

January 2005
A Monthly Publication

Tom Enneking, Editor

Inside This Issue

- 1 **Happy New Year from the Library!**
- 1 **Engineering Drawings Exclusion Claim from Ohio Property Tax Fails**
- 3 **Collection and Service Changes**
- 4 **Legislative History CLE at the Law Library**
- 5 **Search and Seizure: Desktop Discovery**
- 6 **Copyrights on the Internet**
- 7 **New Titles at the Law Library**

The Cincinnati Law Library Association

Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202

General: (513) 946-5300
Fax: (513) 946-5252

Reference: (513) 946-5303
reference@cms.hamilton-co.org

Hours: Monday-Friday 7:30-4:30

<http://www.hamilton-co.org/cinlawlib/>

Happy New Year from the Library!

Please accept our best wishes for a very happy and successful new year. As a member of the Library Association, you already know the value the Library can bring to your practice. Where else can you get such inexpensive access to professional reference – live or via e-mail – service, free access to expensive databases and print research materials, and other practice resources, like computers and conference rooms?

In 2004, we introduced accredited CLE seminars and new electronic databases, added a wireless network and free coffee in a members lounge. We will continue to make changes in 2005 to make your membership even more valuable. We look forward to the Cincinnati Law Library Association being a part of your continuing professional success.

David Whelan, Law Librarian

Engineering Drawings Exclusion Claim from Ohio Property Tax Fails

Maryann B. Gall
Jones Day

This article is reprinted with the author's permission; Jones Day retains copyright. This article appeared on Mondaq (<http://www.mondaq.com>). The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about specific circumstances.

For decades, Ohio's personal property tax code has excluded the cost of engineering drawings from the tax base of machinery and equipment. The exclusion works because the definition of taxable "personal property" eliminates ". . . drawings that are held for use and not for sale in the ordinary course of business." R.C. 5701.03(A). For the same number of decades, the Ohio Department of Taxation has disliked the drawings exclusion and has demanded that the taxpayer-manufacturer prove its drawings costs by producing detailed invoices from outside engineering firms, if the taxpayer has used outside engineers to design, draw, and install the new project or renovate an existing site.

The problem is that the author has never seen an outside engineering firm render detailed invoices with drawings costs broken down by type and class of drawing and the hourly rates of drafters, designers and engineers who drew the drawings. Thus, the Ohio Department of Taxation routinely denies the taxpayers' claims for reduction in the

Cont'd on page 3



Cut straight to the historical text of your statute!



State Legislative History**

StatutesPlus now offers you crucial state legislative histories. In addition to our comprehensive federal legislative history information, updates and recent developments.

** State legislative history is available in select jurisdictions for 2004.

Westlaw® StatutesPlus™

StatutesPlus now offers **PastStat Locator™*** so you can instantly view your statute exactly as it existed on a particular date. That means you can still find, verify, read and interpret statutes with amazing efficiency, and be even more confident that your research is historically accurate and complete by eliminating the need to locate and reconstruct historical statutory text.

* PastStat Locator is available in select jurisdictions for 2004.

Skip the statutes research maze and go with the amazing Westlaw StatutesPlus. Experience it yourself! Visit west.thomson.com or call 1-800-762-5272 today.

© 2004 West, a Thomson business L-3082818-04

Differences that matter.

Westlaw

THOMSON
WEST

Engineering Drawings, cont'd from page 1

base of their Schedule 2 machinery and equipment. Many taxpayers have appealed to the Board of Tax Appeals and have largely prevailed. Unfortunately, this was not the result in *Anheuser-Busch Companies, Inc. v. Zaino*, Case No. 2003-K-699, Ohio Board of Tax Appeals LEXIS 1483 (Sept. 24, 2004) .

Construction Projects At Brewery

During tax years 1995 and 1996, Anheuser-Busch undertook four separate construction projects at its Columbus, Ohio, brewery and used two outside engineering firms. New or modified engineering drawings were created by these firms. However, neither firm's invoices separately stated ". . . the specific costs attributable to the creation of engineering drawings."

Taxpayer's Internal Analysis

After the Tax Commissioner denied Anheuser- Busch's claims for reduction in the taxable value of newly installed machinery and equipment as a result of the four projects, Anheuser-Busch appealed to the Board of Tax Appeals. The taxpayer's main proof was introduced through an internal analysis performed by a senior manager of engineering services who had worked for Anheuser-Busch for thirty years. This witness managed internal engineers who created drawings and also oversaw projects assigned to outside engineering firms.

In general, the witness "costed" the drawings by this process:

- organizing the drawings into a particular engineering discipline (such as mechanical vs. electrical);
- attributing an average number of hours for the creation of new or revised drawings;
- estimating the cost of each drawing by using reasonable prudent hourly rates times the estimated hours for creation of each drawing.

This methodology had been used by the taxpayer in *Duquesne Light Co. v. Tracy*, 88 Ohio St.3d 1459; *Duquesne Light Co. v. Tracy*, BTA Case No. 1995-K-40, *et. seq.* (June 2, 2000), which decision had been vacated after settlement of the case.

Cont'd on page 4

Collection and Service Changes

New Computers

Have you ever come to the library to work on one of the computers, only to find that all four machines in the computer lab are occupied? We recognize this problem and have added two new computers, both of which are found in the Microfiche Room (first door on the right, at the top of the ramp heading toward the back of the library). The computer located near the Ohio Room entrance may be used for research purposes, as well.

Book & Newsletter Giveaway

On occasion, the law library discards a title that is in good condition, either because the volume has been replaced or discontinued. Rather than throw it in the trash, we would like to give them away to interested members. We have placed a bookshelf in the entryway near the elevator, on which you will find books and newsletters. Feel free to take any that interest you.

Reference Collection Shift

In the past, the materials that comprise the reference collection had been divided between the Computer Room and a second location. To centralize this collection, it has been moved in its entirety into the Computer Room. We have moved one of our copies of the Ohio Revised Code, legislative history, and Ohio session law into the reference space, to make your statutory research easier to accomplish.



Engineering Drawings, cont'd from page 3

Application Of Supreme Court's Decision In United Telephone Company

In its analysis which ultimately rejected Anheuser-Busch's proof of its drawings costs, the Board of Tax Appeals found compelling the Ohio Supreme Court's *minority* opinion in *United Tel. Co. of Ohio v. Tracy*, 84 Ohio St.3d 506 (1999). There, the taxpayer used a statistical analysis to "cost" certain telephone line and cable property that was not used or usable in business and, thus, was not subject to taxation. The *minority* opinion insisted that the telephone company produce *all* the detailed records that existed to prove its tax claims, rather than relying on a statistical analysis.

Why The Wrong Standard Was Applied By The BTA

The author was counsel to the taxpayers in both *Duquesne* and *United Tel. Co.* In her humble opinion, the BTA clearly erred in using a "burden of proof" standard from a completely different kind of case. In *United Tel. Co.*, records existed but were too voluminous and changed to often to review in less than thousands and thousands of people hours. In the engineering drawings cases, *there are no records to review* because outside engineering firms do not, on a national industry basis, render "hourly" invoices as do law firms, accounting firms, and other consulting firms. Moreover, the statute, R.C. 5701.03(A), does not mandate any particular way of "costing" engineering drawings.

The case was not appealed. However, the Ohio Department of Taxation should see the difference between this case and *United Tel. Co.* and, hopefully, correct its wrong-headed *minority* view of the burden Ohio property taxpayers must bear to gain the exclusion that the law allows.

Did You Know Our Members Receive:

- ❖ Free Westlaw Access in the Library
- ❖ Free Internet Access in the Library
- ❖ Free Access to CD-ROM law libraries and forms
- ❖ Free Reference Assistance, in person, by phone, or via e-mail
- ❖ Extensive Ohio and Federal primary law collection in print and electronic formats
- ❖ Practice materials, including:
 - handbooks
 - rules
 - treatises
 - jury verdicts
- ❖ Borrowing privileges to nearly all materials in the Library's collection, including CLE materials.

Legislative History CLE at the Law Library

Are you an Ohio lawyer in need of CLE credit? The Cincinnati Law Library will offer a one-hour CLE led by **Thomas Enneking**, Assistant Law Librarian, at the Cincinnati Law Library Association, called **Legislative History: It's Easy**. [We are currently seeking CLE credit for this course from the Ohio Supreme Court].

Join us at the Law Library on Friday, February 25, 2005, from 3pm-4pm. Library Association **members: \$10**; Non-members: \$25. Please call Madonna Gresser at (513) 946-5300 to reserve a place or register online at <http://www.hamiltonco.org/cinlawlib/cle/signup.html>.

Search and Seizure: Desktop Discovery

David Whelan

The practice of law is increasingly reliant on technology and the files in which we save our work product: e-mail, documents, databases, calendars, and so on. The creation of the perfect system for finding information once it has been created is the holy grail of “knowledge management”. You can begin to take small steps towards this perfect system with a new utility called desktop search.

In the old days – 2004 or so – you might have created a contract for the Smith & Wesson Oil Company and wanted to re-use some of it for a similar arrangement involving another client. The trick was to then find out where it was stored. You likely had a paper copy but that would require retyping the document into the computer. A better option would be to find the original electronic copy, and modify that. By modifying the document, you save time spent in retyping (or scanning) the document, never mind having to create it from scratch.

How to find it? Recent surveys have found that only about one-third of all law firms use either case management or document management software. These would be ideal tools for organizing information in a way that made it readily accessible. For everyone else, the typical methods are to use the search function on their computer.

Several companies have now developed free utilities to enable you to look for information on your computer far more easily than before. The utilities, called desktop search, take advantage of Internet search technology and can begin to simplify your information seeking.

The Google Desktop is one of the better-known of these tools (<http://desktop.google.com>). The program, which you download and install on your computer, immediately starts to build an index of words in your files: documents, e-mails, PDFs, and even Web pages you’ve visited and chat room transcripts you’ve participated in. Once the index is built, Google Desktop will continue to add and modify its index as you add and modify information on your computer.

You can use Google Desktop in two ways. First, you can start up the Google Desktop application

on its own and use it to search your computer. The search works just like the Google search engine online (<http://www.google.com>). You type in a query – “contract sale business fixtures” – and the utility scans its index for documents on your computer that match. It then shows a page with results that include any Microsoft Outlook e-mails, documents in a variety of formats including Microsoft Office files (Excel, Word, Powerpoint) and PDF, and Web pages you’ve visited that are still on your computer. You can click on the link to any of these documents to open it, and your computer will start the appropriate program.

A second way to use Google Desktop is to pretend it isn’t there. Instead, go to the Google search engine (<http://www.google.com>) using your Web browser. Type in the same query – “contract sales business fixtures” – and you will now see the same results from the Internet. But wait! Right before the Internet results, there are also links that show files on your computer that match the query. Now you can choose to go to a Web site or to a file on your own computer, without having to do more than one search.

This raises some obvious security questions. If I can see search results from my computer on Google, can everyone else? The answer is, “No, they can’t.” The Desktop utility you installed is what is enabling those search results to appear. Anyone else running the same search will only get the Internet results.

Google is one of the better-known search engines but it is already facing competition in the desktop search market. Two other companies vying for your attention are Blinkx and Microsoft. All three programs work similarly, and none are available for the Macintosh operating system.

The Blinkx desktop search (<http://www.blinkx.com>) does not have the benefit of a behemoth search engine, as Microsoft and Google have. But the utility will watch what you are working on, and will suggest to you documents or information on your computer that are relevant to the task you are working on. It has the added benefit that you can search other computers in your network, if you have one. Neither Google nor Microsoft yet offers that ability.

Desktop Search, cont’d on page 7

Copyrights on the Internet

Lynda E. Roesch
Dinsmore & Shohl

Many assume that if a work is posted on the web, whether it be an article, a song or a movie, that it is fair game to copy the work. Unfortunately or fortunately, depending on your viewpoint, the mere fact that a work appears on the web does not provide an exemption from the copyright laws. In fact, one of the hottest and most contested areas of copyright litigation stems from using or copying works on the web.

You are probably aware of the litigation involving Napster, a file sharing service designed to permit the wholesale copying of music. Last summer, in *A&M Records, Inc. v. Napster, Inc.*, 57 USPQ 2d 1729 (9th Cir. 2001), a judge in San Francisco granted the Recording Industry of America's request for a preliminary injunction, and ordered Napster to shut down. Napster got a reprieve when the Ninth Circuit stayed the implementation of the injunction until they could hear the however, agreed with the District Court judge and ordered Napster to stop the sharing or copying of music. Napster is currently appealing to the entire Ninth Circuit, and it may one day find itself in the Supreme Court.

Similarly, in New York the movie industry has sued to stop wholesale copying of movies. Last year, in *Universal City Studios, Inc. v. Reimerdes*, 55 USPQ 2d 1873 (SDNY 2000), the court in New York, after a trial on the merits, ordered defendants to stop copying and to stop enabling others to copy movies that were protected through encryption technology.

Finally, the U.S. Supreme Court heard arguments at the end of March, 2001 about whether publishers have the right to copy freelance artists' works electronically. Even the Copyright Office has offered their view that such use is copying in *Tasini v. New York Times Co.*, 52 USPQ 2d 1186 (2nd Cir. 1999).

These high profile copyright cases illustrate several points that are worth keeping in mind as businesses and individuals use the web for commerce and communication. As a basic rule, copyright protects the following types of works:

- Literary works
- Musical works
- Dramatic works

- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures and other audio visual works
- Sound recordings
- Architectural works.

Conversely, copyright does not protect the following:

- Ideas
- Procedures
- Processes
- Systems
- Method of operation
- Concepts
- Principles
- Discoveries
- Facts
- Works of the Federal Government
- Copyright can protect selection and arrangement of facts

Under the copyright statute, the owner has the right to:

- Reproduce
- Prepare derivative works
- Distribute copies or transfer ownership
- Perform
- Display

Rights under the copyright statute are limited by fair use. This is a very complicated area and if this is a defense, you should obtain a legal opinion before copying. Fair use is normally found where a work embodies criticism, commentary, news reporting, teaching, scholarship or research. Copyright infringement litigation can be particularly painful for a defendant. Plaintiffs can obtain relief that includes actual damages or statutory damages up to \$50,000.00 per occurrence, an injunction, impoundment of infringing articles, and attorney's fees.

In order to avoid liability for copyright infringement,

1. Assume the material is protected by copyright, even without any notice; this includes matters such as e-mail, postings, sound or music, graphics, video, communications and software;
2. Get written permission from the copyright

Copyrights, cont'd on page 7

Copyrights, cont'd from page 6

owner for any material you want to use;

3. Comply with the terms of any license for the use of copyrighted materials;
4. Inform users of the website of any copyrights and licenses, and require users to agree that they will not infringe and will abide by the terms of any license; and
5. Do not assume copying is fair use.

If you actually create the material on the website, you should take the necessary steps to protect your rights. For any original material you put on your website you should take the following steps to protect your rights:

1. Put copyright notice on the work:
 - o © or copy or copyright; and
 - o year of first publication; and
 - o name of owner;
2. Restrict access to copyrighted materials through a license or fee;
3. Register the copyright and deposit copies at the Copyright Office;
4. Transfer rights in writing; and
5. Record transfers at the Copyright Office.

As the Internet increasingly becomes the media for exchanging information for business, entertainment or education, the law of copyright is expected to continue to be a hotly contested area in the next several years. It may well be worth the expense of a legal audit of your website to avoid or minimize any potential liability.

For more information on this or other copyright issues, please call Lynda Roesch at (513) 977-8139.

Editor's note: The author would like to acknowledge that on December 10, 2004, the United States Supreme Court granted certiorari in MGM STUDIOS INC. v. Grokster, LTD. (2004 WL 2289054, 73 USLW 3247). Furthermore, she states that readers should consult the most current laws regarding copyright, and that her article should not be construed as legal advice.

Desktop Search, cont'd from page 5

Microsoft released its MSN Toolbar Suite Beta (<http://beta.toolbar.msn.com>) as a direct challenge to Google's Toolbar (<http://toolbar.google.com>) and Desktop Search. It is hard to say how this tool will look in final form, but limited use found it wanting in locating information on the desktop. Additionally, it is possible that the tool will be slower in adding non-Microsoft file formats to its search than other tools. MSN is generally not as strong a search tool for the Internet, but Microsoft is making a significant investment in search technology and this is likely to change.

The appearance of desktop search utilities offers a time-saving, integrated information option for lawyers who need to find information in a hurry. The use of Internet search for the desktop allows busy professionals to merge their information seeking and take another step towards greater efficiency.

New Titles at the Law Library

- *Ohio Residential Code for One, Two and Three Family Dwellings*. International Code Council, c2000-.
- *The Law of Sentencing*, Arthur W. Campbell. Thomson West, c2004.
- *Floor Planning, Retail Financing, and Leasing in the Automobile Industry*, Roger D. Billings. Thomson West, 2004.
- *Brownfield's Law and Practice: the Cleanup and Redevelopment of Contaminated Land*, Michael Gerrard, ed. LexisNexis, 1998-.
- *Transfers with Retained Interests and Powers*, Joseph M. Dodge. Tax Management, 1992-.
- *Lawyer Disqualification: Conflicts of Interest and other Bases*, Richard E. Flamm. Banks and Jordan Law Pub. Co., 2003.



WORKING
HARDER TO
IMPROVE
YOUR
IMAGE



*Proudly Serving the Tri-State
Since 1936*

530 Reading Road
Cincinnati, Ohio 45202

(513) 241-COPY (2679)

Fax: 513-723-1349
e-mail: copycentral@zoomtown.com

**Cincinnati Law Library Association
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202**

ADDRESS CORRECTION REQUESTED

INSIDE THIS MONTH

- Engineering Drawings Exclusion
- Search and Seizure: Desktop Discovery
- Copyrights on the Internet
- Legislative CLE at the Law Library

JANUARY 2005 LIBRARY NEWSLETTER