Sales of Vehicles and Common Vehicle Exemptions

Presented By:

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Ohio | Department of Taxation

Overview

- How taxability is determined for a vehicle sale
- Common vehicle exemptions
- ODT Process

Casual Sales/Transfers General Overview

- Price and Consideration
- Motor Vehicle Casual Sales are handled by the Compliance Division
  - Compliance process for casual sales
  - Timeframes and what to expect
- Common Issues

Casual Sale

- "Casual sale" is a sale of tangible personal property by a person not engaged in the business of selling such tangible personal property. While most casual sales are exempt from sales tax under Ohio Revised Code ("O.R.C.") 5739.02(B)(8), that provision specifically excludes the transfer of a motor vehicle from the definition of casual sale. As a result, a motor vehicle purchased in a casual sale is subject to sales or use tax, and the tax must be paid to the clerk of courts at the time of title transfer.

Price

- O.R.C. 5739.01(H)(1)
- Total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

Price – Test Your Knowledge

- Bo has enjoyed driving his SUV for many years but has decided to splurge on something with a little more horsepower as a retirement gift for himself. His co-worker, Luke, has been driving a restored 1969 Dodge Charger. Luke is expecting his first child and is looking to get something a little roomier.
- Bo and Luke decide to swap their vehicles and call it an even trade.
- Is this swap taxable?

Price – Vehicle Swaps

- Non-cash payment: vehicle swap (non-dealers exchanging vehicles), buyer assumes loan, buyer performs services in exchange for vehicle, etc.
- The tax is due upon *the total amount of consideration*, including cash, *credit, property, and services*, for which tangible personal property or services are sold, leased, or rented, valued in money, <u>*whether received in money or otherwise.*</u>
- Therefore, Bo and Luke's trade **was** taxable!
- Tax is due on the value of the property or services traded.
    - Examples: vehicles, lawn care, cleaning, lawnmowers, all terrain vehicles, labor performed, etc.
- If you disagree with ODT's valuation of the property exchange, submit evidence in writing the value of the traded vehicle and send supporting documentation.
    - Examples: Kelly Blue Book valuation, pictures, invoices, etc.

Casual Sales/ Transfers Process

Seller Questionnaire

Buyer Questionnaire

Tax Due Bill

Assessment

Certified Assessment

Timeframe to Respond and What to Expect

Seller Questionnaire	Buyer Questionnaire	Tax Due Bill	Assessment	Certified Assessment
• 14 Days to respond • Sent USPS • No amount listed on notice • No response to seller questionnaire will result in buyer questionnaire being sent • If seller responds with amount greater than title amount no buyer questionnaire will be issued, just a bill	• 14 Days to respond • Sent USPS • Amount listed will be due if no response • No response to Buyer Questionnaire will result in notice becoming immediately assessed	• Tax Due and Interest • 14 Days to respond or remit payment • Sent USPS • Can be issued based on either the seller or buyer response • Failure to remit payment timely will result in bill becoming an assessment	• Tax Due, Interest, and Penalty • 60 Days to pay or appeal the assessment • Sent certified mail • Unresolved tax due assessment will certify for collection to the AGO once the appeal period has expired	• Tax Due, Interest, Penalty, and Additional Fees levied by the AGO • Sent certified mail • Unresolved certified assessments may result in additional action from the AGO

Payment for Vehicle Transfers

- Unlike most business taxes, TP is unable to pay balance due on the Ohio Business Gateway (OBG)
- Must pay via check or money order
- Payment instructions included on all notices
- Payment voucher included with Tax Due and Assessment notices

Why Did I Receive a Questionnaire?

- ODT receives information from BMV or titling agency
- Title amount is compared to average purchase price of other similar vehicles (make and model) in Ohio
- If title amount falls below the average purchase price a questionnaire is issued
- Receiving a questionnaire does not indicate a violation occurred
  - ODT just looking to verify the actual purchase price

Seller Questionnaire, How to Respond

- Questionnaires can be submitted electronically from the Department of Taxation's website, www.tax.ohio.gov
  - Forms tab
  - Top Individuals Forms
  - → Seller Questionnaire
- Seller has no tax obligation for vehicle
- Questionnaires will be located **<u>on the back</u>** of the inquiry
- Completed Questionnaire can be submitted by mail or fax
  - Mailing address and fax number will be on the notice
- Can be submitted via email, vehicle.group@tax.state.oh.us

Seller Questionnaire

- Line 1 is completed if any money (cash, check, money order) was received
- Line 2 is completed if a loan was assumed or paid off by the buyer
  - If yes, the amount assumed or paid needs to be listed
- Line 3 needs to be completed if vehicles were traded or if any additional services or property were received
  - If vehicles traded complete line 3a
  - Important to list the value of the vehicle received in the trade
  - If property or services were received complete 3b
  - Important to describe as well as list the value of the goods or services

Questionnaire Regarding Title Transfer

1. How much money (cash, check, or money order) did you receive from the buyer?
   $____________

2. Was the balance of your loan assumed or paid off by the buyer?
   _____ Yes, amount of your loan assumed or paid by the buyer.
   (Do not include the amount in line 1) $____________
   _____ No (Proceed to Question 3)

3. Did you trade vehicles with the buyer or receive any other services or property?
   _____ Yes (Proceed to Questions 3a and 3b)
   _____ No (Proceed to Question 4)

   3a. If you traded vehicles, describe the vehicle that you received from
   ________Year ____________Make ____________Model
   What was the value of the vehicle you received? $__________

   3b. If you traded any other service or property, please describe:
   ____
   ____
   What was the value of this service or property? $__________

4. Total amount of lines 1-3: $__________

Were there any other circumstances involved in the transfer of the title? If yes, please describe.
____
____

Daytime phone number: ____________________________
Email: __________________________________

I declare under penalties of perjury, that this questionnaire has been examined by me and to the best of my knowledge and belief is true, correct and complete.

________________ ____________ ____________
Signature SSN/FEIN/ITIN Date

Seller Questionnaire cont.

- Line 4 is the total from the previous lines
- If there were any additional circumstances involved in the transfer, they can be listed
    - If the circumstance allotted space is insufficient an additional page can be attached with questionnaire

Questionnaire Regarding Title Transfer

1. How much money (cash, check, or money order) did you receive from the buyer?
   $______________

2. Was the balance of your loan assumed or paid off by the buyer?
   _____ Yes, amount of your loan assumed or paid by the buyer.
   (Do not include the amount in line 1) $______________
   _____ No (Proceed to Question 3)

3. Did you trade vehicles with the buyer or receive any other services or property?
   _____ Yes (Proceed to Questions 3a and 3b)
   _____ No (Proceed to Question 4)

   3a. If you traded vehicles, describe the vehicle that you received from
   ________Year ______________Make ______________Model
   What was the value of the vehicle you received? $__________

   3b. If you traded any other service or property, please describe:
   ____
   ____
   What was the value of this service or property? $__________

4. Total amount of lines 1-3: $__________

Were there any other circumstances involved in the transfer of the title? If yes, please describe.
____
____

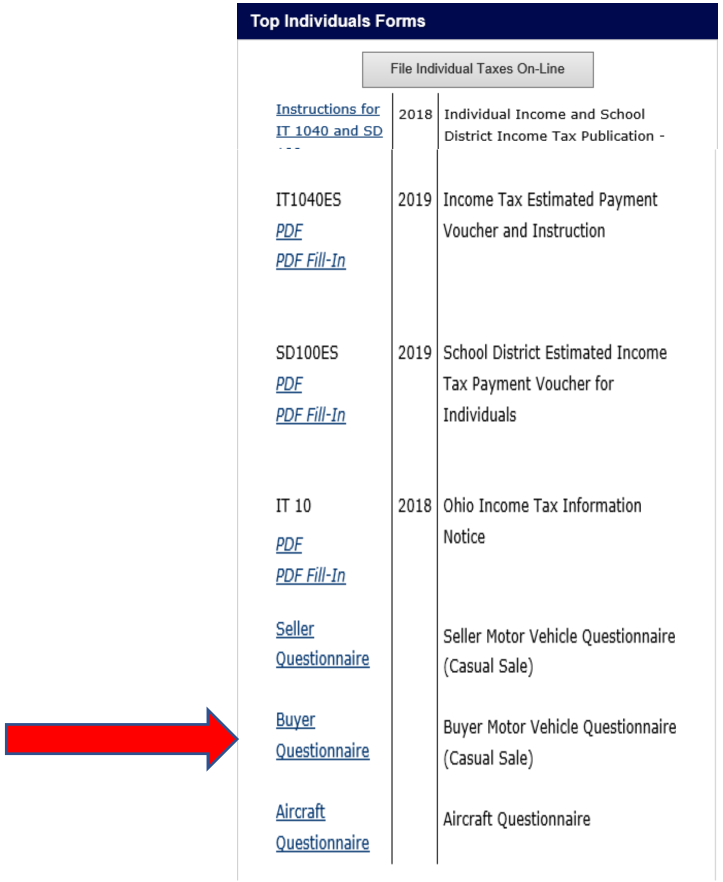
Daytime phone number: ______________________________
Email: ______________________________

I declare under penalties of perjury, that this questionnaire has been examined by me and to the best of my knowledge and belief is true, correct and complete.

______________________ ______________ ______________
Signature SSN/FEIN/ITIN Date

Buyer Questionnaire, How to Respond

- Questionnaires can be submitted electronically by using the path as the Seller Questionnaire
  - Select “Buyer Questionnaire” on Forms tab
- Sent if no response received from seller
- If seller responds, buyer questionnaire will not be issued
  - If seller stated higher purchase price, tax due notice issued
  - If seller confirms purchase price no additional notice issued



Buyer Questionnaire

- Lines 1-4 are the same as the Seller Questionnaire
- Additional section listed to help determine if additional tax is due
- Total from Line 4 minus the Reported Price
- The county sales tax rate will be listed
- Calculate the balance due
  - Payment can be submitted with the submission of the questionnaire if mailing

Questionnaire Regarding Title Transfer

1. How much money (cash, check, or money order) did you pay to the seller?
   $__________
2. Did you obtain a loan to finance this purchase? Do not include the amount in line 1.
   _____ **Yes**, amount of your loan obtained to finance purchase: $__________
   _____ **No** (Proceed to Question 3)
3. Did you trade vehicles with the seller or provide any other services or property to the seller?
   _____ **Yes** (Proceed to Questions 3a and 3b)
   _____ **No** (Proceed to Question 4)

   3a. If you traded vehicles, describe the vehicle you traded.
   ________Year ______________Make ______________Model
   What was the value of the vehicle you traded? $__________

   3b. If you provided any other service or property, please describe:
   ____
   ____
   What is the value of this service or property? $__________
4. Total amount of lines 1-3: $__________

Were there any other circumstances involved in the transfer of the title? If yes, please describe.
____
____

Daytime phone number: ______________________________
Email: ____

If the amount listed on line 4 above is greater than the reported purchase price of $6,500.00, use the computation below to calculate the additional tax due.

Note: If you complete this area, you must return the questionnaire along with payment.

1. Correct purchase price (amount from line #4 above) $__________
2. Reported price $6,500.00
3. Line 1 minus line 2 $__________
4. County sales tax rate 6.75%
5. Balance due (line3 times line 4) $__________

I declare under penalties of perjury, that this questionnaire has been examined by me and to the best of my knowledge and belief is true, correct and complete.

______________________ ______________ __________
Signature SSN/FEIN/ITIN Date

Tax Due Billing Notice

- Issued if seller or buyer indicates a purchase price greater than the title amount
- If disputing the purchase price given to ODT, TP must provide additional supporting documentation
  - Copy of the Bill of Sale
  - Notarized statement from seller indicating the correct purchase price
- If no response is received from the seller or buyer
  - No tax due notice issued
  - Straight to Assessment

Assessment Notice

- Assessment notice is issued to the buyer only
- Issued for two reasons
  - No response from seller or buyer
  - No response to Tax Due notice
- In the case of being assessed due to no response from seller or buyer
  - Buyer can submit Buyer Questionnaire
- In the case of no response to Tax Due notice
  - Assessment stands unless Bill of Sale or notarized statement provided

Appeals

- If the taxpayer disagrees with an assessment it is their legal right to file an appeal
- Appeals must be filed within 60 days from the date the assessment is received
- A Corrected Assessment (CA) or Final Determination (FD) will be issued in response to the appeal
- If a Corrected Assessment has been issued, the taxpayer needs to appeal the Corrected Assessment even if the taxpayer appealed the original
- If the taxpayer disagrees with Final Determination, they must file an appeal with the Board of Tax Appeals

Penalty Abatement

- Penalty added once bill becomes an assessment
- Non-certified
  - Written request submitted to ODT
  - If penalty adjusted a Corrected Assessment (CA) or Final Determination (FD) will be issued depending on what point in the process abatement was requested
  - If abatement request denied a Final Determination (FD) will be issued
- Certified
  - Written request can be submitted to the AGO
  - Tax and interest must be paid

Contacting ODT by Phone

- Contact number: (888)405-4039
- Ability to clear notice over the phone
- Seller Questionnaire
  - Seller calls and confirms purchase price
- Buyer Questionnaire
  - Buyer or Seller calls and confirms purchase price
- Non-Certified Assessment
  - Buyer or Seller calls and confirms purchase price
- If purchase price is greater than title amount response must be in writing
- Certified Assessment **<u>response must be in writing</u>**

Watercraft

- Most common issue is when watercraft and outboard motor are purchased together
- Taxpayer titles the watercraft and outboard motor separately
- Watercraft is titled for the entire purchase price and the outboard motor is titled for 0
- Questionnaire sent for the outboard motor
- Respond to questionnaire with a copy of the bill of sale, showing tax paid and explanation that watercraft and outboard motor both titled

Exemptions

Exemptions: General Law

- It is presumed that all sales of tangible personal property and any use, storage, or other consumption of tangible personal property occurring in Ohio are subject to tax until the contrary is established. O.R.C. 5739.02(C) and O.R.C. 5741.02(G).
- However, the Revised Code provides multiple exemptions to the sales tax. O.R.C. 5739.02(B).
- "Tax-exemption statutes 'must be strictly construed, because exemptions are in derogation of the rights of all other taxpayers.' " *Cincinnati v. Testa*, 143 Ohio St.3d 371, 2015-Ohio-1775, 38 N.E.3d 847, ¶ 16, further citations omitted.
- Further, the well-established rule in tax-exemption cases places the burden on the taxpayer to show that the exemption statute's language clearly expresses the exemption in relation to the claim. *Id.* at ¶ 14, further citations omitted.

Exemption General Overview

- Exemptions prior to assessment are handled by the Compliance Division
  - Compliance Process for Vehicle Exemptions
  - Timeframes and what to expect on notices
- Common exemptions
  - Transportation for Hire
  - Direct Use Farming
  - Direct Use Public Utility
  - Direct Manufacturing

Billing Process

Questionnaire Inquiry

- ODT receives information exemption was claimed
- Questionnaire/ Inquiry notice mailed to Business or Individual
- Will give an amount due if exemption was claimed in error

Tax Due, Billing Notice

- Based on questionnaire or inquiry vehicle is determined to be taxable

Assessment

- If no response to questionnaire assessment will be issued
- Tax Due notice issued and failure to pay timely will result in an assessment notice being issued

Timeframe to Respond and What to Expect

Questionnaire/ Inquiry	Tax Due/ Billing Notice	Assessment
• 14 Days to Respond • Sent via USPS • No response to questionnaire or inquiry will result in notice becoming immediately assessed	• Tax due plus interest • 14 Days to Respond • Sent via USPS • Failure to remit payment timely will result in bill becoming assessment	• Tax Due, interest, penalty • 60 days to pay or appeal the assessment • Sent certified mail • Unresolved tax due assessment will certify for collection to the AGO once the appeal period has expired

Payment for Exemptions

- Unable to pay balance due on the Ohio Business Gateway (OBG)
- Must pay via check or money order
- Payment instructions included on all notices
- Payment voucher included with Tax Due and Assessment notices

Transportation for Hire

- Transportation for Hire Defined
  - O.R.C. 5739.01 (Z)
  - "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:
  - (1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;
  - (2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;
  - (3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

What is Needed to Qualify

- Submitted Questionnaire showing exempt usage
- Valid, Active Operating Number
  - PUCO Number
  - Motor Carrier Number
  - DOT number alone does not qualify

Recent Case Law: The R.L. Best Co. v. Testa

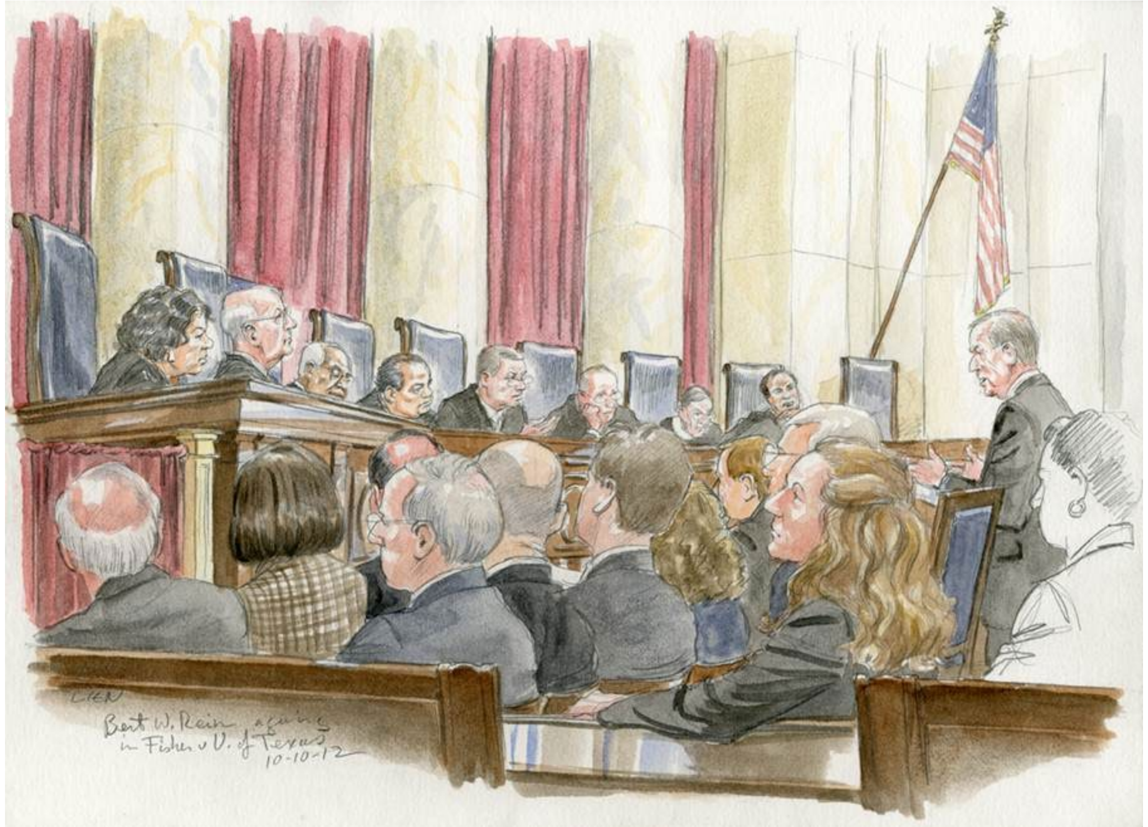
- Taxpayer manufactures, rebuilds, and repairs custom extrusion presses and handling systems.
- Taxpayer would typically retrieve customer equipment, repair at TP's plant, and return it.
- TP was regulated by PUCO and the Interstate Commerce Commission.
- Assessment dealt with trucks and trailers that were used for one of three purposes:
  - To deliver the equipment.
  - To retrieve previously sold customer equipment for repairs.
  - To transport tools for equipment or removal at a customer's location. (TP conceded this was not exempt as transportation for hire)

Recent Case Law: R.L. Best v. Testa *(cont'd)*

- Auditor determined that, when including "dead mileage", taxpayer only transported tangible personal property belonging to others 34.46% of the time, and the vehicles were not used primarily (51% of the time) in an exempt manner.
  - "Dead mileage" – Distance travelled with an empty truck or trailer.
- Auditor also determined that, as the delivery charges were either omitted or misstated, the taxpayer was not transporting items "for consideration" as required by the statute.
  - Previous cases have held that, unless the customer invoices provide a separate fee for transportation, a taxpayer is not entitled to the transportation for hire exemption. *See Kurtz Bros., Inc. v. Tracy* (Dec. 15, 1995), BTA No. 1994-P-614, et seq., unreported, 1995 WL 752290, discretionary appeal not allowed, 77 Ohio St.3d 1495, 673 N.E.2d 150 (1977), and *Pallet World, Inc. v. Levin* (June 22, 2010), BTA No. 2007-M-116, 2010 WL 2548349, in which the BTA "previously rejected claims for exemption under R.C. 5739.02(B)(32) and R.C. 5739.01(Z), where transportation charges were not separately stated."
- Assessment was affirmed by the Board of Tax Appeals and appealed to the Seventh District.

Recent Case Law: R.L. Best v. Testa *(cont'd)*

- The Seventh District held that:
  - As customers were unaware of the actual cost of transportation due to misstatements and omissions by the seller, as well as the absence of specific transportation fees in customer invoices, the Court upheld the BTA's determination that the transportation services were part of a repair service, not separate transportation for hire services, and, therefore, the taxpayer was not entitled to the exemption.
  - As a result, the Court declined to address if the vehicles were "primarily" used in a tax-exempt manner.
  - After an appeal, the Supreme Court of Ohio declined to hear the matter on June 26, 2019.



Takeaways: R.L. Best v. Testa

- What should we take away from this case?
- If you are a company that both repairs items and provides transportation services for hire, or transportation services are just a part of your business, make sure the *full amount* (no omissions or misleading!) of a transportation charge is in a *separately, specifically stated line item* on invoices.
- Make sure to consider mileage logs as well as "dead miles" in determining if you can claim an exemption for a vehicle or trailer.

Questionnaire

- Questionnaire will be located **<u>on the back</u>** of the original notice

TRANSPORTATION FOR HIRE QUESTIONNAIRE

Type of Vehicle (ex: tractor, pickup, van, passenger car, etc):______________________

Commodity or product hauled:______________________

PUCO or Federal Operating Authority number: ______________________

If you are a Broker or Courier, for whom do you haul? ______________________

____

Please indicate the percentage of use for each activity that applies to the vehicle:
Your total must equal 100%.

Hauling Goods/Products/Supplies/Equipment for Others	____________%
Hauling Goods/Products/Supplies/Equipment for Yourself	____________%
Hauling Products Sold by Your Business to Customers	____________%
Hauling Construction Debris or Demolition Debris	____________%
Who will own the debris once it is hauled? ______________________	
Hauling Trash or Garbage	____________%
Who will own the trash or garbage once it is hauled? ______________________	
Company Car (Transporting Personnel) or Repair Vehicle	____________%
Taxi or Limousine (Vendor's License required below)	____________%
Towing Services (Vendor's License required below)	____________%
Other (Be specific) ______________________	____________%
Total % **(Must Equal 100%)**	____________%

I certify that the information I have given on this questionnaire is correct.

Signature: ______________________ Date: ____________

Social Security Number (SSN) or Federal Employer Identification Number (FEIN):
____

Phone: ______________ Vendor's License (if applicable): ______________

Email Address: ______________________

Questionnaire

- Upper portion of Questionnaire
- Indicates general information on the vehicle
  - Vehicle type
  - Type of commodity or product being hauled
  - Operating Number goods being hauled under
  - If company or individual are a broker or courier

TRANSPORTATION FOR HIRE QUESTIONNAIRE

Type of Vehicle (ex: tractor, pickup, van, passenger car, etc):______________________________

Commodity or product hauled:____

PUCO or Federal Operating Authority number: ____

If you are a Broker or Courier, for whom do you haul? ___________________________________

____

Questionnaire

Please indicate the percentage of use for each activity that applies to the vehicle:
Your total must equal 100%.

Hauling Goods/Products/Supplies/Equipment for Others	____%
Hauling Goods/Products/Supplies/Equipment for Yourself	____%
Hauling Products Sold by Your Business to Customers	____%
Hauling Construction Debris or Demolition Debris	____%
Who will own the debris once it is hauled? ____	
Hauling Trash or Garbage	____%
Who will own the trash or garbage once it is hauled? ____	
Company Car (Transporting Personnel) or Repair Vehicle	____%
Taxi or Limousine (Vendor's License required below)	____%
Towing Services (Vendor's License required below)	____%
Other (Be specific) ____	____%
Total % **(Must Equal 100%)**	____%

- Usage portion of Questionnaire
- Usage solely for the vehicle indicated on the inquiry
- Usage must equal 100%
- If listing "Other" it is important to be very specific in the explanation
    - If the explanation does not fit on allotted line you can attach an explanation

Questionnaire

I certify that the information I have given on this questionnaire is correct.

Signature: ______________________________ Date: ______________

Social Security Number (SSN) or Federal Employer Identification Number (FEIN):

____

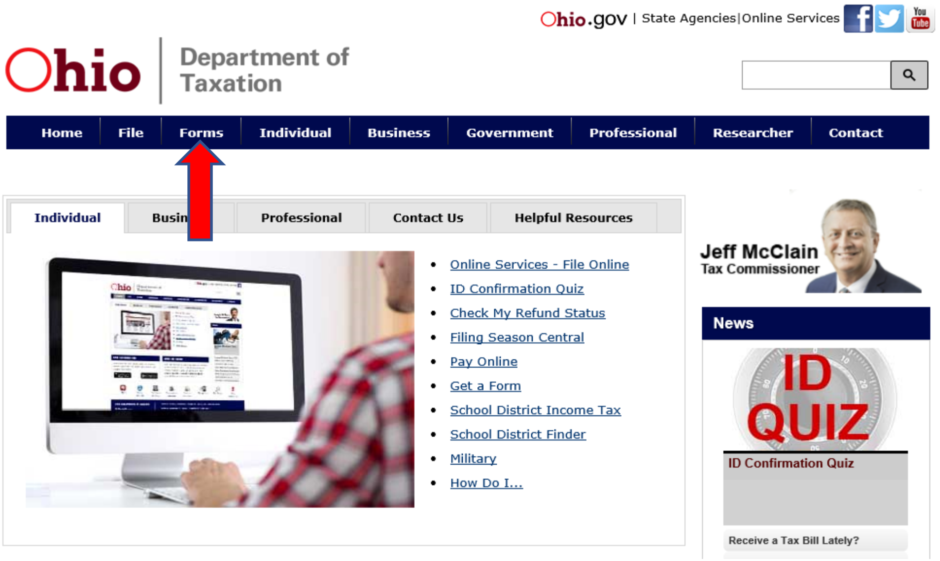
Phone: __________________ Vendor's License (if applicable): ___________________

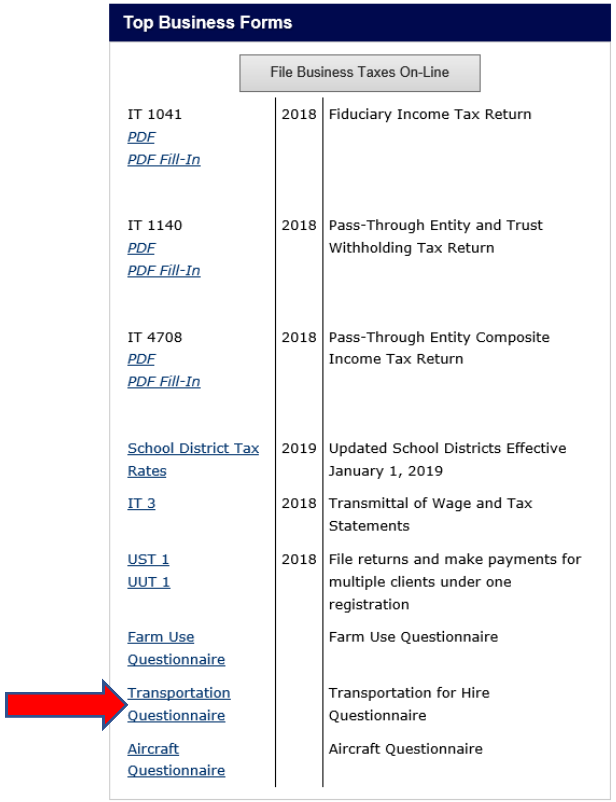
Email Address: ____

- Lower portion of Questionnaire
- Signature and Date
- Vendor's License
  - Important if claiming Towing Services or Taxi, Limousine

Ways of Submitting Questionnaire

- Questionnaires can be submitted electronically from the Department of Taxation's website, www.tax.ohio.gov
  - Forms tab
  - Top Business Forms
  - → Transportation Questionnaire
- Questionnaires will be located on the back of the original notices
- Completed Questionnaire can be submitted by mail or fax
  - Mailing address and fax number will be on the notice
- Can be submitted via email, vehicle.group@tax.state.oh.us





Towing Services

- Need active vendor license and active operating number to qualify
- Vehicle must be tow truck or rollback
- Non towing vehicles do not qualify
  - Sent to change tires
  - Jump battery
  - Provide Gas

Taxi and Limo Services

- Would be exempt under the Direct Use Public Utility exemption
- Typically purchased under the Transportation for Hire exemption
- To qualify must have an active vendor license at time of purchase
  - Important to list vendor license on questionnaire

Construction and Demolition Debris Trash or Garbage

- To qualify the "hauler" must not be the owner of the property being hauled
- Lines on questionnaire need to be filled out with information on owner of debris/ garbage

Hauling Construction Debris or Demolition Debris _______________%

Who will own the debris once it is hauled? ________________________

Hauling Trash or Garbage _______________%

Who will own the trash or garbage once it is hauled? ________________________

Questionnaire Filed Incorrectly

- In response to Tax Due or Assessment Notice
- Can submit corrected questionnaire
- Must provide supporting documentation for updated questionnaire and explanation
  - At least 10 invoices showing vehicle being used in Transportation for Hire
  - Can provide lease agreement for specific vehicle showing hauling for others

Farming Exemption, Generally

- Ohio does not tax sales “to persons engaged in farming, agriculture, horticulture, or floriculture” so long as the item purchased is used “primarily” in farming, agriculture, horticulture, or floriculture. O.R.C. 5739.02(B)(17).
- Sales of articles to be used or consumed in farming, agriculture, horticulture, or floriculture, directly in producing tangible personal property for sale, are not subject to the tax.
- Persons engaged in rendering farming, agricultural, horticultural, or floricultural services for others are deemed to be engaged directly in farming, agriculture, horticulture or floriculture.

Three Questions for Farm Exemption

- Farm exemption is not a status exemption: it is not available simply because someone owns farmland.
- For a sale to be exempt, there are three requirements:
  1. Was the seller engaged in one of the activities named by the statute *as a business*? (Farming, agriculture, etc.) *See Lee v. Testa*, BTA No. 2017-2278, 2018 WL 2409832
  2. Is the purchased item "directly" used in one of those activities?
  3. Is the purchased item "primarily" used in one of those activities?

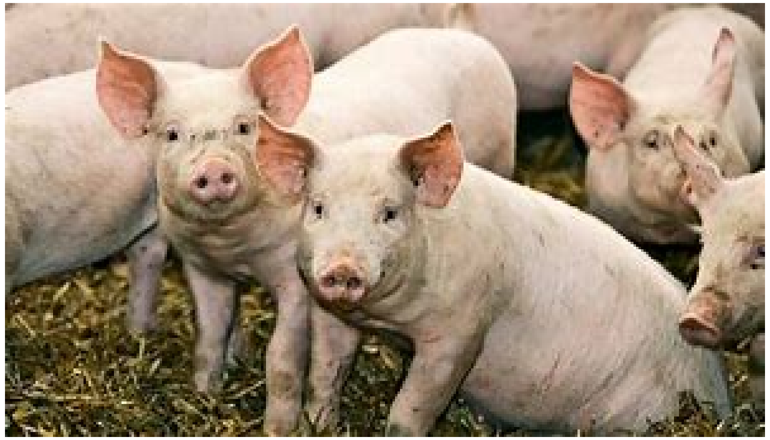
Farming under the O.A.C.

- What does it mean to be "engaged" in these activities?
- Ohio Administrative Code ("O.A.C.") 5703-9-23
  - Farming is defined as the occupation of tilling the soil for the production of crops *as a business* and shall include the raising of farm livestock, bees, or poultry, where the purpose is to sell such livestock, bees, or poultry, or the products thereof *as a business*.
  - You may begin to notice the reoccurring phrase "as a business." More on that later.

Agriculture

- O.A.C. 5703-9-23
- Agriculture is defined as the cultivation of the soil for the purpose of producing vegetables and fruits and includes gardening or horticulture, together with the raising and feeding of cattle or stock for sale *as a business.*





Horticulture

- O.A.C. 5703-9-23
- Horticulture is defined as the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock for sale *as a business* and includes the operation of commercial vegetable greenhouses or nurseries

Floriculture

- O.A.C. 5703-9-23
- Floriculture is defined as the production of flowers and plants for sale *as a business*, either in the field or greenhouse.

Practice Pointers: Forestry

- Must be currently engaged in producing tangible personal property for sale
- Even if the farmer has a plan from the Ohio Division of Forestry but is not yet selling, the purchase is <u>NOT</u> exempt
- Denied unless they are currently engaged in Agriculture, meaning that they are currently selling

Farming Exemption – Test Your Knowledge

- Daisy calls Bo and Luke (you may remember them from the first Test Your Knowledge) to help her choose a pick-up truck to buy from their friend Cooter's mechanic shop.
- Daisy plans on only using the truck to transport feed for her livestock from Hogg's Farming Supplies.
- When not using the truck, she stores it in a barn on her farm property.
- She only uses the truck to travel on public roads to get the supplies from Hogg's and return.
- On the title, Daisy notes that no tax was paid under the farming exemption. She receives her brand-new license plates from the BMV a few weeks later.
- Did Daisy properly claim the exemption?
- Unfortunately, no! Daisy will probably be receiving a letter from ODT in the coming months.

Vehicles Tagged for Road Use

- Equipment is only exempt that is **directly** used in farming, such as tractors, planters or combines that plow the fields, plant the crops or harvest the crops.
  - Not a status exemption
- Motor vehicles (automobiles, trucks, etc.) registered for use on the highways and used to transport seed, fertilizers, chemicals, animals or finished products are generally taxable.
- That's because the primary use of those vehicles would be considered *transportation*, not farming. *See Hedman v. Testa*, BTA No. 2018-373, 2018 WL 5268924.

Example Exceptions to the Rule

- Specifically designed vehicle that contains a tank, operated with a power take-off unit (PTO) that is used to spray liquid fertilizers, pesticides, herbicides, etc., on farm lands and crops.
  - If the tank/sprayer is not operated by a power take-off unit, the vehicle is subject to the tax while the tank/sprayer unit is not.
- Truck or trailer used to inoculate animals or transport ill livestock to quarantine areas. *See Skiles v. Tracy,* BTA No. 94-H-633, 1996 WL 765627.
- Trailer owned by the farmer to primarily transport feed to the farm that would otherwise be contaminated if shipped commercially would be exempt. *See Hemmelgarn & Sons, Inc. v. Zaino,* BTA No. 2002-T-473, 2004 WL 874810.
- Refrigerated vehicles (trucks or trailers) owned & used by egg producers to transport eggs from farm to market. *See id.*

Who Should Hold Title to the Vehicle?

- To qualify for exemption the vehicle must be titled to farming entity
- If an individual claim's the farming exemption and provides the schedule F of a parent, child, sibling, or associate the exemption will not be given
- If the vehicle is titled to an individual under an SSN and the taxpayer submits a schedule F for a corporation under a FEIN, the vehicle would not be tax exempt since the individual is not the farming entity
- If a spouse claiming the exemption files a joint return and their spouse files a Schedule F, we will accept the exemption.

What is Needed to Qualify

- Submitted Questionnaire showing exempt usage
- Supporting Documentation
  - Individual
    - Federal 1040 Pg. 1 and 2, Schedule 1, Schedule F
    - Federal 1041 Pg. 1, Schedule F
  - Partnership
    - Federal 1065 Pg. 1, Schedule F
  - Corporations
    - Federal 1120

No Schedule F

- If an individual files a Federal 1040, Schedule E with a form 4835 for farm rental income and no Schedule F then the exemption will not be granted since the individual is not the farming entity.
- If an individual files a Federal 1040 with a Federal Schedule C for business income and no Schedule F the exemption will not be granted

Questionnaire

- Questionnaire will be located <u>**on the back**</u> of the original notice
- Usage must equal 100%
- If listing "Other" it is important to be very specific in the explanation
  - If the explanation does not fit on allotted line you can attach an explanation

FARM USE QUESTIONNAIRE

Please indicate the percentage of use for each activity that applies to the vehicle.
Your total must equal 100%.

Sowing Seed	____________%
Cultivating Fields	____________%
Spreading Fertilizer on Fields	____________%
Spraying for Insects, Weeds, & Rodents	____________%
Hauling Seed, Grain, Fertilizer, Hay, & Feed for Livestock	____________%
Loading and Unloading Manure	____________%
Corralling Loose Livestock	____________%
Picking Up Rocks from Fields	____________%
Repairing Fencing	____________%
Field Inspection, Soil Sampling & Testing	____________%
Cutting & Hauling Wood, Cutting and Hauling Brush	____________%
Delivering Meals, Repair Parts or Messages to the Field	____________%
Transporting Harvested Crops (within boundaries of the farm)	____________%
Transporting Farm Machinery (within boundaries of the farm)	____________%
Hauling Trash and Garbage	____________%
Snowplowing	____________%
Picking up Mail	____________%
Recreational Activities (riding, hunting, etc.)	____________%
Other (Be specific) ____________________________	____________%
____________________________________	____________%
Total %	**100%**

I produce ______________________ (tangible property) for sale, as reported to the IRS.

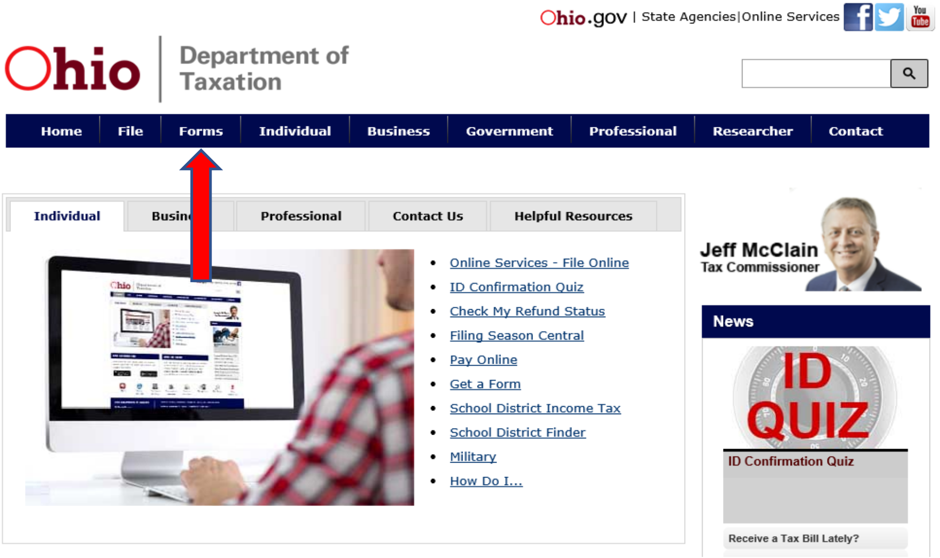
Signature: ____________________________________ Date: ____________

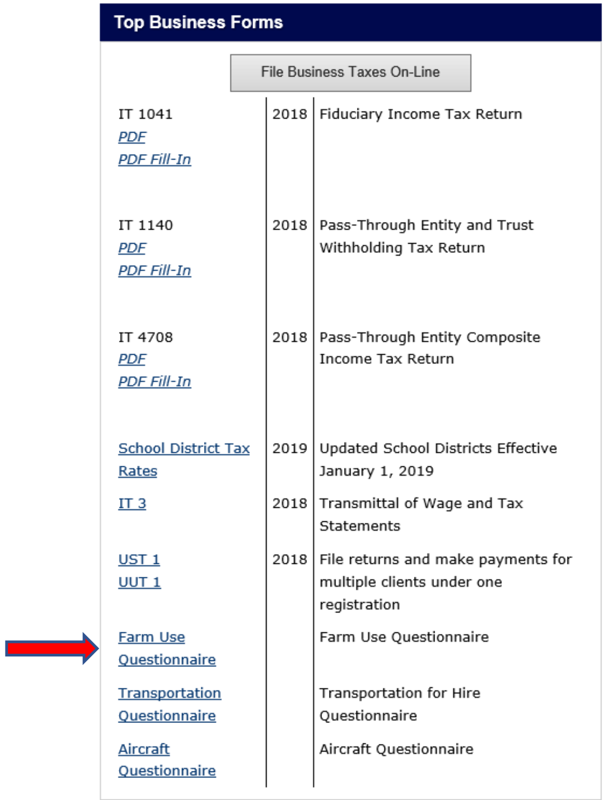
Social Security Number (SSN) or Federal Employer Identification Number (FEIN): ____________

Phone: ______________ Vendor's License (if applicable): ________________

Ways of Submitting Questionnaire

- Questionnaires can be submitted electronically from the Department of Taxation's website, www.tax.ohio.gov
  - Forms tab
  - Top Business Forms
  - → Farm Use Questionnaire
- Completed Questionnaire can be submitted by mail or fax
  - Mailing address and fax number will be on the notice
- Questionnaires can also be submitted via email, vehicle.group@tax.state.oh.us
- If submitting the questionnaire electronically supporting documentation can be submitted via email
  - Note in email that questionnaire submitted electronically





Top Business Forms

File Business Taxes On-Line

IT 1041 PDF PDF Fill-In	2018	Fiduciary Income Tax Return
IT 1140 PDF PDF Fill-In	2018	Pass-Through Entity and Trust Withholding Tax Return
IT 4708 PDF PDF Fill-In	2018	Pass-Through Entity Composite Income Tax Return
School District Tax Rates	2019	Updated School Districts Effective January 1, 2019
IT 3	2018	Transmittal of Wage and Tax Statements
UST 1 UUT 1	2018	File returns and make payments for multiple clients under one registration
Farm Use Questionnaire		Farm Use Questionnaire
Transportation Questionnaire		Transportation for Hire Questionnaire
Aircraft Questionnaire		Aircraft Questionnaire

Direct Use Public Utility

- O.R.C. 5739.02(B)(42)(a)
- Exempt from sales tax tangible personal property that is used directly in the rendition of a public utility service. The first requirement to qualify for that exemption is that the company must be providing a public utility service

Questionnaire

- Questionnaire will be located on the back of the original notice
- Unlike Transportation for Hire and Direct Use Farming
  - No % usage needed, just mark primary

PUBLIC UTILITY QUESTIONNAIRE

1. Please indicate the use of the above vehicle:

___ Ambulance Service - must attach Certificate of Public Convenience and Necessity *(The PUCO establishes the requirements to qualify for a Certificate. If the PUCO determines that a company's service does not require a Certificate, then the company does not qualify for the sales tax exemption in O.R.C. 5739.02(B)(42)(a) because it is not providing a public utility service.)*

___ Bus Company (vendor's license required below)

___ Cable Company

___ City, County, Municipal or Regional agencies (police, fire, water, sewer)

___ Telecommunications Company

___ Electric Company (complete question 2)

___ Limousine Service (vendor's license required below)

___ Natural Gas Company (complete question 2)

___ Taxi (vendor's license required below)

___ Trucking Company (Complete Transportation for Hire Questionnaire. It can be found at tax.ohio.gov).

2. Has vehicle been specially designed or equipped (e.g. lift truck, ladder racks, tool storage)?

___ Yes - please describe:

____

___ No

I certify that the information I have given on this questionnaire is correct.

Signature: ______________________________ Date: __________

Social Security Number (SSN) or Federal Employer Identification Number (FEIN): __________

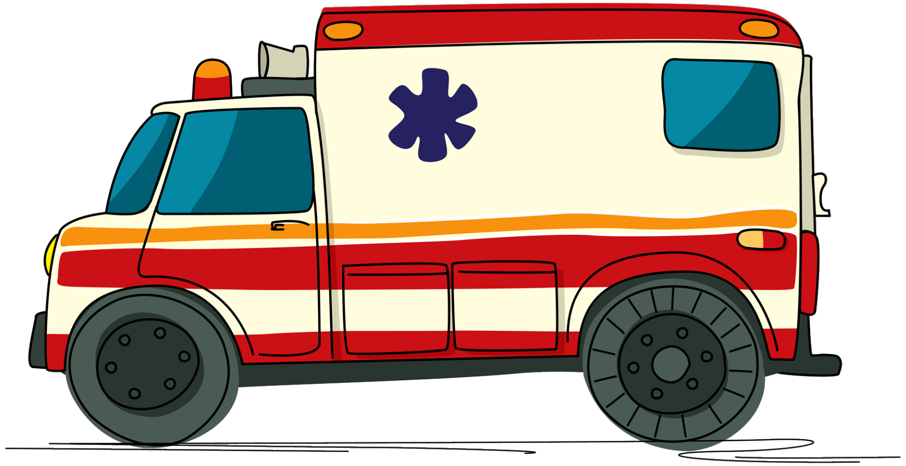
Phone: ____________ Vendor's License (if applicable): ____________

Ways to Submit Questionnaire

- Completed Questionnaire can be submitted by mail or fax
  - Mailing address and fax number will be on the notice
- Questionnaires can be submitted via email, vehicle.group@tax.state.oh.us
- Questionnaires can also be submitted electronically from the Department of Taxation’s website, www.tax.ohio.gov
  - Self Help eLibrary
  - →Section 5 “Vehicle and Aircraft Taxes Help”
  - →Downloads and Electronic Forms
  - →Public Utility Questionnaire

Ambulance Service

- Vehicle is directly and primarily used in providing the ambulance service
- Requires that the company have a certificate of public convenience and necessity (“Certificate”) from the Public Utilities Commission of Ohio
- Purchaser must provide a motor vehicle exemption certificate indicating that the vehicle is “used directly in the rendition of a public utility service.”
- Private Company
    - Do not qualify unless company holds certificate of public convenience and necessity from the Public Utilities Commission of Ohio



City, County, Municipal, Regional Agencies

- City, County, Municipal, Regional agencies (police, fire, water, sewer) are not considered under this exemption but due to vehicle being purchased by a government agency the purchase would be tax exempt
- Should claim exemption, "**SP** State/political subdivision"

Electric and Natural Gas Companies

- Must complete question 2 on the questionnaire
  - If allotted space is not large enough can attach supporting documentation
- Vehicle must be designed or equipped specifically to provide a service to qualify for exemption

Limousine and Taxi Services

- To qualify must have active vendor license
- Must provide vendor license number on questionnaire
  - Space provided under Signature

Trucking Company

- Trucking companies would not qualify under the Direct Use Public Utility exemption
- Could possibly qualify for the Transportation for Hire exemption
- Can submit Transportation for Hire questionnaire in response to Public Utilities notice if applicable
  - Will need to provide valid and active operating number
  - Form can be located on Taxation website, www.tax.ohio.gov

Manufacturing

- No questionnaire attached to inquiry
  - Must respond to inquiry with detailed description of how vehicle is being used
  - Provide supporting documentation (sales invoices, work orders, etc.)
- O.R.C. 5739.011, O.R.C. 5739.02 (B)(42)(g), and O.A.C. 5739-9-21 can be referenced for definitions, examples and exemption information

Cement Mixer

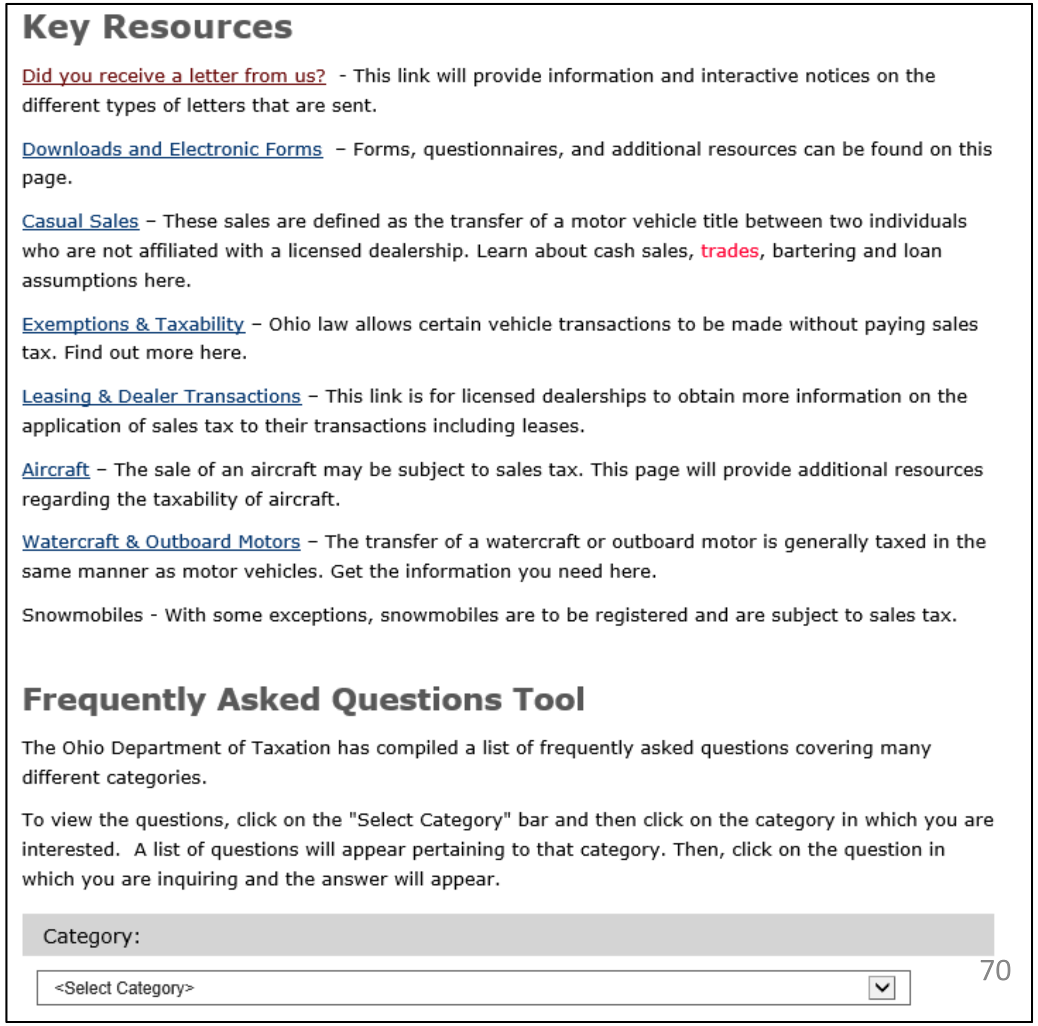
- Exemption would generally apply when the purchaser of a motor vehicle is using the vehicle (through a power take-off unit) in the production of a product for sale by manufacturing processing, or refining
- Cement mixer where the mixing unit is operated through a power take-off unit instead of a separate power source would qualify

Additional Information

- Additional information can be located on the Taxation website, www.tax.ohio.gov
- Additional information on all motor vehicle taxability issues can be accessed from the "Self Help eLibrary"

Self Help eLibrary

- Section Five
  - Vehicle and Aircraft Taxes Help
- Information available
  - Verify type of notice received from ODT
  - Printable copy of questionnaires/ certificates
  - General information on casual sales and exemptions
  - Leasing information
  - Aircraft information
  - Watercraft and outboard motor information
  - FAQs Tool



Key Resources

Did you receive a letter from us? - This link will provide information and interactive notices on the different types of letters that are sent.

Downloads and Electronic Forms – Forms, questionnaires, and additional resources can be found on this page.

Casual Sales – These sales are defined as the transfer of a motor vehicle title between two individuals who are not affiliated with a licensed dealership. Learn about cash sales, trades, bartering and loan assumptions here.

Exemptions & Taxability – Ohio law allows certain vehicle transactions to be made without paying sales tax. Find out more here.

Leasing & Dealer Transactions – This link is for licensed dealerships to obtain more information on the application of sales tax to their transactions including leases.

Aircraft – The sale of an aircraft may be subject to sales tax. This page will provide additional resources regarding the taxability of aircraft.

Watercraft & Outboard Motors – The transfer of a watercraft or outboard motor is generally taxed in the same manner as motor vehicles. Get the information you need here.

Snowmobiles - With some exceptions, snowmobiles are to be registered and are subject to sales tax.

Frequently Asked Questions Tool

The Ohio Department of Taxation has compiled a list of frequently asked questions covering many different categories.

To view the questions, click on the "Select Category" bar and then click on the category in which you are interested. A list of questions will appear pertaining to that category. Then, click on the question in which you are inquiring and the answer will appear.

Category:

<Select Category>

Additional Information FAQs

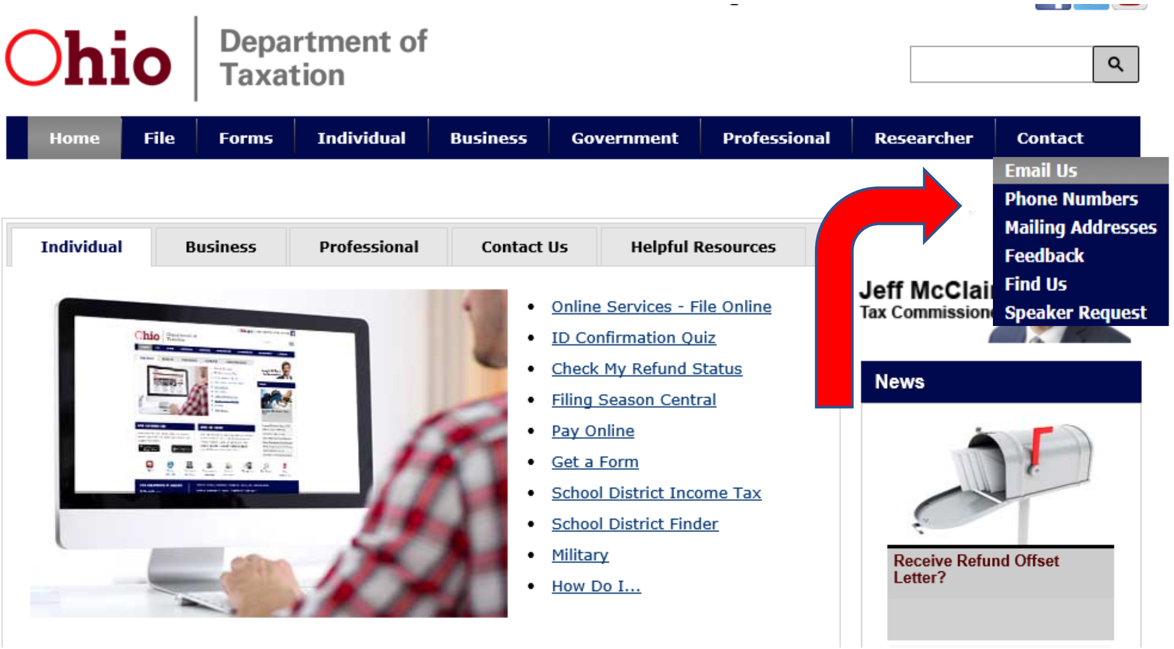
- Additional information can be located on the Taxation website, www.tax.ohio.gov
- Access the FAQ Icon
- In Category drop down select "Sales and Use- Motor Vehicles and Watercraft"
- Over 50 FAQ's covering a wide variety of motor vehicle topics

Additional Information-Information Releases

- Access the "Information Releases" icon
- Select "Sales & Use Tax" under the Current Information Releases
- Provide detailed explanation on certain tax topics

Questions and Contact Information

- Taxpayer Services
  - Business Tax - (888)405-4039
  - Email using the "Contact" feature on ODT website
- Compliance Vehicle Group
  - Email: vehicle.group@tax.state.oh.us



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