

OHIO BOARD OF TAX APPEALS AGAIN REJECTS TAX COMMISSIONER'S ARGUMENT RELATING TO PERMANENT ASSIGNMENT

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RICHARD C. FARRIN, JD
MEMBER

Ohio Board of Tax Appeals Again Rejects Tax Commissioner's Argument that Fluctuation in Staffing Levels Precluded Taxpayer's Claim that the Personnel Qualified for the Permanent Assignment Exclusion of Taxable Employment Services.

In *Career Staffing, LLC v. Testa*, BTA Case No. 2016-2617 (August 2, 2018), the Ohio Board of Tax Appeals ("BTA") again reversed a Final Determination of the Tax Commissioner holding that the taxpayer's provision of staffing services did not qualify for the permanent assignment exclusion from the definition of taxable employment services provided in R.C. 5739.01(JJ)(3) because of frequent fluctuations in the number of individuals assigned. The positions filled by the personnel provided by taxpayer were physically demanding, which resulted in frequent fluctuations in the number of individuals provided. The Tax Commissioner held that these frequent fluctuations indicated that the individuals were not permanently assigned. The BTA disagreed, finding that there was no indication that the frequent fluctuations were due to seasonal or short-term workload needs. The BTA found that the evidence presented indicated that the intent was to provide permanent

staffing personnel, regardless of the frequent fluctuations that resulted from the nature of the work. Hopefully, this latest decision will further impact how the Ohio Department of Taxation approaches audits of taxpayers when there are fluctuations in the number of individuals assigned.

If you would like to discuss this topic, please contact [Rich Farrin](#), or [any of the other professionals](#) at Zaino Hall & Farrin LLC.

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