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Take Quick Advantage of Tax Cut: File Paperless

Every Ohio income tax filer will find their tax rates cut 4.2% this filing season and Tax Commissioner William W. Wilkins says the quickest way to take advantage of that tax cut is to file electronically.

“Everyone who files this year should benefit from the cut,” Wilkins said. “Those with refunds, who file online or use TeleFile, and choose direct deposit, can expect the refund back in 5-to-7 business days.”

Wilkins says people who owe tax can file early and choose to pay at a later date, (anytime through April 17th) when they file electronically. The filing deadline this year is April 17th because the traditional April 15th deadline falls on a weekend.

This year's tax cut is the first of five scheduled as part of a cut totaling 21% or nearly \$2.2 billion annually when fully phased in five years. Taxpayers with taxable income of \$10,000 or less will pay no tax.

The cut, and many other major tax reform initiatives, was part of the most recent state budget bill passed by the Ohio General Assembly and signed by Governor Bob Taft last summer.

Individual income tax filers this year will see other changes including:

- an increase of \$50 to \$1,350 in the personal and dependent exemption
- an increase of \$88 to \$3,731 in the deduction for deposits to Ohio Medical Savings Accounts.
- a new fund accepting donations from tax refunds. The Military Injury Relief Fund will provide grants to members of the military injured while participating in Operation Iraqi Freedom or Operation Enduring Freedom.

Wilkins says taxpayers who file electronically using Ohio I-File (it's free), TeleFile, a tax preparer or commercially available software help hold down everyone's cost.

“It costs us about \$1.15 to process an electronic return compared to \$3 to process a paper one,” Wilkins said. “When the tax department saves money, taxpayers do, too.”

Taxpayers who pay school district income tax can also file that tax return online this year using Ohio I-File.

Taxpayers with questions or otherwise

needing assistance are encouraged to visit the ODT web site (tax.ohio.gov) for information, answers to Frequently Asked Questions or to e-mail questions to taxpayer service agents.

Taxpayers can also call 1-800-282-1780 (toll-free) for assistance. Beginning Monday, January 30th, telephone assistance is available for extended hours from 8 a.m. to 7 p.m. Monday through Friday.

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Tax Attorney Inducted into Ohio Tax Hall of Fame

Veteran Ohio tax attorney Earl Goldhammer is the 2006 Ohio Tax Hall of Fame inductee. Tax Commissioner William W. Wilkins described Mr. Goldhammer as a tax professional committed to improving the process and practices of taxation.

The Ohio Tax Hall of Fame was created in 2001 to recognize persons who have made outstanding contributions to the field of state and local tax in Ohio. Goldhammer is the seventh inductee.

“Earl Goldhammer built a reputation as man of integrity and great expertise,” said Wilkins. “That reputation is absolutely warranted and the Hall of Fame is honored to welcome him.”

Goldhammer retired in 2004 from American Electric Power where he served as senior tax counsel. He also served as an adjunct professor in the graduate law program at Capital University in Columbus and as a trial attorney with the IRS. He authored numerous articles on state and local taxation and served on the organizing committee for the tax conference.

Daniel Navin, assistant vice president of tax and economic policy at the Ohio Chamber of Commerce, says Goldhammer’s contributions have been many and valuable. “Earl has been an outstanding contributor to the work of the Ohio Chamber of Commerce in many of the state and local tax issues that have developed over the years,” added Navin.

Goldhammer currently resides in Upper Arlington with his wife, Karen. Their son is a teacher in New York City.

Comments from the commissioner

ODT Will Again Emphasize Paperless Filing



Commissioner Wilkins

The Ohio Department of Taxation is again emphasizing the benefits of electronic income tax filing this year.

We went from about a 47 percent electronic filing rate in the 2004 filing season to about a 52 percent rate in 2005. While the increase is not huge, it is still significant, and we expect the paperless numbers to continue their upward climb. The increases have occurred even as the number of returns filed and processed has remained roughly the same over the last three years.

The upcoming income tax filing season promises to be another record-setting year for electronic filing for several reasons. First, the system is so convenient, safe and easy to use that I believe that we have largely overcome the fear factor that may have been holding many taxpayers back from electronic filing. Of course, being able to tell taxpayers that they will get their refunds back faster, while saving tax dollars, makes it easier for



HALL OF FAMER - Earl Goldhammer, center, was named the Ohio Tax Hall of Fame 2006 Honoree at the Ohio Tax Conference last week. Flanking him are Ohio Tax Commissioner William W. Wilkins, left, and Dan Navin of the Ohio Chamber of Commerce, right.

them to choose a computer over pen and paper.

This tax filing season, we should have more taxpayers receiving refunds due to cuts in the income tax rates and the addition of a low-income tax credit. Due to recent tax law changes, taxpayers with taxable incomes of \$10,000 or less have no tax liability and the income tax rate for all brackets has been reduced by 4.2 percent this year as it will every year through 2009. Of course, most filers expecting a refund will want to receive it as quickly as possible, which makes electronic filing a natural choice. As with each new filing season, thousands of new income taxpayers will be filing their first returns. Because many are young and computer savvy, electronic filing should be second nature to them.

So it is welcome news that the percentage of income taxpayers filing electronically increased five percent in the 2005 filing season from the previous year. But there is even more exceptional news involving income tax filing and it involves school district income tax returns. Of the 542,318 school district returns filed in 2005, 331,090 came into the department on paper, while 211,228 or 39 percent were paperless. That's 11 percent less paper regarding this tax that we had to deal with in 2005 compared to the previous year. The addition of school district I-file fueled this increase.

What else is new for 2006 in income tax filing? Because of the ruling in the *Cuno v. DaimlerChrysler* case, the tax forms will describe the former manufacturing machinery and equipment tax credit as a grant. There will also be a new box that taxpayers can choose to check in order to donate some or all of their income tax refund to our soldiers injured in Operation Iraqi Freedom or Operation Enduring Freedom. So while the upcoming income tax filing season offers quite a few new wrinkles, the trend that we have been seeing for the last couple of years – an increase in electronic income tax filing – will most likely continue. That's good news for taxpayers, the department and Ohio.

Despite the growing popularity of filing taxes on-line and our growing capability to handle such filings, paper in the form of checks, coupons, forms and envelopes makes up a significant segment of our operations and will for some time to come. To deal with the continued paper influx, the department recently purchased a state-of-the-art letter sorter, extractor and a scanner to help us reduce costs, process more quickly and retain better and more easily accessible records. We purchased the new sorter and extractor after seeing how well it served other companies and government agencies.

Both of the machines were configured to meet our needs at the department. The sorter sifts through incoming mail and sorts to preestablished criteria set according to P.O. Box type. The machine sorts through non-uniform mail and detects the presence of staples and paper clips as well as envelope thickness, length and height. Once the mail has been sorted, it is directed to the proper equipment for further handling such as the new MPE7.5 extractor or the OPEX 5.1 extractors that we have used for a while. The MPE7.5 extractor removes the contents, directs the documents and checks to where they need to go and places the empty envelope in the shred bin. The machine has built in safeguards so that no contents are lost. The result is that each of these machines allow us to sort and extract much faster than before.

The new high-speed, high-resolution scanner that we recently purchased is being brought along slowly but surely. We have restricted its use to Commercial Activity Tax registrations, but we plan to expand its use in the future to school district income tax, sales tax and, perhaps, even individual income tax returns once we can obtain the software to do so. The benefit is speedier processing and more accessible and useful records. Agents will be able to view full-page documents instead of going to files and pulling the documents.

Improved processing helps the department as well as our customers and better record-keeping goes a long way in our efforts to improve compliance.



MOVING THE MAIL - ODT's Carrie Miller keeps the letters moving through the new MPS 40 sorter at the Northland Building.

ODT Offers Resource to Make Filing Less Painful

Although some may liken the feeling to that of a root canal, it's something that can't be escaped – the annual filing of income taxes. But now that the tax filing season is open, the Ohio Department of Taxation (ODT) is offering a Web resource to make the process less painful for taxpayers.

Taxpayers can visit ODT's Web site, tax.ohio.gov, look under "What's New" and click on the entry "2005 Tax Filing Season: See Tips for Ohio Income Taxpayers Here" to find a helpful page that details electronic filing options, changes for this tax year and other pertinent tax information.

Called "The Best Tips for Ohio Taxpayers," the page emphasizes the speed and ease of filing Ohio individual income and school district income taxes online through Ohio I-File. Mentioning the fact that Ohio I-File has no charge, provides secure filing that automatically performs the appropriate tax calculations and gets refunds to taxpayers in five to seven days makes the case that this is the most advantageous means of state tax filing. The page then links the browser directly to the Ohio I-File page to help filers get started.

"Best Tips" also goes beyond Ohio I-file to give taxpayers various options for electronic filing of both federal and state returns, with links to specific IRS Web pages.

Finally, "Best Tips" offers links to online forms, additional income tax information and a guide for Ohio military taxpayers. Phone and e-mail contacts are provided, along with links to Taxpayers Service Center locations.

ODT Helps Tax Administrators With Fuel Investigation Class

The Ohio Department of Taxation recently assisted the Federation of Tax Administrators (FTA) in sponsoring a class in Columbus on motor fuel investigations.

The FTA is a nonprofit organization composed of the tax and revenue departments of the 50 states, the District of Columbia and New York City. Its mission is to improve the standards and methods of tax administration.

Thirty-five people attended the class, which took place in August, including several ODT enforcement agents and a few staff members from ODT's Audit Division.

Attendees journeyed to Columbus from all over the United States. One even came from the Canadian province of the Northwest Territories. Tax Commissioner **William Wilkins** personally welcomed all those who attended.



GOING TO SCHOOL - ODT enforcement officers carry out a motor fuel inspection, while a class member observes the process.

As part of the class, ODT's Enforcement Division set up one of its dyed-fuel inspection sites. All of the class members in attendance traveled to the location of the inspection site, which was on Highway 23 just north of Delaware, to observe how Ohio handles dyed-fuel enforcement.

After observing the inspection process, the attendees returned to the classroom.

According to ODT Enforcement Chief Bob Bray, students in the class took home some valuable information, including:

- How the fuel distribution system works.
- Motor fuel tax evasion schemes.
- Surveillance techniques.
- Interviewing skills.
- Case preparation for prosecutors and the courts.
- Testifying in court.

ODT Web Site Marks 10-Year Anniversary

Professional. Slick. Dynamic. Those are just a few ways to describe ODT's Web site, which turned 10-years-old in October.

But it wasn't always that way, according to two pioneers who helped get the Web site up and running. For one thing, the phone connection to the Web site failed during a pivotal presentation in 1995 to then Tax Commissioner Roger Tracy and his executive administrators. Fortunately, the Web site had been cached or copied to the computer so that no one suspected that anything had gone awry.

"After the presentation, he gave us the OK, and we've been rocking and rolling ever since," said Jack Lewis, of ODT's Information Services Division (ISD), who helped present the concept to Tracy.

ODT's Web site, then known as Project OTIS (Ohio Tax Internet System), started out humbly as a bulletin board before anyone knew what the World Wide Web was.

Like all other websites on the Internet at the time, ODT's was all text and was seen as a way to get information out. There were phone numbers of all department sections, 22 frequently asked questions, the 1995 Business Tax Guide and a publication called Ohio's Financial Picture that showed where Ohio's money came from and where it went. There were also plans to add personal income tax forms and instructions in time for the 1995 filing season.

"It was so incredibly basic," said ODT's Sandra Manning, who also helped develop the site.

"We did a lot of research – on what is good to do and not good to do and on security issues," said Lewis. "I worked with Sandra. She did the majority of the mock-up work."

At first, Manning said the Web site got little attention inside the department. And, perhaps, no wonder, because it was estimated that only 750,000 out of 10 million Ohioans had access to the Internet in 1995. "It was not widely accepted as a means of assisting taxpayers," she said. "People thought it was just a fad."

Already quite enchanted with computers and the "cool" things they could do, Manning, who back then was an eight-year veteran at ODT as a COBOL programmer, said the initial buzz about the Internet piqued her creative nature and curiosity.

"When I heard they were starting up an Internet project (at ODT), my hand was in the air immediately. I wanted to be on that team."

Manning said ODT was progressive in recognizing the value of the Internet and its potential in helping carry out the department's mission. "The Internet was so new at the time, and there was the potential for abuse," she added. "To open ourselves up to something so unknown was very scary for some people."

Lewis said ODT's first web pages were created with Notepad or HTML, later with FrontPage and now with Dreamweaver,

the current industry leader.

The extensiveness of the content on ODT's Web site grew with the expanding use of the web as people found it valuable for all kinds of activities.

Over the last few years, Manning said a push has been underway for all divisions to contribute information through the development of an Intranet site exclusively for ODT staff. She is now in charge of Taxation's Intranet site, TAXI, while ODT's Cathy Demidovich now oversees the Internet site as web coordinator.

Lewis said the best way to describe how ODT's Web site has progressed is that it has become more dynamic with a multitude of tax forms now available. He said the Web site offers a lot because tax filers have grown more accepting of filing their taxes on-line and because "security has grown immensely as well."

Nobody in 1995 could have predicted the incredible popularity that the Internet has achieved today, according to Lewis, with on-line transactions, multimedia applications and high-speed connections being commonplace now, but hardly imaginable back then.

"We'll continue to evolve as long as technology continues to evolve," said Lewis. "Technology changes so quickly. What we're doing today, we wouldn't have thought of 10 years, even five years ago."

"We as a group hope to get more into dynamic things as opposed to static," said Lewis. Over time, he said the goal is to have more enhanced search engines to make for a more dynamic site so that people can more easily locate and work with things.

"We're ahead of the curve as far as other state tax agencies and other Ohio state agencies," said Lewis, who recalled that 16 states were providing revenue and tax information to their taxpayers on the Internet at the time of that fateful 1995 presentation to ODT's top officials.

TAX*enforcementnews*

The following convictions were secured by the Enforcement Division of the Ohio Department of Taxation in August, September and October, 2005. Enforcement News is compiled by Robert M. Bray, administrator, Enforcement Division. Fraud complaints can be e-mailed to Taxenforcement@tax.state.oh.us.

Thomas Tiberi, general manager and vice president of the Lisbon Hospitality Group Inc. in Lisbon, was found guilty of three counts of operating while his vendor's license was suspended for failure to file sales tax returns - a fourth-degree felony. A sign advising the public about the suspension of Tiberi's vendor license was posted, but later removed. A plea agreement was entered into and the defendant has agreed to come into compliance and make full restitution to the Ohio Department of Taxation.

Michael Enslen, owner and operator of Wholesale Auto Service, West Chester, was found guilty of one count of collecting and failing to remit sales tax, a fourth-degree felony. A complaint was received stating that Wholesale Auto Service was collecting sales tax and not remitting the tax money. A check of the system indicated that Enslen did not have a vendor license for this location nor were any sales tax returns submitted. Enslen received community control for three years, 100 hours of community service, a \$2,500 fine and 17 months in jail that will be suspended upon compliance with

all tax laws. Enslin paid \$5,892 in restitution.

Jimmy Binion, owner of NU-U Fitness, New Philadelphia, was found guilty on two counts of collecting and failing to remit sales tax, a fourth-degree felony. A check of the system indicated that Binion was filing the returns, but not remitting any money. Binion was ordered to pay full restitution of \$9,444.69.

Sale of confiscated cigars - Over one million cigars were recently sold to the highest bidder stemming from the largest cigar confiscation in Ohio history. The cigars were viewed by Ohio licensed distributors. Interested distributors submitted sealed bids. The cigars sold for \$160,000 plus \$ 27,000 in tobacco tax. The money is being held until the outcome of the criminal case.

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Steven Patrick	Phoenix Motor Service	Marion	1 count failure to file sales tax returns
Allen Cox	Allen Cox	Marion	1 count failure to file sales tax returns
Jess Harris	Jess Harris	Bedford Heights	1 count failure to file sales tax returns
Leroy Mesenburg	Sylvan Mall Antiques	Sylvania	1 count failure to file sales tax returns
Brian Tobin	Buckey Computer Solutions	Columbus	1 count failure to file sales tax returns
Shih H. Ho	Shih H. Ho	New Philadelphia	1 count failure to file sales tax returns
George Krinas	Hot Dog Charley's	Toledo	1 count failure to file sales tax returns
Majid Ghazi Shamoon	Shamoon, Inc.	Sterling Heights	1 count failure to file sales tax returns
Christy Mumaw	Time Cleaners	Lima	1 count failure to file sales tax returns
Howard Fletcher	Howard Fletcher	Middletown	1 count failure to file sales tax returns
Gary Deaton	Deaton Marine Sales, Inc.	Franklin	1 count failure to file sales tax returns
Michael Howell	Michael Howell	Englewood	1 count failure to file sales tax returns
David Weber	Best Design, Inc.	Deer Park	1 count failure to file sales tax returns
David Mowell	Angel Automotive	Grove City	1 count failure to file sales tax returns
Andrew Zink	Andrew Zink	Columbus	1 count failure to file sales tax returns
Brenda Jordan	Jordan's Family Restaurant	Toledo	1 count failure to file sales tax returns
Nathan S. Clauss	Accredited Roadside Service	Toledo	1 count failure to file sales tax returns
Scott Atkinson	Ivy in the Park	Cincinnati	1 count failure to file sale tax returns
Robert Moomaw	Paradise Cove	Bowling Green	1 count failure to file sales tax returns
Donald Mangold	Toledo Lawn Care	Toledo	1 count failure to file sales tax returns
Kenneth Moeller	Thompson's Quickprint	Toledo	1 count failure to file sales tax returns
Myung Kim	Miso Dental Lab, Inc.	Westerville	1 count failure to file sales tax returns
Ismael Saucedo	LaMoreliana	Upper Sandusky	1 count failure to file sales tax returns
Rusty Rush	Rush Flooring	Findlay	1 count failure to file sales tax returns
Dave Ross	Cycletech Motorcycle Repair	Columbia Station	1 count failure to file sales tax returns, 1 count no vendor license
Caroline Lacy	Carol's Car Care	Hillsboro	2 counts failure to file sales tax returns
David Dietrich	Dave's Quality Cleaners	Van Wert	2 counts failure to file sales tax returns
John Majka	Mainstream Computers	Akron	2 counts failure to file sales tax returns
Deborah K. Peeper	Deborah K. Peeper	Port Washington	2 counts failure to file sales tax returns
Brian & Roger Fox	Audio Advantage	Cincinnati area	2 counts failure to file sales tax returns
Cindy Fruchey	Pirates Den	Bluffton	2 counts failure to file sales tax returns
Craig Covey	Carefree Computing	Avon Lake	3 counts failure to file sales tax returns
Anthony Sigrist	Anthony Sigrist	Delaware	1 count no vendor license
Ann M. Edward	Ann M. Edwards	Delaware	1 count no vendor license
Heather Leathley	Mark's Tool Box	Wilmington	1 count failure to collect sales tax
Sonal A. Soni	Sonal A. Soni	Monroe	1 count failure to collect sales tax
Jane Trapp	Jane Trapp	Ripley	1 count failure to collect sales tax
Maria Abou-Arab	Huron Market	Toledo	1 count failure to collect sales tax
Patrick Hare	Mad Hatter	Wilmington	1 count failure to collect sales tax
Ha C. Huynh	Ha C. Huynh	Monroe	1 count failure to collect sales tax
Cindy Adams	Cindy Adams	Ripley	1 count failure to collect sales tax

Assorted Cigarette Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Yousef Mohammed	Yousef Moham	Cincinnati	1 Count – no cigarette license
John L. Nedrich	John L. Nedrich	Rogers	1 count no cigarette license and one count retailer in possession of cigarettes not bearing tax stamps
Miah Monju	Miah Monju	Toledo	3 counts of possession of untaxed 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 and click on “Releases” in the Popular Links section at the top of the home page.

General

G 2005-02 - OHTAX-ALERT - ODT E-Mail Communication Channel of Pertinent Tax Information; Issued November 2005.

Commercial Activity Tax

CAT 2006-01 - Applicable excise tax rates for purposes of the commercial activity tax. Issued January 2006.

CAT 2005-18 - Temporary motor fuel exemptions from the commercial activity tax. Issued November 2005; revised January 2006.

CAT 2005-17 - Clarifies what constitutes a “taxable gross receipt for purposes of the CAT. Revised January 2006.

CAT 2005-16 - Provides examples to help clarify the concepts contained in an earlier CAT information release. Issued November 2005; revised January 2006.

Estate Tax

ET 2006-01 -Estate Tax Updates As A Result Of Amended Substitute House Bill 66 (HB 66). January 2006.

Income Tax

IT 2005-02 - Employer Withholding Tables. Revised Beginning January 1, 2006

Personal Property

PP 2005-03 - Definition of “Primarily” for Dealer in Intangibles Tax. December 2005.

Sales Tax

ST 2005-05 – Sales and Use Tax Calculation and Rounding Change Effective January 1, 2006. Issued December 2005.

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 October, November and December 2005 and January 2006. These informational summaries of tax decisions are compiled by Peter Angus, legal counsel, Compliance Division.



Corporation Franchise Tax

Federated Dept. Stores, Inc. v. Wilkins (2005), 107 Ohio St.3d 165

The taxpayer's 1993 corporate franchise tax report, which showed a negative net worth of \$334,536,641 as of the first day of its fiscal year, February 1, 1992, was audited and adjustments were made based on information in its annual reports and SEC filings. That information resulted in an audit finding of a net worth of \$430,069,566. The taxpayer presented evidence to show that the information relied upon by the auditors reflected "fresh-start" values after it emerged from bankruptcy on February 4, 1992, but that its separate set of books kept according to GAAP were used in preparing its corporate franchise tax report. The BTA agreed that the taxpayer's GAAP-based accounting records were the proper basis for its corporate franchise tax report, and the Tax Commissioner's final determination was reversed. The Supreme Court affirmed the BTA's holding.

Personal Income Tax

M.L. Criswell v. Wilkins (Nov. 23, 2005), BTA 2005-391

Taxpayer timely filed his 2001 Ohio income tax return but did not pay a balance due of \$32,180 in taxes. Subsequently, he was billed and assessed. He made payments and contended that one payment sent to the Ohio Department of Taxation was lost. He requested adjustment of the interest and penalty relief. The BTA affirmed the assessment, as adjusted by the Department of Taxation, and found that the Tax Commissioner had not abused his discretion in declining to grant full penalty relief.

Brian K. and Jody C. Urbanski v. Wilkins (Oct. 21, 2005), BTA 2005-A-742

Husband and wife taxpayers filed an Ohio tax return for 2002 showing zero adjusted gross income and zero tax, despite receiving W-2's which showed substantial wages. They contended that wages are not income for Ohio income tax purposes. They were assessed a frivolous filing penalty and appealed. The BTA rejected their contention concerning wages, and affirmed the penalty.

David G. Knust & Susan L. Purkrabek v. Wilkins (Oct. 14, 2005), BTA 2004-533

Taxpayers were grantors of ESBTs (Electing Small Business Trusts. These trusts are authorized under Internal Revenue Code 1361(e)(1)). On their joint Ohio income tax return, the taxpayers reported income from the sale of a Subchapter S corporation which was owned by their two respective ESBTs. They sought a refund of the Ohio income tax paid, contending that the income was properly attributable to the ESBTs, not to them as individuals, and since Ohio did not have a trust income tax for the year in question, there was no Ohio income tax liability. The BTA held that an exception to ESBT treatment occurs when the ESBT is a grantor trust, in which the grantor retains significant control over the trust. In such cases, the income from the S corporation is attributable to the grantors, not the ESBTs. The denial of the refund claim was affirmed by the BTA. This case has been appealed to the Ohio Supreme Court.

Personal Property Tax Cases

Oregon Ford Inc. v. Wilkins (Jan. 27, 2006), BTA 2005-111

An auto dealership was audited and approximately 30 of its parking lot lights, mounted on concrete faces and wired underground, were added to its tangible personal property. The taxpayer contended that the lighting constituted real property, not tangible personal property. The lights were determined by the BTA to be business fixtures, primarily benefiting the business, and as such are personal property.

Tigerpoly Manufacturing, Inc. v. Zaino (Dec. 9, 2005), BTA 2003-M-1382

A manufacturer of automotive rubber and plastic products contended that the value of certain parts of its injection-molding machines and secondary equipment should have been excluded from its original personal property tax report as jigs and dies which are exempt from the definition of personal property under Revised Code 5701.03(A). The BTA agreed, holding that items which perform a holding and positioning function during processing are exempt. However, the BTA held that the taxpayer had not carried its burden of demonstrating the value of these items, and so no adjustment was made on this basis.

AAP St. Marys Corporation v. Zaino (Dec. 2, 2005), BTA 2003-1100, 2003-1101

A manufacturer of automobile wheels contended that the platens used to hold and position dies in which aluminum wheels are cast constituted jigs which are exempt from the definition of personal property under Revised Code 5701.03(A). The BTA agreed. Several of the taxpayer's other contentions were dismissed by the BTA because they had not been properly raised in the appeal. This case has been appealed to the Ohio Supreme Court.

Degussa Corporation v. Zaino (Oct. 21, 2005), BTA 2003- 1390

In an appeal regarding the amount of property certified as qualifying for exemption as air pollution control equipment under Ohio Revised Code 5709.20, a manufacturer of carbon black contended that several of its bag filters were unlawfully denied exemption. The statute requires that the Tax Commissioner make a determination as to exemption after obtaining an opinion from the Ohio Environmental Protection Agency. That agency offered the opinion that the bag filters in question were primarily used to gather product rather than to control pollution. The BTA affirmed the action of the Tax Commissioner after the taxpayer failed to present evidence to demonstrate that the Tax Commissioner's reliance on the EPA's recommendation was in error.

Public Utility Personal Property Tax Cases

Omnipoint Holdings, Inc. v. Wilkins (Oct. 21, 2005), BTA 2004-428

The taxpayer, a unit of T-Mobile USA, contended that the valuation of its wireless communication network in accordance with Revised Code 5727.11 and related directives results unfairly in values which do not take into account the obsolescence of its equipment. The BTA rejected the obsolescence studies submitted by the taxpayer because, among other things, they did not provide a reliable means for determining the value of the taxpayer's property on the specific dates involved in the appeals.

Real Property Exemption Cases

Athens County Auditor v. Wilkins (2005), 106 Ohio St.3d 293

The private owner of two dormitories applied for real property exemption under Revised Code 3357.14 and 5709.07(A)(4). The Supreme Court held the property did not qualify for exemption because the taxpayer, a private, for-profit entity, was

not entitled to exemptions for rental property used by technical college students. The property was not “used by” the college pursuant to a state law that grants tax exemptions only to technical college districts. Furthermore, the dormitories were not “connected with” the college. The college did not own or lease the dormitories, was not contractually obligated to pay the taxes on the buildings, and had not applied for and would not have benefited from the tax exemption. Accordingly, although the taxpayer presented evidence that the college provided some administrative and marketing support to the dormitories, it could not overcome its status as a private, for-profit company not engaged in the business of education.

Hardy v. Delaware County. Bd. of Revision (2005), 106 Ohio St.3d 359

The Supreme Court held that the owners of realty were not entitled to current agricultural use valuation (CAUV) status for Ohio real property tax purposes because they were unable to offer sufficient evidence that their property was being used for agricultural purposes. The property owners challenged the county auditor’s decision, arguing that their property qualified for CAUV status because they had received “compensation under a land retirement or conservation program under an agreement with an agency of the federal government.” However, the property owners failed to offer any testimony or evidence detailing the specifics of the federal programs involved or the steps taken by the owners to conform to the programs. Furthermore, the property owners’ argument that the county auditor failed to notify them of the land’s removal from the CAUV program in a timely manner was rejected because no prejudice occurred. The deadline in Revised Code 5713 directing the county to notify property owners of the removal of CAUV status by the first Monday in August was intended to be directory, not mandatory.

Cincinnati Community Kollel v. Wilkins (Jan. 20, 2006), BTA 2004-1441, 2004-1442

The owner of apartments which were provided to religious scholars to assist them in furthering their study claimed exemption on the real property under R.C. 5709.121. The BTA held that exemption under this section involves two questions, the first concerning the nature of the institution which owns the property and the second concerning the use to which the property is devoted. The application of R.C. 5709.121 is limited to charitable or educational institutions or to the state or a political subdivision. The BTA held that the owner was a religious organization, and neither a charitable nor educational institution. Therefore, the real property exemption was not available.

Girl Scouts – Great Trail Council v. McAndrew (Jan. 6, 2006), 2004-166

The owner of real property occupied by a store selling Girl Scout uniforms and equipment sought exemption under Revised Code 5709.12(B), which provides exemption for real and tangible personal property belonging to institutions that is used exclusively for charitable purposes. In this case, since the store operated without a view to profit and sold items merely as an accommodation to its members, the BTA held that the exemption applied. This case has been appealed to the Ohio Supreme Court.

Ohio District of the Lutheran Church Missouri Synod v. Wilkins (Dec. 2, 2005), BTA 2005-1111

A church corporation transferred its interest in certain parcels of realty on March 17, 2003 to another church. The application for exemption was filed on behalf of the transferee church by the transferor church on December 30, 2004. The Tax Commissioner dismissed the application for exemption because it was not the titled owner of the parcels in question at the time it filed its application, and hence had no standing to file. The BTA upheld this action based on Revised Code 5715.27(A) which, at the time application was made, provided: the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that unpaid taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code.

Las-Stik Manufacturing Co. v. Wilkins (Dec. 2, 2005), BTA 2004-1439

The taxpayer sought remission of unpaid taxes that had become a lien before it acquired title to the property. Under R.C. 5713.08, the commissioner may remit unpaid taxes that have become a lien after the property was first used for the exempt purpose only if the applicant acquires title before the tax lien date. If the unpaid taxes, which may include delinquent taxes,

become a lien before then, the commissioner may not remit them. In this case, the lien for real property taxes for the tax year for which appellant seeks exemption (i.e., the 2003 tax year) attached to the subject real property on January 1, 2003, which was nearly a full month before the date that appellant acquired title (i.e., January 31, 2003). Because the lien attached “prior to the date of acquisition of the title to the property by the applicant,” the Tax Commissioner lacked jurisdiction to consider the exemption application. On this basis, the BTA affirmed the Tax Commissioner’s dismissal of the application.

Hamilton Brownfields Redevelopment, LLC v. Zaino (Oct. 28, 2005), BTA 2003-1944

Realty comprised of approximately 13 acres of land and a building formerly used in the manufacture of safes was contaminated with lead, arsenic and asbestos. In 1997, the realty owner, wanting to improve the property, entered into a voluntary action program with the Ohio Environmental Protection Agency to remediate the property. After remediation, in 1998, the EPA issued a “Covenant Not to Sue” pursuant to Revised Code 3746.12. Under this statute, the director of the EPA is to notify the Tax Commissioner of the Covenant Not to Sue. The Tax Commissioner is to order the property to be placed on the exempt list for a ten-year period under Revised Code 5709.87(C). The notification from the director of the EPA to the Tax Commissioner occurred in 2003. The Tax Commissioner ordered the ten-year exemption beginning from that point. The property owner contended that the exemption should be retroactive. The BTA held that since the notification did not occur until 2003, the exemption period could not begin under the statute until that time.

Grace Baptist Church v. Wilkins (Oct. 14, 2005), BTA 2005-217

A church which used most of an eight-acre parcel for exempt purposes but a portion as a residence for a pastor contended that the exempt portion should extend further than what was previously allowed. Based on maps and testimony which established the area used as the taxable residence, the BTA extended the exempt area to include all of the eight acres except for that portion.

Sales/Use Tax

Cousino Construction Co. v. Wilkins, 108 Ohio St.3d 90

A construction company’s purchases of cleaning services for properties that the company restored were subject to Ohio use tax. The company hired professional cleaners to remove soot, dirt and odors from buildings that the company had been hired to restore. The company compensated the cleaners for the work and began the restoration process once the cleaning was complete. Consequently, the company was the consumer of the cleaning services and was liable for tax on the purchase of the services. The resale exemption did not apply to the purchase of the cleaning services because they were not resold in the same form in which they were purchased. In addition, the company’s purchases of the services for use in a public school restoration project were not entitled to an exemption as services sold to a construction contractor for incorporation into a structure under a contract with a political subdivision of the state. In its initial appeal from the decision of the Tax Commissioner to the Board of Tax Appeals, the company failed to mention or cite Revised Code 5739.02(B)(13), the statutory section in which the exemption is authorized. Consequently, the issue was not preserved on appeal and could not be considered.

Marc Glassman, Inc. v. Wilkins (Jan. 20, 2006), BTA 2005-K-82

The taxpayer, which operated several drug stores in Ohio, was assessed use tax on its purchase of electronic information services from NDC Health and Envoy Corporation, which provided information from their databanks on the insured patients’ eligibility, coverage, deductible and co-pay amount. Revised Code 5739.01(Y)(1)(c) defines electronic information services as “providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following: (i) Examining or acquiring data stored in or accessible to the computer equipment; (ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.” The BTA held that the taxpayer had examined or acquired data stored in the computers of NDC Health and Envoy Corporation, and so was liable for use tax on the transactions.

Cameo Countertops, Inc. v. Wilkins (Jan. 6, 2006), BTA 2004-393

A fabricator and installer of custom countertops contended that although it incorporated countertops into the realty of customers, it was not liable for sales/use tax on its purchases because it was acting as a subcontractor for retail stores which procured jobs for it. The BTA rejected this contention, holding that the fact that it was a subcontractor did not affect the taxpayer's liability for tax on its purchases.

William R. O'Neil v. Wilkins (Jan. 6, 2006), BTA 2004-408

A proprietor of a convenience store did not maintain primary or secondary sales records, as required by the Revised Code, and so his sales were established using records of his suppliers. Tax and penalty were assessed based on the volume of sales calculated. At the BTA hearing, the taxpayer withdrew his objection to the tax and asked for penalty reduction. The BTA held that it could reduce the penalty only if the taxpayer showed an abuse of discretion on the part of the Tax Commissioner, which the taxpayer had not done in this case.

Sandy Satullo II and Copper Kettle Marina, Inc. v. Zaino (Dec. 9, 2005), BTA 2003-2115, 2003-2116, 2003-2128, 2003-2129

Boat dealers were assessed use tax on boats which they used extensively for their personal enjoyment. They contended that the boats were at all times held for sale and should therefore be entitled to the resale exemption. Based on documentation of use of the boats and inconsistencies in the taxpayers' testimony, the BTA rejected this contention and affirmed the tax assessed. This case has been appealed to the Ohio Supreme Court.

David Racine v. Wilkins (Nov. 23, 2005), BTA 2005-434

Shirley Gallops v. Wilkins (Nov. 23, 2005), BTA 2005-435

A corporate president and corporate secretary who did not contest that they were personally responsible were held by the BTA to be liable for the corporation's failure to remit sales tax on its sales to customers.

KB Learning Centers, Inc. v. Wilkins (Nov. 10, 2005), BTA 2004-1161

The taxpayer was engaged in the business of providing computer training in both application and system software. In addition, the taxpayer also sold in-home training materials. The taxpayer objected to the inclusion in the audit of computer equipment, computer software, training materials and training manuals, claiming that these items were resold. The BTA, however, found that the taxpayer did not separately state the prices for training and those for the materials supplied. Therefore, the materials were taxable under R.C. 5739.01(B).

Red Rose, Inc. v. Wilkins (Nov. 4, 2005), BTA 2005-284

In the appeal of a mark-up audit of a convenience store, the vendor contended that the price for cigarettes used by the Tax Commissioner agents in calculating sales was erroneous. However, the BTA affirmed the assessment because the vendor did not establish what the error was and the effect of any such error on the calculation of sales tax.

Ronald and Stephanie Bourguin v. Wilkins (Oct. 21, 2005) BTA 2005- 286

Wilsie Paper Company, Inc. v. Wilkins (Oct. 21, 2005), BTA 2005-294

The BTA upheld the Tax Commissioner's revocation of vendors' licenses where the vendors had reported no sales for several years. The revocations were made under Ohio Revised Code 5739.19, which provides, "the Tax Commissioner may revoke any retail vendor's license upon ascertaining that the vendor has no need for the license because the vendor is not engaged in making taxable retail sales...."

Tax Calendar at-a-Glance

Jan.

- 17** Monthly Income Tax Withholding Returns
- 20** Monthly Kilowatt Hour (KWH) Tax Return
- 23** Monthly and Semiannual Sales Tax Returns
- 23** Monthly Consumer Use and Direct Pay Returns
- 23** Quarterly Consumer Use Tax Returns
- 23** Quarterly Direct Pay Sales Tax Returns
- 31** Quarterly Income Tax Withholding Returns

Feb.

- 10** Commercial Activity Tax Returns
- 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 Sales Tax Returns
- 23** Monthly Consumer Use and Direct Pay Returns

Mar.

- 15** Monthly Income Tax Withholding Returns
- 20** Monthly Kilowatt Hour (KWH) Tax Return
- 23** Monthly Sales Tax Returns
- 23** Monthly Consumer Use and Direct Pay Returns

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