

November 9, 2021

**Re: Support for House Bill 234 - Repeal the Commercial Activity Tax**

Chairman Merrin, Vice Chair Riedel, Ranking Member Sobecki and Members of the House Ways and Means Committee,

Thank you for the opportunity to provide testimony in support of House Bill 234. Repealing the Commercial Activity Tax (“CAT”) would help reduce the compliance burden on small businesses, particularly in the construction industry. It would also help ensure that a small business is not being taxed during a time when it wasn’t profitable.

While the CAT may seem straightforward, like most tax programs it is anything but. CAT, along with sales and use tax, is one of the primary topics my construction clients have questions about, particularly when it applies which depends on the type of construction project and who the project owner is (public or private).

My clients have overpaid millions of dollars in CAT because of the complexity of the program. In most cases we are able to assist them in recovering it, however, not all small businesses have access to advisors who can help them navigate the complexity of CAT. That means they are likely overpaying and don’t realize it. While the original intention of the program was surely not to take funds that aren’t actually owed from small businesses, in reality that is exactly what is occurring because these small businesses aren’t aware of the nuances of what should have been a relatively straightforward tax.

For example, the recent dividends from the Ohio Bureau of Workers’ Compensation that were sent to small businesses in 2020 were initially thought to be subject CAT because they were technically gross receipts. The legislature had to amend Senate Bill 18 earlier this year to specifically exclude the dividend payments from CAT. I mention this because there was debate as to whether CAT would apply to these payments or not, and for something that should be common sense to become so complex that it required legislation to correct, highlights the compliance issues a small business encounters with this tax.

The other major issue is that the tax is levied on gross receipts, without consideration for whether the business made a profit or not that year. This has forced my small business clients to come up with the funds to pay CAT even when they're struggling to keep the business open and pay their employees.

CAT also results in increased construction costs, as this tax is factored into construction project estimates and is passed along to the project owners. In some cases if this isn't done, it can have a significant impact on a business that typically generates lower margins on significant revenue totals, such as a general contractor. There is minimal margin for error for a business like that, and the smallest percentage difference can have significant consequences.

This tax also only applies to projects in Ohio, providing an additional burden on companies that primarily do business in the state versus a company that does more work outside the state.

While the intentions of CAT were to create a simple revenue source, it has turned out to be something that is more complicated. Currently, the Ohio Department of Taxation's help center for the CAT has 34 different general help topics, and those don't even get into the more complicated areas of the CAT. With all the existing compliance burdens for construction businesses, removing this one would let them focus on what they do best – building Ohio.

Thank you for your time and consideration.

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