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This Week in State Tax (TWIST)

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Ohio: Taxpayer Does Not Qualify for Agent Exclusion from CAT Base

The Ohio Board of Tax Appeals recently concluded that a food and hospitality services company that provided various managed services to businesses and government institutions was not entitled to an agency exclusion from the Commercial Activities Tax (CAT) base. The receipts at issue were related to services performed under management fee contracts. Under these contracts, the taxpayer purchased food, supplies, and other items for clients who received receipts from the register, reimbursed the taxpayer, and paid the taxpayer a management fee. The taxpayer argued that it erroneously paid CAT on these receipts that it received as an agent. The Department of Taxation denied the refunds on the basis that the taxpayer had not established an agency relationship with its clients. The taxpayer subsequently appealed.

Under the CAT, "gross receipts" generally include "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred…." However, an exclusion applies for amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration. An agent is "a person authorized by another person to act on its behalf to undertake a transaction for the other." In earlier cases, courts had held that the proper focus in determining an agency relationship is whether the purported agent had the actual authority to bind the principal as the purchaser in the transactions at issue. The Board determined that the taxpayer was erroneously focused on the control and risk its clients maintained over its actions as support for its position that it was an agent, rather than whether it had authority to bind the clients. In the Board's view, the evidence showed that the taxpayer did not possess the requisite authority to qualify as an agent for CAT purposes. Importantly, the taxpayer's contracts with clients did not provide the taxpayer with the authority to bind those clients for its purchases of goods. The Board further rejected the taxpayer's position that the reimbursements were not gross receipts under the CAT and declined to hear the taxpayer's constitutional challenges. Please contact Dave Perry with questions on *Aramark Corporation vs. Harris*.