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# State Tax Return

## Ohio Department Of Taxation Review Of Ohio Commercial Activity Tax Information Releases And Draft Rules

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As of the date this article is written, the Ohio Department of Taxation has issued 15 Information Releases addressing the Commercial Activity Tax -- some with more than one version. Each Information Release, the topic it addresses, and any draft administrative rule it incorporates is set forth below. To the extent a particular release and/or draft rule addresses a significant issue, the State Tax Return will discuss it. To date, we have done so with respect to CAT 2005-01 and CAT 2005-05 (October 2005 Edition). In this edition, we have done so with regard to CAT 2005-07 and CAT 2005-10 through CAT 2005-12.

### What Has Been Issued So Far

<u>INFO RELEASE</u>	<u>TOPIC</u>
CAT 2005-01	Definition of "Foreign Corporation" (Rule 5703-29-01)
CAT 2005-02	Nexus Standards - September 2005
CAT 2005-03	Excluded Person - Consolidated Elected and Combined Taxpayer Groups (Rule 5703-29-04)
CAT 2005-04	Quarterly Taxpayers Must File and Pay Electronically (Rule 5703-29-02)
CAT 2005-05	Application of "Common Owners" - Version 2 (Rule 5703-29-02)
CAT 2005-06	Situsing Rules for Certain Services - Version 3
CAT 2005-07	Transfers of Property Into the State (Rule 5703-29-xx)
CAT 2005-08	I.R.C. Section 1221 and 1231 Assets Excluded from "Gross Receipts"
CAT 2005-09	Sampling (Rule 5703-29-06)

<b><u>INFO RELEASE</u></b>	<b><u>TOPIC</u></b>
CAT 2005-10	Qualified Foreign Trade Zone Area (Rule 5703-29-07)
CAT 2005-11	Qualified Foreign Trade Zone Area (Additional Information)
CAT 2005-12	Request for Member of a Combined Taxpayer Group to File Separately (Rule 5703-29-08)
CAT 2005-13	Estimated Payments for Calendar Quarter Taxpayers (Rule 5703-29-09)
CAT 2005-14	Commercial Activity Tax: Nonprofit Organizations (Rule 5703-29-10)
CAT 2005-15	Change in Registration Status until November, 2005

### **CAT 2005-07 -- Transfers Into Ohio Of Property Received Outside The State**

Under R.C. 5751.013, a person subject to Ohio's Commercial Activity Tax ("CAT") that receives property outside of Ohio is required to include as a taxable gross receipt the value of such property if the person transfers the property into the State for the person's own use within one year of the date of receipt.

Pursuant to a draft rule proposed by the Commissioner, the value of property brought into Ohio within twelve months of its receipt does not have to be included as taxable gross receipt by the purchaser. However, upon audit, if the Commissioner finds that the receipt outside of Ohio was intended in whole or in part to avoid the CAT, he may require the value of the property to be included as a taxable gross receipt. In these circumstances, no penalty will be imposed by the Commissioner.

It is also the case that the Commissioner may identify and post on the Department of Taxation's website one or more descriptions of transfers that the Commissioner deems are intended to avoid the CAT. If a transfer is one described, a person subject to the CAT must include the value of the property transferred as a gross receipt for the tax period in which the transfer is made. The property is to be valued at its fair market value at the time of transfer. In these circumstances, the taxpayer may file a refund claim and attempt to show that the acquisition and subsequent transfer was not intended in whole or in part to avoid the CAT.

### **CAT 2005-12 --Request For Member Of Combined Taxpayer Group To File Separately**

For CAT purposes, the members of a combined taxpayer group, i.e., all persons that have more than 50 percent common ownership, are required to file as one taxpayer. Not infrequently, a member of a combined taxpayer group will not want to share

information with other members of the group. Recognizing this reality, the Commissioner has proposed a draft rule (5703-29-08) pursuant to which a member of a combined taxpayer group may request permission to file a separate CAT return. The procedure doing so is set forth below.

A member that is not the primary taxpayer of a combined taxpayer group, together with the primary taxpayer of the group, must contact the Commissioner and request approval that the member be allowed to file separately from the group. The member and the primary taxpayer must agree to all of the following:

- a) The member will not claim any of the group's exclusion of \$1 million for calendar year taxpayers or \$250,000 for calendar quarter taxpayers, and is not entitled to claim any exclusion of the member's taxable gross receipts on its own behalf.
- b) The member will file as a separate taxpayer and will be subject to the applicable tax rate on all of the member's taxable gross receipts without any exclusion. For example, for the semiannual period July 1, 2005 through December 31, 2005, if a member had \$30,000 of taxable gross receipts, the tax would be \$18, the rate of .0006 times the entire \$30,000 of taxable gross receipts.
- c) The member is financially sound and currently able to pay the CAT and other obligations as determined by the Commissioner.
- d) The member remains jointly and severally liable for the group's tax liability.

Once a request has been made, the Commissioner must provide a copy of his written denial or approval to both the member requesting to file separately and to the primary taxpayer of the combined group. If approved, the separate filing normally starts at the beginning of the next tax period for the combined taxpayer, absent special approval to the contrary.

The Commissioner may revoke separate filing approval at any time.

### **CAT 2005--10 And 2005-11 - Commercial Activity Tax And Qualified Foreign Trade Zones**

The Ohio Department of Taxation has issued two information releases regarding the CAT and Qualified Foreign Trade Zone Areas. Information Release CAT 2005-10 and Information Release CAT 2005-11. Uncodified § 557.09.09 of Am. Sub. H.B. 66 ("§ 557.09.09") excludes from gross receipts for purposes of CAT the gross receipts from shipments into and out of a Qualified Trade Zone Area. In Information Release CAT 2005-10 the Department has proposed a draft rule, 5703-29-07, to provide guidance on the conditions under which gross receipts may be excluded from CAT under § 557.09.09.

In order for shipments to qualify for this exclusion, the Qualified Foreign Trade Zone Area must have commenced construction of a qualified intermodal facility as defined in § 557.09.09(B). “Qualified intermodal facility” is defined as:

[A] transshipment station that is capable of receiving and shipping freight through rail transportation, highway transportation, and air transportation.

Further, “the shipments must be to or from a warehouse or facility that is located within one mile from an international airport and that is located, in whole or in part, within a foreign trade zone as defined in [R.C. 5709.44(A)(2).” Draft Rule 5703-29-07(B). That provision defines a “foreign trade zone” as:

[A] general purpose foreign trade zone or a special purpose subzone for which pursuant to the “Act of June 18, 1934,” 48 Stat. 998, 19 U.S.C.A. 81a, as amended, a permit for foreign trade zone status was granted before January 1, 1992, including expansions of and additions to such a zone that are adjacent to the zone as it existed on January 1, 1992, but excluding special purpose subzones for which a permit is granted on or after such date.

In order to help taxpayers identify facilities that meet the requirements for this exclusion, the Tax Commissioner may post on its website maps of international airports that meet the qualifications of § 557.09.09. Any warehouse or facility shown on these maps is deemed, by the Tax Commissioner, to meet the requirements for the exclusion from CAT. Conversely, the taxpayer has the burden of establishing that any warehouse or facility that does not appear on the Department’s maps is within the one-mile boundary, and falls within the exclusion. Draft Rule 5703-29-07(C).

The Department has determined that the Rickenbacker Airport is an international airport with a qualified intermodal facility. Information Release CAT 2005-11. The Department’s website includes a map of the Rickenbacker Airport which sets forth the one-mile boundary and indicates the foreign trade zone areas. Any warehouse or facility shown on the Rickenbacker map that is within one mile of the airport boundary and located within a foreign trade zone is deemed to meet the requirements for the exclusion under CAT.■



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