

ORIGINAL

IN THE SUPREME COURT OF OHIO

Teddy L. Wheeler  
In his Capacity of Pike County Auditor,

Appellee/Cross-Appellant,

v.

Joseph W. Testa,  
Tax Commissioner of Ohio,

Appellee,

and

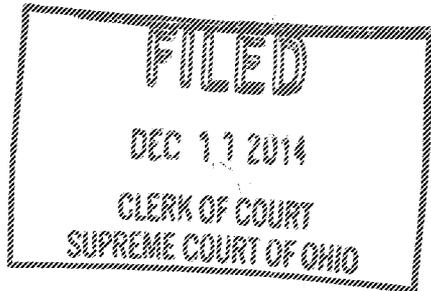
Martin Marietta Energy Systems, Inc.  
n/k/a Lockheed Martin  
Energy Systems, Inc.,

Appellant/Cross-Appellee.

Case No. 2014-1362

Appeal from the Ohio Board of Tax  
Appeals

BTA Case No. 2012-2043



MERIT BRIEF OF  
APPELLEE/CROSS-APPELLANT, TEDDY L. WHEELER, IN HIS OFFICIAL  
CAPACITY OF AUDITOR OF PIKE COUNTY

Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100  
[kshoemaker@midohiolaw.com](mailto:kshoemaker@midohiolaw.com)

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
[wposey@kmlaw.com](mailto:wposey@kmlaw.com)

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellee/Cross-Appellant, Teddy L.  
Wheeler, in his official capacity of  
Auditor of Pike County

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellee/Cross-Appellant, Teddy L.  
Wheeler, in his official capacity of  
Auditor of Pike County

Sean A. McCarter (0064215)  
Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
[sean@smccarterlaw.com](mailto:sean@smccarterlaw.com)

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellee/Cross-Appellant, Teddy L.  
Wheeler, in his official capacity of  
Auditor of Pike County

Robert E. Tait (0020884)  
Hilary J. Houston (0076846)  
Steven L. Smiseck (0061615)  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216  
614/464-6341  
Fax 614/719-4994  
[retait@vorys.com](mailto:retait@vorys.com)

Counsel for Appellant/Cross-Appellee,  
Martin Marietta Energy Systems, Inc.  
n/k/a Lockheed Martin Energy Systems,  
Inc.

Michael DeWine (009181)  
Attorney General of Ohio  
Daniel W. Fausey (0079928)  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215  
614/466-5967  
Fax: 614/466-8226  
[Daniel.Fausey@ohioattorneygeneral.gov](mailto:Daniel.Fausey@ohioattorneygeneral.gov)

Counsel for Appellee,  
Joseph Testa, Tax Commissioner of Ohio

G. Wilson Horde  
Kramer, Rayson LLP  
800 South Gay Street, Suite 2500  
Knoxville, Tennessee 37901  
865/525-5134  
Fax 865/522-5723  
[gwhorde@kramer-rayson.com](mailto:gwhorde@kramer-rayson.com)

Counsel for Appellant/Cross-Appellee,  
Martin Marietta Energy Systems, Inc.  
n/k/a Lockheed Martin Energy Systems,  
Inc.

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## **I. PROCEDURAL POSTURE**

The present case arrives at this Court through the unusual circumstance of a prevailing party at the Ohio Board of Tax Appeals (“BTA”) filing an appeal of a favorable decision which cancelled the tax liability at issue. The BTA issued its Decision and Order (“Decision”) (Appendix, "App." 10) on August 7, 2014. Prior to the Appellee/Cross-Appellant, Teddy L. Wheeler (the “Auditor”), receiving the Decision, Appellant/Cross-Appellee, Martin Marietta Energy Systems, Inc., n/k/a Lockheed Martin Energy Systems, Inc. (“LMES”) filed a Notice of Appeal with this Court. (LMES App. 1) In fact, the LMES Notice of Appeal was filed the next day after the Decision was issued. An Amended Notice of Appeal was later filed by LMES (LMES App. 14)

The LMES Notice of Appeal does not challenge any of the conclusions in the Decision. Each LMES Notice of Appeal states:

“Although MMES/LMES does not contest the BTA’s decision with respect to any of its stated reasons for affirming the Commissioner, MMES/LMES raised before the BTA numerous dispositive legal and jurisdictional issues that should have been part of the BTA’s decision.”

Even though the Decision cancelled the Preliminary Assessment Certificate of Valuation issued December 23, 2010 (the “Assessment”) (App. 48) in total, nullifying any tax liability, LMES appealed the Decision.

This Court has long recognized that a party does not have standing to appeal a decision unless the party is aggrieved by the decision. Accordingly, the Auditor filed a Motion to Dismiss the appeal on September 4, 2014. The Motion to Dismiss was stricken by the Court because a mediation conference call had been scheduled.

On the day after the filing of the Motion to Dismiss, the Auditor filed a Notice of Appeal of the Decision in the Fourth District Court of Appeals (Case No. 2014-CA-00853) (App. 14).

The Auditor later filed a Notice of Appeal in this Court, which was docketed under the case number for this appeal. (App. 1) The Auditor's Notice of Appeal filed in this Court was filed in case this Court reversed earlier precedent and allowed LMES to proceed with its appeal, even though it was not aggrieved by the Decision.

Subsequent to unsuccessful efforts to mediate this case, on September 23, 2014, the Auditor filed a second Motion to Dismiss challenging the standing of LMES to appeal the Decision. The Motion to Dismiss was not opposed by LMES. However, this Court denied the motion without comment. (App. 30) The Auditor now files this Merit Brief as the Appellee/Cross-Appellant.

## **II. INTRODUCTION AND STATEMENT OF FACTS**

This case is about the rule of law. The decisions of this Court and the statutes enacted by the General Assembly support the Auditor's position. The legal issues relating to the Assessment are not unique and have previously been resolved by the Ohio Tax Commissioner ("Tax Commissioner"), the BTA, and the courts of Ohio. However, the issues do arise in a unique setting – a federal uranium enrichment plant. It is the Auditor's position that LMES is required to pay personal property taxes based upon the value of tangible personal property owned by the United States Department of Energy ("DOE"), but used by LMES to manufacture enriched uranium at the Portsmouth Gaseous Diffusion Plant ("PORTS") to be sold by DOE. The Assessment was issued based upon the value of property located at PORTS and taxable in tax year 1993 pursuant to R.C. 5711.16. (App. 36) R.C. 5711.16 provided in 1993, in pertinent part, as follows:

A manufacturer shall also list all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing, and owned or used by such manufacturer.

As of December 31, 1992, LMES was using DOE property to manufacture enriched uranium. The process equipment used by LMES had an acquisition cost of \$862,902,188 as of September 30, 1992. (Supp. 2) When all the other equipment used by LMES in manufacturing is included, the acquisition cost increases significantly. The BTA set forth in its Decision that R.C. 5711.16 would require LMES to pay personal property taxes on the DOE-owned property it used if it is a manufacturer. The BTA incorrectly concluded that LMES is not a manufacturer as contemplated by the statute.

**A. History of PORTS**

In August of 1952, the Atomic Energy Commission ("AEC") selected a tract of land in the Ohio Valley near the Scioto River in Pike County for the site of PORTS. The plant was eventually completed in March 1956, although some production cells had gone on stream as early as 1954. AEC was in charge of operating the facility until those responsibilities were transferred to DOE in October of 1977. Both AEC and DOE decided to operate PORTS through contracts with outside corporations. (Dayton Dep. 11). In November of 1986, Martin Marietta Energy Systems, Inc. succeeded the Goodyear Atomic Corporation ("Goodyear") as the operator of PORTS. The relevant contract between DOE and LMES was signed on March 5, 1991 ("LMES Contract"). (LMES Ex. 1). Pursuant to the LMES Contract, LMES was required to manage, operate and maintain the buildings and facilities at PORTS and a similar enrichment plant in Paducah, Kentucky. DOE ceded complete management and operations of PORTS to LMES, as set forth at Page 9 of the LMES Contract.

The LMES Contract was a cost-plus contract that ensured that the federal government would pay all the cost of operating PORTS, and also pay an award fee, which was above and beyond the costs. The award fee, which is LMES's guaranteed profit, is set forth on pages 6-8 of the LMES Contract. In June of 1995, Lockheed Martin Corporation merged with Martin

Marietta Corporation and the company is presently known as Lockheed Martin Energy Systems, Inc.

To ensure that the LMES Contract was truly a cost-plus contract, DOE is responsible for all state and local taxes. LMES is completely indemnified for any taxes paid. The following language outlines the terms of the indemnification:

I. 70

DEAR 970.5204-23 STATE AND LOCAL TAXES (APR 1984)

(a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer . . .

LMES Contract, p. 148.

The phrase “constituting an allowable item of cost if due and payable” is utilized in the above-quoted paragraph to indicate that LMES will be reimbursed by DOE for any taxes paid. Evidently, the two sophisticated parties to the LMES Contract anticipated that taxes might be collected from LMES “with respect to contract work, any transaction thereunder, or property in its custody or control” and wanted to clarify that DOE would ultimately be responsible. (LMES Contract, p. 148-149). DOE is even required to pay the costs and expenses incurred by LMES in any litigation regarding taxes levied by the state or any local taxing district. (LMES Contract, p. 148). Thus, LMES is completely protected from losses associated with litigation or the payment of personal property taxes to the taxing authorities in Pike County.

During calendar years 1992 and 1993 all of the enrichment of uranium at PORTS was for DOE to sell for use in commercial power plants. (Donnelly Dep. 30) (Nestereuk Dep. 33-34). LMES would run the uranium through filters to manufacture the refined material. (Donnelly

Dep. 35). LMES manufactured the enriched uranium by using DOE-owned property and equipment, all of which was under the custody and control of LMES. (Nesteruk Dep. 43). In fact, every item of personal property at PORTS was used for the ultimate purpose of manufacturing enriched uranium for DOE. (Donnelly Dep. 50-51).

In 1992 and 1993, DOE had about six employees at PORTS. (Donnelly Dep. 39-40). During this time LMES had over two thousand employees at PORTS engaged in the operation of the facility. (Donnelly Dep. 39-40). There is no dispute that LMES was running the day-to-day operations at PORTS. (Donnelly Dep. 30, 38; Dayton Dep. 18). There is also no dispute that LMES was performing the manufacturing activities at PORTS. (Donnelly Notes, Supp. 3,4)

## **B. History Leading to the Assessment**

### **1. The federal government chose not to exempt the use of federal personal property at PORTS from state taxation.**

In 1954 when the federal government began operating the 3,700 acre PORTS facility it was generally accepted that states could not tax a business for the privilege of using or possessing federally-owned property. In addition, the federal government had routinely accepted exclusive jurisdiction over federal properties, thus eliminating the possibility of any state or local taxes. The acceptance by the federal government of exclusive jurisdiction over federal property creates a federal enclave and state or local taxing authorities have no jurisdiction over the property included within the federal enclave. (Supp. 1, Hearing Transcript, hereinafter "Tr." 35).

Unbeknownst to the local officials in Pike County, at the time of acquisition in the 1950's, the federal government through the AEC did not accept exclusive jurisdiction of PORTS (Supp. 1, Tr. 34-5), nor did DOE ever take action to create a federal enclave. (Supp. 1).

AEC was also aware that Congress had removed a statutorily-created exemption from taxation in 1953. The last sentence of 9(b) of the Atomic Energy Act of 1946 had barred state or

local taxation of AEC “activities”. The United States Supreme Court explained in *United States v. New Mexico*, 455 U.S. 720, 102 S. Ct. 1373, 1388, 71 L.Ed.2d 580 (1982):

Congress responded by repealing the last sentence of § 9(b) Pub. L. 262, 67 Stat. 575, in an attempt to “place the Commission and the activities on the same basis with respect to immunity from State and local taxation, as other Federal agencies”. S. Rep. No 694, 83d Cong., 1<sup>st</sup> Sess., 3 (1953). In doing so, Congress endorsed the principle that “constitutional immunity does not extend to cost-plus-fixed-fee contractors of the Federal Government, but is limited to taxes imposed directly upon the United States.” *Id.* At 2.

*New Mexico*, at 744.

The federal government had two chances to protect itself, and its contractors, from taxation, but chose not to exempt the use of federal personal property from state or local taxation.

**2. The states began to challenge the idea that all activities at AEC or DOE facilities are exempt from state taxation.**

In the early 1950's, the time period just before and after the commencement of operations at PORTS, taxing authorities in other states began litigating whether the use or possession of federally-owned property used by a business could be taxed. In those cases, the federal government contended that any tax based on the value of federally-owned property used by a business to perform a federal contract was, in essence, a tax directly against the federal government and, therefore, violated the United States Constitution, Article VI, Clause 2, which is known as the Supremacy Clause (“Supremacy Clause”). A number of cases on this issue were decided by the United States Supreme Court. Unfortunately, in these early cases the Supreme Court was often divided and there was no unwavering rule regarding the limitations placed upon state and local taxing authorities by the Supremacy Clause.

Then, in 1958, the Court clarified the issue and held that a state or local taxing authority could assess a tax against a business for the privilege of using or possessing federally-owned property without violating the Supremacy Clause. In particular the Court decided *City of Detroit*

*v. Murray Corporation of America*, 355 U.S. 489, 78 S. Ct. 458, 2 L. Ed. 2d 441 (1958). In *Murray*, the Court rejected the argument that a state tax styled a personal property tax violated the Supremacy Clause and allowed personal property taxation of those using federal personal property. In *Murray*, the language of the taxing provisions was nearly identical to the Ohio personal property tax statutes. The language was so similar that the tax commissioner immediately after the issuance of the *Murray* opinion requested an opinion from Ohio Attorney General, William Saxbe, regarding the effect of the *Murray* case relative to federally-owned property located in Ohio.

The Court in *Murray* had stated:

As applied - and of course that is the way they must be judged - the taxes involved here imposed a levy on a private party possessing governmental property which it was using or possessing in the course of its own business.

*Murray* at 493.

Attorney General Saxbe acknowledged that Ohio's tangible personal property tax relates only to property "used" in business, but determined that the tax was an ad valorem tax levied on the property itself, rather than a privilege or possessory tax. Based on his conclusion that Ohio's tax was a tax on the property itself, as opposed to a tax for the **privilege** of using personal property, he determined that the Ohio taxes were different from those addressed in *Murray*. He stated in the opinion:

**If the Ohio personal property tax law can properly be characterized as a possessory or privilege tax, then it would seem to follow that your department could assess personal property in the possession of private corporations doing business in Ohio under contracts with the United States Government** similar to that in the *Murray* case. On the other hand, if the Ohio tax can only correctly be described as an *ad valorem* tax upon the property itself, then it follows that there would be no authority for assessing such property.

1958-OAG-2471, page 465 ("Opinion 2471") (emphasis added) (LMES App. 30).

Attorney General Saxbe concluded that this Court had never addressed the issue of whether Ohio's tangible personal property tax was a privilege or possessory tax, but determined on his own, without any supporting authority, that it was an *ad valorem* tax against the property itself. *Id.* Based upon his conclusion, he determined that Ohio's personal property tax could not, pursuant to *Murray*, be assessed against businesses in possession of government property.

Relying upon Opinion 2471, on August 7, 1958, the tax commissioner issued County Bulletin No. 126 informing county auditors that the Ohio Attorney General had concluded that the Ohio personal property tax could not be construed as imposing either a possessory or privilege tax like the tax involved and approved in *Murray*. (LMES App. 34). Accordingly, he determined that personal property taxes could not be assessed against persons in possession of government property.

Within seven years Attorney General Saxbe, and the then tax commissioner, changed their opinions as to whether the Ohio personal property tax could properly be construed as a privilege tax. On April 23, 1965 Attorney General Saxbe filed a brief in this Court in the case of *Doraty Rambler Inc. v Schneider* (1965), 4 Ohio St. 2d 37, in which he asserted:

In as much as the Ohio tangible personal property tax is prospective in nature, that it is levied and assessed at the beginning of the year *for the privilege of using tangible personal property in business for the duration of the year . . .*

(emphasis added) (*Doraty* brief, Supp. 61).

This Court accepted the Attorney General and the tax commissioner's assertion and held:

The tangible personal property tax in Ohio is prospective in nature and is levied and assessed at the beginning of the year for the privilege of using tangible personal property in business for the duration of the year.

*Doraty*, at 39.

This Court provided clear guidance in *Doraty* regarding whether or not Ohio's tangible personal property tax is a privilege tax or a tax upon the property itself. This Court used the phrase “for the privilege of using” to explain the Ohio tangible personal property tax even though the statutes do not use that exact language. *Id.* The *Murray* Court dealt directly with this issue when it stated:

It is true that the Michigan taxing statutes involved here do not expressly state that the person in possession is taxed “for the privilege of using or possessing” personal property, but to strike down a tax on the possessor because of such verbal omission would only prove a victory for empty formalisms.

*Murray*, at 493.

Once this Court determined in 1965 that Ohio's personal property tax was in fact a privilege tax, Attorney General Saxbe's Opinion supports taxation of businesses using personal property owned by the federal government. Following *Doraty*, the tax commissioner should have rescinded County Bulletin No. 126. Instead, the tax commissioner failed to recognize the significance of the decision.

### **3. Payments-in-lieu of real estate taxes.**

At some point in the late 1970's, some Pike County officials became aware that DOE had a program of paying local communities that had lost real estate tax revenues due to the removal of land by virtue of federal ownership that had been on the real estate tax rolls. The payments were limited to the taxes that could have been assessed for the **value of real property** in the condition it was taken by the federal government. For example, the PORTS property was farmland when it was taken, so any payments would be based upon the value of the property as farmland, not the improvements of the PORTS facility or any personal property located there. In order to receive the payments, DOE required a taxing authority empowered to issue a separate tax bill based upon the value of real property to sign an agreement normally referred to as a PILT

(payment-in-lieu of taxes) agreement. (LMES App. 38) Over the years various Pike County officials signed PILT agreements. DOE wanted to ensure that once it made a PILT on the real estate, the taxing authority would not seek additional real estate taxes. (LMES Appendix 38, hereinafter referred to as the "taxing authority").

The PILT agreement in this case ("PILT Agreement") (Supp. 14) includes language waiving any claims for real estate or personal property taxes due to Pike County. This language was required by DOE. For tax year 1993 the language stated that Pike County, as a single taxing authority, was waiving any claim it had to real or personal property taxes. The PILT Agreement was signed by the chairman of the Board of County Commissioners, who at the time believed the board had the authority to waive the taxes. This belief would later prove to be incorrect.

**4. Continuing efforts to determine whether the use of personal property at PORTS by LMES could be taxed.**

Prior to 1986, the state had issued a sales and use tax assessment against the operator at PORTS. Goodyear, as the operator at PORTS for the period under review, filed a petition seeking review of the assessment. On October 28, 1988 the tax commissioner issued a Journal Entry that was sent to Robert D. Bush, Director-Business Services, Martin-Marietta Energy Systems, Inc. - Portsmouth. (App. 50). Martin-Marietta had taken over the operation prior to that date.

The Journal Entry established that the taxes were due, and of significance were two paragraphs that placed LMES on notice that the use of property at PORTS might be taxable. The two paragraphs are as follows:

At issue in the present case is unleaded gasoline used by the petitioner to fulfill its contractual obligations. As in Boyd and New Mexico, supra, it is the responsibility of the contractor to exercise its managerial skill, one aspect of which is purchasing. The government pays the petitioner an annual fee to exercise its discretion in order to ensure an efficiently run operation. The primary purpose of the purchases in question is to further the petitioner's own interest

which includes making a profit. Thus the use of the purchased tangible property by the petitioner is more than “incidental” as in the case of Dresser.

(App. 52).

However, after March 24, 1982, the date of the New Mexico decision, the petitioner was once again given notice by the highest court in the United States that tangible personal property used by an entity for its own business purpose can be subject to taxation by the state. On the state level, the petitioner was aware for at least two years, the length of time taken to obtain security clearances for the auditing agents, that it would be audited by the Department of Taxation.

(App. 54).

In March of 1992, the Auditor attended a Nuclear Regulatory Commission meeting in Kennewick, Washington. (Tr. 27). He spoke with representatives of local governments and schools from many DOE sites throughout the country and determined that he should establish a relationship with DOE. (Tr. 28). Over the years the Auditor also tried to gather information about the site. (Tr. 29).

In the late 1980's or early 1990's, the Auditor would bring up the issue of taxing activities at PORTS with employees of the Ohio Department of Taxation (the “Department”). (Tr. 30). The Auditor had spoken with people from the State of Washington and it was his understanding that they had a use tax that was applicable to a DOE site in Washington and that there was federal law to support the possibility of assessing personal property taxes against the operating contractors at PORTS. (Tr. 31). He was then told by Ed Samsel, an attorney at the Department’s Division of Tax Equalization, that prior to the Auditor's election, the Department had been preparing an order to tax the personal property at PORTS. (Tr. 32). Mr. Samsel stated that a call was made from the Governor’s office to the person preparing to issue the order informing him that if career advancement is a priority he’d best not issue the order. (Tr. 33). At that point the Auditor did not think his chances of getting assistance from the Department were great. (Tr. 33).

On September 28, 1992, the Auditor sent a Freedom of Information Act (“FOIA”) request to the DOE Field Office in Oak Ridge, Tennessee. Among other things, he was requesting a list of personal property owned by DOE at PORTS and a copy of the United States Federal Government’s original acceptance of jurisdiction of the government-owned land at PORTS. DOE responded to the FOIA request with a letter, a contract, a Revised Jurisdiction Summary and a list of DOE-owned personal property assets at PORTS (“DOE Asset List”). (Supp. 2). The Revised Jurisdiction Summary, established that “Exclusive jurisdiction is not vested in the United States over any portion thereof.” (Supp. 1). The DOE Assets List established the acquisition costs of categories of personal property as of 9/30/92 located at PORTS, the end of the federal government’s fiscal year. (Supp. 2). Since the Auditor was now, for the first time, aware that PORTS was not a federal enclave, he decided to make attempts to get someone at the Department to take another look at the taxable status of the property. (Tr. 38). In order to accomplish this he sent a letter to then tax commissioner, Roger Tracy, combining information from the representatives in the State of Washington and information from the response to the FOIA request. (Tr. 37-38). The Auditor received no response from Mr. Tracy. (Tr. 39).

At the time the Auditor was writing to Mr. Tracy, no personal property tax returns had ever been filed by any operator at PORTS. (Tr. 57). LMES had been operating at the site since 1984 and it had filed no returns. However, in May of 1994, LMES, which was then Martin Marietta Energy Systems, Inc., inexplicably filed a County Return of Taxable Property with the Auditor’s office. (Supp. 26).

The 1994 return identified Martin Marietta Energy Systems, Inc. as the taxpayer. It listed zero as the total listed value, the taxable value, and the tax. It was signed by Charles B.

Landguth, Assistant Treasurer for the company. Similar returns were filed for tax years 1995 and 1996, but were signed on behalf of the Director of Business Services. The additional returns stated that the date the business started in Ohio was March 2, 1984. (Supp. 29 and 33). They further indicated zero value for machinery, repair parts, small tools, etc. used in manufacturing.

In the middle of 1993 DOE transitioned the oversight of PORTS to the United States Enrichment Corporation (“USEC”). USEC was a quasi-governmental corporation that later became private. (Dayton Dep. 36-37). Essentially, USEC was doing the same thing that was being done at PORTS from the late 1980s until LMES transitioned the manufacturing operations to USEC. (Nesteruk Dep. 36). USEC, like DOE, was operating PORTS through contractors to enrich uranium to be sold to commercial power plants, and not for national security purposes. (Dayton Dep. 37; Nesteruk Dep. 35). The transition of operations to a quasi-governmental corporation changed the historical operations at PORTS and created a new set of challenges for all of the local officials in Pike County.

Eventually, the Auditor decided it was worth another direct effort to engage the Department and receive an answer to the question of whether LMES could be taxed for the privilege of using the manufacturing machinery and equipment at PORTS. Either the Auditor or his counsel forwarded information to the Department. (Tr. 129). This time the information was reviewed by the Department and a letter was sent by John Nolfi, an administrator at the Department, to Don Martin at Lockheed Martin Corporation. (Supp. 20) The letter confirmed what the Auditor had been saying for years, that the value of the personal property was taxable. It also confirmed that there was no statute of limitations for assessments of personal property that had been omitted from tax returns. After an exchange of letters between Mr. Nolfi, and counsel

for LMES and the Auditor (Supp. 20, 22), the Auditor decided that an assessment should be issued.

On December 23, 2010, the Auditor issued the Assessment for return year 1993. (App. 48). The Assessment increased the taxable value from zero to \$158,512,000. The Auditor issued the Assessment as deputy tax commissioner. On February 7, 2011 LMES filed a Petition for Reassessment (“Petition”) and requested a hearing before the Tax Commissioner.

### III. SUMMARY OF LAW AND ARGUMENT

In 1993, R.C. 5711.16 (App. 36) read as follows, and clearly distinguished for taxation purposes that machinery used in manufacturing, but not owned, was subject to taxation:

A person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying or combining different materials with a view of making a gain or profit by so doing is a manufacturer. When such person is required to return a statement of the amount of his personal property used in business, he shall include the average value, estimated as provided in this section, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying, or refining, and of all articles which were at any time by him manufactured or changed in any way, either by combining, rectifying, refining, or adding thereto, which he has had on hand during the year ending on the day such property is listed for taxation annually, or the part of such year during which he was engaged in business. He shall separately list finished products not kept or stored at the place of manufacture or at a warehouse in the same county.

The average value of such property shall be ascertained by taking the value of all property subject to be listed on the average basis, *owned* by such manufacturer on the last business day of each month the manufacturer was engaged in business during the year, adding the monthly values together, and dividing the result by the number of months the manufacturer was engaged in such business during the year. The result shall be the average value to be listed. A manufacturer shall also list all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing, and *owned or used* by such manufacturer.”

*Id.* (emphasis added).

As later confirmed by this Court in *ATS Ohio Inc. v. Tracy* (1996), 76 Ohio St.3d 297, and now the BTA, the provisions of the statute are precise and require a manufacturer to pay

personal property taxes on engines, machinery, tools, and implements “owned or used” by the manufacturer. The late Chief Justice Moyer, writing for the majority, stated:

The final sentence of the second paragraph states the rule for treatment of property other than inventory, including engines, machinery, tools, and implements on the tax return. Instead of taxing only the items of property from this category that are owned by the taxpayer, R.C. 5711.16 provides that tax must be paid on items from the category that are “owned or used by such manufacturer.” The language of the statute is precise. The contrast between the provision that taxes engines, machinery, and tools “owned or *used*” by a manufacturer, and the provision that taxes inventory-type property “owned” by the manufacturer manifests the intent of the General Assembly to treat the property differently. We conclude, therefore, that manufacturers such as ATS must return only the inventory personal property they own.

*Id.* (emphasis added by the Court).

Thus, the following conclusions lead to the determination that LMES is responsible for personal property taxes for tax year 1993:

- (1) Ownership of machinery and equipment used by a manufacturer is not necessary to create tax liability. *ATS, supra*;
- (2) Under the specific provisions of certain statutes in R.C. Chapter 5711, an entity need not own or have a beneficial interest in the property being assessed to be considered the taxpayer responsible for the tax. *ATS, supra*; *Willis Appliance & T.V. v. Limbach*, 1987 WL 12608 (Ohio App.8 Dist.);
- (3) Under Ohio law county officials are without authority to waive tax claims. *State, ex rel. Donsante v. Pethtel* (1952), 158 Ohio St. 35;
- (4) The Ohio tangible personal property tax is a tax on the privilege of using tangible personal property in business and therefore, LMES was responsible for taxes in 1993. *Doraty, supra*, Opinion 2471;
- (5) In 1988 the Tax Commissioner specifically informed LMES that “tangible personal property used by an entity for its own business purpose can be subject to taxation by the state.” Journal Entry – In the matter of Sales and Use Tax Assessment, Serial No. 88001851S (App. 50);
- (6) The Auditor has authority to issue an assessment to an entity using property in a single county, even if the property is not included in a tax

return. R.C. 5711.24; R.C. 5711.31; *Michelin Tire Corp. v. Kosydar* (1975), 45 Ohio App.2d 107;

- (7) R.C. 5703.58 does not create a statute of limitations relative to personal property taxes payable to Pike County. Legislative Service Commission (“LSC”) Bill Analysis for Sub. H.B. 390 that was enacted as R.C. 5703.58 (Supp. 44).

Accordingly, the Auditor had authority to issue an assessment relative to the use of personal property by LMES, where LMES had failed to include all machinery, engines, tools, and implements it “used” in the manufacturing process.

#### IV. ARGUMENT

##### A. Responses to LMES’s Brief

##### 1. **The Auditor has not acted in bad faith and the BTA had no authority to consider the issue.**

In the last few years, two issues have become a part of the national dialogue – the absence of civility in the legal system and bullying. LMES’s brief is a disappointing example of both. In an effort to create an issue that would arguably support its appeal, LMES attempts to vilify the Auditor with conclusory statements and references to evidence not in the record. It also ignores evidence that supports the conclusion that the Tax Commissioner, the Tax Department staff, the BTA, and even LMES believed that LMES might be responsible for the 1993 taxes assessed by the Auditor.

References such as “single minded desire to extract taxes from a government facility” and “he maintained a private agenda regarding PORTS” are examples of statements that are not supported by evidence in the record. Numerous other derogatory, unsupported statements are strewn throughout LMES’s brief. Such attacks on the integrity of an elected official simply add to the public’s cynicism and do nothing to clarify the issues in this case. Although each of

LMES's propositions of law challenge the BTA's failure to assess costs and fees against the Auditor based upon bad faith, its arguments are supported neither factually, nor legally.

**a. The facts of this case do not support a finding of bad faith.**

The facts presented to the BTA do not support a claim of bad faith for issuing the assessment. The Auditor had been informed that the Department had intended to tax the use of government property at PORTS, but that the Governor had intervened (Tr. 33). This establishes that the Department believed taxation was proper. LMES had filed tax returns identifying itself as the taxpayer at PORTS. (Supp. 26, 29, 33) This established that LMES believed that it was a taxpayer for personal property taxation purposes. Most importantly, and contrary to LMES's assertion that the Tax Commissioner did not assist or support the Auditor, on July 22, 2010, John Nolfi wrote to LMES on Department letterhead setting forth the analysis for the taxability of the use of personal property by LMES. (Supp. 20). John Nolfi stated, in pertinent part:

The Pike County Auditor's Office forwarded information regarding the Portsmouth Gaseous Diffusion Plant (PGDP) located in Piketon, OH, and has asked the Department to determine the taxability of machinery, equipment, fixtures and supplies (the personal property) owned by the U.S. Department of Energy (DOE) during the years the personal property was being used by the private contractors.

\* \* \*

R.C. 5711.16(A)(1) defines "manufacturer" as:

[A] person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing.

Finally, R.C. 5711.16(C) provides:

A manufacturer also shall list all manufacturing equipment owned or used by the manufacturer.

**Applying these statutes to the facts presented above results in the conclusion that the DOE personal property is subject to taxation and should have been listed for taxation by the contractor, i.e., the manufacturer operating the PGDP.** Clearly, this property was not reported for taxation. There is no statute of

limitations in the case of omitted property and such property can be assessed when it is discovered it was omitted (R.C. 5711.27). Preliminary estimates based on best available information indicate that if the omitted personal property is assessed, the taxes, not including penalty and interest, are estimated to be over ten million dollars for tax year 1994 alone.

If LMUS does not feel that the DOE owned property is subject to taxation, submit no later than August 25, 2010, a detailed explanation with documentation to support this position. Otherwise, please contact me directly by the aforementioned date to make arrangements to submit the detail necessary to compute the true and list values of the DOE personal property not previously listed for taxation.

\* \* \*

Your failure to cooperate could result in our estimating the values as provided for in R.C. Section 5703.36.

(Supp. 20) (emphasis added).

Although Mr. Nolfi referenced the present version of R.C. 5711.16, the 1993 version was identical in all relevant aspects. The letter from the Department concludes that: (1) the contractor operating PORTS is a manufacturer; (2) pursuant to R.C. 5711.16, LMES, as the contractor, is responsible for taxes on the use of DOE personal property; (3) there is no statute of limitations relative to an assessment of personal property not listed in a return; and (4) the estimated taxes exceed Ten Million Dollars (\$10,000,000) for tax year 1994 alone. The Nolfi letter undeniably sets forth that the Department believed in 2010 that taxation was proper. Indeed, the possible applicability of R.C. 5711.16 to LMES creating manufacturer personal tax liability has now been confirmed by the BTA in its Decision. The only thing preventing the application of R.C. 5711.16 is the BTA's incorrect decision that LMES is not a manufacturer.

LMES, through its counsel, Raymond Anderson, responded to the Nolfi letter on September 30, 2010 (Supp. 22) and acknowledged that he was responding on behalf of LMES, even though the letter references a sister company. In the response, based on case law interpretations, LMES argues that the personal property at PORTS is not subject to taxation

solely because LMES did not own it or have a beneficial interest in it. This legal argument is the only response given to the analysis for taxation set forth by John Nolfi , and is not determinative in this case.

It was the Auditor who raised the issue of taxability with the Ohio Department of Taxation and asked the Department to determine the taxability of the property used by LMES. John Nolfi concluded that personal property taxation was proper in this case. Within ninety days of Mr. Anderson's response, the Auditor filed the Assessment. The Auditor cannot be found to have acted in bad faith when he pursued taxation only after the Ohio Department of Taxation supported his position in writing and confirmed that it did not believe there was a statute of limitations prohibiting the assessment.

Further bolstering the Auditor's belief that the DOE personal property might be taxable was the filing of tax returns by LMES during its last three years as the operating contractor at PORTS. Although LMES raises numerous arguments regarding its surprise that the Assessment was issued, LMES itself had determined that it was a taxpayer required to file a return.

The Auditor has pursued his statutory responsibilities by serving LMES with the Assessment and informing LMES that it had the right to seek a review of the Assessment with the Tax Commissioner. He then appealed to the BTA and now to the Fourth District Court of Appeals. He has also appealed to this Court to ensure that his appellate rights are protected. An auditor has the right to seek a determination in the only manner allowed by law. Just because LMES disagrees with the Auditor's conclusion, it has no right to attack the Auditor.

**b. The BTA has no authority to assess costs or damages against a party to an appeal.**

LMES argues in its Proposition of Law No. 1 that this Court may impose litigation costs, including legal fees for bad faith and frivolous conduct. In the cases cited by LMES, nearly

every request for attorney costs and attorney fees was denied, even though the actions of the parties were infinitely more egregious than the Auditor's attempt to clarify whether the use of personal property at PORTS could be taxed. For example, in *Oberlin Manor, Ltd. v. Lorain Cty. Bd. of Revision* 1994-Ohio-500, 69 Ohio St.3d 1, this Court failed to award costs and attorney fees against a board of revision and county auditor who had arguably ignored clear precedent and a BTA order regarding the application of value to each year of a triennial update. *Id.* In fact, the board of revision and county auditor did not even challenge the substantive issues before the Court. *Id.* at 3. It is noteworthy that this Court considered only *Oberlin's* "costs and attorney fees incurred in the appeal to this Court." *Id.* In *Oberlin* the taxpayer did not even suggest that the BTA could order the payment of costs or fees incurred before the BTA. LMES implies that *Oberlin*, and other cases, hold that the BTA had "innate authority" to impose sanctions. This is simply incorrect.

The BTA has specific rules that may grant it certain powers to sanction parties in a BTA appeal. OAC 5717-1-11 incorporates the Ohio Rules of Civil Procedure solely for discovery purposes and, thus, may include an authorization for sanctions regarding discovery abuses. OAC 5717-1-14 allows sanctions if a party fails to comply with any rule contained in agency designation 5717 of the Ohio Administrative Code or to enforce compliance with Chapter 5717 of the Ohio Administrative Code or orders of the BTA. LMES has not alleged that the Auditor violated any administrative rule of the BTA or any order issued by the BTA.

Accordingly, any proposition of law based upon the failure of BTA to sanction the Auditor is a groundless attempt to create an argument that LMES is an aggrieved party.

2. **The personal property used by LMES to manufacture enriched uranium was taxable because a manufacturer need not own or have a beneficial interest in machinery, engines, and tools that it uses before it is required to pay taxes.**

LMES has argued that it is not a taxpayer as defined in R.C. 5711.01(B). From this LMES then argues that only property in which a company has an ownership interest or a beneficial interest can be taxed. In making this argument, LMES relies on the 1981 Ohio Supreme Court decision of *Refreshment Service Company, Inc. v. Lindley* (1981), 67 Ohio St.2d 400. In *Refreshment Service*, the Court held that a concessionaire, who was not a manufacturer, at the Cleveland Convention Center was not liable for personal property taxes for equipment and fixtures installed for its use. *Id.* at 401. The Court did not address either R.C. 5711.15 (merchant's inventory) or R.C. 5711.16 (manufacturer's inventory or equipment) because these types of property were not at issue. Thus, the Court overruled the BTA and held that the company was only responsible for property in which it held an ownership or beneficial interest. *Refreshment Service* at 404. The Court also stated, "Clearly if the General Assembly had intended to include as a taxpayer for the purposes of the personal property tax those persons or organizations that use the taxable property in the operation of a business, it could easily have done so." *Refreshment Service* at 403. In the case of manufacturers, that is exactly what it did. With respect to a manufacturer, it provided that a manufacturer would, for tangible personal property tax purposes, be assessed on the value of machinery, tools and implements "owned or used" by a manufacturer. (R.C. 5711.16). Nevertheless, LMES contends that there is an absolute rule that no entity in Ohio ever pays taxes relative to personal property that it does not own. The BTA disagreed in the Decision finding that if LMES was a manufacturer it would be assessed.

If LMES's contention is correct that ownership is required, a review of all cases decided after *Refreshment Service* should reveal an unwavering adherence to the "ownership or beneficial interest" test. Such is not the case. The ownership or beneficial interest argument was rejected by the Eighth District Court of Appeals in *Willis, supra*. Willis Appliance had a consignment agreement with General Electric where Willis would receive goods and later sell them. No one disputed that Willis did not own or have a beneficial interest in the goods. Thus, Willis argued that the consigned goods could not be taxed because of the definition of taxpayer in R.C. 5711.01(B).

The Court directly addressed the issue of required ownership by holding that the language of R.C. 5711.15 (merchant's inventory) allowed the taxation of property which a merchant "has had in his possession or under his control". *Willis, supra* at 2. The Court referenced *Refreshment Service, supra*. It then held:

Revised Code Section 5711.15 shows that the legislature intended to tax more than just the "ownership of" or "a beneficial interest in" personal property when it comes to the inventory of merchants.

\* \* \*

In light of the obvious intentions of the legislature, we hold that R.C. 5711.01(B) and R.C. 5711.15 are to be read in *pari materia*, and that merchants doing business in Ohio who possess or control inventory are "taxpayers" within the meaning of R.C. 5711.01(B).

*Willis, supra* at 2.

In *Willis* the Court specifically accepted the holding in *Refreshment Service*, however, to give effect to R.C. 5711.15, the Court recognized that a provision of R.C. Chapter 5711 that is applicable to a specific industry may alter the general rules.

The BTA has also consistently allowed the taxation of personal property not owned by the entity liable for the taxes. In *Jansheski v. Limbach* (March 25, 1986), BTA Case No. 83-A-

427, 1986 WL 2889, unreported, the BTA held that the definition of a merchant is not restricted to only those businesses which “own” inventory. Specifically, the BTA reviewed R.C. 5711.02, R.C. 5711.03, and R.C. 5711.15 and determined that these statutes required the filing of returns and inclusion of property not owned by the merchant. The BTA explained:

The language of the three statutes quoted above [R.C. 5711.02, R.C. 5711.03 and R.C. 5711.15] is straight forward and the obligation thereby imposed is explicit. A merchant is clearly required to list the average monthly value of the inventory under his possession or control. *Ownership of, or equity in, such inventory is not a prerequisite to a merchant’s duty to file returns.* Possession and control of personal property with the authority to sell it is sufficient to bring a taxpayer within the scope of said duty.

*Id.* at 2 (emphasis added).

Significantly in *Jansheski*, the BTA, decided based on the definition of a merchant, a merchant would not have to have ownership, or equity in, inventory to be required to file a return. It further stated that R.C. 5711.03 requires property to be listed by ownership or control.

This Court applied a similar analysis as the *Willis* court and concluded that the taxation of a manufacturer is dependent upon the specific language of R.C. 5711.16. In *ATS*, this Court stated that a manufacturer would be required to pay taxes on engines, machinery, and tools either owned or used. *ATS, supra.* In *ATS*, this Court explained that a manufacturer is only required to pay taxes on inventory that it owns because the statute clearly distinguishes between inventory **owned** and machinery, engines, and tools **owned or used** by the manufacturer. Specifically, this Court stated:

The final sentence of the second paragraph states the rule for treatment of property other than inventory, including engines, machinery, tools, and implements on the tax return. Instead of taxing only the items of property from this category that are owned by the taxpayer, R.C. 5711.16 provides that tax must be paid on items from the category that are “owned or used by such manufacturer.” The language of the statute is precise. The contrast between the provision that taxes engines, machinery, and tools “owned or used” by a manufacturer, and the provision that taxes inventory-type property “owned” by

the manufacturer manifests the intent of the General Assembly to treat the property differently. We conclude, therefore, that manufacturers such as ATS must return only the inventory personal property they own.

*Id.*

The BTA quoted this language after it had concluded that LMES neither owned nor had a beneficial interest in the property. It recognized that the language of R.C. 5711.16 controls the taxability of the use of property by a manufacturer. A manufacturer need not own the inventory or the machinery used in the manufacturing process for the machinery to be taxed.

Incidentally, Justice Cook's dissenting opinion in *ATS* looked specifically to the definition of a manufacturer and argued that even the inventory not owned by the manufacturer should be taxed. She stated:

I agree with the BTA that the focus by the parties on the phrase "owned by such manufacturer" is misplaced. The transfer of ownership is inapposite to the reality that this assessed property is necessarily "held" to be used by the manufacturer to finish this complex automated system.

*ATS*, at 302.

Every member of the Court concluded that property not owned by the manufacturer could be taxed, based upon the language of R.C. 5711.16.

Rarely is any decision-maker provided with a specific answer to the issue presented, but this Court provided such an answer to the BTA. In a post *Refreshment Service* case, this Court definitively stated that a manufacturer is responsible for taxes related to property used, but not owned, by the manufacturer based upon the language of R.C. 5711.16. Accordingly, the BTA, in this case, must have concluded that manufacturers are not insulated from tax liability simply because they do not own or have a beneficial interest in certain types of personal property that they use. Otherwise why did the BTA address the issue at all. LMES has not challenged that conclusion in its appeal.

3. **The Assessment is not prohibited by the Administrative Practice Doctrine.**

- a. **An administrative practice of non-taxation, a narrow exception to the prohibition against the application of estoppel in tax cases, was not established by LMES.**

Faced with the Supreme Court's pronouncement in *ATS*, LMES has raised various "affirmative defenses" to overcome the indisputable conclusion that, as a manufacturer, it must pay taxes for the privilege of using DOE's machinery, equipment and tools to enrich uranium. One of these defenses is the Doctrine of Administrative Practice. LMES has done this by asserting that a delay in filing the assessment may preclude the assessment on equitable grounds.

In *HealthSouth Corp. v Levin* (2009) 121 Ohio St. 3d 282, this Court stated:

The commissioner insists that these cases involve an estoppel doctrine that may be applied against the taxpayer, but the notion is mistaken. The doctrine of "administrative practice" advanced in *Ormet* and *NLO* constitutes a very narrow exception to the rule that estoppel does not generally apply in tax cases.

*HealthSouth*, at ¶26.

The doctrine is a narrow exception to the rule that estoppel is not applicable in tax cases. LMES must meet the specific requirements of the exception. The fact that an assessment has not been issued for several years does not, in and of itself, establish the applicability of the doctrine.

In *HealthSouth* this Court set forth the specific requirements as follows:

The other cases – *NLO, Inc. v. Limbach* (1993), 66 Ohio St.3d 389, 613 N.E.2d 193, and *Ormet Corp. v. Lindley* (1982), 69 Ohio St.2d 263, 23 O.O.3d 257, 431 N.E.2d 686 - **presented situations in which high-level tax officials repeatedly assured a taxpayer, in writing and over a period of decades**, that particular property was exempt. Then the Commissioner reversed himself and issued a retroactive assessment. In striking down the assessment, this court in each case invoked the concept of "administrative practice" having "persuasive weight" in the court's determining how to apply the law during a given period. *NLO* at 395, 613 N.E.2d 193; *Ormet* at 266, 23 O.O.3d 257, 431 N.E.2d 686, both quoting *Recording Devices, Inc. v. Bowers* (1963), 174 Ohio St. 518, 520, 23 O.O.2d 150, 190 N.E.2d 258. \* \* \* The doctrine of "administrative practice" advanced in *Ormet* and *NLO* constitutes a very narrow exception to the rule that estoppel does not generally apply in tax cases. *Ormet*, 69 Ohio St.2d at 265, 23 O.O.3d 257,

431 N.E.2d 686. **The doctrine applies against the state when the state has interpreted the law in favor of a particular taxpayer in writing and has adhered to that interpretation over an extended period of time, but later corrects its interpretation and attempts to assess taxes retroactively in accordance with the new interpretation.** *Id.* at 266, 23 O.O.3d 257, 431 N.E.2d 686.

*HealthSouth* at ¶26 (emphasis added).

Thus the requirements are: (1) a tax commissioner's written interpretation of the law in favor of a particular taxpayer specifically provided to that taxpayer; (2) reliance on the interpretation by the taxpayer; and, (3) adherence to that interpretation by the tax commissioner for an extended period of time.

**b. LMES has not established that it received, or relied on, any written interpretation from any tax commissioner.**

There are three possible types of writings upon which LMES could base an Administrative Practice Doctrine argument. The first is a 1959 document purporting to be notes from a meeting with NLO, Inc. and the tax commissioner ("NLO Memorandum") (LMES Supp. 153). The second are the PILT agreements that contain representations regarding the taxability of personal property at PORTS. The third is County Bulletin No. 126, which is a 1958 bulletin from the tax commissioner to county auditors regarding the taxability of property used by a business, but owned by the federal government. (LMES App. 34). LMES did not establish the necessary requirements relative to any of the writings.

**c. The NLO Memorandum does not meet the requirements of the Administrative Practice Doctrine.**

Essential to establishing the Administrative Practice Doctrine is a writing to the taxpayer from the tax commissioner upon which the taxpayer relied. The NLO Memorandum is notes from a purported meeting held in 1959 between the tax commissioner and a company that is not affiliated with LMES. Neither the author of the notes nor anyone from the company testified. It

is not a written communication from the tax commissioner to LMES. LMES has introduced no evidence that anyone at LMES had even seen the NLO Memorandum prior to the Assessment. It certainly produced no evidence that LMES had relied on this document over an extended period of time.

The BTA had occasion to address an identical situation in 1995. In *NDM Acquisition Corp v Tracy*, 1995 WL 467113 (Ohio Bd. Tax App.), the taxpayer had offered a letter submitted as evidence in another appeal before BTA. The BTA held:

In the present case, there apparently exists no written communications from the Tax Commissioner directed to appellant advising it that only its material costs will be considered in determining the price of appellant's free goods. While appellant offered a letter submitted as evidence in another appeal before this Board, *see Exhibit 18. [FM3]* even if we were to consider this letter, there exists no evidence that appellant was aware of, or had cause to rely upon, this communication during or subsequent to the audit period, or that it received a comparable correspondence from the Tax Commissioner.

*NDM Acquisitions* at \*6.

Indeed, LMES has not even suggested that it saw or relied on the NLO Memorandum. It certainly has produced no evidence that it ever saw the document prior to the Assessment. Moreover, the NLO Memorandum is not correspondence from the Tax Commissioner. It is a self-serving memorandum purportedly prepared by an employee of an unrelated company.

The NLO Memorandum cannot be the basis for an Administrative Practice Doctrine argument.

**d. The PILT Agreement does not meet the requirements of the Administrative Practice Doctrine.**

The PILT agreements are not correspondence from the tax commissioner and are not directed to LMES. There is no evidence that any tax commissioner was aware of any PILT agreement prior to discussions regarding this matter. Additionally LMES has not established that LMES was aware of any of the agreements prior to the Assessment. Just as with the NLO

Memorandum, LMES introduced absolutely no evidence to prove that it had seen the terms of the PILT agreements. Accordingly, LMES never attempted to establish that it relied on the statements in the agreements prior to the Assessment.

LMES, as a third party beneficiary to the PILT agreements, only has a contractual right to enforce the agreements to the extent that DOE could enforce them. LMES is bound by the Commissioners authority to waive taxes, the same as DOE. LMES also does not have the right to argue that it relied on the PILT agreements simply because DOE may have relied on the agreements. There is no legal support for the proposition that a party may be a third party beneficiary of another's detrimental reliance. *Cordemex, S.A. DE C.V. v. Dayton Importers Corporation*, 1987 WL 6245, pg. 4 (Ohio App. 2 Dist). A third-party beneficiary would have to establish that it specifically saw and relied on the provisions of the agreement. LMES has established neither. This is particularly true relative to the PILT Agreement which was not even signed until 1998. LMES could not have relied on provisions in an agreement that did not exist in 1993. Once again, LMES has failed to prove the necessary requirements of the Administrative Practice Doctrine relative to the PILT agreements.

**e. County Bulletin No. 126, issued in 1958, does not meet the requirements of the Administrative Practice Doctrine.**

Finally, LMES has pointed to County Bulletin No. 126 issued August 7, 1958, as a basis for establishing that the Department has long taken the position that the personal property located at PORTS was exempt. County Bulletin No. 126 is based upon Attorney General Saxbe's Opinion 2471. County Bulletin No. 126 states:

In response to our request the Attorney General, under date of July 30, 1958, rendered his opinion No. 2471, wherein he concluded that existing provisions of the Ohio personal property tax law could not be construed as imposing either a possessory or privilege type tax such as was involved in the Murray Corporation case. Accordingly, he determined that personal property taxes could not be assessed against persons in possession of government property.

Once again LMES introduced no evidence to prove that it was even aware of this bulletin prior to the Assessment. Apparently LMES believes that County Bulletin No. 126 is notice to the world of the tax commissioner's policy. Consequently, LMES must accept any other public statements or court decisions as notice to the world if there is a change in the policy.

The problem with LMES's argument is that County Bulletin No. 126 contains the erroneous conclusion that personal property taxes are not a possessory or privilege tax. It is this erroneous conclusion that is the basis for directing ". . . personal property taxes could not be assessed against persons in possession of government property." As addressed above, the privilege tax issue was resolved by this Court in 1965 in *Doraty*.

Opinion 2471 states that the tax commissioner was making inquiry as to the taxability of personal property possessed by contractors of the federal government in light of the United States Supreme Court decision in *Murray* issued on March 3, 1958. In *Murray*, the United States Supreme Court held that taxes levied by states or local taxing authorities could be assessed against a business based upon the privilege of possessing or using personal property titled to the federal government. The Attorney General concluded, without reference to any authority, that the Ohio's personal property taxation scheme was not a tax for the privilege of using tangible personal property in business, but a tax upon the property itself.

Opinion 2471 concludes with:

Accordingly, and in specific answer to your inquiry, it is my opinion that the Ohio property tax levied under the present provisions of Title 57 of the Revised Code on tangible personal property which is used in business is neither a possessory nor a privilege tax but an *ad valorem* tax on such property and such tax is not applicable to property possessed by a person doing business in Ohio which property is titled in the United States under the provisions of a contract with the Federal Government.

Opinion 2471, p. 469.

Based upon the Attorney General's reasoning, if the personal property tax is a privilege tax, then it would seem to follow that the Department could assess personal property taxes against private corporations using the federal government property. Seven years after Opinion 2471 was issued, the fact that Ohio's tangible personal property tax is a privilege tax, as opposed to a tax on the property itself, was conclusively established by the this Court in *Doraty, supra*, when it held:

The tangible personal property tax in Ohio is prospective in nature and is levied and assessed at the beginning of the year for the privilege of using tangible personal property in business for the duration of the coming year.

*Id.* at 39.

A certified copy of the tax commissioner's brief filed in *Doraty* was admitted at the hearing. The brief establishes that the position taken by the tax commissioner since at least 1965 is that the tangible personal property tax is a privilege tax and is prospective. Therefore, any supposed administrative policy of the Tax Commissioner based upon County Bulletin No. 126's directive that personal property taxes could not be assessed against governmental contractors because the tax was not "a possessory or privilege type tax" died in 1965, if not earlier. LMES presented no evidence that it relied on the directive, and, in fact, LMES filed tax returns in the 1990's.

- 4. The Auditor has authority to issue an assessment for property not listed in returns, if the property used by the manufacturer is located in only one county in Ohio.**

LMES also argues that the Auditor has no authority to assess property not listed in a return filed with the Auditor. It relies upon the first sentence of R.C. 5711.24, which states:

The tax commissioner shall assess all taxable property, except property listed in returns which the county auditor is required to assess as his deputy, and shall list and assess all such property which is not returned for taxation, and for that purpose shall have and exercise all powers vested in him by law for the purpose of administering any law which he is required to administer.

LMES intentionally ignores the next sentence. That sentence states:

The action of the **assessor** in assessing taxable property under sections 5711.01 to 5711.36, **shall be taken as to taxable property required to be listed in a return, whether listed or not, and whether a return has been made or not.**

*Id.* (emphasis added).

The operative phrase in the above-quoted sentence is “required to be listed”. Pursuant to R.C. 5711.01(F), an assessor is the tax commissioner and a county auditor. They are both instructed to take all actions necessary to assess not only property that is listed in a return, but also property not listed. Yet, under LMES’s interpretation, the assessor (the county auditor) could never assess property where a return was not made.

In addition, R.C. 5711.31 conforms to the logical reading of R.C. 5711.24. The first paragraph of R.C. 5711.31 states:

Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as to listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. . . .

The first phrase is clear. “Whenever the assessor assesses any property not listed in or omitted from a return”, the assessor must give notice of the assessment. But the phrase is nonsensical if LMES’s interpretation is adopted. “Assessor” means the tax commissioner or a county Auditor. [R.C. 5711.01(F)]. However, LMES argues that no county auditor can ever assess property not listed in or omitted from a return. Accordingly, if LMES is correct, the first sentence of R.C. 5711.31 should read, “Whenever the **tax commissioner** assesses any property not listed in or omitted from a return, or the assessor assesses any item or class of taxable property listed by a taxpayer in a return . . .” Clearly, the General Assembly anticipated that

county auditors would sometimes be required to assess property not listed in or omitted from a return. Thus, the language of R.C. 5711.31.

In *Michelin Tire Co.*, *supra*, the Eighth District Court of Appeals reviewed R.C. 5711.31 and explained the statute by specifically stating, “When the assessor (either the tax commissioner or a county auditor) assesses any property not listed in the taxpayer’s return . . .”, certain actions must occur. The Court merely confirmed what a clear reading of the language conveys. Therefore, the Auditor had authority to issue the assessment.

Finally, the Department has recognized that a county auditor may issue a preliminary assessment certificate if a taxpayer has failed to file a return. In County Bulletin No. 175 (App. 42), the Department gives guidance to county auditors when issuing preliminary assessment certificates. County Bulletin No. 175 states:

The assessment of property by the county auditor, **if no return has been filed by the taxpayer**, and changes in the values as reported in a given taxpayer’s return or the addition of penalties and additional charges, can only be accomplished by the means of preliminary or amended preliminary assessment certificates, respectively, and I am bringing this to your attention so that you may comply with the law in the future.

(emphasis added).

Accordingly, the Auditor had authority to issue the Assessment.

#### **B. Auditor’s Propositions of Law**

**Proposition of Law No. 1: None of the Persons Named in R.C. 5717.04 has Standing to Appeal Unless that Person has been Aggrieved by the Decision of the BTA from which the Appeal is Taken.**

On August 7, 2014, the BTA issued its Decision in which it concluded:

Thus, based upon the foregoing, we have determined that the appellant auditor improperly assessed personal property tax against MM {LMES}; MM did not own the personal property in question, nor was MM a manufacturer. Further, pursuant to the terms of a PILOT agreement, the county was precluded from assessing personal property tax against MM for the year in question. **As such, we have determined that the commissioner appropriately cancelled the**

**assessment in question. Accordingly, based upon our conclusions, we need not address any other contentions raised by the parties hereto.** The final determination of the commissioner is hereby affirmed.

Decision, pg. 4 (emphasis added).

On the next day, LMES filed its Notice of Appeal with this Court. The Notice of Appeal states that it was being filed as a matter of right pursuant to R.C. 5717.04. Curiously, on page 4 of the Notice of Appeal, it states:

Although MMES/LMES does not contest the BTA's decision with respect to any of its stated reasons for affirming the Commissioner, MMES/LMES raised before the BTA numerous dispositive legal and jurisdictional issues that should have been part of the BTA's Decision.

This statement leaves one wondering why LMES is appealing the Decision if it does not contest any of the reasons stated for affirming the Tax Commissioner's cancellation of the Assessment. The BTA's affirmation of the Tax Commissioner's cancellation of the Assessment is a total victory for LMES. The Assessment at issue was cancelled. From this cancellation, there is no liability whatsoever to LMES. No greater relief from a tax assessment could be granted by the BTA.

LMES was not aggrieved by the Decision and did not have standing to file its appeal in this Court. The filing of the LMES appeal did not vest jurisdiction in this Court.

Consequently, the Auditor first filed a Notice of Appeal of the Decision in the Fourth District Court of Appeals (Case No. 2014 CA 000853). The Auditor then filed a Notice of Appeal in this Court, which was docketed under the case number in this appeal. The Auditor was the only party who had the right to appeal the Decision. Jurisdiction over the appeal of the Decision is properly vested with the Fourth District Court of Appeals.

LMES does not dispute the Decision. It is appealing to this Court to ask it to make more findings in this case regarding the Assessment. It requests a decision that cancels the

Assessment for more reasons than the BTA chose to set forth. However, LMES does not have standing to pursue such an advisory opinion.

The law firm representing LMES has successfully challenged the right of the tax commissioner to file an appeal in a case where the tax commissioner was not aggrieved. In *Newman v. Levin*, 2007 Ohio 5507, 116 Ohio St.3d 1205:

The Tax Commissioner predicates his standing to appeal on the third paragraph of R.C. 5717.04. While it is true that R.C. 5717.04 creates statutory authorization to appeal, **none of the persons named by the statute has standing to appeal unless that person has been aggrieved by the decision of the BTA from which appeal is taken.** See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 33. We hold that when the Tax Commissioner has issued a certificate or determination granting a tax reduction or exemption, he is not aggrieved by a decision of the BTA to the extent that the decision affirms the grant of the tax reduction or exemption. It follows, then, that the Tax Commissioner lacks standing to pursue the appeal that he has filed in this case.

Accordingly, the motion to dismiss the Tax Commissioner's notice of appeal is granted, and that appeal is dismissed.

*Id.* at ¶ 3 (emphasis added).

On June 11, 2014, this Court reaffirmed the requirement that a party appealing a BTA decision must be aggrieved by the decision of the BTA. In *Richman Properties, LLC v. Medina County Board of Revision*, 2014 Ohio 2439, 139 Ohio St.3d 549, this Court again held:

Normally, an appellant must be aggrieved by an error below in order to obtain relief on appeal. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 32-33; and *Newman v. Levin*, 116 Ohio St.3d 1205, 2007 Ohio 5507, 876 N.E.2d 960, ¶ 3.

*Id.* at ¶ 28.

Just a few days ago, on December 2, 2014, this Court again mandated that a party must be aggrieved to appeal a decision of the BTA. *Equity Dublin Associates, et al. v. Testa*, slip opinion, No. 2014-Ohio-5243 (December 2, 2014). This Court held that neither the board of

education nor the tax commissioner were aggrieved by a decision that denied a tax exemption to the taxpayer.

Standing is a jurisdictional requirement. *Federal Home Loan Mortgage Corporation v. Schwartwald*, 134 Ohio St.3d 13, 2012 Ohio 5017, ¶¶ 22-23; *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010 Ohio 6036, ¶ 9; *New Boston Coke Corporation v. Tyler* (1987), 32 Ohio St.3d 216, syllabus ¶ 2; *State ex rel. Dallman v. Court Common Pleas of Franklin County* (1973), 35 Ohio St.2d 176. If a party lacks standing in a court, the court is required to dismiss the case. In the case of an appeal from the BTA, this Court has unequivocally applied this principle. *Equity Dublin Associates, supra*; *Newman, Richman Properties, supra*.

The Decision cancelled the Assessment and relieved LMES of any and all tax liability associated with the Assessment. Based upon this result, it is impossible to conclude that LMES was aggrieved by the Decision. Therefore, in accordance with this Court's recent holdings, LMES's Notice of Appeal must be dismissed for lack of standing.

**Proposition of Law No. 2: The ten-year statute of limitation set forth in R.C. 5703.58 does not apply to assessments of personal property.**

The BTA determined that R.C. 5703.58 (App. 31) creates a ten-year statute of limitations for the assessment of certain taxes. R.C. 5703.58 reads, in pertinent part, as follows:

(A) Subject to division (C) of this section, the tax commissioner shall not make or issue an assessment **for any tax payable to the state** that is administered by the tax commissioner, or any penalty, interest, or additional charge on such tax, after the expiration of ten years, including any extension, from the date the tax return or report was due when such amount was not reported and paid, provided that the ten-year period shall be extended by the period of any lawful stay to such assessment. As used in this section, "assessment" has the same meaning as in section 5703.50 of the Revised Code.

\* \* \*

(C) This section does not authorize the assessment or collection of a tax for which the applicable period of limitation prescribed by law has expired and for which no valid assessment has been made and served as prescribed by law.

*Id.* (emphasis added).

The language of R.C. 5703.58 is clear and unambiguous. The limitation period is applicable to "any tax payable to the state". The personal property tax is payable to Pike County and the other taxing authorities in which PORTS lies. These taxes result from voted millage in various taxing districts. No portion of the taxes are payable to the state. The unmistakable intent of the General Assembly was to limit the time in which the tax commissioner could make an assessment relative to taxes that would result in a payment to the State of Ohio. The procedure for payment and collection of personal property taxes only involves a county auditor and county treasurer. There is no payment to the state.

If, for some inexplicable reason, it is determined that the statute is unclear or ambiguous, then the language must be interpreted. The Court must determine the intention of the legislature by considering, *inter alia*, the legislative history (R.C. 1.49). The Legislative Service Commission's analysis of Substitute H.B. 390 that enacted R.C. 5703.58 specifically identifies the taxes that are affected by the statute. (Auditor's Ex. 36). As the analysis states on Pages 3-4, "The time limit on assessments applies to all taxes payable to the state and administered by the Tax Commissioner (listed above)". The taxes listed are:

- Income tax
- Corporation franchise tax
- Motor fuel tax
- Public utility excise tax
- Municipal electric company tax
- Kilowatt-hour tax
- Horse racing tax
- Pass-through, entity withholding tax
- Commercial activity tax
- Sales and use tax

School income tax  
Cigarette and tobacco taxes  
Alcoholic beverage taxes  
Natural gas distribution tax  
Severance tax

There is no mention of the personal property tax. The intent of the legislature is distinctly reflected in the analysis upon which the legislators relied when casting their votes. There was no intent to alter the statute of limitations for assessing personal property taxes.

In addition, R.C. 1.59 states that “This state” or “the state means the state of Ohio” when used in a statute. Taxes payable to the state means just that. The numerous times that the phrase “payable to the State” is used throughout the Revised Code, it always refers to a payment to be made to the state, rather than a political subdivision.

Most notably, had personal property taxes been included in the ten year prohibition, the General Assembly would have amended R.C. 5711.31. R.C. 5711.31 is specifically applicable to personal property taxes and that section reads, in pertinent part, as follows:

Neither this section nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall preclude the subsequent assessment in the manner authorized by law of any taxable property which such taxpayer failed to list in such return or which the assessor has not theretofore assessed.

R.C. 5711.31.

Over the years, the Department has consistently construed this section to mean that there is no statute of limitations to an assessment regarding personal property that was not listed on a return. Mr. Nolfi obviously understood that R.C. 5711.31 was controlling, rather than R.C. 5703.58, when he sent his July 22, 2010 letter to LMES stating that there is no statute of limitations for omitted property.

Essentially, the BTA reads the statute without the phrase “payable to the state”. If the phrase is removed, then the statute would be applicable to “any tax . . . that is administered by the tax commissioner.” Since all of the taxes defined in R.C. 5703.50 are taxes administered by the tax commissioner, the only logical basis for the inclusion of the phrase “payable to the state” was to distinguish personal property tax assessments from the other assessments. In other words, the General Assembly may have decided to limit the taxes the state would receive, but did not so limit taxes enacted through a vote of the citizens of the local taxing authorities.

Accordingly, the assessment is not time-barred pursuant to R.C. 5703.58.

**Proposition of Law No. 3: The power to tax does not include the power to remit or compromise taxes and a Board of County Commissioners has no authority to contractually preempt or foreclose the Auditor’s ability to issue a preliminary assessment.**

**A. The PILT Agreement.**

In 1998 the Board of County Commissioners of Pike County (“Commissioners”) signed the PILT Agreement in order to receive PILT payments for a number of years including tax year 1993. The PILT Agreement clearly states that the PILT Agreement is between DOE and Pike County, Ohio, which is a duly constituted local taxing authority of the State of Ohio. LMES is a third-party beneficiary to the PILT Agreement, but did not participate in the discussions or the signing of the Agreement.

The PILT Agreement does state that any payments pursuant to the agreement “shall constitute full satisfaction of any and all claims the County may have for taxes for tax years 1992 through 1997 against DOE and DOE’s contractors.” The BTA concluded that this provision precludes the 1993 tax assessment. As explained below, this is incorrect.

**B. The Commissioners have no authority to settle or compromise personal property tax claims, therefore, the PILT Agreement is void with regard to settling the personal property taxes at issue.**

The Commissioners have no authority under any circumstances to settle or compromise personal property tax assessments for Pike County or any other taxing authority. Under Ohio law, in the absence of express legislative authorization, agencies in the state are without power to compromise or to release a claim for taxes, either wholly or in part. *Interstate Motor Freight System v. Donahue*, (1996), 8 Ohio St. 2d 19; *Donsante, supra* at 39-40; *Peter v. Parkinson* (1910), 83 Ohio St. 36, syllabus 49-50; *Brown v. Lindley*, BTA Case No. 81-B-407 (February 28, 1985), 1985 WL 22602, p. 4 (Ohio Bd. Tax App.).

In the oft-cited paragraph from *Donsante, supra*, this Court stated:

**The general rule is that the power to tax does not include the power to remit or compromise taxes. A tax is not predicated on contract and cannot be discharged by reason of contractual considerations.** Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute, and this is the reason for that, if such contracts can be made and performed on the part of a municipality, uniformity and equality are destroyed, and the burden of obligation so remitted is inequitably cast upon the payers of general taxes in the taxing district.

*Id.* at 39 (citations omitted) (emphasis added).

This Court has applied this rule where a suit was brought by a county treasurer against a taxpayer and the board of county commissioners attempted to settle the matter. *Peter, supra*. A board of county commissioners is without authority to compromise or release, in whole or in part, the taxes. *Id.*

The purpose of the restrictions regarding tax settlements is not to protect a county or other political subdivision from liability; rather it is to protect the public from unfair advantages to some taxpayers at the expense of others. That is why the General Assembly has granted

boards of county commissioners only limited rights to waive or abate property taxes. (2012-OAG-030, p. 1), (App. 44).

Attorney General DeWine has conclusively opined that a board of county commissioners does not have authority to contractually waive taxes, unless it follows a specific statutory scheme permitting the waiver. Attorney General DeWine stated:

It is well established that a board of county commissioners is a creature of statute with only those powers granted by statute or necessarily implied by those powers that are expressly granted.

2012-OAG-030, p. 1 (App. 45).

A board of county commissioners does not have the implied power to abate or exempt taxes. *Donsante, supra* (the power to tax does not give the implied power to waive taxes). Therefore, unless a specific statutory provision existed to permit the waiver of the personal property taxes in the PILT Agreement, the Commissioners were without statutory authority to exempt DOE or anyone else from their personal property tax obligation. (2012-OAG-030; App. 44).

Attorney General DeWine has clearly explained that a county's attempt to waive real estate taxes in a contract is a tax abatement, and tax abatements are controlled by specific statutory requirements. (2012-OAG-030). The Attorney General said:

As part of the contract the board agreed to "waive property taxes" on the land and buildings that are subject to the lease, a benefit also known as a tax abatement or tax exemption.

2012-OAG-030, p. 1.

The requirements set forth by Attorney General DeWine apply with equal force if a board of county commissioners seeks to waive personal property taxes. There has been no suggestion in this case that there is any statutory provision that permitted the Commissioners to waive,

exempt, or abate the personal property taxes in this case. Unless a specific statutory provision can be identified permitting the waiver of the personal property taxes, and compliance with the statute established, the waiver of personal property taxes in the PILT Agreement is contrary to law and void. *Donsante, supra*; 2012-OAG-030.

**C. The Commissioners, a single taxing authority, have no authority to settle or compromise the tax obligations owed to any other taxing authorities.**

Not only do the Commissioners not have authority to compromise, release or abate personal property taxes owed to Pike County, it is indisputable that they may not do so for other taxing authorities. The PILT Agreement was between the federal government and Pike County only. The Commissioners constitute one taxing authority amongst many, and they have no authority to settle the tax liability claims of other taxing authorities. *Peter, supra* 49-50. Therefore, if the tax liability was “waived”, only the share going to the Pike County general fund is at issue.

LMES has successfully blurred the issue of the limited applicability of the PILT Agreement before the BTA. However, as the BTA is well aware, the personal property taxes at issue are computed based on millage adopted by numerous taxing authorities located within the geographic region of Pike County. The two largest millages in this case are those of the local school district and the joint vocational school district, neither of which are parties to the PILT Agreement. The portion of the personal property taxes owed to Pike County for the general fund is very small.

As the PILT Agreement states, the PILT Agreement is a two party agreement:

THIS AGREEMENT made and entered into this 21<sup>st</sup> day of August, 1998, by and between the UNITED STATES OF AMERICA (hereinafter called the “Government”), represented by the SECRETARY OF ENERGY (hereinafter referred to as the “Secretary”), the statutory head of the DEPARTMENT OF ENERGY (hereinafter referred to as “DOE”), and **PIKE COUNTY, OHIO**

**(hereinafter referred to as the “County”), a duly constituted local taxing authority of the State of Ohio;**

(emphasis added)

The PILT Agreement clarifies that only one taxing authority, Pike County, is waiving any claim:

2. Such payment shall constitute full satisfaction of any and all claims the County may have for taxes for tax years 1992 through 1997 against DOE and DOE’s contractors, of any nature whatsoever, on, with respect to, or measured by the value or use of Government-owned real or personal property which is utilized in carrying on activities of DOE . . .

The PILT Agreement explicitly defines the “County” as “a” duly constituted local taxing authority. If LMES is unhappy with the language, it should have addressed it when DOE authored the document. Of course, there is no evidence that LMES even knew of this language. Nevertheless, the language is clear and unambiguous.

Thus, the Auditor requests that this Court find that the conclusion of the BTA that the PILT Agreement preempted or foreclosed the issuance of the Assessment is unreasonable and contrary to law.

**Proposition of Law No. 4: The provisions of R.C. 5711.16 are clear and unambiguous and any person or entity who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing is a manufacturer even if the person or entity does not own the inventory or the manufacturing equipment.**

The BTA accepted the Auditor’s argument that a manufacturer would be liable, pursuant to R.C. 5711.16, for taxes on personal property used by a manufacturer even if the manufacturer did not own or have a beneficial interest in the property. The BTA specifically stated:

The Auditor cites *ATS Ohio, Inc. v. Tracy* (1996), 76 Ohio St.3d 297, in support of such proposition. In *ATS*, the court addressed ownership of “inventory in the process of manufacture.” *Id.* at syllabus. In analyzing the provisions of R.C. 5711.16, the court held that “[t]he final sentence of the second paragraph states the rule for treatment of property other than inventory, including engines,

machinery, tools and implements on the tax return. Instead of taxing only the items of property from this category that are owned by the taxpayer, R.C. 5711.16 provides that tax must be paid on items from the category that are “owned or used by such manufacturer.” *Id.* at 299-300. By virtue of MM’s restricted relationship with the DOE and its personal property at PORTS, we conclude that MM is not a manufacturer as contemplated by R.C. 5711.16, but that DOE, who rendered ultimate control and supervision over PORTS, was the manufacturer. Therefore, MM was not properly assessed as a manufacturer.

Decision, p. 4.

The unavoidable conclusion from the finding is that R.C. 5711.16 is applicable to the present matter. The only question is, “Does LMES meet the definition of a manufacturer?” Neither in its Notice of Appeal, nor its Amended Notice of Appeal has LMES challenged the applicability of R.C. 5711.16. It simply rests on the conclusion that LMES is not a manufacturer “as contemplated by R.C. 5711.16”. The improper interpretation of R.C. 5711.16, an unambiguous statute, by the BTA is not controlling on this Court.

In 1993, R.C. 5711.16 stated:

A person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing is a manufacturer.

*Id.*

Chief Justice Moyer, writing for the Court in *ATS, supra*, noted that there is nothing in the definition that requires the manufacturer to be the owner of the raw materials consumed in the manufacturing process. *Id.*, at 299. He further noted that the manufacturer need not be the owner of the engines, machinery, tools and implements used in the manufacturing process. *Id.* Therefore, the question is whether LMES received or held uranium for the purpose of adding to its value by refining the uranium with a view toward making a profit. LMES’ witnesses and the LMES contract confirm that the answer is yes.

Ralph Donnelly, LMES's manager at PORTS in 1993, testified that the number of LMES employees at PORTS in 1992 and 1993 was somewhere in the low two thousands. (Donnelly Dep. 39-40). The number of DOE employees at PORTS in 1992 and 1993 was approximately a half a dozen. (Donnelly, Dep. 40). None of the half a dozen operated any machinery. (Donnelly Dep. 40). None of the DOE employees discussed or had any input into the enrichment process. (Donnelly Dep. 41). DOE had confidence that LMES would take care of the issues at the plant so that it did not need more than six people at PORTS. (Donnelly Dep. 42).

The manufacturing process at PORTS was a 24-hour-a-day operation. (Donnelly Dep. 42). Mr. Donnelly never saw any DOE employees on the second or third shift. (Donnelly Dep. 42-43). So, when material was shipped to PORTS, LMES employees took control and possession of the material and held the material until it was used in the enrichment process. (Donnelly Dep. 53-54). The material was run through filters by LMES employees so LMES was left with refined material. (Donnelly Dep. 35).

Mr. Donnelly also acknowledged that LMES made a profit and that all of the personal property at PORTS was being used to fulfill LMES's obligations under the contract. (Donnelly Dep. 23, 29-30). Indeed, he testified that all of the equipment at PORTS was used for the ultimate purpose of enriching uranium. (Donnelly Dep. 50-51).

Mr. Donnelly confirmed that LMES received and held personal property for the purpose of adding to its value by refining it and made a profit by doing so. He further confirmed that the engines, machinery, tools, and implements at PORTS were used for that purpose. Therefore, LMES falls squarely within the definition of a manufacturer.

**Proposition of Law No. 5: The BTA is required to determine the true value of taxable personal property.**

**A. The BTA received all the evidence necessary to determine the correct value of the personal property, and to comply with its statutory duty to issue a final determination.**

Evidence was presented at the BTA Hearing that the DOE Asset List established the acquisition cost of the manufacturing equipment. The DOE Asset List was presented and explained at the hearing before the BTA. (Tr. 34-36, 126-128) Further, neither the acquisition cost of the equipment, nor the depreciation rate was disputed by LMES. LMES simply took the position that the statutes did not allow for taxation and that there were other defenses to the Assessment.

The Auditor also presented evidence that the necessary tax calculations were completed to determine the tax assessment. LMES, the party that bore the burden to establish that errors had been made, did not present any evidence or specific objections to establish that the calculations resulting in the assessment were in any way incorrect. Since the assessment calculation methodology was not challenged before the Tax Commissioner, the BTA had no discretion to determine that the tax assessment was not calculated properly. (R.C. 5711.31). *The Robbins Company v Levin* (2/21/2012), BTA Case No. 2008-A-1740, 2012 WL 605618, p. 5.

**B. The evidence presented to the BTA at hearing establishes that the Auditor properly calculated the tax liability.**

LMES did not file any tax returns for tax year 1993. It did file tax returns for the tax years 1994, 1995 and 1996. In all of those tax returns, it listed LMES as the taxpayer. The returns listed no property and recorded zero as the value. Therefore, in order to determine the personal property taxes due from LMES for tax year 1993, it was necessary for the Auditor to make assumptions regarding the equipment used, and its value. Initially, it was necessary pursuant to R.C. 5711.16 to determine the acquisition costs of "all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing,

and owned or used by such manufacturer". The acquisition costs were taken from the DOE Asset List. For purposes of this analysis, it is assumed that the acquisition costs as of September 30, 1992 were the same as the acquisition costs on December 31, 1992 and the Auditor, in fairness, included only the property that seemed to fall clearly within R.C. 5711.16. The property that was included in the computation is:

<u>Capital Equipment</u>		
Asset	Description	
720	Laboratory Equipment	\$15,071,060
735	Process Equipment	\$862,902,188
770	Automatic data processing equipment	\$25,607,910
799	Miscellaneous equipment	\$2,205,209
TOTAL		\$905,786,367

The testimony of Ralph Donnelly (LMES Plant Manager at PORTS) and Peter Dayton (former Director of Procurement and Contracts for the Oak Ridge Operations Office of DOE) indicate that all of the personal property was used by LMES to manufacture uranium. (Donnelly Dep. 50-51; Dayton Dep. 40-41). This, of course, would increase the number of categories to be included in the calculations.

There is no indication in the DOE Asset List as to when any of the property went into service, but, the Auditor testified that he was aware that property was regularly maintained and replaced. Mr. Donnelly's testimony confirms that the machinery was kept in top condition. (Donnelly Dep. 52). After all this was a nuclear facility. The Auditor used a 30% overall depreciation factor which he testified he believed was correct under the circumstances. The true value was then calculated at \$634,050,456.

In 1993, the listing factor was 25%. [R.C. 5711.22(C)]. When applied to the true value, the taxable value is \$158,512,614.

The applicable millage is 47.4 mills. Using a total taxable value of \$158,512,000 results in a tax liability of \$7,513,468.

R.C. 5711.27 allows the assessor to include up to a 50% penalty. As the assessor, the Auditor may include the penalty in the assessment. This increases the assessment to \$11,270,202. The total interest to the date of the Assessment is \$11,974,587 with a final tax bill of \$23,244,789. (Auditor's Ex. 27).

**C. Assuming, *arguendo*, that further evidence of the condition and true value of the manufacturing equipment is necessary to issue a final determination, at a minimum, pursuant to a 302 computation, the equipment is worth 15.4% of acquisition cost.**

Assuming, *arguendo*, that the issue of the calculation and methodology used by the Auditor can be challenged, the Department rules regarding depreciation for tangible personal property (OAC 5703-3-10, OAC 5703-3-11) (App. 37, 38) establish a *prima facie* value for personal property which can never fall below an established minimum as long as the property is being used in business. This valuation method is commonly referred to as the 302 Computation. (See Guidelines for Filing Ohio Personal Property Tax Returns 1992 Edition) (App. 56). Therefore there is a minimum value that must be assessed.

LMES filed no returns and DOE provided no specific aging schedule for any property. However, giving LMES every benefit of the doubt, assuming all property is beyond the life range maximums and it falls in Class VI of the 302 computation, the maximum depreciation would be 84.6%. (Guidelines for Filing Ohio Personal Property Tax Returns 1992 Edition, p. 17) (App. 71) If applied to only the categories of property previously selected by the Auditor the minimum amended value would be \$34,872,775 [ $\$905,786,367$  (acquisition cost)  $\times$  15.4% (minimum value)  $\times$  25% (listing factor) = \$34,872,775]. The BTA had sufficient evidence to determine the value and its failure to do so is unreasonable and contrary to law.

**Proposition of Law No. 6: The Tax Commissioner has no authority or discretion to cancel the Assessment pursuant to R.C. 5711.31.**

The Decision states that "Pursuant to R.C. 5703.05, generally and R.C. 5711.31, more specifically, the Commissioner could take whatever action was necessary to 'correct' the assessment." There is no mention in R.C. 5711.31 of the cancellation of an assessment and, thus, no authorization to issue a cancelation. The Tax Commissioner is charged with the responsibility of affirming the assessment or making corrections to the Assessment he finds proper. (R.C. 5711.31). Once an assessment is issued the Tax Commissioner has no statutory or inherent authority to cancel the assessment. Thus, the Decision affirming the right of the Tax Commissioner to cancel the Assessment is unreasonable and contrary to law.

**V. CONCLUSION**

For years LMES and the State of Ohio have ignored the Auditor's questions and the requirements of the statutes relating to personal property taxes for the use of DOE-owned engines, machinery and tools used by LMES to manufacture enriched uranium at PORTS. LMES now invites this Court to do the same. However, the rule of law and the rights of the citizens of Pike County should not be sacrificed on an altar of expediency. The application of the applicable law to the facts in this matter leads to the conclusion that LMES has no standing to appeal the Decision and that LMES is liable for personal property taxes for tax year 1993.

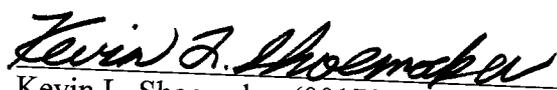
In accordance with the foregoing, the Auditor respectfully requests that this Court:

- (1) Dismiss the present matter due to LMES's lack of standing and order the record to be sent to the Fourth District Court of Appeals where the Auditor first filed his appeal; or in the alternative,
- (2) Dismiss LMES's errors to be Review Nos. 2, 10, 11 and 16 which cite specific statutes that have not been addressed in LMES's brief and therefore are waived; and

- (3) Dismiss LMES's claims of bad faith, due to the BTA's lack of authority to determine bad faith in this matter; and,
- (4) Reverse the Decision as unreasonable and unlawful and concludes that the Assessment is not barred by R.C. 5703.58; and,
- (5) Reverse the Decision as unreasonable and unlawful and conclude that the Commissioners had no authority to waive personal property taxes through the PILT Agreement; and,
- (6) Reverse the Decision as unreasonable and unlawful and conclude that LMES is a manufacturer pursuant to R.C. 5711.16; and,
- (7) Remand this matter to the BTA to determine whether the appropriate taxable value of the personal property should be determined by utilizing the Auditor's estimates or the 302 computation; and,
- (8) Provide for any other relief that this Court deems appropriate.

Respectfully submitted,

Pike County Prosecuting Attorney  
Robert Junk



Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100  
kshoemaker@midohiolaw.com

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
wposey@kmklaw.com

Sean A. McCarter (0064215)

Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
sean@smccarterlaw.com

Special Counsel for Appellee  
Teddy L. Wheeler,  
In his capacity of Pike County  
Auditor

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served by regular U.S. Mail or Hand Delivery upon the persons listed below on this ~~///~~ day of December, 2014.

Daniel W. Fausey  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

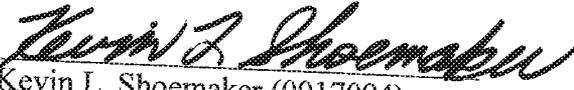
Counsel for Appellee  
Joseph Testa  
Ohio Tax Commissioner

Robert E. Tait  
Hilary J. Houston  
Steven L. Smiseck  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

G. Wilson Horde  
Kramer, Rayson LLP  
800 South Gay Street, Suite 2500  
Knoxville, Tennessee 37901

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

  
Kevin L. Shoemaker (0017094)

ORIGINAL

**NOTICE OF APPEAL FROM THE OHIO BOARD OF TAX APPEALS  
IN THE SUPREME COURT OF OHIO**

**FILED**  
SEP 05 2014  
BOARD OF TAX APPEALS  
COLUMBUS, OHIO

**Teddy L. Wheeler**  
**In his Capacity as Pike County Auditor,**  
  
**Appellant,**

**Case No.**  
  
**Appeal from the Ohio Board of Tax Appeals**

v.

**14-1362**

**Joseph W. Testa,**  
**Tax Commissioner of Ohio,**  
  
**Appellee,**

**BTA Case No. 2012-2043**

and

**Martin Marietta Energy Systems, Inc.**  
**a/k/a Lockheed Martin**  
**Energy Systems, Inc.**  
  
**Appellee.**

**FILED**  
SEP 05 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT TEDDY L. WHEELER PIKE COUNTY  
AUDITOR**

Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
wposey@kmklaw.com

kshoemaker@midohiolaw.com  
  
Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, In his  
capacity as Pike County Auditor.

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, In his  
capacity as Pike County Auditor.

Sean A. McCarter (0064215)  
Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
sean@smccarterlaw.com

Michael DeWine (009181)  
Attorney General of Ohio  
Daniel W. Fausey (0079928)  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215  
614/466-5967  
Fax: 614/466-8226  
Daniel.Fausey@ohioattorneygeneral.gov

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, In his  
capacity as Pike County Auditor.

Counsel for Appellee  
Joseph Testa  
Ohio Tax Commissioner

Robert E. Tait (0020884)  
Hilary J. Houston (0076846)  
Steven L. Smiseck (0061615)  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216  
614/464-6341  
fax 614 719-4994  
retait@vorys.com

G. Wilson Horde  
Kramer, Rayson LLP  
800 South Gay Street, Suite 2500  
Knoxville, Tennessee 37901  
865/525-5134  
fax 865/522-5723  
gwhorde@kramer-rayson.com

Counsel for Appellee  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Counsel for Appellee  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

**NOTICE OF APPEAL OF TEDDY L. WHEELER, PIKE COUNTY AUDITOR**

Appellant, Teddy L. Wheeler, in his capacity as Pike County Auditor ("Auditor") hereby gives notice of his appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from the Decision and Order ("Decision") of the Board of Tax Appeals ("BTA") journalized on August 7, 2014 in *Teddy L. Wheeler, in his Official Capacity as Auditor of Pike County Ohio v. Joseph W. Testa, Tax Commissioner of Ohio, et al.*, Case No. 2012-2043, (the "Decision"). A true copy of the Decision that is being appealed is attached hereto as Exhibit A.

The Decision was issued on August 7, 2014, affirming the Tax Commissioner's Final Determination, canceling the preliminary assessment issued by the Auditor (the "Assessment"), and making other findings. The next day, on August 8, 2014, Lockheed Martin Energy Systems, Inc. ("LMES"), filed a Notice of Appeal of the Decision in the Ohio Supreme Court, case number 14-1362 ("LMES Appeal"), asserting that LMES did not disagree with the Decision it obtained before the BTA. A Motion to Dismiss has been filed in the this Court asserting that the LMES Appeal did not properly invoke the jurisdiction of the Ohio Supreme Court in this matter, because LMES has no standing to file an appeal. A court cannot obtain jurisdiction over a matter when the party seeking to invoke its jurisdiction has no standing to bring the appeal. *Newman v. Levin*, 2007 Ohio 5507, 116 Ohio St.3d 1205. Because LMES cannot create jurisdiction in the Ohio Supreme Court relating to an appeal of the Decision, the Auditor has chosen to file an appeal in this Court in the Fourth District Court of Appeals.

However, in an abundance of caution in this unique situation for which the Appellant has not been able to find any prior decision giving guidance, this Notice of Appeal is being filed after the

Notice of Appeal has been filed in the Fourth District Court of Appeals to preserve the appeal if it is determined that there is no jurisdiction in the Fourth District Court of Appeals.

### **ERRORS TO BE REVIEWED**

The Auditor submits the BTA acted unlawfully and unreasonably, based upon the following errors in the Decision:

1. The BTA erred in construing the clear and unambiguous language of R.C. 5703.58 in determining that the Assessment was precluded by the limitation period in the statute.
2. The BTA erred in its construction and interpretation of R.C. 5703.58 relative to determining that the Assessment was precluded by the limitation period in the statute.
3. The BTA erred in determining that the Pike County Commissioners have authority to waive, compromise, or settle a claim by Pike County for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES.
4. The BTA erred in determining that the Pike County Commissioners have authority to waive, compromise, or settle a claim by other taxing authorities in Pike County, other than the County itself, for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES when the other taxing authorities were not delineated as entities that were bound by the terms of an agreement for payment in lieu of taxes ("PILT Agreement") and were not parties to the PILT Agreement.
5. The BTA erred when it interpreted the PILT Agreement, finding that it resolved the taxes at issue. The BTA has no statutory or other legal authority to interpret contractual agreements.
6. The BTA erred in finding that the PILT Agreement preempted and foreclosed the

Auditor's ability to issue any preliminary assessment certificate of valuation or accompanying assessment.

7. The BTA erred in determining that a claim for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES could be waived, settled, or compromised pursuant to the PILT Agreement to which the Tax Commissioner was not a party pursuant to R.C. 5703.05(C).
8. The BTA erred in construing the clear and unambiguous language of R.C. 5711.16 relative to whether LMES was a manufacturer.
9. The BTA erred in its construction and interpretation of R.C. 5711.16 as to whether LMES was a manufacturer.
10. The BTA erred in concluding that the Tax Commissioner had authority to cancel a preliminary assessment for personal property taxes issued by a county auditor.
11. The BTA erred by holding that the Tax Commissioner did not have to follow the mandate of R.C. 5711.31, when the Tax Commissioner purportedly cancelled the Assessment, rather than making corrections relating to value on the Assessment.
12. The BTA erred by failing to hold that the Tax Commissioner was required to properly determine the true value of taxable tangible personal property.
13. The BTA erred by not applying O.A.C. 5703-3-10, O.A.C. 5703-3-11, or the 302 computation to taxable personal property used for the manufacture of uranium when the BTA and the Tax Commissioner were aware of the unchallenged acquisition cost, but made no determination of the age or class of the personal property.

14. The BTA erred by failing to apply O.A.C. 5703-3-10 and 5703-3-11. The Tax Commissioner was aware of the original cost of taxable tangible personal property used by LMES, but failed to determine the Composite Group Life Class of the property, and failed to determine the minimum true value for the property which, pursuant to O.A.C. 5703-3-10 and 5703-3-11, could not be zero if the property was being used by LMES.

15. The BTA erred by failing to determine the true value of taxable tangible personal property used by LMES.

Respectfully submitted,

Pike County Prosecuting Attorney  
Robert Junk



Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100  
kshoemaker@midohiolaw.com

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
wposey@kmklaw.com

Sean A. McCarter (0064215)  
Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
sean@smccarterlaw.com

Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County  
Auditor

**Proof of Service upon Ohio Board of Tax Appeals**

This is to certify that the Notice of Appeal of Teddy L. Wheeler, in his Official Capacity as the Pike County Auditor, was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24<sup>th</sup> Floor, Columbus, Ohio, as evidenced by the Board of Tax Appeals date stamp set forth on the first page of the Notice of Appeal.



Kevin L. Shoemaker (0017094)  
Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County  
Auditor

**Certificate of Service**

A copy of the foregoing was served by certified U.S. Mail upon the persons listed below on this 5<sup>th</sup> day of September, 2014.

Daniel W. Fausey  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

Counsel for Appellee  
Joseph Testa  
Ohio Tax Commissioner

Robert E. Tait  
Hilary J. Houston  
Steven L. Smiseck  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216

G. Wilson Horde  
Kramer, Rayson LLP  
800 South Gay Street, Suite 2500  
Knoxville, Tennessee 37901

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Appellee Joseph W. Testa,  
Tax Commissioner of Ohio  
30 East Broad Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215

Appellee, Lockheed Martin Energy Systems, Inc.  
Attention: Stephen M. Piper, Vice President  
and General Counsel  
Electronic Systems, Lockheed Martian Corporation  
6801 Rockledge Drive  
Bethesda, Maryland 20817



Kevin L. Shoemaker (0017094)  
Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County Auditor

# EXHIBIT A

OHIO BOARD OF TAX APPEALS

TEDDY L. WHEELER, IN HIS OFFICIAL  
CAPACITY AS AUDITOR OF PIKE COUNTY, )  
OHIO, (et. al.), )

Appellant(s), )

vs. )

JOSEPH W. TESTA, TAX COMMISSIONER OF )  
OHIO, (et. al.), )

Appellee(s). )

CASE NO(S). 2012-2043

(PERSONAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

TEDDY L. WHEELER, IN HIS OFFICIAL  
CAPACITY AS AUDITOR OF PIKE COUNTY,  
OHIO

Represented by:  
KEVIN SHOEMAKER  
SHOEMAKER & HOWARTH, LLP  
471 EAST BROAD STREET  
SUITE 2001  
COLUMBUS, OH 43215

For the Appellee(s)

JOSEPH W. TESTA, TAX COMMISSIONER OF  
OHIO

Represented by:  
DANIEL W. FAUSEY  
ASSISTANT ATTORNEY GENERAL  
30 EAST BROAD STREET, 25TH FLOOR  
COLUMBUS, OH 43215-3428

MARTIN MARIETTA ENERGY SYSTEMS, N/K/A  
LOCKHEED MARTIN ENERGY SYSTEMS, INC.

Represented by:  
ROBERT TAIT  
VORYS, SATER, SEYMOUR AND PEASE, LLP  
52 EAST GAY STREET  
P.O. BOX 1008  
COLUMBUS, OH 43216-1008

Entered Thursday, August 7, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant ("Auditor") from a final determination of the Tax Commissioner wherein the commissioner cancelled the personal property tax assessment issued by appellant to appellee Martin Marietta Energy Systems, n/k/a Lockheed Martin Energy Systems, Inc. ("MM"), relating to tax year

1993. We make our determination based upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, the record of this board's hearing ("H.R."), the parties' joint stipulations of fact ("Stip"), the depositions submitted in lieu of live testimony ("Dep."), and the written arguments of counsel.

There is a presumption that the findings of the Tax Commissioner are valid: *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern*, supra; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan*, supra.

Through the notice of appeal, the Pike County Auditor contests the Tax Commissioner's cancellation of a personal property tax assessment issued by the auditor to MM based upon the value of tangible personal property located at the Portsmouth Gaseous Diffusion Plant ("PORTS"), a uranium enrichment plant. For the tax year in question, i.e., 1993, PORTS, and the equipment that is the subject of the instant assessment, were owned by the United States Department of Energy ("DOE"), "because of the extra hazardous nature of it that no contractor would build the facilities or have the capital investment for it." *Nesteruk Dep.* at 8-9; MM acted as the contract operator of PORTS that managed, operated and maintained the buildings and facilities at PORTS. Stip 1; Ex. 39.

Specifically, for tax year 1993, the Pike County Commissioners entered into an agreement with the DOE for payments in lieu of taxes ("PILOT agreement"). Such agreement, authorized under the Atomic Energy Act of 1946, i.e., 42 U.S.C. 2208, provided that "the County has requested financial assistance from DOE, and has stated that it will waive and release any claims for tax years 1992 through 1997 for taxes against DOE and its contractors on, with respect to, or measured by the value or use of Government-owned real and personal property." Auditor Ex. 20 at 1; MM Ex. 4 at 1. The agreement indicated that DOE's payment of \$175,546.83 would "constitute full satisfaction of any and all claims the County may have for taxes for tax years 1992 through 1997 against DOE and DOE's contractors, of any nature whatsoever, on, with respect to, or measured by the value or use of Government-owned real or personal property which is utilized in carrying on activities of DOE." Auditor Ex. 20 at 2; MM Ex. 4 at 2. Similar agreements were in effect for tax years 1952 through 1997. Stip 6. Thereafter, in December 2010, the auditor, although aware of the PILOT agreement in place for tax year 1993, issued a preliminary assessment certificate of valuation to MM for tax year 1993, resulting in a personal property delinquent tax liability of \$23,244,789. S.T. at 443-449. Upon MM's petition for reassessment, the commissioner took action, pursuant to R.C. 5711.31, to cancel such assessment issued by the auditor. For the reasons stated herein, we find that the subject assessment was properly cancelled.

At the outset, the auditor contends that the commissioner did not have the statutory authority to cancel the assessment in question. We disagree. Pursuant to R.C. 5703.05, generally, and R.C. 5711.31, more specifically, the commissioner could take whatever action was necessary to "correct" the assessment. Clearly, if the commissioner determines that an assessment has been issued by an auditor in error, the commissioner has the authority to cancel such assessment, i.e., to review the acts of his deputies, including county auditors as designated in R.C. 5711.11 and 5715.40, and take whatever action is necessary to correct any errors made, including cancellation.

Every taxpayer engaged in business in Ohio was required to annually file a personal property tax return with the county auditor of each county in which property used in the taxpayer's business was located. R.C. 5711.02. On that return, the taxpayer listed "all taxable property \*\*\* as to ownership or control, valuation, and taxing districts." R.C. 5711.03. A "taxpayer," was defined in R.C. 5711.01(B) as "any owner of taxable property \*\*\* and includes every person \*\*\* doing business in this state, or owning or having a beneficial interest in taxable personal property in this state \*\*\*."

Clearly, MM did not own the subject personal property, as title to it was retained by the DOE. MM also does not stand in the stead of an owner, by virtue of having a "beneficial interest" in the subject property, pursuant to R.C. 5711.01(B). In *Refreshment Service Co. v. Lindley* (1981), 67 Ohio St.2d 400, 403, the court "construe[d] the term 'beneficial interest' to include the interest of one who is in possession of all characteristics of ownership other than legal title of the taxable property. Such a definition prevents one from escaping the incidence of the personal property tax by transferring legal title to the taxable property while keeping the benefits of its ownership. The determination of whether a person has a 'beneficial interest' in an article of personal property requires an examination of the rights and privileges that person has in the property in question. If in fact this person is found to possess all the characteristics of ownership without having legal title to the property, then the person must be found to have a beneficial interest in the property and liable for any personal property tax assessed." Herein, all personal property at PORTS, including the uranium at the plant, was owned by the federal government and MM was not permitted to utilize any of it for its own purposes. The "DOE didn't want a comingling of contractor property, so it was excluded and none was provided." Nesteruk Dep. at 43. The property was physically "tagged" indicating it was owned by the federal government and records were maintained tracking its status. Unauthorized use of such equipment could have resulted in criminal penalties. Nesteruk Dep. at 18-21, 24; Donnelly Dep. at 11, 16, 18-19; Dayton Dep. at 11-12. The maintenance/repair/purchase of equipment was subject to DOE's approval, unless of such an insignificant, day-to-day nature that it was deemed unnecessary to obtain such consent. Dayton Dep. at 16; Donnelly Dep. at 30-32, 43.

Further, the DOE supervised, oversaw and controlled all operations of PORTS. Dayton Dep. at 17. Special clearances were required to be employed by PORTS. Donnelly Dep. at 11. "[H]ardly a week went by without DOE looking over our shoulders." Donnelly Dep. at 15. Language from the contract between MM and the DOE indicates that the DOE "directed" certain MM activities, while others were "subject to the control of DOE," and "[p]erformance of the work under \*\*\* [the] contract" was "subject to the technical direction of DOE \*\*\* Representatives." Donnelly Dep., Ex. A, at 11-12, 18. The DOE determined the specifications of production at PORTS. Donnelly Dep. at 17-18. MM primarily provided the skilled staff to work at PORTS. Nesteruk Dep. at 39. The DOE determined all of the sales/production necessary to meet customer needs, as MM did not participate in the marketing and sales efforts. Dayton Dep. at 13-14; Donnelly Dep. at 74. Accordingly, we conclude that MM did not have a "beneficial interest" in the subject personal property. While MM, of course, had its own business interests under the contract, those interests were limited by the terms of such contract which may have ceded the management of the day-to-day operations to MM, but retained the long term control over and authority for all decisions of any consequence in the DOE.

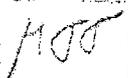
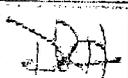
The auditor also contends that MM is subject to the personal property tax assessed by virtue of the provisions of R.C. 5711.16, as a manufacturer. That section specifically provides that "[a] person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing is a manufacturer. \*\*\* A manufacturer shall also list all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing, and

owned or used by such manufacturer." The auditor cites *ATS Ohio, Inc. v. Tracy* (1996), 76 Ohio St.3d 297, in support of such proposition. In *ATS*, the court addressed ownership of "inventory in the process of manufacture." *Id.* at syllabus. In analyzing the provisions of R.C. 5711.16, the court held that "[t]he final sentence of the second paragraph states the rule for treatment of property other than inventory, including engines, machinery, tools, and implements on the tax return. Instead of taxing only the items of property from this category that are owned by the taxpayer, R.C. 5711.16 provides that tax must be paid on items from the category that are "owned or used by such manufacturer." *Id.* at 299-300. By virtue of MM's restricted relationship with the DOE and its personal property at PORTS, we conclude that MM is not a manufacturer, as contemplated by R.C. 5711.16, but that the DOE, who rendered ultimate control and supervision over PORTS, was the manufacturer. Therefore, MM was not properly assessed as a manufacturer.

In addition, beyond the foregoing, we find that the PILOT agreement, in effect for the tax year in question and actively negotiated by the auditor, himself, by its very terms, "preempted and foreclosed the Auditor's ability to issue any preliminary assessment certificate of valuation or accompanying assessment." Comm. Reply Brief at 1. Neither the commissioner nor this board has the statutory authority to void the PILOT agreement or alter or interpret its terms, and therefore, we conclude that the parties' have executed their obligations under the agreement, as written.

Finally, we question the propriety of the auditor's actions in assessing MM for tax year 1993, some seventeen years after the tax year in question. R.C. 5703.58 provides that no assessment shall be issued "after the expiration of ten years \*\*\* from the date the tax return or report was due when such amount was not reported and paid." The auditor, as the commissioner's designated deputy, pursuant to R.C. 5711.11 and 5715.40, issued the assessment in question, clearly outside of the ten year limitation.

Thus, based upon the foregoing, we have determined that the appellant auditor improperly assessed personal property tax against MM; MM did not own the personal property in question, nor was MM a manufacturer. Further, pursuant to the terms of a PILOT agreement, the county was precluded from assessing personal property tax against MM for the year in question. As such, we have determined that the commissioner appropriately cancelled the assessment in question. Accordingly, based upon our conclusions, we need not address any other contentions raised by the parties hereto. The final determination of the commissioner is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

IN THE FOURTH DISTRICT COURT OF APPEALS

Teddy L. Wheeler  
In his Capacity as Pike County Auditor,

Appellee,  
Appellant

v.

Joseph W. Testa,  
Tax Commissioner of Ohio,

Appellee,

and

Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin  
Energy Systems, Inc.

Appellant,  
Appellee

Case No. 2014 CA 000853

Appeal from the Ohio Board of Tax Appeals

BTA Case No. 2012-2043

FILED/RECEIVED  
BOARD OF TAX APPEALS  
2014 SEP -5 AM 8:31

NOTICE OF APPEAL OF APPELLANT TEDDY L. WHEELER PIKE COUNTY  
AUDITOR

Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100

kshoemaker@midohiolaw.com

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, In his  
capacity as Pike County Auditor.

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
wposey@kmlaw.com

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, In his  
capacity as Pike County Auditor.

COURT OF APPEALS  
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*John E. Williams*  
PIKE CO. CLERK

Sean A. McCarter (0064215)  
Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
sean@smccarterlaw.com

Special Counsel to Robert Junk, Pike  
County Prosecuting Attorney, for  
Appellant Teddy L. Wheeler, in his  
capacity as Pike County Auditor.

Robert E. Tait (0020884)  
Hilary J. Houston (0076846)  
Steven L. Smiseck (0061615)  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216  
614/464-6341  
fax 614 719-4994  
retait@vorys.com

Counsel for Appellee  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Michael DeWine (009181)  
Attorney General of Ohio  
Daniel W. Fausey (0079928)  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215  
614/466-5967  
Fax: 614/466-8226  
Daniel.Fausey@ohioattorneygeneral.gov

Counsel for Appellee  
Joseph Testa  
Ohio Tax Commissioner

G. Wilson Horde  
Kramer, Rayson LLP  
P.O. Box  
Knoxville, Tennessee 37901  
865/525-5134  
fax 865/522-5723  
gwhorde@kramer-rayson.com

Counsel for Appellee  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

## **NOTICE OF APPEAL OF TEDDY L. WHEELER, PIKE COUNTY AUDITOR**

Appellant, Teddy L. Wheeler, in his capacity as Pike County Auditor ("Auditor") hereby gives notice of his appeal as of right, pursuant to R.C. 5717.04, to the Fourth District Court of Appeals, from the Decision and Order ("Decision") of the Board of Tax Appeals ("BTA") journalized on August 7, 2014 in *Teddy L. Wheeler, in his Official Capacity as Auditor of Pike County Ohio v. Joseph W. Testa, Tax Commissioner of Ohio, et al.*, Case No. 2012-2043, (the "Decision"). A true copy of the Decision that is being appealed is attached hereto as Exhibit A.

The attorney signing this notice certifies that the judgment appealed is final and appealable as defined in R.C. 2505.02, Civ. R. 54 (B), and R.C. 5717.04.

The Decision was issued on August 7, 2014, affirming the Tax Commissioner's Final Determination, canceling the preliminary assessment issued by the Auditor (the "Assessment"), and making other findings. The next day, on August 8, 2014, Lockheed Martin Energy Systems, Inc. ("LMES"), filed a Notice of Appeal of the Decision in the Ohio Supreme Court, case number 14-1362 ("LMES Appeal"), asserting that LMES did not disagree with the Decision it obtained before the BTA. A motion to Dismiss has been filed in the Ohio Supreme Court asserting that the LMES Appeal did not properly invoke the jurisdiction of the Ohio Supreme Court in this matter, because LMES has no standing to file an appeal. A court cannot obtain jurisdiction over a matter when the party seeking to invoke its jurisdiction has no standing to bring the appeal. *Newman v. Levin*, 2007 Ohio 5507, 116 Ohio St.3d 1205. Because LMES cannot create jurisdiction in the Ohio Supreme Court relating to an appeal of the Decision, the Auditor has chosen to file an appeal in this Court.

### **ERRORS TO BE REVIEWED**

The Auditor submits the BTA acted unlawfully and unreasonably, based upon the following errors in the Decision:

1. The BTA erred in construing the clear and unambiguous language of R.C. 5703.58 in determining that the Assessment was precluded by the limitation period in the statute.
2. The BTA erred in its construction and interpretation of R.C. 5703.58 relative to determining that the Assessment was precluded by the limitation period in the statute.
3. The BTA erred in determining that the Pike County Commissioners have authority to waive, compromise, or settle a claim by Pike County for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES.
4. The BTA erred in determining that the Pike County Commissioners have authority to waive, compromise, or settle a claim by other taxing authorities in Pike County, other than the County itself, for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES when the other taxing authorities were not delineated as entities that were bound by the terms of an agreement for payment in lieu of taxes ("PILT Agreement") and were not parties to the PILT Agreement.
5. The BTA erred when it interpreted the PILT Agreement, finding that it resolved the taxes at issue. The BTA has no statutory or other legal authority to interpret contractual agreements.
6. The BTA erred in finding that the PILT Agreement preempted and foreclosed the Auditor's ability to issue any preliminary assessment certificate of valuation or accompanying assessment.
7. The BTA erred in determining that a claim for personal property taxes, arising pursuant to R.C. Chapter 5711, and specifically R.C. 5711.16, against LMES regarding taxable tangible personal property used by LMES could be waived, settled, or compromised pursuant to the

PILT Agreement to which the Tax Commissioner was not a party pursuant to R.C. 5703.05(C).

8. The BTA erred in construing the clear and unambiguous language of R.C. 5711.16 relative to whether LMES was a manufacturer.

9. The BTA erred in its construction and interpretation of R.C. 5711.16 as to whether LMES was a manufacturer.

10. The BTA erred in concluding that the Tax Commissioner had authority to cancel a preliminary assessment for personal property taxes issued by a county auditor.

11. The BTA erred by holding that the Tax Commissioner did not have to follow the mandate of R.C. 5711.31, when the Tax Commissioner purportedly cancelled the Assessment, rather than making corrections relating to value on the Assessment.

12. The BTA erred by failing to hold that the Tax Commissioner was required to properly determine the true value of taxable tangible personal property.

13. The BTA erred by not applying O.A.C. 5703-3-10, O.A.C. 5703-3-11, or the 302 computation to taxable personal property used for the manufacture of uranium when the BTA and the Tax Commissioner were aware of the unchallenged acquisition cost, but made no determination of the age or class of the personal property.

14. The BTA erred by failing to apply O.A.C. 5703-3-10 and 5703-3-11. The Tax Commissioner was aware of the original cost of taxable tangible personal property used by LMES, but failed to determine the Composite Group Life Class of the property, and failed to determine the minimum true value for the property which, pursuant to O.A.C. 5703-3-10 and 5703-3-11, could not be zero if the property was being used by LMES.

15. The BTA erred by failing to determine the true value of taxable tangible personal property used by LMES.

Respectfully submitted,

Pike County Prosecuting Attorney  
Robert Junk

  
Kevin L. Shoemaker (0017094)  
8226 Inistork Ct.  
Dublin, Ohio 43017  
614/469-0100  
kshoemaker@midohiolaw.com

William Posey (0021821)  
Keating, Muething & Klekamp, PLL  
One East Fourth St., Suite 1400  
Cincinnati, Ohio 45202  
513/579-6535  
wposey@kmklaw.com

Sean A. McCarter (0064215)  
Law Office of Sean A. McCarter  
88 North Fifth St.  
Columbus, Ohio 43215  
614/358-0880  
Fax 614/464-0604  
sean@smccarterlaw.com

Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County  
Auditor

**Proof of Service upon Ohio Board of Tax Appeals**

This is to certify that the Notice of Appeal of Teddy L. Wheeler, in his Official Capacity as the Pike County Auditor, was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24<sup>th</sup> Floor, Columbus, Ohio, as evidenced by the Board of Tax Appeals date stamp set forth on the first page of the Notice of Appeal.

  
Kevin L. Shoemaker (0017094)  
Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County  
Auditor

**Certificate of Service**

A copy of the foregoing was served by certified U.S. Mail upon the persons listed below on this 5<sup>th</sup> day of September, 2014.

Daniel W. Fausey  
Office of the Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

Counsel for Appellee  
Joseph Testa  
Ohio Tax Commissioner

Robert E. Tait  
Hilary J. Houston  
Steven L. Smiseck  
Vorys, Sater, Seymour, and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216

G. Wilson Horde  
Kramer, Rayson LLP  
P.O. Box  
Knoxville, Tennessee 37901

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Counsel for Appellant  
Martin Marietta Energy Systems, Inc.  
a/k/a Lockheed Martin Energy Systems,  
Inc.

Appellee Joseph W. Testa,  
Tax Commissioner of Ohio  
30 East Broad Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215

Appellee, Lockheed Martin Energy Systems, Inc.  
Attention: Stephen M. Piper, Vice President  
and General Counsel  
Electronic Systems, Lockheed Martian Corporation  
6801 Rockledge Drive  
Bethesda, Maryland 20817

  
Kevin L. Shoemaker (0017094)  
Special Counsel for Appellant  
Teddy L. Wheeler,  
In his capacity as Pike County Auditor

# EXHIBIT A

OHIO BOARD OF TAX APPEALS

TEDDY L. WHEELER, IN HIS OFFICIAL  
CAPACITY AS AUDITOR OF PIKE COUNTY, )  
OHIO, (et. al.), )  
Appellant(s), )  
vs. )  
JOSEPH W. TESTA, TAX COMMISSIONER OF )  
OHIO, (et. al.), )  
Appellee(s). )

CASE NO(S). 2012-2043  
  
(PERSONAL PROPERTY TAX)  
  
DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- TEDDY L. WHEELER, IN HIS OFFICIAL  
CAPACITY AS AUDITOR OF PIKE COUNTY,  
OHIO  
Represented by:  
KEVIN SHOEMAKER  
SHOEMAKER & HOWARTH, LLP  
471 EAST BROAD STREET  
SUITE 2001  
COLUMBUS, OH 43215

For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF  
OHIO  
Represented by:  
DANIEL W. FAUSEY  
ASSISTANT ATTORNEY GENERAL  
30 EAST BROAD STREET, 25TH FLOOR  
COLUMBUS, OH 43215-3428

MARTIN MARIETTA ENERGY SYSTEMS, N/K/A  
LOCKHEED MARTIN ENERGY SYSTEMS, INC.  
Represented by:  
ROBERT TAIT  
VORYS, SATER, SEYMOUR AND PEASE, LLP  
52 EAST GAY STREET  
P.O. BOX 1008  
COLUMBUS, OH 43216-1008

Entered Thursday, August 7, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant ("Auditor") from a final determination of the Tax Commissioner wherein the commissioner cancelled the personal property tax assessment issued by appellant to appellee Martin Marietta Energy Systems, n/k/a Lockheed Martin Energy Systems, Inc. ("MM"), relating to tax year

1993. We make our determination based upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, the record of this board's hearing ("H.R."), the parties' joint stipulations of fact ("Stip"), the depositions submitted in lieu of live testimony ("Dep."), and the written arguments of counsel.

There is a presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern*, supra; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan*, supra.

Through the notice of appeal, the Pike County Auditor contests the Tax Commissioner's cancellation of a personal property tax assessment issued by the auditor to MM based upon the value of tangible personal property located at the Portsmouth Gaseous Diffusion Plant ("PORTS"), a uranium enrichment plant. For the tax year in question, i.e., 1993, PORTS, and the equipment that is the subject of the instant assessment, were owned by the United States Department of Energy ("DOE"), "because of the extra hazardous nature of it that no contractor would build the facilities or have the capital investment for it." Nesteruk Dep. at 8-9; MM acted as the contract operator of PORTS that managed, operated and maintained the buildings and facilities at PORTS. Stip 1; Ex. 39.

Specifically, for tax year 1993, the Pike County Commissioners entered into an agreement with the DOE for payments in lieu of taxes ("PILOT agreement"). Such agreement, authorized under the Atomic Energy Act of 1946, i.e., 42 U.S.C. 2208, provided that "the County has requested financial assistance from DOE, and has stated that it will waive and release any claims for tax years 1992 through 1997 for taxes against DOE and its contractors on, with respect to, or measured by the value or use of Government-owned real and personal property." Auditor Ex. 20 at 1; MM Ex. 4 at 1. The agreement indicated that DOE's payment of \$175,546.83 would "constitute full satisfaction of any and all claims the County may have for taxes for tax years 1992 through 1997 against DOE and DOE's contractors, of any nature whatsoever, on, with respect to, or measured by the value or use of Government-owned real or personal property which is utilized in carrying on activities of DOE." Auditor Ex. 20 at 2; MM Ex. 4 at 2. Similar agreements were in effect for tax years 1952 through 1997. Stip 6. Thereafter, in December 2010, the auditor, although aware of the PILOT agreement in place for tax year 1993, issued a preliminary assessment certificate of valuation to MM for tax year 1993, resulting in a personal property delinquent tax liability of \$23,244,789. S.T. at 443-449. Upon MM's petition for reassessment, the commissioner took action, pursuant to R.C. 5711.31, to cancel such assessment issued by the auditor. For the reasons stated herein, we find that the subject assessment was properly cancelled.

At the outset, the auditor contends that the commissioner did not have the statutory authority to cancel the assessment in question. We disagree. Pursuant to R.C. 5703.05, generally, and R.C. 5711.31, more specifically, the commissioner could take whatever action was necessary to "correct" the assessment. Clearly, if the commissioner determines that an assessment has been issued by an auditor in error, the commissioner has the authority to cancel such assessment, i.e., to review the acts of his deputies, including county auditors as designated in R.C. 5711.11 and 5715.40, and take whatever action is necessary to correct any errors made, including cancellation.

Every taxpayer engaged in business in Ohio was required to annually file a personal property tax return with the county auditor of each county in which property used in the taxpayer's business was located. R.C. 5711.02. On that return, the taxpayer listed "all taxable property \*\*\* as to ownership or control, valuation, and taxing districts." R.C. 5711.03. A "taxpayer," was defined in R.C. 5711.01(B) as "any owner of taxable property \*\*\* and includes every person \*\*\* doing business in this state, or owning or having a beneficial interest in taxable personal property in this state \*\*\*."

Clearly, MM did not own the subject personal property, as title to it was retained by the DOE. MM also does not stand in the stead of an owner, by virtue of having a "beneficial interest" in the subject property, pursuant to R.C. 5711.01(B). In *Refreshment Service Co. v. Lindley* (1981), 67 Ohio St.2d 400, 403, the court "construe[d] the term 'beneficial interest' to include the interest of one who is in possession of all characteristics of ownership other than legal title of the taxable property. Such a definition prevents one from escaping the incidence of the personal property tax by transferring legal title to the taxable property while keeping the benefits of its ownership. The determination of whether a person has a 'beneficial interest' in an article of personal property requires an examination of the rights and privileges that person has in the property in question. If in fact this person is found to possess all the characteristics of ownership without having legal title to the property, then the person must be found to have a beneficial interest in the property and liable for any personal property tax assessed." Herein, all personal property at PORTS, including the uranium at the plant, was owned by the federal government and MM was not permitted to utilize any of it for its own purposes. The "DOE didn't want a comingling of contractor property, so it was excluded and none was provided." Nesteruk Dep. at 43. The property was physically "tagged" indicating it was owned by the federal government and records were maintained tracking its status. Unauthorized use of such equipment could have resulted in criminal penalties. Nesteruk Dep. at 18-21, 24; Donnelly Dep. at 11, 16, 18-19; Dayton Dep. at 11-12. The maintenance/repair/purchase of equipment was subject to DOE's approval, unless of such an insignificant, day-to-day nature that it was deemed unnecessary to obtain such consent. Dayton Dep. at 16; Donnelly Dep. at 30-32, 43.

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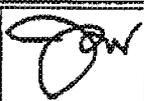
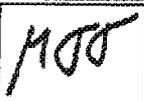
The auditor also contends that MM is subject to the personal property tax assessed by virtue of the provisions of R.C. 5711.16, as a manufacturer. That section specifically provides that "[a] person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing is a manufacturer. \*\*\* A manufacturer shall also list all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing, and

owned or used by such manufacturer." The auditor cites *ATS Ohio, Inc. v. Tracy* (1996), 76 Ohio St.3d 297, in support of such proposition. In *ATS*, the court addressed ownership of "inventory in the process of manufacture." Id. at syllabus. In analyzing the provisions of R.C. 5711.16, the court held that "[t]he final sentence of the second paragraph states the rule for treatment of property other than inventory, including engines, machinery, tools, and implements on the tax return. Instead of taxing only the items of property from this category that are owned by the taxpayer, R.C. 5711.16 provides that tax must be paid on items from the category that are "owned or used by such manufacturer." Id. at 299-300. By virtue of MM's restricted relationship with the DOE and its personal property at PORTS, we conclude that MM is not a manufacturer, as contemplated by R.C. 5711.16, but that the DOE, who rendered ultimate control and supervision over PORTS, was the manufacturer. Therefore, MM was not properly assessed as a manufacturer.

In addition, beyond the foregoing, we find that the PILOT agreement, in effect for the tax year in question and actively negotiated by the auditor, himself, by its very terms, "preempted and foreclosed the Auditor's ability to issue any preliminary assessment certificate of valuation or accompanying assessment." Comm. Reply Brief at 1. Neither the commissioner nor this board has the statutory authority to void the PILOT agreement or alter or interpret its terms, and therefore, we conclude that the parties' have executed their obligations under the agreement, as written.

Finally, we question the propriety of the auditor's actions in assessing MM for tax year 1993, some seventeen years after the tax year in question. R.C. 5703.58 provides that no assessment shall be issued "after the expiration of ten years \*\*\* from the date the tax return or report was due when such amount was not reported and paid." The auditor, as the commissioner's designated deputy, pursuant to R.C. 5711.11 and 5715.40, issued the assessment in question, clearly outside of the ten year limitation.

Thus, based upon the foregoing, we have determined that the appellant auditor improperly assessed personal property tax against MM; MM did not own the personal property in question, nor was MM a manufacturer. Further, pursuant to the terms of a PILOT agreement, the county was precluded from assessing personal property tax against MM for the year in question. As such, we have determined that the commissioner appropriately cancelled the assessment in question. Accordingly, based upon our conclusions, we need not address any other contentions raised by the parties hereto. The final determination of the commissioner is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



\_\_\_\_\_  
A.J. Groeber, Board Secretary



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# FINAL DETERMINATION

Date: MAY 25 2012

Martin Marietta Energy Systems, Inc.  
aka Lockheed Martin Energy Systems, Inc.  
c/o Mr. Stephen M. Piper  
Vice President and General Counsel  
Lockheed Martin Electronic Systems  
6801 Rockledge Drive – MP 365  
Bethesda, MD 20817

Re: Case No. 11-12028  
Personal Property Tax  
Pike County  
Tax Year: 1993

This is the final determination of the Tax Commissioner on a petition for reassessment filed pursuant to R.C. 5711.31 for tax year 1993. The subject assessment was issued by the Pike County Auditor on December 23, 2010<sup>1</sup>. In response to the assessment, the petitioner timely filed a petition for reassessment, and a hearing was held on the petition.

The petitioner did not file a personal property tax return for tax year 1993. The county auditor based his assessment on his conclusion that the petitioner was required to file a return listing taxable property for tax year 1993 and that the petitioner failed to file such return. Through its petition, the petitioner makes several contentions, including that the county auditor is barred from making the subject assessment due to an agreement between Pike County and the United States Department of Energy ("DOE") dated August 21, 1998. The agreement contains the following acknowledgements:

WHEREAS, said Government-owned land, facilities, and other personal property by reason of Federal ownership are not subject to taxation by the County under the Constitution and laws of the United States and the State of Ohio; and the County has suffered the loss of the ad valorem property tax for County government purposes on the land acquired by the Government; and

\* \* \*

<sup>1</sup> On December 23, 2010 the county auditor issued the subject assessment against the petitioner, Martin Marietta Energy Systems, Inc. and Martin Marietta Utility Services, Inc. Subsequent to the filing of petitions by both entities, the county auditor requested the Tax Commissioner cancel the assessment as it relates to Martin Marietta Utility Services, Inc. The decision regarding Martin Marietta Utility Services, Inc. will be made through a separate final determination in case number 11-12029. Since the issuance of the subject assessment, the Pike County Auditor has issued forty-four additional assessments beginning with tax year 1955.

WHEREAS, it is the opinion of Counsel for DOE and Counsel for the County that such contractors are not liable for taxes on, with respect to, or measured by the value or other use of such Government-owned real and personal property under existing State and Federal law; and

\* \* \*

Pursuant to the agreement, Pike County agreed to accept certain payments from the DOE in exchange for the following concession:

Such payment shall constitute full satisfaction of any and all claims the County may have for taxes for tax years 1992 through 1997 against DOE and DOE's contractors, of any nature whatsoever, on, with respect to, or measured by the value or use of Government-owned real or *personal property* which is utilized in carrying on activities of DOE; provided, that the acceptance of this payment shall not prejudice eligibility for any payment in lieu of taxes based on the benefits and burdens test prescribed in Section 168 of the Atomic Energy Act. The term "contractors" means and includes the companies and organizations listed in the schedule attached hereto, designated as Exhibit No. 2, and such other contractors and subcontractors as the parties may agree are in this category. [Emphasis added].

Exhibit No. 2 lists the petitioner, Martin Marietta Energy Systems, Inc., as a DOE contractor.

Based on the language of this contract, Pike County agreed to accept a payment from the DOE in resolution of any potential tax liability for personal property taxes owed by the petitioner for tax years 1992 through 1997, thereby precluding the subject assessment. Pike County received the requested payments-in-lieu of taxes from the DOE under this agreement. The subject assessment represents amounts unrelated to the amounts sought from DOE as payments-in-lieu of taxes. Additionally, the benefits and burdens test of the Atomic Energy Act<sup>2</sup> is not relevant to this determination as this decision is made by DOE based on information provided to the DOE by Pike County. There is no evidence that Pike County has requested or qualified for these additional benefits for these tax years.

Assuming *arguendo* that the county was not contractually foreclosed from making this assessment or that the county auditor was without authority to enter into the contract, the county auditor has not submitted any evidence establishing that the assessment is based on any reliable listing of personal property, nor any evidence supporting his calculation of the assessed value of the personal property.

The evidence that is in the record reveals that on November 18, 1992 the DOE responded to the county auditor's October 28, 1992 Freedom of Information Act request and provided the county auditor with, among other items, "a list of personal property owned by the Department of Energy" at the Piketon Gaseous Diffusion Plant. This list, titled "DOE-OWNED PERSONAL PROPERTY ASSETS," lists items classified as "STORES INVENTORIES," "CAPITAL EQUIPMENT," and "NON-CAPITAL SENSITIVE EQUIPMENT." The record also includes a

<sup>2</sup> Section 9(b) of DOE Order 2100.12A issued June 9, 1992 provides that, "[r]equests for new or revised payments based on special burdens that are in excess of any benefits derived from the Department's activities by the taxing jurisdictions are reviewed by the cognizant DOE Field Office to assure that Departmental policies are complied with and that the requests are complete and adequately supported."

MAY 25 2012  
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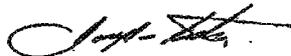
Preliminary Assessment Certificate of Value issued on December 23, 2010 reflecting an amended value of \$158,512,000. Finally, the record includes a Personal Property Delinquent Tax Statement reflecting an amount owed by the petitioner and Martin Marietta Utility Services, Inc. of \$23,244,789.00 for tax year 1993.

The record does not include, and the county auditor has not provided, any explanation of what property he determined was taxable, the methodology he used to value the property, or any schedules calculating the \$158,512,000 amended value. Without such evidence, the assessment cannot be given a presumption of correctness; without any supporting evidence of taxability or value, the assessment cannot be affirmed.

Pike County contractually ceded its right to assess personal property tax in this matter; therefore the Tax Commissioner finds that the assessment, in so far as it relates to the petitioner, must be canceled. Cancellation of the assessment renders moot the petitioner's remaining contentions.

**THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND NOTICE WILL BE SENT PURSUANT TO R.C. 5711.31 TO THE APPROPRIATE COUNTY AUDITOR, WHO SHALL PROCEED IN ACCORDANCE WITH R.C. 5711.32(C).**

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

  
JOSEPH W. TESTA  
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa  
Tax Commissioner

FILED

NOV 19 2014

CLERK OF COURT  
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Teddy L. Wheeler, in his official capacity  
as Auditor of Pike County, Ohio, (et al.)

Case No. 2014-1362

v.

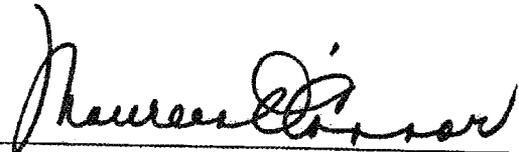
ENTRY

Joseph W. Testa, Tax Commissioner of  
Ohio, (et al.)

This cause is pending before the court as an appeal from the Board of Tax Appeals.

Upon consideration of appellee/cross-appellant's motion to dismiss notice of appeal of Martin Marietta Energy Systems, Inc. and appellant/cross-appellee's motion to stay related proceedings currently pending before the Ohio Department of Taxation, it is ordered by the court that the motions are denied.

(Board of Tax Appeals; No. 2012-2043)



Maureen O'Connor  
Chief Justice

### **5703.58 Time limit for assessments - extension by lawful stay.**

(A) Subject to divisions (B) and (D) of this section, the tax commissioner shall not make or issue an assessment for any tax payable to the state that is administered by the tax commissioner, or any penalty, interest, or additional charge on such tax, after the expiration of ten years, including any extension, from the date the tax return or report was due when such amount was not reported and paid, provided that the ten-year period shall be extended by the period of any lawful stay to such assessment. As used in this section, "assessment" has the same meaning as in section 5703.50 of the Revised Code.

(B) Subject to division (D) of this section, the tax commissioner shall not make or issue an assessment against any person for any tax due under Chapter 5741. of the Revised Code, or any penalty, interest, or additional charge on such tax, after the expiration of seven years, including any extension, from the date the tax return or report was due if the amount of tax due was not reported and paid, provided that the seven-year period shall be extended by the period of any lawful stay to the assessment. The commissioner shall not make or issue an assessment against a consumer for any tax due under Chapter 5741. of the Revised Code, or for any penalty, interest, or additional charge on such tax, if the tax was due before January 1, 2008.

(C) This section does not apply to either of the following:

(1) Any amount collected for the state by a vendor or seller under Chapter 5739. or 5741. of the Revised Code or withheld by an employer under Chapter 5747. of the Revised Code.

(2) Any person who fraudulently attempts to avoid such tax.

(D) This section does not authorize the assessment or collection of a tax for which the applicable period of limitation prescribed by law has expired and for which no valid assessment has been made and served as prescribed by law.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 09-28-2006

## **5703.50 Taxpayer rights definitions.**

As used in sections 5703.50 to 5703.53 of the Revised Code:

(A) "Tax" includes only those taxes imposed on tangible personal property listed in accordance with Chapter 5711. of the Revised Code and taxes imposed under Chapters 5733., 5736., 5739., 5741., 5747., and 5751. of the Revised Code.

(B) "Taxpayer" means a person subject to or potentially subject to a tax including an employer required to deduct and withhold any amount under section 5747.06 of the Revised Code.

(C) "Audit" means the examination of a taxpayer or the inspection of the books, records, memoranda, or accounts of a taxpayer for the purpose of determining liability for a tax.

(D) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 5711.26, 5711.32, 5733.11, 5736.09, 5739.13, 5741.11, 5741.13, 5747.13, or 5751.09 of the Revised Code.

(E) "County auditor" means the auditor of the county in which the tangible personal property subject to a tax is located.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 01-01-1990; 06-30-2005

## **5711.31 Notice of assessment - petition for reassessment - final determination.**

Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. The mailing of the notice of assessment shall be prima-facie evidence of the receipt of the same by the person to whom such notice is addressed. With the notice, the assessor shall provide instructions on how to petition for reassessment and request a hearing on the petition.

Within sixty days after the mailing of the notice of assessment prescribed in this section, the party assessed may file with the tax commissioner, in person or by certified mail, a written petition for reassessment, signed by the party assessed, or by that party's authorized agent having knowledge of the facts. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition also shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the assessment entered on the tax list or duplicate.

If the petitioner requests a hearing on the petition, the commissioner shall assign a time and place for the hearing and notify the petitioner of such time and place, but the commissioner may continue the hearing from time to time as necessary.

The commissioner may make corrections to the assessment, as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner in the manner provided in section [5703.37](#) of the Revised Code. The commissioner's decision in the matter is final, subject to appeal under section [5717.02](#) of the Revised Code. The commissioner also shall transmit a copy of the commissioner's final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders correction of the assessment, the notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the proper county auditor shall make any corrections to the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section [5711.32](#) or [5725.22](#) of the Revised Code.

The decision of the commissioner upon such petition for reassessment shall be final with respect to the assessment of all taxable property listed in the return of the taxpayer and shall constitute to that extent the final determination of the commissioner with respect to such assessment. Neither this section nor a final judgment of the board of tax appeals or any court to which such final determination

may be appealed shall preclude the subsequent assessment in the manner authorized by law of any taxable property which such taxpayer failed to list in such return, or which the assessor has not theretofore assessed.

As used in this section, "taxpayer" includes financial institutions, dealers in intangibles, and domestic insurance companies as defined in section 5725.01 of the Revised Code.

Effective Date: 09-06-2002

### **5711.15 Valuation of merchandise offered for sale.**

A merchant in estimating the value of the personal property held for sale in the course of his business shall take as the criterion the average value of such property, as provided in this section of the Revised Code, which he has had in his possession or under his control during the year ending on the day such property is listed for taxation, or the part of such year during which he was engaged in business. Such average shall be ascertained by taking the amount in value on hand, as nearly as possible, in each month of such year, in which he has been engaged in business, adding together such amounts, and dividing the aggregate amount by the number of months that he has been in business during such year.

As used in this section a "merchant" is a person who owns or has in possession or subject to his control personal property within this state with authority to sell it, which has been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which has been consigned to him from a place out of this state for the purpose of being sold at a place within this state.

Effective Date: 08-15-1957

R.C. **5711.16**

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE LVII TAXATION  
CHAPTER 5711 LISTING PERSONAL PROPERTY  
RETURNS AND LISTINGS; VALUATION OF PROPERTY  
COPR. (c) WEST 1993 No Claim to Orig. Govt. Works

**5711.16** LISTING OF PERSONAL PROPERTY BY MANUFACTURER; AVERAGE VALUE OF ARTICLES

A person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with a view of making a gain or profit by so doing is a manufacturer. When such person is required to return a statement of the amount of his personal property used in business, he shall include the average value, estimated as provided in this section, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying, or refining, and of all articles which were at any time by him manufactured or changed in any way, either by combining, rectifying, refining, or adding thereto, which he has had on hand during the year ending on the day such property is listed for taxation annually, or the part of such year during which he was engaged in business. He shall separately list finished products not kept or stored at the place of manufacture or at a warehouse in the same county.

The average value of such property shall be ascertained by taking the value of all property subject to be listed on the average basis, owned by such manufacturer on the last business day of each month the manufacturer was engaged in business during the year, adding the monthly values together, and dividing the result by the number of months the manufacturer was engaged in such business during the year. The result shall be the average value to be listed. A manufacturer shall also list all engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing, and owned or used by such manufacturer.

HISTORY: 127 v 650, eff. 8-15-57

1953 H 1; GC 5385, 5386

## REFERENCES

## PENALTY

Penalty: 5711.27

## PRACTICE AND STUDY AIDS

Merrick-Rippner, Ohio Probate Law (4th Ed.), Forms 239.01

Baldwin's Ohio Tax Law and Rules, Illustrative Forms 5.14 (TC-50), 7.09 (TC-50); Text 4.02; Bulletins 125, 147, 223

## CROSS REFERENCES

Computation and assessment of average value of inventories, OAC 5703-3-16

Tangible personal property tax, valuation of idle equipment, OAC 5703-3-22

## **5703-3-10 Tangible personal property tax; true value of depreciable assets; application of true value or 302 computation.**

(A) Tangible personal property used in business in this state must be returned, for purposes of the personal property tax, at its true value in money. The true value of depreciable tangible personal property is its book cost less book depreciation, unless the tax commissioner finds that the depreciated book value is greater or less than the true value of such property.

(B) Application of the composite annual allowance procedure provided for in rule 5703-3-11 of the Administrative Code shall determine the prima facie true value of depreciable tangible personal property used in business. The prima facie valuations can be rebutted by probative evidence of higher or lower valuation.

(1) When an item of tangible personal property is acquired in an arms-length transaction, its true value at the time of purchase is the acquisition cost, including all costs incurred to put the property in place and make it capable of operation, which are normally capitalized in accordance with generally accepted accounting principles.

(2) The true value in money of any tangible personal property may be proved by establishing the amount for which the property would sell in an open market by a willing seller to a willing buyer in an arm's-length transaction. If market value is estimated by an appraisal, the property must be appraised as part of an ongoing business unless the taxpayer can demonstrate that the property is more accurately appraised on the basis of piecemeal liquidation or disposal.

(3) If a taxpayer believes that the composite annual allowance procedure as determined by the commissioner does not accurately reflect the true value in money of the taxpayer's depreciable tangible personal property on hand, the taxpayer may establish more accurate annual allowances by probative evidence.

(a) Such evidence must show that the published composite annual allowance procedures are inappropriate because they cause an unjust or unreasonable result, or must be modified because of special or unusual circumstances.

(b) Such evidence may include, but is not limited to, an aging of disposals study and any other studies, data, or documentation the taxpayer wishes to submit for consideration by the commissioner.

(c) Such evidence must cover a sufficient number of years to demonstrate a pattern in the history of the useful life of the subject property.

(C) A taxpayer must file a claim for deduction from book value for every tax return on which depreciable tangible personal property is returned at a value less than depreciated book value. Such claim must be made in writing at the time of filing the return on form 902, as prescribed by the commissioner, or in a format containing substantially all information as required on form 902.

Eff 2-21-86

Rule promulgated under: RC 5703.14

Rule authorized by: RC 5703.05

Rule amplifies: RC 5711.02 , 5711.03 , 5711.09 , 5711.18

## **5703-3-11 Tangible personal property tax; true value or 302 computation.**

(A) To assist taxpayers in returning the true value of depreciable tangible personal property used in business in this state, as required by Chapter 5711. of the Revised Code and rule 5703-3-10 of the Administrative Code, and to assist in the efficient administration of the personal property tax, the tax commissioner shall determine a composite annual allowance procedure for use in computing the true value of such property. The application of the composite annual allowance procedure to the original cost of tangible personal property may be referred to as the "true value computation" or the "302 computation."

(B) The valuation determined by the true value computation shall be the prima facie true value in money of taxable tangible personal property.

(C) The composite annual allowance procedure shall take into consideration the type of business conducted, the types and classes of property, the useful life of the property in such classes, physical deterioration, functional and economic obsolescence, repair and maintenance practices, salvage value of property assigned to such classes, and any other factors that the commissioner considers proper in determining the true value of depreciable tangible personal property used in business in this state.

(D) The commissioner shall publish and make available the composite annual allowance procedure, with such instructions and examples as the commissioner deems useful or necessary to assist taxpayers in computing their proper tax liability.

(E) The commissioner shall review and, if necessary, modify the composite annual allowance procedure, from time to time, to assure that such allowance procedure reflects current technology and business experience.

Eff 2-21-86

Rule promulgated under: RC 5703.14

Rule authorized by: RC 5703.05

Rule amplifies: RC 5711.03 , 5711.18 , 5711.21 , 5711.22

**5717-1-11 Discovery.**

(A) Other than appeals which proceed on the board's small claims docket, discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The "Ohio Rules of Civil Procedure" shall be followed for discovery purposes to the extent they are not inconsistent with other board rules. Discovery shall be subject to the following limitations:

(1) Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed within the applicable case management schedule established in rules 5717-1-06 and 5717-1-07 of the Administrative Code, such deadlines also serving as the last day for a party to seek involvement of the board in discovery matters. Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.

(2) The board expects all counsel to provide for orderly, mutual discovery, freely exchanging discoverable information and documents. Counsel shall make all reasonable efforts to resolve discovery disputes by extra-judicial means, without intervention by the board. To the extent counsel may not resolve such disputes, then they may seek intervention of the board to supervise discovery.

(3) Answers, objections or other responses to discovery requests shall be served within twenty-eight days after service of such requests unless the board orders or the parties agree to a different period of time. Depositions, interrogatories, and admissions shall not be filed with the board, unless the party intends to offer such discovery documents as evidence in a hearing. Responses to discovery requests shall be timely supplemented.

(4) Any motion concerning discovery shall include only those specific portions of the discovery documents necessary for resolution of the motion and include counsel's statement describing all extra-judicial efforts undertaken to effect discovery.

(5) An expert may not be permitted to testify if he or she has not been timely identified prior to hearing consistent with the applicable case management schedule established in rules 5717-1-06 and 5717-1-07 of the Administrative Code. The parties may mutually agree to the exchange of any written reports of expert witnesses to be relied upon by them. Additionally, an expert's report or portions thereof may be excluded from evidence if the report was not made available in a timely fashion to complete a mutually agreed exchange of reports. In all events, the identity of the expert and the written valuation reports shall be disclosed to all parties as soon as known, but no later than the applicable deadlines established in rules 5717-1-06 and 5717-1-07 of the Administrative Code, except as otherwise ordered .

(B) No hearing will be continued for purposes of discovery unless good cause is shown.

(C) Cost of discovery shall be paid by the party requesting such discovery.

(D) Upon the motion of a party and for good cause shown, the board may issue a protective order restricting discovery of a trade secret or other confidential research, development or commercial information.

Effective: 10/09/2013

Promulgated Under: 5703.14

Statutory Authority: 5703.14

Rule Amplifies: 5703.02

Prior Effective Dates: 10/20/1997, 5/17/1990, 3/1/1996, 1/14/2005, 6/15/2007, 2/1/2009, 7/15/2013

## **5717-1-14 Sanctions.**

(A) Failure to comply with the rules contained in agency designation 5717 of the Ohio Administrative Code or an order of the board may result in any of the following sanctions:

- (1) The dismissal of the appeal;
- (2) The prohibition against introducing matters into evidence in support of certain specifications of error or other parts of the notice of appeal;
- (3) The prohibition against introducing designated matters into evidence;
- (4) The prohibition against introducing expert opinion and testimony into evidence;
- (5) The denial or suspension of appearing and qualifying as an expert witness in designated matters before the board;
- (6) The denial or suspension of the right of any person to appear or practice before the board;
- (7) The payment of reasonable expenses caused by the failure to obey an order including attorney fees, and costs incurred by the board from the disobedient party or the attorney advising such party;
- (8) The judicial relief provided by sections 5703.03 and 5703.031 of the Revised Code.

(B) The board may impose sanctions to enforce compliance with this chapter and orders as the board deems just and appropriate after the opportunity for hearing. The repetitious nature of the disobedient party or advising attorney will be considered in determining the appropriate sanctions to be imposed.

R.C. 119.032 review dates: 01/23/2013 and 03/01/2017

Promulgated Under: 5703.14

Statutory Authority: 5703.02 , 5703.14

Rule Amplifies: 5703.02

Prior Effective Dates: 10/20/1977, 3/24/1989, 3/1/1996

## Personal Property Tax

### County Bulletin

TO: ALL COUNTY AUDITORS - Bulletin No. 175

FROM: Stanley J. Bowers, Tax Commissioner

RE: Issuance of Preliminary and Amended Preliminary Assessments by County Auditors, and use of Forms 904A, 904B, and 904C in connection therewith.

DATE: March 15, 1962

Recently several cases have been brought to my attention wherein County Auditors have increased values of taxable property as reported by taxpayers in their original returns or added penalties and additional charges thereto for filing deficiencies without issuing preliminary assessment certificates evidencing such action. This action, of course, is contrary to law and the purported additional assessments resulting therefrom are void. The assessment of property by the county auditor, if no return has been filed by the taxpayer, and changes in the values as reported in a given taxpayer's return, or the addition of penalties and additional charges, can only be accomplished by the means of preliminary or amended preliminary assessment certificates, respectively, and I am bringing this matter to your attention so that you may comply with the law in the future.

In the foregoing connection Section 5711.24, Revised Code, provides in part as follows:

" \* \* \* The action of the assessor in assessing taxable property under Sections 5711.01 to 5711.36, inclusive, Revised Code, shall be taken as to taxable property required to be listed in a return, whether listed or not, and whether such return has been made or not. Such action shall be evidenced by a preliminary or final assessment certificate in such form as the commissioner prescribes, and when issued by the commissioner it shall be under his official seal. The filing of a return with the county auditor pursuant to sections 5711.01 to 5711.36, inclusive of the Revised Code, shall be deemed to be the preliminary assessment of the taxable property contained therein when entered on the proper duplicate by the county auditor. \*\*\*"(Underscoring added. Such language was added by amendment and was effective August 8, 1955, 126 Ohio Laws 52 (53). )

Subsequent to such amendment and on March 9, 1956, the Tax Commissioner issued County Auditor Bulletin No. 105 wherein he stated in part:

"\* \* \* Since the values and tax as computed by the taxpayer, and as submitted by him, are those authorized for transfer to the county auditor's tax list and duplicate, it is evident that the addition of penalties for filing deficiencies, or alterations of values or tax by the county auditor, make necessary the preparation of preliminary assessment certificates on Forms 904A, B, and C, as has been done in the past. When it is necessary to prepare this assessment form, 904C (Tax Commissioner's copy) should be attached to the return when forwarded to this department. \* \* \*"

Additionally, and on October 16, 1959, the Tax Commissioner issued County Auditor Bulletin No. 142, wherein he stated, in part, on pages 2 and 3 thereof as follows:

#### 4. Preliminary Assessments

Tax returns filed with the County Auditor, pursuant to Sections 5711.01 to 5711.36, inclusive, of the Revised Code, shall be deemed to be preliminarily assessed when the value of the taxable property contained therein is entered on the proper duplicate by the county auditor (Section 5711.24, Revised Code, and County Auditor Bulletin No. 105).

#### 5. Alteration of Values

Since the values and tax as computed by the taxpayer, and as submitted by him, are those authorized for transfer to the county auditor's tax list and duplicate, it is evident that the addition of penalties, or alterations of values, or tax by the county auditor make necessary the preparation of preliminary assessment certificates on Forms 904A, 904B and 904C as in the past. When it is necessary to prepare this assessment form, 904C (Tax Commissioner's copy) should be attached to the return when forwarded to this department." (County Auditor Bulletin No.105. )In view of all of the foregoing, and since it appears that the provisions of Section 5711.24, Revised Code, and the County Auditor Bulletins issued with regard thereto, have not been followed fully thereby resulting in many assessments that are invalid, the Tax Commissioner hereby prescribes the following procedure to be used in making assessments by county auditors.

Forms 904A, 904B and 904C (specimens attached) shall be prepared and issued in all instances where a taxpayer has not filed a return and a preliminary assessments made by the county auditor; and, in all instances where the taxpayer has filed a return and an amended preliminary assessment is made by way of altering the values or tax as submitted or by way of adding penalties or additional charges. In the latter instances the word " Amended" shall be typed or stamped on the Forms 904A, 904B and 904C. Form 904C shall be attached to the return and if the return is forwarded to this department then such form shall accompany the return. (Section 5711.25, Revised Code.)

September 19, 2012

The Honorable Anneka P. Collins  
Highland County Prosecuting Attorney  
112 Governor Foraker Place  
Hillsboro, Ohio 45133

SYLLABUS:

2012-030

A board of county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement. A board of county commissioners may grant a tax exemption to a private business under R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 provided the requirements of those statutes are satisfied.



**MIKE DEWINE**

★ OHIO ATTORNEY GENERAL ★

Opinions Section  
Office 614-752-6417  
Fax 614-466-0013

30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
www.OhioAttorneyGeneral.gov

September 19, 2012

OPINION NO. 2012-030

The Honorable Anneka P. Collins  
Highland County Prosecuting Attorney  
112 Governor Foraker Place  
Hillsboro, Ohio 45133

Dear Prosecutor Collins:

You have requested an opinion about the authority of a board of county commissioners to grant a tax exemption. You have explained that the board of county commissioners entered into a contract in which the board leased land located at the county airport to a private business. The tenant constructed buildings on the land and operates a business there. As part of the contract, the board agreed to “waive property taxes” on the land and buildings that are subject to the lease, a benefit also known as a tax abatement or tax exemption.

It is well established that a board of county commissioners is a creature of statute with only those powers granted by statute or necessarily implied by those powers that are expressly granted. R.C. 305.01; *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2); *Elder v. Smith*, 103 Ohio St. 369, 370, 133 N.E. 791 (1921); 2010 Op. Att’y Gen. No. 2010-024, at 2-173. Further, “[a]n exemption from taxation must be clearly and expressly stated in the statute.” *City of Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950) (syllabus, paragraph 1), *rev’d on other grounds*, 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965). *See also Toledo Bus. & Prof’l Women’s Ret. Living, Inc. v. Bd. of Tax Appeals*, 27 Ohio St. 2d 255, 258, 272 N.E.2d 359 (1971) (the power to determine tax exemptions “is lodged exclusively in the General Assembly, and once it has chosen a specific subject for tax exemption, and defined the criteria, the function of the executive and judicial branches is limited to applying those criteria to a particular case, or to interpreting them if necessary”); 1984 Op. Att’y Gen. No. 84-012, at 2-35 (“while a board of county commissioners is authorized to adopt regulations to facilitate administration of a tax levied pursuant to R.C. 5739.024(A), such a board may not, by rule, enlarge or restrict statutory exemptions”). Therefore, a board of county commissioners may grant a tax exemption as part of a lease only if it has express statutory authority to do so.

The general powers and duties of a board of county commissioners are set forth in R.C. Chapter 307. R.C. 307.09 grants a board of county commissioners broad authority to lease any real property belonging to the county and not needed for public use. This statutory provision, however, does not grant a board of county commissioners authority to grant a tax exemption as part of such a lease. Further, no other provision in R.C. Title 3 (counties) grants a board of county commissioners general authority to grant a tax exemption as part of a lease. Accordingly, we conclude that a board of

county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement.

We next look to the provisions of R.C. Chapter 5709, which sets forth and defines several different tax exemptions. Several statutory provisions in this chapter authorize a board of county commissioners to grant a tax exemption when specific requirements are satisfied. First, R.C. 5709.61-.69 permit the creation of enterprise zones in order “to encourage businesses to establish, expand, renovate, and occupy facilities and to create jobs within economically distressed zones.” 1989 Op. Att’y Gen. No. 89-013, at 2-55. A board of county commissioners may designate proposed enterprise zones in municipal corporations or townships or in unincorporated areas of the county with the consent of the affected legislative authority of the municipal corporation or the board of township trustees. R.C. 5709.63; R.C. 5709.632. After an enterprise zone is created, a board of county commissioners, with the consent of the legislative authority of each affected municipal corporation or of the board of township trustees, is expressly authorized to enter an agreement granting tax exemptions to an enterprise in return for the enterprise agreeing to establish or expand a business within a designated enterprise zone. R.C. 5709.63; R.C. 5709.632; *see also* 1989 Op. Att’y Gen. No. 89-013, at 2-55. Accordingly, where the requirements set forth in R.C. 5709.63 or R.C. 5709.632 have been satisfied, a board of county commissioners may grant a tax exemption to an enterprise located within a designated enterprise zone.

Additionally, R.C. 5709.78(A) authorizes a board of county commissioners to declare, by resolution, public infrastructure improvements to certain parcels of property located in the unincorporated territory of the county to be a public purpose. The statute further authorizes a board to exempt such an improvement from real property taxation as provided therein. R.C. 5709.78(A). R.C. 5709.78(B) authorizes a board of county commissioners to adopt a resolution creating an incentive district and to declare improvements to parcels within the district to be a public purpose. Parcels located within an incentive district may be exempt from taxation as provided in R.C. 5709.78(B). Accordingly, a board of county commissioners may grant a tax exemption when the requirements set forth in R.C. 5709.78(A) or (B) are satisfied.

Whether a particular business or lease agreement satisfies the conditions set forth in R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 is a question of fact and cannot be resolved by means of an opinion of the Attorney General. *See* 1990 Op. Att’y Gen. No. 90-020, at 2-78 (“[i]t is inappropriate to use the opinion-rendering function of the Attorney General as a means for making findings of fact”). Rather, the determination of whether a board of county commissioners has the authority to grant a tax exemption to a private business is a question that must be determined on a case-by-case basis at the local level.

We are not aware of any other provisions in the Revised Code that authorize a board of county commissioners to grant a tax exemption. There are, however, various types of tax exemptions throughout the Revised Code. *See* R.C. 1728.10 (community redevelopment corporations); R.C. 3735.67 (community reinvestment areas); R.C. 5709.08 (property of state and public property used exclusive for public purpose are exempt from taxation); R.C. 5709.41 (improvements to property conveyed or leased by a municipal corporation engaged in urban redevelopment). Your question asks

The Honorable Anneka P. Collins

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only about the authority of a board of county commissioners to grant a tax exemption, and so we have examined only those statutes that provide a board this authority.

Based on the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement. A board of county commissioners may grant a tax exemption to a private business under R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 provided the requirements of those statutes are satisfied.

Very respectfully yours,

A handwritten signature in black ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE  
Ohio Attorney General

STATE OF OHIO  
 PIKE COUNTY  
 TANGIBLE PERSONAL PROPERTY



Auditor Ex. 26

**PRELIMINARY ASSESSMENT CERTIFICATE OF VALUATION**

TAXPAYER'S NAME	ACCOUNT NUMBER	F.E.I.N.	DATE	RETURN YEAR
Martin Marietta Utility Services, Inc./Martin Marietta Energy Systems, Inc. c/o Lockheed Martin Corporation Attn: Mr. Don Martin P.O. Box 8048 Building 100, Room U4632 Philadelphia, PA 19101	20-000133	52-1318516	12/23/10	1993
The Pike Co. Auditor, as Deputy Tax Commissioner, hereby certifies a preliminary assessment of taxable property of the above named taxpayer for the return year shown above. In the event you wish to object to this assessment or penalty, if any, please see attached instructions.				
TAXING DISTRICT	INC. OR (DEC.) IN \$10,000 EXEMPTION	AMENDED VALUE	TOTAL PREVIOUS ASSESSED VALUE	INCREASE (DECREASE)
PIKE COUNTY TAXING DISTRICT 660180 SCIOTO TWP-SCIOTO VALLEY LSD	0	\$158,512,000	0	\$158,512,000

Teddy L. Wheeler, Pike Co. Auditor  
 as Deputy Tax Commissioner

IS NOT A TAX BILL. The County Treasurer will send a bill for the amount of taxes charged against you for the year indicated.

## NOTICE TO TAXPAYER

**Objection to Assessed Penalty Only:** You may request abatement of the penalty by filing a Petition for Abatement of Penalty with the Tax Commissioner within 60 days after the mailing of this assessment to you. The petition may be accompanied by, and refer to, a true copy of this assessment certificate and must indicate that your only objection is to the penalty and the reason for your objection. You are required to pay the full amount of tax due, except the penalty. You may pay the penalty as well, subject to refund if your petition is approved (O.R.C. Section 5711.28).

**Objection to Increase in Taxable Value or Denial of a Claim for Deduction from Book Value:** You may request a review of the increased assessment or denial of a claim for deduction from book value by filing a Petition for Reassessment with the Tax Commissioner within 60 days after the mailing of the assessment notice to you. The petition should include, and refer to, a true copy of this assessment certificate and must indicate your objections. Subsequently, additional objections may be submitted if done in writing before the issuance by the Tax Commissioner of the final determination of the petition. You may pay all or the undisputed portion of the tax to avoid interest charges (O.R.C. Section 5711.31).

**Objection to Both Penalty and Increase in Taxable Value:** You may request a review of the increased assessment by filing a Petition for Reassessment with the Tax Commissioner within 60 days after the mailing of this assessment to you. The petition should include, and refer to, a true copy of this assessment certificate and must indicate your objections,

including your objection to the penalty. You may pay all or the undisputed portion of the tax to avoid interest charges (O.R.C. Section 5711.31).

**No Special Form is Required for Filing the Petition for Abatement or the Petition for Reassessment.** The request must be in writing to the Tax Commissioner and must meet the requirements set forth in O.R.C. Sections 5711.28 and 5711.31.

Petitions may be mailed to the Tax Commissioner at:

Ohio Department of Taxation  
Personal Property Tax Division  
P.O. Box 530  
Columbus, Ohio 43216-0530

OR

Delivered in person at the Tax Commissioner's Office:

Personal Property Tax Division  
State Office Tower, 21<sup>st</sup> Floor  
30 East Broad Street  
Columbus, OH 43215

**Interest Charges,** which are applicable for returns for 1983 and subsequent years, are determined based on the amount of taxes not timely paid, or overpaid and the date of payment or refund. Interest charges may not be the subject of review by the Tax Commissioner.

STATE OF OHIO  
DEPARTMENT OF TAXATION

In the matter of Sales and Use Tax  
Assessment, Serial No. 88001651S

JOURNAL ENTRY

Goodyear Atomic Corporation  
c/o Robert D. Bush  
Director - Business Services  
Martin Marietta Energy Systems, Inc. - Portsmouth  
P.O. Box 628  
Piketon, Ohio 45661

FEB 23 1989

Direct Pay Permit No. 98-002229

The petitioner having waived its right to a hearing, this matter now comes on for final consideration. It involves review pursuant to R.C. 5739.13 and 5741.14.

It is hereby determined that:

This assessment came about subsequent to an audit of petitioner's purchases for the period January 1, 1982 through November 15, 1986. The petitioner, under contracts authorized by Section 2061(a), Title 42, U.S. Code, operates a production facility owned by the United States government. As a government contractor, the petitioner produces, fabricates and recycles uranium products. The tangible personal property which forms the basis of this assessment is unleaded gasoline.

Items Purchased for Resale

In the instant assessment, petitioner contends that all items assessed are exempted from taxation pursuant to R.C. 5739.01(B)(1). The petitioner claims that if the transactions " \* \* \* at issue may lawfully be considered sales to Goodyear Atomic Corporation, the sales were nonetheless exempt from Ohio sales tax because Goodyear Atomic Corporation instantaneously resold the items to DOE (Department of Energy)." This contention is not well taken.

To claim the resale exception the petitioner must demonstrate that the primary purpose in purchasing the tangible personal property is resale. Fliteways v. Lindley (1981), 65 Ohio St. 2d 21. To determine the purpose of a consumer, the Ohio Supreme Court in B.F. Goodrich v. Lindley (1979), 58 Ohio St. 2d 364 stated: "Clear statutory language makes the purpose of the consumer the basis of his claim of exemption. If that purpose comes under attack, actual use has evidentiary value tending to illuminate that purpose." Id at 365, 366.

Examination of the actual use of the tangible personal property reveals that the petitioner utilizes the property in order to achieve its own business purpose. As authorized by Congress, the Atomic Energy Commission and its predecessors have the authority to enter into contractual agreements

Auditor E

STATE OF OHIO  
DEPARTMENT OF TAXATION

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with persons in the private sector who possess the knowledge and expertise required to manage the government's facility, conduct research and develop practical applications in the area of nuclear materials. The activities which the petitioner performs and the manner by which this property is obtained by this petitioner is identical to the duties and methods of the contractors in United States v. Boyd (1964), 378 U.S. 39, and United States v. New Mexico (1982), 455 U.S. 720.

Under R.C. 5739.01(B), unless excepted from taxation, all transactions which transfer title or possession of tangible personal property are sales. All sales, in accordance with R.C. 5739.02, are presumed taxable unless they are expressly exempted from taxation. The petitioner contends that sales made to it are excepted as items of resale. The exception contained in R.C. 5739.02(E)(1) reads as follows:

As used in sections 5739.01 to 5739.31 of the Revised Code:

(E) "Retail sale" and "sales at retail" include all sales except those in which the purpose of the consumer is: (1) To resell the thing transferred or benefit of the service provided in the form in which the same is, or is to be, received by him \* \* \*." (Emphasis added.)

Moreover, Section 5741.02 of the Revised Code presumes "that any use, storage, or other consumption of tangible personal property in this state is subject to the tax unless the contrary is established." If, however, the transactions in question are deemed to be excepted for having been made for resale, R.C. 5741.02(C)(2) calls for their exclusion from the use tax also.

The petitioner relies on Tawa v. Aerial Products, Inc. (Md. 1956), 124 A 2d 803 and Dresser Industries v. Lindley (1984), 12 Ohio St. 3d 68, to support its contention that a resale of tangible personal property took place. This reliance is misplaced. Contrasted with the petitioner, which manages a government facility, the contractors in both cases completed performance of their contractual obligations at their own plant locations. In Aerial Products, the contract expressly stated that the ammunition manufacturer was to acquire property and facilities for the Army during the Korean conflict. The Court determined that, under Maryland's statutes and given the language of the contract, this manufacturer could not be held liable for taxes assessed on those items purchased under the terms of the contract.

In Dresser Industries, the Ohio Supreme Court discussed the use this mining machinery manufacturer had made of subcontracts. Dresser subcontracted with two other companies to provide a prototype and engineering reports in order to fulfill its contractual obligations with the

STATE OF OHIO  
DEPARTMENT OF TAXATION

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federal government. It was the decision of the Supreme Court that only an incidental use of the property in question by Dresser would uphold Dresser's contention that the items were excepted from taxation under R.C. 5739.01(E)(1). While noting that title to the tangible personal property produced by the subcontractors vested immediately in the federal government, the Court upheld the finding of the Board of Tax Appeals that the use Dresser made of the property was incidental to the resale of the items to the federal government. Thus the property purchased by Dresser and included with the other materials transferred by Dresser to the federal government were held to be items purchased for resale.

At issue in the present case is unleaded gasoline used by the petitioner to fulfill its contractual obligations. As in Royd and King Mexico, supra, it is the responsibility of the contractor to exercise its managerial skill, one aspect of which is purchasing. The government pays the petitioner an annual fee to exercise its discretion in order to ensure an efficiently run operation. The primary purpose of the purchases in question is to further the petitioner's own interest which includes making a profit. Thus the use of the purchased tangible property by the petitioner is more than "incidental" as in the case of Dresser.

The petitioner also states that the decision in Dresser comports with decisions in other states citing Lockheed Aircraft Corp. v. State Board of Equalization (1978), 81 Cal. App. 3d 257, 146 Cal. Rptr. 283, as an example. However, it must be noted that the Ohio taxing scheme for sales and use taxes is not similar to that of California. Reliance by the petitioner on a foreign court's interpretation of a dissimilar statutory taxing scheme is misplaced. The objections are disallowed.

Sales by the Federal Government to Petitioner

Taking into account the above discussion regarding petitioner's contention of purchases for resale to the federal government, the available evidence demonstrates that the petitioner is the purchaser and consumer of the tangible personal property placed in issue. The petitioner does not argue that there is a sale of the property in issue by the federal government to the petitioner. Therefore, this final determination by the Tax Commissioner will not address this issue.

Prospective Application of United States v. New Mexico

The petitioner contends that prior to March 24, 1982, the date of the U.S. Supreme Court's decision in United States v. New Mexico, supra, it was generally accepted law in Ohio that corporations which managed government-owned, company-operated facilities were not subject to state sales or use taxes. Thus, the petitioner concludes, the Tax Commissioner should delete the transactions from the assessment which occurred between

STATE OF OHIO  
DEPARTMENT OF TAXATION

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October 1, 1981 and March 24, 1982, and give the decision in New Mexico only prospective application.

To buttress this contention the petitioner submitted copies of correspondence regarding cancellation of its direct pay permit and that of two other Atomic Energy Commission contractors. This correspondence was between the Atomic Energy Commission, the Cincinnati District office and the Legal Division of the Department of Taxation during the years 1966, 1967 and 1968. The correspondence reveals that the Cincinnati District office in its April 24, 1966 letter determined that purchase orders which clearly indicate that the purchase made by or for and on behalf of the federal government would not require exemption certificates. Based upon this letter and the explanation of the procurement procedures outlined by the Atomic Energy Commission's Chief Counsel's letter dated July 19, 1968, petitioner's direct pay permit was canceled.

From the submitted correspondence it is not possible to determine all the factors which formed the basis of the Department's decision to cancel petitioner's direct pay permit in 1968. The Department of Taxation's position was restated to Mr. Chalmers C. King, Chief Counsel of the United States Atomic Energy Commission, Albuquerque Operations office in a letter from the Department's legal section dated August 7, 1967. Mr. King inquired about the taxable status of small tooling and rentals which one of the Atomic Energy Commission's contractors used in fulfillment of its contract. The reply of the Department reiterated its position that the items in question are subject to sales and use taxes unless the contractor was cloaked with federal immunity or purchased the items as an agent of the federal government.

The Department's position that the doctrine of implied constitutional immunity did not extend to private contractors performing work for the federal government is based on the U.S. Supreme Court's decision in Alabama v. King & Boozer (1941), 314 U.S. 1.

The state of decisional law in Ohio for the same period is unclear. The petitioner cites Rockwell International v. Lindley (June 24, 1981), B.T.A. Case No. F-900, unreported, wherein the Board of Tax Appeals found a federal contractor's purchases excepted from taxation pursuant to the provisions of E.C. 5739.01(E)(1). Earlier, in 1968, the Board had rejected similar arguments of another contractor similarly situated to Rockwell in Cavite Corp. v. Porterfield (July 3, 1968), B.T.A. Nos. 66512, 66513 and 66514, unreported. The Board affirmed the assessment of tax on purchases in the possession of the contractor which are used and consumed during the course of the contractor's fulfillment of its contractual obligations with the Atomic Energy Commission following the doctrine set out by the U.S. Supreme Court in King & Boozer, *supra*, and United States v. Boyd, *supra*. Given these decisions, it is impossible to conclude that decisional law in Ohio prior to 1982 was clearly stated.

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DEPARTMENT OF TAXATION

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In urging the Tax Commissioner to delete transactions which occurred prior to the announcement of the New Mexico decision, the petitioner has outlined the three prong test found in Chavron Oil Co. v. Huson (1971), 404 U.S. 97, to determine whether decisional law should be limited to prospective application. The Tax Commissioner finds that Chavron is inapplicable to the case at hand and, therefore, need not be discussed. While New Mexico did provide a clear and concise guideline for future cases in which the issue of federal tax immunity is present, the decision reiterated the previously held principle that Atomic Energy Commission contractors were not shielded from state taxation under the guise of constitutional tax immunity. 455 U.S. at 744. This position, upon which the Court based its New Mexico decision, is one with which the Ohio Department of Taxation had concurred and communicated to parties engaged in business in Ohio. The actions of federal and state courts, administrative review bodies, and the State Department of Taxation gave the petitioner sufficient notice that states, including Ohio, have the authority to exercise rights inherent to their sovereignty, one of which is the power to tax. The petitioner's objection is disallowed.

In its petition for reassessment, the petitioner made numerous contentions that the assessment was erroneous. Other than for the contentions listed above, the petitioner did not provide probative evidence to demonstrate that the assessment was in error. Since the contentions in the petition for reassessment lack particularity as called for in R.C. 5739.13, these objections are disallowed.

Based upon the circumstances of this case, the request for penalty remission is conditionally allowed for those purchases which occurred prior to the U.S. Supreme Court's decision in U.S. v. New Mexico, *supra*. The Tax Commissioner finds full remission of the penalty proper for these transactions, giving the petitioner the appropriate benefit for any misunderstanding which may have arisen regarding the taxable status of its purchases prior to New Mexico.

However, after March 24, 1982, the date of the New Mexico decision, the petitioner was once again given notice by the highest court in the United States that tangible personal property used by an entity for its own business purpose can be subject to taxation by the state. On the state level, the petitioner was aware for at least two years, the length of time taken to obtain security clearances for the auditing agents, that it would be audited by the Department of Taxation. During that period of time, petitioner applied for and received a direct pay permit. Petitioner chose to file its returns indicating no tax liability for its purchases. The available evidence demonstrates that the petitioner was aware of and assumed the risk that by not paying tax on its purchases and if the purchases were included in an assessment, the statutory fifteen percent penalty would be imposed. Given the similarities between petitioner and the assessed transactions herein and the entities and type of transactions taxed by New

STATE OF OHIO  
DEPARTMENT OF TAXATION

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Mexico, the case law in Ohio during the audit period, and the communications between the petitioner and the Ohio Department of Taxation, the Tax Commissioner does not view remission of the statutorily imposed penalty appropriate for transactions which occurred subsequent to March 1982. Thus the request for penalty remission for the transactions which occurred subsequent to March 1982 is disallowed.

Therefore, it is the order of the Tax Commissioner that if payment of

	<u>Assessment</u>	<u>Penalty</u>	<u>Total</u>
(Sales Tax)	\$43,562.08	\$6,216.84	\$49,778.92

is made within thirty (30) days after receipt by the taxpayer of this journal entry showing final determination, the assessment shall stand as adjusted in the above amount. In the event this matter is appealed to the Board of Tax Appeals, to an appropriate Court of Appeals, or to the Supreme Court, said thirty (30) day period shall begin to run from the date the entry of the Board of Tax Appeals is filed or the decision of an appropriate Appeals Court or the Supreme Court is rendered.

If the total amount is not paid as above provided, the assessment shall stand as issued in the following amount:

	<u>Assessment</u>	<u>Penalty</u>	<u>Total</u>
(Sales Tax)	\$43,562.08	\$6,534.31	\$50,096.39

The unpaid amount of tax shall bear interest as prescribed by law from December 20, 1987 to the date of payment.

THIS REFLECTS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THE SUBJECT MATTER. UPON EXPIRATION OF THE THIRTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILES APPROPRIATELY CLOSED.

/S/ JOANNE LIMBACH  
Joanne Limbach  
Tax Commissioner

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE  
AND CORRECT STATEMENT OF THE ACTION OF THE TAX  
COMMISSIONER ON THIS DAY WITH RESPECT  
TO THE MATTER REFERRED.

*Joanne Limbach*

JOANNE LIMBACH  
TAX COMMISSIONER

C.3

# GUIDELINES FOR FILING OHIO PERSONAL PROPERTY TAX RETURNS

STATE LIBRARY OF OHIO  
65 SOUTH FRONT STREET  
COLUMBUS, OHIO 43266-0334

MAR 16 1994

DEPOSITORY 0460



1992 EDITION

ROGER W. TRACY  
Tax Commissioner

Auditor Ex. 30

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**STATE OF OHIO  
DEPARTMENT OF TAXATION**

**PROPERTY TAX DIVISION**

**LOCATION**

30 East Broad Street,  
21st Floor  
Columbus, OH 43266-0420

**MAILING ADDRESS**

P.O. Box 530  
Columbus, OH 43266-0030

**Telephone Numbers**

Administration	614-466-3280
Personal Property Section	614-466-8122
Compliance Section	614-466-8610
Public Utility Section	614-466-7371

**OHIO DISTRICT OFFICES**

**AKRON DISTRICT**

161 South High Street  
Akron Government Center, Suite 501  
Akron, Ohio 44308  
216-379-1725

**CANTON SUBDISTRICT**

4150 Belden Village Street N.W.  
Canton, OH 44718-2553  
216-493-2760

**CINCINNATI DISTRICT**

900 Dalton Avenue  
Cincinnati, OH 45209  
513-852-3311

**CLEVELAND DISTRICT**

Cleveland State Office Tower  
615 West Superior Avenue  
Cleveland, OH 44113  
216-787-3125

**COLUMBUS DISTRICT**

1800 East Dublin-Granville Road  
Columbus, OH 43229  
614-895-6270

**DAYTON DISTRICT**

5th Floor, Centre City Office  
15 East Fourth Street  
Dayton, OH 45402  
513-285-6220

**LIMA SUBDISTRICT**

1303 Bellefontaine Avenue  
Lima, OH 45804  
419-227-4906

**STEUBENVILLE SUBDISTRICT**

423 North Street  
P.O. Box 159  
Steubenville, OH 43952  
614-283-3111

**TOLEDO DISTRICT**

One Government Center  
Suite 1400  
Toledo, OH 43604-2232  
419-245-2870

**YOUNGSTOWN SUBDISTRICT**

737 North Garland Avenue  
P.O. Box 2000  
Youngstown, OH 44506  
216-742-8640

**ZANESVILLE DISTRICT**

601 Underwood Street  
Zanesville, OH 43701  
614-453-0628

**OUT OF STATE DISTRICT OFFICES**

**CHICAGO OFFICE**

1011 East Touhy Avenue,  
Suite 345  
Des Plaines, IL 60018  
708-390-7490

**LOS ANGELES OFFICE**

575 Anton Boulevard  
Suite 720  
Costa Mesa, CA 92626  
714-434-6768

## INTRODUCTION

This booklet is published to apprise persons of the manner in which property taxes are levied in Ohio. The content is not intended as a substitute for the law itself. It was prepared with the purpose of conveying general information regarding such taxes with added emphasis on the personal property tax. The explanations and completed examples in this booklet do not apply to persons engaged in business as a financial institution or dealer in intangibles, or an insurance company except when those taxpayers lease property to others. Person who are engaged in these businesses should write the Tax Commissioner for further information specific to their reporting requirements.

Taxpayers who are public utilities also have different reporting requirements, as will those who lease property to public utilities when that property is used directly in the rendition of a public utility service. A special publication is available describing the valuation of public utility property, also obtained from the Tax Commissioner.

## DEFINITIONS

**Real Property** - defined as land, growing crops and all buildings, structures, improvements and fixtures on the land. (O.R.C. 5701.02)

**Personal Property** - all tangible things which are the subject of ownership, except real property. (O.R.C. 5701.03)

**Taxpayer** - means any owner of taxable property, and includes every person residing in, incorporated or organized under the laws of this state, or doing business in this state, or owning or having a beneficial interest in personal property in this state. (O.R.C. 5711.01(b))

**Business, Used in Business** - business includes all enterprises except agriculture, conducted for gain, profit, or income, and extends to personal service occupations. Personal property is used in business when held as a means for carrying on the business, kept and maintained as a part of a plant capable of operation, or stored or kept on hand as material, parts, products or merchandise. (O.R.C. 5701.08)

**Public Utility** - means each person referred to as a telephone company, telegraph company, electric company, natural gas company, pipeline company, water-works company, water transportation company, heating company, rural electric company or railroad company, includes interexchange telecommunications company. (O.R.C. 5727.01 (A, I))

**Manufacturer** - is a person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying or combining different materials with a view of making a gain or profit by doing so. (O.R.C. 5711.16)

**Merchant** - is a person who owns or has in possession or subject to his control, or has been consigned to him, personal property within this state with authority to sell it, with a view to being sold at an advanced price or profit. (O.R.C. 5711.15)

**New Taxpayer** - is a person who engages in business in this state on or after January 1 in any year. (O.R.C. 5711.03)

**Listing Date** - for all taxable personal property is the close of business on December 31 of the preceding year, or for a taxpayer using a different fiscal year-end for federal income tax purposes, that fiscal year-end in the preceding year, provided that the taxpayer has been engaged in business in Ohio twelve months prior to that date. Alternate listing dates may be authorized or required by the Tax Commissioner under special circumstances.

## REAL PROPERTY

The county auditor is the assessor of all real property in his county. The Department of Taxation, through the Division of Tax Equalization, supervises the assessment of real property through the issuance of rules and regulations and the prescription of forms.

The taxable value of all real property is thirty-five percent of its true value in money. All real property must be reappraised in each county every six years, with annual adjustments for new construction and deletions of property in a parcel.

Real property taxes are based on the taxable value of the property and levied by the county auditors and collected by the county treasurers. The tax rates applicable to real property vary throughout the state and represent the aggregate legal levies approved by the voters in each taxing district. Revenue from this tax is used to support local government, and services such as schools, police and fire protection, health and sanitation services, etc.

Several reductions in taxes exist, such as the Homestead Exemption, and the ten percent rollback for all real property, and an additional two and one-half percent rollback for residential property. Such reductions in property taxes are reimbursed to the local governments from the State's General Revenue Fund. Applications for the Homestead Exemption and questions concerning all real property exemption programs should be directed to the county auditor.

## TANGIBLE PERSONAL PROPERTY

All tangible personal property is taxable when used in business. The Tax Commissioner is the

assessor of all such property with each county auditor serving as a deputy of the Tax Commissioner for such purposes.

Tangible personal property is reported through the filing of an annual tax return with either the County Auditor or Tax Commissioner. The taxable value of all tangible personal property is an annually declining percent of its true value in money. For 1992 the listing percent is 26% and will be 25% for 1993 and future return years.

Tangible personal property taxes are based on the taxable value of the property and collected by the county treasurers. The tax rates are the same as those for real property and the revenues are used for the same purposes as those from the real property taxes.

### FILING REQUIREMENTS

Each taxpayer must file an annual return and list all taxable property as to ownership, valuation and taxing district. Every business entity must file an annual return, even to disclose that no tax liability exists. Tax returns must be filed between February 15 and April 30. An extension of time to file the return may be obtained from the official with whom the return must be filed. The maximum extension is forty-five days. New taxpayers have different filing requirements for the year in which they engage in business in Ohio, see special instructions on page 18.

### TAX FORMS

Form 920, County Return of Taxable Business Property is to be used by all taxpayers except those with property in more than one county. This form may be obtained from and must be filed with the Auditor of the County in which the property is located. Corporations having no taxable personal property should file in the county where the principal business activity is conducted. In the event there are no activities or locations in Ohio, this form should be filed with the Tax Commissioner. Form 920 is required to be filed in duplicate.

Form 945, Inter County Return of Taxable Business Property is to be used by taxpayers having taxable property in more than one county. This form is obtained from and must be filed with the Tax Commissioner, P. O. Box 530, Columbus, OH 43266-0030.

### SUPPLEMENTAL FORMS

Unless otherwise indicated, the following forms may be obtained from the official with whom the tax return is filed, and must accompany the tax return at the time of filing.

Form 902, Claim for Deduction from Book Value is to be filed by taxpayers claiming values less than net book value. This form must accompany the tax return at the time of filing.

Form 913-EX, Return of Exempt Personal Property is to be filed by taxpayers with exempt property located in an Urban Jobs and Enterprise Zone.

Form 921, Ohio Balance Sheet must be filed by every taxpayer engaged in business in Ohio. This form is a confidential document and should accompany the tax return at the time of filing, or may be mailed separately to the Tax Commissioner.

Form 925, Return of Grains Handled, is required to be filed by all taxpayers engaged in the business of handling grain.

Form 937, True Value Computation, is to be used by taxpayers valuing property based on the Tax Commissioner's prescribed composite group-life classes.

Form 945-S, County Supplemental Return, must be filed by taxpayers required to file Form 945 when the taxable value in a taxing district increases or decreases from the value reported in the previous year in excess of \$500,000 or more. This form is filed with the appropriate County Auditor.

### PAYMENT OF TAXES

All taxes for tangible personal property are paid to the appropriate county treasurers. Receipts for payments will be sent when a self-addressed stamped envelope is sent with the payment, or when the payment is made in person.

When Form 920 is required to be filed, the return must be accompanied by, or followed within ten days thereafter by a payment equal to one-half the total amount of taxes shown thereon. The balance due is payable on receipt of a bill from the County Treasurer or before September 20, whichever is later.

When Form 945 is required to be filed, no payment is required with the return. The full amount of the taxes for each county will be billed by the appropriate county treasurer, and are payable on receipt of the bills from the county treasurer or before September 20, whichever is later.

The remainder of this publication is devoted to the tangible personal property tax as it pertains to general business property. Taxpayers engaged in business as a public utility, financial institution or dealer in intangibles should write to the Tax

Commissioner for information about their particular tax and reporting requirements. In this booklet, there is a description of the composite valuation method, and illustrations of the forms filed by different types of taxpayers.

## LISTING AND VALUING PERSONAL PROPERTY

Tax forms have been prescribed and designed to permit the taxpayer to list his property in a clear, concise manner. The schedules in the return forms (920 or 945) for reporting the true value of, and computing the listed value of personal property are: Schedule 2, Machinery and Equipment Used in Manufacturing; Schedule 3, Manufacturing Inventory; Schedule 3-A, Merchandising Inventory; Schedule 4, Furniture, Fixtures, Equipment not Used in Manufacturing; Schedule 5 (Form 945 only) Return of Grains Handled.

All property listed in the schedules must be reported according to the taxing district in which it is physically located on the listing date required to be used by the owner. If a taxpayer is in doubt as to the proper taxing district, he should contact the county auditor, with the address of the property, or refer to the taxing district shown on the real property tax bill.

In Schedule 2, enter the true value of all engines, machinery, equipment, implements, small tools, machinery repair parts and other tangible personal property used in the following activities:

manufacturing	dry cleaning plants
mining	stone and gravel plants
laundries	radio and television
towel and linen supply	broadcasting

In Schedule 3, enter the monthly values of all inventory used in manufacturing, including supply inventories consumed in the manufacturing process.

In Schedule 3-A, enter the monthly values of all inventory acquired and held for sale and any finished goods inventory of a manufacturer not held in the county of manufacture.

In Schedule 4, enter the true value of all furniture, fixtures, machinery, equipment and supplies not used in manufacturing; all inventories of taxpayers other than manufacturers or merchants; and all domestic animals not used in agriculture.

## REPORTING AND VALUING DEPRECIABLE ASSETS

Depreciable assets must be listed at their true value in money, which may be greater or less than their net book value. The Tax Commissioner has

prescribed a valuation procedure which applies composite allowances to the cost of assets based on their use and business activity. This valuation procedure is to be used in lieu of net book value for determining the true value of most depreciable assets. A more detailed description of the valuation procedure, including the assigned class lives, follows on page 9. In those instances where the computed true value is less than net book value, Form 902 must be filed with the tax return.

Expendable items, such as small tools, are valued at 50% of the cost of items on hand as of the taxpayer's listing date. Other items such as barrels, returnable containers, bottles, are valued separately, according to previously promulgated methods. Supply items, not costed into inventory are valued at cost in the amount on hand as of the taxpayer's listing date.

Depreciable assets classified as personal property and excluded or exempted from taxation include: motor vehicles registered and licensed in the name of the owner, aircraft registered and licensed in the name of the owner; watercraft not used exclusively in Ohio waters; air, water and noise pollution control facilities and waste removal facilities certified by the Tax Commissioner as exempt; patterns, jigs, dies and drawings when held for use and not for sale in the ordinary course of business; construction in progress while under construction and not capable of use; harvested crops belonging to the producer thereof; depreciable assets and domestic animals not used in agriculture; property located in an Urban Jobs and Enterprise Zone for which an exemption has been granted; property located in buildings boarded up, rendered functionally inoperable and held for disposal.

## LEASED PROPERTY

Leased property must be reported and listed by the owner in his tax return. Property leased to a public utility under a sale/lease transaction occurring in the same calendar year must be reported by the public utility in its annual report. Other property leased to a public utility when used directly in the rendition of a public utility service must be listed by the owner, and valued the same as if the public utility was reporting it. A separate publication is available from the Tax Commissioner describing the valuation procedure for public utility property.

If the lessee is obligated to purchase the property, he is deemed to be the owner and must report the property used exclusively in agriculture is exempt.

Leased property is valued and listed according to the use to which it is put by the lessee.

## INVENTORIES

Ohio law requires the inventories of manufacturers and merchants to be listed on the average monthly basis. The average value shall be determined by dividing the sum of the month-end inventory values by the number of months engaged in business in Ohio. If the books and records of the taxpayer do not provide monthly values, the gross profits method may be used, providing purchases and sales are accrued properly.

The value of manufacturing inventory must include the costs of raw material, work-in-process, and finished goods. The value of goods-in-process and finished goods must include all factory burden and overhead costs attributable to the manufacturing facilities and processes. Such costs include, but shall not be limited to, indirect labor, insurance, utilities, taxes, transportation, rents and leases, repairs and maintenance, depreciation and amortization. (Rule 5703-3-27) Inventory values maintained on the direct cost or LIFO basis must be restarted.

The value of merchandising inventory must include the costs to acquire the inventory, taxes and freight. Inventories carried at retail value must be restarted at cost (Rule 5703-3-17) Inventories held on a floor-plan basis must be returned at full value.

Consigned manufacturing or merchandising inventory must be listed by the owner, but merchandise consigned from a non-resident of Ohio to a merchant doing business in Ohio must be listed by the Ohio merchant. (Rule 5703-3-09)

Supply inventories of a manufacturer must be listed in Schedule 3 on the average basis. All other supply inventories must be listed as of listing date in Schedule 4.

Inventories of taxpayers other than manufacturers and merchants must be listed as of listing date in Schedule 4. Such inventories include those of mines, quarries, laundries, dry cleaners, contractors, repair shops, garages, etc.

## \$10,000 EXEMPTION

For each taxpayer, the first \$10,000 of listed value of taxable personal property is exempt from taxation. The exemption is applied in the taxing district with the highest listed value. If that is less than \$10,000, the remaining amount is applied in the taxing district with the next highest listed value. This process is continued until the aggregate of the exemptions reaches \$10,000. A return must be filed even though no tax is due. The county and local governments will be reimbursed for the taxes not paid because of the exemption only if a return has been filed claiming the exemption.

## LATE FILING AND LATE PAYMENT PENALTIES, INTEREST

When a return is filed after the due date, or the due date as extended, a late filing penalty may be applied to the listed value. One-half of the allowable exemption is forfeited, and a penalty of up to 50% may be applied to the remaining listed value. A Petition for Abatement of the Penalty may be filed with the Tax Commissioner within 30 days of the date of the assessment of the penalty. Such petition must state the reason(s) for the late filing of the return and include a copy of the assessment certificate(s).

Taxes paid after their due date are subject to a late filing penalty of ten percent. A request for abatement of this penalty may be made to the County Auditor. If the County Auditor does not abate the penalty, that decision may be appealed to the Tax commissioner.

Taxes paid after their due date and tax overpayments refunded to the taxpayer are subject to interest charges. The interest percent varies according to the Federal Funds interest rate each October, and accrues on a monthly basis. There is no basis for an appeal or any reduction to the interest on taxes paid after the due date.

## TAXPAYERS' BILL OF RIGHTS

Substitute Senate Bill 147 was passed and effective January 1, 1990. This bill creates specific rights of and requires certain disclosures to taxpayers with respect to audits and assessments arising out of personal property taxation, and corporate franchise, sales, use and income taxes.

Before the commencement of an audit of his return, each taxpayer will receive a written description of the roles of the Department of Taxation and of the taxpayer during an audit. The legislation provides that audits conducted by the Department of Taxation be conducted during regular business hours, and that there shall be written notice of the scheduled audit prior to the commencement of the audit. The taxpayer is entitled to representation during an audit, and may electronically or otherwise record the audit examination.

With or before the issuance of an assessment which requires a correction to the tax list and duplicate, the Tax Commissioner or County Auditor shall provide to the taxpayer a written description of the basis for the assessment and any penalty required to be imposed with the assessment, and a written description of the taxpayer's right to appeal the assessment, including the steps required to request administrative review by the Tax Commissioner. In the case of the issuance of a final assessment, the commis-

or county auditor is required to inform the taxpayer in writing, of the steps necessary to appeal final assessment to the Board of Tax Appeals.

Other provisions of the legislation include the appointment of a problem resolution officer to aid a taxpayer who cannot obtain satisfactory answers from Department employees, continuing education and training programs for the Department's employees, a system for monitoring the performance of tax agents including evaluations obtained from taxpayers, and a procedure for requesting and receiving written opinions

from the Tax Commissioner concerning future tax liabilities.

Copies of the brochures containing more detailed information with regard to Tangible Personal Property are available from the Ohio Department of Taxation, Property Tax Division, P. O. Box 530, Columbus OH 43266-0030. A separate brochure with information on Income, Sales, Use and Corporate Franchise Taxes is available from the Department's Tax Policy and Communication Division, at the same address.

## TRUE VALUE OF TANGIBLE PERSONAL PROPERTY

### INTRODUCTION

Ohio Administrative Code Rules 5703-3-10 and 5703-3-11 provide for the determination of the true value of tangible personal property used in business. The composite annual allowance method prescribed in Rule 5703-3-11 utilizes a single allowance for both short-lived and longer-lived items. The application of the composite annual allowance to historical costs has often been referred to as the "true value computation" or "302 computation." Use of the true value computation has historically been approved by the courts as a means for determining true value for personal property tax purposes. Such value is prima facie true value and in the absence of evidence to the contrary, is acceptable as the "true value in money."

For over five decades, the Tax Commissioner has prescribed composite prima facie annual allowances. Since that time, many technological improvements have been made in manufacturing processes and in the machinery and equipment used in these processes. As these changes occurred, revisions in the allowances were made and new allowances added. On at least one occasion in the 1950's, all the allowances were reviewed and several changes made.

In 1978 and 1979, the Department of Taxation conducted a comprehensive review of all annual allowances and the true value computation method itself. The principal objectives were to make whatever changes were necessary to reflect current conditions, including technological changes, and obsolescence and to describe the various business activities more accurately and completely. As a result of the study, revisions in the valuation procedure were made and published in January 1980. These were reviewed again in 1986 with no changes. The method applies to most taxable property required to be listed by taxpayers under Chapter 5711.

Am. Sub. Senate Bill 156 made numerous revisions in the valuation of taxable property of public utilities and certain tangible personal property leased to public utilities. Commencing with the 1990 tax year, taxable property leased to a public utility and used by

the public utility directly in the rendition of a public utility service as defined in Section 5739.01(P) R.C., must be valued the same as taxable property owned by a public utility. The valuation procedures are set forth in the publication **Valuation of Public Utility Property**, which may be obtained from the Department of Taxation, Public Utility Section, P.O. Box 530, Columbus, OH 43266-0030.

### COMPOSITE VALUATION PROCEDURE

Previous departmental publications explaining the application of the above mentioned prima facie allowances contained brief descriptions of types of business operations as well as types of equipment and the corresponding composite prima facie allowances expressed as annual percentages. The revised procedure, as set forth herein, incorporates a more detailed and comprehensive listing of business activities and a composite group-life class for each. This is followed by a table of valuation percentages for each class. The composite approach was retained by developing and assigning group-life classes to each business activity so as to encompass both short-lived and longer-lived property used within that activity. Therefore, isolation of a segment from a business activity or certain property from within an activity for the purpose of applying a different class is not permitted, except as specified herein.

The descriptions of business activities were patterned after and are assembled in the same order as the standard industrial classifications employed by the federal government. Variations and exceptions were made where necessary to accurately reflect the true value of certain property. For example, some business activities are comprised of widely differing processes, operations and products, each of which requires the use of different types of property. Where necessary, these activities have been subdivided by product

or operation and assigned the appropriate group-life class. General administrative functions common to almost every business are separately shown at the beginning of the list along with the appropriate group-life class for each.

### TRUE VALUE COMPUTATION (5703-3-10 O.A.C.)

Form 937, True Value Computation, provides for assembling the data necessary to determine the aggregate true value of tangible personal property. A separate computation is necessary for each taxing district involved and, within a given taxing district, for each business activity assigned a different class.

Costs of taxable property at the end of the previous year are to be shown by year of acquisition (Col. 1, Col. 2). Additions, disposals and transfers occurring during the year are to be entered at cost, opposite the year in which they were acquired (Col. 3, Col. 4). The resulting costs remaining at year-end are then listed (Col. 5); their total must equal the beginning-of-year total plus additions and transfers-in, less disposals and transfers-out. The valuation percentages for the specified class are then copied into place (Col. 6). Each year-end cost is then multiplied by the corresponding valuation percentage (Col. 7). The column total is the true value and should be carried to the appropriate schedule (Schedule 2 or 4) in the tax return.

Cost-column totals must reconcile with ledger accounts, except that property written off the records but still physically on hand must be included in the computation and property disposed of, but not written off the records, should be deducted. These exceptions should be separately identified in the computation. Costs for non-taxable property such as registered motor vehicles, licensed aircraft, property taxed as real estate, or certified pollution control facilities should not be included.

Full costs must be shown. Cost must include inbound freight, mill-wrighting, overhead, investment credits, assembly and installation labor, material and expenses, and sales and use taxes. Premium pay and payroll taxes are includible in labor costs. Costs may not be reduced by trade-in allowances. Cost of major overhauls are to be treated as capitalized and listed as acquisitions in the year in which they occur. Form 937 or a facsimile is required to be filed with the tax return.

### EXCEPTIONS TO THE TRUE VALUE COMPUTATION

Property which is normally termed "expendable" or is being depreciated over a relatively short period may be segregated and valued separately. For example, on the taxpayer's books, small tools may be capitalized and depreciated over a specified period, or capitalized and adjusted in accordance with periodic physical inventories, or expensed upon acquisition. Fifty percent (50%) of the cost of items actually on hand at year-end will be considered to be their true value.

A manufacturer's supply items, not costed into inventory, are to be valued at cost in the amount on hand at year-end. Supply items of all other taxpayers are to be valued at cost in the amount on hand at year-end. Returnable containers, such as barrels, bottles, carboys, coops, cylinders, drums, reels, etc. are to be valued separately, in accordance with previously promulgated methods. Video tapes held for rental are valued at declining percentages, 50%, 30%, and 20% of original cost in the first, second and third years that they are owned. Thereafter, the value is 20% of original cost. Video tapes held for sale are treated as merchandise inventory using the average month-end cost as the value.

Property located in buildings boarded up, or in departments closed off, or removed from the production line, rendered functionally inoperable and held for disposal as of tax listing day is not taxable. The taxpayer must identify such property separately in the tax return, with an explanation of the circumstances.

Property that is temporarily idle for purposes of overhauling and repair, or resulting from seasonal operation or from reduced usage and property that is held for future use whether as an entire unit or as spare parts is subject to taxation.

### SPECIAL REPORTING REQUIREMENT (SEC. 5711.18)

Whenever a taxpayer reports any property at a value which is below its depreciated book value, he must include a claim for deduction from book value in writing with his tax return. Form 902, Claim for Deduction from Book Value, has been prescribed by the Tax Commissioner for displaying the claim in the return.  
(O.A.C. 5703-3-10)

**BUSINESS ACTIVITIES  
AND  
COMPOSITE GROUP-LIFE CLASSES**

The business activities set forth below are categorized and are presented in a manner similar to the standard industrial classifications employed by the federal government. The listing of certain activities is not intended as a presumption of taxability nor are the major headings reflective of the proper schedule in which the property is to be listed in the tax return.

**BUSINESS ACTIVITY**

<b>GENERAL ACTIVITIES</b>	<b>CLASS</b>
General administrative activities involving the use of desks, files, typewriters, calculators, adding and accounting machines, communications equipment, copiers and duplicating equipment, security systems, and other office furniture, fixtures and equipment .....	III
General business purpose integrated computer systems and related peripheral equipment, such as mini-computers, micro-processors, terminals, disc and tape drives, printers, data entry equipment, and software .....	II
There is no single class for computers and related hardware used primarily to control manufacturing processes, machinery and equipment, and for quality control. The business activity determines the appropriate class.	
<b>AGRICULTURE, FORESTRY AND FISHING (01-09)</b>	
Growing crops, raising and keeping animals and fowl, agricultural and horticultural services .....	III
Commercial fishing, fish hatcheries, hunting, trapping and game propagation .....	III
<b>MINING (10-14)</b>	
Metal mining, coal mining, mining and quarrying of nonmetallic minerals (including sand, gravel, stone, clay and salt) and milling, beneficiation and other primary preparation .....	IV
Petroleum and natural gas:	
Geophysical and exploratory operations .....	III
Drilling of oil and gas wells .....	II
Field services, such as cleaning, fracturing, chemical treatment, cementing and perforating well casings, plugging and abandoning wells .....	III
<b>CONSTRUCTION (15-17)</b>	
General building, marine and heavy construction .....	II
Special trade contractors .....	II
Water well drilling .....	II
<b>FOOD AND FOOD PRODUCTS (20)</b>	
Meat: Slaughtering .....	V
Meat packing, curing, making sausage and other prepared meats .....	III
Poultry and small game: Slaughtering, dressing .....	III
Eggs: Cleaning, grading, packaging, blending, drying; hatcheries .....	III
Dairy products: Processing butter, cheese, milk, ice cream, etc. ....	IV
Fruits and vegetables: Canning, preserving, pickling, drying, freezing; making soups, preserves, sauces and seasonings, salad dressings and other specialties .....	V
Seafoods: Canning, curing, freezing fish and seafoods .....	V
Grain mill products: Milling flour, rice, corn, etc; making blended flour, animal and fowl feeds, pet foods .....	VI

...ing cereal breakfast foods .....	IV
<b>Grain handling, processing and storage facilities (see Wholesale and Retail Trade)</b>	
<b>Bakery products: Making bread, pastries, chips, cake mixes, etc. ....</b>	IV
<b>Sugar: Refining cane, beet and maple sugar and syrups .....</b>	VI
<b>Confections: Making candy, etc. ....</b>	IV
<b>Fats and oils: Cottonseed, soybean and vegetable oil milling; rendering, processing animal     and marine fats and oils, making shortening, table oils, etc. except margarine .....</b>	VI
<b>    Manufacturing margarine .....</b>	IV
<b>Alcoholic beverages: Brewing, distilling, rectifying, blending, packaging .....</b>	V
<b>Soft drinks: Preparing, bottling, canning soft drinks, carbonated waters,     flavoring extracts and syrups .....</b>	IV
<b>Miscellaneous food preparations: Roasted coffee, instant coffee, noodles, refined salt,     chewing gum, manufactured ice .....</b>	IV
<b>TOBACCO PRODUCTS (21)</b>	
<b>Manufacturing cigarettes, cigars, smoking and chewing tobacco, snuff .....</b>	VI
<b>TEXTILE PRODUCTS (22, 23)</b>	
<b>Manufacturing spun, woven, knit or processed yarns and fabrics from natural or synthetic fibers,     including finishing and dyeing; cutting and sewing woven fabrics; manufacturing apparel and     accessories, mattresses, carpets, rugs, pads, sheets, felt goods, lace goods, cordage     and twine, curtains and draperies, textile bags, fur goods, etc. ....</b>	VI
<b>LUMBER, WOOD PRODUCTS AND FURNITURE (24, 25)</b>	
<b>Logging, sawing dimensional stock from logs, chipping, permanent or portable mills .....</b>	III
<b>Manufacturing finished lumber, plywood, hardboard, flooring, veneers, furniture and     other wood products, including wooden matches .....</b>	V
<b>PAPER AND ALLIED PRODUCTS (26)</b>	
<b>Manufacturing pulps, paper and paperboard .....</b>	VI
<b>Manufacturing converted papers, pressed and molded pulp goods, paper bags, boxes,     envelopes, fiber cans, tubes and drums, paper matches .....</b>	V
<b>Manufacturing asphalted paper and fiber insulation .....</b>	VI
<b>PRINTING AND PUBLISHING (27)</b>	
<b>Printing by letterpress, lithography, gravure or screen; bookbinding, typesetting and photo-     typesetting, engraving and photoengraving, electrotyping and other trade services;     publication of newspapers, books, periodicals .....</b>	IV
<b>Reproduction services: See "Business Services"</b>	
<b>CHEMICALS AND ALLIED PRODUCTS (28)</b>	
<b>Manufacturing basic chemicals such as acids, alkalis, salts, organic and inorganic chemicals;     chemical products for further manufacture such as plastic materials and synthetic resins,     rubber and fibers, including petro-chemical processing beyond petroleum refining; finished     chemical products such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes,     adhesives, explosives, and compressed, liquid and solid industrial and specialty     gases - except finished rubber and plastics products, natural gas products or by-products .....</b>	V

**PETROLEUM REFINING (29)**

Distillation, fractionation and catalytic cracking of crude petroleum into gasoline, kerosenes, distillate and residual fuel oils, lubricants; manufacture of asphalt, carbon black:

- Refining equipment, fixed or portable asphalt batch plants ..... IV
- Bulk storage facilities ..... VI

**RUBBER AND PLASTICS PRODUCTS (30)**

Manufacturing products from natural, synthetic or reclaimed rubber such as tires, tubes, footwear, heels and soles, mechanical rubber goods, flooring and rubber sundries; recapping, retreading and rebuilding tires; manufacturing finished plastics products and molding of primary plastics for the trade ..... IV

**LEATHER AND LEATHER PRODUCTS (31)**

Tanning, curing, finishing hides and skins; processing fur pelts; manufacturing finished leather products such as footwear, belting, apparel, luggage and similar leather goods ..... V

**STONE, CLAY, GLASS AND CONCRETE PRODUCTS (32)**

Manufacturing stone and clay products: Brick, tile and pipe, pottery, vitreous china, plumbing fixtures, earthenware, ceramic insulating materials, cut and finished stone ..... VI

Glass: Manufacturing flat, blown or pressed glass products such as plate, safety and window glass, glass containers, glassware, fiberglass, optical lenses ..... V

Manufacturing cement ..... VI

Manufacturing ready-mix concrete, cement products and concrete products, including block, pipe and prefabricated shapes ..... IV  
Cement mixers on trucks ..... I

Gypsum and plaster products ..... VI

Abrasive, asbestos and other nonmetallic mineral products ..... VI

**PRIMARY METALS (33)**

Smelting, reducing, refining and alloying of ferrous and nonferrous metals from ore, pig, scrap or slag; rolling, drawing and alloying of metals; manufacturing nails, spikes, structural shapes, tubing, wire and cable:

Ferrous metals ..... VI

Nonferrous metals ..... V

**FABRICATED METAL PRODUCTS (34)**

Manufacturing cans, tinware, hardware, structural metal products, plate work, sheet metal work, prefabricated buildings and components, screw machine products, castings, forgings and stampings, coating and plating, ordnance and accessories, ammunition, small arms, valves, pipe fittings, wire products, foil and leaf, and custom specialty products ..... V

**MANUFACTURING MACHINERY (35, 36)**

Manufacturing and assembly of engines, metalworking machinery and machine tool accessories, turbines, farm machinery, construction and mining machinery, materials handling machinery, food products machinery, textile machinery, woodworking machinery, paper industries machinery, compressors, pumps, bearings, blowers, industrial patterns, process furnaces and ovens, office machines, and refrigeration and service industry machinery - except electrical machinery and transportation equipment ..... V

Manufacturing and assembly of electrical test and distributing equipment, electrical industrial apparatus (motors, generators etc.), household appliances, electric lighting and wiring equipment, batteries and ignition systems ..... V

Manufacturing and assembly of electronic communication, detection, guidance, control, radiation, computation, test and navigation equipment and components .....	V
<b>TRANSPORTATION EQUIPMENT (37)</b>	
Manufacturing and assembling of automobiles, trucks, trailers, motor homes, buses, military vehicles, motorcycles, bicycles and other recreational and pleasure vehicles:	
Manufacturing and assembly of engines, power trains, frames, bodies and other component parts, not otherwise listed .....	V
Assembly of finished vehicles .....	IV
Manufacturing aircraft, space craft, rockets, missiles, power units; and assembly of components .....	V
Ship and boat building, repair and conversion .....	VI
Building and rebuilding railroad locomotives, railroad cars and street railway cars .....	VI
<b>PROFESSIONAL, SCIENTIFIC, CONTROLLING, MEASURING AND OPTICAL INSTRUMENTS (38)</b>	
Manufacturing mechanical measuring, engineering, laboratory and scientific research instruments; optical instruments; surgical, medical and dental instruments and equipment; ophthalmic equipment; photographic and photocopy equipment; watches and clocks .....	V
<b>MISCELLANEOUS MANUFACTURING (39)</b>	
Manufacturing jewelry, musical instruments, toys and sporting goods, pens and pencils, office and art supplies, advertising signs; waste reduction; processing motion picture, television, commercial or noncommercial film; reproducing phonograph records and pre-recorded tapes; hard-surface floor coverings, etc. ....	V
Manufacturing burial caskets and vaults .....	V
<b>TRANSPORTATION (40 - 47)</b>	
Transportation equipment used in conjunction with business activities elsewhere specified shall be included in the classes designated for those activities. Transportation equipment used in the business of commercial or contract carrying of passengers, freight or commodities:	
Locomotives and railroad cars .....	VI
Motor vehicles, service facilities and terminals .....	III
Barges, river and business craft, floating wharves, loading and unloading equipment .....	VI
Aircraft, hangar and service facilities and ground equipment .....	III
Pipelines, pipe and conveyors for carrying petroleum, gas or other products including trunk lines and storage facilities .....	VI
<b>COMMUNICATION (48)</b>	
Radio and television broadcasting and cablevision .....	III
<b>ELECTRIC, GAS AND SANITARY SERVICES (OTHER THAN PUBLIC UTILITIES) (49)</b>	
Electric generation and distribution .....	VI
Production and distribution of natural gas, mixed, manufactured or liquified petroleum gas .....	VI
Water gathering, treatment and distribution and waste water treatment .....	VI
Steam production and distribution .....	VI
<b>WHOLESALE AND RETAIL TRADE (50 - 59)</b>	
Dealers at wholesale and retail in durable and nondurable goods, including eating and drinking places, carry-outs, pizzerias, fast food places, caterers and institutional food service, mail order houses, scrap metal and waste material dealers, and others not elsewhere classified .....	III

...um bulk stations and terminals .....	VI
...ne service stations .....	II
...handling, processing and storage facilities .....	VI
...andise, food and beverage vending machines .....	II
...housing .....	III
<b>FINANCE, INSURANCE AND REAL ESTATE (60 - 67)</b>	
Banking, savings and lending institutions, business and personal credit institutions; security brokers, dealers and services; exchanges .....	III
Insurance underwriters (all risks), agents and brokers .....	III
Real estate operators, lessors, agents, managers, title abstracters, subdividers and developers .....	III
Holding and investment company offices; trusts .....	III
<b>LODGING PLACES (70)</b>	
Hotels, motels, rooming houses, tourist courts, camps, parks and membership lodging places .....	III
<b>PERSONAL SERVICES (72)</b>	
Laundry, cleaning and garment services: Dry cleaning and pressing plants or shops; towel and linen supply; rug, carpet and upholstery cleaning; commercial laundries, including diaper service .....	IV
Laundries and dry cleaning - coin-operated .....	II
Photographic studios (for photofinishing, see Business Services - Misc.) .....	III
Beauty shops, barber shops .....	III
Shoe repair, shoe shine and hat cleaning shops .....	III
Funeral service, including crematories .....	III
Rental services: Short-term rentals, as of apparel, small tools, home and garden tools, lockers (except cold storage), household goods, health and recreation equipment, etc. ....	II
Miscellaneous services: Baths, health clubs, porter service, dating or escort service, check rooms, travel agencies, tax return preparation service, etc. ....	III
<b>BUSINESS SERVICES (73)</b>	
Advertising agencies .....	III
Advertising, outdoor signs (Sign manufacturing: See Miscellaneous Manufacturing) .....	II
Miscellaneous advertising: Aerial; direct mail; circular, handbill and sample distribution; transit cards .....	III
Credit reporting, adjustment and collection agencies .....	III
Mailing, reproduction, commercial art and photography, stenographic service, blueprinting, photostating, photocopying .....	III
Building services, janitorial and maintenance, painting .....	III
Cold storage, food locker rental .....	IV
News syndicates, wire services .....	III
Employment and temporary help service .....	III
Data processing services: Computer programming, systems design and other software services, data processing, leasing machine time: Computers and related equipment only .....	II

Leasing services: There is no single class applicable to the business of leasing; rather, the activity in which the lessee uses the leased property determines the appropriate class.	
Rental services: Short-term rentals, as of construction, concession, banquet and meeting equipment, portable sanitary facilities, power tools, etc. ....	II
Miscellaneous services: Research and development laboratories; management, consulting and public relations services; detective agencies, protective services; photofinishing; trading stamp services; testing laboratories, bondsmen; bottle exchanges; drafting services; interior design; notaries public; packaging and labeling services; telephone message service; auctioneering; landscaping and grounds maintenance, tree trimming, etc. ....	III
<b>VIDEO TAPE RENTAL (74)</b>	
Video tapes held for rental, 70%, 50%, 30% for first, second, third years, 30% thereafter.	
<b>AUTOMOTIVE SERVICES (75)</b>	
Vehicle leasing, parking, towing, rebuilding and repair, diagnostic centers, and related services .....	III
Car and truck washes .....	II
<b>REPAIR SERVICES (76)</b>	
Household appliance and industrial equipment repair; watch, clock and jewelry repair; reupholstery and furniture repair; welding repair; armature rewinding; bicycle, leather goods, lock and gun, musical instrument and business equipment repair; septic tank and furnace cleaning; sandblasting and steam cleaning; knife sharpening; taxidermy, etc. ....	III
<b>MOTION PICTURE AND RECORDING STUDIOS (78)</b>	
Motion picture and tape production (except processing), studio property, picture distribution, film exchanges and rentals, film libraries; recording studios, except reproduction .....	III
<b>AMUSEMENT AND RECREATION SERVICES (79)</b>	
Auditoriums, concert halls, stadiums and motion picture theaters, including drive-in theaters .....	III
Dance halls and studios, theatrical producers and services, music groups, actors, entertainment groups .....	III
Bowling alleys, billiard and pool establishments .....	III
Commercial sports, golf courses, amusement parks and rides, membership sports and recreation clubs, swimming pools and beaches, riding schools, carnivals, expositions, boat liveries, shooting galleries .....	III
Coin-operated amusement and entertainment devices .....	II
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Health services: Doctors, dentists, optometrists, etc; hospitals, clinics, nursing homes, medical and dental laboratories, and miscellaneous medical services .....	III
Legal services .....	III
Educational services, schools, colleges, institutes .....	III
Social services, job training, day-care services, etc. ....	III
Engineering, architectural and surveying services; accounting, auditing and bookkeeping services; free lance authors, lecturers, artists; etc. ....	III
<b>MUSEUMS (84)</b>	
Museums, art galleries, arboreta, botanical and zoological gardens .....	III
<b>MEMBERSHIP ORGANIZATIONS (86)</b>	
Business, professional, labor union, civic, social, fraternal, political, religious organizations, farm bureaus and granges .....	III

**PUBLIC ADMINISTRATION (90)**

There is no single class applicable to property owned or used in public administration. The use to which the property is put determines the proper class.

**VIDEO TAPE RENTAL**

Video tapes held for rental, 50%, 30%, 20% for first, second, third years, 20% thereafter.

**TABLES FOR DETERMINING TRUE VALUE**

(expressed as percents)

Age	Class I	Class II	Class III	Class IV	Class V	Class VI
1	90.0	92.0	93.2	93.9	94.3	94.4
2	63.3	76.3	82.8	86.3	88.1	88.9
3	44.0	60.6	72.4	78.7	81.8	83.3
4	32.0	46.1	62.0	71.1	75.6	77.8
5	20.0	37.9	51.5	63.5	69.3	72.2
6	20.0	29.8	42.2	55.8	63.1	66.7
7	20.0	21.6	36.3	48.2	56.9	61.1
8		20.0	30.5	40.6	50.6	55.6
9		20.0	24.6	35.4	44.4	50.0
10		20.0	18.8	31.1	38.2	44.4
11			18.8	26.8	32.8	38.9
12			18.8	22.5	29.5	33.3
13				18.3	26.2	28.9
14				17.4	22.9	26.2
15	<b>COMPOSITE GROUP - LIFE RANGES</b>			17.4	19.6	23.5
16	<b>Class</b>	<b>At Least</b>	<b>Less Than</b>	17.4	16.3	20.8
17	I		6.0 yrs.			
	II	6.0 yrs.	8.4 "			
	III	8.4 "	11.6 "			
	IV	11.6 "	14.8 "			
	V	14.8 "	17.2 "			
18	VI	17.2 "		16.3	15.4	
19						15.4
20						15.4

The smallest percentage in each class determines the minimum acceptable value so long as property is held for use in business

## INSTRUCTIONS FOR NEW TAXPAYERS

Any person, partnership, corporation or association who engages in business in Ohio on or after January 1 of any year is a 'new taxpayer' for that year. Whenever a taxpayer ceases business in Ohio, and in a subsequent year begins business in Ohio again, he is a new taxpayer for that year. The new taxpayer is liable for a property tax return in the year in which he commences business, reporting property owned on the first day of business in Ohio. The amount of tax owed is prorated based on the number of months in business in Ohio in that first year.

The new taxpayer return is to be filed with the same official and using the same forms, (Form 920 or 945) as with a regular return. The return must be filed within 90 days of first engaging in business in Ohio, with the provision for requesting an extension of time of up to 45 additional days. Such extensions should be obtained from the official with whom the return is to be filed.

The date of engaging in business has been generally defined as the day the business commences operations, which is not necessarily the day the business was organized or licensed in Ohio. In the case of a merchant, the day that the business opened for the purpose of selling merchandise would be the first day of business. In the case of a manufacturer, it would be the day that production started. For other business activities, the first day of business would be the day that the intended business activity started.

For the new taxpayer return, the listing date is the first day of business in Ohio instead of December 31 or a fiscal year end. All taxable property, except inventory, owned on the first day of business must be listed, the true value is the taxpayer's cost. Inventory must be listed at the average value for the remainder of the year. Estimate month-end values starting with the end of the month engaging in business and for each month-end throughout the remainder of the year. If additional locations will be opened later in the year, inventory for those locations must also be estimated for the new taxpayer return. The average value is the sum of the month-end values divided by the number of month-end values included. The estimated values reported may be amended at a later date, when actual month-end inventory values are known.

The listed value in each schedule of the return is multiplied by a fraction which represents the portion of the year during which the taxpayer will be engaged in business in Ohio. The numerator of the fraction is the number of full months from the date of engaging in business to December 31, the denominator is twelve. The resulting values should be reported on the front of the 920, or the recapitulation pages of the 945. They are the values to which the tax rates are applied to determine the amount of tax owed.

When a new taxpayer has acquired an existing business and that business has filed a personal property tax return for the same year in which the new

taxpayer acquires the business, taxes for property that was listed by the former owner need not be paid again by the new taxpayer. The new taxpayer must produce a copy of the return or assessment indicating that the same property has been listed or assessed for taxation for the same year. The amount of inventory which may be excluded is the lower of the average amount listed by the former owner in his return for the same year, or the amount transferred. Any property not listed in the former owner's return and acquired prior to the new taxpayer's first day of business must be listed. Average inventory in excess of the amount excludable must also be listed.

Frequently, an existing business that had been organized as a proprietorship or partnership will be reorganized as a corporation, or other changes in the business structure take place that result in the existence of a new entity. In these circumstances, the new owner or business entity is considered a new taxpayer and required to file a new taxpayer return for the year in which the change took place. These new taxpayers are subject to the same reporting requirements as those beginning a new business. A copy of the return filed for the same year by the former entity should be included with the new taxpayer return.

The new taxpayer return is for the year in which business commenced in Ohio, even if it is not due to be filed until the next calendar year. A regular tax return is required to be filed for the calendar year following the year in which the business began and is due in the normal filing period of February 15 through April 30. All taxable property in this year's return must be listed as of the close of business on December 31 of the preceding calendar year (the year engaging in business), and inventory listed at the average of the month-end values for each of the months that the taxpayer was engaged in business in that year, using the number of month-end values included as the divisor. Listed values in this year's tax return may not be prorated.

Rule 5703-3-04, Ohio Administrative Code, provides for the use of listing dates other than December 31. Before a listing date other than December 31 may be used, the taxpayer must be engaged in business in Ohio for at least twelve months prior to that listing date. In certain instances, where property may be excluded from taxation for a year, or taxed twice in a year, the Tax Commissioner may authorize or require an alternate listing date for a taxpayer to exclude or to report property involved in a change of ownership. These circumstances may affect the new taxpayer's returns when an entire business or facility is acquired. Questions concerning the new taxpayer return should be directed to the Tax Commissioner through the local district office, or the Property Tax Division in Columbus.

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# GUIDELINES FOR FILING OHIO PERSONAL PROPERTY TAX RETURNS

STATE LIBRARY OF OHIO  
65 SOUTH FRONT STREET  
COLUMBUS, OHIO 43266-0334

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1994 EDITION

ROGER W. TRACY  
Tax Commissioner

Auditor Ex. 31

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**STATE OF OHIO  
DEPARTMENT OF TAXATION**

**PROPERTY TAX DIVISION**

**LOCATION**

30 East Broad Street  
21st Floor  
Columbus, OH 43266-0420

**MAILING ADDRESS**

P.O. Box 530  
Columbus, OH 43266-0030

**Telephone Numbers**

Administration	614-466-3280
Personal Property Section	614-466-8122
Public Utility Section	614-466-7371

**OHIO DISTRICT OFFICES**

**AKRON DISTRICT**

161 South High Street  
Akron Government Center, Suite 501  
Akron, Ohio 44308  
216-379-1725

**DAYTON DISTRICT**

5th Floor, Center City Office  
15 East Fourth Street  
Dayton, OH 45402  
513-285-6220

**CINCINNATI DISTRICT**

900 Dalton Avenue  
Cincinnati, OH 45203  
513-852-3311

**TOLEDO DISTRICT**

One Government Center  
Suite 1400  
Toledo, OH 43604-2232  
419-245-2870

**CLEVELAND DISTRICT**

Cleveland State Office Tower  
615 West Superior Avenue  
Cleveland, OH 44113  
216-787-3125

**YOUNGSTOWN DISTRICT**

Stambaugh Building #300  
44 Federal Plaza Central  
Youngstown, OH 44503-1651  
419-742-8640

**COLUMBUS DISTRICT**

1800 East Dublin-Granville Road  
Columbus, OH 43229  
614-895-6250

**ZANESVILLE DISTRICT**

601 Underwood Street  
Zanesville OH 43701  
614-453-0628

**OUT OF STATE DISTRICT OFFICES**

**CHICAGO OFFICE**

1011 East Touhy Avenue,  
Suite 345  
Des Plaines, IL 60018  
708-390-7490

**LOS ANGELES OFFICE**

575 Anton Boulevard  
Suite 720  
Costa Mesa, CA 92626  
714-434-6768

Telephone assistance is provided for the hearing impaired through the Ohio Relay Service (ORS). TTY/TDD users may reach the Department of Taxation offices by contacting ORS operators at 1-800-750-0750.

## INTRODUCTION

This booklet is published to apprise persons of the manner in which property taxes are levied in Ohio. The content is not intended as a substitute for the law itself, but was prepared with the purpose of conveying general information regarding such taxes with added emphasis on the personal property tax. The explanations and completed examples in this booklet do not apply to persons engaged in business as a financial institution or dealer in intangibles, or an insurance company except when those taxpayers lease property to others. Person who are engaged in these businesses should write the Tax Commissioner for further information specific to their reporting requirements.

Taxpayers who are public utilities also have different reporting requirements, as will those who lease property to public utilities when that property is used directly in the rendition of a public utility service. A special publication is available describing the valuation of public utility property, also obtained from the Tax Commissioner.

## DEFINITIONS

**Real Property** - defined as land, growing crops and all buildings, structures, improvements and fixtures on the land. (O.R.C. 5701.02)

**Personal Property** - all tangible things which are the subject of ownership, except real property. (O.R.C. 5701.03)

**Taxpayer** - means any owner of taxable property, and includes every person residing in, incorporated or organized under the laws of this state, or doing business in this state, or owning or having a beneficial interest in personal property in this state. (O.R.C. 5711.01 (b))

**Business, Used in Business** - business includes all enterprises except agriculture, conducted for gain, profit, or income, and extends to personal service occupations. Personal property is used in business when held as a means for carrying on the business, kept and maintained as a part of a plant capable of operation, or stored or kept on hand as material, parts, products or merchandise. (O.R.C. 5701.08)

**Public Utility** - means each person referred to as a telephone company, telegraph company, electric company, natural gas company, pipeline company, water-works company, water transportation company, heating company, rural electric company or railroad company, includes interexchange telecommunications company. (O.R.C. 5727.01 (A, I))

**Manufacturer** - is a person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying or combining different materials with a view

of making a gain or profit by doing so. (O.R.C. 5711.16)

**Merchant** - is a person who owns or has in possession or subject to his control, or has been consigned to him, personal property within this state with authority to sell it, with a view to being sold at an advanced price or profit. (O.R.C. 5711.15)

**New Taxpayer** - is a person who engages in business in this state on or after January 1 in any year. (O.R.C. 5711.03)

**Listing Date** - for all taxable personal property is the close of business on December 31 of the preceding year, or for a taxpayer using a different fiscal year-end for federal income tax purposes, that fiscal year-end in the preceding year, provided that the taxpayer has been engaged in business in Ohio twelve months prior to that date. Alternate listing dates may be authorized or required by the Tax Commissioner under special circumstances.

## REAL PROPERTY

The county auditor is the assessor of all real property in his county. The Department of Taxation, through the Division of Tax Equalization, supervises the assessment of real property through the issuance of rules and regulations and the prescription of forms.

The taxable value of all real property is thirty-five percent of its true value in money. All real property must be reappraised in each county every six years, with annual adjustments for new construction and deletions of property in a parcel.

Real property taxes are based on the taxable value of the property and levied by the county auditors and collected by the county treasurers. The tax rates applicable to real property vary throughout the state and represent the aggregate legal levies approved by the voters in each taxing district. Revenue from this tax is used to support local government, and services such as schools, police and fire protection, health and sanitation services, etc.

Several reductions in taxes exist, such as the Homestead Exemption, and the ten percent rollback for all real property, and an additional two and one-half percent rollback for residential property. Such reductions in property taxes are reimbursed to the local governments from the State's General Revenue Fund. Applications for the Homestead Exemption and questions concerning all real property exemption programs should be directed to the county auditor.

## TANGIBLE PERSONAL PROPERTY

All tangible personal property is taxable when used in business. The Tax Commissioner is the as-

essor of all such property with each county auditor serving as a deputy of the Tax Commissioner for such purposes.

Tangible personal property is reported by the filing of an annual tax return with either the county auditor or the Tax Commissioner. All tangible personal property is assessed or listed at 25% of its true value in money.

Tangible personal property taxes are based on the assessed value of the property and the tax rate for the taxing district where the property is located. This rate is the same as for real property, except that some reductions in the real property tax rates do not apply to personal property tax rates. The taxes are collected by the county treasurers and are used for the same purposes as those from real property taxes.

### **FILING REQUIREMENTS**

Each taxpayer must file an annual return and list all taxable property as to ownership, valuation and taxing district. Every business entity must file an annual return, even to disclose that no tax liability exists. Tax returns must be filed between February 15 and April 30. An extension of time to file the return may be obtained from the official with whom the return must be filed. The maximum extension is forty-five days. New taxpayers have different filing requirements for the year in which they engage in business in Ohio, see special instructions on page 18.

### **TAX FORMS**

Form 920, County Return of Taxable Business Property is to be used by all taxpayers except those with property in more than one county. This form may be obtained from and must be filed with the Auditor of the County in which the property is located. Corporations having no taxable personal property should file in the county where the principal business activity is conducted. In the event there are no activities or locations in Ohio, this form should be filed with the Tax Commissioner. Form 920 is required to be filed in duplicate.

Form 945, Inter County Return of Taxable Business Property is to be used by taxpayers having taxable property in more than one county. This form is obtained from and must be filed with the Tax Commissioner, P. O. Box 530, Columbus, OH 43266-0030.

### **SUPPLEMENTAL FORMS**

Unless otherwise indicated, the following forms may be obtained from the official with whom the tax

return is filed, and must accompany the tax return at the time of filing.

Form 902, Claim for Deduction from Book Value is to be filed by taxpayers claiming values less than net book value. This form must accompany the tax return at the time of filing.

Form 913-EX, Return of Exempt Personal Property is to be filed by taxpayers with exempt property located in an Urban Jobs and Enterprise Zone.

Form 921, Ohio Balance Sheet must be filed by every taxpayer engaged in business in Ohio. This form is a confidential document and should accompany the tax return at the time of filing, or may be mailed separately to the Tax Commissioner.

Form 925, Return of Grains Handled, is required to be filed by all taxpayers engaged in the business of handling grain.

Form 937, True Value Computation, is to be used by taxpayers valuing property based on the Tax Commissioner's prescribed composite group-life classes.

Form 945-S, County Supplemental Return, must be filed by taxpayers required to file Form 945 when the taxable value in a taxing district increases or decreases from the value reported in the previous year in excess of \$500,000 or more. This form is filed with the appropriate County Auditor.

### **PAYMENT OF TAXES**

All taxes for tangible personal property are paid to the appropriate county treasurers. Receipts for payments will be sent when a self-addressed stamped envelope is sent with the payment, or when the payment is made in person.

When Form 920 is required to be filed, the return must be accompanied by, or followed within ten days thereafter by a payment equal to one-half the total amount of taxes shown thereon. The balance due is payable on receipt of a bill from the County Treasurer or before September 20, whichever is later.

When Form 945 is required to be filed, no payment is required with the return. The full amount of the taxes for each county will be billed by the appropriate county treasurer, and are payable on receipt of the bills from the county treasurer or before September 20, whichever is later.

The remainder of this publication is devoted to the tangible personal property tax as it pertains to general business property. Taxpayers engaged in business as a public utility, financial institution or dealer in intangibles should write to the Tax Commissioner for information about their particular tax and reporting requirements. In this booklet, there is a description of the composite valuation method,

and illustrations of the forms filed by different types of taxpayers.

## LISTING AND VALUING PERSONAL PROPERTY

Tax forms have been prescribed and designed to permit the taxpayer to list his property in a clear, concise manner. The schedules in the return forms (920 or 945) for reporting the true value of, and computing the listed value of personal property are: Schedule 2, Machinery and Equipment Used in Manufacturing; Schedule 3, Manufacturing Inventory; Schedule 3-A, Merchandising Inventory; Schedule 4, Furniture, Fixtures, Equipment not Used in Manufacturing; Schedule 5 (Form 945 only) Return of Grains Handled.

All property listed in the schedules must be reported according to the taxing district in which it is physically located on the listing date required to be used by the owner. If a taxpayer is in doubt as to the proper taxing district, he should contact the county auditor, with the address of the property, or refer to the taxing district shown on the real property tax bill.

In Schedule 2, enter the true value of all engines, machinery, equipment, implements, small tools, machinery repair parts and other tangible personal property used in the following activities:

manufacturing	dry cleaning plants
mining	stone and gravel plants
laundries	radio and television
towel and linen supply	broadcasting

In Schedule 3, enter the monthly values of all inventory used in manufacturing, including supply inventories consumed in the manufacturing process.

In Schedule 3-A, enter the monthly values of all inventory acquired and held for sale and any finished goods inventory of a manufacturer not held in the county of manufacture.

In Schedule 4, enter the true value of all furniture, fixtures, machinery, equipment and supplies not used in manufacturing; all inventories of taxpayers other than manufacturers or merchants; and all domestic animals not used in agriculture.

## REPORTING AND VALUING DEPRECIABLE ASSETS

Depreciable assets must be listed at their true value, which may be greater or less than their book value. The Tax Commissioner has prescribed a valuation procedure which applies com-

posite allowances to the cost of assets based on their use and business activity. This valuation procedure is to be used in lieu of net book value for determining the true value of most depreciable assets. A more detailed description of the valuation procedure, including the assigned class lives, follows on page 9. In those instances where the computed true value is less than net book value, Form 902 must be filed with the tax return.

Property which is expensed at acquisition or depreciated over a short period of time is valued at 50% of the cost of the amount on hand on the taxpayer's listing day. Other items such as barrels, returnable containers, bottles, are valued according to previously promulgated methods. Supply items, inventories of repair and maintenance parts, and equipment held as spare parts are valued at the cost of the amount on hand on the taxpayer's listing day.

Depreciable assets classified as personal property and excluded or exempted from taxation include: motor vehicles registered and licensed in the name of the owner, aircraft registered and licensed in the name of the owner; watercraft not used exclusively in Ohio waters; air, water and noise pollution control facilities and waste removal facilities certified by the Tax Commissioner as exempt; patterns, jigs, dies and drawings when held for use and not for sale in the ordinary course of business; construction in progress while under construction and not capable of use; harvested crops belonging to the producer thereof; depreciable assets and domestic animals used in agriculture; property located in an Urban Jobs and Enterprise Zone for which an exemption has been granted; property located in buildings boarded up, rendered functionally inoperable and held for disposal.

## LEASED PROPERTY

Leased property must be reported and listed by the owner in his tax return. Property leased to a public utility under a sale/lease transaction occurring in the same calendar year must be reported by the public utility in its annual report. Other property leased to a public utility when used directly in the rendition of a public utility service must be listed by the owner, and valued the same as if the public utility was reporting it. A separate publication is available from the Tax Commissioner describing the valuation procedure for public utility property.

If the lessee is obligated to purchase the property, he is deemed to be the owner and must report the property. Leased property used exclusively in agriculture is exempt.

Leased property is valued and listed according to the use to which it is put by the lessee.

## **INVENTORIES**

Ohio law requires the inventories of manufacturers and merchants to be listed on the average monthly basis. The average value shall be determined by dividing the sum of the month-end inventory values by the number of months engaged in business in Ohio. If the books and records of the taxpayer do not provide monthly values, the gross profits method may be used, providing purchases and sales are accrued properly.

The value of manufacturing inventory must include the costs of raw material, work-in-process, and finished goods. The value of goods-in-process and finished goods must include all factory burden and overhead costs attributable to the manufacturing facilities and processes. Such costs include, but shall not be limited to, indirect labor, insurance, utilities, taxes, transportation, rents and leases, repairs and maintenance, depreciation and amortization. (Rule 5703-3-27) Inventory values maintained on the direct cost or LIFO basis must be restated.

The value of merchandising inventory must include the costs to acquire the inventory, taxes and freight. Inventories carried at retail value must be restated at cost. (Rule 5703-3-17) Inventories held on a floor-plan basis must be returned at full value.

Consigned manufacturing or merchandising inventory must be listed by the owner, but merchandise consigned from a non-resident of Ohio to a merchant doing business in Ohio must be listed by the Ohio merchant. (Rule 5703-3-09)

Supply inventories of a manufacturer must be listed in Schedule 3 on the average basis. All other supply inventories must be listed as of listing date in Schedule 4.

Inventories of taxpayers other than manufacturers and merchants must be listed as of listing date in Schedule 4. Such inventories include those of mines, quarries, laundries, dry cleaners, contractors, repair shops, garages, etc.

## **\$10,000 EXEMPTION**

For each taxpayer, the first \$10,000 of listed value of taxable personal property is exempt from taxation. The exemption is applied in the taxing district with the highest listed value. If that is less than \$10,000, the remaining amount is applied in the taxing district with the next highest listed value. This process is continued until the aggregate of the exemptions reaches \$10,000. A return must be filed even though no tax is due. The county and local governments will be reimbursed for the taxes not paid because of the exemption only if a return has been filed claiming the exemption.

## **LATE FILING AND LATE PAYMENT PENALTIES, INTEREST**

When a return is filed after the due date, or the due date as extended, a late filing penalty may be applied to the listed value. One-half of the allowable exemption is forfeited, and a penalty of up to 50% may be applied to the remaining listed value. A Petition for Abatement of the Penalty may be filed with the Tax Commissioner within 30 days of the date of the assessment of the penalty. Such petition must state the reason(s) for the late filing of the return and include a copy of the assessment certificate(s).

Taxes paid after their due date are subject to a late filing penalty of ten percent. A request for abatement of this penalty may be made to the County Auditor. If the County Auditor does not abate the penalty, that decision may be appealed to the Tax Commissioner.

Taxes paid after their due date and tax overpayments refunded to the taxpayer are subject to interest charges. The interest percent varies according to the Federal Funds interest rate each October, and accrues on a monthly basis. There is no basis for an appeal or any reduction to the interest on taxes paid after the due date.

## **TAXPAYERS' BILL OF RIGHTS**

Substitute Senate Bill 147 was passed and effective January 1, 1990. This bill creates specific rights of and requires certain disclosures to taxpayers with respect to audits and assessments arising out of personal property taxation, and corporate franchise, sales, use and income taxes.

Before the commencement of an audit of his return, each taxpayer will receive a written description of the roles of the Department of Taxation and of the taxpayer during an audit. The legislation provides that audits conducted by the Department of Taxation be conducted during regular business hours, and that there shall be written notice of the scheduled audit prior to the commencement of the audit. The taxpayer is entitled to representation during an audit, and may electronically or otherwise record the audit examination.

With or before the issuance of an assessment which requires a correction to the tax list and duplicate, the Tax Commissioner or County Auditor shall provide to the taxpayer a written description of the basis for the assessment and any penalty required to be imposed with the assessment, and a written description of the taxpayer's right to appeal the assessment, including the steps required to request administrative review by the Tax Commissioner. In the case of the issuance of a final assessment, the commissioner or county auditor is re-

quired to inform the taxpayer in writing, of the steps necessary to appeal the final assessment to the Board of Tax Appeals.

Other provisions of the legislation include the appointment of a problem resolution officer to aid a taxpayer who cannot obtain satisfactory answers from Tax Department employees, continuing education and training programs for the Department's employees, a system for monitoring the performance of tax agents including evaluations obtained from taxpayers, and a procedure for requesting and re-

ceiving written opinions from the Tax Commissioner concerning future tax liabilities.

Copies of the brochures containing more detailed information with regard to Tangible Personal Property are available from the Ohio Department of Taxation, Property Tax Division, P. O. Box 530, Columbus OH 43266-0030. A separate brochure with information on Income, Sales, Use and Corporate Franchise Taxes is available from the Department's Tax Policy and Communication Division, at the same address.

## TRUE VALUE OF TANGIBLE PERSONAL PROPERTY

### INTRODUCTION

Ohio Administrative Code (OAC) Rules 5703-3-10 and 5703-3-11 provide for the determination of the true value of tangible personal property used in business. A procedure which applies a composite annual allowance to historical costs has been prescribed by the Tax Commissioner for over sixty years, with modifications to reflect current technology and business experience, new type of equipment, and new business activities. The procedure, often referred to as the "true value computation" or "302 computation", has been approved by the courts as a means for determining true value for personal property tax purposes. Such value is prima facie true value and in the absence of evidence to the contrary, is acceptable as "true value in money." The composite annual allowance procedure prescribed in OAC 5703-3-11 uses a comprehensive listing of business activities, a composite group life for each activity, and a table with valuation percentages for each class.

Am. Sub. Senate Bill 156 revised the procedure for valuing taxable property of public utilities and interexchange telecommunication companies (ITC) and certain tangible personal property leased to public utilities and ITC's. Starting with the 1990 tax year, taxable property leased to a public utility or ITC and used by the public utility or ITC directly in the rendition of a public utility service as defined in ORC Section 5739.01(P), must be valued the same as taxable property owned by a public utility. The valuation procedures are described in the publication Valuation of Public Utility Property, available from the Department of Taxation Public Utility Section, P.O. Box 530, Columbus, OH 43266-0030.

### COMPOSITE CLASS LIFE

The Standard Industrial Code Manual published by the Office of Budget and Management was used as the model for the list of business activities, and is intended for a business to determine, on a prima facie basis, which class life should be used for valuing

its property. The description of business activities should include your business activity. If you are not sure which business activity applies or if your activity is unique and not listed, contact the Personal Property Tax Division for clarification. You may direct inquiries to the Ohio Department of Taxation, Personal Property Tax Division, P.O. Box 530, Columbus, OH 43266-0030 or call 614-466-8122. ORC Section 5703.53 provides that a taxpayer may ask for and receive a written opinion of the Tax Commissioner. The determination of the correct class life may be the subject of an opinion which would be binding for the inquiring taxpayer only, and as long as the same circumstances exist .

Types of property used in general administrative functions common to most businesses are separately shown at the beginning of the listing of Business Activities with the appropriate group-life class for each. When business activities are comprised of widely differing processes, operations and products, each of which requires the use of different types of property, these activities have been subdivided by operation or product and assigned the appropriate group-life class.

Because each class listed uses the composite approach for the property (short-lived and longer-lived) used in each business activity, isolating a segment from a business activity or certain property from within an activity for the purpose of applying a different class is not permitted except as specified.

### TRUE VALUE COMPUTATION

Form 937, True Value Computation, is provided for you to list the data necessary to determine the aggregate true value of tangible personal property. A separate computation is necessary for each taxing district where property is located and within a given taxing district, for each business activity or type of property assigned a different group-life class. Form 937 or a facsimile is required to be filed with the tax return.

The instructions in this paragraph refer to the examples of completed Form 937's shown later in this book. Costs of taxable property at the end of the previous year are to be shown by year of acquisition in columns 1 and 2. Additions, disposals and transfers occurring during the year are to be entered at cost, opposite the year in which they were acquired in columns 3 and 4. The resulting costs remaining at year-end are then listed in column 5. Their total must equal the beginning-of-year total plus total additions and transfers-in, less total disposals and transfers-out. The valuation percentages for the assigned class are listed in column 6. Each year-end cost is multiplied by the corresponding valuation percentage and the product listed in column 7. The total of that column is the true value and is listed in schedule 2 or 4 in the tax return.

Cost-column totals must agree with ledger accounts. Property written off the records, but still physically on hand, must be included in the computation, and property disposed of, but not written off the records, should be deducted and separately identified in the computation. Costs for non-taxable property such as registered motor vehicles, licensed aircraft, property taxed as real property, or pollution control facilities certified exempt should not be included.

Full costs must be shown. Costs must include inbound freight, millwrighting, overhead, investment credits, assembly and installation labor (including premium pay and payroll taxes), material and expenses, and sales and use taxes. Costs of assets may not be reduced by trade-in allowances. Major overhaul costs are to be treated as capitalized and listed as acquisitions in the year in which they occur.

#### **EXCEPTIONS TO THE TRUE VALUE COMPUTATION**

Fixed assets which have a determinable useful life of one year or less and the cost of which is expensed at acquisition are valued at 50% of the cost of the amount on hand at year end. Inventories of repair and maintenance parts as well as equip-

ment held as spare parts are valued at 100% of the cost of the amount on hand at year-end.

The supply items of a manufacturer which are not costed into inventory, and supply items of all other taxpayers are to be valued at the cost of the amount on hand at year-end. This includes office supplies, and supplies used in the normal business activities.

Returnable containers, such as barrels, bottles, carboys, coops, cylinders, drums, reels, etc., are to be valued separately, in accordance with previously promulgated methods.

Video tapes held for rental are valued at declining percentages, 50%, 30%, 20% of original cost in the first, second and third years that they are owned. Thereafter, the value is 20% of original cost. Video tapes held for sale are treated as merchandise inventory using the average month-end cost as the value.

Property located in buildings boarded up, or in departments closed off, or removed from the production line, is functionally inoperable and held for disposal as of tax listing day is not taxable. The taxpayer must identify such property separately in the tax return, with an explanation of the circumstances.

Property that is temporarily idle for purposes of overhauling and repair, from seasonal operation, or from reduced usage is subject to taxation and is not entitled to a reduced valuation for that reason. Property that is held for future use whether as an entire unit or as spare parts is subject to taxation.

#### **SPECIAL REPORTING REQUIREMENT (SEC. 5711.18)**

Whenever a taxpayer reports any property at a value which is below its depreciated book value, he must include a claim for deduction from book value in writing with his tax return. Form 902, Claim for Deduction from Book Value has been prescribed by the Tax Commissioner for displaying the claim in the return. (OAC 5703-3-10).

**BUSINESS ACTIVITIES  
AND  
COMPOSITE GROUP-LIFE CLASSES**

The business activities set forth below are categorized and are presented in a manner similar to the standard industrial classifications employed by the federal government. The listing of certain activities is not intended as a presumption of taxability nor are the major headings reflective of the proper schedule in which the property is to be listed in the tax return.

<b>BUSINESS ACTIVITY</b>	<b>CLASS</b>
<b>GENERAL ACTIVITIES</b> .....	
General administrative activities involving the use of desks, files, typewriters, calculators, adding and accounting machines, communications equipment, fax machines, cellular telephones, pagers, copiers and duplicating equipment, security systems, and other office furniture, fixtures and equipment.....	III
General business purpose integrated computer systems and related peripheral equipment, such as mini-computers, micro-processors, personal computers, terminals, disc and tape drives, CD-Rom players, printers, data entry equipment and software.....	II
There is no single class for computers and related hardware used primarily to control manufacturing processes, machinery and equipment, for quality control, or otherwise incorporated into a business activity. The business activity determines the appropriate composite group-life class.	
<b>AGRICULTURE, FORESTRY AND FISHING (01-09)</b>	
Growing crops, raising and keeping animals and fowl, agricultural and horticultural services .....	III
Commercial fishing, fish hatcheries, hunting, trapping and game propagation.....	III
<b>MINING (10-14)</b>	
Metal mining, coal mining, mining and quarrying of nonmetallic minerals (including sand, gravel, stone, clay and salt) and milling, beneficiation and other primary preparation .....	IV
Petroleum and natural gas:	
Geophysical and exploratory operations.....	III
Drilling of oil and gas wells .....	II
Field services, such as cleaning, fracturing, chemical treatment, cementing and perforating well casings, plugging and abandoning wells.....	III
<b>CONSTRUCTION (15-17)</b>	
General building, marine and heavy construction .....	II
Special trade contractors.....	II
Water wells drilling.....	II
<b>FOOD AND FOOD PRODUCTS (20)</b>	
Meat: Slaughtering	
Meat packing, curing, making sausage and other prepared meats .....	III
Poultry and small game, slaughtering, dressing .....	III
Slaughtering, preparing, packaging animal foods, including pet foods .....	V
Dairy products: Processing butter, cheese, milk, ice cream, etc.....	IV
Fruits and vegetables: Canning, preserving, pickling, drying, freezing; making soups, preserves, sauces and seasonings, salad dressings and other specialties.....	V
Seafoods: Canning, curing, freezing fish and seafoods .....	V
Grain mill products: Milling flour, rice, corn, etc; making blended flour, animal and fowl feeds, pet foods.....	VI

Making cereal breakfast foods .....	IV
Grain handling, processing and storage facilities (see Wholesale and Retail Trade)	
Bakery products: Making bread, pastries, chips, cake mixes, etc. ....	IV
Sugar: Refining cane, beet and maple sugar and syrups .....	VI
Confections: Making candy, etc. ....	IV
Fats and oils: Cottonseed, soybean and vegetable oil milling; rendering, processing animal and marine fats and oils, making shortening, table oils, etc. except margarine .....	VI
Manufacturing margarine .....	IV
Alcoholic beverages: Brewing, distilling, rectifying, blending, packaging .....	V
Soft drinks: Preparing, bottling, canning soft drinks, carbonated waters, flavoring extracts and syrups .....	IV
Miscellaneous food preparations: Roasted coffee, instant coffee, noodles, refined salt, chewing gum, manufactured ice .....	IV
<b>TOBACCO PRODUCTS (21)</b>	
Manufacturing cigarettes, cigars, smoking and chewing tobacco, snuff .....	VI
<b>TEXTILE PRODUCTS (22, 23)</b>	
Manufacturing spun, woven, knit or processed yarns and fabrics from natural or synthetic fibers, including finishing and dyeing; cutting and sewing woven fabrics; manufacturing apparel and accessories, mattresses, carpets, rugs, pads, sheets, felt goods, lace goods, cordage and twine, curtains and draperies, textile bags, fur goods, etc. ....	VI
<b>LUMBER, WOOD PRODUCTS AND FURNITURE (24, 25)</b>	
Logging, sawing dimensional stock from logs, chipping, permanent or portable mills .....	III
Manufacturing finished lumber, plywood, hardboard, flooring, veneers, furniture and other wood products, including wooden matches .....	V
<b>PAPER AND ALLIED PRODUCTS (26)</b>	
Manufacturing pulps, paper and paperboard .....	VI
Manufacturing converted papers, pressed and molded pulp goods, paper bags, boxes, envelopes, fiber cans, tubes and drums, paper matches .....	V
Manufacturing asphalted paper and fiber insulation .....	VI
<b>PRINTING AND PUBLISHING (27)</b>	
Printing by letterpress, lithography, gravure or screen; bookbinding, typesetting and photo- typesetting, engraving and photoengraving, electrotyping and other trade services; publication of newspaper, books, periodicals .....	IV
Reproduction services: See "Business Services"	
<b>CHEMICALS AND ALLIED PRODUCTS (28)</b>	
Manufacturing basic chemicals such as acids, alkalis, salts, organic and inorganic chemicals; chemical products for further manufacture such as plastic materials and synthetic resins, rubber and fibers, including petro-chemical processing beyond petroleum refining, finished chemical products such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes, adhesives, explosives, and compressed, liquid and solid industrial and specialty gases - except finished rubber and plastics products, natural gas products or by-products .....	V

**PETROLEUM REFINING (29)**

Distillation, fractionation and catalytic cracking of crude petroleum into gasoline, kerosenes, distillate and residual fuel oils, lubricants; manufacture of asphalt, carbon black:

Refining equipment, fixed or portable asphalt batch plants ..... IV  
Bulk storage facilities ..... VI

**RUBBER AND PLASTIC PRODUCTS (30)**

Manufacturing products from natural, synthetic or reclaimed rubber such as tires, tubes, footwear, heels and soles, mechanical rubber goods, flooring and rubber sundries; recapping, retreading and rebuilding tires; manufacturing finished plastic products and molding of primary plastics for the trade ..... IV

**LEATHER AND LEATHER PRODUCTS (31)**

Tanning, curing, finishing hides and skins; processing fur pelts; manufacturing finished leather products such as footwear, belting, apparel, luggage and similar leather goods ..... V

**STONE, CLAY, GLASS AND CONCRETE PRODUCTS (32)**

Manufacturing stone and clay products: Brick, tile and pipe, pottery, vitreous china, plumbing fixtures, earthenware, ceramic insulating materials, cut and finished stone ..... VI  
Glass: Manufacturing flat, blown or pressed glass products such as plate, safety and window glass, glass containers, glassware, fiberglass, optical lenses ..... V  
Manufacturing cement ..... VI  
Manufacturing ready-mix concrete, cement products and concrete products, including block, pipe and prefabricated shapes ..... IV  
Cement mixers on trucks ..... I  
Gypsum and plaster products ..... VI  
Abrasive, asbestos and other nonmetallic mineral products ..... VI

**PRIMARY METALS (33)**

Smelting, reducing, refining and alloying of ferrous and nonferrous metals from ore, pig, scrap or slag; casting, rolling, drawing and alloying of metals; manufacturing nails, spikes, structural shapes, castings, tubing, wire and cable.  
Ferrous metals ..... VI  
Nonferrous metals ..... V

**FABRICATED METAL PRODUCTS (34)**

Manufacturing from refined or cast ferrous or nonferrous metals: cans, tinware, hardware, structural metal products, plate work sheet metal work, prefabricated building and components, screw machine products, castings, forgings and stampings, coating and plating, ordnance and accessories, ammunition, small arms, valves, pipe fittings, wire products, foil and leaf, and custom specialty products ..... V

**MANUFACTURING MACHINERY (35, 36)**

Manufacturing and assembly of engines, metalworking machinery and machine tool accessories, turbines, farm machinery, construction and mining machinery, materials handling machinery, food products machinery, textile machinery, woodworking machinery, paper industries machinery, compressors, pumps, bearings, blowers, industrial patterns, process furnaces and ovens, office machines, and refrigeration and service industry machinery - except electrical machinery and transportation equipment ..... V  
Manufacturing and assembly of electrical test and distributing equipment, electrical industrial apparatus (motors, generators etc.), household appliances, electric lighting and wiring equipment, batteries and ignition systems ..... V  
Manufacturing and assembly of electronic communication, detection, guidance, control, radiation, computation, test and navigation equipment and components ..... V

**TRANSPORTATION EQUIPMENT (37)**

Manufacturing and assembling of automobiles, trucks, trailers, motor homes, buses, military vehicles, motorcycles, bicycles and other recreational and pleasure vehicles

Manufacturing and assembly of engines, power trains, frames, bodies and other component parts, not otherwise listed ..... V

Assembly of finished vehicles ..... VI

Manufacturing aircraft, space craft, rockets, missiles, power units; and assembly of components ..... V

Ship and boat building, repair and conversion ..... VI

Building and rebuilding railroad locomotives, railroad cars and street railway cars ..... VI

**PROFESSIONAL, SCIENTIFIC, CONTROLLING, MEASURING AND OPTICAL INSTRUMENTS (38)**

Manufacturing mechanical measuring, engineering, laboratory and scientific research instruments; optical instruments; surgical, medical and dental instruments and equipment; ophthalmic equipment; photographic and photocopy equipment; watches and clocks ..... V

**MISCELLANEOUS MANUFACTURING (39)**

Manufacturing jewelry, musical instruments, toys and sporting goods, pens and pencils, office and art supplies, advertising signs; waste reduction, processing motion picture, television, commercial or noncommercial film; reproducing phonograph records and pre-recorded tapes; hard-surface floor coverings, etc. .... V

Manufacturing burial caskets and vaults ..... V

**TRANSPORTATION (40, 47)**

Transportation equipment, including fork-lifts and other non-licensed vehicles used in conjunction with business activities elsewhere specified shall be included in the class designated for that activity. Transportation equipment used in the business of commercial or contract carrying of passengers, freight or commodities.

Locomotives and railroad cars ..... VI

Motor vehicles, service facilities and terminals ..... III

Barges, river and business craft, floating wharves, loading and unloading equipment ..... VI

Aircraft, hangar and service facilities and ground equipment ..... III

Pipelines, pipe and conveyors for carrying petroleum, gas or other products including trunk lines and storage facilities ..... VI

**COMMUNICATIONS (48)**

Radio and television broadcasting, cablevision, radio pager services, cellular telephone services, satellite communication services ..... III

**ELECTRIC, GAS AND SANITARY SERVICES (OTHER THAN PUBLIC UTILITIES) (49)**

Electric generation and distribution ..... VI

Production and distribution of natural gas, mixed, and manufactured or liquified petroleum gas ..... VI

Water gathering, treatment and distribution and waste water treatment ..... VI

Steam production and distribution ..... VI

**WHOLESALE AND RETAIL TRADE (50 - 59)**

Property included in these activities includes all property, unless otherwise specified, used in the retail or wholesale business such as store fixtures, shelving, display cases, storage areas, point of sale equipment (scanners, microprocessors, terminals, cash registers, and cables and wires), bascart, leasehold improvements.

Dealers at wholesale and retail in durable and nondurable goods, including eating and drinking places, carry-outs, pizzerias, fast food places, caterers and institutional food service, mail order houses, scrap metal and waste material dealers, and others not elsewhere classified ..... III

Petroleum bulk stations and terminals .....	VI
Gasoline service stations	
Tanks, pumps and mechanical equipment .....	II
Store furniture and fixtures, mini-market furniture and fixtures, coolers, display fixtures .....	III
Air handling, processing and storage facilities .....	VI
Merchandise, food and beverage vending machines .....	II
Warehousing .....	III
<b>FINANCE, INSURANCE AND REAL ESTATE (60 - 67)</b>	
Banking, savings and lending institutions, business and personal credit institutions; security brokers, dealers and services; exchanges .....	III
Insurance underwriters (all risks), agents and brokers .....	III
Real estate operators, lessors, agents, managers, title abstracters, subdividers and developers .....	III
Holding and investment company offices; trusts .....	III
<b>LODGING PLACES (70)</b>	
Hotels, motels, rooming houses, tourist courts, camps, parks and membership lodging places .....	III
<b>PERSONAL SERVICES (72)</b>	
Laundry, cleaning and garment services: Dry cleaning and pressing plants or shops; towel and linen supply; rug, carpet and upholstery cleaning; commercial laundries, including diaper service .....	IV
Laundries and dry cleaning - coin-operated .....	II
Photographic studios (for photofinishing, see Business Services - Misc.) .....	III
Beauty shops, barber shops .....	III
Shoe repair, shoe shine and hat cleaning shops .....	III
Funeral service, including crematories .....	III
Rental services: Short-term rentals, as of apparel, small tools, home and garden tools, lockers (except cold storage), household goods, health and recreation equipment, etc. ....	II
Miscellaneous services: Baths, health clubs, porter service, dating or escort service, check rooms, travel agencies, tax return preparation service, etc. ....	III
<b>BUSINESS SERVICES (73)</b>	
Advertising agencies .....	III
Advertising, outdoor signs (Sign manufacturing: See Miscellaneous Manufacturing) .....	II
Miscellaneous advertising: Aerial; direct mail; circular, handbill and sample distribution; transit cards .....	III
Credit reporting, adjustment and collection agencies .....	III
Mailing, reproduction, commercial art and photography, stenographic service, blueprinting, photostating, photocopying .....	III
Building services, janitorial and maintenance, painting .....	III
Cold storage, food locker rental .....	IV
News syndicates, wire services .....	III
Employment and temporary help service .....	III
Data processing services: Computer programming, systems design and other software services, data processing, leasing machine time:	

Computers and related equipment only .....	II
Leasing services: There is no single class applicable to the business of leasing; rather, the activity in which the lessee uses the leased property determines the appropriate class.	II
Rental services: Short-term rentals, as of construction, concession, banquet and meeting equipment, portable sanitary facilities, power tools, etc. ....	II
Miscellaneous services: Research and development laboratories; management, consulting and public relations services; detective agencies, protective services; photofinishing; trading stamp services; testing laboratories, bondsmen; bottle exchanges; drafting services; interior design; notaries public; packaging and labeling services; telephone message service; auctioneering; landscaping and grounds maintenance, tree trimming, etc. ....	III
<b>VIDEO TAPE RENTAL (74)</b>	
Video tapes held for rental, 50%, 30%, 20% for the first, second, third years, 20% thereafter.	
<b>AUTOMOTIVE SERVICES (75)</b>	
Vehicle leasing, parking, towing, rebuilding and repair, diagnostic centers, and related services .....	III
Car and truck washes .....	II
<b>REPAIR SERVICES (76)</b>	
Household appliance and industrial equipment repair; watch, clock and jewelry repair; reupholstery and furniture repair; welding repair; armature rewinding; bicycle, leather goods, lock and gun, musical instrument and business equipment repair; septic tank and furnace cleaning; sandblasting and steam cleaning; knife sharpening; taxidermy, etc. ....	III
<b>MOTION PICTURE AND RECORDING STUDIOS (78)</b>	
Motion picture and tape production (except processing), studio property, picture distribution, film exchanges and rentals, film libraries; recording studios, except reproduction .....	III
<b>MUSEMENT AND RECREATION SERVICES (79)</b>	
Auditoriums, concert halls, stadiums and motion picture theaters, including drive-in theaters .....	III
Dance halls and studios, theatrical producers and services, music groups, actors, entertainment groups .....	III
Bowling alleys, billiard and pool establishments .....	III
Commercial sports, golf courses, amusement parks and rides, membership sports and recreation clubs, swimming pools and beaches, riding schools, carnivals, expositions, boat liveries, shooting galleries .....	III
Coin-operated or token operated amusement and entertainment devices .....	II
<b>PROFESSIONAL SERVICES (80 - 83, 89)</b>	
Health services: Doctors, dentists, optometrists, etc; hospitals, clinics, nursing homes, medical and dental laboratories, and miscellaneous medical services .....	III
Legal services .....	III
Educational services, schools, colleges, institutes .....	III
Social services, job training, day-care services, etc. ....	III
Engineering, architectural and surveying services; accounting, auditing and bookkeeping services; free lance authors, lecturers, artists; etc. ....	III
<b>MUSEUMS (84)</b>	
Museums, art galleries, arboreta, botanical and zoological gardens .....	III

**MEMBERSHIP ORGANIZATIONS (86)**

Business, professional, labor union, civic, social, fraternal, political, religious organizations, farm bureaus and granges.....

III

**PUBLIC ADMINISTRATION (90)**

There is no single class applicable to property owned or used in public administration. The use to which the property is put determines the proper class.

**TABLES FOR DETERMINING TRUE VALUE**

(expressed as percents)

Age	Class I	Class II	Class III	Class IV	Class V	Class VI
1	90.0	92.0	93.2	93.9	94.3	94.4
2	63.3	76.3	82.8	86.3	88.1	88.9
3	44.0	60.6	72.4	78.7	81.8	83.3
4	32.0	46.1	62.0	71.1	75.6	77.8
5	20.0	37.9	51.5	63.5	69.3	72.2
6	20.0	29.8	42.2	55.8	63.1	66.7
7	20.0	21.6	36.3	48.2	56.9	61.1
8		20.0	30.5	40.6	50.6	55.6
9		20.0	24.6	35.4	44.4	50.0
10		20.0	18.8	31.1	38.2	44.4
11			18.8	26.8	32.8	38.9
12			18.8	22.5	29.5	33.3
13				18.3	26.2	28.9
14				17.4	22.9	26.2
15				17.4	19.6	23.5
	<b>COMPOSITE GROUP - LIFE RANGES</b>					
	<b>Class</b>	<b>At Least</b>	<b>Less Than</b>			
16				17.4	16.3	20.8
17	I		6.0 yrs.		16.3	18.1
	II	6.0 yrs.	8.4 "			
18	III	8.4 "	11.6 "		16.3	15.4
	IV	11.6 "	14.8 "			
19	V	14.8 "	17.2 "		16.3	15.4
	VI	17.2 "				
20						15.4

The lowest percentage in each class determines the minimum acceptable value so long as property is held for use in business.

## INSTRUCTIONS FOR NEW TAXPAYERS

Any person, partnership, corporation or association who engages in business in Ohio on or after January 1 of any year is a 'new taxpayer' for that year. Whenever a taxpayer ceases business in Ohio, and in a subsequent year begins business in Ohio again, he is a new taxpayer for that year. The new taxpayer is liable for a property tax return in the year in which he commences business, reporting property owned on the first day of business in Ohio. The amount of tax owed is prorated based on the number of months in business in Ohio in that first year.

The new taxpayer return is to be filed with the same official and using the same forms, (Form 920 or 945) as with a regular return. The return must be filed within 90 days of first engaging in business in Ohio, with the provision for requesting an extension of time of up to 45 additional days. Such extensions should be obtained from the official with whom the return is to be filed.

The date of engaging in business has been generally defined as the day the business commences operations, which is not necessarily the day the business was organized or licensed in Ohio. In the case of a merchant, the day that the business opened for the purpose of selling merchandise would be the first day of business. In the case of a manufacturer, it would be the day that production started. For other business activities, the first day of business would be the day that the intended business activity started.

For the new taxpayer return, the listing date is the first day of business in Ohio instead of December 31 or a fiscal year end. All taxable property, except inventory, owned on the first day of business must be listed, the true value is the taxpayer's cost. Inventory must be listed at the average value for the remainder of the year. Estimate month-end values starting with the end of the month engaging in business and for each month-end throughout the remainder of the year. If additional locations will be opened later in the year, inventory for those locations must also be estimated for the new taxpayer return. The average value is the sum of the month-end values divided by the number of month-end values included. The estimated values reported may be amended at a later date, when actual month-end inventory values are known.

The total listed value of the return is multiplied by a fraction which represents the portion of the year during which the taxpayer will be engaged in business in Ohio. The numerator of the fraction is the number of full months from the date of engaging in business to December 31, the denominator is twelve. The resulting values should be reported on the front of the 920, or the recapitulation pages of the 945. They are the values to which the tax rates are applied to determine the amount of tax owed.

When a new taxpayer has acquired an existing business and that business has filed a personal property tax return for the same year in which the new taxpayer acquires the business, taxes for property that was listed by the former owner need not be paid again by the new taxpayer. The new taxpayer must produce a copy of the return or assessment indicating that the same property has been listed or assessed for taxation for the same year. The amount of inventory which may be excluded is the lower of the average amount listed by the former owner in his return for the same year, or the amount transferred. Any property not listed in the former owner's return and acquired prior to the new taxpayer's first day of business must be listed. Average inventory in excess of the amount excludable must also be listed.

Frequently, an existing business that had been organized as a proprietorship or partnership will be reorganized as a corporation, or other changes in the business structure take place that result in the existence of a new entity. In these circumstances, the new owner or business entity is considered a new taxpayer and required to file a new taxpayer return for the year in which the change took place. These new taxpayers are subject to the same reporting requirements as those beginning a new business. A copy of the return filed for the same year by the former entity should be included with the new taxpayer return.

The new taxpayer return is for the year in which business commenced in Ohio, even if it is not due to be filed until the next calendar year. A regular tax return is required to be filed for the calendar year following the year in which the business began and is due in the normal filing period of February 15 through April 30. All taxable property in this year's return must be listed as of the close of business on December 31 of the preceding calendar year (the year engaging in business), and inventory listed at the average of the month-end values for each of the months that the taxpayer was engaged in business in that year, using the number of month-end values included as the divisor. Listed values in this year's tax return may not be prorated.

Rule 5703-3-04, Ohio Administrative Code, provides for the use of listing dates other than December 31. Before a listing date other than December 31 may be used, the taxpayer must be engaged in business in Ohio for at least twelve months prior to that listing date. In certain instances, where property may be excluded from taxation for a year, or taxed twice in a year, the Tax Commissioner may authorize or require an alternate listing date for a taxpayer to exclude or to report property involved in a change of ownership. These circumstances may affect the new taxpayer's returns when an entire business or facility is acquire. Questions concerning the new taxpayer return should be directed to the Tax Commissioner through the local district office, or the Property Tax Division in Columbus.