

This Week in State Tax (TWIST)

June 23, 2025



Ohio: Supreme Court Finds Firm Does Not Qualify for CAT Exclusion as Agent of Its Client

The Ohio Supreme Court ruled that a taxpayer could not exclude reimbursements from its gross receipts for purposes of the Commercial Activity Tax (CAT). The CAT is imposed on taxable gross receipts of a person doing business in Ohio. An exclusion applies to amounts “received or acquired by an agent on behalf of another in excess of the agent’s commission, fee, or other renumeration.” The taxpayer, a food services company, operated under two different types of contracts—“profit-and-loss contracts” under which the taxpayer contracted with an event organizer to sell food at the event, with the taxpayer maintaining ownership of the food and bearing the risk of profit or loss on the sales, and “management-fee contracts”, under which the taxpayer sold food on behalf of the organizer and was reimbursed for the costs it incurred in purchasing the food along with its contracted fee. After including all amounts received under both types of contracts on its original CAT returns, the taxpayer filed amended returns excluding reimbursements under its management-fee contracts. The resulting refund was denied at the administrative and Board of Tax Appeals levels, and the taxpayer appealed.

Before the supreme court, the taxpayer first argued that, because it was acting as its client’s agent when it purchased the food, the subsequent reimbursements should qualify for the statutory exclusion. The supreme court rejected this argument. First, it determined that the taxpayer was not an agent of its customers as that word is defined under statute. The statute defines “agent” to include a “person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person.” Because the taxpayer paid vendors using its own money before receiving a reimbursement from its client, it was not passing the proceeds of the reimbursement over to another person. In reaching this conclusion, the court repudiated its previous ruling in *Willoughby Hills*, which reached beyond the text of the statute to define “agent” as “a person authorized by another person to act on its behalf to undertake a transaction for the other.” The court here ruled that this description could not supersede the statutory definition, and the taxpayer did not meet the terms of the statute. Further, even if the taxpayer was an agent, the reimbursements were not excludable because they were not “received or acquired … on behalf of another.” The court concluded on this point by determining that various administrative documents cited by the taxpayer did not disturb these definitions.

As an alternative to its agency-based arguments, the taxpayer also argued that reimbursements did not qualify as gross receipts because they did not “contribute to the production of gross income.” The CAT statute provides that “gross receipts” means the total amount realized by a person … that contributes to the production of gross income of the person.” However, the supreme court noted that the statute explicitly includes within this

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definition “[a]mounts realized from the taxpayer’s performance of services for another.” Because the reimbursements were from the performance of contractual services, they fell within the statutory definition. The dissent, which would have held for the taxpayer, disputed the majority’s interpretations of the statutory definition of “agent” and the scope of the statutory exclusion.

Although unfavorable to the taxpayer in this case, the court’s reinterpretation of the agency exclusion statute may create opportunities for some taxpayers. By distancing itself from the strict requirements of common law agency imposed by cases like *Willoughby Hills and Cincinnati Golf Management*, the Court appears to have broadened the availability of the agency exclusion to a degree. This may create an occasion for some taxpayers to revisit prior discussions regarding the applicability of the agency exclusion to their situation. Contact [Dave Perry](#) with questions about [Aramark Co. v. Harris](#).

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