



WEEKLY STATE TAX REPORT



NUMBER 48**DECEMBER 3, 2010**

HIGHLIGHTS**New Ohio Rules Conform State to Streamlined Sales Tax Agreement**

Ohio adopts a series of new regulations and amends an existing regulation on exemption certificate forms to conform to recent amendments to the Streamlined Sales and Use Tax Agreement. Changes include adoption of new rules on the obligation to collect sales tax within 30 days following a change in the state rate and the application of sales and use tax to transactions involving optional computer software maintenance contracts.

California Responds to E-Filing Trend, Discontinues Mailing of Income Tax Booklets

California's Franchise Tax Board announces it will no longer mail printed tax booklets to income taxpayers, as more taxpayers file electronically. The FTB's announcement mirrors a similar move by the IRS, which said in September that it will no longer mail paper copies of income tax packages due to continued growth in electronic filing and the availability of free filing options.

Small Business Tax Credit for Certain Businesses Gets an Increase in Washington

A new amendment to the small business tax credit rule, which reflects an increase in the credit amount for certain businesses, was adopted by Washington's Department of Revenue. The credit was amended effective May 1, and the final rule provides that certain taxpayers who report at least 50 percent of their total B&O taxable amount have their maximum credit increased to \$70, multiplied by the number of months in the reporting period.

Perspective: New York's Aggressive Pursuit of Tax Scofflaws Gathers Momentum

During William J. Comiskey's tenure as deputy commissioner for tax enforcement with the New York State Department of Taxation and Finance, the state ramped up its data mining efforts and enacted legislation to put more tools in the hands of investigators. In this interview, Mr. Comiskey talks with BNA about trends in tax law enforcement in the state and throughout the nation.

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PUBLICATION SPECIALIST:
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INDEX EDITOR: Nancy Emison, Esq.

CHIEF OF BNA CORRESPONDENTS:
Paul Albergo

Tax Management, Inc.
1801 S Bell St,
Arlington, VA 22202-4501
Telephone: (703) 341-5937
Fax: (703) 341-1625

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Perspective

Tax Policy

William J. Comiskey, former deputy commissioner for tax enforcement with the New York State Department of Taxation and Finance, recently joined the law firm of Hodgson Russ LLP. Mr. Comiskey was New York's top tax enforcement officer, overseeing the work of 2,500 auditors, collectors, and criminal investigators. During his tenure, New York ramped up its data mining efforts and enacted legislation to put more tools in the hands of investigators. In this interview, Mr. Comiskey talks with BNA about trends in tax law enforcement in the state and throughout the nation.

New York's Aggressive Pursuit of Tax Scofflaws Gains Teeth, Gathers Momentum as State Pursues Creative New Strategies

WILLIAM J. COMISKEY, INTERVIEWED BY DOLORES W. GREGORY

BNA: While you were with the department of taxation, New York enacted a state version of the federal False Claims Act—and modified it in 2010. What does this legislation do?

COMISKEY: In 2007, the state adopted its False Claims Act, which essentially paralleled the federal act. In 2009, the federal False Claims Act was amended, and in 2010, the state essentially adopted the same changes. But New York went one step further. Under the federal False Claims Act, claims under the tax law are specifically exempted. In New York now—and I think it's the only state in the nation to do so—such claims are expressly permitted if certain monetary thresholds are met.

BNA: So, if someone is working for a company and they know they are evading taxes, they can bring a whistle-blower suit.

COMISKEY: Yes, if the thresholds are met and if the evasion was based on a false statement that was made knowingly. And if the suits are successful, the whistle-blowers will be richly rewarded. The False Claims Act is viewed by many as the most powerful tool government has for exposing false claims and fraud against the government. It allows the whistle-blowers to sue those who defraud the government for three times the amount of damages the government has sustained and to collect up to 30 percent of the amounts recovered. This is an area where there's been an explosion of activity and litigation, especially in connection with cases where individuals or companies have allegedly falsely billed for health-care services or with respect to pharmaceuticals paid for by the federal government.

BNA: What prompted the state to extend the False Claims Act to taxes? Is it a function of the fiscal crisis?

COMISKEY: When the bill was enacted, its sponsors made pretty clear that given current economic conditions, the state has to take strong measures to make sure it is not subjected to false claims or fraud.

BNA: The bill was enacted in August. Have there been any results from that yet?

COMISKEY: It is obviously early in the process, but it is worth observing that the primary proponent of the legislation expanding the act to tax fraud, Sen. Eric Schneiderman, is going to be attorney general and he has expressly said he is going to use it to investigate and pursue claims of inappropriate credits obtained by businesses and individuals with respect to empire zones. He's made it clear that the law he championed is one he intends to use aggressively, and as attorney general, he will have the primary role in developing and pursuing cases under the act.

BNA: New York has also recently expanded funding for district attorneys to pursue tax fraud—a 300 percent increase, I believe.

COMISKEY: Correct. There's a program that's been operating for half a dozen years called the Crimes Against Revenue Program, which provides funding for district attorneys in the large population centers of New York to underwrite their costs for investigating and prosecuting crimes against the public fisc. Mainly the monies have been used to provide them with a way to build a capability for handling tax crimes. For its investment, it brings in two and a half to three times its cost. The department in the last four years has really ramped up its criminal enforcement effort in tax cases. The number of criminal investigations related to tax fraud has increased 400 percent; referrals from the Civil Au-

dit Division to the criminal side are up about 1,000 percent in four years. There's also been an increase in the number of referrals to prosecutors. It's created a sort of bubble in the system. Prosecutors had some resources, but not enough to handle the growing number of cases, and the Legislature decided to increase the money available.

BNA: Again I would ask what's driving that increased activity. Is it that there's more tax evasion going on, or that the state decided it was time to clamp down on it?

COMISKEY: It's the latter, for sure. The department's strategic and practical approach to the tax gap, which it articulated going back to 2007, is a multifaceted attempt to bring it under control. It's a multibillion dollar problem—no one knows exactly how many billions are involved. The department expressly said that while there are lots of different causes of that gap, the reality is that a substantial portion is directly attributable to people making a choice.

So the department made a conscious choice to narrow that gap by engaging in enhanced enforcement, by increasing investments in technology—data analysis, data mining, predictive software—a whole host of things that make for smart enforcement, and they've increased substantially the number of enforcement people working at the department. It's all driven by a desire to close the tax gap. Whether times are flush or not, it's unacceptable and it's unfair to those paying their full freight. When the economy took a nosedive, the need to ensure uniform compliance with the tax law sparked even greater interest from the department and the Legislature.

BNA: How much revenue have those extra efforts generated in the last couple of years?

COMISKEY: The audit collections and criminal enforcement activity of the department—the number they are bringing in now is in the vicinity of about \$3 billion a year, and that's a substantial jump. At one point, the number of audits conducted—whether desk or field audits—was in the area of 700,000 or so. While I was at the department, it increased to well over 1 million.

BNA: New York has been in the news recently because of the ruling in the Amazon tax case. Is that something we can expect to see more of from New York—more “creative thinking” or alternative enforcement?

COMISKEY: Do I think that states like New York will be looking for ways to ensure that their tax base remains stable? They clearly will. The law New York wrote on the Amazon side has been, from their perspective, successful. There have been 30 or so remote vendors that have registered to collect sales tax, and they are expecting additional revenue of \$70 million or so now. That's a lot of money, and it's additional money without a new tax.

BNA: Can we expect New York to follow Colorado in adopting reporting requirements for remote vendors?

COMISKEY: I would be very surprised if New York did not look at the Colorado efforts and say “that's a good idea.” Data acquisition and utilization is central to modern tax administration and New York has taken the lead in that area. They passed pretty impressive laws in 2009, requiring a variety of businesses to provide information with respect to the business they conduct in the

state. For example, every franchisor—wherever they are located—that has a franchise in New York state is required to provide New York with an annual statement of the sales activity of that franchisee. We saw from audits that very often the franchisee was telling the franchisor one set of numbers as to their sales and telling the state a different and—you won't be surprised by this—lesser number.

BNA: So you're looking at businesses that report not only to the state but also to another entity.

COMISKEY: Absolutely. You have the same information reporting requirements for beer, alcohol, and liquor wholesalers. You have it for insurance companies that pay for car repairs. The department will get an annual report of the amount of money paid by the insurance company to these repair shops. And in an area where compliance is challenging, having access to this information is going to lead certain taxpayers to change their reporting behaviors. And that's really the goal of any enforcement program—not to conduct a lot of audits or drive everybody crazy, but to affect behavior.

BNA: And you'll see more revenue come in as compliance improves and less being caught on the audit side.

COMISKEY: Any state or government that isn't investing heavily in the development of that capability is just missing the boat, in my opinion. It's only relatively recently that the department really began comparing information internally. It's only recently that the department is comparing what you say in an income tax return with what you say in a sales tax return. And when they do that comparison, what the department finds is often pretty staggering. There is often information in the corporate returns—not just in the income returns, but in the expenses and in other reported data—that provide pretty powerful clues as to whether the sales tax returns are accurately capturing and reporting true sales. The department is building algorithms to figure it out, and when they get that picture, then the goal is to do real-time scoring of returns as they come in, so they can select the right place to devote their resources and leave alone businesses that there is no reason to be bothering. When businesses learn these comparisons with internal and external data are being made routinely and that they greatly increase the chance of an audit or an examination, they will change their reporting behavior.

BNA: Where might we end up with the issue of taxation of electronic commerce? Do you think we'll reach a point where the physical presence standard is no longer relevant?

COMISKEY: I don't know that I'd go that far. I think states will race to create or find alternative mechanisms that are consistent with due process limitations. But if government is going to maintain its ability to fairly treat all businesses selling products, it must find a way so that the tax obligation is uniformly applied to people who purchase tangible property in the state. You can't have [local] businesses obliged to impose the sales tax when more and more people are turning to electronic means for buying where taxes are not imposed. Until that disparity is addressed, all local businesses are operating at a competitive disadvantage, and the state is losing its tax base—and a lot of money.

Income Taxes

California

Procedure

California FTB Responds to E-Filing Trend, Discontinues Mailing of Income Tax Booklets

SACRAMENTO, Calif.—The Franchise Tax Board announced Nov. 22 it will no longer mail printed tax booklets to income taxpayers, as more taxpayers file electronically.

The FTB's announcement mirrors a similar move by the Internal Revenue Service, which said in September that it will no longer mail paper copies of income tax packages due to continued growth in electronic filing and the availability of free filing options.

The FTB said taxpayers will receive a letter in January with information on filing options, including e-filing and how to obtain a full, printed tax booklet.

Last year, 75 percent of all state income tax returns, or more than 11 million, were filed electronically, the FTB said. Of the paper returns filed, most were printed from commercial tax preparation software products or downloaded from the FTB website.

The state will save at least \$1 million in printing and postage expenses, the agency said.

State income tax forms and information about electronic filing options are available online at <http://www.ftb.ca.gov>.

BY LAURA MAHONEY

California

Tax Base

California Tax Withholding Rates on Gain From Some Real Estate Deals Will Decrease

SACRAMENTO, Calif.—Tax withholding rates for some real estate transactions will decrease beginning Jan. 1, 2011, when a temporary increase to those rates expires, the California Franchise Tax Board said Nov. 20.

Escrow agents are required to withhold state income tax from sellers to prepay tax on gain from sale of California real property.

The withholding rate is 3.33 percent of total sale unless a seller elects an optional gain on sale withholding based on the maximum rate on the gain on sale. Temporary increases to the optional gain on sale withholding rates expire Jan. 1, 2011.

For transactions involving optional gain on sale withholding, the rates will decrease from 9.55 percent to 9.3 percent for individuals and non-California partnerships, from 11.05 percent to 10.8 percent for S corporations, and from 13.05 percent to 12.8 percent for financial S corporations.

Beginning Jan. 1, 2011, escrow agents should use updated forms that include the reduced tax rates, the FTB said.

BY LAURA MAHONEY

For a discussion of real estate withholding taxes in California, see 1900 T.M., *California Personal Income Tax*, at 1900.12.C.

New York

Tax Base

Cruise Operators Principally Engaged In New York Article 9 Transportation

Companies operating cruise lines are taxable as transportation corporations under Article 9, not as general entertainment business corporations under Article 9-A, the New York Division of Tax Appeals ruled, finding that because the major part of their expenses were in the operation and maintenance of the vessels, including crew, fuel, and port expenses, the cruise lines were principally engaged in the conduct of a transportation business. [*In re Royal Caribbean Cruises LTD*, N.Y. Div. Tax App., Nos. 822986, 823273, and 822987, 11/10/10]

The provision of entertainment, accommodations, and dining was merely incidental to the taxpayer's function as a cruise operator, transporting passengers to and from the various places on the itinerary, the division concluded.

The text of the determination is available on the internet at <http://www.nysdta.org/Determinations/822986.det.pdf>.

For a discussion of corporations subject to tax in New York, see 2200-2nd T.M., *New York State and City Corporation Income Taxes*, at 2200.02. For a discussion of the effect of Article 9 taxes, see 1100-2nd T.M., *Income Taxes: Computation of State Taxable Income (Minnesota Through Wyoming)*, at 1100.11.C.2.

New York

Net Operating Losses

Interest on Refund Caused by NOL Carryback Allowed From Due Date of New York Return

Interest on a personal income tax refund caused by a net operating loss carryback that is not refunded to a taxpayer within 45 days of a claim for refund should be allowed from the due date of the loss year return without regard to filing extensions, the New York Department of Taxation and Finance advised. [N.Y. Dept. of Taxn. and Fin., TSB-A-10(10)I, 10/28/10]

The relevant state law does not address interest on refunds arising from NOL carrybacks not paid within 45 days of claim for refund, the department said. However, because New York tax law is modeled on the I.R.C., the state can look to federal case law and the Internal Revenue Manual for guidance. Under federal rules, the department said, the date of overpayment is deemed to be April 15, the filing date of the return for the loss year, determined without regard to extensions.

The text of the advisory opinion is available on the internet at http://www.tax.state.ny.us/pdf/advisory_opinions/income/a10_10i.pdf.

□ For a discussion of the treatment of interest on New York returns, see 3020 T.M., *Personal Income Taxes: Minnesota Through Wyoming*, at 3020.11.E.4.f. For a discussion of New York refund claims, see 2210 T.M., *New York Personal Income Tax*, at 2210.22.D.

Pennsylvania

Constitutional Limitations

Pennsylvania Tax Provision Denying Carryover Of S Corporation Losses Ruled Constitutional

A Pennsylvania law prohibiting the carryover of losses by the shareholders of an S corporation violates neither the Uniformity Clause of the Pennsylvania Constitution nor the Equal Protection Clause of the U.S. Constitution, the Pennsylvania Commonwealth Court held, finding that because of the S corporation election, which renders the business exempt from state corporate income tax, S corporations and C corporations are not similarly situated taxpayers and, thus, no

discrimination exists. [*DelGaizo v. Pennsylvania, Pa. Commw. Ct.*, Nos. 558 F.R. 2008 and 37 F.R. 2009, 11/18/10]

Rather, the court held, the taxpayers voluntarily chose S corporation status and cannot enjoy its benefit without its burdens.

The text of the opinion is available on the internet at http://www.pacourts.us/OpPosting/Cwealth/out/558FR08_11-18-10.pdf.

□ For a discussion of federal constitutional limitations on Pennsylvania taxation, see 2300 T.M., *Pennsylvania Corporate Taxes*, at 2300.02.A. Information on the taxation of S corporation shareholders is available in 1510 T.M., *State Taxation of S Corporations*, at 1510.05.B. For a discussion of the general principles of the Equal Protections Clause, see 1400 T.M., *Federal Constitutional Limitations on State Taxation*, at 1400.06.

West Virginia

Assessment/Collection

West Virginia High Court Upholds Agricultural Break for Timberland Managers

Partnerships engaged in the management of timberland are exempt from the business franchise tax because their operations qualify as “agriculture and farming,” which are not subject to the tax, the West Virginia Supreme Court of Appeals held. [*Morris v. Heartwood Forestland Fund Ltd. P’ship., W. Va.*, No. 35476, 11/18/10]

The partnerships are North Carolina limited partnerships that invested in wooded lands in West Virginia. The operations manage timberland, produce and sustain timber on that land, and sell harvest rights to third parties. All of this is done through forest land management plans designed by the partnerships.

The state high court upheld a finding of the circuit court that the exception of agriculture and farming from the business franchise tax extends to activities of growing and managing timberland, provided that there is no direct involvement in actual timbering activity and that other statutory requirements are met.

Full text of the decision is available on the internet at <http://www.state.wv.us/wvsc/docs/fall10/35476.htm>.

□ For a discussion of the classification of partnerships, see 1560 T.M., *State Taxation of Limited Liability Companies and Partnerships*, at 1560.03.

Sales & Use Taxes

California

Tax Base

California Rules No Sales Tax Refund For Worthless HSBC Credit Card Accounts

A finance company is not entitled to a sales tax refund on worthless credit card accounts, the California Court of Appeal held, because the accounts it offers are distinguishable from the installment sales accounts that were the subject of refunds in *WFS Financial Inc.* [*HSBC Retail Svcs. Inc. v. California State Bd. of Equal.*, Cal. Ct. App., No. A125995, 11/18/10]

HSBC Retail Services provided financing to California merchants, which then offered private label credit cards to their customers. In December 2000, the SBOE issued its *WFS Financial* opinion, which allowed a claim for sales tax refunds on bad debts incurred before the end of 1999. In that case, the claim was based on defaults on vehicle purchase financing contracts.

Later that month, HSBC sought a refund of the sales taxes paid on its credit card accounts that were written off as bad debts for federal income tax purposes from 1997 to 1999. Most of HSBC's claims for sales made prior to Oct. 1, 1999, were denied.

HSBC then appealed the denial, which the SBOE affirmed, as the board ruled that HSBC's bad debt losses did not satisfy the requirements set out in *WFS Financial*. Next, HSBC filed a civil action, and the trial court entered judgment for the SBOE.

The appellate court found that HSBC failed to meet the third condition in *WFS Financial*, namely "that the dealer's assignments of receivables to the claimant were substantially contemporaneous with the execution of the sales agreement between the dealers and the purchasers." HSBC's manager admitted that a consumer could apply for a credit card without making an immediate purchase with the card. Moreover, once a consumer applied for a card, all future sales were charged to the existing credit card account, the court found.

Because HSBC's revolving credit card accounts were used for a series of purchases, the facts are distinguishable from the *WFS Financial* opinion, which involved single-purchase installment sales agreements. Installment sales accounts have a fixed term and are for a fixed amount, the court said, noting that the payment schedule is defined throughout the contract.

Revolving Credit Account at Issue. In contrast, a revolving credit account has a credit limit, which the consumer uses to make multiple purchases, and the principal balance and minimum payment vary throughout the contract term. In addition, all future purchases are governed by an ongoing contract, the court noted.

The appellate court rejected HSBC's argument that it satisfied the third prong of *WFS Financial* because each individual retail transaction was electronically submitted daily for approval and was financed at the time of each sale, noting that "the differences between the ongoing credit line offered by HSBC and the closed-ended transaction in *WFS Financial* are sufficiently distinct that these facts cannot satisfy the third prong of that decision."

The text of the opinion is available on the internet at <http://www.courtinfo.ca.gov/opinions/nonpub/A125995.PDF>.

By KATHLEEN CAGGIANO

For a general discussion of bad debts, see 1360 T.M., *Sales and Use Taxes: Retail Sales Issues*, at 1360.01.F. For a discussion of exclusions from gross receipts in California, see 1920 T.M., *California Sales and Use Taxes*, at 1920.02.B.6.c.

Illinois

Exemptions

Illinois Rules Aircraft Not Taxable If Corporate Owner Reorganizes Into LLC

An aircraft owned by a corporation entering into an I.R.C. §368(a)(1)(F) reorganization to become a limited liability company is not subject to use tax, the Illinois Department of Revenue advised, because no taxable transfer between separate entities occurs merely because a corporation changes its structure. [III. Dept. of Rev., Private Letter Ruling ST 10-0007-PLR, 10/13/10]

The ruling is available on the internet at <http://tax.illinois.gov/LegalInformation/Letter/rulings/st/2010/ST-10-0007-P.pdf>.

For a information about changes in form or identity, see 1530 T.M., *Mergers and Acquisitions: Sales*

and Use Tax Consequences, at 1530.06.F. For a discussion of exemptions in Illinois, see 2110 T.M., *Illinois Sales and Use Taxes*, at 2110.08.

Missouri

Exemptions

Corporation Not Headquartered in Missouri, Owes Tax on Computers Used by Engineers

A Missouri corporation does not qualify for a sales tax exemption on computer software and security systems, the Missouri Department of Revenue advised, because the taxpayer does not meet the statutory definition of an engineering firm “headquartered in the state.” [Mo. Dept. of Rev., Letter Ruling LR6417, 8/27/10]

A sales tax exemption is available for computers, computer software, and computer security systems purchased for use by architectural or engineering firms headquartered in Missouri. An eligible business is headquartered in the state if it has an office for the administrative management of at least four integrated facilities operated by the business in Missouri, the department said.

The corporation in question employs licensed engineers but does not itself have an engineering certificate from the state. As for its facilities, the corporation has three hangars in the same Missouri airport, which it uses to develop products, as well as a separate headquarters in Missouri.

In order to qualify for the sales tax exemption, the department said, the corporation using the computer software must be an engineering firm headquartered in Missouri. Because the corporation lacks an engineering license and a certificate of authority from Missouri, it does not qualify as an engineering firm, the department noted. In addition, the department advised, the corporation’s use of hangars in the same airport does not meet the headquarters requirement; therefore, the corporation is not headquartered in the state.

The ruling is available on the internet at <http://dor.mo.gov/rulings/LR6417.htm>.

By KATHLEEN CAGGIANO

□ For a discussion of computer software subject to Missouri sales and use tax, see 1350-2nd T.M., *Sales and Use Taxes: Communications Services and Electronic Commerce*, at 1350.37.D.

Missouri

Procedure

Missouri Pickle Seller Must Register For Retail License Because of Direct Sales

A Missouri-based partnership that sells pickles wholesale to grocery stores and directly to consumers online must register for a retail sales tax license, the Missouri Department of Revenue advised, finding that its online sales constitute sales at retail, for which it is required to collect and remit sales tax. [Mo. Dept. of Rev., Letter Ruling LR6428, 8/27/10]

The ruling is available on the internet at <http://dor.mo.gov/rulings/LR6428.htm>.

□ For a discussion of retailers and retail sales, see 1360 T.M., *Sales and Use Taxes: Retail Sales Issues*, at 1360.01.B. For a general discussion of sales and use tax on food, see 1300-2nd T.M., *Sales and Use Taxes: General Principles*, at 1300.05.D.2.

New York

Exemptions

New York Says Disabled Taxpayer Entitled To Exemption on Van’s Handicap Equipment

Handicap accessibility equipment added to a taxpayer’s minivan is exempt from sales tax because it was added to the vehicle and sold as a single unit, the New York Division of Tax Appeals advised, noting that the equipment charges were separately stated on an itemized invoice. [*In re Bartlett*, N.Y. Div. Tax App., No. 823114, 11/10/10]

The taxpayer, a wheelchair user, purchased a minivan previously equipped with a mobility conversion system, which allows the taxpayer to independently access and operate the vehicle. The minivan’s prior owner had the modifications installed by the dealer at the time of purchase. The detailed invoice of the prior owner’s purchase indicates a price of \$16,037 for the minivan itself and \$18,750 for the handicap accessibility equipment.

The taxpayer purchased the minivan via a private casual sale for \$29,000, under which he agreed to pay \$17,000 for the accessibility equipment and \$12,000 for the vehicle. There is no detailed invoice regarding the taxpayer’s minivan purchase. The taxpayer paid sales tax on the vehicle’s full purchase price, then sought a refund on the portion of taxes paid for the handicap ac-

cessibility equipment, which the Division of Taxation denied.

An administrative law judge for the Division of Tax Appeals noted that handicap accessibility equipment added to nonexempt tangible personal property and sold as a single unit is exempt from sales tax. Because the minivan's mobility conversion system was installed on the minivan to make it adaptable for use by the handicapped taxpayer, the ALJ found that the system was exempt from sales tax. Furthermore, the ALJ found that when the handicap accessibility features are separately stated on the vehicle's bill and reasonable in amount, then the added parts are exempt from tax.

Although he did not have an itemized bill of sale from his purchase of the minivan, the taxpayer did provide the itemized invoice of the prior owner's purchase of the minivan from the dealer. In addition, since the minivan had rarely been used by the prior owner, the ALJ ruled that the agreed allocation of \$17,000 for the handicap accessibility equipment was reasonable based on the original bill of sale. Based on this evidence, the ALJ determined that the taxpayer met the exemption requirements and was entitled to a sales tax refund for the equipment.

The text of the decision is located at <http://www.nysdta.org/Determinations/823114.det.pdf>.

By KATHLEEN CAGGIANO

For a discussion of medical prosthetics sales tax exemptions in New York, see 2220 T.M., *New York Sales and Use Taxes*, at 2220.03.B.8.a.

Ohio

Tax Base

Ohio Adopts New Rules, Amends Others for Streamlined Sales Tax Conformity

The Ohio Department of Taxation adopted new regulations and amended an existing regulation to conform to recent amendments to the Streamlined Sales and Use Tax Agreement. [Ohio Dept. of Taxn., Regs. §§ 5703-9-03, 5703-9-26, 5703-9-55, 5703-9-56, 5703-9-57, 5703-9-58, and 5703-9-59, 11/19/10]

The new regulations pertain to:

- the obligation to collect sales tax within 30 days following a change in the state rate,
- certification and use of automated system software for sales tax collection and remittance,
- relief from liability for sales and use tax for certified service providers where the consumer presents a fully completed exemption certificate,
- relief from liability for sales and use tax for purchasers as a result of erroneous data provided by the state,
- the application of sales and use tax to transactions involving optional computer software maintenance contracts, and
- the sourcing of ancillary telecommunication services and internet access.

The existing regulation regarding the exemption certificate forms was amended to require that the pur-

chaser fully complete the certificate and to provide that a fully completed exemption certificate include:

- the consumer's name and business address,
- the consumer's tax identification number,
- the purchaser's type of business or organization,
- the reason for the claimed exemption, and
- if the certificate is a hard copy, the signature of the purchaser.

The new regulations and amended regulation are effective Nov. 29.

Full text of the new and amended regulations is available at <http://www.registerofohio.state.oh.us/>.

By ERIN McMANUS

For a discussion of the application of sales tax to computers and related products and telecommunication services in Ohio, see 1270 T.M., *Sales and Use Taxes: Streamlined Sales Tax System*, at 1270.40.B. The taxation of telecommunications, internet access, and computer software and services in Ohio also is discussed in 1350-2nd T.M., *Sales and Use Taxes: Communications Services and Electronic Commerce*, at 1350.47. A general discussion of the documentation of tax-exempt sales can be found in 1360 T.M., *Sales and Use Taxes: Retail Sales Issues*, at 1360.05.B.

Oklahoma

Procedure

Oklahoma DOR Adopts Emergency Rule For Unregistered Out-of-State Retailers

The Oklahoma Department of Revenue adopted emergency rules outlining the notice requirements for certain out-of-state retailers or vendors not registered in Oklahoma, which require every noncollecting retailer to give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser. [Okla. Dept. of Rev., **Emergency Regs. § 710:65-21-8, Okla. Reg. 11/1/10**]

The rules took effect Sept. 17, 2010, and are set to expire July 14, 2011.

The text of the emergency rules is available on the internet at <http://www.oktax.state.ok.us/rules/710-65-21-8%20ADOPTED.pdf>.

For a discussion of Oklahoma's business registration requirements, see 1780 T.M., *Doing Business in States Other Than the State of Incorporation (Minnesota Through Wyoming)*, at 1780.15. For a discussion of duties and obligations of sellers and purchasers, see 1300-2nd T.M., *Sales and Use Taxes: General Principles*, at 1300.03.B. For a discussion of the application of nexus principles in Oklahoma, see 1420 T.M., *Limitations on States' Jurisdiction to Impose Sales and Use Taxes*, at 1420.04.E.1.aa. For a discussion of exemption certificates, see 1360 T.M., *Sales and Use Taxes: Retail Sales Issues*, at 1360.05.E.

Property Taxes

Georgia

Procedure

Georgia Court Rules Tax Sale Erroneous, Buyer Entitled to Refund, Not Attorney's Fees

A company that purchased a property at a tax sale later found to be held in error is entitled to a refund of the purchase price of the property, but not payment of attorney's fees, the Georgia Supreme Court held, affirming a decision of the trial court that the county tax commissioner had good cause for refusing and delaying the demand for payment. [*Foxworthy Inc. v. Ferdinand, Ga., No. S10A2048, 11/22/10*]

The trial court found that the property's true owner was under bankruptcy court protection at the time of the tax sale, but that the property had been incorrectly identified in court documents. The order was silent as to whether Foxworthy was eligible for reimbursement for the taxes it paid for the years between the tax sale and the bankruptcy court order voiding the sale.

The supreme court remanded the case to determine whether Foxworthy is entitled to reimbursement for those additional expenditures.

Full text of the opinion is online at <http://www.gasupreme.us/sc-op/pdf/s10a2048.pdf>.

Georgia

Tax Base

Georgia Court Determines County Erred In Rescinding Estranged Wife's Exemption

The Georgia Supreme Court reversed a trial court's denial of a homestead exemption to a woman whose estranged husband had obtained an exemption on another property. [*Masters v. DeKalb Cnty., Ga.,*

Bd. of Tax Assessors, Ga., No. S10A0905, 11/22/10]

Sandra Masters and her husband purchased a home in 1978 and lived there with their children until 1992. The parties have lived separately since 1992, but have not divorced. In 1998, Masters' husband deeded his interest in the house to her and she applied for and received a homestead exemption the following year.

By 2001, however, Masters' husband had acquired another home, for which he had applied and received a homestead exemption. In 2008, when it was discovered that both Masters and her husband had homestead exemptions, Dekalb County rescinded her exemption retroactively and assessed back taxes for 2002 to 2007.

Although state law provides for only one homestead exemption per married couple, there was "no legal authority to allow Masters' husband, years later, to nullify the pre-existing exemption," the state supreme court said. The exemption request of Masters' husband should not have been honored and that Masters' valid, preexisting homestead exemption should not have been rescinded, the court concluded.

Full text of the decision is available at <http://www.gasupreme.us/sc-op/pdf/s10a0905.pdf>.

Credits & Incentives

Nebraska

Job Creation Credits

Nebraska DOR Issues Wage and Investment Levels for Economic Development Tax Credits

The Nebraska Department of Revenue issued new wage and investment levels for economic development tax incentives for 2011. [Neb. Dept. of Rev., Revenue Ruling No. 29-10-3, 11/12/10]

Under the Nebraska Advantage Act, companies that meet minimum wage and investment levels are entitled to credits based on average wages paid to new employees. The investment and wage requirements are indexed on Oct. 1 of each year and apply to all applications filed on or after Jan. 1 of the following year. For applications filed before July 15, 2010, wages are defined as compensation subject to withholding for federal income tax, and for applications filed on or after July 15, 2010, wages are defined as compensation subject to the federal Medicare tax.

Investment Thresholds. For 2010 and 2011, Tier 1 investment levels remain at \$1 million and Tier 2 investment levels remain at \$3 million. For 2010, the Tier 4 investment level is \$10 million, and for 2011 it is \$11 million.

For 2010 the Tier 5 investment level is \$32 million, and for 2011 it is \$33 million. For 2010 and 2011, Tier 6 investment levels are \$10 million or \$100 million, depending on the number of employees hired.

Tier 3 does not have an investment requirement.

Wage Requirements. The 2010 required wage level under the Nebraska Advantage Rural Development Act remains at \$10.73 per hour and increases to \$10.86 per hour in 2011.

The maximum wage paid for the Nebraska Advantage Microenterprise Tax Credit Act in 2010 remains at \$1,046 per week and increases to \$1,058 per week in 2011.

Full text of the revenue ruling, with the complete schedule of wage requirements for each investment level, is available at <http://www.revenue.ne.gov/legal/rulings/rr291003.pdf>.

By DENISE RYAN

□ For a discussion of the Nebraska Advantage Act, see 1470-2nd T.M., *Credits and Incentives: Missouri Through Oklahoma*, at 1470.08.A.1. Information on the Nebraska Advantage Rural Development Act is located at 1470.08.A.3. The Nebraska Advantage Microenterprise Tax Credit Act is discussed at 1470.08.A.6.

Washington

Specific Industry Credits

Washington DOR Increases Small Business Tax Credit for Certain Businesses

An amendment to the small business tax credit rule, which reflects an increase in the credit amount for certain businesses, was adopted by the Washington Department of Revenue. [Wash. Dept. of Rev., Regs. §458-20-104, issued 11/12/10]

The small business credit is available against the business and occupation (B&O) tax and is calculated at a maximum of \$35, multiplied by the number of months in the reporting period for all eligible taxpayers.

The credit was amended effective May 1, 2010, and the final rule provides that certain taxpayers who report at least 50 percent of their total B&O taxable amount have their maximum credit increased to \$70, multiplied by the number of months in the reporting period. The credit increase only applies to real estate brokers, service and other activities such as for-profit hospitals, for-profit research and development, accountants, attorneys, dentists, janitors, and landscape architects, and contests of chance.

The final rule is effective Dec. 13.

Full text of the final rule is available at <http://dor.wa.gov/Docs/Rules/draft/20-104cr3fmdraft2010.pdf>.

By DENISE RYAN

□ For a discussion of the small business tax credit in Washington, see 1480 T.M., *Credits and Incentives: Oregon Through Wyoming*, at 1480.16.J.6.