

2011 Income Tax Cut Caps Historic Tax Reform Plan

Ohio's individual income tax rates fall by more than four percent across the board for 2011, meaning additional savings for Ohio taxpayers.

But there is a larger historical significance to these rate reductions. They also mark the finish line in one of the most ambitious packages of state tax cuts ever undertaken in Ohio, a multiyear plan that has reduced income tax rates four other times and phased out Ohio's two largest business taxes.

With the 2011 rate change, state income tax rates are a full 21 percent lower across the board than they were in 2004, the year before the Ohio General Assembly launched the tax reform plan as part of House Bill 66.

The plan, launched during the Taft administration, was embraced by Governor Ted Strickland and has reduced taxes throughout his term as governor. The reforms also included a gradual phase out of local property taxes on business machinery and equipment and a phase out of the state's corporation franchise tax on profits. These taxes, which ended for nearly all taxpayers after 2008 and 2009, respectively, were replaced with the commercial activity tax, which imposes a much smaller burden on businesses and generates far less revenue.

Overall, the reforms in place before 2011 were already delivering a net annual savings for Ohio taxpayers of about \$2.1 billion each year. The 2011 income tax rate cut adds an additional \$400 million per year to that total. Overall, the reforms are thought to be Ohio's single largest package of tax cuts in at least 70 years.

Ohio Tax Commissioner Richard A. Levin said the changes helped improve Ohio's business climate. In particular, he praised the elimination of taxes on business personal property.

"For decades, experts said these taxes on machinery and equipment discouraged business owners from making investments that create jobs in Ohio. And they were right," Levin said. "Ohio is now one of just 10 states that no longer taxes machinery and equipment. That's a big competitive advantage – one that I think will grow in importance as business owners learn about what we've accomplished during the past five years."

Others share Levin's view that the reforms have improved Ohio's business environment. Last January, Eric Burkland, president of the Ohio Manufacturers' Associa-

tion, [told the Columbus Dispatch](#) that Ohio has a "a tax structure right now that beats anybody." Jay Foran, senior vice president of Team NEO, [told the Akron Beacon Journal](#) that Ohio's new tax structure has made the difference in some companies deciding to locate in Ohio.

Also, [Abercrombie & Fitch recently informed shareholders](#) that it would save \$180,000 each year in state taxes if it reincorporated in Ohio instead of Delaware.

"That was a striking announcement," Levin said of the Abercrombie notice. "Delaware's reputation is that of a state tax haven. For a corporation to conclude that Ohio's taxes would impose less of a burden than those of Delaware – that speaks volumes about just how competitive Ohio has become."

The 2005 tax reform plan was implemented on schedule except for one piece: the 2011 income tax cut. The cut was originally scheduled for 2009, but state leaders, with the support of major business organizations, opted to postpone it for two years in order to close a budget hole created by an unexpected Ohio Supreme Court decision concerning the placement of video lottery terminals at horse racing tracks.

The savings associated with the 2011 income tax cut will vary according to income of the taxpayer. But, for a family of four earning \$60,000, it means \$77 less tax per year. Such a family was already paying about \$309 less income tax per year because of four previous rate reductions.

Ohio taxpayers will realize the savings from the latest rate reductions when they file their 2011 income tax re-

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turns due in April, 2012. At that point, the 2011 rate change will mean either a larger refund or a smaller amount due. No change is planned in the amount of money that Ohio employers withhold from paychecks.

Click [here](#) to see how Ohio's individual income tax rates have gradually been falling since 2004. 

Key Moments in Ohio Tax History

Fundamental, systemic changes to Ohio's tax laws are rare. This brief timeline looks back at some of the most significant changes to Ohio's tax laws during the past two centuries.

1825 — Ohio begins taxing real property according to its value. Previously, land was taxed at one of three rates, depending on whether its quality was judged to be "first rate," "second rate" or "third rate."

1846 — The General Assembly enacts the "Kelley Law," requiring that "all property, whether real or personal... unless exempted, shall be subject to taxation." Previously many forms of personal property, such as tools and machinery, were exempt from tax.

1902 — The General Assembly enacts a new corporation franchise tax, based on corporations' net worth.

1929–1935 — This period included a number of important changes, including an end to taxes on tangible personal property when not used in business and a lower, 10-mill

ceiling on unvoted property tax levies. The first change relieved individuals of the duty to pay property taxes based on the value of personal possessions such as tools, jewelry and silverware. The latter change is the reason nearly all property tax levies are now decided through votes of the people. In December, 1934, the General Assembly enacted another significant change: a new three-percent state sales tax, effective in January 1935.

1971 — The General Assembly enacts a new state individual income tax effective for 1972. Lawmakers also broaden the corporation franchise tax to include a net income base.

2005–2011 — Tangible personal property taxes are gradually phased out for all businesses except public utilities. The corporation franchise tax is gradually phased out for nearly all businesses except financial institutions. A new commercial activity tax is gradually phased in. State income tax rates are reduced by 21 percent across the board. 

New Ohio Income Tax Tables Will Save Taxpayers \$25 Million

The Ohio Department of Taxation recently unveiled its first-ever adjustment of Ohio's individual income tax tables for inflation, a move that will save Ohioans an estimated \$25 million annually starting with the returns due next spring.

The income levels associated with each of Ohio's nine income tax brackets were adjusted by 0.9 percent for the 2010 taxable year. This adjustment, based on federal economic data, will translate into an estimated \$25 million annual savings when compared to what Ohio taxpayers would have collectively paid without the adjustment.

The periodic adjustment of tax brackets for inflation is known as "indexing." Indexing is designed to prevent "bracket creep" — the tendency for individuals' incomes to creep into a higher tax bracket because of nominal increases in income, even when the real value of that income has not increased.

"The purpose of indexing is to prevent people from being pushed into a higher tax bracket when their paychecks are only keeping up with inflation," Ohio Tax Commissioner Richard A. Levin said. Adjustment of tax brackets

for inflation will benefit the vast majority of taxpayers, regardless of how their income has changed, he said.

The adjustment is being done in accordance with Ohio Revised Code section 5747.02, which calls on the tax commissioner to adjust brackets each July starting this year. The calculation was made based on data released by the U.S. Department of Commerce Bureau of Economic Analysis.

Ohio's indexing law actually dates back to 2002, when the 124th General Assembly called for brackets to be adjusted annually starting in 2005. But before the first adjustment could take place, lawmakers postponed indexing for an additional five years as part of a broad tax reform plan that included five annual income tax rate cuts of 4.2 percent each. Ohio joins about a dozen other states that also index their tax brackets to inflation, including Arkansas, California, Idaho, Iowa, Maine, Minnesota, Montana, North Dakota, Oregon, South Carolina, Vermont and Wisconsin. 

Commissioner's Column

Tax Foundation's Business Tax Climate Study Lacks Credibility

Four years ago, in this very space, then Tax Commissioner William W. Wilkins used the word "bogus" to describe the Tax Foundation's annual ranking of state tax systems.

That's a harsh word. But during the past four years, I've come to believe that Wilkins was probably being too kind.

The blunt truth is that the Tax Foundation's annual "state business tax climate index" isn't credible at all and should not be taken seriously.

Here's why. For starters, the Tax Foundation's index contains a significant number of factual errors. Among these mistakes (which I've described in more detail at tax.ohio.gov/taxfoundation/) is the organization's apparent confusion over whether or not the state of Ohio taxes corporation profits. As many of you know, Ohio's century-old corporation franchise tax came to an end more than a year ago. This was an important tax reform; for the first time in decades, state government is no longer taxing the profits of corporations.

In one part of its report, the Tax Foundation acknowledges this achievement. But in another section the organization absurdly claims Ohio imposes taxes of up to 3.4 percent on corporation profits.

This shows an astonishing level of confusion about a key element of Ohio's business tax system. One can't help but wonder: are factual errors like this part of the reason the Tax Foundation consistently rates Ohio's tax climate so poorly?

Unfortunately, we will never know, because the Tax Foundation refuses to fully disclose how it calculates its rankings. And this is the real reason the Tax Foundation's work simply cannot be taken seriously: the calculations are done in secret.

Two basic principles of good research are that it must be transparent and capable of being replicated by another researcher. The Tax Foundation fails on both counts.



Commissioner Levin

This secrecy is particularly troubling when one considers that any ranking of state tax systems ultimately comes down to a series of subjective judgments about what constitutes good tax policy. By not fully disclosing its calculations, the Tax Foundation shrouds in secrecy the value judgments it is making about which tax policies are the most important.

In essence, the public is expected to blindly trust that this privately-funded organization in Washington, D.C. shares our values, understands the needs of Ohio business and is making the right decisions behind closed doors.

That's difficult to believe based on some of what is known about this index.

For example, while the Tax Foundation grades states on policies as subtle as whether or not sales taxes apply to groceries, the index ignores one of the most important considerations for any business: property taxes on machinery and equipment.

Last year, for the first time since 1846, businesses in Ohio were finally fully relieved of the responsibility to pay property tax on machinery and equipment. This was a landmark tax reform; since the vast majority of other states still tax machinery and equipment, Ohio now has a significant advantage when trying to compete for jobs and investment.

The Tax Foundation literally ignores this achievement. It appears to believe businesses are better off when states do tax groceries than when states don't tax machinery and equipment. This point of view is difficult to understand, to say the least. By repealing taxes on machinery and equipment, Ohio has removed an obstacle to investments that makes its workers more productive and, in the long term, improves our standard of living.

"Bogus" isn't the right word to describe the Tax Foundation's business tax climate index. I'd call it "junk science" – except that the Tax Foundation's index isn't really science at all.

This is an adaptation of a guest column that first appeared in the Dec. 3, 2010 edition of Columbus Business First. 

Department Steps Up Fight Against Untaxed Tobacco Products

The Ohio Department of Taxation recently established a new tobacco enforcement unit to combat the illegal sale of untaxed tobacco products in Ohio.

“The agents in the unit will be assigned to conduct more retail inspections than the other agents, and they will coordinate geographical tobacco sweeps,” said Robert Bray, chief of the Enforcement Division. “They will participate in any large-scale tobacco investigations that may occur, too.”

The agents staffing the new unit were selected because their offices are relatively close to the border of states where tobacco taxes are lower than in Ohio. Such areas are more prone to violations of Ohio’s tobacco tax laws than other parts of the state.

The Tobacco Enforcement Unit is expected to be a valuable tool in leveling the playing field for all tobacco businesses in the state of Ohio. The creation of this specialized unit will allow Taxation’s Enforcement Division to conduct inspections in greater numbers and with more detail than in any other time in its history.

With the new unit, the department may be able to double the number of retail inspections taking place each

year. Before the creation of the unit, the division was conducting about 1,100 retail inspections per year.

Ohio has 17,000 to 20,000 licensed cigarette retailers and almost 300 licensed vendors of other tobacco products, such as cigars and chewing tobacco. The new unit is being funded through an increase in the license fees on tobacco wholesalers and retailers enacted previously by the General Assembly. Wholesalers supported the fee increases, which include an annual license fee increase from \$300 to \$1,000 for tobacco wholesalers and from \$30 to \$125 for retailers.

Eastern and southern Ohio are particularly prone to violations of Ohio tobacco tax laws because of lower tobacco taxes in Pennsylvania, West Virginia and Kentucky. Pennsylvania, for example, does not tax other tobacco products – meaning, all tobacco products other than cigarettes. Ohio’s tax on such products is 17 percent of the wholesale price. Taxes on cigarettes in West Virginia and Kentucky are also lower than in Ohio.

Another new part of the more robust effort to catch vendors trying to avoid paying Ohio tobacco taxes is a new hotline that citizens can call to report tips. It is (877) SMOKE-80. ☎

Motor Fuel

Ceccarelli v. Levin (2010), Slip Opinion No. 2010-Ohio-5681

The 100% owner of a corporation licensed as a motor fuel dealer was assessed for unpaid motor fuel tax. The assessment was issued more than four years after the unpaid returns were filed. Ohio Revised Code 5735.12(A) states: “No assessment shall be made against any motor fuel dealer for taxes imposed by this chapter more than four years after the date on which the report on which the assessment was based was due or was filed, whichever is later.” Revised Code 5735.35(B) provides that the “sum due for the liability [of responsible parties] may be collected by assessment in the manner provided in sections 5735.12 and 5735.121 of the Revised Code.” Because of this phrasing of the statute, the Supreme Court held that the four-year period for assessing the responsible party of a motor fuel deal is coterminous with the period for assessing the dealer.

Legal Update



The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court from January 2010 through December 2010. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

Employer Withholding

Ross v. Levin (Aug. 26, 2010), 2010 Ohio 4009, Ohio Court of Appeals, 8th Circuit

An individual was assessed personally under Ohio Revised Code 5747.07(G) for unpaid employer withholding tax due from Fairport Yacht Inc. for the period 1999-2002. The individual contended that although he was listed in corporate documents in 1998, he was not responsible for the period in question. He testified that all of the corporate records were destroyed in a flood. The Court of Appeals held that the evidence contained in the record was not adequate to hold the individual responsible.

Personal Income Tax

Turner v. Levin (2010), Slip Opinion No. 2010-Ohio-922

Ohio Revised Code 5717.04 requires a notice of appeal to “set forth the decision of the board appealed from and the errors therein complained of.” In his appeal, the appellant stated that the Board of Tax Appeals “improperly interpret[ed] every instance of fact laid out” by the appellant in his notice of appeal. The Supreme Court held that this was too general, and that an assignment of error in a notice of appeal does not confer jurisdiction if the errors set out are such as might be advanced in nearly any case. The appeal was dismissed.

Doss v. Levin (Sept. 14, 2010), BTA #2008-M-725

A taxpayer filed and paid his school district income tax during the amnesty period in early 2006. Later he was assessed. He was given credit for the amount previously paid, but he still owed additional tax, plus interest and penalty. He appealed, contending that the penalty of \$150 was excessive. The Board of Tax Appeals found that there was no abuse of discretion on the part of the Tax Commissioner in imposing the penalty.

Personal Property Tax

American Fiber Systems Inc. v. Levin (2010), Slip Opinion No. 2010-Ohio-1468

An “interexchange telecommunications company,” as defined in Ohio Revised Code 5727.01(H), sought exemption for its fiber-optic cable which was “unlit” and which was held for lease to others. The company contended that this property was not “used in business” as that term is defined in Revised Code 5701.08(A). The Supreme Court affirmed the Tax Commissioner’s determination that because the company held the unlit fiber as property available for lease by other businesses rather than using it in its own right, the unlit fiber “has the character of a type of inventory that is used in business by being held for use by other entities.”

Rich’s Dept. Stores, Inc. v. Levin (2010), Slip Opinion No. 2010-Ohio-957

A retailer contended that its inventory was improperly overvalued for purposes of tangible personal property tax for 2000, 2001 and 2002 because the Tax Commissioner did not allow an adjustment to cost based on “markdown allowances” which the suppliers granted to the retailer after the merchandise failed to sell at expected retail price. The retailer used the “retail method,” under generally-accepted accounting principles, to determine the value of its inventory. It is this value which the Tax Commissioner used in valuing the inventory for purposes of the personal property tax. The markdown allowances sometimes granted by sup-

pliers help offset the unprofitability of some merchandise. Such allowances are not incorporated into the value of the inventory under generally accepted accounting principles, nor under the applicable rule, Ohio Administrative Code 5703-3-17. Accordingly, the markdown allowances do not affect the valuation of the inventory. Therefore, the decision of the Board of Tax Appeals reversing the Tax Commissioner was reversed.

Amu & Anu, Inc. v. Wilkins (Feb. 2, 2010), BTA 2007-K-147

A corporation which owned and operated a St. Clairsville hotel failed to file personal property tax returns for several years and was assessed. It did not provide values of its property, contending that the hotel had suffered water damage during the period. Because assessments are presumptively correct unless/until the taxpayer establishes otherwise, the BTA affirmed the Tax Commissioner’s final determination in the matter. The case was appealed to and subsequently dismissed by the Seventh District Court of Appeals in Belmont County.

HealthSouth Corporation v. Wilkins (October 6, 2010), BTA #2005-A-1386

In a prior Supreme Court decision, the court ordered that the personal property tax assessment of HealthSouth Corporation be adjusted because there had been fraudulent over-reporting of assets. This Board of Tax Appeals (BTA) decision held that certain assets should be removed from the assessment because they had never existed. They had been entered on the books for fraudulent purposes. The Tax Commissioner has appealed the BTA decision to the Ohio Supreme Court.

Public Utility Excise Tax

Levin v. Commerce Energy, Inc., certiorari granted by U.S. Supreme Court 130 S. Ct. 496

Non-Ohio natural gas suppliers compete with Ohio natural gas distribution companies in marketing and selling gas to Ohio consumers. While the suppliers paid fees to use the distribution pipelines owned by the local gas distribution companies, the four local natural gas distributors were exempt from state and county sales and use taxes on their natural gas sales and instead paid a gross receipts excise tax that was lower than the taxes that the suppliers paid. The non-Ohio natural gas suppliers sought injunctive relief and alleged that Ohio’s tax scheme was discriminatory. The district court reasoned that, while the Tax Injunction Act, 28 U.S.C. § 1341, did not bar plaintiffs’ claims, general principles of comity and federalism did. The U.S. Sixth District Court of Appeals agreed that the Tax Injunction Act does not bar the natural gas suppliers’

claims. The Court of Appeals overturned the District Court by holding that principles of comity and federalism do not bar the natural gas suppliers from bringing these actions. The U.S. Supreme Court granted a motion filed by the Tax Commissioner for review. The oral argument was held in March. On June 1, 2010 the Court unanimously reversed the Sixth Circuit holding that the principles of comity do not allow complaints regarding contentions of state taxation discrimination to be heard in federal courts.

Put-In Bay Boat Line Company v. Levin (June 22, 2010) BTA #2007-V-1162,3

The operator of a boat transportation company objected to the apportionment of its property between the two taxing districts in which it operated. On its public utility tax returns, the boat company situated its property to its primary business location. On audit, the Tax Commissioner situated the company's property under Ohio Revised Code 5727.15(D) according to where it was located on the tax lien days of the respective tax years. The Board of Tax Appeals held that the Commissioner's method was the one proper under the statute, and affirmed the assessment.

Real Property Exemption

Anderson/Maltbie Partnership et al v. Levin (2010), Slip Opinion No. 2010-Ohio-4904

Anderson/Maltbie Partnership, a for-profit entity that leases property to LKH Victory Corporation, a nonprofit entity that runs Cincinnati College Preparatory Academy sought to exempt the parcel under Ohio Revised Code 5709.07(A)(1), the "public-schoolhouse exemption." The Supreme Court held that property cannot be exempted from taxation as a public schoolhouse when the owner leases the property to the school for profit.

Dialysis Clinic, Inc. (2010), Slip Opinion No. 2010-Ohio-5071

Dialysis Clinic, Inc. provides dialysis services for patients who suffer from end-stage renal disease, and it sought to obtain a charitable-use exemption for its West Chester real estate by contending that it was a charitable entity under Revised Code 5709.121 and that the use of the real property was exclusively charitable under Revised Code 5709.12(B). The nonprofit company applied half of its excess revenue to support kidney research and half to subsidize its own services – which included covering unpaid costs of providing care, opening new clinics, and operating a children's summer camp free of charge to children who suffer from end-stage renal disease or who have received kidney transplants. The company's indigence policy, however, expressly states that the "...indigence policy is not a charity or gift to patients. DCI retains

all rights to refuse to admit and treat a patient who has no ability to pay." The Supreme Court found that the company was not a charitable entity and that its use of the real property was not exclusively charitable.

NBC-USA Housing, Inc. v. Levin (Apr. 12, 2010), Slip Opinion No. 2010-Ohio-1553

A 501(c)(3) organization owned and operated a federally-subsidized apartment complex for low-income tenants in northeast Columbus. It sought exemption for the property. The Supreme Court held that real property owned by a nonprofit corporation, the stated purpose of which is to secure and operate resident apartments for aged and needy persons, is not exempt from taxation under Ohio Revised Code 5709.12 even though it was shown that the rent intended to be charged was at or below cost, and in no event resulted in a profit, and that it was expected that some persons unable to pay the full rental would be assisted by subsidies from the corporation.

Mt. Sinai Housing Development Corp. v. Wilkins (Feb. 2, 2010), BTA 2006-M-2129

A corporation in the business of providing low-cost housing for lower-income senior citizens sought exemption under Ohio Revised Code 5709.12. Because the facts were similar to those in *NBC-USA Housing Inc. v. Levin*, the Board of Tax Appeals denied exemption.

Couple-to-Couple International Inc. v. Levin (Apr. 13, 2010), BTA 2007-M-101

A charitable organization sought exemption of its real property under Ohio Revised Code 5709.12 which provides that "real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." Approximately 22% of the real estate was used by the organization to sell books and other products at a profit. It used the Internet to advertise and to promote the sale of these items. The Board of Tax Appeals (BTA) found that the profits from the sales were not inconsistent with the organization using the property exclusively for charitable purposes, and granted exemption. A dissenting member of the BTA noted that the organization had earned net profits of hundreds of thousands of dollars per year from the sales of items such as books, mugs and totes. A listing of the organization's offerings for sale filled a 57-page catalog. The Tax Commissioner has appealed the case to the Ohio Supreme Court.

Grace Chapel v. Levin (May 4, 2010), BTA #2007-K-835

A church acquired five acres of land which had formerly been an industrial site, and sought exemption from real estate taxes under Ohio Revised Code 5709.07, which exempts houses of worship and the real property attached

thereto which is necessary to their use. The evidence showed that most of the property was intended to be used as recreational areas and the Board of Tax Appeals held that this was not an exempt purpose. However, one storage building in which maintenance supplies and equipment were stored was held exempt.

Ohio Department of Natural Resources v. Levin (June 1, 2010), BTA #2009-K-1876,7,8

The State of Ohio acquired certain real property pursuant to the Ohio Canal Act of 1825 and held the property for the use of the canals until 1929, when the canal project was abandoned. At about that time the property was leased to private parties, but remained titled in the State. The leases expired in the 1980's. Upon application by the State for a determination of exemption, the Tax Commissioner dismissed under Revised Code 5708.13(D) because the application was not accompanied by a certificate showing that all tax, penalties and interest had been paid up until the date of the application. The Board of Tax Appeals affirmed this action.

Columbus Board of Education v. Levin & Ohio State University (Sept. 14, 2010) BTA #2008-408

The reversionary interest of a parcel of realty located on North High Street in Columbus, across from Ohio State University, was bequeathed by the reversionary interest holder to "The Ohio State University, David Stuart White Fellowship Fund". The property had been leased for 99 years in 1925 and is presently occupied by a McDonalds store and apartments. In 2000 Campus Partners purchased the lease rights, which it sold to OSU in 2002, thereby giving OSU a fee simple interest in the property, subject to the lease. OSU sought exemption for the property under Ohio Revised Code 3345.17, which exempts property owned by state universities and used for their support. The Board of Tax Appeals allowed the exemption, because the income from the property rentals goes to the specified scholarship fund and thus is in support of the university. The Columbus Board of Education has appealed this case to the Ohio Supreme Court.

Dennis P. Orr and others v. Wilkins (Nov. 9, 2010), BTA #2007-K-212

Representatives of a church operated on a five-acre property, with buildings, for which they sought exemption under Ohio Revised Code 5709.07, which exempts property used for public worship. The Tax Commissioner denied exemption because the property was rented to others for \$2,600 per month. The Board of Tax Appeals reversed this determination upon a finding that the property was rented to other churches and there was no evidence that the owners rented the property with a view to profit.

Sales & Use Tax

Convenient Food Mart, Inc. v. Wilkins (Feb. 16, 2010), BTA #2006-V-2233

A sales tax audit of a convenience store based on an analysis of the store's purchases was affirmed over the objection of the owner. The store had failed to maintain primary sales records as required by Ohio Revised Code 5739.11. The case was appealed and subsequently dismissed by the Eighth District Court of Appeals in Cuyahoga County.

Equilon Enterprises LLC v. Levin (Feb. 9, 2010), BTA #2007-V-441

A company which hired temporary employees was assessed for not paying sales tax pursuant to Ohio Revised Code 5739.01(B)(3)(k). The company contended that although the sales tax was not stated on the invoices it received, sales tax was embedded in the price. However, the breakout figures on the invoices did not appear to reflect sales tax, and the company was unable to provide documentation of tax paid. Accordingly, the assessment was affirmed by the Board of Tax Appeals.

Fruedenberg v. Wilkins (Apr. 13, 2010), BTA 2006-K-1556 and 2006-K-1558

A manufacturer of automobile accessories for the aftermarket sought exemption for equipment used in its warehouse/distribution center in which it processed orders and shipped them to customers. The customers included automobile manufacturers, auto repair shops, and engine rebuilders. The manufacturer sought exemption for the equipment under Ohio Revised Code 5739.02(B)(42)(j) which provides that sales tax does not apply when the purpose of the consumer (the manufacturer in this case) is:

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing ... [which] has the same meaning as in division (B)(35) of this section.

(B)(35) provides: "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

The Board of Tax Appeals held that the manufacturer met the criteria for exemption for warehouse and distribution equipment even though it did not make retail sales. The Tax Commissioner has appealed this case to the Ohio Supreme Court.

***IBM v. Levin*, 125 Ohio St. 3d 347**

A corporate taxpayer which obtained sales/use tax refunds under Ohio Revised Code 5739.071(A) contended that it should also receive interest on those refunds. That statute allows a refund of 25% of the sales tax paid on the cost of computer systems used in specific ways for business purposes. The Supreme Court agreed with the Tax Commissioner that the particular statute does not contain an interest provision, and the general sales tax interest provision of Revised Code 5739.132(B) does not apply.

***Mark H. Beckstedt v. Levin* (April 20, 2010), BTA 2007-V-936**

A husband and wife who purchased a 40-foot boat in Ohio in 2004 claimed it was exempt from sales tax because it was purchased for resale. During the next two years the couple sailed the boat along the Atlantic seacoast and around the Gulf of Mexico and back to Ohio. They then sold the boat in Indiana for less than they had paid for it. The Board of Tax Appeals affirmed the Tax Commissioner's sales tax assessment on the 2004 purchase since, based on the use of the boat, the primary purpose of the couple in acquiring the boat was personal use.

***Cincinnati Golf Management v. Levin* (April 20, 2010), BTA 2007-M-1411**

A golf management company which contracted with the city of Cincinnati to operate, as an independent contractor, the city's seven golf courses, contended that its purchases of materials and equipment were exempt from sales tax because it was purchasing on behalf of the city. The Board of Tax Appeals held that the company did not have vicarious exemption for its purchases because it was operating as an independent contractor. Cincinnati Golf Management has appealed this case to the Ohio Supreme Court.

***TNS Inc. v. Levin* (June 22, 2010), BTA #2006-M-2210**

The Board of Tax Appeals reversed a portion of a use tax assessment which related to delivery charges for gravel and other material prior to Sept. 6, 2002. Prior to that date, there was no requirement in the sales tax chapter of the Ohio Revised Code for separating labor/delivery charges from material charges on such invoices. Effective on that date, Ohio Revised Code 5739.01 was amended to require the separate listing of delivery and labor charges from material charges on invoices for purposes of Ohio sales/use tax.

***Pallet World, Inc. v. Levin* (June 22, 2010), BTA #2007-M-116**

A pallet manufacturer and mulch retailer purchased several vehicles for use in its business without paying sales tax. The manufacturer contended that the vehicles were exempt because they were used in transporting property belonging to others under Revised Code 5739.01(Z). But the evidence presented at the Board of Tax Appeals hearing did not support this. Instead, the evidence showed that the primary use of the vehicles was the transporting of the manufacturer's goods.

***Ingrassia v. Ganley Mgt. Co.* (Aug. 19, 2010), 2010-Ohio-3883, Ohio Court of Appeals, 8th Circuit**

An automobile dealer charged a customer \$1,883 for a repair and based sales tax on that amount. The dealer gave the customer a 15% discount of \$278. The customer contended that the sales tax base should have been reduced by \$278 as well. The customer brought a class action suit in common pleas court against the automobile dealer. On review, the Ohio court of appeals ruled that this action should be dismissed. The customer should bring his case in the Ohio Court of Claims for any overpaid tax.

***Global Knowledge Training, L.L.C. v. Levin* (2010), 127 Ohio St.3d 34**

A computer training company was assessed use tax on its sale of computer training. It objected that several courses effectuated training on routers and switches and not "computer equipment" as that term is used in Revised Code 5739.01(Y)(1)(b), and are therefore not taxable. The company argued that training may be subject to the use tax only if the equipment involved in the training is a computer. The Tax Commissioner responded that training on routers and switches involves training on "computer equipment" or "computer systems" and is therefore taxable. The Supreme Court agreed, holding that Revised Code 5739.01(Y)(1)(b) does not limit taxation to courses involving training on computers. Rather, the statute levies the tax on instruction "provided in conjunction with and to support the * * * operation of taxable computer equipment or systems."

***Feras Abdeljaber v. Levin* (Oct. 26, 2010), BTA #2008-V-483**

The taxpayer was assessed under Ohio Revised Code 5739.33 as a responsible party for unpaid sales tax of a carry-out store. An administrative hearing was held by the Ohio Department of Taxation at which the taxpayer's attorney indicated that the taxpayer was a responsible party. A final determination was issued by the Tax Commissioner explaining this. The taxpayer appealed to the Board of Tax Appeals (BTA), contending that he was not a responsible party. The BTA rejected the appeal because the taxpayer's attorney had waived this contention previously and so it could not be raised as an error at the BTA. 

Tax Enforcement News

The following convictions were received by the Enforcement Division of the Ohio Department of Taxation from February through July 2010. Tax Enforcement News is compiled by Robert M. Bray, administrator of the Enforcement Division. Fraud complaints can be e-mailed to taxenforcement@tax.state.oh.us



During the reporting period, the Enforcement Division executed eight search warrants, conducted 716 retail tobacco inspections and collected \$ 2,730,990 in taxes owed. Confiscations included: 5,872 packs of untaxed cigarettes, 139,722 cigars, 2,048 single-stick cigarettes, 169 packs of chewing tobacco, 279 cans of snuff, 14,002 blunt wraps, 428 packs of loose tobacco and 193 bags of hookah.

Ohio Department of Taxation enforcement agents in conjunction with agents from the department's Excise Tax Division conducted concentrated tobacco inspections throughout various locations in Franklin County and Montgomery County. A total of 170 retail inspections were conducted in both counties.

Company Fails to Remit Sales Tax Again

Kizco LLC, of Findlay, was convicted in 2005 for failure to file sales tax returns. Part of the agreement was for the company to come into compliance with its sales tax liability, but the problem continued. On Feb. 9, a Hancock County grand jury indicted owner Jasam Kizy on four counts of collecting and failing to remit sales tax. The indictment indicated that Kizy owed \$75,000 in back taxes. On March 10, Kizy pleaded guilty to all four counts. He paid all outstanding taxes owed and was placed in a diversion program.

Business Guilty of Tax, Grand Theft Charges

Taxation enforcement agents found that Freedom Wholesale, located in Stark County, had failed to report over \$70,000 in other tobacco taxes. As a result, Freedom Wholesale was indicted on two counts of trafficking in tobacco products with intent to avoid the tax and one count of grand theft, both fourth-degree felonies. The corporation pleaded guilty to all counts. The court ordered Freedom Wholesale to pay \$89,143 to the state.

Transportation Company Pleads Guilty

Ohio Department of Taxation enforcement agents acted on a complaint received from department auditors that a Cuyahoga County company was not remitting sales tax. Enforcement agents investigated and found that Ridgway Transportation Company, which ran a limousine service, had collected sales tax from its customers, but failed to remit it to the state. Owner David Klein pleaded guilty on behalf of the company to one count of collecting and failing to remit sales tax and one count of grand theft. The company paid all sales tax owed prior to the convictions.

Lima Business Owner Convicted

Joseph Jones, owner and operator of Rainbow International of Lima, pleaded guilty to two counts of failure to remit withholding taxes, two counts of failure to file withholding returns and two counts of theft. He was ordered to pay over \$61,000 in taxes that were collected, but not remitted to the state. These violations were uncovered by a delinquency program administered by the Ohio Department of Taxation's Enforcement Division.

Owner Leaves Town after Conviction

Kamal Abboushi, of Cleveland, left town after being convicted of attempted possession of tobacco products with intent to avoid the tax. Tax enforcement agents received information that Abboushi, owner of Platinum Wireless in Cleveland, had obtained tobacco without taxes being paid. He was scheduled for a pre-sentence investigation prior to sentencing when he fled. A warrant has been issued.

Akron Store Owner Convicted

Arnbold Depinet, owner and operator of Depinet in Akron, received a suspended six-month prison sentence and was ordered to pay restitution after being convicted in Summit County Common Pleas Court of one count of possession of untaxed other tobacco products. An investigation by a newly formed tobacco unit within Taxation's Enforcement Division received a complaint and conducted an investigation leading to the conviction.

Violations Send Store Owner to Jail

Enforcement agents conducting investigations involving delinquent accounts found Arps Hardware in Defiance behind in remitting withholding and sales taxes. Owner Rebecca Clemens was sentenced in the Defiance County Common Pleas Court on one count of filing a false return, six counts of failure to remit withholding, six counts of failure to remit sales taxes and one count of grand theft. She was ordered to serve a 60-day jail sentence, placed on three years of probation and ordered to pay restitution. 

Assorted Sales Tax Violations

Business	County	City	Violation
Abokor-Cellular Super Store	Franklin	Columbus	One count failure to collect sales tax
Shiraz Ltd.	Lorain	Vermillion	One count failure to file sales tax returns
Lang's Body Shop	Erie	Sandusky	One count failure to file sales tax returns
Knapke Cabinets	Miami	Troy	One count failure to file sales tax returns
Rombes	Hamilton	Cincinnati	One count failure to file sales tax returns
Cum Deo Inc.	Hamilton	Cincinnati	One count failure to file sales tax returns
Stacy Machor	Lorain	Elyria	One count failure to file sales tax returns
Buckeye Lake Super 8	Licking	Buckeye Lake	One count failure to file sales tax returns
The Toy Store	Allen	Lima	One count failure to file sales tax returns
Doug Kane Motorsports	Muskingum	Zanesville	Two counts failure to file sales tax returns
Aqua Specialists	Cuyahoga	Cleveland	One count failure to file sales tax returns
Boyer Van Wormer Scott	Lucas	Toledo	One count failure to file sales tax return
Shawn Titus	Greene	Fairborn	One count no vendor's license
Anytime Women's Fitness	Licking	Heath	One count failure to file sales tax return
J & L Power Equipment	Auglaize	Wapakoneta	Two counts failure to file sales tax returns
Meal Ticket	Summit	Akron	Three counts failure to file sales tax returns
Yaser Ali	Cuyahoga	Berea	One count failure to file sales tax returns
Perry Auto Inc.	Allen	Lima	One count failure to file sales tax returns

Assorted Sales Tax Violations

Business	County	City	Violation
Bottle 'N Keg	Mercer	Celina	One count failure to file sales tax returns
Gregory Fluker	Lorain	Elyria	One count failure to file sales tax returns
Interstate Gaming Supplies LLC	Butler	Hamilton	One count failure to file sales tax returns
Home Carpet Inc.	Franklin	Columbus	One count failure to file sales tax returns
Duncan Dental Lab	Franklin	Columbus	One count failure to file sales tax returns
Natoma	Licking	Newark	One count failure to file sales tax returns
Ellis Kitchen & Bath Studio	Franklin	Columbus	One count failure to file sales tax returns
Cardinal Transportation Inc.	Franklin	Columbus	One count failure to file sales tax returns
L & J Cleaning	Cuyahoga	Westlake	One count no vendor's license
The Frame Specialist	Allen	Lima	One count failure to file sales tax returns
Thomas Chiochetti	Trumbull	Warren	One count failure to file sales tax returns
Dragon Towing	Portage	Rootstown	Two counts failure to file sales tax returns One count no vendor's license
Elite Fitness 2	Geauga	Chesterland	Three counts failure to file sales tax returns
The Game Store	Delaware	Delaware	One count failure to file sales tax returns
Sapja Inc.	Warren	Lebanon	One count failure to file sales tax returns
Springdale Cleaners	Butler	Springdale	One count failure to file sales tax returns
Mark Muleski	Allen	Lima	One count failure to file sales tax returns
Michael McClain	Ashland	Loudonville	One count failure to file sales tax returns

Assorted Sales Tax Violations

Business	County	City	Violation
Sylvania Tree Service	Lucas	Sylvania	One count no vendor's license
Luis Rios	Lorain	Avon Lake	Two counts failure to file sales tax returns
Smitty Care	Lorain	Avon Lake	Two counts failure to file sales tax returns
Murray Tires	Coshocton	Coshocton	One count failure to file sales tax returns
The Speed Factory	Franklin	Columbus	One count failure to file sales tax returns
Richard Turner	Butler	Liberty Township	One count no vendor's license
Smitley Chops	Licking	Newark	One count failure to file sales tax returns One count failure to collect sales tax
Gary L. Durst	Franklin	Columbus	One count failure to file sales tax returns (bond forfeiture)
Robert Novak	Franklin	Columbus	One count failure to file sales tax returns
Aqua Immersion	Franklin	Columbus	One count failure to file sales tax returns
Stillwater Wave LLC	Ottawa	Put-in-Bay	One count failure to file sales tax returns
Tres Hombres Holdings	Franklin	Columbus	One count failure to file sales tax returns
Dean's Place	Ottawa	Marblehead	One count failure to file sales tax returns
Fostoria Country Club	Hancock	Fostoria	Two counts failure to file sales tax returns
Abbott Pressure Washing Inc.	Stark	Canton	One count no vendor's license
Amber Kuehn	Franklin	Columbus	One count failure to file sales tax returns
Yankee Trader	Franklin	Columbus	One count failure to file sales tax returns
White Dog Wine LLC	Hamilton	Cincinnati	One count failure to file sales tax returns

Assorted Sales Tax Violations

Business	County	City	Violation
OK Cafe	Marion	Marion	One count failure to file sales tax returns
The Tiger Shop	Coshocton	Coshocton	One count no vendor's license
Oiler Retreading	Hancock	Bluffton	Two counts failure to file sales tax returns
Edward Emerine	Pickaway	Circleville	One count no vendor's license
Robert Walker	Franklin	Columbus	One count no vendor's license
Sandusky Bay Cigars	Erie	Sandusky	Two counts failure to file sales tax returns
Top O' the Caves Campground	Hocking	South Bloomingville	One count failure to file sales tax returns

Cigarette Violations

Business	County	City	Violation
Riverside	Jefferson	Steubenville	One count no cigarette license
The Cove	Columbiana	East Liverpool	One count no cigarette license
Safeway	Portage	Kent	One count selling single cigarettes One count no cigarette license
Dipietro	Jefferson	Steubenville	One count selling single cigarettes
Jawdat, Inc.	Hamilton	Cincinnati	One count failure to maintain tobacco records
Tasneem, Inc.	Franklin	Columbus	One count no tobacco distributor's license
Yaser Ali	Cuyahoga	Berea	One count no cigarette license

Cigarette Violations

Business	County	City	Violation
Brewhous Carry-Out	Miami	Covington	One count not purchasing tobacco from a licensed distributor
MAA Petroleum LCC	Jefferson	Wintersville	One count failure to maintain tobacco records
One Stop	Mahoning	Youngstown	One count no cigarette license
Dollar Store Plus	Lucas	Toledo	One count no cigarette license
TLC Smoke Shop	Greene	Xenia	One count no tobacco distributor's license
Oak Street	Mahoning	Youngstown	One count selling single cigarettes One count no cigarette license
Ollah Market	Mahoning	Youngstown	One count selling single cigarettes One count failure to post cigarette license One count not buying tobacco from licensed distributor One count failure to maintain other tobacco records One count failure to maintain cigarette records
Shop 'N Save	Franklin	Columbus	One count no cigarette license (bond forfeiture)
Morinda Petroleum	Allen	Lima	One count failure to properly mark tobacco invoices
Noor Market	Summit	Akron	One count selling single cigarettes One count not purchasing from a licensed distributor
Lawnsdale	Washington	Belpre	One count no cigarette license One count not buying tobacco from a license distributor
Sierra African Market	Franklin	Columbus	One count no cigarette license
Khettab Abdelaziz	Franklin	Columbus	One count failure to maintain tobacco invoices
Mike's	Summit	Akron	One count failure to maintain tobacco invoices One count not purchasing tobacco from a licensed distributor
Glenmoor Superette	Columbiana	East Liverpool	One count no cigarette license One count failure to post cigarette license
Weber Market	Franklin	Columbus	One count no cigarette license
Broadway Carryout LLC	Miami	Covington	One count no purchasing tobacco from a licensed distributor

Cigarette Violations

Business	County	City	Violation
Five Points Drive Thru	Marion	Marion	One count no cigarette license
Caledonia Quick Stop	Marion	Caledonia	One count no cigarette license
Kharian Inc.	Pickaway	Circleville	One count no cigarette license
L & P One Stop	Adams	West Union	One count no cigarette license
Riyaguroom Inc.	Butler	Fairfield Township	One count no other tobacco distributor license
The Broad Princeton Market	Franklin	Columbus	One count no cigarette license
Champion Market	Franklin	Columbus	One count attempt to sell individual cigarettes
JQ's Quick Stop	Mahoning	Youngstown	One count selling single cigarettes

Assorted Dyed Fuel Violations

Business	County	City	Violation
Calvin Partidge	Wood	Harrison	One count no IFTA decal
Darrel Dexter	Harrison	Cadiz	One count using untaxed fuel on the highway
Wellco Industries	Harrison	Cadiz	One count untaxed fuel on the highway
Tomas Harnish	Michigan	Michigan	One count no IFTA decal

Calendar at-a-glance

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Jan.

- 18 Monthly Income Tax Withholding Return
- 18 Quarterly Estimated Income Tax Payment
- 20 Monthly Kilowatt Hour Tax Return
- 24 Monthly Sales Tax Return
- 24 Monthly Consumer Use and Direct Pay Return
- 24 Quarterly Consumer and Direct Pay Return
- 31 Quarterly Income Tax Withholding Return

Feb.

- 10 Quarterly Commercial Activity Tax Return
- 15 Monthly Income Tax Withholding Return
- 15 Quarterly Estimated Income Tax Return
- 22 Monthly Kilowatt Hour Tax Return
- 22 Quarterly Natural Gas Distribution Tax Return
- 23 Monthly Sales Tax Return
- 23 Monthly Consumer Use and Direct Pay Return

March

- 15 Monthly Income Tax Withholding Return
- 21 Monthly Kilowatt Hour Tax Return
- 23 Monthly Sales Tax Return
- 23 Monthly Consumer Use and Direct Pay Return

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

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

The editor of the Ohio State Tax Report is Howard Wheat. Questions or comments may be directed to him at Howard_Wheat@tax.state.oh.us.

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