

OHIO STATE BAR ASSOCIATION TAXATION COMMITTEE
Sales/Use Tax Subcommittee Report
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I. EXEMPTIONS

A. Transportation for Hire:

Battle Axe Construction v. McClain, Ohio BTA Case No. 2022-559 (October 11, 2022). Exemption denied for truck not used primarily to transport property belonging to others. The BTA focused on a questionnaire response referencing transportation of waste, which is generally not considered to be property of another since it had been discarded. No BTA evidentiary hearing occurred. *See N.A.T. Transp., Inc. v. McClain* for when waste can qualify for “belonging to others” (i.e., where they control its disposition).

B. Direct Use in Farming:

Quinter v. McClain, Ohio BTA Case No. 2022-431 (October 24, 2022). Although the taxpayer identified multiple farming activities, he did not connect them to use of the utility task vehicle at issue. Furthermore, the taxpayer did not file tax returns reflecting a farming business. Therefore, exemption was denied. No BTA evidentiary hearing occurred.

II. PROCEDURE

A. Sample Method:

Design Molded Plastics, Inc. v. McClain, Ohio BTA Case Nos. 2021-183 and 2021-313 (October 11, 2022). The BTA upheld the agreed to audit sampling methodology, noting that it can only potentially be successfully challenged as unrepresentative (e.g., due to inclusion of an expense in the wrong account) upon quantifying the impact of alleged sampling errors on total tax due. More importantly, the taxpayer waived any argument due to the executed sample arrangement.

B. Mark Up Audits:

Club Ethio v. McClain, Ohio BTA Case No. 2022-28 (December 27, 2022). Markup audit upheld since taxpayer failed to provide probative/credible evidence to establish an alternative to audit's conclusions. No BTA evidentiary hearing occurred.

C. Responsible Party Liability:

Brooks v. McClain, Ohio BTA Case No. 2020-1152 (December 9, 2022). Responsible party status affirmed. Individual claimed he merely lived next door to the LLC's owner and became a member of the LLC to assist the owner obtain a lease; the owner was a felon. He allegedly did not receive financial gain and had no financial interactions with the LLC. The BTA affirmed the individual as a responsible party because he was publicly listed as a member of the LLC, signed a check, and signed the LLC's lease (including as guarantor).

III. LEGISLATION

A. Bad Debt Deduction Expanded to Private Label Credit Accounts – H.B. 223

Amends R.C. 5739.121 to allow vendors to deduct bad debts from private label credit accounts carrying, referring to, or branded with the vendor's name or from purchases from the vendor, its affiliates, or franchisees. The amount of the deduction is the unpaid balance on private label credit accounts or such receivables that are bad debts and charged off as uncollectible on the lender's books after July 1, 2023. To qualify for the deduction, the lender must have complied with applicable federal and Ohio consumer protection laws.

The vendor may carry forward bad debts exceeding its taxable sales for the month on succeeding tax returns.

Supersedes previous cases limiting bad debt deduction to debts written off *by the vendor* on its own books. *See e.g., Home Depot USA, Inc. v. Levin*, 2009-Ohio-1431; and *Chrysler Financial Co., LLC v. Wilkins*, 2004-Ohio-3922.

B. Potential Ohio Tax Amnesty – H.B. 45

The Director of Budget and Management may authorize a two-month tax amnesty program during calendar year 2023 if she determines the General Revenue Fund requires additional proceeds from the amnesty program to meet obligations required to be paid from the GRF during calendar year 2023. Determination must be made by November 1, 2023. Amnesty program would include state and local sales / use tax, amongst other taxes administered by the Tax Commissioner.

IV. OHIO ADMINISTRATIVE CODE

- A. Ohio Admin. Code 5703-9-26:** Removes reference that Internet services are sourced to the consumer's place of primary use to comply with Internet Tax Freedom Act.

- B. Ohio Admin. Code 5703-9-28:** Defines “magazines distributed as controlled circulation publications,” which are exempt from tax, as: (1) containing at least 24 pages; (2) containing at least 25% editorial content; (3) issued at regular intervals at least 4 times per year; (4) without charge to the recipient; and (5) not owned or controlled by persons publishing magazines as auxiliary to or to advance its business interests.
- C. Ohio Admin. Code 5717-1-16:** Ohio Rules of Evidence apply during Board of Tax Appeals merit hearings “unless inconsistent with these rules, inconsistent with other binding law, or as justice so requires.”
- D. Five-Year Rule Review:** Technical / nonsubstantive changes made to the following regulations:
 - 1. Ohio Admin Code 5703-9-14 (Construction contracts; exemption certificates) – updates incorrect IRC reference.
 - 2. Ohio Admin Code 5703-9-36 (Negative equity in motor vehicle sales and leases).

V. OHIO DEPARTMENT OF TAXATION GUIDANCE

Info. Release 1999-03 (Revised Oct. 2022)

Reiterates Department’s position concerning taxation of purchases by government employees and reflects recent GSA guidance. Purchases by the federal, state, and local governments are exempt from Ohio sales / use tax. However, purchases made by government employees as the consumer are subject to tax, even if the employee seeks reimbursement from the government.

This release explains distinction between GSA SmartPay Program credit cards that may be Centrally Billed Accounts (CBA) and Individually Billed Accounts (IBA). Purchases made using CBAs are exempt and do not require exemption certificates. The Department indicates purchases made using IBA cards, which may only be used for travel-related purchases, are not exempt as government purchases. The 6th digit of the card number determines whether it is a CBA or IBA card.

Record keeping issue – The Department indicates that the vendor must retain the invoice and a copy of the CBA card to establish the exemption for government purchases. This unusual requirement to retain the entire card is contrary to the Payment Card Industry Data Security Standards and creates unnecessary security risk. Typically, vendors only retain the last 4 digits of the credit card number in their records for security purposes.