



**BDO Seidman, LLP**  
Accountants and Consultants

## Subject:

### November 15 Registration Deadline Under the New Ohio Commercial Activity Tax Law

# State Tax Alert

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## Overview:

As part of the budget bill (H.B. 66), signed by the Governor, Ohio has significantly reformed its tax structure. The law provides for a number of changes including the imposition of a new commercial activity tax (CAT), the phase-out of the corporation franchise tax, amendments to the personal property, personal income, sales and use, cigarette, and motor fuel taxes. Also, the law provides for a tax amnesty program.

## Details:

The CAT is a privilege tax that applies to taxable gross receipts received on or after July 1, 2005. Businesses with annual gross receipts of \$150,000 or less are not subject to the CAT. The CAT applies to all business entities regardless of form (i.e., corporations, sole proprietorships, LLCs, partnerships, S corporations and clubs). However, Ohio does provide exclusions from the CAT for financial institutions, insurance companies, public utilities, nonprofits and dealers in intangibles.

## Rates:

The CAT will be phased-in as follows:

- 7/1/2005 – 3/31/2006 - .06 percent;
- 4/1/2006 – 3/31/2007 - .1040 percent;
- 4/1/2007 – 3/31/2008 - .1560 percent;
- 4/1/2008 – 3/31/2009 - .2080 percent; and
- On or after 4/1/2009 - .26 percent.

Conversely, the Ohio corporate franchise tax will be phased out over a five-year period. The franchise tax is a progressive rate structure with the rates being phased out at 20 percent per year. The highest tax rates for the phase-out periods are as follows:

- 2006 tax year (tax year ending in 2005) – 6.8 percent;
- 2007 tax year (tax year ending in 2006) – 5.1 percent;
- 2008 tax year (tax year ending in 2007) – 3.4 percent;
- 2009 tax year (tax year ending in 2008) – 1.7 percent; and
- 2010 tax year and thereafter – no tax.

**Registration and Filings:**

Each business subject to the CAT must register with the Tax Commissioner by the later of November 15, 2005, or 30 days after the business has more than \$150,000 in taxable gross receipts. The registration fee is \$15 if filed electronically or \$20 if filed using paper forms. Consolidated or combined filers are subject to a maximum fee for all its members of \$200. Electronic registration is available online at <http://obg.ohio.gov/> or <http://tax.ohio.gov/>. Paper forms can be obtained from the Department of Taxation's website, <http://tax.ohio.gov/>, or by calling 1-800-282-1782. Registration fees will be credited toward a taxpayer's liability on their first return.

The Ohio Department of Taxation recently announced an accommodation for taxpayers unsure of whether to register as a combined or consolidated filer. It is recommended that a taxpayer unsure of how to register should register as a combined filer because the consolidated election is binding for eight quarters. Taxpayers will be allowed to amend their registration from a combined to a consolidated status prior to the filing of the initial return or February 10, 2006, whichever is earlier. A request for a registration amendment can be faxed to 614-644-9641 or made in writing to:

Ohio Department of Taxation  
Commercial Activity Tax Division  
P.O. Box 16158  
Columbus, Ohio 43216-16158

The first measurement period for the CAT tax is July 1, 2005 through December 31, 2005 with the return being due February 10, 2006. Beginning January 1, 2006, taxpayers with taxable gross receipts of \$1,000,000 or more will file and pay the CAT quarterly. All other taxpayers will file and pay the CAT annually. Taxpayers are required to use the "statutory estimation" method for determining gross receipts (i.e., actual gross receipts). However, calendar quarter taxpayers may elect to use the "rule estimation" method for estimating quarterly gross receipts. This method provides taxpayers with flexibility when determining the exact amount of taxable gross receipts. Taxpayers using this method must reconcile the estimate with actual on or before the due date for the next quarter. Both the quarterly and annual filings are due 40 days after the end of the reporting period. For measurement periods after December 31, 2005, calendar quarter taxpayers are required to file returns and remit tax electronically. Taxpayers may apply to the Tax Commissioner to be excused from this requirement.

**Combined vs. Consolidated Filing:**

Taxpayers with common ownership of more than 50 percent must file as a combined taxpayer. Combined taxpayers may not exclude intercompany transactions from the computation of taxable gross receipts. Combined taxpayers will only include members having "nexus" in Ohio.

Alternatively, taxpayers meeting the 50 percent common ownership may elect to file as a "consolidated elected taxpayer." All commonly owned entities will be part of the group regardless of nexus. The consolidated elected taxpayer may choose to include all foreign corporations with the same common ownership. The benefit of electing a consolidated filing is that intercompany transactions are excluded from determining taxable gross receipts. The election is binding for two years from the date of the election.

**Gross Receipts:**

Gross receipts are broadly defined to include the amount realized from the sale of property or the performance of a service. Deductions are permitted for discounts, returns, and bad debts. In addition, certain receipts are not subject to the CAT: interest, dividends, capital gain (i.e., sale of IRC §1221 or §1231 assets), distributions, capital contributions, proceeds from stock issuance, and damages.

Gross receipts from services are sourced to Ohio in proportion to the purchaser's benefit in Ohio versus everywhere. The physical location of where the purchaser uses or receives the benefit of the service will be paramount in determining whether the service is subject to the CAT. Gross receipts from the sale of tangible personal property will be sourced to Ohio if received in Ohio by the purchaser or delivered to a location within Ohio. Ohio enacted "anti-abuse" provisions which tax subsequent transfers of property to Ohio within a year from the original purchase.

**Nexus:**

Taxpayers are not afforded protection from the CAT under PL 86-272. A taxpayer will be subject to the CAT if any of the following activities apply:

- Own or use part of its capital in Ohio;
- Register to do business in Ohio;
- Have a "bright-line presence" in Ohio; or
- Otherwise have nexus in Ohio under a constitutional standard.

**Pre-CAT NOLs:**

Taxpayers that have net operating losses (NOLs) under the Ohio corporate franchise tax have two options for future utilization of these losses. The first option is for taxpayers to use the NOLs against the phased-out corporate franchise tax for the next five years. The second option is available to taxpayers with Ohio NOLs in excess of \$50 million. This option involves converting the NOLs into credits to be used against the CAT. The conversion of the NOLs is a complex calculation involving the computation of a disallowed amount and amortizing the remaining balance.

**Other:**

This Alert is intended to provide a "high-level" overview of the newly enacted legislation pertaining to the CAT. As previously mentioned, H.B. 66 contained numerous changes to other types of taxes. Please refer to H.B. 66 for additional changes to the Ohio Revised Code. In addition, planning opportunities may exist because of the timing differences between the rate changes for the phase-in of the CAT and the phase-out of the corporate franchise tax. Please consult your local state and local tax professional for more detail.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.

**FOR MORE INFORMATION  
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