Commercial Activity Tax

The commercial activity tax (CAT) is a tax imposed on the privilege of doing business in Ohio, measured by gross receipts. The CAT is paid either quarterly or annually and applies to all business types that operate in Ohio, regardless of whether such business is located within Ohio. The tax was enacted by the Ohio General Assembly in 2005 as part of House Bill 66, legislation that also gradually phased out the tangible personal property tax and corporation franchise tax for the vast majority of Ohio businesses.

In fiscal year 2009, the CAT produced $1,179.2 million in total revenue. Of this amount, $825.4 million, or 70 percent, was deposited in the School District Property Tax Replacement Fund and $353.7 million, or 30 percent, was placed in the Local Government Property Tax Replacement Fund. No revenue was deposited into the General Revenue Fund.

The returns due and filed during fiscal year 2009 show that manufacturing taxpayers accounted for the largest share of tax liability, reporting $333.4 million or 28.9 percent of the total while accounting for 9.9 percent of all taxpayers. The retail sector represented the largest group of taxpayers – 12.8 percent – and represented 18.8 percent of total liability. Taxpayers with taxable gross receipts over $100 million accounted for more than half (58 percent) of total CAT liability and just 0.4 percent of the overall taxpayer population. In contrast, taxpayers whose receipts were $1 million or less represented just 1.1 percent of total tax liability but made up 71.9 percent of all taxpayers.

Taxpayer

(Ohio Revised Code 5751.01)

The CAT is paid by any person 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 most types of real property. The tax also applies to all businesses that either:

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

The tax does not apply to entities such as nonprofit organizations or certain types of entities that are liable for another Ohio tax, including:

- financial institutions and certain affiliates of financial institutions, which pay the corporation franchise tax;
- insurance companies, which pay the Ohio insurance premiums tax, and certain affiliates of insurance companies, which pay the corporation franchise tax; and
- dealers in intangibles, which pay the Ohio dealers in intangibles tax.

The tax also does not apply to certain receipts by public utilities that are subject to the public utility excise tax.

Tax Base

(R.C. 5751.001(F))

The base of the CAT is gross receipts sitused to Ohio. "Gross receipts" means the total amount realized, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income. Examples of gross receipts include sales, performance of services, and rentals or leases. The method of accounting for gross receipts for the CAT is the same as for federal income tax purposes (that is, accrual or cash basis).

Rates

(R.C. 5751.03 and 5751.031)

Generally, businesses with annual taxable gross receipts of $150,000 or less are not subject to the CAT.

Businesses with annual taxable gross receipts of more than $150,000 are subject to an annual minimum tax of $150.

Businesses with annual taxable gross receipts in excess of $1 million are subject to the annual minimum tax of $150 and also pay tax on receipts above $1 million on a quarterly basis (with a $250,000 quarterly exclusion) at the following tax rates:

- April 1, 2008 to March 31, 2009: 0.208 percent.
- April 1, 2009 and thereafter: 0.26 percent.

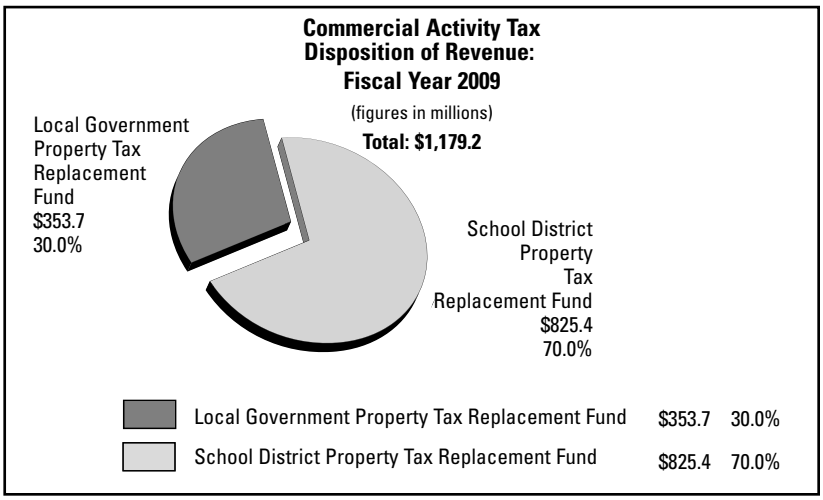
Credits

(R.C. 5751.51 – 5751.53, 5751.98)

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.

Chart



- 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.

Filing and Payment Dates

(R.C. 5751.051)

All businesses 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 10 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. Quarterly returns are due on 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 may 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.

Disposition of Revenue

(R.C. 5751.20)

During the 2009 fiscal year:

- 70 percent of the revenue generated by the CAT was dedicated to the School District Property Tax Replacement Fund.
- 30 percent of the revenue generated by the CAT was dedicated to the Local Government Property Tax Replacement Fund.

Current law maintains this distribution formula until fiscal year 2011. Beginning in fiscal year 2012, the CAT revenue apportioned to the Local Government Property Tax Replacement Fund will be drawn down at an average rate of 3.5 percentage points annually and deposited into the General Revenue Fund. Starting with fiscal year 2019, the General Revenue Fund will receive 30 percent of CAT revenue, and the remaining 70 percent will be allocated to the School District Property Tax Replacement Fund.

Administration

The Tax Commissioner administers the CAT and distributes the revenue to the various funds.

Ohio Revised Code Citations

Chapter 5751.

Recent Court Cases

Ohio Grocers Association v. Levin, 123 Ohio St.3d 303, 2009-Ohio-4872:

The Ohio Supreme Court reversed the decision made by the Tenth District Court of Appeals in *Ohio Grocers Assoc., et. al. v. Wilkins*, 897 N.E.2d188 (Ohio App. 10th Dist., Sept. 2, 2008). In its opinion, the Court decided that the CAT "is not a tax on the sale or purchase of food and therefore does not violate the Ohio Constitution." The Court further clarified that the CAT "is a tax on the privilege of doing business" and the "fact that the tax is measured by gross receipts that include proceeds from the sale of food does not affect the constitutionality of [the CAT]."

Table 1

Fiscal Year 2009 Commercial Activity Tax Returns, Number of Returns and Reported Financial Data, by Industrial Classification[1]
(Dollar amounts are in thousands)

Industrial Classification	NAICS Code Ranges	Number of Taxpayers	Taxable Gross Receipts	Exclusion[2]	Net Taxable Gross Receipts	Tax at 0.208% Rate	Annual Minimum Tax[3]	Tax Before Credits	Non-refundable Tax Credits[4]	Refundable Tax Credits[5]	Total Tax Due: 0.208% Tax and Minimum Tax
Agriculture, Forestry, and Fishing	111100-115310	5,761	$5,593,814	$2,567,864	$3,025,950	$6,294	$864	$7,158	$0	$0	$7,158
Mining	211110-213110	769	6,156,940	470,431	5,686,509	11,828	115	11,943	0	0	11,943
Utilities (excluding telecommunications)	221100-221300	127	16,631,001	82,270	16,548,731	34,421	19	34,440	0	0	34,440
Construction	236110-238900	16,609	33,750,871	8,319,904	25,430,966	52,896	2,491	55,388	0	0	55,388
Manufacturing	311110-339900	15,883	177,137,492	10,674,119	166,463,373	346,244	2,382	348,626	8,651	6,593	333,382
Wholesale Trade	423100-425120	8,888	96,006,629	5,832,093	90,174,536	187,563	1,333	188,896	180	533	188,183
Retail Trade	441110-454390	20,533	116,276,105	11,451,659	104,824,447	218,035	3,080	221,115	4	3,048	218,063
Transportation and Warehousing	481000-493100	4,638	15,113,074	2,456,018	12,657,056	26,327	696	27,022	28	835	26,160
Information (including telecommunications)	511110-519100	1,545	25,676,290	865,933	24,810,357	51,606	232	51,837	13	71	51,753
Finance and Insurance	522110-525990	6,071	8,825,992	2,023,966	6,802,025	14,148	911	15,059	127	405	14,527
Real Estate, and Rental & Leasing of Property	531110-533110	13,519	15,370,577	5,626,932	9,743,645	20,267	2,028	22,295	0	0	22,295
Professional, Scientific and Technical Services	541110-541990	14,828	34,477,453	7,280,902	27,196,551	56,569	2,224	58,793	129	4,143	54,521
Management of Companies (Holding Companies)	551111-551112	871	28,659,709	640,095	28,019,614	58,281	131	58,411	2,226	12,935	43,249
Administrative & Support Services, and Waste Management & Remediation Services	561110-562000	3,996	8,869,769	1,947,623	6,922,146	14,398	599	14,997	0	0	14,997
Education, Health Care and Social Assistance	611000-624410	12,545	22,909,415	7,231,316	15,678,100	32,610	1,882	34,492	0	0	34,492
Arts, Entertainment, and Recreation	711100-713900	1,561	2,419,097	690,681	1,728,415	3,595	234	3,829	0	0	3,829
Accomodation and Food Services	721110-722410	8,227	13,778,346	4,233,909	9,544,437	19,852	1,234	21,086	0	0	21,086
Other Services	811110-812990	8,269	7,403,255	3,641,557	3,761,698	7,824	1,240	9,065	0	13	9,052
Unclassified	n/a	15,947	12,906,710	5,900,366	7,006,344	14,574	2,394	16,968	0	1,135	15,834
TOTAL		**160,587**	**$647,962,539**	**$81,937,638**	**$566,024,900**	**$1,177,332**	**$24,089**	**$1,201,420**	**$11,358**	**$29,711**	**$1,160,352**

1 The total tax liability shown in this table does not match actual commercial activity tax revenues in fiscal year 2009. This is because the table reflects reported tax liability, not actual payments made. In addition, the table reflects information from tax returns on the computer system as of the dates when the August 2008, November 2008, February 2009 and May 2009 return data was extracted; any subsequently filed tax returns or subsequent corrections made to previously-filed tax returns are not reflected in this table.

2 On a quarterly basis, each taxpayer's first $250,000 in taxable gross receipts is excluded from the 0.208% tax, resulting in an annual exclusion of $1 million per taxpayer.

3 The annual minimum tax is $150. All taxpayers (annual taxpayers and quarterly taxpayers alike) are required to pay the annual minimum tax.

4 Beginning with the third quarter 2008 filing period (the tax return due in November 2008), several nonrefundable tax credits could be claimed by eligible commercial activity taxpayers. The available nonrefundable credits are: the credit for qualified research expenses; the job retention tax credit; and the research and development loan credit.

5 Beginning with the third quarter 2008 filing period (the tax return due in November 2008), the refundable job creation tax credit could be claimed by eligible commercial activity taxpayers.

Table 2

Fiscal Year 2009 Commercial Activity Tax Returns,
Number of Returns and Reported Financial Data by Size of Taxable Gross Receipts[1]
(Dollar amounts are in thousands)

Size of FY 2009 Taxable Gross Receipts[2]	Number of Taxpayers	Taxable Gross Receipts	Exclusion[3]	Net Taxable Gross Receipts	Tax at 0.208% Rate	Annual Minimum Tax[4]	Tax Before Credits	Non-refundable Tax Credits[5]	Refundable Tax Credits[6]	Total Tax Due: 0.208% Tax and Minimum Tax
Less than $1,000,000	115,397	$38,525,185	$37,913,671	$611,513	$1,272	$17,310	$18,581	$0	$5,674	$12,908
$1,000,000 - $1,999,999	18,601	26,470,222	18,044,687	8,425,535	17,525	2,790	20,315	1	87	20,227
$2,000,000 - $2,999,999	7,685	18,780,542	7,486,972	11,293,571	23,491	1,153	24,643	11	1,437	23,196
$3,000,000 - $3,999,999	3,974	13,713,771	3,870,735	9,843,036	20,474	596	21,070	5	91	20,974
$4,000,000 - $4,999,999	2,496	11,173,051	2,432,523	8,740,528	18,180	374	18,555	5	5	18,544
$5,000,000 - $9,999,999	5,569	39,027,387	5,437,564	33,589,823	69,867	835	70,702	13	62	70,627
$10,000,000 - $24,999,999	3,894	60,023,542	3,817,568	56,205,974	116,908	584	117,493	150	1,300	116,042
$25,000,000 - $49,999,999	1,425	49,828,386	1,401,485	48,426,900	100,728	214	100,942	115	504	100,323
$50,000,000 - $99,999,999	758	52,720,049	747,450	51,972,599	108,103	114	108,217	756	2,491	104,970
$100,000,000 - $499,999,999	658	139,409,278	654,983	138,754,295	288,609	99	288,708	2,564	7,900	278,244
$500,000,000 - $999,999,999	73	49,746,731	73,000	49,673,731	103,321	11	103,332	32	1,840	101,461
$1 billion and above	57	148,544,395	57,000	148,487,395	308,854	9	308,862	7,706	8,320	292,836
TOTAL	**160,587**	**$647,962,539**	**$81,937,638**	**$566,024,900**	**$1,177,332**	**$24,089**	**$1,201,420**	**$11,358**	**$29,711**	**$1,160,352**

1 The total tax liability shown in this table does not match actual commercial activity tax revenues in fiscal year 2009. This is because the table reflects reported tax liability, not actual payments made. In addition, the table reflects information from tax returns on the computer system as of the dates when the August 2008, November 2008, February 2009 and May 2009 return data was extracted; any subsequently filed tax returns or subsequent corrections made to previously-filed tax returns are not reflected in this table.

2 These categories reflect aggregate taxable gross receipts (before exclusion) as reported by taxpayers on returns that were due and filed during fiscal year 2009. For example, a taxpayer whose taxable gross receipts were $5 million, $6 million, $4 million, and $7 million, on returns filed in August 2008, November 2008, February 2009 and May 2009, respectively, would have total fiscal year 2009 taxable gross receipts of $22 million, and thereby would be included within the $10-$25 mllion category.

3 On a quarterly basis, each taxpayer's first $250,000 in taxable gross receipts is excluded from the 0.208% tax, resulting in an annual exclusion of $1 million per taxpayer.

4 The annual minimum tax is $150. All taxpayers (annual taxpayers and quarterly taxpayers alike) are required to pay the annual minimum tax.

5 Beginning with the third quarter 2008 filing period (the tax return due in November 2008), several nonrefundable tax credits could be claimed by eligible commercial activity taxpayers. The available nonrefundable credits are: the credit for qualified research expenses; the job retention tax credit; and the research and development loan credit.

6 Beginning with the third quarter 2008 filing period (the tax return due in November 2008), the refundable job creation tax credit could be claimed by eligible commercial activity taxpayers.