ORIGINAL

FILED/RECEIVED
BOARD OF TAX APPEALS

2009 AUG 26 PM 1:40

IN THE SUPREME COURT OF OHIO

Global Knowledge Training, LLC,	)	Case No. 09-1543
Appellant,	)	
vs.	)	Appeal from the Ohio Board of Tax Appeals
Richard A. Levin, Tax Commissioner of Ohio,	)	
Appellee.	)	BTA Case No. 2006-V-471

NOTICE OF APPEAL OF GLOBAL KNOWLEDGE TRAINING, LLC

Nicholas M.J. Ray (0068664)
(Counsel of Record)
Siegel Siegel Johnson & Jennings Co. LPA
3001 Bethel Road
Suite 208
Columbus, OH 43220
(614) 442-8885

Counsel for Appellant
Global Knowledge Training, LLC

William I. Sussman*
Michael Robotti*
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
212-596-9000
*(Members, New York bar)

Of Counsel for Appellant
Global Knowledge Training, LLC

Richard Cordray (0038034)
Ohio Attorney General
Damion M. Clifford (0077777)
Assistant Attorney General
30 E. Broad Street, 25th Floor
Columbus, OH 43266-0410
(614) 466-5967

Counsel for Appellee
Tax Commissioner of Ohio

FILED
AUG 26 2009
BOARD OF TAX APPEALS
COLUMBUS, OHIO

FILED
AUG 26 2009
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Global Knowledge Training, LLC,	)	
	)	Case No. _____
Appellant,	)	
	)	
vs.	)	Appeal from the Ohio
	)	Board of Tax Appeals
Richard A. Levin,	)	
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	BTA Case No. 2006-V-471

NOTICE OF APPEAL OF GLOBAL KNOWLEDGE TRAINING, LLC

Appellant, Global Knowledge Training, LLC, hereby gives notice of an appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals ("BTA"), journalized on July 28, 2009, in case number 2006-V-471.

A true copy of the Decision and Order of the BTA being appealed is attached hereto and incorporated herein by reference as Exhibit A.

The appellant complains of the following errors in the Decision and Order of the Ohio Board of Tax Appeals:

ASSIGNMENT OF ERROR NO. 1:

> The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably applied R.C. 5739.01(B)(3)(e) and R.C. 5739.01(Y)(b) to Appellant's training courses at issue based upon the content of and the pedagogical methods used in the courses in violation of Sections 2 and 11 of Article I of the Ohio Constitution and the First and Fourteenth Amendments to the United States Constitution.

ASSIGNMENT OF ERROR NO. 2:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably failed to recognize that the true object of a number of the training courses at issue concerned training on routers, switches, and other hardware that are not computer equipment and therefore do not fall into the definition of taxable computer services found in R.C. 5739.01(Y)(1)(b) but rather are personal or professional services within R.C. 5739.01(B)(5).

ASSIGNMENT OF ERROR NO. 3:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably expanded the scope of taxable training under R.C. 5739.01(Y)(1)(b) by subjecting to the tax tuition paid for a number of training courses at issue that do not involve "training" within the meaning of the statute, because among other things the Board made a factual determination that the equipment involved in such training are not computers.

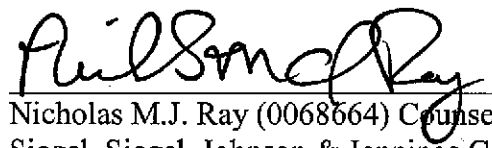
ASSIGNMENT OF ERROR NO. 4:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably failed to recognize that the true object of a number of the training courses at issue concerned training in computer-related concepts and therefore were not "provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems" as required by R.C. 5739.01(Y)(1)(b) to be taxable computer services but rather are personal or professional services within R.C. 5739.01(B)(5). The Board of Tax Appeals decision failed to adequately address this issue in its decision.

ASSIGNMENT OF ERROR NO. 5:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably failed to recognize that a number of the training courses at issue are not provided to "computer programmers and operators" as required by R.C. 5739.01(Y)(1)(b) and therefore do not fall into the definition of taxable computer services found in R.C. 5739.01(Y)(1)(b) but rather are personal or professional services within R.C. 5739.01(B)(5).

Respectfully submitted,



Nicholas M.J. Ray (0068664) Counsel of Record
Siegel, Siegel, Johnson & Jennings Co., LPA
3001 Bethel Rd., Suite 208
Columbus, Ohio 43220
Tel: (614) 442-8885
Fax: (614) 442-8880

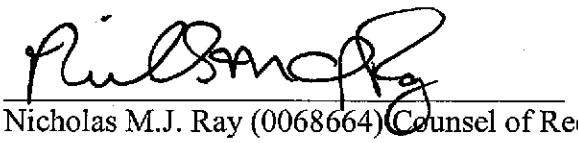
William I. Sussman*
Michael Robotti*
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
*(Members, New York bar)

Tel: (212) 596-9000
Fax: (646) 596-9500

Of Counsel for Appellant
Global Knowledge Training, LLC

PROOF OF SERVICE UPON
OHIO BOARD OF TAX APPEALS

This is to certify that the Notice of Appeal of Global Knowledge Training, LLC was filed with the Ohio Board of Tax Appeals, State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio as evidenced by its date stamp as set forth hereon.



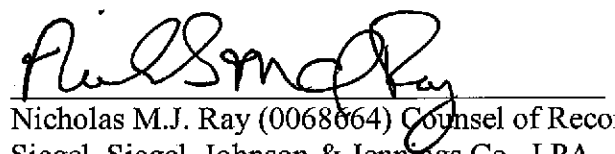
Nicholas M.J. Ray (0068664) Counsel of Record
Siegel, Siegel, Johnson & Jennings Co., LPA
3001 Bethel Rd., Suite 208
Columbus, Ohio 43220
Tel: (614) 442-8885
Fax: (614) 442-8880

Attorneys for Appellant
Global Knowledge Training, LLC

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of August 2009, a copy of the Notice of Appeal of Global Knowledge Training, LLC, was sent via certified U.S. mail to:

Richard Cordray,
Attorney General of Ohio
Damion M. Clifford
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, OH 43266-0410



Nicholas M.J. Ray (0068664) Counsel of Record
Siegel, Siegel, Johnson & Jennings Co., LPA
3001 Bethel Rd., Suite 208
Columbus, Ohio 43220
Tel: (614) 442-8885
Fax: (614) 442-8880

Attorneys for Appellant
Global Knowledge Training, LLC

OHIO BOARD OF TAX APPEALS

Global Knowledge Training, LLC, Appellant, vs. Richard A. Levin, Tax Commissioner of Ohio, Appellee.	))))))))))	CASE NO. 2006-V-471 (USE TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson
& Jennings Co., LPA
Nicholas M.J. Ray
3001 Bethel Road
Suite 208
Columbus, OH 43220

For the Appellee - Richard Cordray
Attorney General of Ohio
Damion M. Clifford
Assistant Attorney General
State Office Tower
30 East Broad Street, 25th Floor
Columbus, OH 43266-0410

Entered JUL 28 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Global Knowledge Training, LLC (hereinafter "Global") concerning a final determination of the Tax Commissioner denying its petition for reassessment for the audit period beginning July 1, 1997 and ending June 30, 2000. The underlying petition claims that training services provided by appellant are not within the scope of the tax upon computer services pursuant to R.C. 5739.01.

Exhibit A

This matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T."), and the testimony and other evidence adduced at hearing before this board ("H.R."). The parties have also provided written legal arguments. In construing the applicable law relevant to the audit period in question, we have focused on the statutory and administrative code provisions in effect during the audit period. H.R. at 133-134.

The record discloses Global provides training services regarding a range of computer hardware and software applications to its clients. At issue is the taxability of certain training courses provided to Global's clients during the audit period.

Before the Tax Commissioner, Global argued that its training classes were personal/professional services not subject to Ohio sales tax. S.T. at 49. Global further argued that its training services did not constitute "computer services" as defined by Ohio Adm. Code 5703-9-46(2) because Global's training was "not provided in conjunction with the sale, lease or operation of computer equipment or systems." Id. at 50. Finally, Global argued that because the individuals trained "may or may not have the technical expertise or the higher level of training required by a computer programmer or computer operator" the services did not rise to "computer services" as defined in the Ohio Administrative Code. Id.

The commissioner denied the petition for reassessment holding that Global failed to provide "sufficient information that the training is not on systems software and therefore within the definition of [sic] sale." S.T. at 1. The commissioner did remit the penalties imposed by the assessment. Id.

Initially, we note that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens, Inc. v. Kosydar* (1974), 38 Ohio St.2d 135; *Ohio Fast Freight v. Porterfield* (1972), 29 Ohio St.2d 69; *Nat'l Tube v. Glander* (1952), 157 Ohio St. 407. The taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores v. Lindley* (1983), 5 Ohio St.3d 213. It is with these authorities in mind that we turn to the merits of the instant appeal.

In its notice of appeal, Global raises the following issues for this board's consideration:

> "(A) In failing to recognize that the true object of a portion of the training courses concerned training on non-computer equipment and therefore does not fall into the definition of a taxable computer service found in R.C. 5739.01(Y)(1)(b) but are exempt from taxation as personal or professional services based upon R.C. 5739.01(B)(5).
>
> "(B) In failing to recognize that the true object of a portion of the training courses concerned training in computer-related concepts rather than operation and therefore were not 'provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems' as required by R.C. 5739.01(Y)(1)(b) to be a taxable computer service but are exempt from taxation as personal services based upon R.C. 5739.01(B)(5).
>
> "(C) In failing to recognize that a portion of the training courses concerned training on application software and therefore did not fall into the definition of a taxable computer service found in R.C. 5739.01(Y)(1)(b).

> "(D) In failing to recognize that a portion of the training courses are not provided to 'computer programmers and operators' as required by R.C. 5739.01(Y)(1)(b) and are therefore not subject to tax.
>
> "(E) In assessing transactions where the Appellant has provided proof to the Tax Commissioner that the customer is a holder of a direct pay permit issued by the Ohio Department of Taxation pursuant to the provisions of R.C. 5739.031 and, as a result, the tax was self-assessed by the customer and Appellant was under no obligation to collect tax on these transactions."

Jurisdiction

The commissioner argues that the last issue asserted in appellant's notice of appeal (concerning the direct pay permit customer) was not previously raised before the commissioner.

R.C. 5739.13 contains the provisions for the filing of a petition for reassessment and the commissioner's consideration thereof:

> "(B) Unless the party to whom the notice of assessment is directed files with the commissioner within thirty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. *The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.*" (Emphasis added.)

In *CNG Dev. Co. v. Limbach* (1992), 63 Ohio St.3d 28, the court stated that "a taxpayer has not substantially complied with the statute, so as to invoke the right to review of a particular error, if he has not set forth that error with specificity in the petition for reassessment." Id. at 32. See, also, *Shugarman Surgical Supply, Inc. v.*

Zaino (2002), 97 Ohio St.3d 183, 2002-Ohio-5809; *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Nimon v. Zaino*, Lorain App. No. 01CA007918, 2002-Ohio-822. Although R.C. 5739.13 also permits a taxpayer to raise additional objections with the commissioner, if submitted in writing prior to the date upon which the commissioner issues his final determination, under *CNG*, neither the commissioner nor this board has jurisdiction to consider those issues that are not raised in a petition for reassessment or otherwise in writing prior to the issuance of the final determination. Where a taxpayer has not advanced such written objections, this board is without jurisdiction to consider the issue upon appeal. *CNG*, supra; *Yost v. Tracy* (May 10, 1996), BTA No. 1995-T-31, unreported.

Appellant's petition for reassessment fails to raise the direct pay permit customer issue raised in the notice of appeal. S.T. at 49. Further, appellant elected not to respond to this jurisdictional issue raised by the commissioner in his merit brief. Based on the record before us, we must therefore conclude that we lack jurisdiction to consider the direct pay permit specification of error contained within the notice of appeal.

Computer Services

In his audit, the commissioner identified training courses given by Global across the state during the audit period where no sales tax was collected or remitted to

the state of Ohio. The subject of the commissioner's audit is thirty-six courses offered by Global, ten of which Global concedes are taxable. Ex. 9 at 5-7.[1]

R.C. 5739.01(B)(3)(e) provides, in relevant part:

> "(B) 'Sale' and 'selling' include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price of rental, in money or by exchange, and by any means whatsoever:
>
> "***
>
> "(3) All transactions by which:
>
> "***
>
> "(e) *** computer services, *** are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of *** computer services, *** rather than the receipt of personal or professional services to which *** computer services, *** are incidental or supplemental. ***"

R.C. 5739.01(Y)(1)(b) defines "computer services" to be:

> "(b) 'Computer services' means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems."

---

[1] Appellant, in its merit brief, has submitted an attachment purporting to be an "up-dated" version of Ex. 7. Appellant's Brief at 4. This board does not consider evidence submitted outside the hearing process. Accordingly, appellant's "Corrected Motion 12" shall be stricken from the record. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, at 16; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported (holding that documents submitted outside hearing would not be considered as evidence).

Before this board, Michael Fox, senior vice president of Global, testified concerning appellant's training curriculum and sales. Mr. Fox testified to the twenty-six specific training courses provided by Global. H.R. at 30-66.

Global contends that a portion of its training curriculum does not constitute computer services taxable under R.C. 5739.01(B)(3)(e) and defined in R.C. 5739.01(Y)(1)(b) based on three arguments.

First, Global argues the services were not provided in conjunction with the sale of taxable computer equipment as described in R.C. 5739.01(Y)(1)(b).[2] We disagree. We read the statute to expressly include the "training of computer programmers and operators, provided in conjunction with and to support the sale, lease, *or operation* of taxable computer equipment or systems." (Emphasis added.) While we agree that services provided in conjunction with the sale or lease of taxable computer equipment and systems are taxable, services provided in conjunction with the operation of the taxable computer equipment or computer systems are equally taxable.

In construing a statute, it is the duty of the court to give effect to the words used and not to insert words not used. *State v. S.R.* (1992), 63 Ohio St.3d 590, 594-595. "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation. *** However, where a statute is found to be subject to various interpretations, a court

[2] In various passages of its brief Global incorrectly describes R.C. 5739.01(Y)(1)(b) to cover the "sale, lease *and* operating activities." Brief at 15-16.

called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent." *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 96 ***." *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 217, 220. The General Assembly must be presumed to mean what it says and any claimed omission in a statute may not be provided under the guise of statutory construction. *State ex rel. Foster v. Evatt* (1944), 144 Ohio St. 65; *Slingluff v. Weaver* (1902), 66 Ohio St. 621.

"In the construction of a statute the court must be guided by it as it exists. It is not the function of the court to set forth what it thinks the statute under consideration should provide. There is no authority under any rule of statutory construction for a court to add to, enlarge or extend the provisions of the statute to meet a situation not provided for, or contemplated thereby." *City of Heath v. Licking Cty. Regional Airport Authority* (1967), 16 Ohio Misc. 69.

Such is the case before us today. We fail to see ambiguity in the express language of the statute that includes the "operation of taxable computer equipment."

Global next argues that four of the classes involved training pertaining to "application" software which is not subject to tax in Ohio. Global points to Ohio Adm. Code 5703-9-46, which provided during the audit period in question:

> "(5)(a) Systems software includes all programming that controls the basic operations of the computer, such as arithmetic, logic, compilation or similar functions whether it is an integral part of the computer hardware or is contained on magnetic media.

> "(b) Application software includes programs that are intended to perform business functions or control or monitor processes.
>
> "(6) 'Training' means instructing computer programmers and operators in the use of computer equipment and its systems software. It does not include instruction in the use of application software or other result-oriented procedures."

The four classes at issue are identified on Global's listing of curriculum taxed during the audit period in question and identified by Mr. Fox.[3] Ex. 7, H.R. at 30-66. The four classes are as follows:

<u>#M720 (1026) Exchange 5.5 Concepts & Admin</u>

Mr. Fox testified that the Exchange 5.5 is application software that "operates on top of the system software" used by the end user to perform various work functions. H.R. at 31-32.

<u>#5455 CISCO Enterprise Management Solutions</u>

Mr. Fox testified that this course is concerned with applications software which manages various switching and routing components. Id. at 39.

No evidence was offered to rebut Mr. Fox's conclusions that the above two courses involved instruction in the use of application software. Therefore, we find the above two courses not to be subject to the tax pursuant to Ohio Adm. Code 5703-9-46.

---

[3] Global has identified the basis for exemption within a column listed in Exhibit 7. There are four classes identified with the designation "3" which is noted as "application software training." Id.

#6950 PERL Scripting and #6980 PERL with CGI for the web

Mr. Fox testified that both courses cover systems software and that VMS stands for a software operation. H.R. at 54-55. Given Mr. Fox's testimony that neither of these courses involve application software, but rather systems software, we find these two courses not to be excluded from the ambit of taxable computer services.

Global next argues that training involving routers and switches are not taxable as computer services because routers and switches are not "computers." Global further argues that because the equipment focused on in the training is not computers per se, then its attendees are necessarily not "computer programmers (or) operators as required by Ohio law." Brief at 17-18. We disagree.

Global's argument is premised upon Mr. Fox's testimony that a "computer" is an "individual work station used to perform business applications or consumer applications." H.R. at 12. Global acknowledges that "computer equipment" as used in R.C. 5739.01 is not defined under Ohio law. Mr. Fox testified that general definitions of a computer (a programmable electronic device) are so broad that they would include telephones and coffee makers. H.R. at 12. He testified before this board that routers and switches are devices that are located within computer networks that manage the flow of information between computers and other equipment such as printers and telephones. Mr. Fox explained that routers and switches serve as "traffic cops" to control how data is directed within a computer network. H.R. at 20-24. He testified that routers and switches are not computers, and explained:

> "[T]he industry that manufactures and sells equipment they call computers, and we all refer to them in the industry, computers as personal computers and laptops that run software for the end user's benefit. Routers and switches do not run an application's software. They are not interfaced with individuals for the purposes of running software. *** They do not have the functionality of the computer. They have one purpose in life and that is to manage traffic through networks." Id. at 25.

During cross-examination, Mr. Fox testified to a multitude of the courses offered by Global and answered questions from counsel regarding the specific technical material of the classes offered. Id. at 71-109, S.T. 11-44. Much of the discussion included what techniques were being taught as they related to establishing, configuring, and manipulating routers and switches. As can be seen from the questioning by counsel, the use of a computer is necessary to configure routers and switches:

> "Q. *** [W]hen people are being taught how to configure TCP and IP addresses, so to speak, they have to interface that through a computer; correct?
>
> "A. Yes.
>
> "Q. So when you're accessing it, you pull up the TCIP and it sets what sort of protocol you are going to allow the networks *** or the individual computer to interface across the networks with each other?
>
> "A. The only computer – you actually access the switch with the router and a little window pops up and you are actually talking directly with the router, so the computer is really not involved.
>
> "Q. Correct. But it's the interface mechanism to the router?
>
> "A. Yes." H.R. at 105.

Upon further questioning regarding routers and switches, Mr. Fox testified:

> "A. *** It [a switch] does not look at the data that comes to it and interrogate that data and decide where to send it. Basically, it manages the connections to the computers in a high-speed fashion and through the addressing that is set up, the data goes to the location it is supposed to go.
>
> "Routers actually look at data and interrogate the data, where did it come from, where is it supposed to go, where should I send it. So it's – so it's a more in-depth look at the data traveling. Switch is about speed. Routers are about template.
>
> "Q. And the router's ability to discriminate, where does that come from? Does it come from the computer it is hooked up or to the software [sic] or does the router itself –
>
> "A. The router contains tables that when it looks at the data traffic, it compares that data traffic to its tables and decides where to send it – what wire to send that traffic to.
>
> "Q. And can I manipulate those tables?
>
> "A. Yes.
>
> "Q. That's in the teaching?
>
> "A. Yes." Id. at 109-110.

While routers and switches are not computers per se, they are an integral part of a computer network. In *Mercury Machine Co. v. Limbach* (1994), 94 Ohio App.3d 116, the court found that computer systems and work station computers used to create and store "instruction sets" were adjuncts used in and during manufacturing. An "instruction set" consisted of data that drove and directed the machines that cut the taxpayer's tools and dies. The court reasoned that because the machine could not

manufacture products without the instruction sets, the equipment used to create and store the sets was a part of the manufacturing process. Based on the record before this board, it is apparent that routers and switches have no utility outside a network of computers. Therefore, we find that routers and switches constitute "computer equipment."

We further observe that the curriculum being taught by Global focused on training individuals on aspects of computer technology well beyond the general individual who uses a computer to perform tasks. Upon questioning from counsel, Mr. Fox testified:

> "Q. So if you took, like, a basic person who just had Word and throw them in some of these courses we have gone over, they would probably be clueless?
>
> "A. They would be clueless, they would lose their money and waste the instructor's time." Id. at 93.

In *Mentor Technologies L.P. v. Tracy* (Aug. 25, 1995), BTA No. 1994-A-1058, unreported, this board held:

> "Initially, when we consider the context in which the phrase 'computer operator' is used, this Board notes that it is stated in conjunction with the phrase, 'computer programmer.' Undeniably, a computer programmer is an individual with some level of expertise in the coding of programs used to run a computer. Clearly said phrase connotes a very technical position, both inside and outside of the computer industry. Therefore, by coupling that phrase with 'computer operator', this Board considers that the phrase 'computer operator' attains the same technical connotation, indicating a specialized position within the computer science industry. In addition, this Board does not agree with appellee when he argues that the definition set forth in <u>The Dictionary of Occupational Titles</u> is 'pedestrian and non-technical.' On the contrary, said definition

> indicates a level of specificity and technicality in job duties, above and beyond what an individual who generally uses a computer in his or her everyday job duties would require. Clearly, the individual who would meet the standards set forth in said definition would have to have a higher level of training and understanding of the computer; a computer operator, by the terms of said definition, would have to understand the operations of the computer and be able to not only utilize the computer to complete his or her job effectively, but also be aware of methods by which problems with the equipment can be corrected." Id. at 6.

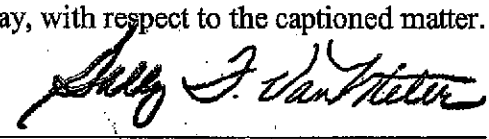
Even the most introductory of courses offered by Global appear to be geared toward individuals entering into the technology field. H.R. at 45-47. The remainder of the courses offered by Global involve a high degree of technical acumen; many of the courses are required for different professional certifications. H.R. at 77-79, 85-86, 108. Therefore, we conclude that the courses provided by Global further meet the definition of "training" under Ohio Adm. Code 5703-6-46(6) because its attendees are computer programmers and operators seeking training on the use of computer equipment and systems software.

Therefore, based upon the record, and with the exception of the two software application classes described above, Global has otherwise failed to meet its burden in demonstrating that its computer services are not taxable under R.C. 5739.01(Y)(1)(b).

Based on the record, it is the decision and order of the Board of Tax Appeals that the courses # M720 "Exchange Concepts & Admin" and # CISCO Enterprise Management Solutions are not taxable pursuant to Ohio Adm Code 5703-6-

46. We further find the remainder of the training provided by Global constitutes computer services and is taxable. The final determination of the Tax Commissioner is affirmed in part and reversed in part.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Sally F. Van Meter, Board Secretary