



# Legal Connections

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

DECEMBER 8 - 14, 2023

*As year-end tax matters become top of mind, look to a Columbus Bar lawyer for guidance.*

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## AN OVERVIEW OF AN OHIO SALES TAX AUDIT AND APPEAL

A taxpayer receives a letter from the Ohio Department of Taxation (the "Department") informing them that the Department intends to conduct a sales tax audit of their business. What happens next? This article will describe the audit process along with the available appeal mechanisms should there be a disagreement between the Department and the taxpayer regarding the amount of tax allegedly due.



BY: DAMION CLIFFORD

One of the areas that the Department routinely audits is sales tax. Normally, a sales tax audit covers a three-year period. However, there are certain instances where the audit period is expanded to six years or even longer because the taxpayer failed to register, collect, and file sales tax returns or the Department uncovers evidence that the taxpayer collected sales tax and did not provide it to the State. R.C. §5739.16(A)(1)-(2).

Once the audit is commenced, the Department requests the taxpayer's business records. These document requests normally seek federal income tax returns, sales journals, bank statements, credit card statements, and exemption certificates. After receiving these documents from the taxpayer, it is routine for the Department to have follow-up questions and/or ask for specific documents to include invoices, point of sale reports, and 1099s.

After the Department has reviewed the requested documents, it will also issue a 120-day letter. The 120-day letter provides the taxpayer with an opportunity to provide the Department with exemption certificates. Exemption certificates are documents the taxpayer receives from its customers explaining why the taxpayer does not have to collect sales tax from that customer. R.C. §5739.03(B)(1)(a). The taxpayer has 120 days from the issuance of the letter to provide all exemption certificates they have to the Department. R.C. §5739.03(B)(4).

After the Department has completed its review, it will issue preliminary proposed audit findings and will give the taxpayer an opportunity to identify any potential errors. The taxpayer's response is one of the best opportunities to reduce the amount of tax that the Department claims is due and owing. The Department routinely provides the taxpayer with three to four weeks to prepare a response. After receiving the taxpayer's response, the Department will normally have a conference with the taxpayer to address any concerns raised by the taxpayer in their response.

In addition, if the Department determines that there was sales tax that was either not collected or collected and not returned to the State, the audit will impose penalties and interest in addition to the tax due. At

the same time that the preliminary proposed audit findings are provided, the Department will also provide the taxpayer with an opportunity to explain why penalties should not be imposed or why the amount of the penalty imposed should be reduced. During the audit phase, the Department will, in many instances, impose a 50% penalty on any unpaid sales tax. The reason is simple—sales tax is a trust tax that a taxpayer is charged with collecting on behalf of the State from its customers and providing all of the collected tax to the State at the end of each reporting period.

After the Department has completed its final review of the audit, it will issue a Notice of Assessment (the "Assessment") and serve it on the taxpayer via certified mail. R.C. §5739.13(A). The taxpayer has sixty (60) days to file a petition for reassessment with the Department's Appeals Division and request a hearing. R.C. §5739.13(B). A petition for reassessment states the basis for why the taxpayer believes that the amount of tax and/or penalty assessed is incorrect.

In the Appeals Division, the petition is assigned to an attorney who works for the Department. If the taxpayer requests a hearing (which is always recommended), the taxpayer will be given an opportunity to present their arguments either in person or over the phone explaining why the Assessment needs to be corrected. The hearing before the Appeals Division is

usually very informal and consists of the taxpayer or their counsel providing the reasons why the taxpayer believes that the Assessment is incorrect. At the conclusion of the hearing, the attorney for the Appeals Division routinely requests that the taxpayer express their arguments in writing and may ask for additional documents to support the taxpayer's position.

Once the Appeals Division has reviewed the taxpayer's arguments, it will cause the Ohio Tax Commissioner to issue a Final Determination. Similar to the Assessment, the Final Determination is served on the taxpayer via certified mail. The taxpayer has sixty (60) days to file an appeal with the Ohio Board of Tax Appeals (the "BTA") and provide a copy of the appeal to the Ohio Tax Commissioner. R.C. §5717.02(B). The notice of appeal is to contain a short and plain statement of the claimed errors from the Tax Commissioner's Final Determination. The taxpayer is also provided an opportunity to request a hearing (which is also always recommended) before the BTA. The BTA is the first opportunity that the taxpayer has to present its arguments to a neutral third party.

Damion M. Clifford is the partner in charge of the state and local tax practice at Arnold & Clifford LLP. Go to [www.cbalaw.org](http://www.cbalaw.org) to read the rest of Damion's article in the Fall 2023 Issue of Columbus Bar Lawyers Quarterly. ■

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## EDUCATION & EVENTS

Tuesday, December 12 | 9:30am-12:15pm  
**Analyzing the Ethical Blunders of Alex Jones: The Sandy Hook Conspiracy Theory**  
2.50 CLE Hours

Wednesday, December 13 | 1:00pm-2:30pm  
**Client Fund Management 2: IOLTA Accounting**  
1.50 CLE Hours

Thursday, December 14 | 12:00pm-1:00pm  
**2023 Franklin County Auditor's Office Education Series**  
1.0 CLE Hour

All classes listed are offered by the Columbus Bar Association through Zoom.

To register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).



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