

## Gross Receipts:

### Ohio CAT Agency Exclusion Did Not Apply to Reimbursements from Management Fee Contracts

*Case No. 2019-2975, Ohio Bd. of Tax App. (11/6/23).* In a case involving a company providing managed services for its clients wherein it purchased food, supplies, and other items for them pursuant to certain management fee contracts, the Ohio Board of Tax Appeals (Board) rejected the company's refund claims for Ohio commercial activity tax (CAT) it paid on reimbursements it received from these contracts, holding that the company failed to show it was acting as an agent of its clients and thus the reimbursements could *not* be excluded from CAT receipts under the "agency exclusion." Under the facts, the management fee contracts at issue were structured so that the company purchased food and supplies for a client, but the client received the corresponding receipts directly from the register, reimbursed the company for its expenses on the items, and then paid the company a management fee for its services. According to the Board, to qualify as an agent for such purposes, the company must show that it was doing more than making purchases to fulfill its contractual obligations to provide food services to its clients; rather, the company must show that it was endowed with the requisite authority to bind its clients for the activities related to the activities that generated those receipts – which it failed to do in this case. The Board also explained that the company focused heavily on the extent to which the clients could make the final say in decisions regarding menus, pricing, and employee matters, but that these factors have no bearing on the analysis if the company cannot demonstrate that it had actual authority to bind its clients. Moreover, the Board rejected that company's contention that reimbursement for the costs of goods purchased necessary to fulfill its service agreements did not contribute to its production of gross income. Please contact us with any questions.

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