

# Commercial Activity Tax Update

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Legal Counsel

# CAT Collections

- First Biennium (7/1/05 - 6/30/07)
  - Budgeted amount
    - \$657 million
  - Test period amount
    - \$815 million (R.C. 5751.032)
      - If actual collections were *less than* \$733 million → upward rate adjustment
      - If actual collections were *more than* \$896 million → downward rate adjustment

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# CAT Collections

- First Biennium (7/1/05 - 6/30/07)
  - Actual collections
    - \$868 million
      - 32% over budget projections
      - 6.5% over test period amount
  - No rate adjustment
    - Current rate is .156%
    - Increases to .208% on 4/1/08

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# CAT Collections

- Current Biennium (7/1/07 - 6/30/09)
  - Actual collections thru 12/31/07
    - \$457 million
      - 0.5% under budget projections
  - Next test period for rate adjustment
    - 7/1/08 to 6/30/09
    - Target amount is \$1.19 billion

# Case Law Update

- Background
  - R.C. 5751.02(A)
    - The CAT is levied on the vendor for the privilege of doing business in Ohio
    - It is not a transactional tax levied on the purchaser
  - Ohio Constitution
    - “no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold”

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# Case Law Update

- *Ohio Grocers Association v. Wilkins*
  - Trial court held:
    - the CAT is an excise tax, but ...
    - it does not violate the Ohio constitutional prohibition against excise taxes on the sale of food for human consumption off the premises
  - Case has been appealed to Court of Appeals

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# Case Law Update

- *Mosser Construction v. City of Toledo*
  - Not a tax case
  - Court of Appeals finds that the CAT is “similar to” a sales or use tax since the amount of tax owed is tied to the amount of gross receipts from transactions

# Administrative Update

- Information Release 2007-03
  - Rule 5703-29-22 (draft)
    - CAT credits
- Information Release 2007-02
  - Rule 5703-29-21
    - Pre-income tax trusts
- Information Release 2007-01
  - Rule estimation and statutory estimation procedures

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# Administrative Update

- Information Release 2006-03
  - Proposed Rule 5703-29-13
    - Definition of “agent” (revised 2007)
- Opinion of the Tax Commissioner No. 07-0002
  - Taxation of homeowners association and membership dues

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# Legislative Update

- Am. Sub. H.B. No. 119
  - 70% earmarking of CAT revenues to the schools for PPT replacement continued indefinitely
  - 70% earmark was scheduled to end in 2019 per H.B. 66
- Note: The two-year temporary exclusion for gross receipts from the sale of motor fuel expired on July 1, 2007

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