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Pining for Answers in Ohio Tree Law

by Chad M. Stonebrook, *Associate Lardiere McNair, LLC*

Central Ohio is home to many beautiful and established neighborhoods that have been around for over a hundred years. From Grandview to German Village to Upper Arlington to Clintonville and so on, old houses line the streets. With old neighborhoods and houses, also comes matured trees. Those trees have become ingrained in neighborhoods, and often extend from one property to the next. Problems can arise between neighbors that have disagreements over the growth patterns of the tree. The best practice to avoid problems is to communicate with your neighbors and resolve any potential conflict. However, sometimes that isn't enough.

How is tree ownership determined in Ohio?

A tree is owned by the property owner of the property upon which the tree grows. Ohio law states that the property line extends upward toward the sky. The limbs of the tree extending onto another property do not extend ownership to that property owner. However, a tree that is growing on the property line is deemed jointly owned by both neighbors.

If a tree falls and damages property, who is responsible for the damage?

Ohio law states that tree owners are not responsible for the damages caused by their trees, unless the tree owners are negligent. *Shoemaker v. Harris,* 1998 Ohio App. LEXIS 6066. Negligence arises out of whether not tree owner has actual knowledge of a weakened tree. *Hay v. Norwalk Lodge No. 730, BPOE*, 92 Ohio App. 14, 3 (1951). If the owner has knowledge of the weakened condition, and damage occurs, they are liable. If the tree is not in a weakened or damaged condition, or if they reasonably do not have notice of the same, the owner is not liable for the damage.

In summary, the party whose property is damaged bears the responsibility of the damages, unless the owner of the tree was negligent.

Does the owner of the tree have a duty to inspect the tree?

In urban areas like Central Ohio, a tree owner may also be liable for damage if they have constructive notice of a weekend tree. These owners have a duty to inspect their trees regularly. A tree owner in an urban area is treated as though that owner has actual knowledge of the results of an actual tree inspection. If an inspection of a tree would not have given the tree owner knowledge of a weakened state, the tree owner is not liable for any damages resulting from a fall.

In rural areas, the standard for inspection is lower. Generally, property owners are not responsible for regular inspections of their trees, unless the condition of the tree is obviously weakened as stated above.

What if my tree hangs over my neighbor's property—can she or he make me trim it?

You are not required to do so, as you are not liable for the damages unless the tree is weakened, and you reasonably should notice, as stated above.

Can my neighbor trim my tree?

Sure. If the limbs or branches of your tree extend onto the neighbors' property, she or he may remove those limbs that overhang such property.

However, the neighbor needs to be cautious when cutting/trimming the tree. The neighbor cannot kill or otherwise cripple the tree, and needs to exercise reasonable care. Ohio Revised Code §901.51 do not permit injuring the vines, bushes, trees, or crops on the land of another. This could result in treble damages (three times the value of the tree).

Who can cut the limbs (or entire tree) of a jointly owned tree?

Either neighbor may cut the branches that extend onto their own property, but must obtain permission from their neighbor before cutting additional branches, or the entire tree.

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Notable Quotables

The pen is the tongue of the mind.
~Horace

Success - keeping your mind awake and your desire asleep.
~Walter Scott

Most great people have attained their greatest success just one step beyond their greatest failure.
~Napoleon Hill

The best day of your life is the one on which you decide your life is your own. No apologies or excuses. No one to lean on, rely on, or blame. The gift is yours - it is an amazing journey - and you alone are responsible for the quality of it. This is the day your life really begins.
~Bob Moawad

In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing.
~Theodore Roosevelt

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3 Tax Deductions That Could Lead to an Audit

These write-offs raise the biggest red flags.

by Dan Caplinger, *The Motley Fool* - December 16, 2015

Getting audited is many taxpayers' worst nightmare, but that shouldn't stop you from taking advantage of the tax deductions you're legally entitled to take. You should just take care to make sure you have the documentation you need to back up your deduction if the IRS decides to take a closer look at your return.

Below, you'll learn about three tax deductions that often raise red flags from would-be auditors.

1. Home office deduction

Self-employed entrepreneurs often work out of their homes, and the tax laws provide for such businesses to deduct the legitimate expenses that are connected with their home-based business. If you meet the requirements for a portion of your home that's used regularly and exclusively for business use, and is your principal place of business, you can usually prorate your overall household expenses by the fraction of your home's total area that your business takes up. In addition, you can deduct in full expenses that are directly linked to your business and aren't shared throughout the remainder of your home for personal use.

Abuse of this provision has led to increased IRS scrutiny. The most important thing to remember is that you need to be able to document the separate area and its exclusive business use, so if your business takes up a large fraction of your overall property, you'll need to prepare to prove it. In addition, ensuring that all claimed expenses are business-related is important in maintaining your credibility during an audit.

2. Charitable deductions

Donations to charity are usually tax-deductible to those who itemize their deductions, and the IRS has paid increasing amounts of attention to charitable deductions in recent years. Gifts by check are hard to falsify, but claiming large amounts for donated items like cars or used clothing has been a frequent area of abuse among taxpayers.

In judging your charitable donations, the IRS will compare your deductions with those of taxpayers in a similar financial situation based on your tax return. If you're on the high side of average, the risk of an audit will increase, and it'll be more important for you to keep good records on what you gave, when you gave it, and how you determined the appropriate value of the property. Fail at any of those tasks, and you could be left unable to support your deduction to an IRS auditor.

3. Unreimbursed business expenses

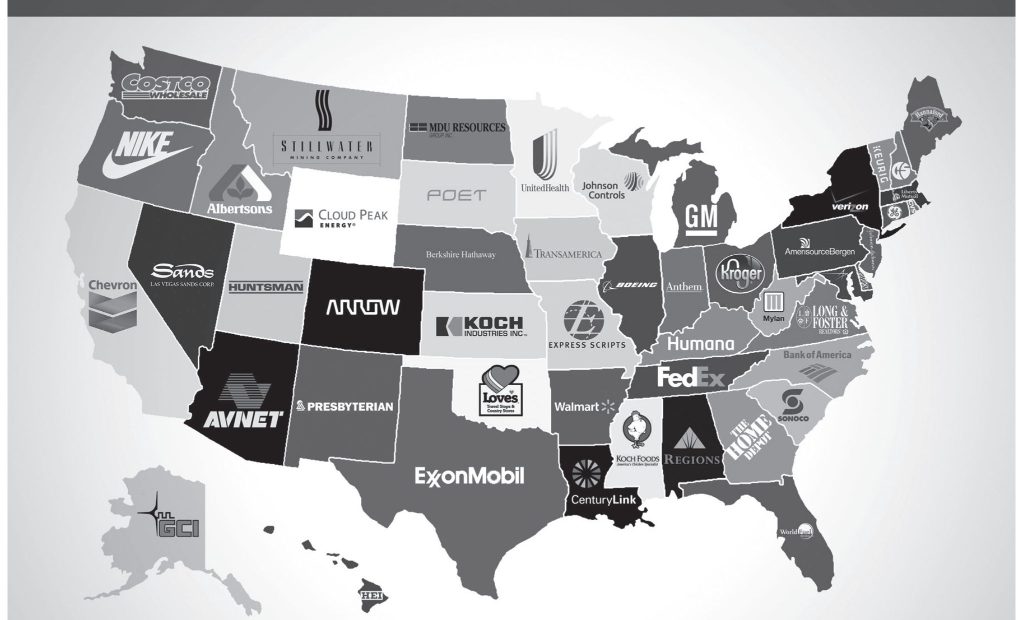
Most of the time, employees get reimbursed by their employers for any business expenses they pay for themselves. As a result, the IRS looks carefully at unreimbursed business expenses, even though they're an itemized deduction and are only deductible to the extent that they exceed 2% of adjusted gross income.

Many items are potentially deductible, including dues and license fees, subscriptions to trade journals and publications related to your work, tools and supplies, and specialty uniforms. Yet the temptation among many taxpayers is to try to deduct additional items that are only somewhat connected to their jobs. Before taking this deduction, make sure the expenses you're seeking to claim are legitimately business-related, and be prepared to explain in an audit why your employer didn't reimburse you for them.

Finally, bear in mind that any deduction could lead to an audit if it's unusually large compared to what most people report on their tax returns. If you're entitled to a big deduction for any reason, make sure you have the records to prove it in case the IRS comes knocking.

Getting audited is no fun, but as long as you have the required documentation, you should be able to stand up to IRS scrutiny with your deductions intact. Keeping good tax records with these three deductions in particular is a smart move that will keep you from paying extra tax after an audit.

LARGEST COMPANY BY REVENUE IN EACH STATE 2015



Restaurant Chains Get Burned by Overexpansion, New Rivals

by Julie Jargon and Lillian Rizzo

The Wall Street Journal, October 16, 2016

The U.S. is having one of its biggest restaurant shakeouts in years, as an oversupply of eateries and new rivals offering prepared meals to go claim what is expected to be a growing number of casualties.

In one recent week alone, three restaurant companies filed for chapter 11 bankruptcy protection, including Così Inc.; Rita Restaurant Corp., parent of the Don Pablo chain, and Garden Fresh Corp., which operates Souplantation and Sweet Tomatoes. At least five other restaurant operators have filed for court protection this year, with restructuring plans that call for restaurant closures.

So many filings in such a short time has surprised industry experts, who say more restaurant bankruptcies or closures are likely, as well as some consolidation. Some chains have been closing locations and shaking up management. Famous Dave's of America Inc., which has been closing many of its barbecue restaurants, last week named its fourth new CEO in four years.

In August, Ruby Tuesday Inc. announced plans to close nearly 100 restaurants and Bob Evans Farms Inc. closed 27 restaurants in April on top of 20 it had shut down last year.

"Restaurants have been facing substantial pressures due to sales declines, as well as cost increases," John Morberg, Garden Fresh's chief executive, said in court papers.

Part of the problem is that the supply of restaurants continued to grow in past years, even when foot traffic didn't. Between 2006 and the industry's peak in 2014, the number of restaurants in the U.S. grew 7.3% to more than 638,000—outpacing the 6.9% growth rate of the U.S. population over that period, according to NPD Group Inc., which studies eating patterns in the U.S.

The number of restaurants has since declined to just over 624,000, with many independent restaurants shutting their doors as chains continued to expand. Meanwhile, meal-kit delivery services, such as Blue Apron, and an expanded array of prepared meals available at supermarkets and convenience stores have been taking away customers.

Darden Restaurants Inc. CEO Eugene Lee told investors earlier this month that consumers now have a lot of options for their discretionary income. "Restaurants are competing against a lot of those other choices, not just restaurants," said Mr. Lee, whose company operates the Olive Garden and LongHorn Steakhouse chains.

Once the heaviest group of restaurant customers, 18- to- 35-year-olds have scaled back. In the past 10 years, older millennials have made 50 fewer restaurant visits per capita, according to NPD. Although people under the age of 20 are increasing their visits, they go out to eat at a far lower rate than older millennials and members of Generation X did at their peak.

Uncertainty about the outcome of the U.S. presidential election and what it might mean for the economy plays a role. But young people also have found they can save money by shopping at the grocery store, where food is at its cheapest point relative to restaurants since the mid-1980s, according to government data. Although millennials, who have delayed marriage and having children, don't typically fill up their grocery carts, many of them like to cook.

Madeline Keig, an 18-year-old English major at the University of Texas, enjoys making poached eggs on toast for herself, and prefers to dine in. "The experience of cooking and eating with people is really cool," Ms. Keig said. "It's more social, rather than just eating to eat."

As more people work from home, restaurant visits at lunchtime—once a key source of revenue for the industry—also have declined.

In addition, some chains have been struggling with heavy debt loads, said Darren Tristano of restaurant data provider Technomic Inc. "Many of them are a bad quarter away from folding, despite doing their best to improve and get by."

Garden Fresh, Logan's Roadhouse Inc. and Fox & Hound, a unit of Last Call Guarantor LLC, are among the chains that have cited hefty borrowings in their chapter 11 filings.

Such casual-dining chains, which offer table service, have been hit first, but industry experts predict that fast-casual chains, where customers order at the counter, will be the next victims. While fast-casual chains, many of which are matched by private investors, don't usually carry as much debt as full-service restaurants, they have overexpanded in recent years in response to growing demand for fresher, more customizable food in contemporary settings.

"I think it's going to be five to 10 years for the shakeout to complete. Landlords are incentivized to make it a slow unwinding. They'll give restaurants rent reductions because it's better than having to look for a new tenant," said Josh Benn, managing director at corporate-finance advisory firm Duff & Phelps Corp.

Damon Chandik, managing director and head of restaurant investment banking at Piper Jaffray & Co., said, "More than ever, the industry is a case of winners and losers."

If restaurants can't make their offerings distinctive and compelling enough for customers, they will need to consider providing delivery service, analysts and industry executives say. Some operators are doing both. In the past two years, Darden's Olive Garden has placed an emphasis on offering catering delivery and takeout and has been trying to appeal to millennials with meals served at pop-up communal tables around the country.

California Pizza Kitchen has remodeled its restaurants to look more upscale, broadened its menu to include shareable plates and craft cocktails and expanded its partnership with third-party delivery services.

"Off-premise dining, whether third-party delivery, pickup or catering is changing the landscape dramatically," CEO G.J. Hart said in a recent interview.

What Millennials Want

$925
The median monthly rent millennials are paying

Two-thirds
of apartment renters live in cities

Two out of five
millennials living at home were independent at one time

26.3 million
The number of American households composed of millennials, over one-fifth the U.S. total

70%
The percentage of GenYers who expect to be homeowners in the next five years