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## Welcome to the *Business Compass*



Welcome to our August issue of the Business Compass. Our first article, written by **David Kern (Akron)**, discusses how many organizations have lost their tax exempt status with the IRS and how they can reinstate it. **Steve Dimengo and Rich Fry (Akron)** authored the second article focusing on Ohio's Use Tax Amnesty Program. The last feature article, authored by myself, introduces us to the newest member of our practice group, **Rose Schindler (Boca Raton)**, who brings with her years of securities law experience.

I hope you enjoy this edition of our newsletter. If you have any questions about any of the articles or about any other business law issue, please contact any of our practice group members. As always, we welcome your opinions and feedback. Thank you.

*Robert W. Malone*  
Business Practice Group Chair

## FEATURE ARTICLES

### 275,000 organizations lose tax exempt status

By: **David Kern**



A recent news release from the Internal Revenue Service reported that as of June 8, 275,000 organizations had lost their tax exempt status for failing to comply with tax law changes that became effective in 2007.

The new tax laws that caused the compliance issues were enacted under the Pension Protection Act (PPA) of 2006. They required all tax-exempt organizations to file any of the applicable Form 990's with the IRS. The penalty for failing to do so for three consecutive years is the revocation of the entity's tax exempt status.

To help establish compliance with the revised reporting requirements, the IRS sent out more than one million notices to organizations that had not been required to file prior to the enacted tax law changes. Clearly, the message did not get through to many tax exempt businesses.

Addressing the issue again, the IRS has now issued new procedures that will allow adversely affected organizations to have their tax exempt status reinstated – in some circumstances retroactive through the date of revocation.

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## RECENT NEWS

- Steven Dimengo (Akron) and David Hilkert (Akron)** recently succeeded in obtaining a favorable judgment with the Ohio Supreme Court for their client, WCI Steel, Inc. The Court's 7-0 decision essentially allows an appellant to introduce a new appraisal to the Ohio Board of Tax Appeals (BTA) even though it was not previously presented at the administration appeal to the tax commissioner. Further, the decision ruled that "the jurisdiction of the State Board of Tax Appeals (BTA) is invoked to review a determination of the value of personal property if the notice of appeal states the appellant's objection and identifies the treatment the state tax commissioner should have applied." The Court "remanded the case to the BTA to determine WCI's appeal on the merits."

# BUCKINGHAM

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## Buckingham adds new securities law expertise

By: Robert W. Malone



Buckingham has added new capabilities to its Securities Law Practice Group with the addition of Rose M. Schindler, former vice president of the Financial Industry Regulatory Authority (FINRA) and southeast regional director of FINRA Dispute Resolution.

Schindler joined the firm as a partner in the Boca Raton office. She has extensive regulatory knowledge and experience with both FINRA and the Securities and Exchange Commission (SEC). She also brings regulatory experience as former in-house litigation counsel with a Midwest-based broker/dealer.

With her addition, Buckingham will now be able to represent clients in the securities industry in regulatory investigations and provide compliance consulting.

Currently, the firm represents both broker/dealers and investors in arbitration proceedings before the FINRA and National Futures Association (NFA).

Many investors do not realize that arbitration is mandatory for investors who have a dispute with their broker/dealer and/or financial advisor and wish to recover damages. A state, federal or regulatory investigation, by itself, will not result in a recovery to the investor. Arbitration can provide all remedies generally available in a court proceeding, but is generally less expensive primarily due to limited discovery and motion practice. It also is more efficient, averaging 15 months from filing to award.

In addition to Schindler, Jim Kraus and other members of the practice group have experience representing business clients who want to raise private funds to expand their business. They are familiar not only with Ohio and federal securities laws, such as the Securities Act of 1933 and rules promulgated thereunder, but also the securities laws of other states – generally referred to as Blue Sky Laws.

A common error made by many corporations and individuals when they engage in a securities offering is mistaking the offering document for a marketing document. The offering document is best described as a risk disclosure document that prepares potential investors for the possibility of a failure of the business and loss of their investment.

Anyone considering a private or public securities offering should consult with securities lawyers prior to the offering.

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## 275,000 organizations lose tax exempt status

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Any organization hoping to reinstate its tax exempt status will have to file a new Application for Recognition of Tax-Exempt Status on Form 1023 with the IRS and carefully comply with the new procedures. Applicable provisions and requirements for reinstatement may vary based upon 2010 gross receipts.

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## Ohio Budget Bill offers incredible amnesty opportunity to consumers for Ohio use tax

By: **Steven A. Dimengo** and **Richard B. Fry, III**



Whether currently under audit or unregistered to pay Ohio use tax, the Ohio Budget Bill signed into law by Governor Kasich on June 30 provides a historic opportunity for consumers to resolve their Ohio use tax liability and start with a clean slate.

The Use Tax Amnesty Program is aimed at increasing registration for Ohio use tax by allowing consumers to resolve their use tax liability by paying all taxes owed from January 1, 2009 through the present. If the consumer had not registered to pay Ohio use tax prior to June 1, 2011, interest and penalties will be waived. If the consumer had registered prior to June 1, interest and penalties may be charged on the tax due.

The program will begin October 1, 2011, and run through May 1, 2013. Significantly, taxpayers currently under audit will be eligible to participate in the Use Tax Amnesty Program, provided the Tax Commissioner does not issue a consumer use tax assessment prior to September 29, 2011.

The Tax Commissioner will be releasing rules, forms and instructions with further details concerning the program shortly.

Additionally, the Budget Bill amended R.C. 5703.58(B) to prohibit a consumer use tax assessment in all circumstances for tax due prior to January 1, 2008, as long as an assessment is not issued before September 29.

The Ohio use tax applies to the storage, use or consumption of tangible personal property or certain taxable services in Ohio. In transactions where sales tax was not collected by the vendor or seller, a use tax of equal amount is due to the state from the consumer.

The Use Tax Amnesty Program, coupled with the general limitation on consumer use tax assessments for tax owed prior to 2008, effectively ends the enforcement component of the Tax Commissioner's Use Tax Education Program announced in January, as the threat of a seven year audit for unregistered taxpayers no longer exists.

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