

## Commercial Activity Tax (CAT)

### Taxpayer

The CAT is paid by any person that has substantial nexus with the State of Ohio and with taxable gross receipts of \$150,000 or more in a calendar year. The term "person" includes sole proprietors, partnerships and corporations. It also applies to service providers such as medical professionals, attorneys, and accountants, as well as persons engaged in the sale or rental of property. A person has substantial nexus if they have any one of the following in a calendar year:

- at least \$500,000 in taxable gross receipts;
- at least \$50,000 in property in Ohio;
- expend at least \$50,000 in payroll;
- at least 25 % of their total property, payroll, or gross receipts in Ohio; or
- are domiciled in Ohio.

### Tax Base

The CAT is a business privilege tax measured by gross receipts, defined as the total amount realized, without deduction for the cost of goods sold or other expenses incurred, from activities that contribute to the production of gross income. Examples of gross receipts include sales, performance of services, and rentals or leases. A taxpayer accounts for gross receipts using the same method of accounting as for federal income tax (i.e., accrual or cash basis).

### Rates

- Generally, taxpayers with annual taxable gross receipts of \$150,000 or less are not subject to the CAT.
- Taxpayers with annual taxable gross receipts of more than \$150,000 are subject to an annual minimum tax of \$150.
- Taxpayers with annual taxable gross receipts in excess of \$1 million are subject to the annual minimum tax of \$150 and also pay tax of .26% measured by the taxable gross receipts above \$1 million on a quarterly basis (with a \$250,000 quarterly exclusion).

### Major Exemptions

The CAT does not apply to:

- nonprofit organizations;
- financial institutions;
- insurance companies;
- affiliates of financial institutions and insurance companies, paying the corporation franchise tax or insurance premiums tax, respectively;
- dealers in intangibles; and
- certain receipts by public utilities that are subject to the public utility excise tax.

### Revenue

(In Millions)

Fiscal Year	Total
2007	\$594.9
2008	961.4
2009	1,179.4
2010	1,342.1
2011	1,451.6

### Disposition of Revenue

In fiscal years 2007 to 2011, 70 percent of CAT revenue was dedicated to the School District Replacement Fund and 30 percent to the Local Government Replacement Fund.

In fiscal year 2012, the General Revenue Fund will receive 25 percent of CAT revenue, and the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund receive 52.5 percent and 22.5 percent of tax revenue, respectively. In fiscal year 2013 and thereafter, the General Revenue Fund receives 50 percent of CAT revenue, with the School District and Local Government Tangible Property Tax Replacement Funds receiving 35 percent and 15 percent, respectively.

### Payment Dates

All persons liable for the CAT must register prior to filing a return. All taxpayers are subject to the annual minimum tax of \$150, which is due by May 10th of each year.

Taxpayers with taxable gross receipts greater than \$1 million must file quarterly returns. Quarterly returns must be filed electronically through the Ohio Business Gateway on or before the tenth day of the second month after the end of each calendar quarter (May 10, Aug. 10, Nov. 10, and Feb. 10).

Taxpayers with taxable gross receipts less than \$1 million file annual returns. The annual return may also be filed electronically but electronic filing is not mandatory as it is with the quarterly return. The annual return is due on or before May 10 of each year. The annual return reports the prior year's taxable gross receipts and pays the annual minimum tax for the current (privilege) year.

### Special Provisions and Credits

Eligible taxpayers began accumulating one or all of the following credits against their CAT liability beginning Jan. 1, 2008, and were able to claim these credits beginning July 1, 2008 (on the return due Nov. 9, 2008):

- job creation tax credit.
- job retention tax credit.
- credit for qualified research expenses.
- credit for research and development loan payments.

In addition, a credit for unused franchise tax net operating loss deductions became available starting with the 2010 calendar year.

For more information about these credits, see the **Business Tax Credits** chapter.

### Sections of Ohio Revised Code

Chapter 5751.

### Responsibility for Administration

Tax Commissioner.

### History of Major Changes

**2005** The CAT is enacted as part of H.B. 66.

**2006** Legislation allows for certain corporations to claim an unused tax credit that was previously available against corporation franchise tax.

Beginning in 2007, an existing exemption for amounts derived from shipments into or out of a qualified foreign trade zone was replaced with an exemption for certain receipts from the sale of tangible personal property delivered to a "qualified distribution center".

**2007** Legislation devoted 70 percent of the CAT revenue to the School District Tangible Property Tax Replacement Fund. Previously, this provision would have expired in FY 2018.

The same legislation authorized an alternative method for situsing receipts from services that must be applied in a reasonable, consistent, and uniform manner that is supported by the taxpayer's records as they existed when the service was performed or within a reasonable time thereafter.

**2009** In *Ohio Grocers Assn. v. Levin*, the Ohio Supreme Court reversed the decision made by the Tenth District Court of Appeals and upheld that the CAT "is not a tax on the sale or purchase of food and therefore does not violate the Ohio Constitution."

Beginning in 2010, the due date for the annual minimum tax was moved from February to May. Additionally, the quarterly due dates for the CAT returns were moved to the tenth day of the second month following each tax period. Previously, the due date floated based on the calculation of forty days following each tax period.

**2010** A legislative change allows a person (in certain situations) who, after completion of the calendar year, was not subject to the CAT because the person's taxable gross receipts were \$150,000 or less, to apply for a refund of the previously paid annual minimum tax.

## Comparisons with Other States

(As of August, 2010)

None of the states selected for comparison in this publication impose a tax which is exclusively measured by gross receipts. The tax most closely resembling the CAT is the Texas franchise tax ("margin tax") which is based on the lesser of three alternative computations: total receipts less costs of goods sold; total receipts less compensation paid; or total receipts multiplied by 70 percent.

See the **Corporation Franchise Tax** chapter for further comparative information on state business taxes.