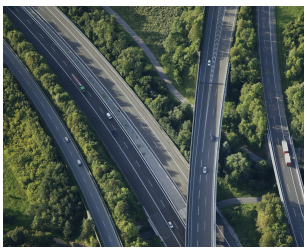

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The Ultimate Destination Rule – Keeping Ohio's CAT in Check

Imagine that you are the chief financial officer of an aftermarket automotive parts company named SupplyCo. SupplyCo is headquartered in Missouri and its only facilities are in that state. Your products are delivered directly to your customers' distribution centers in several U.S. states, including Ohio, via common carrier. SupplyCo's customer contracts are all entered into out of state. In each instance, customers pay for the freight charges and sales are made free on board origin, meaning that title and risk of loss transfer to your customer at your warehouse docks in Missouri. You are aware that your products are primarily delivered to customers' distribution centers in Ohio, Michigan, Pennsylvania and are later transported from these distribution centers to your customers' retail stores in all 50 states — with only about 4 percent of the products staying in Ohio.[1]

For state income tax purposes, you have always treated these sales as Missouri sales (that is, cost of performance) or sales in the state of the customer's contract location (that is, market-based sourcing). That is why you are surprised to receive an audit commencement letter from Ohio referencing the commercial activity tax (CAT). The letter not only suggests that you are subject to the CAT, but also implies penalties, interest, and an audit period going back to the CAT's enactment in 2005. You have never filed for the CAT before, so this is all new to you.

As an unsuspecting victim of Ohio's CAT, you are now left wondering:

- How can Ohio tax SupplyCo given its lack of activities in the state?
- What can I do to reduce this tax?

The first question is what we are asked over and over as practitioners — often phrased as: "How is this constitutional?" Based on how Ohio courts have evaluated this issue in *Crutchfield* and *Greenscapes*,[2] and based on the U.S. Supreme Court's decision

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in *Wayfair*,[3] Ohio appears to have the authority to levy a gross-receipts-based tax on goods that have a physical connection with the state (for example, shipped into the state), regardless of the taxpayer's lack of other connections with the state. Based on this precedent, it appears that this issue would need to be altered legislatively or ruled upon by the Court for a meaningful change to occur.[4] For example, a taxpayer may still argue that it has not purposefully availed itself of the Ohio marketplace, and thus taxation would violate the fundamental fairness mandated by the Ohio and U.S. due process clauses. A taxpayer may also argue that the Ohio CAT statutes do not contain the same taxpayer protections as Wayfair, such as adherence to uniform standards like the Streamlined Sales and Use Tax Agreement. However, constitutional law is not typically fast moving, as evidenced by the time between Wayfair and the prior Supreme Court cases it overruled, Quill and Bellas Hess.[5]

Rather than address the constitutionality of the CAT, this article will help address the second question and provide practical solutions for mitigating your tax exposure through an analysis of Ohio's ultimate destination rule for sourcing sales of tangible personal property.

The CAT

The CAT is imposed at a flat 0.26 percent rate on all gross receipts sourced (or sitused)[6] to Ohio beyond a limited exemption and alternative minimum tax amount. Gross receipts taxes like the CAT are becoming more common across the United States.[7] The CAT is different from your traditional state corporate income tax for two main reasons. First, it is imposed on gross receipts, not net income, and therefore applies even if you are operating at a loss or at very low margins. Second, because the CAT is not a net income tax, taxpayers are not afforded the immunity from state and local taxation offered by Public Law 86-272. In fact, the CAT uses the following bright-line nexus threshold:

- property in Ohio with an aggregate value of at least $50,000;
- payroll in Ohio of at least $50,000; or

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- taxable gross receipts in Ohio of at least $500,000.[8]

Notably, this disjunctive nexus test means that taxpayers can trigger nexus if they only have sufficient sales sourced to Ohio in excess of $500,000 in any one year.

Despite its low rate of taxation, CAT assessments can add up quickly because of (i) the lack of deductions (for example, cost of goods sold), (ii) the penalties of up to 50 percent plus interest,[9] and (iii) a 10-year limitations period for nonfilers.[10]

Sourcing Sales of Tangible Personal Property and The Ultimate Destination Rule

In the earlier hypothetical scenario, SupplyCo sales of automotive parts would be considered tangible personal property. Under O.R.C. 5751.033(E), Ohio law requires the following for the sourcing of tangible personal property:

> Gross receipts from the sale of tangible personal property shall be situsedto this state if the property is received in this state by the purchaser. In the case of delivery of tangible personal property by motor carrier or by other means of transportation, the place at which such property is ***ultimately received*** *after* ***all transportation*** *has been completed shall be considered the place where the purchaser receives the property*. For purposes of this section, the phrase "delivery of tangible personal property by motor carrier or by other means of transportation" includes the situation in which a purchaser accepts the property in this state and then transports the property directly or by other means to a location outside this state. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes *or other conditions of sale*. [Emphasis added.]

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As is often the case in Ohio tax audits, the Department of Taxation will attempt to simplistically source 100 percent of gross receipts to the state based on where the taxpayer's customer first receives the property in Ohio even if the auditors know that only a small percentage of the property stays in the state. However, reading the statute holistically gives rise to the ultimate destination rule, which states that "the place at which such property is *ultimately received* after *all transportation* has been completed shall be considered the place where the purchaser receives the property." [Emphasis added.] Notably, the relevant situsing provision neither says nor refers to the "first stop," "some transportation," or "mere transportation." Instead, the statute focuses on the location of the goods after "all transportation" has been completed. Simply put, the correct analysis should be on the ultimate destination of the property, not the initial delivery point.

Moreover, the situsing provision does not say that there cannot be stops along the way, including repackaging or treatment of products at those stops. In fact, the final clause of O.R.C. section 5751.033(E) indicates that the ultimate destination of the products will be determined without regard to where title passes or "other conditions of sale." Couldn't a condition of sale be that the purchaser handles part of the manufacturing, assembly, or other processes? It seems possible, as the intent of the statute is to tax businesses based on where their products ultimately end up.

Presumably, because the CAT is relatively new, the Department of Taxation and General Assembly have offered little guidance and refinement regarding the sourcing of tangible personal property. However, Ohio courts and the Board of Tax Appeals (BTA) have established precedent for the application of the ultimate destination rule when evaluating a similar rule for purposes of the corporation franchise tax (CFT).

The CFT was Ohio's form of corporate income tax that began to phase out for most taxpayers at the same time the CAT was phased in (2005 to 2010).

O.R.C. 5733.05(B)(2)(c)(i) provided a similar ultimate destination rule within the CFT regime:

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Receipts from the sale of tangible personal property shall be sitused to this state if such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, *the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser*. [Emphasis added.]

The Ohio Supreme Court has recognized that the CFT and the CAT have strong similarities in their purpose and language.[11] In *Greenscapes* (discussed later), the BTA also noted that "the commissioner, both in the final determination, and again on appeal, cites to *Dupps Co. v. Lindley*, 62 Ohio St.2d 305 (1980), which analyzed a nearly identical statute situsing sales for purposes of the corporation franchise tax, i.e., R.C. 5733.05(B)(2)(c)."[12] Therefore, because the tax commissioner and the Ohio courts have cited to previous CFT cases for sourcing authority, prior cases involving the CFT's ultimate destination rule clearly have at least some persuasive value to courts faced with applying the CAT's similar rule.

Trilogy of CFT Cases Interpreting the Ultimate Destination Rule

Three cases are particularly insightful in determining how sales of tangible personal property should be sourced under the CAT for purposes of the ultimate destination rule: *House of Seagram Inc.*, *Dupps Co.*, and *Loral Corporation v. Limbach*.[13]

In *House of Seagram*, the Ohio Department of Liquor Control purchased liquor from House of Seagram at its place of business in New York. Seagram delivered the liquor in New York to a common carrier designated by the purchaser, and it was then brought into Ohio and delivered to a warehouse owned by the purchaser. The Ohio Supreme Court held that all products ultimately received in Ohio after all transportation would be treated as "business done in Ohio" and included in Seagram's Ohio-apportioned sales. The court also held, conversely, that when an Ohio purchaser transports

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goods through Ohio on their way to some ultimate destination outside the state, there is no delivery to the purchaser in Ohio within the meaning of the CFT statute, and those sales would not be considered business transacted in Ohio.

Dupps Co. involved an Ohio corporation that manufactured heavy machinery and replacement parts for use in meat processing, which it sold to customers in all 50 states and foreign countries. Typically, the customer would be responsible for shipment of the equipment from the Ohio plant. In computing its franchise tax obligation under O.R.C. section 5733.05(B), Dupps excluded from the sales factor of the formula its "customer pickup" sales — sales to non-Ohio customers, in which the purchaser either used its own vehicles to transport the equipment from its Ohio factory or hired private truckers to do the same. The tax commissioner argued that the equipment should be deemed "received in this state by the purchaser" if it was picked up at the Ohio factory. As a result, the commissioner argued that the customer pickups constituted Ohio sales. On appeal, the Ohio Supreme Court rejected the tax commissioner's argument, holding that "since the equipment herein was 'ultimately received' outside of Ohio, such sales should not have been included in the sales factor as business done in this state."[14] Importantly for the taxpayer in *Dupps Co.*, it did not matter whose trucks were used for transport; the key point was to focus on the products' ultimate destination after all transportation was complete.

Loral involved an out-of-state manufacturer and vendor of electronic radar equipment for use on aircraft. The U.S. Department of Defense purchased the equipment — with many of the purchases passing through the Wright-Patterson Air Force Base in Dayton, Ohio. Much of the property would later be shipped from the base to its final destination out of state. Citing *Dupps* and *House of Seagram*, the BTA held that Loral was entitled to base its taxation on the goods' final destination, not their initial delivery point in Ohio. The board ruled as follows:

Here, we expressly find that the record before this Board includes uncontroverted testimony that the assessed property merely entered Ohio in route to non-Ohio

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destinations. *We cannot accept [the tax commissioner's] conclusion that the transportation of the property was completed at the moment it arrived at Wright-Patterson. The testimony before this Board clearly indicates that the property was shipped from Wright-Patterson to points outside of Ohio.* [The commissioner] did not produce any evidence which would cause this Board to conclude that the later shipment of the goods from Wright-Patterson was not *a continuation* of the transportation beginning at appellant's New York facility. [Emphasis added.]

This ruling explains that products can be held at an Ohio distribution center for a period before the ultimate destination of the products is determined. Moreover, if the Ohio distribution center is a link in the continuous supply chain, then it may not be appropriate to deem Ohio as the ultimate destination of those products.

It is unclear based on the BTA's decision and published sources as to who exactly testified before it; it could have been someone from Loral or its purchaser, the Department of Defense. Nevertheless, it is critical to note that the board accepted and relied on testimony regarding the ultimate destination of the goods in rendering its decision in favor of the taxpayer.

The Tax Commissioner's Position on the Ultimate Destination Rule

A taxpayer's ability to provide testimony or evidence (at a hearing or otherwise) on the final destination of its sales may contradict the tax commissioner's position on the ultimate destination rule. Information Release CAT 200517 provides that the location of the ultimate destination must be known by the seller at the time of the sale. Despite the information release's position, the statute itself does not require that the ultimate destination be known by the seller of tangible personal property at the time of the sale. In fact, Ohio courts have consistently held that information releases are nothing more than the department's position on an issue and are not to be regarded as binding authority.[15]

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The department's position that the ultimate destination must be known by the seller at the time of the sale is not only unfounded in law, but it also creates an unworkable standard that requires taxpayers to request and obtain records that typically lack independent business purpose or value for the taxpayer, frustrate customers, and increase the cost of doing business. Further, this standard represents poor economic policy in that it encourages taxpayers that have choices on where to ship their products to not ship their products into Ohio distribution centers or locations. This is the opposite of the intent of the Ohio tax reform under which the CAT was enacted. That reform intended to provide incentives for businesses to relocate into Ohio by eliminating taxation of personal property and by repealing property and payroll factors used for income-based taxes in favor of the CAT. The authors are aware of a multinational corporation that moved its Ohio distribution center to another state partially as a result of Ohio's position regarding the sourcing of tangible personal property.

Recent CAT Cases Involving the Ultimate Destination Rule

The department's position regarding the ultimate destination rule has been challenged in several recent CAT cases. But in each case, courts held that taxpayers were unsuccessful in providing sufficient (or, in some cases, any) evidence regarding the ultimate destination of their shipments. When insufficient evidence is provided regarding the ultimate destination of a shipment, Ohio will tax based on the initial delivery point. It appears that the Department of Taxation could have cherry-picked these cases and allowed them to go before the BTA because of the lack of evidence. Unfortunately for other Ohio taxpayers, bad facts generate bad precedent.

The recent cases of *Greenscapes*, *Mia Shoes*, *Henry*, and *Electrolux* are examples of taxpayers providing apparently insufficient evidence to rebut the department's default position.

Greenscapes was a Tenth District case on appeal from the BTA, in which an out-of-state supplier of tangible personal property was subject to the CAT despite having only sales into the state and no physical presence. The taxpayer in this case based its arguments on

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the constitutionality of the CAT from a due process and commerce clause perspective. Relying on the precedents of *Crutchfield* and *Wayfair* together, the Tenth District held that the CAT and its bright-line nexus standard were constitutional. While *Greenscapes* has been cited frequently for its constitutional analysis, the factual and statutory issues are often overlooked. The BTA and Tenth District opinions both mentioned that Greenscapes had the opportunity to reduce its Ohio-sourced gross receipts (and corresponding tax) by supplying evidence regarding the ultimate destination of its goods. Apparently, the Ohio auditor requested ultimate destination data during the audit, but the taxpayer never provided it. The lack of evidence and proof ultimately doomed the taxpayer in *Greenscapes*.

Mia Shoes was similar to *Greenscapes*. The BTA affirmed an out-of-state footwear wholesaler's CAT assessment, finding that the tax was properly assessed because the taxpayer failed to prove that the goods shipped into Ohio warehouses were ultimately received anywhere other than in Ohio. Citing *Greenscapes*, the board found that "the evidence shows that Mia Shoes shipped its goods to Ohio, knew it was shipping goods to Ohio, and lost visibility of the goods once they were delivered to the customers in Ohio."[16] The lack of sufficient evidence and proof once again doomed this taxpayer.

Henry[17] is yet another case of a taxpayer who argued for a tax reduction by application of the ultimate destination rule, but unfortunately did not properly present evidence to rebut the tax commissioner's audit findings. This case involved an out-of-state gun manufacturer that sold guns to distributors, some of which were in Ohio. Citing *Dupps* and *Greenscapes*, the taxpayer argued that goods picked up in Ohio for delivery outside of the state were not Ohio sales (that is, the ultimate destination rule). In its decision, the BTA compared this case with the holdings in *Greenscapes* and *Mia Shoes*:

In all three cases, an out of state producer shipped products into Ohio, and the three companies knew the products were shipped into Ohio. All three made the argument that *some* products were destined for locations shipped outside of Ohio but did not prove *how many* or *which* products were

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transported outside of Ohio. Accordingly, we find Henry's argument meritless in light of *Greenscapes* and *Mia Shoes*. [Emphasis added.]

The taxpayer in *Henry* submitted summaries of reports as exhibits to its notice of appeal that purportedly demonstrated an error in the commissioner's calculation of the Ohio-sitused receipts. However, as a long-standing rule, these summaries and exhibits were rejected because they were not properly authenticated at a BTA hearing. In fact, the taxpayer did not even request a hearing. Authentication clearly requires more than just appending exhibits to a notice of appeal. If the taxpayer had requested a hearing, its summaries could have been authenticated as evidence through oral testimony verifying the records before the board and allowing the commissioner to cross-examine the witness attempting to authenticate the records. However, the taxpayer did not give itself that opportunity.

The taxpayer in *Henry* also argued that some of the information proving its case was in the statutory transcript from the audit and the administrative hearing before the Ohio Department of Taxation. The BTA refused to consider this information, stating: "It is incumbent on Henry to establish its right to the relief requested. *Westlake Polymers v. McClain* (May 29, 2020), BTA No. 2019-830, unreported ('It is not the duty of this board to comb through the audit work papers to determine if they actually support the appellant's arguments.')" While the taxpayer in *Henry* claimed to have proof of the ultimate destination, none of it counted at the BTA level or was reviewed by the board because of procedural missteps. Again, the lack of evidence ruined the taxpayer's position.

A final determination (April 23, 2020) and notice of appeal to the BTA (June 18, 2020) involving Electrolux Home Products Inc. provides further insight into the Ohio Department of Taxation's position on reconciling the holdings in the older CFT cases with the more recent decisions in *Greenscapes* and *Mia Shoes*. Based on the final determination in Electrolux, it appears that the department will apply (or at least mention) the principles set forth in *Dupps* and *House of Seagram* in CAT audits. However, in citing *Greenscapes* and *Mia Shoes*, and similar to the holdings in both cases, the

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department determined that the taxpayer did not meet its affirmative burden of proof to demonstrate that its products sold into Ohio were immediately (or at any later point) shipped out of state. The taxpayer argued in its notice of appeal that it maintained sufficient customer records regarding the final (out-of-state) destination of its shipments. But based on the information in the notice of appeal and final determination, the detail and specificity of that customer information is unclear. Evidently, the tax commissioner did not find the information to be sufficient during the audit process. It is critical to note that the Electrolux final determination is merely an administrative holding. This case will be important to monitor at the BTA and (possibly) beyond.

While none of these recent CAT cases has resulted in a favorable ruling for the taxpayers (yet), they underscore the importance of properly introduced evidence — which was nonexistent in all of them. We know from these decisions that evidence must be either stipulated by the parties or properly authenticated at a BTA hearing. As evidenced by the discord between the taxpayers and its positions in these cases, the department is unlikely to stipulate. Thus, this begs the question: What types of evidence would be sufficient?

The Question of Sufficient Evidence

Based on scant guidance from Ohio courts, the General Assembly, and the Department of Taxation, it is not abundantly clear as to what evidence would be sufficient regarding the final destination of a company's shipments. Clearly, however, taxpayers desiring to accurately report their underlying CAT liability should keep track of their products' ultimate destinations to support their Ohio situsing methods. Otherwise, they could end up in the same position as *Greenscapes* and *Mia Shoes*, with no evidence and a larger-than-necessary CAT assessment. Returning to the earlier hypothetical example, how could SupplyCo use the final destination rule to reduce the amount of underlying CAT it may owe?

The best evidence would likely be a paper trail of invoices or bills of lading showing that specific tangible personal property eventually left Ohio before reaching its ultimate destination out of state.

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However, this level of detail may not be available and is likely too voluminous and cumbersome to work through. Further, customers may push back on these requests because of competitive business concerns, privacy laws, or the cost of complying with the requests. There may be ways to work through these concerns, however, such as redacting sensitive business information and customer names. To obtain sufficient, credible information that is also practical, taxpayers could begin to work with their customers to obtain spreadsheets or summary data on the products' ultimate destinations.

While written records may be the preferred standard of proof, they may not be the only way to prove the ultimate destination. Without written records, taxpayers could seek written or oral testimony from a customer that the shipments into Ohio are later shipped out of state. Based on the BTA's holding in *Loral*, it seems that testimony that the property was merely passing through Ohio before reaching its ultimate destination would satisfy the taxpayer's burden of proving that the ultimate destination was outside Ohio. The recent Ohio Second Appellate District Court case of *Riverside v. Patino*, 2020-Ohio-4486, which involved tax deficiencies and penalties, used and relied on an employee's affidavit as evidence. Hence, it appears that employee affidavits can be accepted as evidence by the BTA and other Ohio courts, with the level of credibility afforded to the affidavits decided by those courts.

In the recent *Defender Security Company* case, the Ohio Supreme Court held that a combination of summary internal corporate documentation and employee testimony would be sufficient evidence to determine the location of sales for purposes of the CAT. On the topic of sufficient evidence, the court ruled as follows:

> Defender presented summary documents showing its CAT payments relating to the receipts at issue and then, at the BTA hearing, presented the testimony of its corporate controller to verify the summary documents in light of underlying records. *Given this, we see no reason why the absence of primary documentation should deter us from reaching the legal issues when it did not deter the commissioner himself, in his final determination, from doing*

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so without any suggestion of a defect in the evidence. Thus, we conclude that dismissal on evidentiary grounds would be inappropriate under these circumstances.[18] [Emphasis added.]

While Defender Security involved the sourcing of sales of intangible property, the standards of evidence should remain constant. This appears to be a much more relaxed standard than the final determination in *Electrolux*, in which the tax commissioner appears to be unwilling to accept the taxpayer's corporate sales records.

Taxpayers may also suggest a form of sampling or estimation methods for determining the ultimate destination of gross receipts. In fact, there is a judicial basis for accepting sampling methods and estimates when absolute certainty is impossible. This is known as the *Cohan* rule. *Cohan v. Commissioner of Internal Revenue* is a federal tax case regarding the deductibility of certain expense. In that case, the Second Circuit ruled as follows:

Absolute certainty in such matters is usually impossible and is not necessary; the Board should make as close an approximation as it can, bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making. But to allow nothing at all appears to us inconsistent with saying that something was spent.[19]

The *Cohan* rule supports the position that estimates are acceptable when they are reasonable, and allowing for no form of estimate (even a conservative estimate) would certainly be inaccurate.

Could the *Cohan* rule apply to the sourcing of tangible personal property under the CAT?[20] While the taxpayers in *Mia Shoes* and *Greenscapes* were apparently unable to provide the information requested by the commissioner, it is uncertain whether the commissioner would have accepted an estimate in lieu of other items of evidence.

In fact, the commissioner already does permit estimation when it comes to sourcing receipts to qualified distribution centers (QDCs).[21] In Ohio, some large distribution centers meeting the statutory requirement of at least $500 million in qualified property costs are

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granted the benefit of an estimation method. There is a high cost of entry to obtain QDC status: QDC holders must pay a $100,000 annual fee to the Ohio Treasurer of State.

QDC certificate holders use an estimation method to establish an Ohio delivery percentage for their warehouses, which allows their suppliers to obtain a reduced CAT on their Ohio shipments. The theory behind this is the ultimate destination rule: The Ohio delivery percentage equals the percentage of the cost of qualified property shipped out of the QDC to purchasers in Ohio. This QDC arrangement ultimately benefits the owners of the QDC certificates because they (theoretically) receive better pricing from their suppliers, which are subject to less taxation on their sales. This all begs the question: Why should this benefit only apply to large corporations that are willing to pay a significant annual fee to the state? It seems that such a selective benefit could contradict the equal protection clauses of the U.S. and Ohio constitutions — which stand for the premise that substantially similar taxpayers must be treated the same.

Take Action Now to Mitigate Tax and Penalty Risk

Most of this article deals with what businesses like SupplyCo can do during an audit or appeal process. However, there are proactive steps that companies can take to potentially reduce CAT and associated penalties. For one, they can collect records from their customers regarding the ultimate destination of their products after all transportation is complete. Further, companies could amend their contracts to require customers to provide information on products' ultimate destination.

If a company believes it may have overpaid CAT in past periods based on its sourcing method, it may be entitled to a refund claim. Taxpayers must file a refund claim within four years of the payment of CAT on which the refund claim is based.[22]

Alternatively, if you determine that you have underpaid CAT in prior periods, it may be beneficial to consult with a licensed Ohio tax attorney to discuss a confidential voluntary disclosure. Because of attorney-client privilege and the design of these programs, a

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taxpayer's identity can be kept anonymous until proper guidelines are agreed upon. Further, a voluntary disclosure is typically helpful in mitigating potential penalties and limiting the number of years that the department seeks to go back. If a taxpayer's liability does not warrant or qualify for a voluntary disclosure, then it should consider filing CAT returns (even during audit) before any assessment is made to avoid nonfiling penalties. The returns can be filed using the taxpayer's good-faith position and are not required to follow the department's position. If a taxpayer wants to avoid the risk for underpayment penalties inherent in filings in contravention of the department's position, the taxpayer can file and pay taxes based on the department's position and file a refund claim for the difference. However, note that doing that can tilt the negotiation leverage in the department's favor if a settlement is the goal — because the agency has the tax revenues in its coffers and the road to a contested refund can be long.

If you are dealing with a pending case, consider the application of prior CFT cases or the more relaxed proof standards expressed in *Defender Security*. Moreover, if you do not have access to precise records, consider applying the *Cohan* rule and prepare estimates of the products' ultimate destination.

For more information, contact any member of Frost Brown Todd's Tax Practice.

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[1]This tracks with Ohio's percentage of the U.S. population, approximately 4 percent.

[2]See infra notes 11 and 12.

[3]South Dakota v. Wayfair Inc., 585 U.S._ , 138 S. Ct. 2080, 2089 (2018).

[4]*See Great Lakes Minerals LLC v. Ohio*, No. 2018-SC-000161-TG (Ky. Sup. Ct. 2019), *cert. denied* 2020 WL 5883297 (2020).

[5]*National Bellas Hess Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967); and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

[6]The more common term "sourcing" is used interchangeably with the Ohio statutory term "situsing" throughout the article.

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[7]Delaware, Nevada, Ohio, Oregon, Tennessee, Texas, and Washington use some form of gross receipts tax. *See* Janelle Camenga, "Does Your State Have a Gross Receipts Tax?" Tax Foundation, Apr. 22, 2020.

[8]O.R.C. section 5751.01(I).

[9]O.R.C. section 5751.06.
[10]O.R.C. section 5703.58.

[11]*See Crutchfield Corp. v. Testa*, 151 Ohio St. 3d 278, 88 N.E.3d 900 (2016).

[12]*Greenscapes Home and Garden Products Inc. v. Testa*, BTA Case No. 2016-350 (2017).

[13]*House of Seagram Inc. v. Porterfield*, 27 Ohio St. 2d 97, 271 N.E.2d 827, 828 (1971); *Dupps Co. v. Lindley*, 62 Ohio St. 2d 305, 405 N.E.2d 716 (1980); and *Loral Corporation v. Limbach*, BTA Case Nos. 85-C-914, 85-B-915 (1988).

[14]*Dupps Co. v. Lindley*, 62 Ohio St. 2d 305, 308, 405 N.E.2d 716, 718

[15]*See Renacci v. Testa*, 148 Ohio St. 3d 470, 71 N.E.3d 962 (2016).

[16]*Mia Shoes Inc. v. McClain*, BTA Case No. 2016-282 (2019).

[17]*Henry Rac Holding Corporation v. McClain*, BTA Case No. 2019-787 (2020).

[18]*Defender Security Co. v. McClain*, 2020-Ohio-4594, 2020 WL 5776005.

[19]*Cohan v. Commissioner of Internal Revenue*, 39 F.2d 540 (2d Cir. 1930).

[20]It is noted that the CAT is intended to use the principles and definitions of federal tax law unless a different meaning is clearly required. *See* O.R.C. section 5751.01(K).

[21]Ohio Admin. Code 5703-29-16; O.R.C. section 5751(F)(2)(z).

[22]O.R.C. section 5751.08(A).

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