

Administrative Rule Review, Legislative Update, and Recent Court Decisions for 2018

Presented By: Kerrie Ryan and Laura Stanley

February 20, 2019



Department of
Taxation

RULES!

-
1. YOU SHALL!
 2. YOU WILL!
 3. YOU MUST!

Administrative Rules - Overview

- Statistics for Ohio Department of Taxation
 - Over 850 Ohio Revised Code statutes that guide our duties
 - Just over 200 administrative rules
- What is the purpose of rules?
 - Grant by General Assembly to implement statutes that they have created
 - Allow the agency to communicate a predictable interpretation of statutory mandates
 - Generally, rules are ODT's attempt to follow statutes given practical considerations

Administrative Rules - Overview

- Force and effect of law
- Cannot dictate public policy
- Allows agencies the authority to use their judgment in the practical application of statutes



Administrative Rules - Procedure

- Why promulgate new rules or change current rules?
 - Statute is enacted, requiring (“shall”) or permitting (“may”) rule creation
 - 5 Year Rule Review Process
 - Change in business process at agency which requires rule change



Administrative Rules

Test Your Knowledge:

Q: Can the Department of Taxation draft a rule subjecting individuals owning dogs to a DOG tax?

A: No. But if a statute creating a DOG tax were passed, the Department could issue rules regarding how that tax would practically be applied.



Administrative Rules - Procedure

- Rule is created/changed/marked for rescission
- Rule is posted on ODT website
 - ODT sends out alerts to subscribers
- Rules affecting business submitted to Common Sense Initiative (CSI) for review
 - CSI sends out alerts
- Once approved by CSI, rules submitted to Joint Committee on Agency Rule Review (JCARR)
 - At least 65 days
 - Public hearing
 - RSFA is filed with proposed rule/change
 - Effective 10 days after final filing by the agency
- Appeal is possible to the Board of Tax Appeals (BTA)

Administrative Rules – How to Track

- Tax.ohio.gov

The screenshot shows the Ohio Department of Taxation website. The URL is <https://www.tax.ohio.gov/Professional.aspx>. The page features a navigation menu with the following items: Home, File, Forms, Individual, Business, Government, Professional, Researcher, and Contact. The Professional menu is expanded, showing a list of resources including: Electronic Filing by Tax Preparers, Taxpayer Representation Form (TBOR1), Software Developers, Legal Resources, Ohio Taxes, News Releases, Laws/Rules/Ruling (highlighted with a red circle), Tax Professional Assistance, Interest Rates, Interest Calculator, OBG Tutorial, and Criminal Investigations Division. Below the navigation menu, there is a section titled "Additional Professional Resources" with a grid of links: View Ohio Taxes, Ohio Revised Code, Due Dates, Municipal Sites, Taxpayer Representation Form (TBOR1), Voluntary Disclosure Program, IRS Tax Forum / Seminars, Interest Rates, Kilowatt Hour Tax Filing, Annual Reports, Natural Gas Distribution Tax, Sales and Use, Commercial Activity Tax (CAT), Employer Withholding, and Casino Tax. At the bottom of the page, there is a footer with the Ohio Department of Taxation logo and contact information: Michael DeWine, Governor | Jeff McClain, Tax Commissioner | Ohio.gov |

Administrative Rules – How to Track

https://www.tax.ohio.gov/legal/laws_and_rules.aspx

Ohio.gov | State Agencies | Online Services   



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Legal Resources

Tax Pro Links

- [Tax Professional Assistance](#)
- [Information for Software Developers](#)
- [Electronic Filing by Tax Professionals](#)
- [Ohio Taxes](#)
- [Forms](#)
- [Sales and Use](#)
- [Laws, Rules, and Ruling](#)
- [Commercial Activity Tax \(CAT\)](#)
- [OBG Self-Help Videos](#)
- [How Do I...](#)

Helpful Resources

- [Ohio Taxes](#)
- [FAQs \(Frequently Asked Questions\)](#)
- [Tax Research](#)
- [Ohio Business Gateway](#)
- [Tax Rate Finder](#)

Laws, Rules & Rulings

This section of our Web site is designed to help individuals better understand Ohio's tax laws as well as the department's rules for their administration. It includes formal opinions of the tax commissioner, proposed and final administrative rules and other resources.

- [Information releases](#) — Information releases are technical advisories that offer detailed explanations of selected laws, rules and rulings that govern the taxes administered by the Ohio Department of Taxation. A repository of them may be found here.
- [Ohio Revised Code](#) — The Ohio Revised Code, as compiled by Lawriter LLC at the direction of the Legislative Service Commission, is found here.
- [Rules](#) — Resources on the department's proposed and final administrative rules are located here.
- [Tax Commissioner Opinions](#) — Formal opinions of the Ohio tax commissioner, dating back to 1990, can be found here

Administrative Rules – How to Track

The screenshot displays the Ohio Department of Taxation website. At the top, the logo for Ohio and the text 'Department of Taxation' are visible, along with social media icons and a search bar. A navigation menu includes links for Home, File, Forms, Individual, Business, Government, Professional, Researcher, and Contact. The main content area is titled 'Legal Resources - Tax Rules' and is divided into three columns. The left column contains 'Tax Pro Links' and 'Key Rule Resources'. The middle column contains 'Helpful Resources'. The right column contains 'Tax Rules', 'Draft Rules', and 'Proposed Rules Submitted to JCARR'. The 'Tax Rules' section includes a paragraph explaining the rule-making process and a search bar with 'Sales and Use Tax' entered. The 'Draft Rules' section includes a search bar with 'Sales and Use Tax' entered and a heading for 'Draft Rules submitted to the Common Sense Initiative'. The 'Proposed Rules Submitted to JCARR' section includes a paragraph explaining the process and a search bar with 'Municipal Income Tax' entered. At the bottom, there is a row of icons for various services, with 'Tax Alerts' highlighted by a red circle. The footer contains contact information for the Governor and Tax Commissioner, as well as links for Privacy Statement, Contact, Feedback, and ADA Statement/Accessibility.

Ohio.gov | State Agencies | Online Services

Ohio Department of Taxation

Home | File | Forms | Individual | Business | Government | Professional | Researcher | Contact

Legal Resources - Tax Rules

Tax Pro Links

- Tax Professional Assistance
- Information for Software Developers
- Electronic Filing by Tax Professionals
- Ohio Taxes
- Forms
- Sales and Use
- Laws, Rules, and Ruling
- Commercial Activity Tax (CAT)
- OBG Self-Help Videos
- How Do I...

Key Rule Resources

- Regulatory reform
- Register of Ohio
- Joint Committee on Agency Rule Review (JCARR)
- Ohio Administrative Code

Helpful Resources

- Ohio Taxes
- FAQs (Frequently Asked Questions)
- Tax Research
- Ohio Business Gateway
- Tax Rate Finder
- Tax Alerts
- News Releases
- Download Adobe Reader

Tax Rules

The Ohio Revised Code grants rule-making authority to the Ohio Department of Taxation to adopt new rules. Additionally, the Department may review, amend and rescind current rules. The Department of Taxation posts draft rules here for an initial comment period. Some rules are then submitted to the Common Sense Initiative (CSI) for further review and comment. Finally, draft rules are submitted to the Joint Committee on Agency Rule Review (JCARR) for final review and ultimate publication as updated rules in the [Ohio Administrative code \(the Final Rules\)](#). Please see below to track progress of current draft/proposed rules.

Draft Rules

Sales and Use Tax

Draft Rules submitted to the Common Sense Initiative

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI, state agencies, including the Ohio Department of Taxation, are required to draft rules in collaboration with stakeholders, assess and justify any adverse impact on the business community (as defined by [revised code 107.52](#)), and provide an opportunity for the affected public to provide input on the rules.

In this section you will find proposed rules, business impact assessments and any additional documentation:

Sales and Use Tax

Commercial Activity Tax

Proposed Rules Submitted to JCARR

The Department of Taxation files rule proposals with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's rule-review process. Generally, 41-65 days after the original file date, JCARR schedules the Department of Taxation to appear before a meeting concerning the rule proposal.

In this section you will find rules currently under the review of the Joint Committee on Agency Rule Review:

Municipal Income Tax

Sales and Use Tax

Tax Equalization

FAQs | Online Services | Self Help eLibrary | Information Releases | Interest Calculator | Tax Webinars | Tax Alerts | Ohio Taxes | The Finder | Ohio Means Jobs

Ohio Department of Taxation | Michael DeWine, Governor | Jeff McClain, Tax Commissioner | Ohio.gov | Mailing Addresses | Privacy Statement | Contact | Feedback | ADA Statement/Accessibility

Administrative Rules – How to Track

- Rulewatchohio.gov
- governor.ohio.gov/wps/portal/gov/governor/priorities/common-sense-initiative
- jcarr@state.oh.us
- RegisterofOhio@state.oh.us

Administrative Rules – How to Track

Not secure | www.registerofohio.state.oh.us



THE REGISTER OF OHIO
PUBLIC NOTICE OF STATE AGENCY RULE MAKING

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- About the Register
- Administrative Rule Making in Ohio
- Participate in Rule Making
- Agency Rule-Making Guides
- How to Read a Rule
- Ohio Administrative Code

Rule Number Quick Search

[\[Advanced Search \]](#)

Rule Number

Rule #

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Public Notices

- [Upcoming Hearings on Proposed Rules](#)
- [Hearing Summary Reports](#)
- [Agricultural Commodity Marketing Programs](#)
- [EPA Final Filing Notices](#)
- [Liability Insurance Certifications](#)
- [Ohio Department of Medicaid Federal Notices](#)

This Week's Public Hearings

[\[Hearings Search \]](#)

State Personnel Board of Review
01/18/2019 10:00 AM
State Personnel Board of Review, 65 East State Street,
12th Floor, Columbus, Ohio 43215-4213

[VIEW NOTICE](#) [ADD TO CALENDAR](#)

Resources

Administrative Rules – How to Track

Not secure | www.registerofohio.state.oh.us/rules/search/details/297781



THE REGISTER OF OHIO
PUBLIC NOTICE OF STATE AGENCY RULE MAKING

ABOUT RULES PUBLIC NOTICES CSI

[Print Rule Detail](#)

Filings for Rule Number 5703-1-01

Title	Information exchange with other states.
Agency	Department of Taxation
Division	
Contact	Kerrie Ryan
Phone	614-466-1956

Actions

Active Historical

- Public Notice
- RSFA Analysis
- Rule
- Appendices
- Hearing Summary Reports
- CSI Business Impact Analysis
- CSI Recommendation
- CSI Agency Memorandum of Response

Title	File Date	Action	Type	Class	Hearing	Eff Date	Exp Date	FYR	PN	RA	R	A	SSR	CB	CR	CA
Information exchange with other states.	05/03/2018	Final File	Amendment	Other		05/13/2018		Y								
Information exchange with other states.	02/12/2018	Original File	Amendment	Other				Y								

Administrative Rules – How to Track

ACTION: Original DATE: 02/12/2018 3:48 PM

Rule Summary and Fiscal Analysis
Part A - General Questions

Rule Number: 5703-1-01
Rule Type: Amendment
Rule Title/Tagline: Information exchange with other states.
Agency Name: Department of Taxation
Division:
Address: 30 East Broad Street 22nd floor Columbus OH 43215
Contact: Kerrie Ryan
Email: Kerrie.Ryan@tax.state.oh.us **Phone:** 614-466-1956

I. Rule Summary

- Is this a five year rule review? Yes
 - What is the rule's five year review date? 2/12/2018
- Is this rule the result of recent legislation? No
- What statute is this rule being promulgated under? 119
- What statute(s) grant rule writing authority? 5703.05
- What statute(s) does the rule implement or amplify? 5703.40
- What are the reasons for proposing the rule?
 The rule is being reviewed as part of the five-year rule review process.
- Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.
 The rule provides the conditions under which the Department may share state information with other states and the federal government. The rule is amended for cosmetic details and to reflect a change in promulgation authority.
- Does the rule incorporate material by reference? No

FileNumber: 5703-1-01; RuleType: Amendment; Date: 02/12/2018 3:48 PM; Agency: Department of Taxation; Division: ; Address: 30 East Broad Street 22nd floor Columbus OH 43215; Contact: Kerrie Ryan; Email: Kerrie.Ryan@tax.state.oh.us; Phone: 614-466-1956

Page 2 Rule Number: 5703-1-01

- If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.
 Not Applicable
- If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.
 Not Applicable

II. Fiscal Analysis

- As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.
 This will have no impact on revenues or expenditures.
 0.00
 Not applicable.
- What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?
 Not applicable.
- Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No
- Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

III. Common Sense Initiative (CSI) Questions

- Was this rule filed with the Common Sense Initiative Office? No
- Does this rule have an adverse impact on business? No
 - Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

Page 3 Rule Number: 5703-1-01

- Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No
- Does this rule require specific expenditures or the report of information as a condition of compliance? No

Administrative Rules

Test Your Knowledge:



Q: Which of the following of the following agencies is **not** involved with the rule review process?

- a. JCARR
- b. CSI
- c. FIA
- d. ODT

A: FIA

Administrative Rules - Procedure



Department of Taxation rule procedure:

No requirement for initial public hearing

Right to appeal directly to the BTA

Only came under the 5 year rule review process 5 years ago



New legislation affecting rules process

SB 221

- Allows for additional input from JCARR to require agencies to create rules
- Allows for additional direct appeal by taxpayer to have rule created
- Still a lot of questions to be answered regarding language and process as set forth

Administrative Rules

- Rules of Note issued during 2018
 - Commercial Activity Tax
 - Cash Discounts (5703-29-14)
 - Municipal Income Tax Rules Effective (5703-41-XX)
 - Sales and Use Tax
 - Manufacturing Rule (5703-9-21)
 - Withholding
 - Withholding on supplemental compensation for Ohio individual income tax purposes (5703-7-10)
 - Dissolution Process
 - Corporations that are dissolving must now submit a Form D-5 to notify the Department of dissolution (5703-1-05)

Legislative Update – Am. Sub. S.B. 51

- **Sales & Use Taxes**

- R.C. 5739.02(B)(57)
- Sales of TPP
 - That is not required to be registered or licensed under the laws of this state
- To a citizen of a foreign nation
 - That is not a citizen of the United States
- Provided that
 - The property is delivered to a person in this state that is not a related member of the purchaser,
 - Is physically present in this state for the sole purpose of temporary storage and package consolidation,
- Subsequently delivered to the purchaser at a delivery address in a foreign nation
- “Temporary Storage”
 - Storage of TPP for a period of not more than sixty days
- Retroactive to October 1, 2017 – but on March 20th

Legislative Update – Am. Sub. S.B. 51

- **Municipal Income Tax**
 - Harmonized the definition of "taxable year" for a business that elects to have the Department of Taxation administer its municipal income tax with the definition that applies to businesses not making that election
 - Effective immediately

Legislative Update – Am. Sub. S.B. 51

- **Real Property Tax**

- Establishes a temporary procedure by which a village may apply for a property tax exemption and the abatement of unpaid property taxes for 2009 and thereafter for a former school building
- To qualify:
 - Unpaid charges must exceed the price paid by the village in 2009, and
 - Property must currently be used for a tax-exempt purpose
- Application for the abatement must be filed before **July 1, 2019**



Legislative Update – Am. Sub. S.B. 51

- **Real Property Tax**

- Authorizes a retrospective tax exemption for improvements subject to a municipal tax increment financing arrangement that were not exempt for prior tax years due to procedural error
 - For tax years 2005 or 2006
 - The property owner or municipality must have originally filed an exemption application for that year that was dismissed for failure to comply with the application procedures
 - New application must be filed by June 18, 2019

Legislative Update – Am. Sub. S.B. 51

- **Public Utility Property Tax**
 - Provides for one-time payments to certain taxing districts to partially compensate those districts for property tax revenue losses due to a decline in the value of nuclear power plants



Legislative Update – Am. Sub. S.B. 51

- The act requires the Director of Budget and Management to transfer money from the General Revenue Fund to the Local Government Fund as soon as possible, and the Tax Commissioner to pay the money to Lake and Ottawa Counties for disbursement

Legislative Update – Am. Sub. S.B. 51

- **School Funding**

- Requires a recomputation of foundation funding for a school district if a nonprofit hospital in the district was mistakenly included in the property tax base for 2016
- Corrected certification will lower the aggregate valuation of taxable property in the school district
- The Commissioner must certify the new 2016 taxable valuation for each school district in the county to the Department of Education
- Make adjustment to the district's FY 2018 and 2019 foundation funding payments necessary to reflect the corrected valuations and make an adjustment payment by August 31, 2019



Legislative Update – Am. Sub. S.B. 51

- **Lodging Tax**

- Extends the deadline for Clermont County to levy an additional 1% lodging tax by extending the date by which the county's convention and visitors bureau must first enter into a contract to construct a lodging tax-funded sports facility
- Prior law required a convention and visitors bureau to enter into a contract by January 1, 2019
- Deadline is now December 31, 2019



Legislative Update – H.B. 133

- Creates new deduction on Ohio Schedule A
 - Compensation and business income that is:
 - For disaster work in Ohio during a disaster response period
 - Received by a nonresident with no other Ohio-sourced income
 - Change was first effective for tax year 2018
- Creates a new exclusion from CAT gross receipts received by an out-of-state disaster business for repairing infrastructure during a disaster response period
- Creates an exemption for the temporary use in Ohio of any equipment by an out-of-state disaster business to repair infrastructure during a disaster response period

Legislative Update – Sub. H.B. 531



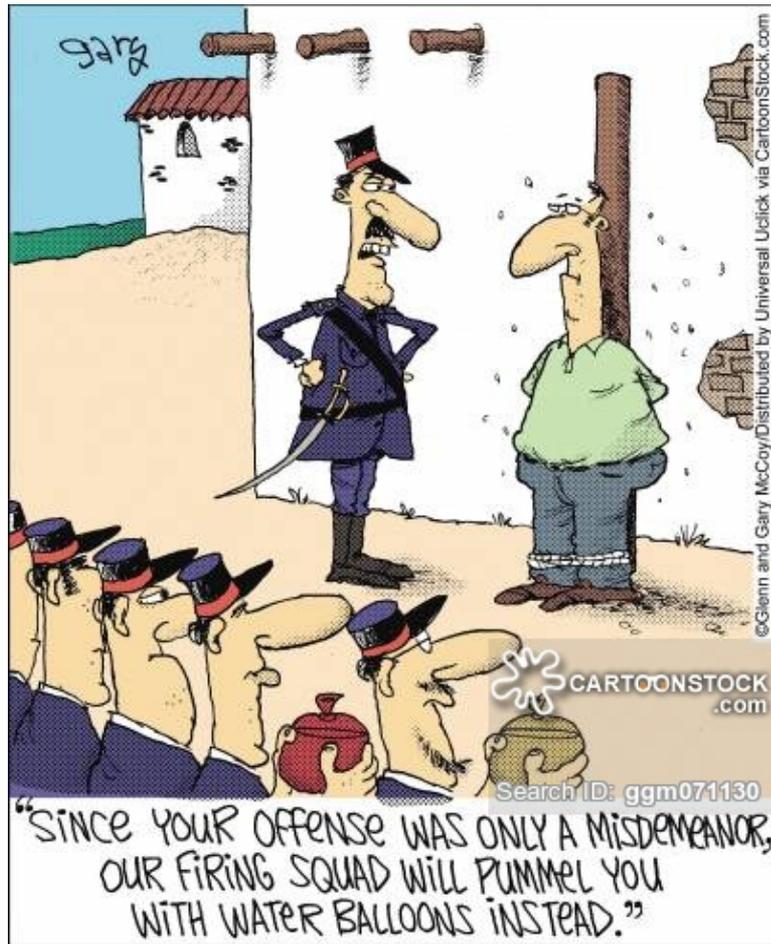
- Limits the amount of a sports event grant that may be awarded for a single event to the lesser of \$2 million or the grant recipient's costs to host the event pursuant to an agreement with the event's sponsor ("qualifying costs"). (The House had removed current law's \$500,000 per-event grant limitation)

Legislative Update – Am. Sub. SB 8

- Am. Sub. SB 8
 - Extends an existing sales and use tax exemption for prosthetic devices to include corrective eyeglasses and contact lenses, beginning July 1, 2019.
 - Current exemption explicitly excluded eyeglasses and contact lenses. See R.C. 5739.01(JJJ).



Legislative Update – Sub. S.B. 66



- Aligns a withholding violation with a sales tax violation, allowing the Department to issue a citation for the offense. Prior to this, the violation was a felony. The change lessened the penalty for a first-time offender, making it an unclassified misdemeanor.

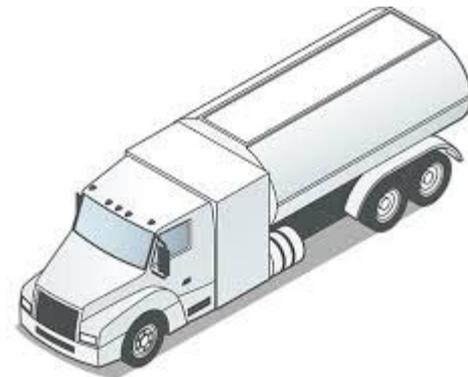
Legislative Update – Sub. H.B. 430

- Modifies the language governing the sales and use tax exemption for certain kinds of property used in the production of oil and gas.



Recent Court Decisions - Willoughby Hills Dev. & Distrib., Inc. v. Testa, Slip Opinion No. 2018-Ohio-4488

- Gross receipts—Gasoline distributor not eligible for gross receipts exclusion from commercial activity tax under R.C. 5751.01(F)(2)(I) because it was not acting as agent of manufacturer/supplier when selling gasoline to retailers.



Recent Court Decisions -Cincinnati Reds, L.L.C. v. Testa, Slip Opinion No. 2018-Ohio-4669.

- Use tax—Sale-for-resale exemption, R.C. 5739.01(E)—Promotional items distributed at professional baseball games were transferred with the purpose to “resell” them for consideration and therefore qualified for tax exemption.



Recent Court Decisions - Cincinnati Reds, L.L.C. v. Testa, Slip Opinion No. 2018-Ohio-4669.

- Testimony suggested
 - that advertisement of specific promotional items occurred in advance using various media platforms.
 - that the promotional items are unavailable to general public.
 - the ticket prices are calculated to cover the cost of the promotional items and other overhead associated with holding the items as inventory.
 - that the fans purchasing tickets to the games with promotional items “[a]bsolutely believe that they are purchasing both the promotional item and the right to view the game at the ballpark.” Individuals believe they are purchasing both items.
 - the promotional items are never underordered, but instead are estimated based on projected attendance.
- The Reds argued that
 - consideration is paid when there is a transfer of the valuable property to induce the purchase of the ticket.
 - a separately stated price was not necessary in this case.
- The Court reasoned that the purchaser of promotional items has the burden of proving they purchased promotional items for the purpose of reselling them to fans.
- The Court was persuaded by all of the facts and circumstances of this case and the Reds overcame the burden of proof that they did not intend to give them away rather than sell the items.
- The Court then reasoned that the promotional item constituted a thing of value in exchange for which the fans paid money that was included in the ticket price (i.e., consideration). This would be distinguished from unexpected items that fans might receive when attending a game.

Recent Court Decisions - Pi In The Sky, L.L.C. v. Testa, Slip Opinion No. 2018-Ohio-4812

- Sale-for-resale exception—Limited liability company was not “engaging in business” within meaning of R.C. 5739.01(E) by leasing aircraft to its sole member—Board of Tax Appeals’ decision affirming Tax Commissioner’s assessment of use tax affirmed.



Recent Court Decisions - Pi In The Sky, L.L.C. v. Testa, Slip Opinion No. 2018-Ohio-4812

- Facts:
 - An entity purchased the airplane and claimed “resale” under R.C. 5739.01(E).
 - The airplane was immediately leased to a commonly owned entity, a hair salon.
 - An individual was an owner in the company that leased the airplane, as well as, the hair salon and signed on behalf of both the lessor and the lessee in the purported lease transaction between taxpayer and the hair salon.
 - There was no documented use by any entity other than the hair salon.
 - There was an appearance of personal use by the individual (who was also a pilot).
 - Arguably, the lease payments were below market.
- Ultimately, the OSC determined that the entity was not “engaging in business” by leasing the aircraft to its sole member.

Recent Court Decisions - Seaton Corp. v. Testa, Slip Opinion No. 2018-Ohio-4911.

- R.C. 5739.01(B)(3)(k)—Sales tax imposed on transactions by which “employment service” is provided—R.C. 5739.01(JJ)—Definition of “employment service”—Providing personnel to perform work or labor “under the supervision or control of another”—Employment service inquiry under R.C. 5739.01(JJ) focuses on who controlled workers’ schedules and workplace assignments based on the evidence presented, with the “supervision or control” exercised involving the specific work performed by the provided personnel.



Recent Court Decisions - Seaton Corp. v. Testa, Slip Opinion No. 2018-Ohio-4911.

- At the BTA:
 - Seaton was assessed for sales tax, while Kal Kan was assessed for use tax. Kal Kan operates a pet food manufacturing plant in Columbus, Ohio. Kal Kan contracted with Seaton to provide staffing services to assist in the production operations. Kal Kan and Seaton both contend that the service provided by Seaton does not constitute “employment services” as defined in R.C. 5739.01(JJ), or is excludable from the definition pursuant to R.C. 5739.01(JJ)(1) and/or (3). The court did not address the latter only because it concluded that the activity does not meet the definition of an employment service.
 - Seaton stated that it operated an “on-site management operation” which *** hired, trained and managed the workers.” Seaton made “job assignments,” monitored “the productivity of the work,” and determined “whether *** [the workers] were operating safely” and communicated “any new procedures to *** [the workers].”

Recent Court Decisions - Seaton Corp. v. Testa, Slip Opinion No. 2018-Ohio-4911.

- Factors:
 - Seaton will “furnish, manage and supervise” workers.
 - Seaton workers “are employees” of Seaton and that Seaton has “the exclusive right to control all” Seaton workers.
 - Seaton must “maintain an attendance policy” for Seaton workers.
 - Seaton was provided on-site dedicated office space and furnished it at its own cost.
 - Seaton was to “provide on-site supervision that is responsible for all shift management of the contractor employees”.
 - Seaton was required to screen the candidates.
 - Workers were provided uniforms and safety equipment, at Seaton’s expense.



Recent Court Decisions - Seaton Corp. v. Testa, Slip Opinion No. 2018-Ohio-4911.

- At the Supreme Court:
 - The Supreme Court upheld the BTA’s decision. “Seaton contractually retained and, in practice, actually exercised the same level of supervision over its employees” and does not meet the supervision or control requirement of a taxable employment service under 5739.01(JJ) and affirmed the findings of the BTA.

Recent Court Decisions - Great Lakes Bar Control, Inc. v. Testa, Slip Opinion No. 2018-Ohio-5207.

- Sales tax on “building maintenance and janitorial services” under R.C. 5739.01(B)(3)(j)—Appellee’s beer-line service is not a “building maintenance and janitorial service” within meaning of R.C. 5739.01(II).



Recent Court Decisions - Great Lakes Bar Control, Inc. v. Testa, Slip Opinion No. 2018-Ohio-5207.

- R.C. 5739.01(II)
 - "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made.
 - > \$5000
 - Does not include sanitation services in a meat processing plant.

Recent Court Decisions - Great Lakes Bar Control, Inc. v. Testa, Slip Opinion No. 2018-Ohio-5207.

- Supreme Court:
 - Not going to limit the analysis to the hyper-literal meaning of each word.
 - The beer-line services do not fit within the common usage of “cleaning” in a janitorial sense. Janitorial cleaning services are generally understood to encompass activities such as washing floors or windows, removing garbage, vacuuming, dusting and the like.
 - Not an exhaustive list.
 - No one would take the ordinary meaning of janitorial cleaning to include inspecting and flushing beer-tap lines.



Recent Court Decisions - Lottery Subl3 v. Testa, Ohio BTA Case No 2016-665, 2016-658, 2016-659, 2016-660, 2016-661.

- Based on the statutory framework for transfers of lottery prize awards in R.C. 3770, the repeal of the CFT, and the apparent failure to harmonize the two, that the present situation is the type with R.C. 5703.05(B) contemplates. The amounts should be refunded to the entity.



Questions?

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Laura Stanley

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