



Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

June 2009

Ohio Supreme Court reverses the Ohio Board of Tax Appeals regarding when the three year statute of limitations period begins to run for filing a corporation franchise tax application for refund

By David A. Froling, Vorys, Sater Seymour and Pease LLP

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On April 30, 2009, the Ohio Supreme Court issued a decision styled Nestle R&D Center, Inc., v. Levin, Case No. 2009-Ohio-1929. This case involved the Ohio corporation franchise tax statute of limitations for filing an application for refund to claim a refundable jobs creation tax credit. In a 7-0 decision the Court reversed the Ohio Board of Tax Appeals decision holding that such statute of limitations period expired prior to Nestle filing its application for refund. See, Nestle R&D Center, Inc., v. Wilkins, Ohio B.T.A. Case No. 2006-M-1365 (June 3, 2008).

Nestle timely filed its tax year 2001 estimated corporation franchise tax reports that were due on January 31, 2001, March 31, 2001, and May 31, 2001. Nestle also timely filed its original 2001 corporation franchise tax report on October 9, 2001, six days before the extended due date of October 15, 2001. Nestle did not claim a refundable jobs creation tax credit on its original report. As of October 9, 2001, Nestle had not received a credit certificate issued by the Ohio Department of Development (“ODOD”) authorizing Nestle to claim such credit. ODOD issued Nestle its certificate on December 6, 2004. The certificate entitled Nestle to claim a \$43,696.80 refundable jobs creation tax credit on its original report.

In accordance with R.C. 5733.12(B) Nestle filed both an application for refund and a corresponding amended tax year 2001 corporation franchise tax report on January 6, 2005. Nestle's sole purpose in filing its refund application and amended report was to claim the \$43,696.80 jobs creation tax credit and receive the corresponding tax and interest benefits.

Relying on the statutory requirements within R.C. 5733.12(B) and 5733.0610 Nestle argued that the three year statute of limitations period to file an application for refund to claim its refundable jobs creation tax credit began to run on December 6, 2004, the day the Ohio Department of Development issued Nestle its certificate. Conversely, the Commissioner argued the three year statute of limitations period within R.C. 5733.12(B) began to run on October 15, 2001, the extended due date of Nestle's corporation franchise tax report. The Court observed that pursuant to R.C. 5733.12(B) an application for refund shall be filed “within three years from the date of the illegal, erroneous or excessive payment of the tax” and that any payment made before the franchise tax return is due “shall be deemed to

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Tech Tip: Checking Your Library Account

By Julie Koehne

Did you know our members are able to check their library account remotely? Members are able to see what they have checked out, when it is due, what is on hold or outstanding charges.

To check this information, go to the Law Library's home page at <http://www.cincinnatiilaw.org> and then click on the link "Check your Library account".

The screenshot shows the homepage of the Cincinnati Law Library Association. The main navigation menu includes 'Home', 'Sign out', 'Start', 'Search', 'Lists', 'My Account', and 'Help'. The 'My Account' menu is expanded, showing options like 'My Profile', 'My Checkouts', 'My Charges', 'My Holds', 'My Messages', 'My Password', 'My Routing', and 'My Requests'. A green callout box highlights the 'Check your Library account' link in the 'Library Members' section. Another green callout box explains the sign-in process: 'To sign in enter your Borrower Number and password, then click the "Sign In" button. Your password is the same as your Borrower Number unless you have changed it.' The 'Sign In' form includes fields for 'Borrower Number' and 'Password', and a 'Sign In' button.

Efficient Online Legal Research: Tips from a Power Searcher

By Mary Jenkins, Law Librarian & Director

Law library members benefited from an excellent presentation on efficient online legal research, offered on May 20 by Emily M. Janoski-Haehlen, Assistant Director of Research & Online Services, Chase College of Law Library, NKU. Emphasizing tools and strategies to save time and money, Ms. Janoski-Haehlen took us on a whirlwind tour of search engines (including meta search engines and several that are specific to law), public library resources available to residents, public records sites on the web, sources for company research and research on individuals, news alerts, blogs, and tips for improving search results. With her permission, we are highlighting sites you may want to explore and save:

Search Engines

Keep in mind that search engines won't find everything on the web. Your best bet for something approximating comprehensive research: a meta-search engine like [Ixquick](#), [Clusty](#), and [DogPile](#) or hybrid search engines with advanced searching capabilities like Google and Exalead.

Legal Search Engines and Compilation Sites

You already know about FindLaw.com but be sure to consider the following sites as well:

WashLaw <http://www.washlaw.edu> links to "everything" law-related on the web

Lawyer Express
<http://www.lawyerexpress.com> legal resources for lawyers

AllLaw.com <http://www.AllLaw.com> links to practice area materials and attorney directories

MegaLaw <http://megalaw.com> links to directories and state and federal sites

HieroGamos <http://www.hg.org> for domestic and international law practice information

Track Updates on Websites

<http://WatchThatPage.com> to monitor any updates on a site

<http://TrackEngine.com> to monitor any updates on a site – great for competitive intelligence

<http://WayBackMachine.com> to see what used to be on a site

Google Alerts www.google.com/alerts to monitor topics, people, companies, and yourself on the web

Public Records on the Web

Public Record Finder –
www.publicrecordfinder.com

Pretrieve – www.pretrieve.com

Search Systems - www.searchsystems.net/

NETROnline - www.netronline.com/

Public Record Research Library –
www.brbpub.com/

The Ultimates – www.theultimates.com

Social Security Searches:

- Social Security Death Index –
<http://ssdi.rootsweb.com>
- SSN Validator – www.ssnvalidator.com

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Board of Tax Appeals, continued from page

have been made on the due date or extended due date.” The Court then stated that entitlement to a refund is predicated on two elements: first, that a payment was made; second, that the payment was illegal, erroneous, or excessive. Because the taxpayer must prove the illegal, erroneous, or excessive character of a payment in order to qualify for a refund, a refund claim does not accrue until all circumstances are present that cause the payment to be illegal, erroneous or excessive. Accordingly the court said it must determine when the payments at issue became illegal and excessive.

The Court concluded that the issuance of the certificate on December 6, 2004 retroactively established the illegal and excessive character of the payments that Nestle made with respect to its original tax return. It was significant to the Court that the jobs creation tax credit was a refundable tax credit as opposed to a nonrefundable tax credit (i.e., the taxpayer receives the full benefit of the tax credit even if the taxpayer’s tax liability is less than the value of the credit). In this regard, there has been no “payment” to the extent such credit exceeds the amount of actual payments that have been made. As a result, there is no absolute point of reference to tell the taxpayer when to file its refund claim. The court stated that receiving a certificate was an essential element to receiving the tax credit. Accordingly, Nestle’s refund claim accrued, for purposes of the statute of limitations period, on December 6, 2004, the day ODOD issued Nestle its certificate.

Aside from benefiting taxpayers similarly situated to Nestle, this case may prove to be important for several additional reasons. First, the Ohio corporation franchise tax remains in effect for financial institutions. Second, individual taxpayers can claim a refundable jobs creation tax credit on their

personal income tax return. Third, taxpayers can claim such credit against the Ohio commercial activity tax. Fourth, other states offer refundable tax credits and the Court’s decision may influence how the statute of limitations is interpreted and applied in those states.

Mr. Froling is an associate at Vorys, Sater, Seymour and Pease in the Columbus office and a member of the tax group. He has more than 13 years experience with all types of state and local tax issues and in particular, matters involving corporation income/franchise tax, pass through entity tax, commercial activity tax, sales and use tax, personal income tax, trust tax, dealers in intangibles tax, municipal income tax, and unclaimed funds (escheat).

Congratulations!

The Cincinnati Law Library offers its congratulations to member Joanne Wissman Glass of Frost, Brown, Todd upon receipt of the John W. Warrington Community Service Award. Congratulations, also, to the Hon. Timothy S. Black, recently honored with The Themis Award for extraordinary service to law and the community.



State of Ohio Board of Tax Appeals Information

By Glenna Herald

The Board of Tax Appeals' website gives information concerning the tax appeals process in Ohio. This includes their changing policies, Rules of Practice and Procedure, and a very helpful Frequently Asked Questions section. To begin your research, start here:

<http://www.bta.ohio.gov/>

While searching their site I found that, although the Board does not require a specific form when filing an appeal, they do offer the following for appellants to use when pursuing an appeal from a decision of a municipal board of appeal. This form is available here:

<http://bta.ohio.gov/MunNoA.pdf>

Another important feature their website offers is access to full-text merit decisions and interim orders from 1997 to the present. A listing, by case number and nature of tax, of all decisions on the merit docket, stipulations, dismissals and other orders and interim orders of attorney examiners can be found in the *Weekly Announcement* section of their website located here:

<http://www.bta.ohio.gov/>

If, however, you need a decision rendered by the Board prior to January 3, 1997 please contact the CLLA. We have, in print, many of the Board's decisions, though not every decision is published. Only cases of "legal significance" are chosen for publication.

Another option for obtaining hard to find Tax Appeals Decisions is to contact the Board's offices directly. They should provide you with a free copy of the decision you need. To contact them, call 614-466-6700.

As usual, please ask our assistance with these or other resources. We are happy to help.

Member Benefits

All members have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online** Law Journals and Federal Register, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom **videoconferencing**

5 **meeting rooms** with speaker phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

Company Information

Use the online resources that your public library provides, for example:

<http://www.cincinnatiilibrary.org/resources/research.arch.asp> including ReferenceUSA

Zimmerman's Research Guide
<http://www.lexisnexis.com/infopro/zimmerman/>

CEO Express www.ceoexpress.com

SEC filings
<http://www.sec.gov/idea/searchidea/webusers.htm>

10K Wizard <http://www.10kwizard.com>,

Skyfinder <http://www.skyfinder.com>, GSI Company Roundup Report

Better Business Bureau <http://www.bbb.org>,

Angie's List <http://www.angieslist.com>

Finding People

Accurint <http://www accurint.com/>

ZoomInfo <http://www.zoominfo.com/>

LegalDockets.com <http://legaldockets.com/> for filings, case dockets, and public records

If you have questions about any of these sites or effective web-based research, please call the Cincinnati Law Library Association at 513.946.5300 or your firm's librarian.

Save a tree!

Are you currently receiving the CLLA newsletter in print? Would you prefer an online version? CLLA members who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email reference@cms.hamilton-co.org with a request to switch formats.

Looking for a Good Book on Electronic Discovery? Try These:

By Mary Jenkins, Law Librarian & Director

Discovery of electronically stored information : surveying the legal landscape / Ronald J. Hedges

E-discovery : now what? / Rodger W. Moore...[et al].

E-discovery update : changes in Ohio rules of civil procedure / [featured speaker, Donald A. Wochna].

Electronic discovery and records management guide : rules, checklists, and forms / Jay E. Grenig, Browning E. Marean, Mary Pat Poteet.

Electronic evidence : law and practice / Paul R. Rice.

The ethics of e-Discovery / John M. Barkett.

The impact of the federal rules changes on electronic discovery and document storage [in Ohio]/ prepared by Robert L. Ellis ... [et. al]

Privilege issues in the age of electronic discovery / by David J. Lender.

Proving your case with computer forensics / authors: Brett Burney [et al]



Hamilton County Law Library Board Members Named

By Mary Jenkins, Law Librarian & Director

As you have read in earlier issues, 127 H.B. 420 creates a County Law Library Resources Board in each county, shifting governance of the county law libraries from the private law library associations to the newly established CLLRBs, effective January 1, 2010. The five members of the Hamilton County CLLRB have been named by the four appointing authorities:

James T. O'Reilly, Chair, term expires 12/31/2014
Michael Florez, term expires 12/31/2010
Timothy P. Reilly, term expires 12/31/2011
William D. Bell, Sr., term expires 12/31/2012
John Cobey, term expires 12/31/2013

Additionally, two trustees of the Cincinnati Law Library Association, Barbara Silbersack and Stephen L. Black, will serve on the CLLRB from July 1, 2009 through December 31, 2010, assuring continuity and a smooth transition. The CLLRB will meet in July of this year as required by statute to prepare a budget and to begin to adopt rules for the operation of the Law Library. The mission is unchanged: The library staff will support the legal research needs of the bench, the bar, and county officials and the Cincinnati Law Library Association will continue. As we move closer to January 1st, we will share any developments, though we emphasize that the CLLRB will offer excellent stewardship of the Law Library, maintaining the level of service that the Bar, elected officials, and judges have enjoyed since 1847.

If you have comments or questions about the CLLA, the CLLRB, or the law library generally, please contact Mary Jenkins, Cathy R. Cook, President, CLLA, or Jim O'Reilly, Chair, CLLRB. Members are also invited to attend the CLLA Annual Meeting on June 25 to hear more about the governance changes.

Inside Look for Summer Associates

By Mary Jenkins, Law Librarian & Director

The Cincinnati Law Library Association joins with the CBA's Legal Research & Information Resources Committee in announcing the 14th Annual Inside Look for Summer Associates. The registration deadline is June 3 so you will want to complete the registration quickly if you haven't already. Here's the link:

<http://www.vorys.com/assets/attachments/Inside Look 2009 official brochure.pdf>

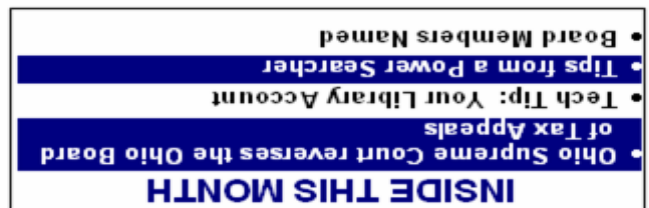
Inside Look gives summer associates a candid look at the daily realities of practicing law, featuring sessions with prominent local attorneys in various practice areas. It is an excellent professional development opportunity for your summer associates.

Annual Meeting Scheduled for June 25

The Board of Trustees has scheduled the 2009 Annual Meeting of the Cincinnati Law Library Association at 12:00 noon on Thursday, June 25. The meeting will be held in the Hon. Robert S. Kraft Boardroom in the Law Library. All members are welcome to attend. To aid us in planning, please contact Madonna at mstoneki@cms.hamilton-co.org or 513.946.5300 if you expect to attend. Lunch will be provided. On the agenda as of this writing:

- Approval of Minutes of the 2008 Meeting
- Annual Report
- Election of Trustees
- Update on the Transition to the County Law Library Resources Board
- Other Business before the Membership

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