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Taft Names Wilkins Tax Commissioner

On December 16, 2003, Governor Bob Taft announced the appointment of William W. Wilkins as Ohio Tax Commissioner. Mr. Wilkins, 59, will start his job on January 19.

“Bill brings extraordinary ability and integrity to this position,” said Governor Taft. “He is committed to further streamlining the management of the tax department, and he’ll be a key player in our work to advocate the type of tax reform needed to grow our economy.”

Mr. Wilkins currently is president and CEO of Global Health Solutions, a consulting and government relations firm that specializes in services to the health care industry. From 1995 to 2002, he served as president and CEO of OhioHealth. As a member of former Governor Rhodes’ cabinet, Wilkins has a long history of public service. He served as director of the Office of Budget and Management and director of the Department of Administrative Services.

As Tax Commissioner, Mr. Wilkins will be responsible for overseeing the Ohio Department of Taxation (ODT). The Tax Commissioner is responsible for the administration of most state-collected taxes and several locally-collected taxes, and exercises supervision over the real properties tax. ODT has a staff of approximately 1,300 working in Columbus, seven regional offices in Ohio and three branch offices out of state.

Originally from Lancaster, Mr. Wilkins received a Bachelor of Science degree from The Ohio State University and pursued Graduate Studies in Business Administration at the University of Toledo. Additionally, Mr. Wilkins serves as Chair of the Governor’s Blue Ribbon Task Force on Financing Student Success and Chairman of the Ohio Turnpike Commission. Mr. Wilkins will remain on the Blue Ribbon Task Force, but will resign from the Ohio Turnpike Commission.

Source: Office of Governor Bob Taft

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Changes at the Top

J. Patrick McAndrew is currently serving as Interim Tax Commissioner as former Tax Commissioner Thomas M. Zaino resigned as of October 31, 2003. William Wilkins will begin serving as Tax Commissioner on January 19, 2004 (see article on page 1).

Governor Taft appointed Mr. McAndrew Interim Tax Commissioner effective November 1, 2003. In addition to serving as Interim Tax Commissioner, Mr. McAndrew continues fulfilling his prior responsibilities as Deputy Tax Commissioner of Tax Services. Commissioner McAndrew started working at ODT in 1974, working his way up through the ranks over the years. Commissioner McAndrew was appointed Deputy Tax Commissioner in 1999 under then-Tax Commissioner Zaino.

Commissioner McAndrew said, "I am honored that Governor Taft appointed me Interim Tax Commissioner. It is a privilege to serve in this capacity."

Former Tax Commissioner Thomas M. Zaino became Ohio's thirteenth Tax Commissioner on July 1, 1999. After serving as Ohio Tax Commissioner for more than four years, Mr. Zaino resigned, effective October 31, 2003. He decided to re-enter private practice as a tax practitioner.

In a press release announcing Commissioner Zaino's resignation, Governor Taft said, "I am very grateful for Tom's service to my administration and the citizens of Ohio. His leadership and guidance have been critical in helping steer Ohio through the most difficult financial times we've faced in more than a decade. He is a 'go-to' guy who has accomplished all that I've asked him to do and much more. I feel that, with Tom, Ohio has had one of the best Tax Commissioners in the country."

A few of the accomplishments during Commissioner Zaino's term include:

- Creation of the *Ohio Business Gateway* and *Ohio I-File*
- Development and passage of two Taxpayer Services Bills, the Offer in Compromise Program, and major Municipal Income Tax Reform
- Successful completion of the Committee to Study State and Local Taxes.

In an e-mail to employees Commissioner Zaino said, "It is with very mixed emotions that I leave the position of Tax Commissioner. As I told Governor Taft, it has been my highest honor and privilege to serve the state of Ohio... ."

Double-Check Those School District Numbers! (please)

The Ohio public school district identification numbers are listed in the income tax booklets for purposes of reporting school district numbers on personal income tax returns. Please make sure that you use the correct school district codes as you complete tax returns for your clients. Not only does ODT use these figures, but so does the Ohio Department of Education in determining state aid for school districts. In order to make sure that the school districts receive their fair share of school aid from the state, ODT must receive accurate data from taxpayers.

In addition to determining school funding, the school district numbers on the state income tax returns are used to enforce compliance with school district income taxes. It helps the department to ensure that all school district residents are paying their share of income taxes. Failure to do so can lead to shortfalls in revenues in districts, causing them to prematurely return to the ballot for increased taxes, to the detriment of all taxpayers in the district.

Ohio Tax Conference

The Ohio Tax Conference—otherwise modestly known as “The One Conference You Cannot Afford to Miss”—is only a short time away. The 13th annual conference, sponsored by the Ohio Department of Taxation and the Ohio Chamber of Commerce, is scheduled for January 20-21, 2004 at the Hyatt Regency in Columbus.

Effective state and local tax management within business and industry is a top business priority in 2004. By attending the Ohio Tax Conference, you will learn best how to manage business taxes. You will not only learn valuable tax savings tips to help you cut costs, you'll also receive invaluable information on how state and local governments are raising revenue.

Attendees will obtain tax information from Ohio's premier tax experts and many of the leading experts in the nation. The conference will cover issues such as effective business tax planning and management; major changes in Ohio's business taxes contained in Ohio's FY 2004-5 budget; business income tax issues; recent tax reforms; NEXUS policies; and multi-state sales tax issues and federalism. Attendees also select four workshops to attend during the two-day conference.

Some of the speakers for the conference include Maureen Pechacek, Partner, PricewaterhouseCoopers LLP; William Lundeen, Partner & Director, SALT Services, Clifton Gunderson LLP; Frank Julian, Operating Vice President & Tax Counsel, Federated Department Stores; Doug Lindholm, President and Executive Director, Council On State Taxation (COST); Dan Bucks, Executive Director, Multistate Tax Commission (MTC); and Harley Duncan, Executive Director, Federation of Tax Administrators (FTA). Some of the other speakers include representatives from neighboring states' taxation departments, local law firm employees, along with numerous speakers from the Ohio Department of Taxation.

James Bearden, Vice President and Certified Speaking Professional (CSP), DuCharme, McMillen & Associates, is the luncheon keynote speaker on January 21. Mr. Bearden's luncheon address is entitled, “Change, Choice & Champions ...the Relentless Search for Better Ways, Personal & Professional Accountability, Tax Department Culture, Effective Leadership & Effecting Meaningful Change.”

The cost of the conference is \$595 per person. This fee includes tuition, a comprehensive set of manuals, two luncheons, and a reception. If an organization sends three to seven persons, the rate is \$495 per person. For eight or more attendees, the fee is \$395 per person. For more information, call the Ohio Chamber of Commerce at 1-800-OCC-1893. To register for the conference, call the Manufacturers' Education Council at (614) 229-7990 or register on-line at www.MECseminars.com. Registration is requested by January 14, 2004.

Annual Report

Copies of the 2003 Annual Report will soon be available. Watch for the full version to be available on our web site at tax.ohio.gov. Click on “Research,” “Publications,” and “2003 Annual Report.” You may also request a hard copy by e-mailing us from our web site. Look for the “E-Mail Us” link found at the top, right-hand corner of the home page.

Filing Season

The season is almost upon us. Not only the holiday season, but also the filing season. ODT employees are completing the final tasks to gear up for the 2004 filing season.

As in years past, one of the major goals this filing season is to have fewer taxpayers file paper returns and, instead, file their returns electronically. Last year, 41 percent of all returns were filed electronically, which was an increase from the previous year. Returns filed electronically are less expensive to process, while they ease the filing process for taxpayers. Paper returns cost approximately \$3.00 to process, whereas electronic returns have a blended cost of \$1.15 to process.

To file electronically, taxpayers can use Ohio I-File, TeleFile or IRS e-file. Ohio I-File was offered for the first time last year and received rave reviews from its users. Taxpayers felt it was user-friendly and convenient to use. Ohio I-File is free and easily accessible through our website (tax.ohio.gov). The only requirement for taxpayers wanting to use this system is that they filed an Ohio income tax return last year.

Choosing to file a paperless return will result in quick refunds. Taxpayers using Ohio I-File, TeleFile or IRS e-file will receive their refund within 14-21 days. Taxpayers filing electronically and selecting the direct deposit option will receive their refund in their bank account within 5-7 days, or sooner. Those taxpayers who file early using Ohio I-File or TeleFile and owe tax have the option of postdating an electronic check until April 15, 2004.

Taxpayers will again this year have the option of paying their tax due with a credit card. The private vendor, which has been approved by the state and IRS, will charge a convenience fee.

One change this year is the increase in the personal income tax exemption amount to \$1,250 for the taxpayer, spouse and each dependent. Also, the maximum deduction for contributions to Medical Savings Accounts has been increased to \$3,575.

Another change this year is in the mailing of income tax booklets. In a continuing effort to serve Ohio taxpayers in a more cost-effective manner, ODT is not mailing out 2003 Ohio Income Tax booklets either to anyone who had a practitioner prepare his/her taxes or to anyone who filed electronically the previous year. Instead, those taxpayers will receive a special mailer that will provide them with some general instructions and a message from the Tax Commissioner explaining why they did not receive a booklet.

Taxpayers who have questions or need help can call ODT at 1-800-282-1780, visit a Taxpayer Service Center, or e-mail ODT through the Department's web site.

Tax Forms

Final versions of Ohio's tax forms are now available on our web site @ tax.ohio.gov. Draft forms of many of our forms have been out on the web site since late October. A compact disc (CD) with our most commonly used forms will be mailed out by early January, free of charge.

OHIO legislative update

General Assembly Enacts House Bill 127

On November 14, the General Assembly enacted Substitute House Bill 127 making a number of changes to tax law. Governor Bob Taft signed the bill on December 11, 2003.

Of primary significance, the bill delays the effective date of the sales tax sourcing changes on delivered goods from January 1, 2004 to January 1, 2005. The General Assembly included the one-year delay in response to vendors' concerns that the changes would be expensive and difficult to put into practice. With this delay, ODT will collaborate with vendors to implement the changes more smoothly. The sourcing changes are required for Ohio to comply with the Streamlined Sales Tax Agreement, a multi-state effort to make the sales tax systems of the member states simpler and more uniform.

Other provisions include the following:

- Permits political subdivisions to acquire tax delinquent real property before foreclosure, if all other taxing districts waive their claim to delinquent taxes.
- In the corporation franchise tax, in determining what portion of a corporation's sales are Ohio sales, adopts the "market-state" approach for the apportionment of sales of certain intangibles and services.
- Makes changes to the law regarding local Tax Incentive Review Councils (TIRCs).
- Restricts the ability of municipalities to tax their residents' income from distributive shares of S corporations, subject to voter approval.
- Changes the method for rounding the inflation adjustment for the reduction in taxable value for the homestead exemption program.
- Extends until 2015 the manufacturing machinery and equipment tax credit against the corporation franchise tax and the personal income tax.
- Clarifies that the sales tax on intra-state transportation does not apply to public transit buses that seat ten or fewer persons, and allows the operators of such public transit buses to apply for the motor fuel tax refund.
- Generally returns the computation of the factors for apportioning the income of trusts to the pre-House Bill 95 method.

Any questions regarding H.B. 127 can be directed to the Legislation Division at (614) 644-6896.

Ohio Business Gateway

The *Ohio Business Gateway (OBG)* continues to grow. House Bill 95 of the 125th General Assembly expanded the *OBG* steering committee. This committee will direct the continuing development of the online filing system, oversee its operations, and recommend to the Department of Administrative Services enhancements to improve the *OBG*.



The committee shall consider all banking, technological, administrative, and other issues associated with the *OBG* and shall make recommendations regarding the type of reporting forms or other tax documents to be filed through the *OBG*.

By law, the committee is made up of the following members appointed by the Governor with the advice and consent of the Ohio Senate. Current members are as follows:

* Not more than two representatives of the business community:

Daniel Navin, Managing Director of Legislative Affairs, Ohio Chamber of Commerce
Dwight Smith, President and CEO, Sophisticated Systems, Inc.

* Not more than three representatives of municipal tax administrators:

Thomas Zammikiel, Executive Director, Regional Income Tax Agency
V. Faye Gibson, Director of Taxation, City of Dublin
Teresa Richter, Finance Manager/Tax Commissioner, City of Cincinnati Finance Department – Income Tax Division

* Not more than two tax practitioners:

J. Matthew Yuskewich, Accountant, Winterset CPA Group, Inc.
Edward Bernert, Partner, Baker & Hostetler, LLP

The committee is also made up of the following ex officio members:

The Secretary of State (or designee)

Secretary of State Kenneth Blackwell

The Treasurer of State (or designee)

Treasurer of State Joseph Deters

The Director of Budget and Management (or designee)

Director Thomas Johnson

The Director of Administrative Services (or designee)

Director Scott Johnson

The Tax Commissioner (or designee)

Interim Tax Commissioner Pat McAndrew

The Director or other highest officer of each state agency that has tax reporting forms or other tax documents filed with it through the *OBG* (or designee)

Administrator James Conrad, Ohio Bureau of Workers' Compensation
Lt. Governor Jennette Bradley, Ohio Department of Commerce

Now Available on OBG

Two School District Employer Withholding forms are now available on the *OBG*. They are:

- SD-101 (Employer Payment of School District Income Tax Withheld)
- SD-141 (School District Employer's Annual Reconciliation of Tax Withheld)

Director Tom Hayes, Ohio Department of Job and Family Services

Other news regarding the *OBG* is the hiring of Joe Zapotosky as the Program Director of the *OBG*. In his new role, he will support the activities of the *OBG* Steering Committee (OBGSC) and, in general, focus on the strategic development, marketing, and operation of the *OBG*. Mr. Zapotosky works on a day-to-day basis within DAS's Digital Ohio office.

You can find the *Ohio Business Gateway* and learn more about its services at obg.ohio.gov.

Administrative Changes

Administrative changes continue to take place at ODT. Following are some of the changes.

As a result of **Dick Barrett's** retirement at the end of November, **John Trippier** joined the Department as an Administrator in the Audit Division.

Mr. Trippier previously worked at ODT as a Tax Commissioner Agent in the Chicago office from 1989 through 1991 before holding various jobs, many in the tax field. Most recently, Mr. Trippier worked for McGladrey & Pullen, LLP, as a Director of State and Local Taxes in North Carolina. Throughout his career, Mr. Trippier has assisted taxpayers in their tax planning and compliance.

Excise and Motor Fuel Tax Division Administrator **Dick Beckner** retired at the end of November. **Dale Bischoff** is the new Administrator of the Division.

Mr. Bischoff began his career with ODT in 1974 as an office agent in Highway Use Tax. He has held a variety of positions in the Department over the years, most recently being Assistant Administrator of the Excise and Motor Fuel Tax Division.

Pete Angus, ODT's Problem Resolution Officer (PRO), is moving to the Compliance Division. His new role will be Counsel for the Compliance Division. An employee of ODT for 17 years, Mr. Angus worked in the Legal Division before serving as the PRO for the last four years.

Einon Plummer is ODT's new Problem Resolution Officer. Please see the PRO-files article on page 9.

Joe Zapotosky is the Program Director of the *Ohio Business Gateway (OBG)*. Please see the OBG article on page 6.

Kimberly Wisecup is the new Administrator in ODT's Legislation Division.

Prior to joining ODT, Ms. Wisecup was the legislative liaison for the Ohio Department of Mental Retardation and Developmental Disabilities (MR/DD). At MR/DD, Ms. Wisecup was the primary contact for members of the General Assembly and their staffs and monitored legislation of interest for MR/DD. Michael Adelman, the previous administrator, resigned from ODT at the end of October to join the Ohio Bankers League.

Both Deputy Tax Commissioner **Carol Bessey** and Executive Administrator **Jim Kamerick** retired from ODT effective November 30.

Progress Report on the Streamlined Sales Tax Project

By Bill Riesenberger, Legal Counsel, Sales and Use Tax

The Streamlined Sales Tax Project (SSTP) has continued its efforts to bring greater simplicity and uniformity to state sales and use tax laws throughout 2003. Meanwhile, a number of states have taken steps to bring their laws and practices into compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) that was adopted by the Implementing States in November 2002. Ohio acted to adopt the provisions of the Agreement in the biennial budget bill, Am. Sub. H.B. 95.

Currently, twenty states including Ohio have enacted legislation adopting all or a substantial portion of the provisions of the Agreement. What must happen next is for the states to petition for membership in the Streamlined System and to provide documentation of their compliance with the provisions of the Agreement. The states that petition for membership will judge each other's compliance. Before the Agreement can take effect, ten states with at least twenty percent of the population of all states with sales and use taxes must be found to have brought their laws and practices into conformity with the terms of the Agreement. A number of the state statutory changes have delayed effective dates, such as January 1, 2004 or July 1, 2004.

In the meantime, the SSTP has been working on a number of issues that will be important to the operation of the Streamlined System. One workgroup has been developing standards for approving tax collection software that, if used by sellers, will relieve the seller of certain audit liability for relying on state-provided information. Another group has been establishing the format for the simplified sales tax return and a uniform exemption certificate form. Other groups have been developing uniform rules for sales tax holidays, rules for treating bundled transactions and rules for sourcing (situs) sales of services.

As noted above, Ohio's latest Streamlined legislation was contained in Am. Sub. H.B. 95. This bill addressed a number of issues not included in the previously passed S.B. 143. H.B. 95 contained a number of changes to the sales and use tax laws to conform Ohio statutes to the Streamlined Agreement. Most of these changes went into effect on July 1, 2003. Included were some new or revised definitions of basic terms such as "tangible personal property," "price," and "lease or rental." Other new definitions include "computer," "computer software," "prosthetic device," "durable medical equipment," and "mobility enhancing device." Many familiar exceptions, previously found in R.C. 5739.01(E), were moved to become exemptions in R.C. 5739.02(B)(43).

The practical impact of some of these definitional changes was to somewhat broaden the existing exemptions for food, medical equipment, and prescription drugs. ODT estimates that these changes lead to a revenue loss of about \$30 million in FY 2005. An additional money-losing change, replacing the current "bracket" tax calculations with mathematical rounding, is delayed until January 1, 2006. State officials hope that the short-term losses from conforming Ohio's laws to the Agreement will eventually be made up by revenue gains from remote sales that are currently escaping state and local taxation.

The lead-time for changing the rates of county or transit authority permissive taxes was extended to allow the state to provide notice to sellers of the change. This change takes effect for rate change resolutions adopted on or after January 1, 2004.

The most controversial changes to Ohio's sales and use tax laws were the changes to the sourcing rules. These rules tell sellers what jurisdiction's tax to collect. The Streamlined Agreement adopts a destination-based sourcing system. That is, if a seller ships or delivers the product to the consumer, tax is due at the location where the consumer receives the product, rather than at the seller's location. These changes were originally adopted in S.B. 143 with an effective date of July 1, 2003. H.B. 95 added some additional provisions relating to lease

transactions and direct mail and also postponed the effective date of the change to January 1, 2004. However, when notification of these changes was sent to vendors, it caused a significant outcry from businesses that felt the changes made their operations more difficult. The Ohio General Assembly adopted an amendment in H.B. 127 that further delays the effect of the new sourcing rules until January 2005.

It should also be noted that H.B. 95 included new sourcing rules for sales of telecommunications service. These rules were adopted by the SSTP in cooperation with the telecommunications industry. They went into effect July 1, 2003 and were not delayed by H.B. 127.

Bills have been introduced in both houses of the United States Congress to approve the Streamlined Agreement. These bills would provide states that participate in the Streamlined System with the authority to require out-of-state remote sellers to collect the state's tax on sales to in-state consumers, regardless of whether the seller has nexus with the state. The House of Representatives bill is H.R. 3184, introduced by Representative Istook and others on September 25; the Senate bill is S. 1736, introduced by Senator Enzi and others (including Senator Voinovich) on October 15. To date, no action has been taken on either bill.

Further information on the SSTP or the Streamlined Agreement is available on the Project's website: www.streamlinedsalestax.org.

PRO-files

ODT's New Problem Resolution Officer

Einon Plummer is the new Problem Resolution Officer (PRO) for the Ohio Department of Taxation (ODT), replacing Peter Angus, who is now the Legal Counsel for ODT's Compliance Division.

Mr. Plummer began his career with ODT in 1991 as a taxpayer service agent at the Columbus District Office (now known as the Columbus Service Center). Mr. Plummer handled all types of taxpayer inquiries.

He began working in the Taxpayer Services Division in 1998. In addition to taxpayer service duties, he also administered the Small Business Tax Workshop, Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs for ODT. In this position, he served as division liaison to the PRO, information liaison with the Service Centers and department divisions, and was the agency manager with the Internal Revenue Service.

Mr. Plummer was transferred to the Taxpayer Services/Compliance Support Division in 2001. His main focus in this position was to create, maintain and distribute daily, monthly and annual reports showing statistics generated from ODT's telephone system.

Mr. Plummer said, "As the PRO, my door will be open to anyone needing assistance. I will strive to keep the lines of communication open between the taxpayers and ODT. Taxpayers will be treated individually, while I help to solve each problem efficiently and effectively. I look forward to serving in this new position."

Mr. Plummer can be contacted directly at (614) 466-0832 or by e-mail at einon_plummer@tax.state.oh.us. His fax number is (614) 466-6401.

COURT *decisions*



The following are significant decisions of the Board of Tax Appeals (BTA), the Ohio Courts of Appeals and the Ohio Supreme Court during September, October and November, 2003. These informational summaries of tax decisions are compiled by Peter Angus, Legal Counsel, Compliance Division.

SALES / USE TAX CASES

Standards Testing Laboratories, Inc. v. Zaino (2003), 100 Ohio St. 3d 240

A laboratory which tested automobile tires, rims, and bolts was required under the terms of its contracts to only perform tests on items provided by others. Some the laboratory's customers preferred that the laboratory make purchases of items needed to complete the tests. For example, a tire manufacturer might provide tires to be tested, and the laboratory would purchase wheels and bolts to be used in the tests of the tires. These purchases were billed to the manufacturer on a markup basis. The laboratory contended that these purchases were excepted under Ohio Revised Code 5739.01 as purchases for resale. The BTA agreed and the Supreme Court affirmed. The Court declined to extend its ruling to wheels, for which insufficient evidence had been provided.

Crew 4 You Inc. v. Zaino (Oct. 24, 2003), BTA 2002-958

A company which provided TV video and camera crews for live sporting events was assessed sales tax under Ohio Revised Code 5739.01(B)(3)(k), which includes employment services within the definition of taxable sales. The company argued that it was not providing temporary employment services because the personnel were highly-skilled operators of broadcast equipment. However, the BTA held that the broadcasting companies which used the services maintained control over the entire production process, and the personnel were therefore employees. Regarding transactions in which the temporary employment services were acquired by one company (which provided the broadcasting equipment) but used by another company (which managed the production), the services were resold and were subject to exception under Ohio Revised Code 5739.01(E)(1). This case has been appealed by both parties to the Ohio Supreme Court.

Ronald Aaron, Responsible Party of Aaron Ford Lincoln Mercury Inc. v. Zaino (Oct. 17, 2003) BTA 2003-381

A corporate officer of a corporation which failed to remit sales tax was personally assessed for the liability under Ohio Revised Code 5739.33. He admitted that he was one of those in the corporation liable for collecting and remitting sales tax, but he contended that the amount of the assessed liability was incorrect. The BTA held that the liability under Revised Code 5739.33 is derivative, and an assessed corporate officer may not challenge the underlying assessment against the corporation.

Julie Palmquist, Officer of J. Oberlin Ayers, Inc. v. Zaino (Nov. 14, 2003), BTA 2003-220

The secretary / treasurer of an interior design corporation, who was one of the three shareholders / corporate officers, was assessed personally for unremitted sales tax under Ohio Revised Code 5739.33. She had check-signing authority and had paid some expenses of the corporation. However, she usually needed the permission of the other officers to make payments and she was generally answerable to them. On these facts, the BTA held her to be not personally liable.

Barry Yoskovich v. Zaino (Nov. 21, 2003), BTA 2002-1076

A responsible party of Yoskovich Mlakar, Inc. contended that the assessment against him personally under Ohio Revised Code 5739.33 should not be pursued until the collection efforts against the corporation had been exhausted. The BTA held that the fact that collection efforts were ongoing against the corporation did not preclude assessments against responsible parties. The responsible party admitted that he was the president and

sole shareholder of the corporation for the periods involved, and that he ran the business and had check-signing authority and made all fiscal decisions. On these facts, the BTA held the assessee liable.

PERSONAL INCOME TAX CASES

State ex relator Peter Kaiser v. Zaino (Oct. 24, 2003), Lucas County App. Ct. No. L-03-1092

The Ohio Attorney General was collecting on a 1987 Ohio personal income tax against the taxpayer, and the taxpayer contended that he had never received proper, timely notice of the assessment. The taxpayer brought a mandamus action in the Lucas County Court of Common Pleas. Upon motion, the action was dismissed because the taxpayer was seeking the equivalent of an injunction to the tax judgment, which is prohibited under Ohio Revised Code 5703.38.

Michael G. Tyson v. Zaino (October 3, 2003), BTA 2001-1327

The taxpayer originally filed and paid Ohio income tax returns for 1995 and 1996. Subsequently, within the time permitted under statute, he filed for refunds of amounts paid for those years, contending that he was not an Ohio resident. The BTA conducted a hearing on the matter and took extensive testimony and evidence. The evidence did not show that the taxpayer had an abode outside Ohio for each of the tax years, as Ohio Revised Code 5747.24 requires in order for the presumption of non-residency to arise. Moreover, the taxpayer had a home in Ohio and his travel was limited under the terms of his probation. Since he had over 183 contact periods (days/nights) in Ohio during each of the tax years, he was presumed to be an Ohio resident and he failed to rebut this presumption by clear and convincing evidence. The BTA therefore affirmed the denial of the refund claims.

James E. Pursel v. Zaino (November 21, 2003), BTA 2003-415

Alina M. Workman v. Zaino (October 24, 2003), BTA 2003-814

Curtis Hampton v. Zaino (October 24, 2003), BTA 2003-626

In these three cases the taxpayers received wages but submitted Ohio income tax returns showing zero adjusted gross income. When asked on audit why their adjusted gross income was zero, they responded that it was their position that wages were not includable in income. They were assessed a frivolous filing penalty under Ohio Revised Code 5747.15(A), and these assessments were affirmed by the BTA.

Kenneth Leroy Geiser v. Zaino (October 3, 2003), BTA 2003-391

The taxpayer was issued an income tax assessment based on information which the Internal Revenue Service provided to the Ohio Department of Taxation. The taxpayer filed a petition for reassessment, but it was dismissed under the provisions of Ohio Revised Code 5747.13, which requires prepayment of the tax and interest as a jurisdictional prerequisite when the taxpayer has not filed a return and paid the tax shown on the return. The BTA affirmed the dismissal of the petition and held that it was without jurisdiction to consider the appeal because the taxpayer had not prepaid as required by statute.

REAL PROPERTY EXEMPTION CASES

Emmanuel Christian Academy v. Zaino (November 21, 2003), BTA 2002-2055

A not-for-profit corporation sought exemption for certain real property for 2000 and 2001. It acquired the property by June 16, 2000 and sold it on August 14, 2001. The application for exemption was filed December 31, 2001. Under Ohio Revised Code 5715.27(A), the owner of a property may file an application for exemption with the Tax Commissioner. Because the not-for-profit corporation was not the owner at the time of the filing of the application, the BTA affirmed the Tax Commissioner's dismissal of the matter.

First Baptist Church of Milford v. Zaino (October 10, 2003), BTA 2003-316

A church sought exemption for a parcel of land which it owned and which was to be used for a sports field and a learning center. The BTA found the information submitted by the applicant to be insufficient to support its application for exemption, and affirmed the Tax Commissioner's denial of exempt status.

Village of Lockland v. Zaino (October 10, 2003), BTA 2002-508, 513 through 523

The village of Lockland acquired 12 parcels of land in a crime-ridden area in order to have the present structures razed and to have a non-profit entity construct new homes on the sites. The BTA held that exemption under Ohio Revised Code 5709.08 was proper. That section exempts property belonging to the state or its subdivisions and used exclusively for public purposes.

INFORMATION *releases*

The following information releases were issued by the Department in the last several months. The topics addressed are summarized below. Please visit our web site at tax.ohio.gov and click on "Releases" at the top of the home page to view all the information releases in their entirety.

Personal Income Tax/Corporate Franchise Tax

Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2001 and Thereafter – July 31, 2002 – Revised October 27, 2003

PI & CFT 2002-01

The purpose of this information release is to explain recent changes in Ohio law regarding the amount of allowable depreciation expense deductions.

Excise and Motor Fuel Tax

Cigarettes and Other Tobacco Products

Notice about Cigarette Minimum Prices and Cigarette Master Settlement Agreement Reporting – October 2, 2003

XT 2003-14

This information release addresses cigarette minimum pricing. The Ohio Department of Taxation has learned that the wholesale price of cigarettes may increase due to changes in the marketplace.

The release also addresses Cigarette Master Settlement Agreement reporting.

Fiduciary

Trust Residency

Trust 2003-02

The purpose of this information release is to explain, by way of examples, the definition of "trust residency" as set forth in division (I)(3) of the Ohio Revised Code section 5747.01.

Ohio law imposes Ohio income tax on trusts for taxable years beginning in 2002, 2003, and 2004 - April 14, 2003

Trust 2003-01

Ohio law imposes Ohio income tax on trusts for taxable years beginning in 2002, 2003, and 2004. Set forth in the information release are frequently asked questions and our answers. NOTE: because of changes made by House Bill 675, 124th General Assembly, effective December 13, 2002, this information release replaces the July, 2002 information release and the September 12, 2002 information release.

Shared Gain: New Funds Help ODT and Local Governments

Sometimes giving up a little means getting back a whole lot more. In this case, counties give up a tiny slice of tax money with a good likelihood they'll get back a chunk more.

That's the idea behind two new administrative funds in the Ohio Department of Taxation (ODT) that underwrite collection costs of some taxes while enabling the department to improve tax compliance. Authorized by House Bill 95, the Property Tax Administration and the Motor Fuel Tax Administration funds enable ODT to defray the costs of audits and other operations.

Before these funds were created, the state General Revenue Fund (GRF) (e.g. ODT's budget) paid the cost of administering taxes that yielded no money for the GRF. Property taxes go to local governments and motor fuel taxes are used exclusively for state and local roads. Now the cost of administering the property and motor fuel taxes is paid by the benefactors: local governments and highway and road funds. These new dedicated funds reduce revenues given back to local taxing districts or highway and roads by less than 1 percent.

"It's a certainty to the counties that property tax administration will be funded," Property Tax Executive Administrator Rick Anthony said, "and that there will be employees and field agents dedicated to continue and improve compliance activities."

Within ODT, the Property Tax Administration Fund ensures that 23 recently-hired personal property tax auditors are retained. It also enables the department to hire a field auditor who will be dedicated to public utility taxes. Together, these 24 auditors are expected to generate a return on investment of \$1.40 this fiscal year for every dollar invested in the property tax administration fund, an amount that's expected to more than double to \$3.70 per dollar in FY 2005.

With its new revenue, the Excise and Motor Fuel Tax Division added two auditors in the effort to increase motor fuel tax compliance. According to former Excise and Motor Fuel Tax Administrator Dick Beckner, this brings the division roughly back to its 1990 staffing level.

Implementing the property tax fund and beefing up the audit staff are expected to yield \$17.4 million in additional property tax revenues in Fiscal Year 2004, according to department estimates. Over the next two fiscal years, ODT expects to bring in \$45 million and \$51 million, respectively, in additional property tax dollars. Additional motor fuel tax revenues are expected to total roughly \$1.2 million over the next three fiscal years, Mr. Beckner said.

The two new administration funds will pay for most all the operations of the property tax areas (including public utilities, tax equalization, and tangible property as well as the personal property functions of the audit division) and the motor fuel portion of the excise and motor fuel tax division. The funds can be used for salaries, computers, phones, mailing costs, even rental of floor space where necessary.

An estimated \$12.1 million is slated to go into the Property Tax Administration Fund in FY 2004. The Motor Fuel Tax Administration Fund will receive about \$3.7 million.

The reductions to local taxing districts' shares of property taxes are minimal. The property tax fund will take .75 percent from inter-county personal property tax returns (from businesses with locations in more than one county); .15 percent from public utility tax returns; and .3 percent of the 10 percent real property rollback reimbursement. This represents a total of less than one percent of total revenues.

The slice taken "off the top" of motor fuel tax revenues – which are distributed in shares of approximately 75

percent to the Ohio Department of Transportation and 25 percent to local entities – is equally small, Mr. Beckner stated. The percentage dedicated to the motor fuel fund is .275 percent. It will replace money formerly transferred from Transportation's share to the General Revenue Fund to pay for motor fuel tax operations.

“But overall, more revenue will be coming in,” Mr. Beckner emphasized.

The concept for the funds has its roots in ODT's personnel reductions over the past 13 years. For example, department records show that 65 auditors were engaged in personal property and public utility tax compliance programs in 1990. By 2000, this number had dwindled to 15, with no field auditors assigned to public utility taxes.

The need for a dedicated revenue stream that could not only maintain but expand the existing services, particularly audit and compliance, stuck out like an increasingly sore thumb. The department was able to convince both Governor Taft and state budget crafters of the necessity of filling this need, and it was met with the passage of H.B. 95 in June of this year.

The amount returned to local taxing districts from all property taxes in 2001 was about \$1.7 billion, according to the department's 2002 *Annual Report*. Motor fuel tax revenues returned to local entities were about \$140.4 million for the same year.

Given the huge impact of property tax revenue, ODT has established an advisory group, chaired by Rick Anthony. The group is comprised of members of the county professional associations, including representatives of county auditors, treasurers and commissioners. The group will meet at least annually to provide counties, municipalities and townships with updates on staffing as well as auditing and compliance issues that affect property taxes.

“It's very important that we listen to their concerns and do a good job for the locals,” Mr. Anthony said. “We think we've improved our service.”

The property tax and motor fuel tax administration funds give ODT a stable means of funding two key areas of the department at a minimum cost to local governments. In return, ODT will be able to bring in additional dollars to fund emergency services, schools and roads – another way of providing quality service to Ohio taxpayers.

As Mr. Anthony said he's put it to several local officials, “We're going to get you more than you're giving up.”

Interest Rate Announced

The interest rate charged by the state of Ohio during calendar year 2004 for delinquent taxes and tax assessments will be **four percent** per annum. The rate was certified and announced in October by then-Tax Commissioner Zaino and will take effect January 1, 2004. Last year's rate was six percent.

State law mandates that every October the tax commissioner compute the interest rate for the following calendar year. The rate equals the federal short-term interest rate in July, plus three percent. Interest is charged on money taxpayers owe to the state for underpayment or late payment of taxes, other tax delinquencies and tax assessments. The state also applies this rate to money it may owe individuals or businesses for certain overdue payments.

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

TAX enforcement news

The following information is a list of convictions secured by the Enforcement Division of the Ohio Department of Taxation in August, September and October, 2003. Tax Enforcement News is compiled by Robert M. Bray, Administrator, Enforcement Division. Fraud complaints can be e-mailed to the Enforcement Division at Taxenforcement@tax.state.oh.us.

Julie Copley, of Pataskala, was found guilty of three counts of theft, and one count of filing false income tax returns for 1996 through 2000. She was sentenced to four years and eleven months in prison. ODT's Enforcement Division met with a detective of the Columbus Police Department's Economic Crime Unit and learned he was investigating the taxpayer in regards to an embezzlement of over \$500,000 during the years 1998, 1999 and 2000. It was learned during those years Ms. Copley worked for an accounting firm and stole money from the firm's clients. She was writing checks and depositing them in her personal account.

Sarah D. Harper, of Columbus, pleaded guilty to three counts of theft and one count of fraudulent filing of an Ohio income tax return. Ms. Harper was sentenced to two years in prison at the Marysville Correctional Institute for two counts of tampering with records, twelve months for theft and six months for fraudulent filing of Ohio income tax returns. These terms of incarceration are to be served concurrently. It is alleged Ms. Harper embezzled \$99,219 from her former employers and did not claim it as income for 1997, 1998 and 1999.

Jonathan Keeley, of Heath, pleaded guilty on one count of incomplete, false and fraudulent returns prohibited, a felony of the 5th degree. Mr. Keeley was sentenced to a period of community control for three years. The defendant shall make restitution and shall pay supervision costs and court costs. The defendant was further ordered to pay all past due taxes within six months and timely file and pay all federal, state and local taxes in the future. During a multi-jurisdictional investigation, a detective from the Licking County Sheriff's Department provided information regarding Mr. Keeley's state tax filing status. Mr. Keeley's filing status was confirmed with the state of Ohio's computer system. The query produced documentation that Mr. Keeley had failed to file state tax returns for 1998, 1999, 2000 and 2001. Mr. Keeley was a Heath police officer during the period of the investigation.

Delbert W. Lambert, owner of Lambert's Food Mart LLC in Zanesville, was indicted on 22 counts, six counts employee withholding collecting and failing to remit for January 1997 through June 2003, one count per year; six counts collecting and failing to remit sales tax for 1998, 1999, 2000 and November 2002 through January 2003; and ten counts filing fraudulent returns for September 1997 through May 2002. Mr. Lambert was also found guilty of failure to have a retail cigarette license. He was fined \$250, and \$50 court costs. Information was referred to ODT's Enforcement Division by ODT's Zanesville Taxpayer Service Center. It was discovered that sales tax returns were underreported. Actual records were provided, showing the sales tax liability was underreported by approximately fifty percent. For the time period of May 2001 through September 2002, the amount of sales tax collected and remitted totaled \$57,000. A check was then issued for the total amount owed of \$57,000. The Enforcement Division was also advised Mr. Lambert owned another business and was operating without a vendor's license until October 16, 2002. There had not been any sales tax returns filed for this business since September 2001.

Dyed Motor Fuel Violations

Enforcement Agents were conducting motor fuel inspections for the presence of dyed fuel. All were found to have dyed fuel in their tanks and all were issued summons for using untaxed motor fuel (dyed) on the highway. The following individuals were convicted for using untaxed motor fuel (dyed) on the highway:

- Roger Colvin, Milford, Ohio, was fined \$200 plus court costs;
- Aaron Kull, Lancaster, Ohio, was fined \$500;
- John Meadows, Lancaster, Ohio, was fined \$500; and
- Richard Boehm, Norwich, Ohio, was fined \$500.

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

Assorted Cigarette Violations

NAME	BUSINESS	CITY	VIOLATION
Gary Caruso	Deli Beer & More	Columbus	(1) Count No Cigarette License
Amarender Pesaru	L & S Carry Out	Hilliard	(1) Count No Cigarette License
	BP #8985	Cincinnati	(1) Count No Cigarette License
Betty Jo Rose	Smoke Stack	Wilmington	(1) Count No Cigarette License
Fector Haddad	Sabina Shell	Sabina	(1) Count No Cigarette License
	BP #8991	Cincinnati	(1) Count No Cigarette License
Victor Habib Safadi	Safadi Inc.	Toledo	(1) Count No Cigarette License
Hamada A. El-Tatawy	Library Carry Out	Toledo	(1) Count No Cigarette License
Mark C. Flora, Jr.	Village Quick Stop	Martinsville	(1) Count No Cigarette License
Patel Hemant	Beverage Dock	Wilmington	(1) Count No Cigarette License
	BP #6634	Northwood	(1) Count No Cigarette License
Abdelaziz Daray	Beer Cooler	Delaware	(1) Count No Cigarette License
Johnny Randall	East End Drive-Thru	Xenia	(1) Count No Cigarette License
	BP America #2332	Maumee	(1) Count No Cigarette License
Allwell Akatobi	Fast Trip Mini Mart	Columbus	(1) Count No Cigarette License
Anthony J. Licata, Jr.	Licata's Sunoco	Toledo	(1) Count No Cigarette License
Kimberly Mayer	Plain City Village Market	Plain City	(1) Count No Cigarette License

Assorted Sales Tax Violations

NAME	BUSINESS	CITY	VIOLATION
James Palosi	Custom Unlimited of Ohio	Canton	(1) Count Failure To File Sales Tax Returns
Rick Neace		Mt. Sterling	(1) Count Failure To File Sales Tax Returns
Lakeeta Carpenter	National Gold Jewelers	Toledo	(1) Count Failure To File Sales Tax Returns
Ron Saunders & Lakeeta Carpenter	Ronsaun	Toledo	(1) Count Failure To File Sales Tax Returns
Alfreda Strong	Joy of Life Boutique	Kent	(1) Count Failure To File Sales Tax Returns
Inpahn Veopaseuth	Little China Express	Marysville	(2) Counts Failure To File Sales Tax Returns
Patsy Venters	Last Chance Carry Out	Gallipolis	(1) Count Failure To File Sales Tax Returns
	Dining Concepts	Cincinnati	(1) Count Failure To File Sales Tax Returns
Eric & Jewel Strite	Coffee Rush	Tiffin	(1) Count Failure To File Sales Tax Returns
Rodney Peacock		Tiffin	(1) Count Failure To File Sales Tax Returns

Assorted Sales Tax Violations Cont'd.

NAME	BUSINESS	CITY	VIOLATION
Michael Streicher	Streicher Racing	Bluffton	(1) Count Failure To File Sales Tax Returns
S.W. Dotson	Extreme Window Tint	Cambridge	(1) Count Failure To File Sales Tax Returns
Robert Tracy	Tracy's Flowers	Roseville	(1) Count Failure To File Sales Tax Returns
Brian M. Scott	J B Walsh Inc.	North Ridgeville	(1) Count Failure To File Sales Tax Returns
Mindy Weber	M & M Catering	Fostoria	(1) Count Failure To File Sales Tax Returns
William E. Frasure, III	Frasure's Chateau	Lucasville	(1) Count Failure To File Sales Tax Returns
Todd Gilsdorf	Trans Tech	Toledo	(1) Count Failure To File Sales Tax Returns
Timothy Allen	Douglas Sales & Service	Toledo	(1) Count Failure To File Sales Tax Returns
Robert Fisher	North Coast Cleaning	Sandusky	(1) Count Failure To File Sales Tax Returns
Carrie Baker	Baker's Back Alley Deli	Dresden	(1) Count Failure To File Sales Tax Returns
Mary Lein	Strike Kings Bowlers Shoppe	Canton	(1) Count Failure To File Sales Tax Returns
Mohamed Abdiwahab	Marathon	Columbus	(1) Count Failure To File Sales Tax Returns
Ryllis Chandler	Corjo Enterprises	Louisville	(1) Count Failure To File Sales Tax Returns
Dena Bruni	Balloons By Dena	Alliance	(1) Count Failure To File Sales Tax Returns
Christine Snyder	The Vitamin Store	Louisville	(1) Count Failure To File Sales Tax Returns
Mona Shaheen	Penny Alley Inc.	Canton	(1) Count Failure To File Sales Tax Returns
Gary Cathey	Gary Cathey's Carpet Shoppe	Massillon	(1) Count Failure To File Sales Tax Returns
Chouhaib Lahmime	Electronic Discounts	Columbus	(3) Counts Failure To File Sales Tax Returns
S.E. Garrett	Abi Phone System	Zanesville	(1) Count Failure To File Sales Tax Returns
Greg Fisher	Richard's Music	Toledo	(1) Count Failure To File Sales Tax Returns
Jeffrey Colaracovas	Coco's Garage	Dover	(1) Count Failure To File Sales Tax Returns
Mark Armstead	Mark's Auto & Body Works	Canton	(1) Count Failure To File Sales Tax Returns
Harold Minor	Harold's Towing & Auto Repair	Massillon	(1) Count Failure To File Sales Tax Returns
Alfreda Strong	Joy of Life Boutique	Kent	(1) Count Failure To File Sales Tax Returns
Paul Sullivan	Hometown Furniture & Appliance LTD	Alliance	(1) Count Failure To File Sales Tax Returns
Lee Alkire	Alliance-Wakeman Oil	Alliance	(1) Count Failure To File Sales Tax Returns
Vincent Hobson	Wilberforce University	Wilberforce	(1) Count Failure To File Sales Tax Returns
John Fulton	Finest Floor & Tile	Perrysburg	(1) Count Failure To File Sales Tax Returns
S.L. Stewart	S.L. Stewart Computers	Zanesville	(1) Count Failure To File Sales Tax Returns
Clyde Wright	Royal Cleaning Co.	Zanesville	(1) Count Failure To File Sales Tax Returns
Doug Kane	Kane Motor Sports	Zanesville	(1) Count Failure To File Sales Tax Returns
C.A. Wright	City News	E. Fultonhan	(1) Count Failure To File Sales Tax Returns
Yousef Qtaish		Chicago	(1) Count Failure To File Sales Tax Returns
William Phifer		Toledo	(1) Count Failure To File Sales Tax Returns
Phillip Wood Jr.	Walts Auto Glass	Toledo	(1) Count Failure To File Sales Tax Returns
Matthew Coleman	Extra Touch Auto Care	Toledo	(1) Count Failure To File Sales Tax Returns
Michael Beckloff	Ednamea's Vermilion	Vermilion	(1) Count Failure To File Sales Tax Returns
Thomas M. Drees	Cellular Center	Toledo	(1) Count Failure To File Sales Tax Returns
William Crall	Bill Crall's Automotive	Chillicothe	(1) Count Failure To File Sales Tax Returns

Assorted Sales Tax Violations Cont'd.

NAME	BUSINESS	CITY	VIOLATION
Gary Wheeler	Ross Computer Services	Frankfort	(1) Count Failure To File Sales Tax Returns
Marlene VanFossan	Hilltop Market	Adelphia	(1) Count Failure To File Sales Tax Returns
Charles Brausch	Adventure's Club	Avon Lake	(1) Count Failure To File Sales Tax Returns
Steven Safreed	Photomania	North Canton	(1) Count Failure To File Sales Tax Returns
G. Roger Miller	S.J. & G.R. Milter Enterprises Inc.	Massillon	(1) Count Failure To File Sales Tax Returns
Robert Hurley	Custom Landscaping	Wheelersburg	(1) Count Failure To File Sales Tax Returns
Michael Bishop	Klingbeil Flowers	Port Clinton	(1) Count Failure To File Sales Tax Returns
Kevin Louderback	Louderback Family	Tipp City	(1) Count Failure To File Sales Tax Returns
Robert Turner	Thornwood Golf & Fort	Fremont	(2) Counts Failure To File Sales Tax Returns
Susan Pendergrass	Discount Muffler & Brake	Sandusky	(1) Count Failure To File Sales Tax Returns
Roger Smith		Delaware	(1) Count-No Vendor's License
Naqid Hasan	Sylvania Sunoco	Toledo	(1) Count-No Vendor's License

Tax Calendar at-a-Glance**Jan.**

- 15** Monthly Income Tax Withholding Return
- 15** 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
- 23** Quarterly Consumer Use Tax Return
- 23** Quarterly Direct Pay Return

Feb.

- 2** Quarterly Income Tax Withholding Return
- 2** Annual Corporation Franchise Tax Return or Estimated Return
- 2** Employer Annual Reconciliation of Income Tax Withheld
- 17** 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

Mar.

- 1** Annual Wage and Tax Statements (Withholding Report)
- 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
- 31** Annual Corporation Franchise Tax Return or Estimated Return

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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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