

# OHIO BOARD OF TAX APPEALS

Money Access Services Corporation,	)	CASE NO. 98-M-1006
	)	
Appellant,	)	(CORPORATE FRANCHISE TAX)
	)	
vs.	)	ORDER
	)	
Roger W. Tracy,	)	(Denying Motion for Reconsideration)
Tax Commissioner of Ohio,	)	
	)	<a href="#">Link to Decision of June 2, 2000</a>
Appellee.	)	

## APPEARANCES:

For the Appellant -

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For the Appellee -

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Entered June 23, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is again before the Board of Tax Appeals following the filing of a motion by the Tax Commissioner requesting that we reconsider our decision announced on June 2, 2000. In our decision, the Board reaffirmed our earlier holding in *Customized Transportation v. Tracy* (Mar. 16, 1996), B.T.A. No. 93-K-364, unreported, where we concluded that a taxpayer may measure franchise tax due

the state based upon a “taxable year” which is less than a calendar twelve month period which, under the circumstances, was consistent with its taxable year for federal income tax purposes.

The Attorney General has included with the motion for reconsideration, a brief that fully develops the Tax Commissioner’s reasons for affirmance of his prior determination as expressed in his final determination.

We have carefully considered the arguments made by the Tax Commissioner and find none of them sufficient for us to revise our determination. The Tax Commissioner asks us to reconsider our conclusion in *Customized Transportatio* , *supra*, where we held the definition of “taxable year” for federal tax purposes permits a taxpayer to use a short year for measurement of Ohio franchise tax due.

While the Tax Commissioner makes certain assertions regarding Green Machine’s ability to utilize a short taxable year for federal tax purposes, the fact remains that Green Machine’s income for the 1992 calendar year was reported through two separate federal income tax returns. In *Customized Transportation*, *supra*, the Board concluded that the “short period” reported for federal tax purposes could be utilized as “a portion [of the year] thereof” for purposes of R.C. 5733.031(A). While the Tax Commissioner attempts to limit the phrase “or portion thereof” to cover only new taxpayers not in existence for the full year, the statute contains no such limitations.

The Commissioner’s arguments regarding the applicability of revised Ohio Adm. Code 5703-5-04 have also been addressed in our decision.

After careful consideration of the motion to vacate and the brief, we find no basis to reconsider our original decision, nor do we find any legal argument which would cause us to affirm the Tax Commissioner’s findings, not already considered. Accordingly, it is the order of the Board of Tax Appeals that the Tax Commissioner’s motion for reconsideration is not well taken and it is hereby denied.

