OHIO's statetaxreport

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More Taxpayers Pick Paperless Filing

It was another successful filing season for the Ohio Department of Taxation. Electronic filing increased from the previous year, while paper filing decreased. As of May 15, an estimated 37 percent or about 2 million of all personal income tax returns filed were paperless (filed *via* the Internet or the telephone, *TeleFile*). Approximately 5.4 million returns were filed.

Figures provided by the Federation of Tax Administrators (FTA) placed Ohio in the top five states in the number of state returns filed electronically. The figures showed California in first, followed by New York, Georgia, Illinois, and Ohio.

Steps taken by the Ohio Department of Taxation to automate the income tax filing system saved Ohio taxpayers more than $1 million this year, and increasing automation is expected to provide greater savings in years to come. The estimated savings in tax dollars is attributed to the cost of processing a paperless versus a paper return. It can cost between 70 cents and $1.25 to process a paper return, depending on type, compared to an average of 35 cents to process an electronic or *TeleFile* return.

In an effort to induce more Ohioans to file electronically, the Department packaged the 2001 individual income tax booklet with the *TeleFile* booklet. In order to be eligible to *TeleFile*, taxpayers had to receive the *TeleFile* booklet in the mail, while meeting certain qualifications. As in past years, the qualifications were expanded, making more taxpayers eligible to use this quick and easy filing method. Thirty-three percent more taxpayers opted to *TeleFile* in 2002 compared with 2001.

The growth in *TeleFile* was briefly a bit much. During April 14-15, the *TeleFile* system was swamped, receiving roughly 1.68 mil-

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lion calls, with approximately 48,000 taxpayers successfully filing by telephone during the last two days. Obviously, many taxpayers continued redialing, trying to get through as the end neared. The system has 395 telephone lines, which includes 95 additional lines that were added this filing season. The *TeleFile* system can process a maximum of 2,200 returns per hour, or 52,800 per 24 hours.

E-File returns, the other paperless filing method, increased 22 percent over last year. Electronic filing is available to all taxpayers by using a personal computer and tax preparation software, or using an authorized *E-File* provider (their tax preparer).

The number of taxpayers choosing to have their refund checks deposited directly into their bank accounts also increased. To take advantage of direct deposit, taxpayers were required to file a paperless return, as the paper returns do not offer this option. Over 600,000 filers chose to have their refund deposited into their bank account and received it within 7-10 days of filing.

First offered last year, taxpayers were again offered the option of paying their taxes with a credit card. Although there is a two and a half percent fee charged by the vendor, there was a 96 percent increase in the number of taxpayers taking advantage of the credit card payment option this year.

Please note that the figures used in this article are as of May 15, and are not final, as we are still processing returns. *TeleFile* was available until April 30, while *E-File* is available through October 15.

Governor Lauds Ohio Business Gateway

New Electronic Tax Filing Option Open for Business

Ohio Business Gateway got a big boost from Ohio Governor Bob Taft in late March, and then became reality in mid-April for the first of many Ohio Department of Taxation (ODT) tax agents who will help make it work

Governor Taft's boost of the new automated state tax reporting and collection system for business came at a press conference in Columbus. During the press conference, the Governor noted the new Internet-based system offers business the opportunity to file several tax reports and payments with the touch of a computer key. This paperless system saves business taxpayers time and paperwork, he said.

Ohio Business Gateway is the result of a Governor Taft initiative that Commissioner Zaino helped create through his leadership of an interagency cabinet-level team. Commissioner Zaino also spoke at the press conference held at a business on the east side of Columbus. He cited several advantages that *Ohio Business Gateway* offers Ohio business taxpayers, including last minute filing and instant confirmation. That compares to the paper system, which can suffer from delays in the mail, that result in late filings, and the accompanying penalties.

David Stone, Administrator of the Sales Tax Division, demonstrated the new system at the press conference, and then a few weeks later he did it again for 18 tax agents from ODT offices throughout Ohio. "My purpose was to get them reasonably knowledgeable about the system," Mr. Stone said of the instruction he gave the tax agents. He came away from the class believing the agents who attended "have a good understanding of it." The agents took their knowledge back to their offices where they were to share it with other agents and assist taxpayers.

COMMENTS *fromthecommissioner*

Commissioner Zaino

As tax commissioner, I am pleased that Amended House Bill 396 was signed by Governor Taft and becomes effective on June 13, 2002. In conjunction with the Attorney General's Office, our Department worked diligently to draft language for this bill, which was sponsored by Representative Robert Latta. This bill formalizes Ohio's Offers in Compromise program, patterning it after the one provided by the IRS. The bill provides that, with respect to a delinquent tax matter certified to the attorney general for collection, the tax commissioner and the attorney general may consider the possibility of compromising the claim for less than its full amount and may consider a proposed payment plan.

Prior to this bill, there were no formalized standards to consider when working with taxpayers and their delinquent assessments. With the passage of Amended House Bill 396, we are pleased to have a formalized program with the Attorney General's Office. The program also provides more flexibility for taxpayers trying to resolve their overdue tax liabilities. Prior to this bill, taxpayers were permitted to enter into a one-year payment plan once the liability was certified to the Attorney General's Office. With this bill, the attorney general and tax commissioner have the authority to extend the payment plan for a longer period of time.

I do not want taxpayers to get the idea that this program is a way to avoid paying taxes. ODT, as well as the Attorney General's Office, will be prudent and deliberate in making any compromises. It is not a way for taxpayers to walk away from their liabilities. We expect the Offers in Compromise Program will actually raise our collections, not lower them, by encouraging taxpayers to tap sources unavailable to ODT or the Attorney General's Office in order to put this problem behind them (i.e., borrow from family, friends, and even banks).

The bill provides four standards that may be considered for such a compromise by the attorney general and tax commissioner when compromising outstanding tax liabilities. They include:

1) Doubt that the claim can be collected;
2) Substantial probability that a payment of the claim would result in a subsequent successful refund claim;
3) Economic hardship; and,
4) Any other standard to which the attorney general and tax commissioner jointly agree.

I would like to give two examples of when an offer may be accepted. For instance, a taxpayer may have more liability than he/she has in assets. The taxpayer could ask friends and family for financial assistance in making an offer. The taxpayer would be paying more money than he/she would have been able to with just his/her assets. Another example is if a taxpayer is terminally ill and does not have enough in assets to cover the liability. A compromise of tax may be appropriate in this sensitive case as well.

Taxpayers must realize that when using the Offers in Compromise Program, there will be no right of appeal. The decision of ODT and the Attorney General's Office will be final.

When drafting the language for Amended House Bill 396, we wanted to stick with the intent of the existing statute. We were not looking to give delinquent taxpayers an easy way out. We realize that sometimes people get into financial difficulty with taxes. Under certain circumstances, we should accept an offer, allowing the taxpayer to put the hardship behind him or her, move on, and be in full compliance for future tax years.

This proactive legislation is one more way we are fulfilling our mission of *providing quality service to Ohio taxpayers by helping them comply with their tax responsibilities and by fairly applying the tax law.*

ODT Maps Future Plans

In March, thirty-two individuals representing various ODT divisions and employee levels participated in the 2002 Strategic Planning Retreat. The purpose of the retreat was to learn from the past, discuss the present, and look towards the future.

Ohio Tax Commissioner Zaino said, "I am happy to announce that the retreat was very successful. All of the participants added their unique perspective and knowledge in helping to craft the Department's strategic direction for the next two to five years. We limited the size of the retreat team in order to facilitate the process, but tried to get participation from different areas of the Department and different employee levels."

The retreat resulted in seven Strategic Objectives. Below is the final list of the Strategic Objectives for ODT over the next several years. Next to each objective is a very brief description, along with some example initiatives that will fall under each objective.

Data Accessibility: This objective deals with making data more accessible to ODT's various operations, and will include an examination of the document handling processes.

E-file and Electronic Registration: This objective stresses ODT's goal of encouraging more paperless filing and the creation of an on-line registration system.

Get the Voice of the Customer/Establish Key Performance Measures: This objective will require ODT to identify what is important to its various customers, then establish measurements to monitor performance at fulfilling the needs of those customers.

Modernize the Tax Code: This continues to stress one of ODT's primary goals of modernizing Ohio's tax system in light of the current economy.

Business Process Improvement/Re-engineering: This objective addresses various operational improvement initiatives, including further functionalization where appropriate, the adoption of an audit management system, the pushing of budgets down to the division level, and the development of a centralized policy making process.

Quality Process Review: Quality is such a significant part of ODT's mission and new goals, that it should be a separate Strategic Objective. This objective will include standardizing and simplifying tax documents, as well as establishing a process to review the quality of all ODT documents.

Employee Development: This objective extends the goal of developing ODT employees through the continued development of our new training program, focusing on management and employee development, and implementing succession planning within ODT.

As a next step, the six Deputy Tax Commissioners, Chief Legal Counsel, and Commissioner Zaino have each assumed responsibility for developing one of the Strategic Objectives. Their job will be to identify the specific initiatives that should be included under each objective, prioritize these initiatives and establish a workplan. Then the hard work of achieving these objectives and their underlying initiatives will begin.

OHIO legislative update

The following is a summary of tax-related legislation enacted by the 124th General Assembly.

Bill Number	Effective	Description
Am. Sub. Senate Bill 143	3/22/02	Enacts the Simplified Sales and Use Tax Administration Act, a model act developed by the National Conference of State Legislatures (NCSL), to develop a voluntary streamlined system to simplify the collection of sales and use taxes, particularly from remote sellers. The Act also directs the state to participate in multi-state discussions to develop the system. Ohio will be represented in these discussions by a three-person delegation, including the Tax Commissioner as Chairman of the delegation, and the designees of the Senate President and the Speaker of the House. The Act permits the Tax Commissioner to enter into a multi-state Sales and Use Tax Administration Agreement, requiring certain uniformity provisions to which all member states must conform. The Act makes certain changes to Ohio law, effective July 1, 2003, including limitations on the frequency of local tax rate changes and standards for attributing the source of transactions to taxing jurisdictions. The bill also implements the sourcing provisions of the federal Mobile Telecommunications Sourcing Act, effective August 1, 2002. The bill also prohibits requiring taxpayers to report and pay on the personal income tax return use tax on purchases on which sales tax has been paid to Ohio or another state.
Am. Sub. Senate Bill 144	3/21/02	The Act creates the Ethanol Incentive Board to review business plans submitted by owners of ethanol production plants. The ethanol plants must be majority-owned by Ohio farmers in order to be eligible for the ethanol tax credit, which can be claimed against the personal income tax or corporate franchise tax credit. The non-refundable credit will be for an amount equal to 50% of the money invested in the plant, not to exceed $5,000 per plant. The Act requires that the credit against the corporate franchise tax be claimed in the tax year immediately following the year in which the investment is made. The credit against the personal income tax is claimed in the taxable year in which the investment is made. Any credit in excess of the taxpayer's liability may be carried forward for three years. The Act also includes ethanol plants in the types of air quality facilities to which the Ohio Air Quality Development Authority may offer financial assistance.

Amnesty Totals Success

The numbers have been added up and the final amnesty total is **$48,523,912**! You may recall that the goal was $17 million. Approximately $33 million went to the General Revenue Fund, with $15 million going to local political subdivisions. Ohio's Tax Amnesty Program offered certain taxpayers an incentive to file outstanding returns and pay "qualifying delinquent taxes" owed to the Ohio Department of Taxation.

PRO-files

Cases Provide Guidance for Residents/Non-Residents Receiving S-Corporation Income

Submitted by Peter Angus, Esq., CPA, Problem Resolution Officer

Four Ohio Supreme Court cases issued over the past several years provide guidance for Ohio residents and non-residents who receive income from Subchapter S corporations. In *Ardire et al. v. Tracy* (1997), 77 Ohio St. 3d 409, an Ohio couple received income from a Sub-chapter S corporation which did business in California and Michigan, but not Ohio. Upon review by the Department of Taxation, a resident credit was allowed for the portion of the income which had been subject to the California Corporation Franchise or Income Tax, but denied regarding the portion subjected to the Michigan Single Business Tax. Ohio Revised Code 5747.05 provides that the term "income tax" includes both a tax on net income and a tax measured by net income. The resident credit of 5747.05(B) is the lesser of:

(1) The amount of tax otherwise due under section 5747.02 of the Revised Code on such portion of the adjusted gross income of a resident taxpayer that in another state or in the District of Columbia is subjected to an income tax.

(2) The amount of income tax liability to another state or the District of Columbia on the portion of the adjusted gross income of a resident taxpayer that in another state or in the District of Columbia is subjected to an income tax. The credit provided under division (B)(2) of this section shall not exceed the amount of tax otherwise due under section 5747.02 of the Revised Code.

The Court found that the Michigan Single Business Tax employs a value-added measure of business activity, but its intended effect is to impose a tax upon the privilege of conducting business activity within Michigan. It is not a tax upon income and, therefore, the Ohio resident credit may not be based upon the portion of income subjected to it.

In *Dupee et al. v. Tracy* (1999), 85 Ohio St. 3d 350, Florida shareholders of an Ohio Subchapter S corporation claimed that their distributive share of income should be apportioned outside Ohio to their state of residence. The Court observed that Ohio Revised Code 5747.02 imposes the income tax on every individual residing in or earning or receiving income in Ohio. The income in question was earned and received by the Subchapter S corporation in Ohio. The Court held that the character of the income – including having been earned in Ohio – is the same for residents and nonresidents. Therefore, the Florida shareholders were liable for Ohio income tax on their distributive share of income which was earned – by the Subchapter S corporation – in Ohio.

In *Agley et al. v. Tracy* (1999), 87 Ohio St. 3d 265, Michigan residents received distributive shares of income from a Subchapter S corporation which did business and earned income in Ohio. The Michigan residents contended, among other things, that the taxation of them as non-resident shareholders violated their due process rights because they did not have nexus with Ohio. The court held that the taxpayers, through their Subchapter S corporation, had availed themselves of the protections and benefits of Ohio by carrying on business here. This provides Ohio with the minimum contacts it needs to justify taxing the taxpayers on their distributive share of income. The Court also rejected the taxpayer's contention that applying the Ohio income tax to them violated Section 381, Title 15, U.S. Code (also known as "Public Law 86-272") because the parties had stipulated that the corporation did more than the threshold activities under the statute in Ohio. Additionally, the Court rejected the contention that the distributive income from the corporation was "nonbusiness" income to the shareholders, and therefore apportionable outside Ohio. The Court held that the income retains the same characteristics it had when generated by the S corporation.

Kemppel et al. v. Zaino (2001), 91 Ohio St. 3d 420 involved an Ohio Subchapter S corporation which was liquidated and dissolved with the net proceeds being distributed to the appellant shareholders who were Florida residents. The Tax Commissioner assessed the shareholders on their distributive share of the gain under the rationale of *Agley*, asserting that it was business income. Ohio Revised Code 5747.21 provides that business income is to be allocated to Ohio by apportionment, and nonbusiness income is "allocable to this state if the taxpayer's domicile was in this state at the time of such sale or other transfer." The Supreme Court found that there are two tests for distinguishing between business and nonbusiness income: the transactional test and the functional test. Under the transactional test, emphasis is given to whether the income arose from the transactions occurring in the regular course of a trade or business. Under the functional test, emphasis is given to whether the property was used in the regular course of the business operation. The Court held that the income from the liquidation of the business was not business income under either test, and so reversed the assessment.

ODT Seeking Enforcement Accreditation

Submitted by Jim Lawrence, Deputy Tax Commissioner

The Commission on Accreditation of Law Enforcement Agencies (CALEA) conducted an on-site review of the Department of Taxation's Enforcement Division during the period of April 27 – May 1, 2002. The three-person team found that the Division was in compliance with all of the Commission's standards and will recommend that the Commission accredit the Division at its annual meeting in Cleveland this coming July. The three-person team was made up Chief (Ret.) Peter Favreau, Manchester (New Hampshire) Police Department, Lieutenant Bruce Longino, Naperville (Illinois) Police Department and John Dankel, Crime Prevention Specialist, Ashville (North Carolina) Police Department.

CALEA develops a set of international standards in police management and service and administers a process that certifies law enforcement agencies that demonstrate that they meet those standards. The accreditation process has five phases: application, self-assessment, on-site assessment, commission review/decision, and maintaining compliance (re-accreditation). The Enforcement Division is now preparing for the fourth phase, commission review/decision, at CALEA's Conference in Cleveland on July 24 to 27.

If accredited, ODT will have the first tax enforcement unit in the country to have earned this designation.

INFORMATION*releases*

The following information releases have been issued by the Department in the last several months. The topics addressed are summarized below. Please visit our Web site at www.state.oh.us/tax and click on "Practitioner" and then on "Information Releases" under the "Releases" link to view all the information releases.

Excise and Motor Fuel Tax

License Requirements for Other Tobacco Products – April 9, 2002

This information release addresses the requirement for retailers purchasing untaxed tobacco products to register and obtain an Other Tobacco Products distributor's license. It also states that retailers in this state who receive tobacco products from a supplier outside this state, on which the tobacco products tax has not been paid to the supplier, are liable for the tax.

Sales Tax

Portable Grain Bins, Field Tile, Livestock Structures, and Horticulture Structures – April, 2002

This information release rescinds and replaces the previous information release dated December, 1985. It adds information concerning livestock and horticulture structures and provides statements and instructions for completing exemption certificates.

Exemption Does Not Excuse Filing

A number of county auditors in Ohio say they are worried that personal property tax returns are being filed in their offices with all zeroes on them because some taxpayers and tax practitioners do not understand the $10,000 personal property tax exemption. "I know of companies or offices that have machinery or equipment or inventory or all three and the personal property tax returns their accountants file don't reflect any of it," one auditor said. "The exemption does not mean no return has to be filed. In fact, if a business has machinery, equipment or inventory, personal property tax does have to be filed."

Some of the basic rules for reporting personal property are:

- Personal property includes every tangible thing owned and used in business in Ohio, except property classified as real property.
- Personal property includes machinery, equipment, furniture, fixtures, inventory and supplies.
- Each taxpayer is entitled to an exemption not greater than $10,000 of listed value.

The important part of all this, again, is even though a $10,000 exemption is allowed, the actual true value of all personal property used in business in Ohio must still be reported, even when its value is less than $10,000. And, as a further note, when the returns are filed and the exemption is appropriate, the county in which the return is filed will be reimbursed for that exemption by the state.

Also, there are penalties when a taxpayer does not file a personal property tax return, files it late or does not report all of its personal property used for business in Ohio.

For more information on personal property go to the Ohio Department of Taxation Web site at: www.state.oh.us/tax for more information and answers to frequently asked questions. Or, call the Department's Taxpayer Services Division toll-free at 1-888-644-6778.

Reporting Requirements Waived for RICs, REITs & REMICs

The Tax Commissioner has waived the 2003 reporting requirement for Real Estate Investment Trusts (REITs), Regulated Investment Companies (RICs), and Real Estate Mortgage Investment Conduits (REMICs). For 2003, principals of these entities are not required to submit any list of names, addresses, and social security or federal identification numbers of investors, shareholders and others who had any interest, or had invested in the entity at any time during the 2002 calendar year.

Such entities are exempt from taxation for the 2003 calendar year as corporations and are exempt from taxation for the same year as dealers in intangibles, even though they will not be submitting reports.

Legal Affairs Going Public on the Internet

ODT's Office of Chief Counsel is currently in the process of creating an appeals management database. It is anticipated that some information contained in the appeals management database will be made available to the public on the Internet. ODT plans to make some information available to the public on the Internet, including pertinent tax sections, administrative rules, select Final Determinations issued by ODT, along with subsequent decisions issued by the Board of Tax Appeals, Ohio Supreme Court, etc.

This database is still in the development stage, so please feel free to offer your input and let the Office of Chief Counsel know if there is any other information you would like available to the public using the Internet. To do so, contact the Office of Chief Counsel at (614) 466-6750.

COURT decisions

The following are significant court decisions of the Ohio Supreme Court and Board of Tax Appeals (BTA) announced in March and April 2002. These informational summaries of tax decisions are compiled by Peter Angus, Esq., CPA, Problem Resolution Officer.

Personal Income Tax

***Charlotte Ray v. Zaino* (March 8, 2002), BTA 01-363**

A taxpayer's appeal of an income tax assessment was dismissed because she had not pre-paid the assessment as required by Ohio Revised Code 5747.13(E). The BTA held that the pre-payment requirements of the statute are jurisdictional, and an appeal therefore may not be entertained by the BTA unless the requirements have been met.

Personal Property Tax

Keystone Powdered Metal Company v. Zaino (March 22, 2002), BTA 00-749

A manufacturer of metal parts for the automotive industry contended that it should be allowed to use a shorter class life in determining the value of its assets under the "302 Computation" prescribed by Ohio Administrative Code 5703-3-11. The taxpayer contended that its machinery and equipment were subjected to excessive wear and tear, and this amounted to special or unusual circumstances warranting a deviation from the 302 Computation. The only witness for the taxpayer was an outside tax consultant who did not provide information regarding industry standards against which to compare the taxpayer's rate of machinery and equipment disposal. The BTA therefore held that the taxpayer did not provide sufficient evidence to demonstrate special or unusual circumstances. The taxpayer's contention that the application of the 302 computation would result in an unjust or unreasonable result was also not adequately supported. The BTA noted, for example, that the disposal study submitted by the consultant to demonstrate a Class I useful life, *i.e.*, less than six years, showed that only one-third of the assets were disposed of during the ten years covered by the study.

***PMX Ohio Corp. & Great Lakes Metals Corp. v. Zaino* (April 26, 2002), BTA 99-941, 99-942, 00-1**

Great Lakes Metals Corp (1995) and PMAX Ohio Corp (1996) have been appealed to the Ohio Supreme Court. PMX Ohio Corp. purchased the assets of Great Lakes Metals Corp. pursuant to a purchase agreement dated December 28, 1994. PMX Ohio Corp. filed a new taxpayer personal property tax return reflecting May 1995, as its first month of business. On audit, PMX Ohio Corp. was assessed as a regular taxpayer, not a new taxpayer, for 1995. The Department also assessed Great Lakes Metals Corp for tax year 1995. The BTA found that the purchase agreement did not transfer title to the assets of the manufacturing plant until March 16, 1995. Therefore, Great Lakes was the taxpayer for 1995. The Board also removed an amount from the asset listing believed to be part of pollution control certificates.

Real Property Exemptions

Columbus City Schools Bd. Of Ed. v. Zaino (March 8, 2002), BTA 2000-96

Holy Cross Care Services Inc. purchased a nursing care facility on December 31, 1996 and sought and received an exemption from the Tax Commissioner, effective January 1, 1997, under the home for the aged provisions of Ohio Revised Code 5709.12. The Columbus City Schools Board of Education appealed the Tax Commissioner's final determination granting exemption. The BTA found that the patient admission agreement of Holy Cross Care Services Inc. provided that patients may be discharged for non-payment, that patients must demonstrate the ability to pay, and that patients must vacate for failure to pay. On this basis, the BTA found that Holy Cross Care Services Inc. did not qualify as a home for the aged under Ohio Revised Code 5701.13 because, as of January 1, 1997, it did not provide for services for the life of each resident without regard to his ability to continue payment for the full cost of the services, as the statute requires for exemption.

***Columbus Christian Center v. Zaino* (April 19, 2002), BTA 00-669**

The taxpayer purchased twenty-five acres of vacant land on August 27, 1996. On November 11, 1997, it received a commitment letter from a bank for financing the building of a church on the property. It filed an application for exemption for the property in December, 1997. It was issued a building permit in January, 1998, and broke ground in October, 1998. The building was first used in December, 1999. The BTA affirmed the Tax Commissioner's granting of an exemption for fifteen acres used for building construction and a parking lot beginning in 1997, and denying exemption for ten acres which was seeded but otherwise not used primarily as a house of public worship or in support of public worship pursuant to Ohio Revised Code 5709.07.

***First Christian Church of Medina v. Zaino* (April 12, 2002), BTA 00-480**

The appellant church purchased 17.9 acres of vacant land in 1996 and sought exemption for the entire parcel under Ohio Revised Code 5709.07, which exempts houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment. The BTA held that the portion of the land which will be used for the new church building and parking lot, the connecting road and septic system, is exempt. The land used for a "spiritual walk" was held to be taxable, as was land for which building plans had not yet been made.

***Bd. Of Ed. of Hilliard City S.D. v. Zaino and American Islamic WAQF (AIW)/AI Ltd.* (April 26, 2002) BTA 01-695**

The BTA affirmed exemption for 2000 under Ohio Revised Code 5709.07 for 8.3 acres used as the site of a house of public worship. The remission of taxes and penalties for prior years was denied, as the property had been used for farming until 2000.

Sales and Use Tax

***Corporate Staffing Resources Inc. v. Zaino* (2002), 95 Ohio St. 3d 1**

Corporate Staffing Resources, Inc., a temporary employment company, sought a refund for sales tax paid on its charges for supplying temporary employees to one of its customers, Sarcom, Inc. Sarcom used the temporary employees to fulfill warranties with its customers. Corporate Staffing Resources, Inc. contended that the sales were excepted under Ohio Revised Code 5739.01(E)(1) which provides that retail sales do not include "sales …in which the purposes of the consumer is … to resell the thing transferred or the benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person." The Supreme Court found that the actual benefit of the temporary employment services to Sarcom Inc. was the contribution of a temporary, flexible, and less costly workforce. The actual benefit to Sarcom's customers was to have consistently operating computer hardware. Because the actual benefit was not resold in the same form, the resale exception did not apply.

***Key Service Corp. v. Zaino* (2002), 95 Ohio St. 3d 11**

Remanded to the Board for further proceedings. A taxpayer applied for a refund under Ohio Revised Code 5739.071 for sales tax paid on equipment used to provide what it called electronic information services. The Tax Commissioner denied the claim because the taxpayer was not "providing a service" as defined in Revised Code 5739.01(X): "providing or furnishing anything described in division (B)(3) of this section for consideration." R.C. 5739.01(B)(e) exempts from the definition of sales those transactions that occur between members of an affiliated group. The Court rejected the Commissioner's contention. However, the Court did allow the Tax Commissioner's cross appeal regarding the transactions that made-up the refund claim.

***B.J. Alan Co. v. Tracy* (March 1, 2002), BTA 99-196**

***Diamond Sparkler Mfg. Co. Inc. v. Tracy* (March 1, 2002), BTA 99-197**

These two cases have been appealed to the Ohio Supreme Court. Fireworks vendors contended that their purchases of discount cards ("preferred" and "premier" cards) which they gave to their customers were exempt

under Ohio Revised Code 5739.02(B)(37)(a) which provides an exemption for "sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale." The BTA held that the "preferred" and "premier" cards were not exempt because they did not price and describe property offered for sale. The taxpayers also contended that trailers which they rented and used for storage of inventory were exempt under Ohio Revised Code 5739.01(E)(12). However, that exemption, by its terms, only applies when the stored inventory is to be distributed outside Ohio to retail stores of the person who owns or controls the facility. Since there was not evidence that such was the case here, the taxpayers' contention was rejected. The taxpayers also sought exemption for their pallet wrap under the packaging exemption of Ohio Revised Code 5739.02(B)(15). The BTA found that the pallet wrap did not meet the definition of a package contained in the statute, and so rejected the contention. The BTA granted exemption to the taxpayers for their purchases of employment services under a lease. The BTA held that the taxpayer had shown that it met the statutory requirements of Ohio Revised Code 5739.01(JJ)(3): "Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis."

D Cubed Inc. v. Zaino (April 26, 2002), BTA 2001-371

A taxpayer filed a petition for reassessment prior to the assessment being issued. He contended he did not receive notice of the assessment, although his wife's signature appeared on the delivery receipt. The BTA held that the Tax Commissioner did not have jurisdiction to review the matter since the taxpayer filed its petition for reassessment prior to the issuance of the assessment. The assessment was affirmed.

Ellwood Engineered Castings Co. v. Zaino (March 22, 2002) BTA 00-391

This case has been appealed to the Ohio Supreme Court. A manufacturer of molds for the steel and automotive industries contended that its boom crane and dust collection systems were exempt manufacturing equipment. The boom crane was used to load broken molds into the taxpayer's railroad cards for transport to the melt shop. The molds were broken by another entity which operated on the taxpayer's property. The BTA held that the boom crane was exempt under Ohio Revised Code 5739.011(B), which exempts items which move the product through a continuous manufacturing operation. Although the Tax Commissioner contended that the broken molds moved by the boom crane had not yet entered the *taxpayer's* manufacturing operation, the BTA held that because the entire operation takes place at the taxpayer's site and the molds remain under the taxpayer's ownership throughout, the molds entered the manufacturing operation when they were placed in the pit to be broken (by the other entity), and so the exemption applies. The dust collection system of the taxpayer was used to protect employees from inhaling dust and to prevent the dust from adulterating sand molds used in castings. Under Ohio Revised Code 5739.011(C)(5), a dust collection system is exempt only if it "totally regulates the environment in a special and limited area of the manufacturing facility." Such was not the case here, so the exemption was denied.

Moore Personnel Services v. Zaino (April 12, 2002), BTA 99-2098

This case has been appealed to the Ohio Supreme Court. The taxpayer was assessed as a provider of taxable employment services under Ohio Revised Code 5739.01(JJ). However, the BTA ruled that, in regard to some customers, the taxpayer was performing payroll and bookkeeping services that are not subject to sales tax.

MCI Telecommunications Corp. v. Tracy (April 19, 2002), BTA 98-1299, 98-1300

During a portion of the audit period, 1988-1995, the taxpayer's switching equipment was not able to record the location in Ohio to situs the sales of telecommunication service which it sold, and so it only charged and remitted the 5% state rate on its sales. On audit, the agent allocated the sales to the 88 counties based on the same ratios that the taxpayer had reported for sales of other telecommunications services. The appropriate county permissive rates were assessed. The BTA upheld this audit methodology, despite the taxpayer's contention that it was, during the audit period, impossible for it to comply.

***Martin Ruben and Frank Ruben v. Zaino* (April 26, 2002), BTA 00-136, 00-137**

The BTA held personally liable for unpaid sales tax two brothers who ran an auto salvage business, despite their contention that they had turned the business over to a purchaser by the time of the audit period, March – November, 1996. The purchaser testified that the two brothers remained active in the business throughout the audit period and well into 1997.

***Ted R. Morton v. Zaino* (March 1, 2002), BTA 00-126**

A CEO and 20% shareholder whose duties were limited to conducting two board of directors meetings per year and who did not receive a salary or dividends and who did not sign tax returns was found to be not liable under Ohio Revised Code 5739.33 as a responsible party for unpaid sales tax.

***Remo Polselli v. Zaino* (March 8, 2002), BTA 00-1379**

The president and sole shareholder of Winco Properties Inc. was held liable for the unpaid sales tax due from the corporation, although he asserted that he had delegated to others the duties of preparing returns and remitting sales tax.

Withholding Tax

***EZ Care Lawn Inc. v. Zaino* (April 12, 2002), BTA 01-1360, 01-1361, 01-1362, 01-1365**

In Cases 01-1360, 01-1361, 01-1362, an employer's appeal of three income tax withholding assessments was dismissed because the employer had not prepaid the assessments as required by Ohio Revised Code 5747.13(B). In Case 01-1365, the appeal was dismissed because it was not taken from a final determination of the Tax Commissioner, as required by Revised Code 5717.02.

Calling All (new) Vendors

Tax agents in the Ohio Department of Taxation's (ODT) nine in-state taxpayer service centers are going beyond the computer and the automated telephone answering systems in an attempt to reduce the number of delinquent sales tax accounts. They are calling everyone in Ohio who applies for a vendor's license. So far they have actually spoken, person-to-person, with 3,000 people.

"I feel this first call is important for a couple of reasons," Keith Farrell, administrator of all those service centers, said. "First, it is a non-threatening call. We are not calling to tell our customer that he or she owes taxes. We are calling to establish a relationship." Beyond that, Mr. Farrell said the agents calling those with new vendor's licenses:

- Make certain the customer really needs a vendor's license for the business in which they are engaged.
- Go over the obligations to report and pay sales taxes on time.
- And, finally, explain their other tax obligations under Ohio law.

"We've had many problems with vendor's licenses, and that translates into expense," Mr. Farrell said. That's due to all the delinquent notices that are sent out that could be prevented. "I feel if we could get to those new license holders as quickly as possible, on the front-end, we can cut our expense by eliminating the sending of many of those unnecessary delinquency notices." If you have a vendor's license, you are required to file a sales tax return. If you fail to file a sales tax return, a computer automatically sends you a delinquency notice. If you ignore that, you get a bill for estimated tax, interest, and penalty.

In addition to making phone calls, ODT is working closely with Ohio's 88 county auditors on the vendor's license problem. "We are encouraging the auditors to call us if they have any questions whatsoever about the appropriateness of issuing a vendor's license," Mr. Farrell said, and added, "The auditors are doing that." County auditors issue vendor's licenses. The program is going well so far, and taxpayers have noted that they appreciate the contact from a person.

TAXenforcementnews

The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation from February through April, 2002. Tax Enforcement News is compiled by Diann L. Hamilton and Robert M. Bray, Acting Administrator, Enforcement Division. Fraud complaints can be e-mailed to the Enforcement Division at Enforcement@tax.state.oh.us.

Ennan and Essam Abdallah of Lakewood pleaded guilty in Cuyahoga County Common Pleas Court to one count of possession of untaxed other tobacco products. They were sentenced to eight months in the Lorain Corrections Center (suspended), fined $250, and placed on probation for two years. An investigation led to 3,650 cigars being confiscated and the charges being filed. A check was received in the amount of $14,231 in excise tax owed for the cigars.

Joseph Salaman of Westlake pleaded guilty in Cuyahoga County Common Pleas Court to one count of making false entries on invoices relating to the purchase of untaxed cigars. Mr. Salaman was sentenced to six months in jail (suspended). An investigation led to the confiscation of 24,500 cigars and a felony indictment. The cigars were turned over to the Ohio Department of Taxation for destruction.

Muna and Karim Danial, owners and operators of K & M Wholesale in Cleveland, pleaded guilty to possession of untaxed cigars (attempt) and one count of making a false entry on a tobacco invoice. They were sentenced to six months in jail (suspended) and ordered to pay $12,575 in restitution. The restitution was paid at the time of the sentencing. Investigators learned K & M Wholesale was purchasing untaxed cigars. A search warrant was conducted and purchase receipts were confiscated. This led to the charges being filed and subsequent conviction.

Daniel Harper Inc., dba Cheap Tobacco, pleaded guilty in the Cuyahoga County Common Pleas Court to one count of collecting and failing to remit sales tax and pleaded individually to one count of failure to file a sales tax return. Mr. Harper was fined $11,000 and sentenced to 60 days in jail (suspended). During an investigation, it was determined the corporation owed taxes in excess of $500,000. At the time of the sentencing $503,768 had been paid to the state of Ohio.

Raymond George of Rocky River pleaded no contest in the Parma Municipal Court to one count of falsification. Information was obtained by investigators from the Toledo Taxpayer Service Center on an alleged underreporting of sales tax on a boat title. There was a $100,000 discrepancy from the purchase agreement and the amount placed on the title. Prior to the court processing, $8,820 was received by the Enforcement Division.

Melvin Wilder of Columbus was found guilty in the Franklin County Common Pleas Court of one count of failure to file a state income tax return, one count of fraudulent filing of a withholding tax return, one count of theft and one count of collecting and failing to remit withholding tax. He was sentenced to five years probation and ordered to pay all taxes owed. An investigation led to the charges being filed and subsequent conviction.

Carl Fell of Crooksville pleaded guilty in Muskingum County Municipal Court to one count of operating on a highway with untaxed fuel. He was fined $100 plus court costs. A routine dyed fuel inspection by the Ohio Department of Taxation's Dyed Fuel Inspection Team discovered dyed or untaxed diesel fuel being used in a vehicle on the highway.

Tammy Geyer of Norwich pleaded no contest and was found guilty in Muskingum Municipal Court of one count of operating on a highway with untaxed fuel. She was fined $100 plus court costs. A routine dyed fuel inspection by the Ohio Department of Taxation's Dyed Fuel Inspection Team discovered dyed or untaxed diesel fuel being used in a vehicle on the highway.

Several individuals in the Columbus area were convicted of various charges relating to a Columbus Police Department Task Force investigation involving several agencies including the U.S. Department of Agriculture and the Ohio Department of Taxation. The tax charges related to this investigation involved untaxed cigarettes. The individuals involved were:

Hani Shalash – 1 count of receiving stolen property.
Mohammad Shalash – 1 count of conspiracy to engage in a pattern of corrupt activity; 1 count of receiving stolen property.
Mustafa Shalash – 1 count of conspiracy to engage in a pattern of corrupt activity; 1 count of receiving stolen property.
Jamil M. Shalash – 1 count of conspiracy to engage in a pattern of corrupt activity.
Jamil S. Shalash – 1 count of conspiracy to engage in a pattern of corrupt activity.

Cleveland Wholesale Inc. of Cleveland pleaded guilty in the Cuyahoga County Common Pleas Court to one county of filing a false tax return relating to the sale of untaxed cigars. The corporation was fined $7,500 (suspended). Invoices were obtained indicating purchases were made of untaxed cigars leading to the charges and subsequent conviction.

Holly Burkhart of Medina pleaded guilty in the Medina County Common Pleas Court to one county of selling cigarettes without tax stamps. The charges derived from a Medina County Task Force working in conjunction with the Ohio Department of Taxation's Enforcement Division.

Ralph Geer of Mentor pleaded guilty in the Trumbull County Common Pleas Court to five counts of incomplete false and fraudulent income tax returns (attempt). He was sentenced to six months in jail (suspended) and given probation. Mr. Geer was also required to file and pay amended income tax returns. A referral from the Income Tax Division led to an investigation of Mr. Geer and discovery that he owed over $17,000 in Ohio income tax accrued over six years.

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

Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Kail, Ryan	Southside Carryout	Upper Sandusky	(1) Count – No Cigarette License
Swemba, John M.	The Cigar Affair	Perrysburg	(1) Count – Attempted Trafficking In Cigarettes
Safadi, Victor H.	Safadi Inc.	Toledo	(1) Count – Trafficking In Cigarettes Without A License
	Toledo Citgo	Toledo	(1) Count – No Cigarette License
Nassar, Rose	U.S. Mini Mart	Hamilton	(1) Count – Failure To Post License
Nassar, Osama		Hamilton	(1) Count – Duty To Affix Stamps (2) Counts – Dealers Must Keep Records
Zappa, Mark	Lorain Music & Vending Co.	Amherst	(1) Count - No Cigarette License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
Schwenn, John S.		Columbus	(1) Count Making Retail Sales Without a Vendor's License
Fulton, John	Finest Floors	Perrysburg	(3) Counts Failure To File Sales Tax Returns
Shabenas, William	Nit Kap Inn	Oregon	(2) Counts Failure To File Sales Tax Returns
Hendricks, A.	H-Tech Computers	Toledo	(2) Counts Failure To File Sales Tax Returns
Bryant, Raymond		Sunbury	(6) Counts Collecting and Failing To Remit Sales Tax
Bass, Neal	Erie Gold & Diamond	Sandusky	(1) Count Collecting and Failing To Remit Sales Tax
Daily, Krista	CDL Protective Services	Columbus	(2) Counts Collecting and Failing To Remit Sales Tax (1) Count Operating Under Suspension
Depew, Dale	Seneca Printing	Tiffin	(1) Count Collecting and Failing To Remit Sales Tax (1) Count Collecting and Failing to Remit Withholding Tax
	Hooties	Bellview	(1) Count Failure To File Sales Tax Returns

Tax Calendar at-a-Glance

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

Aug.
- **15** Monthly Income Tax Withholding Return
- **20** Monthly Kilowatt Hour (KWH) Tax Return
- **20** Quarterly Natural Gas Distribution (MCF) Tax Return
- **23** Monthly and Semiannual Sales Tax Returns
- **23** Monthly Consumer and Direct Pay Returns

Sept.
- **16** Monthly Income Tax Withholding Return
- **16** Quarterly Estimated Income Tax Return
- **20** Monthly Kilowatt Hour (KWH) Tax Return
- **23** Monthly and Semiannual Sales Tax Returns
- **23** Monthly Consumer 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.

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