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Ohio Manufacturers' Association
Tax Policy Committee Tax Counsel Report
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Administrative Actions:

Pursuant to uncodified section 757.42 of H.B. 153 (copy attached), a use tax amnesty for consumers use tax payers took effect October 1, 2011 and will last until May 1, 2013. Highlights of the program include:

- Taxpayer pays all taxes due after January 1, 2009; all criminal and civil penalties and interest are waived.
- A payment plan for up to 7 years is available.
- Any taxes previously assessed do not qualify.
- A person registered to pay use tax prior to January 1, 2011, remains liable for interest and penalty.
- A person who does not qualify for this amnesty may still qualify for relief under the voluntary disclosure program.

A rule has been proposed (O.A.C. 5703-9-69) governing the use tax amnesty payment plans. A copy is attached. A summary of the program in question and answer format has been issued by the Department; a copy is attached.

Legislative Actions:

See Mr. Augsburger's report.

Judicial Actions:

Ohio Supreme Court

In *WCI Steel, Inc. v. Testa*, 129 Ohio St. 3d 256, 2011-Ohio-3280, the Supreme Court ruled that a notice of appeal to the board of tax appeals sufficient specified error if it (i) states the taxpayer's objection to the commissioner's actions and (ii) identified the treatment that the commissioner should have applied. Moreover, the court recognized that since the BTA has a statutory duty to receive additional evidence, evidence that was not submitted to the Tax Commissioner may still be presented in the first instance to the BTA.

In *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Op. No. 2011-Ohio-3362, the Court held that the BOR and BTA may consider, as evidence, information contained in an appraisal report when the appraiser who prepared the report does not appear to testify before the BOR. In addition, it is also permissible to rely on evidence contained in an appraisal report that determines value for a date other than the tax lien date in issue. Such arguments go to the weight to be afforded to the evidence, rather than to its admissibility.

In *Maralgate, LLC v. Greene Cty. Bd. of Revision*, Slip Op. No. 2011-Ohio-5448, the Court held that a parcel of property that was originally part of a single parcel owned by a family farm and qualifying for CAUV could still qualify for CAUV after it was transferred to another family-owned entity. The parcel would not have qualified by itself, but since its use continued in conjunction with the rest of the land, the Court held that its status could be considered in conjunction with that of the rest of the property.

Ohio Court of Appeals

In *Middletown v. Myers*, 193 Ohio App. 3d 632, 2011-Ohio-2470, the Court of Appeals held that an individual who resided in Middletown and who failed to show that he had another permanent place of residence was domiciled in Middletown for municipal income tax purposes. "Domicil" is that place at which one makes a home for an indefinite period. The taxpayer resided in Middletown and failed to establish another place of residence, therefore, he was found to be domiciled within the city and subject to tax.

Ohio Board of Tax Appeals

No decisions of substance.

The BTA has implemented a small claims process.

Tax Commissioner Opinion

No opinions to report.

Ohio Third Frontier Program

For information about the Ohio Third Frontier Program, please see the attached summary.