

Interested Party Testimony
Prepared for House Bill 234
The Ohio House Ways & Means Committee
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Chair Merrin, Vice Chair Riedel, Ranking Member Sobecki, and Members of the Ohio House Ways & Means Committee, thank you for this opportunity to offer interested party testimony on House Bill 234. I'm Greg Saul, Director of Tax Policy for The Ohio Society of CPAs (OSCPA).

The Commercial Activity Tax, or simply CAT, was implemented in 2005 to replace both Ohio's tangible personal property tax (TPP) and corporation franchise tax (CFT). The CAT is not a transactional tax but rather a tax on "the privilege of doing business in Ohio." OSCPAs has a longstanding position that the CAT is effective if the following criteria remain intact: the rate is low, the base is broad, the exemptions are few, and compliance is simple. Our 2016 Ohio Tax Reform Task Force report entitled "[Improving Ohio's Tax Climate](#)" (see pages 17-21) discussed each of these four areas along with making nine recommendations.

CAT Rate Must Remain Low. The primary benefit of Ohio's approach is the uniform, low rate of 0.26%. The main concern by some with the CAT has always been its pyramiding effect. However, the low rate mitigates the concern about pyramiding. The higher the rate, the more dramatic the problem would become with the CAT's pyramiding structure.

We recognize that a business might owe CAT even though it may have a loss. This happens with many types of taxes, such as property taxes and sales & use taxes. Once again, the mitigating factor is the very low rate. If the rate were to increase even slightly, the CAT would become more problematic, especially for those businesses.

Prior to 2014, the Annual Minimum Tax (AMT) was a flat \$150 for all taxpayers with gross receipts over \$150,000 and up to \$1 million. The tiers were added in the budget bill, H.B. 59 (130th GA), which essentially phased out the benefit of the \$1 million exclusion for larger businesses for tax periods beginning on or after January 1, 2014.

Therefore, this exclusion begins phasing out for businesses earning one dollar more than \$1 million of gross receipts. It is fully phased out by the time a business hits \$4 million of gross receipts, thus paying an AMT of \$2,600. These are still small businesses, and the General Assembly (GA) could consider restoring the exclusion or even expanding it to protect small businesses.

Base Must Remain Broad. A major reason why the CAT rate has remained low is that the base is very broad, as intended from inception. One of the CAT's benefits is that it does not stand in the way of someone investing in Ohio—no one is penalized for investing in equipment or employees (this is not the case in many other states or under Ohio's prior tax system).

Instead, any business that makes more than \$500,000 of sales to Ohio customers is subject to the CAT, whether they are an Ohio business or non-Ohio business. If a business leaves Ohio

because of the CAT, it would not pay less CAT. The CAT is based on where the seller's customers are located, not where the seller is located. As a result, the CAT exports a large portion of Ohio tax to non-Ohio businesses. For fairness to all businesses, Ohio should continue to pursue additional revenues by aggressively going after out-of-state companies that have nexus with Ohio and should be paying the CAT. [See recommendation #9 on page 21.](#)

Exemptions Must Be Limited. OSCPA has consistently fought to eliminate and oppose exemptions, as well as resist additional carve-outs. Tax expenditures can and will affect CAT revenues, which continue to be added despite commitments to a broad base, limited exclusions, and a low rate when the tax was first passed in 2005. The total cost of the tax expenditures has more than doubled since 2005 from approximately \$300 million of CAT revenue to nearly \$700 million projected for FY 2022.

Since 100% of the CAT revenue is not yet going into the GRF, carve-outs exacerbate this issue. As of July 1, 2017, 85% of CAT revenue, after deductions for the costs of administering the CAT, is credited to the GRF, 13% is credited to the School District Property Tax Replacement Fund, and 2% is credited to the Local Government Property Tax Replacement Fund.

Administration, Compliance and Enforcement. The CAT is a simple tax to administer, yet improvements can be made in the areas of administration, compliance, and enforcement. As a result, there are several revisions that could be made to improve the CAT. Times have changed and, in hindsight, if the GA does not eliminate the CAT, it certainly could fix some problems that are clearer 17 years later.

Considering U.S. Supreme Court and Ohio Supreme Court cases on nexus, the distinction between Consolidated Elected Taxpayer and Combined Taxpayer is now archaic and simply a trap for unwary taxpayers. It should be eliminated. [See recommendation #6 on page 20.](#)

The CAT base is "gross receipts." That term was intended to coincide with the federal definition of "gross income." However, ODT and taxpayers often argue over whether federal treatment of a receipt or GAAP treatment should apply. This could be clarified. [See recommendation #1 on page 19.](#)

Another consideration toward the goal of better supporting small business is to continue the GA's path of reducing the personal income tax on businesses, both at the state and municipal level. Smaller businesses are often pass-through entities (PTEs) while larger businesses are usually C corporations who only pay the CAT and zero income tax (except the municipal net profits tax). When the CAT was added as a replacement for the CFT, it was imposed on PTEs, which was a "new" tax on these generally smaller businesses that already pay an income tax (again, not imposed on C corporations). Ohio has gone a long way to eliminate this problem by lowering the income tax on business income via the business income deduction (BID) and 3% flat tax rate. Further reducing the tax on business income for PTEs would create more tax parity for smaller businesses with larger businesses.

On behalf of the OSCPA, thank you for allowing me the opportunity to share our views on House Bill 234. I would be happy to answer any of your questions.