



# Fine Print

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## What Business Owners Should Know about Mold and Indoor Air Quality Issues

*Brent C. Taggart*

Mold infestation may lead to a variety of legal claims against businesses. Such claims can include regulatory enforcement actions under OSHA's "general duty" clause, Ohio's statutory landlord tenant laws, and municipal housing codes.



They can include bodily injury claims under general tort principles and workers' compensation laws. And even if no bodily injury is alleged, there can be claims for property damage under laws governing real estate transactions, Ohio's Consumer Sales Practices Act, and general contract law. Claims can arise against virtually any business

involved in the life of a building, from construction contractors, real estate brokers, and landlords, to employers whose workers simply occupy the building.

To help control those potential liabilities, the business owner can follow some basic steps:

- Mold only becomes a problem in the presence of oxygen, heat, organic material and moisture. Avoid mold problems by controlling moisture and humidity in your building and by keeping organic materials such as drywall, wood and carpet dry. Clean up any water intrusion within the first 24 hours.

- Where there is no visible mold problem but there is an alleged indoor air quality problem, hire a qualified testing contractor to recommend and conduct appropriate tests to determine the nature and location of the problem. The contractor's project supervisor should hold the title of Certified Industrial Hygienist from the American Industrial Hygiene Association. The testing contractor should be completely separate from the remediation contractor to avoid conflicts of interest.

- When a mold problem is visible, spend your money on

remediation, not testing. Follow remediation recommendations published by EPA or by the Institute of Inspection, Cleaning and Restoration Certification (IICRC). If hiring a remediation contractor, require the project manager to be certified by IICRC or the American Indoor

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## Taxpayers Can Choose Method for Estimating Commercial Activity Tax Payments

*Mark A. Engel*

As part of the comprehensive tax reform enacted in 2005, a new commercial activity tax is being imposed upon the gross receipts from commercial activity in Ohio. Taxpayers with annual taxable gross receipts of less than \$1,000,000 file annual returns, while taxpayers with annual gross receipts in excess of \$1,000,000 file quarterly returns.

For taxpayers filing quarterly returns, the returns and payments are due 40 days after the end of the

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**Tax Payments**, cont. from page 1

calendar quarter. Many small and medium-sized taxpayers, however, find it hard to obtain accurate gross receipt figures within this window. The possibility of interest and penalties for reporting inaccuracies only adds to the tensions.

Fortunately, taxpayers can choose one of two methods for estimating their quarterly tax liabilities: the “rule estimation procedure” and the “statutory estimation procedure.”

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Air Quality Council, and obtain references.

■ Thoroughly investigate and document any allegations of health effects by individuals potentially exposed to mold.

■ Notify your insurer of any known mold-related problems or claims. Mold damage may or may not be covered under your policy, but either way, your insurer may be able to point you in the direction of appropriate contractors and other resources to help mitigate the damage.

■ Carefully consider what legal duties you may have to disclose a mold issue, and consult with your legal counsel if you are in doubt. There may be specific legal disclosure requirements regarding mold.

While each mold infestation scenario is different and potentially complex, taking these basic first steps can prevent serious problems.

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Although they work differently, both methods allow a taxpayer to estimate taxable gross receipts during a quarter and to reconcile that estimate at a later date.

Using the “rule estimation procedure,” the taxpayer can estimate taxable gross receipts based on the actual receipts from the previous quarter. The estimate must be at least 95 percent of the actual taxable gross receipts for the previous quarter, but in no event less than 70 percent of the actual receipts for the current quarter. The taxpayer must then file a reconciliation return before the due date for the next quarter and pay any additional tax due. A taxpayer using the “rule estimation procedure” and meeting its requirements will not incur penalties or interest when filing a reconciliation return.

The “statutory estimation procedure” permits a taxpayer to estimate taxable gross receipts for a quarter at 95 percent to 105 percent of the actual number without penalty or interest. The taxpayer files a single reconciliation return at the end of the year, reporting the actual taxable gross receipts for each quarter and comparing them to the estimated receipts. If the estimate falls within the range of 95 percent to 105 percent of the actual receipts for that quarter, no inter-

est or penalty is due (although any shortfall in tax paid must be paid and any excess is taken as a credit for the fourth quarter). If the estimate falls below that range, however, a penalty of 10 percent plus interest will apply. A taxpayer who overpays the tax for one quarter may not use the excess to remedy an underpayment for another quarter; each quarter stands on its own.

A taxpayer may not mix methods during a calendar year. If the rule estimation method is used for a quarter, the taxpayer may not use the statutory estimation method for a subsequent quarter in that year. However, a taxpayer may estimate taxable gross receipts for one or more quarters, using either method, and report actual taxable gross receipts for other quarters during the same calendar year.

Most taxpayers likely will find the “rule estimation procedure” easier. However, businesses with wildly fluctuation receipts, or with anticipated seasonal swings, may find the statutory estimate procedure offers better protection. Taxpayers should take the time to determine which method is better for their particular situation.

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**In the Hopper...**

*State legislation that could affect small business*

The Ohio State Bar Association (OSBA) has announced its support for House Bill 134, which will make Ohio more competitive and encourage businesses to continue to incorporate in Ohio. The legislation, initiated by the OSBA’s Corporation Law Committee, will allow corporations to amend their articles to permit majority voting, replacing the current plurality voting provision.

Some Ohio corporations have received shareholder proposals to consider changing their domicile to a state other than Ohio because of the plurality standard. In changing to the majority standard, Ohio would join most states, including California, Delaware, Florida, Illinois and Michigan, in this practice.

*From the OSBA Office of Government Relations.*