

This Week in State Tax (TWIST)

March 3, 2025



Ohio: BTA Denies Refunds of Financial Institutions Tax

The Board of Tax Appeals (Board) recently affirmed a decision of the Ohio Tax Commissioner (Commissioner) denying a bank's claims for a refund of the state Financial Institutions Tax (FIT) based on an alternative apportionment formula proposed by the bank. Before the Commissioner, the taxpayer argued that the FIT violated several provisions of the Constitution, and that the alternative apportionment was required to alleviate those infirmities. The Commissioner denied the refund on the basis that (1) the desired apportionment remedy could not be "uncoupled" from the several constitutional questions the taxpayer raised, and (2) she lacked authority to adjudicate constitutional questions. The taxpayer appealed to the Board.

The FIT is a privilege tax imposed on certain financial institutions that conduct business in the state or otherwise have nexus with Ohio. The tax is imposed on total equity capital of the institution apportioned by the ratio of gross receipts situated in Ohio to gross receipts everywhere. The tax then applies a "regressive" rate structure with a rate of 0.8 percent on the first \$200 million in apportioned equity capital, declining to a rate of 0.25 percent on Ohio equity capital over \$1.3 billion. The taxpayer in the case was based in Pennsylvania and did not have greater than \$200 million in Ohio equity capital in any of the relevant years (2016-2020).

Before the Board, the taxpayer argued the FIT violated the Due Process, Equal Protection, Commerce, and Supremacy clauses of the Constitution. It specifically argued the tax was incompatible with the internal consistency test as applied by the Supreme Court in *Wynne*. The Board did not discuss the particular elements of the constitutional issues. Instead, it first found that the taxpayer had not waived its right to argue for statutory alternative apportionment when it agreed to an expedited hearing before the Commissioner that was "confined to the issues related to the FIT rate issue and its constitutionality." Despite the Commissioner's contentions before the Board, it held the evidence was not clear that the argument was waived, and the taxpayer had always sought that remedy. It went on to find, however, that remedy sought could not be separated from the harm alleged which was attributable to the constitutional questions raised. Further, the proposed remedy would rewrite the statutory rate structure which is beyond the purview of the alternative apportionment statute. Accordingly, it affirmed the refund denial on the basis that it could not deal with the alternative apportionment without implicitly adjudicating the constitutional questions which are, by law, beyond its authority. For questions on [Dollar Bank FSB v. Harris](#), contact [Brandon Erwine](#).

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