

# This Week in State Tax (TWIST)

November 11, 2024



## Minnesota: State High Court Finds Rebates Not Included in Gross Receipts

The Minnesota Supreme Court recently ruled that rebate amounts paid to customers by a wholesale drug distributor were properly excluded from the distributor's gross receipts. Minnesota imposes a Wholesale Drug Distribution Tax on gross receipts earned from the sale of drugs to support the MinnesotaCare subsidized health care system. The taxpayer invoiced customers for the full price the drugs it sold but returned certain amounts as part of contractual rebate agreements with its customers. Some customers deducted the rebate from the amount paid to the taxpayer, treating it as credit; others paid the full invoiced amount and received the rebate amount as a check. The issue was whether the value of these rebate amounts should be excluded from "gross revenues" subject to the excise tax. The taxpayer excluded the rebates on its original returns, but the Commissioner of Revenue (Commissioner) added them back on audit. The taxpayer appealed, and the Tax Court ruled that the taxpayer never "received" the rebate amounts because it was contractually required to return them to its customers.

On appeal, the Supreme Court applied dictionary definitions to interpret the statutory language, ruling that "gross revenues" means "total amounts received in money or otherwise," and that "received" means "to come into possession of" or 'acquire.' The court noted the taxpayer did not have discretion in paying the rebates, meaning it did not "come into possession of" these amounts. The court further determined that there was no statutory basis for the Commissioner's position that gross receipts should be measured using the full invoiced amounts, noting that this interpretation would require a taxpayer to include as gross receipts invoiced amounts even if a customer refuses to pay. The court characterized the Commissioner's approach as "form-over-substance", noting that if the taxpayer had applied the rebates on an invoice-by-invoice basis, it would have reached an economically equivalent outcome while undoubtedly excluding the rebated amounts from its gross receipts. Finally, the court rejected an argument that the customer loyalty "purchased" by the rebates should be treated as receipts earned by the taxpayer with a value equal to the rebate amounts, because the rebate is based on historical purchasing patterns, not on any obligation to make future purchases. Please contact [Matthew Saunders](#) with questions on [Dakota Drug v. Commissioner of Revenue](#).

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