

This Week in State Tax (TWIST)

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Ohio: State Supreme Court says sales through Ohio distribution center are sitused to Ohio, but opens avenue for obtaining clarifying information

In a recent decision, the Ohio Supreme Court denied a taxpayer's Commercial Activity Tax (CAT) refund claim due to insufficient evidence. It did, however, reject an argument that would limit the way a taxpayer could show that items transported to a customer's Ohio distribution center were later shipped out of state by the customer.

The taxpayer, a shoe manufacturer, delivered its products to a retailer's distribution center in Ohio. Under Ohio law, gross receipts from the sale of tangible personal property are sitused for CAT purposes to "the place at which such property is ultimately received after all transportation has been completed." According to the taxpayer, the retailer subsequently distributed most of the products to its brick-and-mortar stores in multiple states, from which they were sold to retail customers. The taxpayer initially reported all sales sent to the Ohio distribution center as Ohio gross receipts on its CAT returns, but later claimed a refund based on the percentage of shoes it alleged were shipped to stores in other states. The Tax Commissioner denied the refund claim, reasoning that consideration of "secondary" evidence (*i.e.*, evidence generated after the date of delivery) would create unreasonable compliance and administrative issues. On appeal, the Board of Tax Appeals affirmed the denial of the claim but rejected the Commissioner's argument that secondary evidence was impermissible. Instead, the Board determined that the taxpayer's evidence (which included testimony comparing the customer's Ohio sales to the total value of the shoes the taxpayer sold to the customer, along with evidence that the taxpayer's shoes were available for sale at the customer's stores in other states) was insufficient to properly measure the amount of the refund. The taxpayer and the Commissioner cross-appealed the decision.

The Ohio Supreme Court denied both appeals. It found nothing in Ohio law to support the Commissioner's contention that a taxpayer must have "contemporaneous knowledge" of a product's ultimate destination to source beyond the location to which the product was immediately delivered. Even if a taxpayer does not know where its product will ultimately be received at the time it ships the product to the customer, subsequent discovery of that information can support a refund claim. The state high court also rejected the taxpayer's argument that evidence showing "some portion" of the taxpayer's merchandise was subsequently transported out of state could support a quantitatively definitive refund. Instead, the court determined that the taxpayer was obligated to prove the amount of the requested refund, which its provided evidence failed to do. Contact [Dave Perry](#) with questions about [Jones Apparel Group/Nine West Holdings v. Harris](#).

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