



This Week in State Tax (TWIST)

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Ohio: State supreme court holds for taxpayer in determining appropriate price to be used for CAT purposes

The Supreme Court of Ohio 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 agreed-upon prices and used third-party wholesalers to distribute the drugs to the retailers. When the taxpayer shipped the drugs to a wholesaler, it issued an invoice reflecting the “wholesale acquisition cost” (WAC), i.e., the list price. The parties understood that the distributor would deduct a contractually required chargeback from the WAC and remit the lower retailer contract price to the taxpayer. After selling the drugs to a retailer, the wholesaler remitted the retailer contract price to the taxpayer and submitted a chargeback claim for the difference between the contract price and the WAC; the taxpayer was contractually obligated to honor the chargebacks. The taxpayer reported Ohio CAT receipts based on the sales price after chargebacks. The Tax Commissioner assessed additional tax using the initially invoiced WAC as gross receipts and rejected the taxpayer’s treatment of the chargebacks. On appeal, the Board of Tax Appeals (BTA) reversed the Commissioner, holding that gross receipts for CAT purposes were the net amounts after chargebacks. It relied specifically on the statutory definition of “gross receipts” for CAT purposes which is the “amount realized” by the seller in a transaction.

The Commissioner appealed, objecting primarily to the BTA’s understanding of “gross receipts”. The Commissioner’s argument had several parts: the CAT statute prohibited deducting costs of goods sold or other expenses incurred from gross receipts with certain specified exceptions, but not chargebacks such as at issue here; the BTA definition would render various statutory exclusions from “gross receipts” (e.g., cash discounts and rebates) redundant; the chargebacks did not qualify for the cash discounts exclusion; and the BTA definition would allow some taxpayers to implicitly deduct costs of goods sold by combining buying and selling into a single net transaction.

The Ohio Supreme Court affirmed the BTA decision, agreeing that “gross receipts” is the money or property a seller actually receives in exchange for the property transferred. The taxpayer did not realize the list prices reflected on its invoices because the chargeback mechanism simply reconciled those prices to the lower retailer contract prices. The chargebacks did not represent deductions for expenses or cost of goods sold; instead, they reflected the amount the taxpayer actually received from distributors based on the retailer contract prices. Accordingly, the taxpayer did not realize the uncollected portion of the list price, and that amount was not part of the CAT base.

Please contact [Dave Perry](#) with questions about [Perrigo Sales Corp. v. Harris](#).

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