This information release describes the standards the Department of Taxation will apply to determine if a person has substantial nexus with Ohio and is subject to the Commercial Activity Tax (CAT).¹

DEFINITIONS

The following definitions are used in this information release:

“Person” means, but is not limited to, individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes, and any other entities.

“Excluded persons” include nonprofit organizations or the state, its agencies, its instrumentalities, and its political subdivisions.

“Nexus” has the same meaning as “substantial nexus” that is used in R.C. Chapter 5751.

I. The nexus standard used to determine whether a person is subject to the CAT

Ohio law provides that a person is subject to the CAT under any set of circumstances allowed by the Constitution of the United States. Specifically, R.C. 5751.01(H) sets forth the legal standard used by the Department of Taxation to determine whether a person is subject to the CAT. A person is subject to the CAT when any of the following applies. The person:

- owns or uses a part or all of its capital or property in this state [5751.01(H)(1)]; or
- holds a certificate of compliance with the laws of Ohio authorizing the person to do business in this state [5751.01(H)(2)];² or
- has bright-line presence in Ohio [5751.01(H)(3)]; or
- otherwise has nexus with Ohio to an extent that the person can be required to remit the CAT under the Constitution of the United States. [5751.01(H)(4)]

¹ This information release is not intended to be an all-encompassing or all-inclusive description of this subject. This information release may be modified by changes in either federal or state laws or by decisions of the U.S. Supreme Court, the Ohio Supreme Court, the Ohio Courts of Appeals, or the Ohio Board of Tax Appeals.

² Cf. R.C. 1703.02 for those out-of-state corporations not required to register with the Ohio Secretary of State.
II. Bright-line presence

A. Notwithstanding the provisions of R.C. 5751.01(H)(4), the Department of Taxation, in its administration of the CAT, will only enforce nexus against persons who possess bright-line presence as set forth in R.C. 5751.01(I)(1)-(5) and discussed below. Consequently, even if a person has nexus under the Constitution of the United States, if the person lacks bright-line presence the Department of Taxation will not assert that such person is required to be a taxpayer (this does not apply to a person that is required to be part of a consolidated elected taxpayer group).

B. Bright-line presence is a method of determining whether nexus exists that relies entirely upon quantitative criteria. Bright-line presence is defined in R.C. 5751.01(I). A person has “bright-line presence” in this state if any of the following applies. The person:

1) **Has at any time during the calendar year property in this state with an aggregate value of at least $50,000.** For the purposes of bright-line presence, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

2) **Has during the calendar year payroll in this state of at least $50,000.** Payroll in this state includes all of the following: (a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code; (b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and (c) Any amount the person pays for services performed in this state on its behalf by another.

3) **Has during the calendar year taxable gross receipts in this state of at least $500,000.** As bright-line presence does not require physical presence, it is satisfied when a person has at least $500,000 of taxable gross receipts even if that person does not have property or payroll in this state.

4) **Has at any time during the calendar year within this state at least 25 percent of the person’s total property, total payroll, or total gross receipts.** Thus, if a person had $25,000 worth of property in Ohio and the value of its total property everywhere was $100,000 or less, bright-line presence would still exist, despite R.C. 5751.01(I)(1).

5) **Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.** Being domiciled in Ohio automatically creates bright-line presence, regardless of the value of the person’s property, payroll or sales.

C. In 2016, the Ohio Supreme Court upheld the constitutionality of the CAT bright-line presence nexus standard by finding that physical presence is not a necessary condition under the
Commerce Clause for imposing a business privilege tax and that the $500,000 sales-receipts
threshold is a valid and adequate quantitative standard that ensures a taxpayer’s nexus with
Ohio is substantial. See *Crutchfield Corp. v. Testa*, 151 Ohio St.3d 278, 2016-Ohio-7760, *Mason
Cos., Inc. v. Testa*, 149 Ohio St.3d 299, 2016-Ohio-7768, and *Newegg, Inc. v. Testa*, 149 Ohio
St.3d. 289, 2016-Ohio-7762. “If there was any doubt after *Crutchfield* that a physical presence
was not required under the Commerce Clause for imposing a tax obligation under the CAT,
the Supreme Court of the United States put that to rest in *South Dakota v. Wayfair, ___ U.S.
___*, 138 S.Ct. 2080 (2018).” *Greenscapes Home & Garden Prods., Inc. v. Testa*, 2019-Ohio-384,
¶25 (10th Dist.), *appeal not accepted*, 156 Ohio St.3d 1406, 2019-Ohio-2261, 123 N.E.3d 1042.

III. Registration and filing requirements for a person subject to the CAT

A person falling within this state’s taxing jurisdiction is required to register for a CAT account, file
returns, and pay the applicable tax due. A person with nexus must register for a CAT account
within thirty (30) days after that person has more than $150,000 in taxable gross receipts during
a given calendar year.

IV. Once bright-line presence is established, how long does the filing requirement last?

A person that satisfies the bright-line presence criteria for any part of a calendar year continues
to be required to be a CAT taxpayer for the remainder of the calendar year. In addition, a person,
regardless of when they meet the bright-line presence standard at any time during that
subsequent calendar year, is required to be a taxpayer for the entire subsequent calendar year.

V. Voluntary Disclosure Program

A person that is subject to the CAT under the nexus standards described above that has failed to
file and pay the applicable tax may be eligible to participate in the voluntary disclosure program
offered by the Department. Additional information about the voluntary disclosure program can
be found on the Department’s website at: tax.ohio.gov/other/voluntary_disclosure.aspx.

Please contact the Business Tax Division of the Ohio Department of Taxation at 1-888-722-8829 with any
questions. For persons using TTY, please contact the Ohio Relay Service at 1-800-750-0750 and give the
operator the Ohio Department of Taxation’s telephone number.