissioner assessed the taxpayer on the purchase transaction. The taxpayer contended that the taxable price of the boat should be based on transient in-state use, pursuant to Ohio Revised Code 5741.01(G)(3) or 5741.01(G)(4), which apply to "nonresident business consumers that purchase and use tangible personal property outside this state and subsequently temporarily store, use or otherwise consume" the property "in the conduct of business in this state". The BTA held that the taxpayer was not a nonresident of Ohio and did not conduct a business in Ohio, and so these provisions did not apply. Additionally, there was adequate evidence of use of the boat within Ohio for a three-month period to meet the "use" requirement of Revised Code 5741.01. The BTA affirmed the Tax Commissioner's final determination.

**John G. Childers v. Wilkins (May 18, 2007), BTA #2004-1326**

A business owner who operated a transportation service obtained Toledo municipal permits for vehicles for hire. The owner contended that his purchases for the business were exempt under Ohio Revised Code 5739.01(E)(2) because they were

used in rendering a public utility service. The BTA found that the business was operated mostly on the basis of pre-arranged contracts, not as a taxi service. The rates were not established by municipal ordinance, nor were there taxi meters in most of the vehicles. The BTA cited Ohio Supreme Court decisions holding that a determinative characteristic of a public utility service is that the service is provided to an indefinite public which has a legal right to demand and receive the service provided by the utility. Using this standard, the BTA held that the business was not a public utility. The BTA affirmed the Tax Commissioner's final determination.

**Thermal Efficiency Exemption Certificate**

**Carroll E. Newman, Adams County Auditor v. Wilkins (May 18, 2007), BTA #2002-170, 2002-171, 2002-172**

The Adams County Auditor sought revocation of the thermal efficiency certificates issued by the Tax Commissioner for the J.M. Stuart & Killen Electric Generating Station, contending (1) that the auditor was not given notice of the hearing on the matter as required by the Ohio Revised Code, (2) that the equipment in question does not qualify for exemption under the applicable statutes, (3) that the certificates relate to machinery completed prior to December 31, 1974 and which are therefore not eligible for exemption under Ohio Revised Code

5709.46, and (4) that the Tax Commissioner did not receive formal opinions from the Ohio Director of Development regarding the equipment, as required by statute. The BTA found that some of the facili-

ties were not post-December 31, 1974 facilities but held that post-December 31, 1974 improvements to such facilities could nonetheless qualify for the thermal efficiency

exemption. The BTA determined in its order which of the improvements in contention qualified. This case has been appealed to the Supreme Court.



# TAX enforcement news

*The following convictions were secured by the Enforcement Division of the Ohio Department of Taxation from February through April 2007. Enforcement News is compiled by Robert M. Bray, administrator of ODT's Enforcement Division. Fraud complaints can be e-mailed to [Taxenforcement@tax.state.oh.us](mailto:Taxenforcement@tax.state.oh.us).*

Todd Frankart, an employee of the Seneca East School District in Bloomville, pleaded guilty to one count of theft in office, a third-degree felony. The department was contacted by the Attica Police Department and Seneca School Board regarding tax-exempt purchases made with government funds by Frankart for his personal use. A review of invoices found that at least \$20,000 in school district purchases were for the personal use of Frankart, involving \$1,098 of unpaid sales tax. Frankart will be sentenced at a later time. The maximum possible sentence for such a felony is five years in a state penal institution.

Ming H. Wu, owner of Dynasty Buffet in Cincinnati, pleaded guilty to two counts of collecting and failing to remit sales tax, a fourth-degree felony. A complaint was received stating that Dynasty Buffet was overcharging sales tax. After reviewing department records it was found that the business did not have a vendor's license and was not remitting the sales tax it collected. An audit was conducted and it was determined that Wu owed the State of Ohio \$95,442.00 including penalties and interest. Prior to sentencing, Wu made several payments to the state. He received five years of probation and was ordered to remit \$56,396.56 to the State of Ohio for his delinquent sales tax. If Wu fails to remit the delinquent sales tax, he will have to serve a three-year sentence.

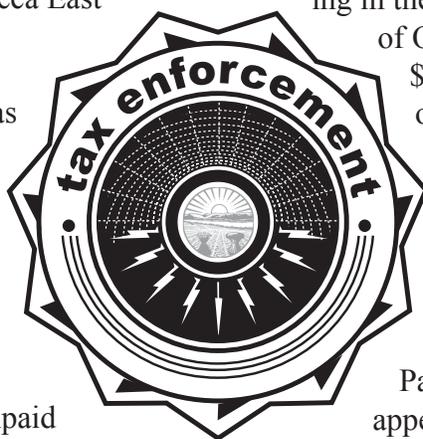
Daniel E. Kinane Jr., owner of Omega Supply in Miamisburg, pleaded guilty to four counts of trafficking with the intent to avoid other tobacco products

tax. During a routine inspection, agents found that the business' invoices contained no tobacco product invoices. A search warrant was executed at Omega Supply and the tobacco distribution supplier. Documentation obtained showed that Kinane had been purchasing untaxed tobacco for at least four years. Kinane was sentenced to 30 days in jail, prohibited from engaging in the sale of tobacco products in the State

of Ohio and ordered to immediately pay \$20,000 in excise taxes and to pay another \$58,550.99 in monthly increments of \$200 until paid in full. He was also ordered to attend a chemical dependency program and his driver's license was suspended for thirty days with work privileges.

Paul Jones, former mayor of Ravenna, appeared in the Portage County Court of Common Pleas where he pleaded guilty to three counts of unlawful interests in a public contract, three counts of filing a fraudulent income tax return (a fourth-degree felony) and four counts of filing a false financial disclosure statement. The judge accepted the guilty plea and sentenced Jones to 14 months in prison. He will be transferred to the Department of Corrections after he serves a 16-month sentence for federal charges that he pleaded to in March.

Colonial Rubber Company, of Ravenna, was found guilty of five counts of collecting and failing to remit withholding tax (a fifth-degree felony). This case was referred to the Enforcement Division by the Tax Discovery Unit. Colonial Rubber was notified by mail that its withholding account was in arrears. However, no response was received. Enforcement agents obtained the withholding records and determined that \$1,224,470.70 was owed in interest and penalties. The court did not order an amount of restitution; however, assessments were certified to the Attorney General's Office for collection.



## Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Eli Monte	Oregon's Flooring/Wall Gallery	Oregon	1 count failure to file sales tax returns
Leota Alwine	Lingo's Hardware	Quaker City	1 count failure to file sales tax returns
Bryan Callahan	Bryan Callahan	Lancaster	1 count failure to file sales tax returns
Amul Patel	Shri Hotel	Columbus	1 count failure to file sales tax returns
Jeffrey Tolles	Ottawa River Automotive	Toledo	1 count failure to file sales tax returns
John Kallenberger	True Quality Collision	Hamilton	1 count failure to file sales tax returns
John Kallenberger	JKFE Enterprises	Cincinnati	1 count failure to file sales tax returns
Mary Kline	Margie's Cleaning Service	Ravenna	1 count failure to file sales tax returns
Daniel Duplain	Fedeli Restaurant	Canton	1 count failure to file sales tax returns
Timmy Brendle	Four Winds Restaurant	Canton	1 count failure to file sales tax returns
Paulette Wittich	American Sign Co.	Perrysburg	1 count failure to file sales tax returns
Douglas Schaffer	Lifestyles For Ladies	Northwood	1 count failure to file sales tax returns
Martin Pecina	Midnights	Toledo	1 count failure to file sales tax returns
Arvind Toughreddy	Convenience Express	Toledo	1 count failure to file sales tax returns
Mathew Morris	Hilltop Inverwest	Toledo	1 count failure to file sales tax returns
Jeanna Fairchild	Atlas Bridal	Toledo	1 count failure to file sales tax returns
David Groff	Jak's Place	Ottawa	2 counts failure to file sales tax returns
Cathy Lingafelter	Cambridge Petland	Cambridge	2 counts failure to file sales tax returns
Michael Maag	Timberline Cabins	Cambridge	2 counts failure to file sales tax returns
Travis Appis	Spitler's Restaurant	Coshocton	2 counts failure To file sales tax returns
Steven Ramsey	Gator's Sports Pub	Coshocton	2 counts failure to file sales tax returns
Blake Frederick	Blake Frederick	Sheffield Village	2 counts failure to file sales tax returns
Larry Workinger	Larry Workinger	New Philadelphia	3 counts failure to file sales tax return
Thomas Nicholson	Solid Rock Computers	Defiance	3 counts failure to file sales tax returns
David Zimmerman	David Zimmerman	Ghadenhutten	1 count failure to file sales tax returns 1 count no vendor's license
Pamela Girand	LCR Office Equipment	Fremont	2 counts failure to file sales tax returns
Joe Pendergrass	Joe's Muffler and Brake	Huron	2 counts failure to file sales tax returns
Melinda Moore	Memmer's Water	Defiance	2 counts failure to file sales tax returns
Michael Hulme	Deluxe Carpet & Floor Care	Thompson	2 counts failure to file sales tax returns
Salvatore Cestaro	Sarah's Beverage	Byesville	2 counts failure to file sales tax returns
Glenn Elliot	Town House Restaurant	Chesterland	2 counts failure to file sales tax returns
Anthony Adams	Adams Auto Repair	Columbus	1 count failure to collect sales tax
Katina Aldrich	Steinmetz Signs & Graphics	Tiffin	1 count failure to collect sales tax
Ronald Paramore	Ronald Paramore	Wilmington	1 count failure to collect sales tax
James Santomieri	James Santomieri	Wilmington	1 count failure to collect sales tax

## Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Ernest Brown	Ernest Brown	Euclid	1 count no cigarette license
Kashif Syed	Kashif Syed	Euclid	1 count no cigarette license
Mohamad Mohamad	Q's Gas & Go	Cleveland	1 count no cigarette license
Jeffry Shamali	George's Market	Cleveland	1 count no cigarette license
Osama Bahhur	Franklin Food Market	Cleveland	1 count no cigarette license
William Norvell	Norvell Landscaping	Middletown	1 count no cigarette license
Jhirmal Singh	K&K Bharath Sunoco	Fairborn	1 count no cigarette license
Jhirmal Singh	K&K Bharath Marathon	Fairborn	1 count no cigarette license
Rayd Kader	Rayd Kader	Akron	1 count no cigarette license
Timothy Hahne	Hahne's Carry Out	Bridgeport	1 count no cigarette license
Raymond Sexton	Bloomville Market	Bloomville	1 count no cigarette license
Charles McKeegan	Caruso Oil	St. Clairsville	1 count failure to post cigarette license
Assaad Hawrouni	Edy's Food Mart	Cleveland	1 count failure to post cigarette license
Norman Leets	Storman Norman's Sports Café	Reading	1 count no cigarette license 1 count failure to maintain purchase records 1 count retailer in possession of untaxed cigarettes
Baupinder Kaur	Baupinder Kaur	West Chester	1 count retailer in possession of untaxed cigarettes
Abdel Jaber	Rico Super Mercado	Cleveland	1 count retailer in possession of untaxed cigarettes
Kevin Edwards	Kevin Edwards	Cincinnati	1 count retailer in possession of untaxed cigarettes
Naser Judeh	Naser Judeh	Akron	1 count selling single cigarettes

# INFORMATION releases

The Ohio Department of Taxation recently issued the following information releases. To view the releases, please visit our Web site at [tax.ohio.gov](http://tax.ohio.gov) and click on "Releases" in the Popular Links section at the top of the home page.

## Commercial Activity Tax

**CAT 2007-02** - Commercial Activity Tax: Pre-Income Tax Trusts, Explained with Revocation Procedures - Issued February 2007; Revised March 2007; Revised May 2007

**CAT 2006-01** - Applicable Excise Tax Rates for Purposes of the Commercial Activity Tax; Issued January, 2006; Revised February, 2007

## Excise Tax

**XT 2007-02** - Severance Tax Increase on Coal - Issued March 2007

## Personal Income Tax

**IT 1996-01** - Personal Income Tax: Federal Law Preempting State Taxation of Retirement Plan Income - Issued March 11, 1996; Revised May 2007

## IT 2006-04 -

Personal Income Tax: Nonresident Married Filing Jointly - Issued September, 2006; Revised March 2007

## Sales Tax

**ST 1993-08** - Employment Service - Issued September, 1993; Revised October, 1993; Revised December, 2000; Revised May, 2006, Revised February, 2007

**ST 1995-05** - "Price" for calculating Sales or Use Tax - Issued March, 1995; Revised February, 2007

**IT 2006-04** - Personal Income Tax: Nonresident Married Filing Jointly - Issued September, 2006; Revised March 2007

**Sales Tax**

**ST 1993-08** - Employment Service - Issued September, 1993; Revised October, 1993; Revised December, 2000; Revised May, 2006, Revised February, 2007

**ST 1995-05** - “Price” for calculating Sales or Use Tax- Issued March, 1995; Revised February, 2007

**ST 2002-02** - Portable Grain Bins, Field Tile, Live-stock Structures, Horticulture Structures - Issued April 2002; Revised May 2007

**ST 2005-01** - Vendor Compensation - Issued April 2005; Revised July 2005; Revised April 2007

**July Tax Calendar at-a-Glance**

- 16** Monthly Income Tax Withholding Returns
- 20** Monthly Kilowatt Hour Tax Returns
- 23** Monthly Semiannual Sales Tax Returns
- 23** Monthly Consumer Use and Direct Pay Returns
- 23** Quarterly Consumer Use Tax Returns
- 23** Quarterly Direct Pay Sales Tax Returns
- 30** Semiannual ST-CRDO for Cumulative Vendors
- 31** Quarterly Income Tax Withholding Returns

**Aug.**

- 9** Quarterly Commercial Activity Tax Returns
- 15** Monthly Income Tax Withholding Returns
- 20** Monthly Kilowatt Hour (KWH) Tax Returns
- 20** Quarterly Natural Gas Distribution Tax Returns
- 23** Monthly Sales Tax Returns
- 23** Monthly Consumer Use and Direct Pay Returns

**Sept.**

- 17** Monthly Income Tax Withholding Returns
- 17** Quarterly Estimated Income Tax Returns
- 20** Monthly Kilowatt Hour (KWH) Returns
- 24** Monthly Sales Tax Returns
- 24** Monthly Consumer Use and Direct Pay Returns

*Our Mission:*

*To provide quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.*

*Our Motto:*

*We CARE about the quality of our service.*

- Courteous*
- Accurate*
- Responsive*
- Equitable*

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