CAT 2006-07 - Commercial Activity Tax: Qualified Distribution Centers - Issued June, 2006; Revised July, 2006; Revised September, 2006; Revised June, 2014; Revised July 2014

This rule clarifies the exclusion for qualifying distribution center receipts for purposes of the Commercial Activity Tax (CAT). This rule is being updated to clarify that a refining facility, as that term is defined in R.C. 5751.01(F)(2)(z)(VIII) may obtain a qualified distribution center certificate. If you wish to comment on the proposed rule or the BIA, please send your comments to the Department of Taxation and the Common Sense Initiative Office by August 15, 2014.

Proposed Rule 5703-29-16 Qualified distribution center.

(A) Pursuant to division (F)(2)(z) of section 5751.01 of the Revised Code, “gross receipts” excludes “qualifying distribution center receipts.” That division defines “qualifying distribution center receipts” and other terms used in that definition. While all the requirements of division (F)(2)(z) of section 5751.01 of the Revised Code must be met, it essentially provides that certain receipts of a supplier from qualified property delivered to a qualified distribution center are excluded from that supplier’s calculation of gross receipts for purposes of the commercial activity tax. The extent of this exclusion is based on the Ohio delivery percentage as determined by the qualified distribution center, and such percentage applies to all suppliers shipping to that location regardless of the percentage of that supplier’s actual property that will be shipped outside the state.

(B) In order to meet the requirements to be a qualified distribution center, a warehouse ~~or other similar~~, a facility similar to a warehouse, or a refining facility in addition to meeting all other requirements specified in division (F)(2)(z) of section 5751.01 of the Revised Code, must meet both of the following requirements for the qualifying period:

(1) The operator of the warehouse ~~or similar~~, facility similar to a warehouse, or a refining facility and members of the operator’s consolidated elected taxpayer group as described in section 5751.011 of the Revised Code must have had at least five hundred million dollars in cumulative costs from qualified property delivered to the distribution center by its suppliers during the qualifying period. Such costs only include costs of qualified property, which is tangible personal property delivered to a distribution center that is shipped there solely for further shipping by the distribution center to another location either within or without this state or in the case of gold, silver, platinum or palladium, delivered to a refining facility solely for refining to a grade and fitness acceptable for delivery to a registered commodity exchange. Only the cost of the qualified property, less any ~~deductions~~reduction in price(e.g., cash discounts) is considered for purposes of this calculation. Any costs or reimbursements for providing a service to the seller, such as management consulting services, are excluded from the calculation. Further, only purchases made by members of the same consolidated elected taxpayer group and received at the distribution center are included in the calculation of the five hundred million dollars. All purchases from members of the same consolidated elected taxpayer group must be excluded from the calculation and cannot be included in the five hundred million dollar threshold.

(a) For example, Corporation A is the operator of a distribution center. Corporation A, Corporation B, and Corporation Z purchase qualified property that is shipped to the distribution center by independent, third-party suppliers during the qualifying period. Corporation A and Corporation B are part of the same consolidated elected taxpayer group; Corporation Z is not part of Corporation A's consolidated elected taxpayer group. The purchases of qualified property made by Corporation A and Corporation B that are shipped to the distribution center are aggregated in the calculation of the five hundred million dollar threshold. However, purchases made by Corporation Z are not included in that calculation because Corporation Z is not part of Corporation A's consolidated elected taxpayer group.

(b) In contrast, assume the same facts as in the previous example. The intercompany sales between Corporation A and Corporation B or between or among any other members of the operator's consolidated elected taxpayer group are not aggregated with other purchases from outside suppliers to meet the five hundred million dollar threshold.

(2) The operator of such warehouse, a facility similar to a warehouse, or refining facility must have had more than fifty per cent of the cost of the qualified property shipped to a situs outside this state under the provisions of division (E) of section 5751.033 of the Revised Code during the qualifying period. Any qualified property shipped from a qualified distribution center to a destination within this state is received in this state, even if the qualified property is subsequently shipped outside this state.

(C) If the warehouse ~~or similar,~~ facility similar to a warehouse, or a refining facility meets both requirements, the operator of such location must make an application to the Tax Commissioner and provide its Ohio delivery percentage. The Ohio delivery percentage equals the percentage of the cost of qualified property that is shipped to purchasers located within this state. The computation shall be carried out to four decimal places (e.g., 44.56%). If the calculation results in more than four decimal places, the percentage shall be rounded up whenever the fifth decimal place is greater than four. "Purchasers" of this property may be either members of the same consolidated elected taxpayer group or non-members of the group. The cost basis used for calculating the Ohio delivery percentage must be consistently applied in both the numerator and denominator and must be supported by the taxpayer's records as they existed during the qualifying period.

(D) On the operator's application, the calculations provided to establish compliance with the requirements identified in this paragraph and paragraph (B) of this rule must be certified by a certified public accountant in a format approved by the commissioner. Such certification must be attached to the operator's application.
With the application, the operator must provide both: (1) the cost of the qualified property shipped to the distribution center by suppliers during the qualifying period; and (2) the Ohio delivery percentage cost attributable to each location, which is the proportion of the cost of the qualified property shipped to locations in this state compared with the cost of qualified property shipped everywhere. Only those suppliers that actually sell to such qualified distribution center qualify for the partial exclusion from their gross receipts.

(E) In the event an agency relationship exists such that a broker, for example, works with a supplier to sell to a distribution center, only the principal (the supplier) is entitled to take the partial exclusion from its gross receipts pursuant to division (F)(2)(z) of section 5751.01 of the Revised Code. The broker may be entitled to exclude the portion of the gross receipts it passes on to the principal/supplier as an agent under division (F)(2)(l) of section 5751.01 of the Revised Code. However, the person receiving the commission or fee could not apply the Ohio delivery percentage to its commission or fee in order to further reduce its commercial activity tax liability because such person is providing a service and the amount retained is not attributable to qualified property.