



# This Week in State Tax (TWIST)

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## Ohio: Board of Tax Appeals finds chargebacks not included in gross receipts of pharmaceutical manufacturer

The Ohio Board of Tax Appeals recently addressed whether a manufacturer and seller of pharmaceutical products should use its listed price for generic pharmaceutical drugs or the actual price paid by its customers for purposes of its Ohio Commercial Activity Tax (CAT) return. In the case at issue, the taxpayer contracted with retailers to supply drugs at an agreed-upon price. The drugs were distributed to the retailers by third-party wholesalers. Upon shipping their product to the wholesalers, taxpayer issued an invoice showing a “wholesale acquisition cost” (WAC). Both the taxpayer and the distributor understood that a subsequent chargeback based on the taxpayer’s agreements with the retailers would reduce the purchase price paid by the retailer ultimately receiving the drugs. Accordingly, once the distributor sold the drugs to the retailers, it would submit a chargeback to the taxpayer reflecting the difference between the WAC and the purchase price provided in the retailer contract. Once the chargeback was submitted and processed, the distributor remitted the net sales price to the taxpayer.

In filing its Ohio CAT return, the taxpayer reported its receipts based on the sales price reduced after all chargebacks, rebates, shortages, and other discounts. The taxpayer was then assessed by the Ohio Tax Commissioner for additional tax, based on using the WAC that was initially charged as the baseline gross receipts from the sale. Other lesser deductions were also involved, some of which were resolved favorably for the taxpayer. Ultimately, however, the Commissioner disallowed the exclusion for chargeback (comprising over 90 percent of the assessment), and the taxpayer appealed to the Board.

Ohio law defines gross receipts as “the total amount realized by a person without deduction for cost of goods sold or expenses incurred, that contributes to the production of gross income of the person.” The taxpayer argued that the chargebacks were not deductible expenses but rather price adjustments that reduce the original invoice amounts. The Board agreed finding that the economic reality showed the end user paid a lower contract price to the wholesalers, who then sought reimbursement from the taxpayer. As such, the taxpayer only received the adjusted sales price, not the full WAC. The distributor paid no consideration in exchange for the chargeback, and it was uncontroverted that the taxpayer “essentially never receives the full WAC.” In the Board’s view, the wholesalers remitted only the net amount after the chargeback, and they understood the WAC is not the true price of the product. As such, the transaction was a single-step, unified transaction. Finally, the Board noted that the CAT is a tax on receipts realized by the taxpayer; the WAC was not that. Please contact [Dave Perry](#) and [Brandon Erwine](#) for questions about [Perrigo Sales Corp. v. Patricia Harris, Comm. Of Ohio](#).

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