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Real Property Owners With Dismissed Applications May Be Able to Claim Exemption

Property owners whose applications for real property tax exemption were dismissed due to a recent Supreme Court decision may be able to claim exemption for tax years that are no longer open under permanent law.

Ohio law allows entities such as cemeteries, schools, churches, homes for the aged and charitable, and public institutions to request exemption from real property taxes. An applicant may request exemption for the year in which the application was filed and may receive remission of taxes for the three preceding years if the property qualified for exemption in those years. Ohio law also requires the applicant to have paid all taxes and special assessments that are not subject to exemption at the time the application is filed. Historically, the Ohio Department of Taxation (ODT) allowed applicants to pay the necessary charges after the application was filed. However the recent court decision interpreted the payment requirement narrowly to mean payment must be made prior to the time the application is filed, as evidenced by a certificate from the county treasurer which must be attached to the application.

The Ohio Supreme Court's decision in Cleveland Clinic Foundation v. Wilkins (103 Ohio St.3d 382 (2004) required ODT to dismiss all applications for real property tax exemptions that did not have a proper county treasurer certification attached to the application at the time of filing. The ruling left many applicants facing the loss of a year of exempted taxes that they otherwise would have been able to claim.

However, a new law passed by state lawmakers and signed into law in late December by Governor Bob Taft, entities whose applications were dismissed due to the court decision can refile a request for exemption for the years under consideration in the first application. If the property currently qualifies for exemption and the taxing authorities due to receive the revenue

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do not object to remission of taxes for the years closed under permanent law, the exemption may be effective for the years included under the dismissed application.

Entities wishing to refile under this amnesty provision will need to attach a copy of the Tax Commissioner's final determination dismissing the previous application to the new application. They will also need to attach a current certificate from the county treasurer indicating that any charges that cannot be remitted due to the exemption have been paid. The deadline for these applications is July 1, 2005.

Foreign Language Skills Boost Taxpayer Customer Service

The Ohio Department of Taxation (ODT) is fortunate to have staff members who can communicate with taxpayers who are more at ease speaking about taxes in a language other than English. Currently, ten employees within the department collectively speak Spanish, Hungarian, Arabic, Italian or Latvian.

ODT began looking for multi-lingual staff two years ago, according to Linda Post, executive secretary in Taxpayer Services. The idea came from Bonnie Reed, then the administrator of Taxpayer Services.

"People were calling and agents couldn't understand them," Post said. "She (Reed) put together this list of people who speak a second language."

Most of these individuals are tax agents and auditors who are already on the front lines with taxpayers every day. Their second-language skills give them an additional way to provide quality service to Ohio residents. And while these skills don't get used everyday, they still find themselves called on frequently to assist people who aren't fully comfortable conversing in English.

"Fifty percent of the time, I just walk into it," said Merlinda Baker, an agent at the Toledo Taxpayer Service Center who speaks Spanish. "I've helped out with people who walk in to the front desk, and I've taken calls on Spectrum or had them transferred in from another agent."

Baker, one of five Spanish speakers listed in ODT, stated that it's not "real often" that her language services are needed, but added that the calls come more frequently around income tax time. Mostly it involves interpreting what to do with a particular form or how to respond to a letter that a taxpayer has received, she said.

Hispanics comprise a growing immigrant population in Ohio's larger cities, especially in Cleveland, which is reflected in the phone calls, e-mails and walk-in taxpayers received by Natalie Morales, a senior agent in the Cleveland Taxpayer Service Center. The calls run the gamut of taxes - sales, property, income and corporation franchise. "I'll translate, and any questions that I might not be able to answer, I will research and get back to the taxpayer as soon as possible," she said. The demand for assistance is higher than expected, so agents Felipe Agrelot and Luis Vizcarrondo help out.

Morales' skill has earned her a reputation that results in a wide range of transfer calls and taxpayer visits. It also challenges her language ability because of the many different dialects in Spanish-speaking countries. "It helps the taxpayers to get assistance in Spanish and it gives me exposure to a lot of people of different nationalities," she said, adding that it also teaches her, Agrelot and Vizcarrondo to appreciate their jobs and culture and to gain knowledge from helping others.

The number of immigrants from the Middle East is also growing in Ohio, providing Siham (Sue) Shibley, Clerk 3 at the Cleveland Taxpayer Service Center, a chance to talk taxes in Arabic. She explained that people hear her accent and ask if she speaks Arabic. "They're more comfortable speaking to someone in their own language," she added. "They understand it better."

Shibley, the only Arabic speaker working at ODT, has been mostly called on to assist with sales tax questions from small business owners, but she has also dealt with income tax issues.

An occasional need exists for speakers of a European language – a requirement ODT answers by having two employees who speak Hungarian and one each that speak Italian and Latvian.

Alan Varga, an agent supervisor in Cleveland, said he's dealt with many Hungarians over the years. Although the local population has dwindled or become part of the larger community over the years, his skills are still occasionally needed. "But there are a few older people who have known me throughout the years, and they come down to see me," he commented, mostly on sales and income tax issues.

This number includes a couple of accountants who Varga said speak "broken English." And similar to many who seek Siham Shibley's ability, Varga added, "They're more comfortable speaking their native tongue."

Mark Walker, Executive Administrator, Taxpayer Services/Compliance, said he doesn't believe the need for linguists in ODT is widespread at this time. But he praised the employees who voluntarily utilize these additional skills to help others. "It's nice that we have these people and they're willing and capable of doing this," he stated. "They should be patted on the back."

And while interpreting tax questions in another language isn't a frequent occurrence in ODT, at least not yet, those who have the capabilities believe they're performing a valuable service. "People are really grateful," Morales remarked.

PRO-*files*

By Peter Angus, Legal Counsel, Compliance Division

Authority of ODT to Offset Refunds is Expanded

House Bill 95, effective June 26, 2003, expanded the ability of the Ohio Department of Taxation (ODT) to withhold outstanding tax and other liabilities from refunds due to taxpayers. The expanded offset provisions apply to refunds and credit carry-forwards of most of the taxes administered by ODT, including personal income, corporation franchise, sales/use, public utility excise, kilowatt-hour, motor fuel, tobacco products and severance. Refunds and carry-forwards from any of these taxes are to be offset against any taxes administered by ODT. Additionally, unpaid liabilities for Workers Compensation and Unemployment Compensation will be offset against potential income tax and corporation franchise tax refunds.

The offsets against refunds otherwise due to parents who have arrearages of unpaid child support will continue to be made against income tax refunds. Also offset against income tax refunds are overpayments of public assistance and overpaid child support. The amounts of these offsets are determined by the respective county child support enforcement agencies who certify the amounts to the Ohio Department of Jobs and Family Services which, in turn, provides the information to ODT. Questions or concerns regarding these offsets should be directed to the county agencies first.

The accompanying chart summarizes the offset provisions of the tax title (Title 57) of the Ohio Revised Code. In addition to these intra-Ohio offsets, ODT offsets for U.S Internal Revenue Service (IRS) liabilities under the State Income Tax Levy Program (SITLP). The IRS reciprocates by offsetting refunds for Ohio income tax assessments under the Treasury Offset Program (TOP). In the most recent year, there were 6,076 TOP notices issued and $3,560,851 of Ohio revenue was collected from IRS refunds. There were 11,841 SITLP notices issued and $2,247,545 in federal revenue was collected from ODT refunds.

Refund Offset Authorized by Ohio Revised Code Section	Tax	What debts may be offset against refund?	Other Provisions
3734.905	Fees on Tire Sales	Any tax, penalty, interest or fee administered by the Tax Commissioner	
5727.28	Excise Tax on Natural Gas Company or Combined Electric and Gas Company	Any tax, penalty, interest or fee administered by the Tax Commissioner	
5727.91	Kilowatt-Hour Tax	Any tax, penalty, interest or fee administered by the Tax Commissioner	
5733.121	Corporation Franchise Tax	Any tax, workers' compensation premium, unemployment compensation contribution or payment to be made in lieu thereof, or fee that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code, or any charge, penalty, or interest.	
5735.143	Motor Fuel Tax	Any tax or fee administered by the Tax Commissioner that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code.	
5739.072	Sales Tax	Any tax or fee administered by the Tax Commissioner that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code.	
5741.101	Use Tax	Any tax or fee administered by theTax Commissioner that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code.	
5743.53	Tobacco Products Tax	Any tax or fee administered by the Tax Commissioner.	
5747.12	Income (including school district), Withholding Tax (including school district)	Any tax, workers' compensation premium, unemployment compensation contribution or payment to be made in lieu thereof, or fee that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code, or any charge, penalty, or interest.	If the person has more than one such debt, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

Refund Offset Authorized by Ohio Revised Code Section	Tax	What debts may be offset against refund?	Other Provisions
5747.121	Income	Overdue child support	In the case of persons filing a joint income tax return, the amount of the refund available for the collection of overdue child support shall be based on the proportion of the refund due to the obligor only.
5747.122	Income	Overpayments of public assistance under Chapters 5107, 5111, or 5115.	In the case of a joint income tax return for two people who were not married to each other at the time one of them received an overpayment of assistance, only the portion of a refund that is due to the recipient of the overpayment shall be available for collection of the overpayment.
5747.123	Income	Overpaid child support.	In the case of persons filing a joint income tax return, the amount of the refund available for the collection of overpaid child support shall be based on the proportion of the refund due the obligee only.
5749.09	Severance Tax	Any tax indebtedness to the State.	

COMMENTS *from the commissioner*

Commissioner *Wilkins*

We are on the verge of yet another filing season. Over the last several years, it has been the department's goal to have fewer taxpayers file paper returns and instead file electronic returns. It will be our goal again, although I am putting even higher emphasis on it this year.

Many states, including California, Michigan and Wisconsin, are mandating that practitioners file electronically. We aren't ready to go that far here in Ohio, but we will be working hard to convince practitioners to file electronically.

Without mandating electronic filing, we've done well. More than 2.4 million or 47 percent of taxpayers chose to file their state returns electronically in 2004 (tax year 2003). Returns filed electronically are less expensive to process, while they ease the filing process for taxpayers. Paper returns cost about $3 to process, whereas electronic returns cost $1.15 to process.

Since first being offered in 2003, Ohio-I-File continues to receive rave reviews from users. Taxpayers find the system convenient and user-friendly. Ohio-I-File is free and easily accessible through our Web site at tax.ohio.gov.

This year, there are a few changes to the I-File system, in turn making it available to more taxpayers. If the taxpayer has filed with us in the past two years, they will simply register on line and then file. This year, it is also open to taxpayers who have never filed an Ohio return. They must first register with Taxpayer Services, and then they can file their return, immediately if they wish. Previously, taxpayers involved with pass-through entities were restricted from using I-File. This year, the system will be open to them as well. Also new this year is the option for taxpayers to I-File their school district income tax return. School district income tax returns from as far back as 2001 can be filed using I-File.

Again, taxpayers will have the option of paying their tax due with a credit card. This can be accomplished via the ePayment system that connects directly to a private vendor that has been approved by the state and IRS and that charges a convenience fee. Taxpayers may also have their tax due directly debited from a bank account. Taxpayers who owe tax and I-File can file at any time and choose a later time to pay.

Choosing to file a paperless return will result in quick refunds. Taxpayers filing electronically and selecting the direct payment option will receive their refund in their bank account within five to seven days or sooner. Those who don't choose direct deposit will wait more than twice as long.

Besides increasing electronic filing, goals for the department in 2005 also focus on improving our operations, tax reform and taxpayer education and outreach.

Improving our operations is an everyday and ongoing effort. I am looking at any and all ways that we can improve. Specifically, I am looking at speeding up our response to taxpayers on all fronts. Whether it is processing returns, answering the phones or providing instruction, it can be done more quickly, and I will be looking for tools and strategies to accomplish that.

Tax reform will again be a big issue. Our tax system is clearly the product of a bygone era and is in desperate need of updating. This state must recognize the reality of intense national and international competition in the area of attracting and growing new business and economic development. It's imperative that our tax system be designed to enhance Ohio's competitive position and spark additional business investment.

Finally, **education and outreach** can help us accomplish our other three objectives. If we can teach taxpayers how to cope with the complexity of the tax laws, it will directly reduce their frustrations and requests for assistance. If we reach out to taxpayers, we can explain our taxes and our products. It also gives us the opportunity to market electronic filing and other self-help resources that increase our efficiency and help hold down costs.

Officials Hear of Tax Avoidance Schemes, Get Compliance Advice

A standing-room-only crowd of federal, state and municipal tax officials gathered in Columbus in late September to learn of efforts to bring taxpayers into compliance who purposely avoid paying taxes – on the advice of some of the largest, most prestigious accounting and law firms in the country.

Those attending the event saw video clips from television programs and congressional hearings detailing some of the tax avoidance schemes promoted – often aggressively – by some accounting and law firms. In one case, a well-known accounting firm even had a call center pitching tax breaks the way some companies pitch credit cards.

The U.S. Internal Revenue Service (IRS) estimates a significant portion of the approximate $312 billion tax gap (the difference between total tax owed and total tax paid) is due to participation in abusive schemes.

Ohio's interest in recovering tax revenue lost through these tax avoidance schemes has been spurred by the success of a California program that generated $1.4 billion for the state treasury from 1,138 personal and corporate taxpayers .

Currently, the Ohio Department of Taxation is contacting possible tax dodging taxpayers included on a list provided by the IRS. The IRS says its list came from practitioners who promoted the schemes. They usually involve complex, multi-layer transactions for the purpose of hiding the true nature and ownership of taxable income and/or assets.

Abusive tax schemes are characterized by the use of trusts, limited liability companies, limited liability partnerships, international business companies, foreign financial accounts and offshore credit/debit cards.

Examples of tax avoidance schemes identified by the IRS are:

• Foreign trusts that usually start off as a series of domestic trusts layered upon one another. The purpose is to make it appear the taxpayer has turned his or her business and assets over to a trust and no longer controls them. The reality is that nothing changes. The taxpayer still exercises full control.

• Hiding income in international business corporations and foreign banks.

• Using false billing schemes where the taxpayer sets up an international business corporation in a tax haven country and opens a bank account. The scheme promoter then issues invoices to the taxpayer's business for goods allegedly purchased by the taxpayer. The taxpayer sends money to cover the alleged cost of those goods, but the money is simply deposited into the foreign bank, thereby reducing taxable income. Money from these transactions can be returned to the taxpayer in the form of fraudulent loans or the taxpayer uses a credit card to withdraw the cash and pay for everyday expenses.

The IRS is going after promoters of these tax avoidance schemes, and has compiled a list of schemes it is alerting taxpayers to avoid. The taxpayer is ultimately responsible for paying taxes and penalties associated with tax avoidance schemes.

The IRS says abusive tax avoidance schemes often include offers to:

• Reduce or eliminate income and self-employment tax.

• Use a trust to pay personal expenses.

• Allow depreciation deductions on an owner's personal residence and furnishings.

• Charge high fees for trust packages, to be offset by promised tax benefits.

• Use post office boxes for trust addresses.

• Use terms such as *pure trust, constitutional trust, sovereign trust* or *unincorporated business organization.*

The IRS tax fraud section can be reached by calling 1-800-829-0433. The ODT tax fraud number is 1-800-757-6091.

Make Plans Now to Attend Ohio Tax Conference

Don't miss the most important business tax event of the year to be held in Ohio. Make reservations now to attend the 14th annual Ohio Tax Conference at the Greater Columbus Convention Center on January 27 and 28, 2005.

The conference is particularly timely given the current backdrop of Ohio tax policy being at a crossroads with lawmakers and the governor preparing to grapple with the toughest state budget since the Great Depression and the Ohio business community demanding significant tax reform that reduces the tax cost of capital investment and job creation.

Throw in significant public pressure to address Ohio's long-standing school funding issues, intense lobbying to reduce Ohio's sales and personal income tax rates and the Sixth Circuit U.S. Court of Appeals ruling that Ohio's manufacturing investment tax credit is unconstitutional and it is easy to see why this is one conference you cannot afford to miss!

Besides hearing about the above challenges facing Ohio leaders in 2005, attendees will also leave the conference having gained:

- The most reliable tax information from many of the nation's leading experts at the largest business tax conference in the U.S.
- Multiple opportunities, including an informal networking session during the gala reception, to discuss your tax problems, concerns and issues with senior Ohio Department of Taxation officials.
- Priceless insight into potential Congressional action on business activity tax nexus, Streamlined Sales Tax Project, Quill repeal legislation and the taxation of electronic commerce.
- A complete understanding of the significant financial and tax reporting requirements, differing audit-sampling methods, economic and tax incentives, international tax issues, audits/assessments/appeals, Ohio's new Internet application "The Finder" and how Ohio funds public schools. You will also be exposed to the Michigan single business tax with candid advice for non-Michigan companies.
- Information on the latest tax developments in Ohio such as municipal income tax uniformity, sales and use tax, corporate franchise and income tax, tangible personal property tax, sales taxation of employment services and the taxation of pass-through entities.
- Valuable tax management strategies and valuable information on the enormous challenges you face in the effort to improve your business bottom line to help your company overcome one of Ohio's worst economic downturns.

Additionally, mid-level managers, newer tax professionals and others will have a special track of workshops focused on the practical aspects of tax compliance.

The keynote speaker on January 27 is Ohio Tax Commissioner William W. Wilkins, who will address the Ohio Department of Taxation's new management organization and new policies and procedures impacting Ohio's business taxpayers. On January 28, CPA Jack Park, a certified speaking professional and Ohio State University football analyst, will deliver a fun-filled keynote speech on improving organizational performance.

The cost of the conference is $595 per person, which includes tuition, a comprehensive set of manuals, two luncheons, a gala reception, continental breakfasts and snack breaks. The cost per person for organizations sending three to seven people to the conference is $495. Those that send eight or more people get a further price break of $395 per attendee. Please register by January 21, 2005 either online at www.MECSeminars.com, by phone at (614) 229-7990 or by fax at (614) 229-7991.

INFORMATION*releases*

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

Sales Tax
ST 2004-03 - Equipment used primarily in providing Internet services – December 2004

Addresses the application of Ohio sales and use tax to the purchase of equipment used primarily to provide Internet services.

ST 2003-01 - Direct Payment Authority Program - December 2004

Replaces Information Release ST 2003-01 and addresses what information direct payment permit holders must provide to the department and minimum penalties applied under audit for non-compliance.

Motor Fuel Tax
XT 2004-03 – Motor Fuel Tax Refund Claims for Agricultural, Industrial and Miscellaneous refund claimants - August 6, 2004

Addresses the filing of motor fuel refund claims for agricultural, industrial, and miscellaneous refundable use.

COURT*decisions*

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

Corporation Franchise Tax Cases

Cuno v. DaimlerChrysler, Inc. et al., (Sept. 2, 2004), U.S. Court of Appeals for the Sixth Circuit, No. 00-7247

In 1998, DaimlerChrysler entered into an agreement with the City of Toledo to construct a new vehicle-assembly plant near the company's existing facility in exchange for various tax incentives. DaimlerChrysler estimated that it would invest approximately $1.2 billion in this project, which would provide the region with several thousand new jobs. In return, the City and two local school districts agreed to give DaimlerChrysler a ten-year 100 percent property tax exemption, as well as an investment tax credit of 13.5 percent against the state corporation franchise tax for certain qualifying investments. The total value of the tax incentives was estimated to be $280 million. Ohio's investment tax credit grants a taxpayer a non-refundable credit against the state's corporation franchise tax if the taxpayer "purchases new manufacturing machinery and equipment during the qualifying period, provided that the new manufacturing machinery and equipment are installed in [Ohio]." Ohio Rev. Code 5733.33(B)(1). The U.S. Court of Appeals held that the statute violates the Commerce Clause of the U.S. Constitution because, although the investment tax credit is equally available to in-state and out-of-state businesses, it discriminates against interstate economic activity by coercing businesses already subject to the Ohio franchise tax to expand locally rather than out-of-state. Specifically, any corporation currently doing business in Ohio, and therefore paying the state's corporation franchise tax in Ohio, can reduce its existing tax liability by locating significant new machinery and equipment within the state, but it will receive no such reduction in tax liability if it locates a comparable plant and equipment elsewhere. Moreover, as between two businesses, otherwise similarly situated and each subject to Ohio taxation, the business that chooses to expand its local presence will enjoy a reduced tax burden, based directly on its new in-state investment, while a competitor that invests out of state will face a comparatively higher tax burden because it will be ineligible for any credit against its Ohio tax.

Note: The state of Ohio is seeking review of the court's decision. Because a review of the decision is being made, the Ohio Department of Taxation (ODT) is not currently enjoined from administering the tax credit. ODT is currently allowing taxpayers to claim the credit in those circumstances where purchases of new manufacturing machinery and equipment qualify for the credit under Ohio law. ODT will continue to monitor the situation and issue future notifications to taxpayers and practitioners as the situation warrants.

Real Property Exemption Cases

Cleveland Clinic Foundation v. Wilkins (2004), 103 Ohio St. 3d 382

In July 1998, the Cleveland Clinic Foundation filed with the Tax Commissioner an application for exemption of certain real property for 1998 and a request for remission of taxes and penalties for tax year 1997. The county auditor's records indicated that the owner of the property was not the Cleveland Clinic. The county treasurer's certificate attached to the application stated that there were unpaid taxes, special assessments, penalties, and interest for 1997. The Tax Commissioner dismissed the application on the grounds that the applicant was not the owner of the property and under former Ohio Revised Code 5713.08, which provided that "The commissioner shall not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer certifying either of the following: (1) That all taxes, assessments, interest and penalties" have been paid as of the date of the application or "(2) That the applicant has entered into a valid undertaking with the county treasurer" to pay all of the delinquencies owed on the property.

The BTA, in its consideration of the matter, held that the Cleveland Clinic Foundation held such a large "bundle of rights" in the property that it had standing to file the application. The BTA also held that the payment requirements of Revised Code 5713.08 did not preclude consideration of the application. The Tax Commissioner appealed to the Ohio Supreme Court, primarily seeking clarification of whether a lessee has standing to file an exemption application. The Court, however, found that since there were unpaid special assessments at the time the application was filed, the Tax Commissioner's dismissal was proper. The Court did not address whether a lessee can be considered an owner for purposes of filing an exemption application.

House Bill 362, recently signed into law, contains an amnesty provision that applicants issued final determinations as a result of this case may be able to use to re-apply for an exemption (See separate story in this issue of the OSTR).

City of Grove City v. Zaino (September 24, 2004), BTA 2003-722

In 1999, the City of Grove City accepted a donation of 193 acres for the purpose of developing a public park. In June 2000, the City leased the property to a farmer for a period of five years, at $49 per acre. In 2001, the City filed an application for exemption for the property under Ohio Revised Code 5709.08, which provides exemption for realty belonging to the state or a political subdivision used exclusively for a public purpose. Although the City acknowledged that the farming that occurred after June 2000 was not consistent with the property's intended exempt use, it argued that the exemption is determined on the tax lien date, which is January 1. On January 1, 2000, the City had the intent to use the property for an exempt purpose, i.e., for a public park. The BTA agreed that the City held the property for an exempt purpose on January 1, 2000, and was thus entitled to exemption for tax year 2000.

Strongsville Bd. Of Ed. v. Zaino (October 8, 2004), BTA 2002-2562

A Salvation Army thrift shop was granted exemption by the Tax Commissioner under Ohio Revised Code 5709.12, which provides exemption for property used for charitable or public purposes. The Tax Commissioner found that the Salvation Army's thrift shop was used as part of its rehabilitation program. The Strongsville Board of Education filed an appeal in which it contended that the thrift shop was not used for charitable purposes, but was operated with a view toward profit.

The BTA, finding that the Tax Commissioner did not have jurisdiction to consider the case because there were unpaid taxes at the time the Salvation Army filed its application, reversed the Tax Commissioner's final determination granting exemption and remanded the case to him with instructions to dismiss it because taxes for 1997 had not been paid at the time the application was filed. The Salvation Army has appealed its case to the Ohio Supreme Court.

Personal Income Tax Case

Robert & Rachel Gibbs v. McAndrew (October 1, 2004), BTA 2004-204

The taxpayers filed Ohio income tax returns for 2000 and 2001 reflecting zero adjusted gross income and zero Ohio adjusted gross income and requesting a refund of all of their withholdings. Their W-2s showed that they received wages from their employers. The taxpayers' contention was that wages are not included in income. The taxpayers were assessed a frivolous filing penalty. The BTA affirmed the assessment.

Personal Property Tax Cases

Alcoa Inc. v. Zaino (October 22, 2004), BTA 1999-1401

The taxpayer appealed its final assessment certificates of valuation, contending that the use of the "302 Computation" for valuing its machinery is inappropriate because of special and unusual circumstances, and/or because the result of that computation is unjust or unreasonable. The machinery in question included large forges with which the taxpayer manufactured aircraft. The taxpayer contended that its equipment lost value because of the general downturn in the aircraft business in the 1990's. The BTA allowed the values as found by an appraiser using an income approach with an obsolescence factor. The taxpayer also contended that some of its equipment constituted "jigs", which are excepted from the definition of tangible personal property. The BTA held that some machine components which held work were jigs. However, the taxpayer failed to provide reliable values for the jigs, and so the objection to the inclusion of them was disallowed. This case has been appealed to the Ohio Supreme Court.

Anheuser-Busch Companies Inc. v. Zaino (September 24, 2004), BTA 2003-699

The taxpayer objected to the preliminary assessment certificates issued for 1995 and 1996, contending that part of the valuation of machinery and equipment improperly included the costs of engineering drawings. The BTA held that the taxpayer did not meet its burden of delineating the amount of costs attributable to engineering drawings, and therefore was not entitled to relief. The Tax Commissioner's final determination was affirmed.

Sales/Use Tax Cases

Continental Leasing Inc. v. Wilkins (Oct. 15, 2004), BTA 2004-443

A vendor filed a refund claim for sales tax paid on a transaction for which it had obtained a blanket exemption certificate which claimed exemption for "equipment primarily used in research and development." The Tax Commissioner denied the claim for exemption because the certificate did not adequately specify an exempt use. Under Ohio Revised Code 5739.01(HH) qualified research and development is exempt. "Qualified" research and development equipment is capitalized personal property, or leased property which would be capitalized if it were purchased. The BTA affirmed the Tax Commissioner's denial of the refund claim.

Meadowbrook Place, Inc. v. Zaino (Oct.29, 2004), BTA 2003-1234
Event Makers, Inc. v. Zaino (Oct. 29, 2004), BTA 2003-1109

Two catering services which provided both on- and off-premises food and beverage service were assessed for sales tax on numerous transactions. The taxpayers contended that some of the transactions were exempt because they were for off-premises consumption or were sales to governmental or charitable organizations. The taxpayers also objected to the inclusion of the gratuity in the price of some transactions. However, the taxpayers did not appear at the BTA hearings to give particulars concerning their objections. Accordingly, the BTA affirmed the Tax Commissioner's final determinations on the matters.

Forms Database and Search Function Tips

By Julie Carpenter, Administrator, Forms Division

The search functionality of the Ohio Department of Taxation's forms page is much improved from what it was previously. Here are some tips that may help taxpayers use this search function more effectively.

- If you just choose "search" without entering any information in the boxes, you will get an entire listing of the forms on our web page.
- If you enter a specific tax category in the "Tax Type" box (such as Employer Withholding), a list of all the Employer Withholding forms will pop up.
- If you enter a specific tax category in the "Tax Type" box (such as Individual Income Tax) and then select a year in the "Tax Year" box (such as 2003), a listing of all of the 2003 Income Tax forms will appear.
- Another new option is the ability to search by either Form Number or Form Title to speed up your search. If you can't remember the number of the form you are seeking, you can enter a few key words from the title and the database will find the form you need.

In other words, you can expand or restrict your forms search as necessary for your particular needs.

Interest Rate Charged By State Set at 5 Percent for 2005

Effective January 1, 2005, the annual interest rate charged by the state of Ohio during calendar year 2005 for delinquent taxes and tax assessments is five percent, up from four percent in 2004. Tax Commissioner Wilkins certified and announced the new interest rate in October as mandated by state law. The rate equals the federal short-term interest rate in July, which was two percent, plus three percent.

Interest is charged on money that taxpayers owe to the state for underpayment or late payment of taxes, other tax delinquencies and tax assessments. The state also applies this rate to money it may owe individuals or businesses for certain overdue payments.

The five percent rate applies to tax sections of the Ohio Revised Code requiring computation of an annual interest rate. Taxes affected are personal income, real estate, personal property, estate, sales and use, cigarettes, alcoholic beverage, motor vehicle fuel, corporation franchise, public utility, severance, pass-through entity, other tobacco products, tire fee, fuel use, kilowatt hour and natural gas distribution.

OHIO legislative update

Recently Enacted Legislation of Interest

Substitute Senate Bill 218 (Sponsor: Senator Ron Amstutz)

- Creates a six month compensation mechanism for vendors to assist them in complying with the destination sourcing law that takes effect in 2005.
- Establishes a compensation procedure for small and medium-sized counties to mitigate lost county permissive sales tax revenues.
- Requires the Tax Commissioner to work with the other states implementing the Streamlined Sales Tax agreement to encourage the adoption of an amendment that would allow certain small vendors to source sales of delivered items at their place of business.

Substitute House Bill 362 (Sponsor: Representative Jim Hoops)

- Changes certain terminology and procedures for school district permanent improvement property tax levies, making it easier for school districts to meet the maintenance requirements for school building projects.
- Makes changes to the application prioritization procedures for the job training credit.
- Creates an amnesty period for refiling real property tax exemption applications dismissed due to case law. (See article on page 1)
- Incorporates recent federal tax changes into Ohio law for the individual income tax and the corporation franchise tax.
- Makes changes in the municipal income tax treatment of stock option income in certain cases.
- For municipal income tax purposes, allows some single member LLC's to be separate taxpayers from their single member under certain circumstances.
- Changes the requirements for a lottery prize award winner to transfer the prize award to another party.

Substitute House Bill 414 (Sponsor: Representative Tony Core)

- Establishes Agricultural Security Areas (ASAs) intended to preserve land in agricultural use.
- Allows a temporary partial real property tax exemption for certain buildings, structures, improvements, and fixtures used exclusively for agriculture located in ASAs.

All bills can be viewed on the Ohio General Assembly website at: http://www.legislature.state.oh.us/search.cfm

TAX enforcement news

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

Antoinette Thompson, aka Treneice Campbell, of Akron, pleaded guilty to four counts of grand theft and one count of filing a fraudulent tax return. On April 27, 2004, the Ohio Department of Taxation (ODT), Taxpayer Services, forwarded information involving potential identity theft. Ms. Campbell alleged that someone had stolen her identity. A computer search indicated three different persons using the social security number of Ms. Campbell. Ms. Campbell identified the individual

in all three photos as Antoinette Thompson. Ms. Thompson denied filing a state and federal return. Ms. Thompson went to H&R Block and received and cashed the State of Ohio income tax check. Ms. Thompson was sentenced to serve a total of eight years in the Ohio Department of Rehabilitation and Corrections.

Lynn P. Brown, president of Creative Marketing Enterprises, Inc. of Toledo, entered a plea of guilty to one count of failure to pay withholding taxes. An anonymous complaint was received that the business was withholding Ohio tax from paychecks and issuing W-2s but not remitting the money to the State of Ohio. A check of ODT's computer files reflected an employee withholding account was established but showed no returns filed nor any money received. A search warrant was issued and executed. Miscellaneous payroll records were recovered and an audit was conducted which reflected a total of $201,117.79 of Ohio Income Tax and School District Tax withheld and not remitted. The defendant was ordered to pay the withholding amount of $175,119.18 and a fine of $5,000 to be suspended on the condition the tax was paid. On October 14, 2004 a check in the amount of $175,119.18 was issued to ODT.

Gerold Ward, owner and operator of The Original Gary's Plantland, Inc., of Cincinnati, entered a plea of guilty to three counts of knowingly failing to file income tax returns, three counts of collecting and failing to remit sales tax, four counts of collecting and failing to remit withholding tax returns and one count of theft. On April 1, 2002, ODT received an anonymous complaint regarding the above business. A check of the Department of Taxation's computer system reflected the vendor's license was cancelled on April 30, 1998. It was also verified the business operates out of two addresses for which no record of a vendor's license could be located for the second location.

A search warrant was issued for their records. A review of the records indicate over $187,000 was owed in taxes. The judge ordered Mr. Ward to serve seven years and three months in a location to be determined and also ordered payment of $187,796.24 in restitution to ODT.

Statewide, the Enforcement Delinquent Program, also known as Operation Pay-Up, has resulted in the citation and/or conviction of 690 vendors, compelled 5,566 returns to be filed and caused a total of just over $4 million to be collected as of October 31, 2004.

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

Assorted Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Gary L. King	Gary L. King	Cincinnati	1 Count No Cigarette License 1 Count Retailer In Possession of Untaxed Cigarettes
Tracey Fadley	Tracy's Country Mkt.	Republic	1 Count No Cigarette License
Anthony Preidis	Don's Drive Thru	Pataskala	1 Count No Cigarette License
Deborah Tebeau	McClure Mini Mart	Weston	1 Count No Cigarette License
Patricia Leslie	Tip Top Tow. & Haul.	Bellefontaine	1 Count No Cigarette License
Thomas Weber	Mach I, Inc.	Gahanna	1 Count No Cigarette License
Ahmed Ali Elzokm	Arden, Inc.	Cincinnati	1 Count Retailer in Possession Not Bearing Tax Stamps
Deborah Thornburg	Buckeye Cash Carry	Aberdeen	1 Count Retailer in Possession Not Bearing Tax Stamps

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Gregory Miller	M & W Eyewear	Sharonville	1 Count Failure To File Sales Tax Returns
Bobby Hubbard	B & B Lawncare	West Chester	2 Counts Failure To File Sales Tax Returns
Allen J. Peck Jr.	Express Auto Care	Cleveland	1 Count Failure To File Sales Tax Returns
Joseph Blaney	Interior Comforts, Inc.	Westerville	1 Count Failure To File Sales Tax Returns
Corporation	Toledo Rest. Group	Toledo	1 Count Failure To File Sales Tax Returns
Mark McDole	Oarhouse	Toledo	1 Count Failure To File Sales Tax Returns
Omar Nazeer	Engine Installers	Sylvania	1 Count Failure To File Sales Tax Returns
Benjamin O. Tawaih	Beta Computers	Toledo	1 Count Failure To File Sales Tax Returns
Victor Bruno	Vee Bee, Inc.	Marysville	1 Count Failure To File Sales Tax Returns
Dennis L. Miller	Clinton Lake Camping	Republic	2 Counts Failure To File Sales Tax Returns
Michael L. Pontius	Mid Town Café	Van Wert	1 Count Failure To File Sales Tax Returns
Mel Palmerton	Mel's Collision	Bryan	1 Count Failure To File Sales Tax Returns
Corporation	Adrianes Enterprises	Edgerton	1 Count Failure To File Sales Tax Returns
Mary B. Wettle	Awning Designs	Walbridge	1 Count Failure To File Sales Tax Returns
David E. Bell	The Paintball Co.	Lima	1 Count Failure To File Sales Tax Returns
Ronald Owens	Ron's Auto Repair	Hamilton	1 Count Failure To File Sales Tax Returns
Timothy Skidmore	Mr. Skids	Hamilton	1 Count Failure To File Sales Tax Returns
Rufus F. Gripper	Styles & Profyles	Columbus	1 Count Failure To File Sales Tax Returns
James A. Durivage	Chmpnshp Powersports	Waterville	2 Counts Failure To File Sales Tax Returns
Lori Dunning	Vogue Hair Salon	Cambridge	1 Count Failure To File Sales Tax Returns
Harry S. Ream III	Cambridge Software	Cambridge	1 Count Failure To File Sales Tax Returns
Nicholas Koka	Standard Loan	Toledo	1 Count Failure To File Sales Tax Returns
Jeri Tackett	Kustom Kolors	Marion	1 Count Failure To File Sales Tax Returns
Brent A. Benson	Sheet Metal Services	Troy	1 Count Failure To File Sales Tax Returns
Johnathan C. Barker	JB's Auto Repair	Frazeysburg	1 Count Failure To File Sales Tax Returns
Sandra Schrand	Dave's Car Audio	Tiffin	2 Counts Failure To File Sales Tax Returns
K. & C. Andres	KC's Floor Covering	Port Clinton	2 Counts Failure To File Sales Tax Returns
Carol S. Gillespie	Mary & John's	Tiffin	4 Counts Failure To File Sales Tax Returns
Chad A. Fackler	Allen Cunniff Furniture	Montpelier	1 Count Failure To File Sales Tax Returns
Timothy W. Postel	Postel's Automotive	New Philadelphia	1 Count Failure To File Sales Tax Returns
James Folds	Green Horizon, Inc.	Fairview Park	2 Counts Failure To File Sales Tax Returns
John Berberich	Berberich Auto	Blacklick	1 Count Failure To File Sales Tax Returns
Cherly A. Garmatter	Cory Rawson Café	Rawson	2 Counts Failure To File Sales Tax Returns
Bernie Pugh	103 Drive Thru	Willard	2 Counts Failure To File Sales Tax Returns
Arlene G. Tipping	Complete Auto Detailing	Whitehouse	1 Count Failure To File Sales Tax Returns
James P. Kookoothe	Dean & Sons	Waterville	1 Count Failure To File Sales Tax Returns
James F. Markowiak	Gordon's Gifts	Holland	2 Counts Failure To File Sales Tax Returns
Frank Lizcano	Lizcano's Pro Shop	Toledo	2 Counts – Failure To File Sales Tax Returns
Calvin Bell	Diamond World Jewelers	Toledo	2 Counts Failure To File Sales Tax Returns
Steven M. Kaminsky	Artforms	Perrysburg	1 Count Failure To File Sales Tax Returns
William F. Greenawalt	Diversified Dynamics	Toledo	1 Count Failure To File Sales Tax Returns
Kendra J. Andres	M &K Quality Carpet	Port Clinton	1 Count Failure To File Sales Tax Returns

Tax Calendar at-a-Glance

Jan.

14	Monthly Income Tax Withholding Returns
20	Monthly Kilowatt Hour (KWH) Tax Return
24	Monthly and Semiannual Sales Tax Returns
24	Monthly Consumer Use and Direct Pay Returns
24	Quarterly Consumer Use Tax Returns
24	Quarterly Direct Pay Sales Tax Returns
31	Quarterly Income Tax Withholding Returns

Feb.

15	Monthly Income Tax Withholding Returns
15	Quarterly Estimated Income Tax Return
21	Monthly Kilowatt Hour (KWH) Tax Return
21	Quarterly Natural Gas Distribution (MCF) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer Use and Direct Pay Returns

Mar.

15	Monthly Income Tax Withholding Returns
21	Monthly Kilowatt Hour (KWH) Tax Return
23	Monthly and Semiannual Sales Tax Returns
23	Monthly Consumer Use and Direct Pay Returns

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

Our Motto:
We CARE about the quality of our service.
Courteous
Accurate
Responsive
Equitable

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

Governor Bob Taft
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Editor . . . . . Howard Wheat
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