

Blog Post

Where's My Sales? – Sourcing Sales Receipts for Ohio CAT Purposes

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The cornerstone of any taxing regime is the situsing of receipts. The taxpaying public must have certainty regarding when its income is subject to tax in a jurisdiction. Recent rulings from the Ohio Department of Taxation (the “Department”) regarding the situsing of receipts for the Ohio Commercial Activity Tax (“CAT”), however, inject ambiguity into what should be a straightforward analysis.

Under Ohio law, where tangible personal property is delivered into Ohio, the situs of the sale is the place where the property is finally received “after all transportation has completed.” The passage of title is irrelevant to the sourcing of the sale. This statement of law raises several unanswered questions. For example, when is the property finally received? At what point in the process of delivery is all transportation completed? Recent administrative rulings from the Department and the recent *Greenscapes Home and Garden Products, Inc.* decision from the Ohio Board of Tax Appeals (the “BTA”) do not give clear answers to these questions.

Consider the following simple fact pattern. Company A is a wholesaler of shoes located outside Ohio. Company B has a distribution center located in Ohio and retail stores across the United States, including Ohio. Company A sells shoes to Company

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B and delivers the shoes to Company B's distribution center in Ohio. Company B breaks down the pallets of shoes, repackages them for delivery and then ships the shoes for sale at retail to its stores in Ohio and elsewhere. What dollar value of the wholesale sales by Company A is subject to the CAT?

The threshold question is whether the actions of Company B at the distribution center result in 100% of the wholesale sales being subject to tax. At this time, the answer to this question *appears* to be "no". In a 2016 administrative ruling issued to a printer of advertising inserts, the Department concluded that taking possession, making changes to, and repackaging property in a fulfillment center did not result in final delivery to the purchaser. The Department stated that the fulfillment center was merely an intermediate point in the delivery process.

The next step is to determine what percentage of Company A's wholesale sales are sourced to Ohio. We know that not all of the shoes are sold at retail in Ohio. Company B ships the shoes to stores all over the United States for retail sale. The taxpayer in *Greenscapes* made this exact argument. However, the BTA rejected this argument noting that the taxpayer failed to provide any evidence of ultimate delivery. Recently, in a 2017 administrative ruling, the Department acknowledged that property shipped to a distribution center in Ohio and subsequently delivered outside the state would not be sourced to Ohio. Despite this apparent concession, the Department rejected the wholesaler's supporting evidence comparing the percentage of its customer's Ohio retail stores to all of its retail locations.

Although the CAT has been around for over a decade, many important questions remain regarding the proper sourcing of sales.

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