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UPDATE: Ohio's New CAT Tax And Tax Amnesty

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This is an update to our June 2005 report on Ohio's new commercial activities tax ("CAT"). Our June article was based on the legislation as it existed on June 1, 2005. Subsequently, on June 30, 2005, Governor Taft signed Am. Sub. H.B. 66, the Ohio Biennial Budget Bill, which replaced, for most corporate taxpayers, the corporation franchise tax with the CAT.

For general information about the CAT and other tax law revisions, the Ohio Department of Taxation's website is www.tax.ohio.gov. It contains updates and answers to questions that taxpayers have been asking.

Tax Amnesty

The earlier version of the legislation provided an amnesty program to run from November 1, 2005, to December 15, 2005. As finally passed, Section 553.01 of the Ohio Revised Code provides for the amnesty period to start on January 1, 2006, and end on February 16, 2006.

The advantage of the amnesty program is that payment of the full amount of the so-called "qualifying delinquent taxes," plus one-half of any interest, grants the Tax Commissioner the authority to waive all penalties and one-half of the interest due. R.C. 553.01(A)(1) defines "qualifying delinquent taxes" to include the following Ohio taxes:

- Corporation franchise tax levied by Chapter 5733.
- Ohio's sales tax found in Chapter 5739.
- The use tax contained in Chapter 5741.
- The income tax levied by Chapter 5747 or Chapter 5748.
- Taxes required to be withheld under Chapter 5747 (personal income tax) and Chapter 5748 (school district income tax).

Subsection (2) of R.C. 553.01(A) also has a definition for "qualifying delinquent personal property taxes," meaning the tangible personal property tax for which taxpayers file returns under R.C. 5711.02 of the Revised Code.

As is typical with amnesty programs, there are exclusions. Subsection (3) of R.C. 553.01(A) specifically excludes any taxes for which a notice of assessment or audit has been issued, or which a tax bill has been issued, or for which an audit has been conducted or is currently being conducted by the Ohio Department of Taxation. The new statute requires the Tax Commissioner to issue forms and instructions and take necessary administrative actions to implement the amnesty program, including a requirement to "publicize the program so as to maximize public awareness and participation in the program." See R.C. 553.01(B).

Interestingly, new Section 553.02 of the Revised Code specifically repeals the amnesty law in Section 553.01, effective February 16, 2006. Unless amended at a later point, the Tax Commissioner will have no statutory authority to grant the specified amnesty actions noted above, on and after February 16, 2006.

Tax Threshold

Our June article reported that more than \$40,000 in annual taxable gross receipts was subject to CAT. That was changed in the final version of the legislation. Taxpayers with annual gross receipts of \$150,000 or less are not subject to CAT. Taxpayers with receipts from \$150,001 - \$1,000,000 must pay a minimum \$150 tax.

Where To Find CAT

The new commercial activities tax is found in Chapter 5751.01 of the Revised Code. You can find the text at <http://www.legislature.state.oh.us/laws.cfm>.■



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