2010
Ohio Tax Update

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Contents

Legislative Matters

Cases & Rulings

Legislative Matters

Franchise & Income:

Sub. S.B. 106 (effective March 24, 2010) amended R.C. 5747.01 to modify the definition of "qualifying transfer" in the definition of "resident" for purposes of the Ohio income tax on trusts. Specifically, the act modifies this provision by specifying that a "qualifying transfer" is a transfer of assets, net any related liabilities, directly or indirectly to a trust, if the transfer is, among other things, made to a trust on account of the will of a testator who was domiciled in Ohio at the time of the testator's death for purposes of the taxes levied under the Ohio Estate Tax Law.

Sub. S.B. 155 (effective March 31, 2010) amended R.C. 5747.08 to permit an individual taxpayer to direct the state to deposit the taxpayer's income tax refund into a checking account or preexisting college savings plan or program account offered by the Ohio Tuition Trust Authority. This direct deposit applies to taxable years beginning on or after January 1, 2010.

Am. Sub. S.B. 194 (effective August 19, 2010) amended R.C. 5747.08 to permit an individual taxpayer who files an income tax return electronically to direct the state to deposit the taxpayer's refund into a checking, savings, or individual retirement account.

Sub. H.B. 300 (effective February 26, 2010) amended R.C. 5725.18 to exclude, for the period ending Sept. 30, 2009, payments received from the Medicaid program from domestic insurance companies' calculations of franchise tax payments for their health insurance lines of business.

Sub. H.B. 313 (effective July 7, 2010) amended R.C. 5705.19 to authorize counties to levy taxes outside the 10-mill limitation for soil and water conservation districts and Ohio State University Extension services.

Sub. H.B. 495 (effective December 15, 2010) amended various provisions to incorporate changes in the Internal Revenue Code (IRC) that occurred between October 16, 2009 and the act's effective date. The principal amendments to the IRC and other federal statutes that are being incorporated by the act are the "Worker, Homeownership, and Business Act of 2009" and the "Small Business Jobs Act of 2010." This incorporation applies to only general, undated references to the IRC or other federal statutes, and does not apply to references that specify a date.

Personal Property:

Am. Sub. S.B. 232 (effective June 17, 2010) provides an exemption from public utility property taxes for alternative energy producers and to replace the taxes with annual service payments based upon the nameplate capacity of the facility. Without the provision, such entities would be taxed as public utilities and would be required to pay personal property taxes on all equipment associated with the projects. The bill was passed by the House and the Senate. As emergency legislation, it took effect immediately upon signing by the governor.

Emergency rules implementing the exemption provisions of Am. Sub. S.B. 232 were adopted in September 2010. They are found at O.A.C. 122:23 or at http://development.ohio.gov/ProposedRules/erp.htm.

Omnibus Changes:

Am. Sub. H.B. 519 (effective September 10, 2010) amended various tax provisions with respect to casino implementation in Ohio. Various provisions in R.C. Chapter 5747 are amended to impose income tax upon casino winnings, impose income tax withholding on casino winnings, and allow a deduction for losses from wagering transactions. The act added R.C. Chapter 5753 to impose a gross revenue tax on casinos and related provisions.

Am. Sub. S.B. 181 (effective June 13, 2010) made numerous changes to various tax provisions, including:

With respect to the commercial activity tax ("CAT"), the act amends R.C. 5751.08 to authorize the Tax Commissioner to refund commercial activity tax paid by a business that does not owe any tax (without a CAT liability) regardless of the business's registration status. Also, the act amends R.C. 5751.08 and 5751.09 to authorize a taxpayer and the Tax Commissioner to agree to extend the four-year CAT assessment and refund statute of limitations.

The act modifies the tax exemption applicable to property owned by or leased to a board of education. Specifically, the act provides that any real or personal property "owned by or leased to" a board of education, where the lease term is at least 50 years, is exempt from taxation.

The act added R.C. 5709.084 which provides a property tax exemption for a new convention center located in a county with a population exceeding 1.2 million. Additionally, R.C.

5739.02 was amended to exempt construction materials and services sold to a contractor for incorporation into a convention center from sales and use taxation, if the convention center qualifies for property tax exemption as described immediately above. This exemption expires one year after construction of the convention center is completed.

Cases & Rulings

Franchise & Income:

Personal Income:

In *Information Release IT 2010-01*, "Announcement of Direct Deposit Options for Ohio Income Tax Refunds – Issued October 2010," the Department announced new direct deposit options for Ohio individual income tax refunds. The release also explains how the Department will handle situations where the total refund requested by a taxpayer on his or her return does not match the amount ultimately issued after further review.

In *Turner v. Levin*, 124 Ohio St. 3d 1233, 2010-Ohio-922, the Supreme Court of Ohio dismissed the taxpayer's appeal for want of jurisdiction. The Supreme Court held that taxpayer's notice of appeal was too general when it stated that the BTA "improperly interpret[ed] every instance of fact laid out."

Corporation Franchise:

In *Information Release CFT 2010-01*, "Franchise Tax Filing or Payment Obligations for Corporations Subject to the Phase-Out – Issued October 2010," the Department reminded taxpayers that the phase-out is complete and that most corporations no longer have to file returns. However, those corporations that remain subject to the tax (primarily financial institutions) must still file form FT-1120 as prescribed by law.

In *Information Release CFT 2010-02*, "Waiver of Corporation Franchise Tax Filing Requirements for 2011 for S Corporations – Issued October 2010," the Department advised S Corporations that the Tax Commissioner had issued a final determination waiving the filing requirements for such corporations.

Municipal Income:

In *City of Riverside v. State of Ohio* (Ohio App. Dec. 2, 2010), 2010-Ohio-5071, the Tenth District Court of Appeals upheld an Ohio law—R.C. 718.01(H)(11)—that exempts employees who work at an air force base from municipal income taxation, unless that income taxation is based on the employee's residence. As a result of the decision upholding this statute, people who work at Wright Patterson Air Force base may only be subject to municipal income taxation by the cities in which they live—not simply by virtue of their working at the base.

In *Matchett v. Chillicothe Municipal Bd. of Appeal*, BTA No. 2007-M-1148 (March 2, 2010), the BTA held that a severance payment paid to a nonresident former employee was subject to municipal income tax. The ordinance in question included severance payments within its definition of taxable wages and the employer maintained a location in the city; therefore, withholding was correct.

Employer Withholding:

In *Ross v. Levin* (8th Dist. 2010), 2010-Ohio-4009, 2010 Ohio App. LEXIS 3397 (August 26, 2010), the Court of Appeals held that there was not enough evidence in the record to hold an individual personally liable for a corporation's failure to pay withholding taxes under R.C. 5747.07(G). The individual contended that although he was listed in corporate documents in 1998, he was not responsible for the period in question. Moreover, he testified that all the corporate records were destroyed in a flood.

School District Income:

In *Doss v. Levin*, BTA No. 2008-M-725 (September 14, 2010), the BTA held that there was no abuse of discretion by the Tax Commissioner in imposing penalties upon a taxpayer who filed and paid school district income tax during a tax amnesty program.

Ad Valorem:

Procedure:

In *Toledo Public School Dist. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (2010), 124 Ohio St. 3d 490, 2010-Ohio-253, the Supreme Court of Ohio held that where a valuation complaint was prepared by a company that managed a property, but was reviewed and filed by an attorney, the complaint was valid and the BOR (and BTA) had jurisdiction over the matter. The company had identified itself as the complainant, but not the owner, on the complaint. It also indicated it was a management company acting on behalf of the owner. The Court held this

was sufficient to notify parties of the management company's representative capacity.

In *Meadows Development LLC v. Champaign Cty. Bd. of Revision*, 124 Ohio St. 3d 349, 2010-Ohio-249, the Supreme Court of Ohio held that where a BOR first certifies its decision to the property owner, and within the 30-day appeal period sends a copy of the decision to the owner's attorney, a new 30-day appeal period begins to run. The Court viewed the subsequent mailing as a certification of a new decision. As a result, the Court decided that a notice of appeal that was filed more than 30 days after the notice of decision had been mailed to the property owner, but within 30 days after the decision had been sent to the owner's attorney, was timely filed.

In *Newbridge Condominium LLC v. Franklin Cty. Bd. of Revision*, BTA Nos. 2008-K-348 and 2008-K-357 (Sept. 14, 2010), the BTA followed prior decisions and held that where a BOR issues a decision for a second tax year pursuant to the continuing complaint provision of R.C. 5715.19(D), and the property owner subsequently files a valid complaint for the second year, the decision of the BOR for the second year is void and the new complaint is in play.

In *Exchange Street Assocs., L.L.C. v. Donofrio* (9th Dist. 2010), 187 Ohio App. 3d 241, 2010-Ohio-127, the Court of Appeals reversed a decision of the court of common pleas that the taxpayer had not perfected its appeal from the county BOR. The taxpayer had filed its notice of appeal with the BOR and with the court of common pleas within 30 days and named all proper appellees, but failed to provide certified mail service to each of the appellees. The Court of Appeals held that the filing of the notice with the BOR and court of common pleas within the 30 day period was a jurisdictional requirement, but that the service of other appellees by certified mail was not.

In *Bd. of Edn. of Columbus City School Dist. v. Franklin Cty. Bd. of Revision*, BTA No. 2007-V-60 (Jan. 12, 2010), the BTA held that it did not have jurisdiction over an appeal filed by the board of education 36 days after the BOR issued its initial notice of decision letter, but 29 days after a purported correcting letter was mailed. The initial letter indicated an incorrect parcel number, which was corrected on the subsequent letter. However, the BOR never met to vacate its earlier decision letter. Hence the appeal was found to be beyond the 30-day appeal period.

In *Amu & Anu, Inc. v. Wilkins*, BTA No. 2007-K-147 (Feb. 2, 2010), the BTA held that a personal property taxpayer's notice of appeal had failed to state with specificity the taxpayer's objections or claimed errors; the taxpayer's notice of appeal objected only to "the costs used to assess our personal property." Thus, the BTA's review of the Tax Commissioner's final determination denying the taxpayer's petition for reassessment was confined to the taxpayer's claim that the values that the Tax Commissioner used overstated the value of the taxpayer's property. The BTA affirmed the Tax Commissioner's final determination because the taxpayer failed not only to file a personal property tax return, but also failed repeatedly to produce business records to show the actual cost of the personalty.

In *Meijer Stores L.P. v. Lucas Cty. Bd. of Rev.*, BTA No. 2008-M-186 et seq. (March 4, 2010), the BTA granted a property owner's series of subpoenas for the deposition of an appraiser who the appellee school district identified after the close of the BTA's 120-day discovery period. Because the witness had not been disclosed within the 120-day discovery period, the BTA found that good cause was shown to support the extension of the discovery period. However, the BTA rejected the property owner's request that the appraiser be required to produce copies of appraisals that he had prepared of other unrelated properties.

In *Newbridge Condominium LLC v. Franklin Cty. Bd. of Revision*, BTA No. 2008-K-348 et seq. (Sept. 14, 2010), the BTA held that a property owner's filing of a new property tax valuation complaint for tax year 2007 cut off the "carry-over effect" of a pending 2006 appeal of the property's value; thus, the pending appeal related only to tax years preceding 2007.

Valuation:

In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision* (2010), 127 Ohio St. 3d 44, 2010-Ohio-4468, the Supreme Court of Ohio held that the carry-over provisions of R.C. 5715.19(D), with respect to real estate valuation complaints, did not apply to years after and including tax years in which the county auditor had a statutory duty to re-determine the value of real property. Thus, a final decision on a valuation complaint does not carry over to sexennial reappraisal (and, possibly, triennial update) years—such reappraisals "cut off" the carry-over effect. However, the BOR and BTA do have jurisdiction to hear evidence and issue a decision, even after a reappraisal occurs—such a decision would relate back to the original tax year at issue, and carry over until a reappraisal (or, possibly, an update) occurs.

In *MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision* (2010), 126 Ohio St. 3d 430, 2010-Ohio-3781, the Supreme Court of Ohio ruled that a party that filed a real property valuation complaint (in this case, a board of education) was a necessary party to all proceedings. Therefore, when the BOR failed to notify a board of education of the property owner's appeal to the BTA from the BOR's decision, the BTA should have vacated its decision approving a stipulation of value between the BOR and the property owner, even though the board of education filed its motion to vacate beyond the 60-day appeal period. Because the board of education had filed the original complaint and had not been notified of the appeal or the BTA's decision, its appeal period from the decision of the BOR had never commenced.

In *Akron Centre Plaza L.L.C. v. Summit Cty. Bd. of Revision* (Oct. 31, 2010), Slip Opinion No. 2010-Ohio-5035, the Supreme Court of Ohio agreed that a second complaint filed during a three-year period was valid when it alleged that the reduction in valuation was due to the impact of a reduction in occupancy. In the case of the first complaint, the property owner had relied upon a prospective loss of occupancy that it anticipated would occur following the expiration of a major tenant's lease. In the second complaint, the property owner relied upon the actual loss of occupancy after the lease had expired. The Court distinguished between the impact of the *expected* loss of occupancy, and the impact of the *actual* loss of occupancy, holding that the second complaint was not barred by R.C. 5715.19(A)(2) because the actual loss was not taken (in fact, because it had not yet occurred, it could not have been taken) into consideration with respect to the first complaint.

In *M/I Homes of Cincinnati, LLC v. Warren Cty. Bd. of Revision,* BTA No. 2009-V-3796 (Sept. 21, 2010), the BTA held that the value of a block of 29 vacant parcels of land held by an integrated home builder should have been based upon the separate value of each parcel using the market approach to value. It rejected the taxpayer's argument that the parcels would only be sold, if vacant, as a block and that a discounted cash flow analysis best reflected the value of the all the parcels. The BTA did, however, order a modest reduction in value based upon the initial steps of the appraiser, which indicated the market value of the individual lots was lower than the value that the Auditor had placed upon them.

In *Bd. of Educ. of Newark City Schools v. Licking Cty. Bd. of Revision*, BTA No. 2007-V-481 (July 13, 2010), the BOR reduced the value of the property based upon the taxpayer's evidence and the board of education appealed. The BTA rejected the taxpayer's evidence of value because it was based on historical information for the subject property, not on market data. In addition to rejecting the taxpayer's evidence of value, the BTA rejected the reduction made by the BOR because, being based on the taxpayer's evidence, it was not based on credible evidence.

In *Bd. of Educ. of the Washington Local Schools v. Lucas Cty. Bd. of Revision*, BTA No. 2007-V-1784 (May 11, 2010), the BTA rejected the appraisal evidence that a property owner offered because the appraisal's effective date was not the relevant tax lien date, because the appraiser relied upon actual income and expenses from the property (rather than market-based data), and because the appraiser failed to make meaningful adjustments to the sales comparisons that he had selected. The property was a strip mall that had experienced low occupancy due, all parties generally agreed, to one of the tenants being an adult entertainment venue. The BTA emphasized that a market-based approach would have presumed a "normal" balance of tenants, and would not have presumed a high vacancy rate due to the property's management's decision to accept a possibly unsavory tenant.

In *Bd. of Educ. of the Newark City Schools v. Licking Cty. Bd. of Revision*, BTA No. 2007-V-481 (July 13, 2010), the BTA held that a property owner's and his broker's opinions of value did not constitute probative evidence of the value of an apartment complex. The witnesses' opinions of value were predicated upon the actual income and expenses of the property, failed to consider market income and expenses, and failed to account for market vacancy rates.

In *Olentangy Local Sch. Dist. Bd. of Educ. v. Delaware Cty. Bd. of Revision*, BTA No. 2006-M-1363 (April 20, 2010), the BTA found that neither the appellant school board, nor the appellee property owner, had adduced competent or probative evidence of the property's value as of the tax lien date. The BTA agreed with the school district that the BOR had lacked sufficient evidence to warrant the reduction in value that it had granted; the BTA rejected the proposition that an analysis of value should have presumed that the preceding year's valuation was correct, and then made adjustments to that value. Instead, the BTA required that independent evidence of value for the relevant tax year be adduced. Since no party introduced such evidence of value, the BTA reinstated the Auditor's original value of the property

In *Crestwood Villa Assoc., LP v. Crawford Cty. Bd. of Revision*, BTA No. 2007-V-515 (Jan. 12, 2010), the BTA affirmed the BOR's decision not to change the value of a subsidized housing complex. The owner presented an "Owner's Opinion of Value" authenticated and adopted by the vice president of the general partner of the partnership that owned the property. This witness also discussed the property's characteristics and history. However, the BTA found that this evidence was insufficient to warrant a change in the Auditor's and BOR's determinations of value. The BTA reiterated its frequent criticisms of "Owner's Opinions of Value" that lack any identification of an author or any underlying substantiation. The BTA also questioned the capacity of a vice president of a general partner to qualify as an "owner" for the purposes of offering non-expert testimony regarding value. Like the BOR, the BTA retained the Auditor's valuation of the property.

In *Bd. of Educ. for Washington Local Sch. Dist. v. Lucas Cty. Bd. of Revision*, BTA No. 2006-A-1715 (April 13, 2010), the BTA emphasized that appraisals based on the income approach should utilize market-based income and expenses, rather than merely relying upon actual income and expense data from the property that is subject to the appeal. The BTA explained that "Relying solely upon the subject's actual experience can be deceptive, because without a comparison to the market, there is no way to verify whether the subject's income and expenses are affected by variables that can be controlled, such as, for example, management practices and condition of the property." Appraisal presented for tax purposes should rely upon market forces, not simply the experience of the subject property.

In *Cincinnati School Dist. Bd. of Educ. v. Hamilton Cty. Bd. of Revision*, BTA No. 2009-K-1863 (October 6, 2010), the BTA retained a BOR's and Auditor's determination of the value of a city-owned parking lot in Cincinnati. The school district had filed a valuation complaint seeking to raise the property's value, based on the school district's appraiser's opinion that the property's highest and best use was as a mixed-use development, rather than its current use as a parking lot. The BTA found that there was insufficient evidence to support this appraiser's opinion about the property's highest and best use, particularly because the property's former improvements had been razed in 1999 and the property had remained undeveloped since that time. Further, there were no immediate plans for the property's redevelopment and the economic climate in downtown Cincinnati was not robust; thus, the BTA, like the BOR, retained the Auditor's valuation of the subject property.

In *Downtown Properties, Ltd. v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2008-V-37 (July 27, 2010), the BTA granted a reduction to a grade C commercial office building in Cleveland based upon the property owner's appraiser's testimony and report showing that a market vacancy rate of 50% applied to the building. The school district complained that this figure represented the property's actual economic vacancy, rather than a market-based vacancy rate; however, the BTA found that the appraiser had demonstrated with a range of comparables and adjustments that the market supported a 50% vacancy rate for the subject property.

In *Wingates, LLC v. Franklin Cty. Bd. of Revision*, BTA No. 2007-M-192 (Aug. 10, 2010), the BTA declined to adopt an opinion of value that an appraiser offered of a 1700-unit apartment complex. The appraiser opined that the property's highest and best use was as a roughly 400-unit complex; however, the appraiser failed to offer an opinion of the property's value as is was currently improved. The BTA explained that "A determination that a property's highest and best use as improved has changed necessarily involves a consideration of the value of the property as improved." Thus, the BTA instead based its determination of the property's value on the opinion of a different appraiser, who concluded to a value based on the property as it had been improved on the tax lien date.

In *Bd. of Educ. of the Groveport Madison Local Sch. Dist. v. Franklin Cty. Bd. of Revision*, BTA No. 2008-K-946 (Dec. 7, 2010), the BTA reiterated its skepticism of the use of effective gross income multipliers ("EGIMs") in developing opinions of value; however, the BTA did find that the property owner's appraiser's income approach to value constituted sufficient evidence to support a reduction in value. The case dealt with the value of a Section 8 subsidized housing complex.

Sale:

In *Cincinnati Sch. Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2010), 127 Ohio St. 3d 63, 2010-Ohio-4907, the Supreme Court of Ohio ruled that a foreclosure sale would not normally be an arm's-length transaction because it is typically conducted under duress. The Court noted that R.C. 5713.04 provides that the price paid at a forced sale shall not be taken as the value of property. While it is presumed that a foreclosure sale is forced, parties may submit evidence to the contrary. In this case, the evidence submitted by the property owner was not sufficient to overcome the presumption.

In *Olentangy Local Sch. Dist. Bd. of Edn. v. Delaware Cty. Bd. of Revision* (2010), 125 Ohio St. 3d 103, 2010-Ohio-1040, the Supreme Court affirmed the BTA's decision that (i) a sale that took place 24 months prior to tax lien date was sufficient to make the prima facie case that the price paid was indicative of the value of the property; and (ii) the evidence presented by the taxpayer to try to show changes in the market place between the date of the sale and the tax lien date was not sufficient to indicate that the sale had not been "recent."

In *HIN, LLC v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St. 3d 481, 2010-Ohio-687, the Supreme Court of Ohio held that when a property is sold in two arm's-length transactions, the sale closer to the tax lien date presents the better evidence of the value of the property on that date.

In *Bd. of Educ. of the South-Western City Sch. Dist. v. Franklin Cty. Bd. of Revision* (2010), BTA No. 2008-V-197 (July 27, 2010), the BTA considered the value of a property for tax years 2006, 2007, 2008, and 2009. Between 2006 and 2009, the property had been sold in four transactions:

- March 1, 2006 – Arm's length sale - $110,000
- March 30, 2007 – Sheriff's sale - $74,000
- Sept. 24, 2007 – Arm's length sale – $78,500
- July 17, 2008 – Arm's length sale – $75,000

The BTA disregarded the sheriff's sale, as not being an arm's-length transaction, but then applied the purchase prices associated with the other three sales to the 2006 – 2009 tax lien dates, assigning the purchase prices to the January 1 tax lien dates to which the arm's-length sales dates were closest. Thus, the BTA determined that the property's value was $110,000 for 2006, $78,500 for 2007 and 2008, and $75,000 for 2009.

In Bd. of Educ. of the Heath City Sch. Dist. v. Licking Cty. Bd. of Revision, BTA No. 2007-M-879 (Sept. 21, 2010), the BTA held that a July 2006 sale of several parcels of property constituted the best evidence of the value of those parcels on January 1, 2006—the tax lien date of the 2006 tax year at issue. While certain of the constituent parcels had been purchased by the eventual seller of the property in about December 2005, the BTA held that the total purchase price paid for all of the parcels in the July 2006 sale constituted the best evidence of value.

In *FirstCal Industrial 2 Acquisitions L.L.C. v. Franklin Cty. Bd. of Revision* (2010), 125 Ohio St. 3d 485, 2010-Ohio-1921, the Supreme Court of Ohio ruled that the portion of the price paid for a number of properties in the case of a bulk sale that was listed on a conveyance fee statement was presumptively the value of the particular property in question. The party challenging the allocation of value listed on a conveyance fee statement has the burden of presenting evidence that the allocation does not reflect the value of the property. Merely allocating the purchase price based upon the previous proportional value of the properties was not sufficient. *See also Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2008-M-108 (Dec. 28, 2010) (finding that conveyance fee statement and deed listing purchase price constituted prima facie evidence of property's value, even though business operations were bought along with property in same transaction for additional consideration); *Newbridge Condominium LLC v. Franklin Cty. Bd. of Revision*, BTA No. 2008-K-348 et seq. (Sept, 14, 2010) (holding that conveyance fee statement and deed of sale only a few months removed from tax lien date constituted prima facie evidence of property's value).

In *Walgreen Co. v. Stark Cty. Bd. of Revision*, BTA No. 2007-M-1268 (Aug. 10, 2010), the BTA held that the price paid to a developer for an improved property that was built to the purchaser's model specifications represented the value of the property for tax purposes. The transaction occurred within one year of the tax lien date. The BTA cited a number of cases in which the Supreme Court of Ohio had ruled that in such a situation, the reasons for the transaction were irrelevant and the price paid reflected the value of the property. Therefore, the BTA refused to consider the appraisal evidence that the taxpayer attempted to submit.

In *Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 2006-V-381 (April 20, 2010), on remand from the Supreme Court of Ohio, the BTA determined that a sale conducted in May 2003 was sufficiently recent to constitute probative evidence of value for tax years 2004 and 2005. Observing that recency was not merely a matter of time, the BTA concluded that evidence that the property could not have been sold during 2005, that the seller misrepresented performance to the buyer, and that occupancy and rent both dropped during 2004, was not sufficient to show that the sale was not "recent."

In *Harp Midim Beachwood Hotel Investors, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, BTA Nos. 2006-M-1629, 2006-M-1809 and 2006-M-1810 (Jan. 19, 2010), the BTA rejected the argument that the sales price paid in a recent transaction for a hotel was not indicative of value because it included business or going concern value associated with the chain name on the hotel. The BTA noted that the income generated by the business derived from granting the right to use space at the hotel.

Consequently, the BTA found that where it is the use of the real estate that constitutes the business that creates value, that value should be allocated to the real estate, and not to some separate business value.

In *Bd. of Educ. of the Worthington City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2006-V-381 (April 20, 2010), the BTA, on remand from the Supreme Court of Ohio, considered whether the purchase price paid in a May 2003 sale of the subject property was sufficiently recent to enjoy a presumption of constituting the property's value for tax year 2004. The property owner who purchased the property in 2003 argued that, though the sale was only about 8 months removed from the tax lien date, the sale should not have been viewed as evidence of value. The owned testified that the sale was arranged as a "1031 like-kind-exchange" for tax purposes, the purchase was made based on representations of full tenant occupancy that never materialized, and neither the buyer nor her realtor was knowledgeable about commercial property or the local property market. The owner claimed that these factors supported a value of the property that was lower than the owner's recent purchase price. The BTA disagreed, finding that these factors were insufficient to demonstrate that the real estate market had experienced a "material event" or a change in condition between the May 2003 sale and the Jan. 1, 2004 tax lien date. Thus, the arm's-length sale was sufficiently recent to reflect the property's true value.

Exemption:

In *Anderson/Maltbie Partnership v. Levin* (2010), 127 Ohio St. 3d 178, 2010-Ohio-4904, the Supreme Court of Ohio ruled that property that was leased to a community school for use as a public school house was not entitled to exemption because the lease had a profit component for the owner. The exemption was sought pursuant to R.C. 5709.07(A)(1), which limits the exemption for public schoolhouses to property that is not leased or otherwise used with a view to profit. The Court distinguished earlier decisions that had permitted exemption for private property leased to public colleges on the basis that that provision, R.C. 5709.07(A)(4), did not contain the limiting language that the property not be used with a view to profit.

In *Dialysis Clinic, Inc. v. Levin* (2010), 127 Ohio st. 3d 215, 2010-Ohio-5071, the Supreme Court of Ohio affirmed the decision of the BTA to deny a property tax exemption application that a non-profit organization filed as to one of the dialysis clinics that it operated. The property owner—DCI—failed to prove that it provided any free charity care at the clinic. The Court rejected DCI's argument that its property should enjoy exemption under Ohio law simply because DCI was a non-profit organization that enjoyed federal income tax exemption. While the Court agreed that some level of free or reduced-cost care was required, the Court rejected once again the Tax Commissioner's suggestion that hospitals and clinics must offer a certain threshold amount or percentage of care in order to achieve exemption. The Court affirmed that offering medical care to all who seek it, regardless of their ability to pay, was an exempt use of property. It also noted that providing care to Medicare and Medicaid patients, under programs specifically designed to make health care available to individuals who could not afford it, would qualify as charity for purposes of achieving property tax exemption.

In *NBC-USA Housing Inc.–Five v. Levin* (2010), 125 Ohio St. 3d 394, 2010-Ohio-1553, the Court ruled that low income housing for handicapped and elderly individuals was not entitled to exemption from taxation because it was not used exclusively for charitable purposes. The Court recited the long line of cases holding that property used for residential purposes is inherently not charitable in nature. Absent any other evidence of charitable activity conducted on the property, the Court agreed with the BTA that the exemption was not warranted. *See also NBC-USA Housing, Inc.-Thirteen v. Levin*, 126 Ohio St. 3d 121, 2010-Ohio-2669; *Mt. Sinai Housing Dev'p Corp. v. Wilkins*, BTA No. 2006-M-2129 (Feb. 2, 1010).

In *Orr v. Wilkins*, BTA No. 2007-K-212 (Nov. 9, 2010), the BTA granted exemption to property that a couple owned and leased to a church. The rent payments covered the couple's mortgage on the property and upkeep expenses, but the couple did not lease the property with a view to profit. Because the property owners had not claimed exemption under R.C. 5709.12 or .121 (which grant exemption to properties used exclusively for charitable purposes) before the Tax Commissioner, the BTA lacked jurisdiction to consider the couple's request for a charitable-use exemption for the first time on appeal. Instead, the BTA granted exemption under R.C. 5709.07, the statute that provides for the exemption of houses of public worship.

In *Bd. of Educ. of the Columbus City School Dist. v. Levin*, BTA No. 2008-M-408 (Sept. 14, 2010), the BTA granted exemption to a parcel of property that the State of Ohio owns and uses for the benefit of The Ohio State University, which leases the property to third parties for a profit. As an initial matter, because R.C. 5715.27 permits the beneficiaries of a trust to

file exemption applications, the BTA held that The Ohio State University did have "standing" to file the exemption application, even though it was not the record title holder of the property. The BTA then affirmed the Tax Commissioner's decision to grant exemption to the property under R.C. 3345.17, which grants exemption to property held by the State of Ohio (or the boards of trustees of the state universities of Ohio) that is used for the support of such public universities or colleges. Even though OSU leased the property and derived substantial revenue from its leasing of the property, the BTA held that the property should enjoy exemption because the funds derived from leasing the property were used to support OSU. While leasing property with a view to profit precludes exemption under the charitable-use statutes, no such prohibition applies to exemption granted under R.C. 3345.17.

In *Ohio Dept. of Natural Resources v. Levin*, BTA No. 2009-K-1876 et seq. (June 1, 2010), the BTA affirmed the Tax Commissioner's determination that he lacked jurisdiction to consider a series of exemption applications that the Ohio Dept. of Natural Resources ("ODNR") had filed, since ODNR had failed to obtain certificates from the County Treasurer indicating that all non-remittable taxes had been paid. Taxes dating back many years had not been paid on the properties, and, while taxes up to three years old may be remitted if an exemption application is granted, ODNR had failed to pay taxes that preceded this 3-year window; as a consequence, the Treasurer could not certify that the non-remittable taxes had been paid. Because R.C. 5713.08 requires that such a Treasurer's certificate be attached to property tax exemption applications, the BTA agreed that the Tax Commissioner lacked jurisdiction to consider ODNR's exemption applications.

In *Grace Chapel v. Levin*, BTA No. 2007-K-835 (May 4, 2010), the BTA held that portions of a church's property used for recreational and outreach purposes could not enjoy exemption under R.C. 5709.07, which provides for the exemption of houses of public worship. Though the property owner identified only "O.R.C. 501(c)(3)" as the statutory basis for its exemption application, the Tax Commissioner and the BTA interpreted the exemption application to be seeking exemption under R.C. 5709.07. The property owner did not claim exemption under R.C. 5709.12 or .121, which provide exemption for property used exclusively for charitable purposes. The property owner was attempting to utilize most of the property as a "recreation center or sports complex" designed to bring youth and others into the fold of the church; however, the BTA held that the church was not using these portions of the property in a "principal, primary, and essential way to facilitate public worship." Thus, the BTA granted exemption to those portions of the property used for public worship (as well as storage and maintenance for those areas), but denied the exemption application as to the recreational, athletic, and food-pantry uses, as these uses did not constitute public worship.

In *Couple to Couple League International, Inc. v. Levin*, BTA No. 2007-M-101 (April 13, 2010), the BTA granted exemption to property that a non-profit organization used to operate offices and a warehouse. The organization promoted natural family planning practices that accorded with the doctrines of the Catholic Church by holding meetings and publishing and selling books and other materials. The BTA held that the items that the organization sold were specific to its charitable cause. Though the items were sold for more than they actually cost, they were not sold "with a view to profit." In short, the BTA found that the publication, storage, and sale of natural family planning materials was a part of the organization's charitable mission, and therefore those portions of the property used in this manner should enjoy exemption. The BTA denied exemption to an adjacent parking lot, since the organization did not use the lot, but instead made the lot available to an adjacent business.

In *Homes at Second Avenue, LLC v. Wilkins*, BTA No. 2006-M-1069 (Nov. 30, 2010), the BTA affirmed the Tax Commissioner's decision to deny an exemption application that a single-member limited liability company ("LLC") filed as to property used as a mixed-income apartment complex. The LLC's sole member was the Columbus Metropolitan Housing Authority ("CMHA"), and CMHA had created the LLC and transferred the property to it pursuant to a Department of Housing and Urban Development requirement related to mortgage guarantees. The LLC had sought exemption under R.C. 3735.34 (property owned by housing authorities), R.C. 5709.08 (state-owned public property), and R.C. 5709.10 (property owned by housing authorities).

The LLC argued that exemption should have been granted, at least to the low-income housing portions of the property, because exemption would have been granted if CMHA had owned the property and filed the exemption application. The LLC also argued that it was a "disregarded entity" under federal income tax law, and that Ohio's property tax exemption laws should disregard the LLC and treat the property as having been owned by CMHA. The BTA rejected both arguments, concluding that the LLC and CMHA were separate entities,

and there was no statutory authority for granting exemption under R.C. 3735.34, R.C. 5709.08, and R.C. 5709.10, since the LLC was not itself a public entity or a housing authority.

In *Growth Partnership for Ashtabula v. Levin*, BTA No. 2008-K-1030 (Dec. 7, 2010), the BTA held that a not-for-profit organization whose mission was the facilitation of the development of a county's business community did not qualify as a charitable institution. As a result, the organization, which leased portions of its property to other organizations, could not take advantage of the broader definitions of charitable use contained in R.C. 5709.121. Because the organization was not using its property exclusively for charitable purposes, and because it was not a charitable institution, the organization's property tax exemption application was denied.

Current Agricultural Use Valuation ("CAUV")

In *Cutter Farms Ltd. v. Wayne Cty. Bd. of Revision*, BTA No. 2008-V-1525 (August 17, 2010), the BTA considered a family farm's appeal of a BOR decision that denied the farm's request that four parcels of land be returned to the CAUV list. The BTA first found that it lacked jurisdiction over two of the parcels, one of which the owner had not listed on its CAUV application, and the other of which the owner had not listed on its complaint with the BOR. While the owner had originally stated in its CAUV application that the property was used for pasture, a deputy auditor inspected the property and testified that he saw no grazing occurring, and noted that the fencing of the property was in disrepair. However, one of the owner's members testified that the property had actually been used for hay, and the hay had been harvested at times when the county auditor had not observed the harvesting. The owner also presented photographic evidence of the harvesting. The BTA concluded that the two parcels over which it had jurisdiction should have been placed in the CAUV program due to their use for harvesting (even though the owner's application had identified pasturing and grazing, rather than harvesting hay, as the agricultural use of the property).

In *Maralgate, LLC v. Greene Cty. Bd. of Revision*, BTA No. 2008-M-644 (Sept. 21, 2010), the BTA held that a parcel of property, which a family farm partnership acquired (along with several other parcels) and then transferred to a wholly-owned limited liability company, could enjoy participation in the CAUV program. The Auditor and BOR had rejected the CAUV application and subsequent complaint; however, the BTA reversed this decision, finding that the single parcel of land was devoted to agricultural uses, and further found that the woodlands on the parcel were adjacent to other parcels under common ownership (i.e., the other parcels still owned by the family farm partnership) that were otherwise devoted exclusively to agricultural use. *See* R.C. 5713.30(A)(1).

Homestead Exemption:

In *Gilman v. Hamilton Cty. Bd. of Revision* (2010), 127 Ohio St. 3d 154, 2010-Ohio-4992, the Supreme Court of Ohio held that a trustee of a trust that held title to residential real property that was used by the trustee as its principal residence was an owner who qualified for the homestead exemption provided by R.C. 323.151(A). The Auditor and BOR had denied the reduction on the basis that only a settlor of a trust could qualify for the reduction. The Court noted that the list of persons who qualified as an owner listed in R.C. 323.151(A)(2) was not exclusive, but rather was illustrative of the individuals who might qualify.

Tangible Personal Property:

In *Am. Fiber Sys., Inc. v. Levin* (2010), 125 Ohio St. 3d 374, 2010-Ohio-1468, the Supreme Court of Ohio held that optical fibers available for lease by the taxpayer to other telecommunications providers were used in business because they were available to be leased, even though they were not yet leased. Since they were used in business, they were taxable property that had to be reported for tax purposes. The Court also rejected the taxpayer's argument that the Tax Commissioner's decision with respect to a prior tax year stopped that official from making a different determination for the current tax year on the basis that each tax year presents a new question of value. Finally, since all the fiber was used in business, the Court rejected the taxpayer's argument that its ancillary equipment was exempt from taxation in proportion to the extent that its optical fibers were not taxed.

In *Rich's Dept. Stores, Inc. v. Levin* (2010), 125 Ohio St. 3d 15, 2010-Ohio-957, the Supreme Court of Ohio reversed a decision of the BTA and held that mark-down allowances could not be considered to reduce the value of inventory because they were reflected on the income statement rather than on the balance sheet of the taxpayer. Thus, the allowances were not evidence of the value of the inventory on the books and records of the taxpayer.

In *HealthSouth Corporation v. Wilkins*, BTA No. 2005-A-1386 (Oct. 6, 2010), on remand from the Supreme Court of Ohio, the BTA held that the taxpayer succeeded in proving the refund to which it was entitled when the evidence it submitted included forensic accounting reports that were also submitted to the SEC, and testimony from the vice president of tax regarding documents and processes used during the tax years in question, even though the vice president had not worked for the taxpayer during the tax year in question. Chair Margulies dissented, concluding that the taxpayer had failed to satisfy its burden of proof.

In *Delaney, Greene Cty. Aud. v. Levin*, BTA No. 2010-K-18 (Aug. 3, 2010), appeal docketed (Aug. 27, 2010), Sup. Ct. No. 2010-1511, appeal dismissed, the BTA dismissed an appeal from final assessment certificates issued by the Tax Commissioner because the notice of appeal failed to specify error. The notice of appeal stated that the values set forth in the assessment certificates were unreasonable and unwarranted, contrary to the interests of Greene County, and were made without input by the Greene County Auditor. The BTA ruled these allegations were so general that they could be alleged in virtually any appeal and failed to fairly apprise either the BTA, or the other parties, of the nature of the specific errors. *See also Delaney, Greene Cty. Aud. v. Levin*, BTA No. 2009-V-3139 (March 16, 2010).

Miscellaneous:

In *Ohio State Bar Assn. v. Appraisal Research Corp.* (2010), 125 Ohio St. 3d 508, 2010-Ohio-2204, the Supreme Court of Ohio ruled that appearing on behalf of another before a BOR constituted the practice of law. Where the individual making the appearance was not an attorney licensed to practice in the state of Ohio, his actions constituted the unauthorized practice of law.

In *Ohio Apt. Assn. v. Levin* (2010), 127 Ohio St. 3d 76, 2010-Ohio-4414, the Supreme Court of Ohio upheld O.A.C. 5703-25-18 and O.A.C. 5703-25-10, which provide that for purposes of the 10% roll-back in taxes afforded to property that is not used for business activities, as provided in R.C. 319.302(A)(1), dwellings or property improved with four-family or more dwellings were used for business activities, but dwellings or property improved with one-family, two-family, or three-family dwellings were not so used. The Court found there was a reasonable basis for the distinction, therefore the provision did not violate the uniformity clause of the Ohio Constitution.

Sales & Use:

In *Direct TV, Inc. v. Levin* (Dec. 2, 2010), Slip Opinion No. 2010-Ohio-6279, the Supreme Court of Ohio held that the Commerce Clause does not prohibit Ohio from taxing sales of satellite television broadcasting services, even though Ohio does not impose the same sales tax on cable broadcasting services. The Court reasoned that the tax's application depends on the broadcaster's mode of operation and distribution, not the broadcaster's state of origin. Thus, the Court held that Ohio's decision to tax one form of television broadcasting but not another did not violate the United States Constitution's "dormant" Commerce Clause.

In *Information Release ST 2010-01*, "Sales and Use Tax: Food Service – Equipment and Supplies Used in the Food Service Industry – Issued August 2010," the Department provided guidance to the food service industry regarding the application of sales and use tax to their equipment and supply purchases. The Department explained that, while the general rule was that all purchases of tangible personal property made in Ohio are subject to the tax, several sales tax exemptions are available. The release provided a brief description of the exemptions available.

In *Information Release ST 2010-02*, "Sales and Use Tax: Bundled Transactions – Issued September 2010," the Department explained its construction of R.C. 5739.012, which provides that in the case of bundled transactions, the "true object" test will be used to determine whether the single charge in a bundled transaction is subject to tax. The release provides various definitions of terms used in the statute, the records that must be maintained by vendors, and the manner in which the "true object" test will be applied.

In *Information Release ST 2010-03*, "Sales and Use Tax: Drugs, Durable Medical Equipment, Mobility Enhancing Equipment, and Prosthetic Devises – Issued September 2010," the Department announced new definitions adopted as part of its participation in the Streamlined Sales Tax effort. These definitions deal with drugs and various types of medical equipment.

In *Information Release ST 2003-02*, "Landscaping, Lawn Care Services, and Snow Removal – Issued October 2010 – Revised December 2010," the Department revised its discussion regarding the application of Ohio sales and use tax to landscaping, lawn care, and snow removal services. This information release revises and replaces the prior release issued in January 2004.

In *International Business Machines Corp. v. Levin* (2010), 125 Ohio St. 3d 347, 2010-Ohio-1861, the Supreme Court of Ohio held that the sales tax refund provided by R.C. 5739.071(A) to providers of electronic information services was to be made without the payment of interest. The Court noted the statute did not expressly permit the payment of interest, and rejected the claim that the interest provision of the general refund statute applied to this special provision.

In *Global Knowledge Training, L.L.C. v. Levin* (2010), 127 Ohio St. 3d 34, 2010-Ohio-4411, the Supreme Court held that training provided with respect to applications software was not a taxable computer service, but that training provided with respect to (i) systems software; (ii) the use and repair of switches and routers; and (iii) services provided to computer support personnel, all qualified as computer services that were subject to the sales tax under R.C. 5739.01(Y)(1). The Court declined to address various constitutional claims raised by the taxpayer because the taxpayer had not preserved the arguments by raising them at the earliest opportunity before the Tax Commissioner.

In *Volbers-Klarich v. Middletown Mgt., Inc.* (2010), 124 Ohio St. 3d 494, 2010-Ohio-2057, the Supreme Court held that when a vendor charges its customer a nonexistent tax, the funds collected are not a tax collected for the benefit of the tax authority. Therefore, under such limited circumstances, the proper remedy is for the customer to file suit directly against the vendor to recover collected funds, not seek a refund from the government entity that purportedly imposed the tax.

In *Ingrassia v. Ganley Mgt. Co.* (8th Dist. 2010), 2010-Ohio-3883, 2010 Ohio App. LEXIS 3281 (August 19, 2010), the Court of Appeals held that a claim for overpaid tax should be brought in the Ohio Court of Claims. The taxpayer received a discount for an automobile repair but was charged sales tax as if he had paid the undiscounted amount. The taxpayer argued that the sales tax should have been reduced by the amount of the discount. The Court of Appeals held that the Ohio Court of Claims had original and exclusive jurisdiction over a taxpayer's claim for monetary damages.

In *Durabilt, Inc. v. Levin*, BTA No. 2008-M-501 (December 21, 2010), the BTA upheld the Tax Commissioner's determination that the taxpayer's contract with a customer constituted a construction contract, that the taxpayer was a construction contractor under R.C. 5739.01(B)(5), and that the taxpayer was therefore liable for the use tax due on its purchases of materials from a third-party supplier. The facts showed that the relationship between the taxpayer and the third-party created consideration for the use of materials that was tantamount to a purchase of materials. Therefore, the BTA held that the circumstances showed that the taxpayer, not the taxpayer's customer, was the consumer of goods from the third-party.

In *Cincinnati Golf Management, Inc. v. Levin*, BTA No. 2007-M-1411 (April 20, 2010), the BTA held that a private company that operated golf courses on behalf of the City of Cincinnati under management agreements was acting as the agent of the City; consequently, it was liable for use tax on its purchases of tangible personal property used in performing its management services. The BTA applied general rules of agency and looked to the agreement to determine that the taxpayer did not have authority to bind the City, nor had the City pledged its credit to obligations undertaken by the taxpayer.

In *TNS, Inc. v. Levin*, BTA No. 2006-M-2210 (June 22, 2010), the BTA held that prior to September 6, 2002, there was no statutory requirement that non-taxable delivery charges had to be separately stated on vendor's invoices in order to be exempt from sales tax. Since the vendor's books indicated the separation and showed that tax was correctly calculated on material only, it was error for tax to be assessed on the delivery charges. In addition, between September 6, 2002, and August 1, 2003, delivery charges were non-taxable if they were separately stated. Since the taxpayer was the consumer and was not involved in the preparation of the sales invoices, the BTA held it was an abuse of discretion for the Tax Commissioner not to remit the penalty for that period.

In *Pallet World, Inc. v. Levin*, BTA No. 2007-M-116 (June 22, 2010), the BTA held that the taxpayer was not entitled to a "transportation for hire" exemption under R.C. 5739.02(B)(32). The taxpayer failed to provide any original documentation that it was carrying goods of others and therefore failed to satisfy the requirement that it was primarily hauling goods of others.

In *Freudenberg NOK General Partnership*, BTA No. 2006-K-1556 and 2006-K-1558 (April 13, 2010), the taxpayer sought exemption under R.C. 5739.02(B)(42)(j) for "direct marketing" activities. The BTA held that the taxpayer satisfied the requirements for exemption for warehouse and distribution equipment even though it did not make retail sales. Rather, the taxpayer made sales to retailers for resale.

In *Convenient Food Mart, Inc. v. Wilkins*, BTA No. 2006-V-2233 (February 16, 2010), the BTA affirmed a sales tax assessment against a convenience store in which the audit agent used a markup audit where it was determined that the taxpayer did not have records adequate to determine the accuracy of reportable taxable sales and tax collected and remitted.

In *Equilon Enterprises LLC v. Levin*, BTA No. 2007-V-441 (February 9, 2010), the BTA held that the taxpayer was unable to provide documentation of sales tax paid. The taxpayer's invoices itemized various figures and did not contain any specific amount paid for sales tax, thereby failing to show that tax was added to the lump sum price.

In *Beckstedt v. Levin*, BTA No. 2007-V-936 (April 20, 2010), the BTA held that a pair of taxpayers was not entitled to a "retail sale" sales tax exemption under R.C. 5739.01(E) for their purchase of a boat. The BTA found that the couple's primary purpose in acquiring the boat was for personal use.

Officer Liability:

In *Abedeljaber v. Levin*, BTA No. 2008-V-483 (Oct. 26, 2010), the BTA held that where counsel for a taxpayer expressly waived the only issue presented in a petition for reassessment, the BTA had no jurisdiction to consider an appeal on the merits from a final determination of the Tax Commissioner. In this case, the taxpayer was assessed as a responsible party for the sales tax owed by his corporation. Since counsel allegedly waived the issue of responsibility, there was no other issue for the BTA to consider.

Commercial Activity:

In *Information Release CAT 2008-01*, "Commercial Activity Tax: Voluntary Disclosure Agreements – Issued July 2008 – Revised May 2009 – Revised September 2010," the Department explained its policy regarding voluntary disclosure agreements with regard to the commercial activity tax. This release was updated to reflect an addition of a look-back period for the tax.

In *Information Release CAT 2005-14*, "Commercial Activity Tax: Nonprofit Organizations – Issued December 2005 – Revised June 2006 – Revised May 2010," the Department announced that it is in the process of amending the administrative rule regarding nonprofit organizations to clarify that only entities that are organized not-for-profit fall within the definition of a nonprofit organization.

Excise & Motor Fuel:

In *Levin v. Commerce Energy Inc.* (2010), 130 S. Ct. 2323, the Supreme Court of the United States ruled that respect for the states in a federal system of government precludes the federal district courts from ruling on the constitutionality of Ohio's taxation of natural gas providers. Non-Ohio natural gas suppliers sought injunctive relief, alleging that Ohio's tax scheme was discriminatory because the non-Ohio natural gas suppliers paid fees to use distribution pipelines, whereas the Ohio natural gas distributors paid a gross receipts excise tax that was lower than the taxes paid by the suppliers. The district court held that general principles of comity and federalism barred the claims of the non-Ohio natural gas suppliers. The Court of Appeals for the Sixth Circuit had held that comity principles did not bar the non-Ohio natural gas suppliers' claims. The Supreme Court reversed, concluding that comity precluded federal action.

In *Ceccarelli v. Levin* (2010), 127 Ohio St. 3d 231, 2010-Ohio-5681, the Supreme Court of Ohio held that the four-year limitation period for assessing a motor fuel dealer also applies to employees or officers of motor fuel dealers who qualify as responsible parties. The Tax Commissioner issued an assessment against the responsible party more than four years after the unpaid returns were filed. R.C. 5735.12(A) provides that a four-year statute of limitations period applies to assessments "made against any motor fuel dealer." The Court read R.C. 5735.12(A) in light of R.C. 5739.121 which provides that the "sum due for the liability [of responsible parties] may be collected by assessment in the manner provided in sections 5735.12 and 5735.121 of the Revised Code" and held that the statutory period for assessing the responsible party was coterminous with the period for assessing the dealer.

In *Put-In-Bay Boat Line Company v. Levin*, BTA Nos. 2008-K-282 and 2008-K-139 (June 22, 2010), the BTA determined whether tangible personal property of a water transportation company should be apportioned to the company's primary business location or the situs of the personal property on the tax lien date. The BTA held that, because no specific statute specifically addressed this matter, and because the Tax Commissioner had provided notice that the cost of watercraft should be reported in the taxing district in which the watercraft is located on the lien date, the cost of watercraft should be reported in the district in which the watercraft was located on the relevant tax lien date. The Tax Commissioner had provided such notice through instructions that accompanied annual reports required to be filed by the taxpayer, and the instructions had been in existence prior to the tax years in question.