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Ohio Board of Tax Appeals Rejects Tax Commissioner's Request for Proof Requirements not Required by Statute and Restores Fair Consideration of Testimonial Evidence

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Perrigo Sales Corp. v. Harris, BTA No. 2024-485, 2025 Ohio Tax LEXIS 1573, (Oct. 9, 2025) (appealed by Ohio Tax Commissioner Nov. 7, 2025).

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By: Steven Smiseck

The Ohio Board of Tax Appeals (Board) has found that chargebacks, i.e., above the line price reductions, are not discounts to the customer and should not be included in "gross receipts" for Commercial Activity Tax (CAT) purposes.

The Board issued a decision in *Perrigo Sales Corp.* addressing whether the Tax Commissioner properly assessed CAT based on the list price (WAC) of generic pharmaceutical drugs, or whether the actual sale price paid by customers should have been used. The Board found that the actual sale price, reflecting chargebacks and other contractual adjustments, is the appropriate standard for calculating taxable gross receipts. The decision reverses the Commissioner's assessment to the extent it relied on the list price rather than the net amount realized by Perrigo.

Equally important is how the Board weighed evidence presented and rejected calls by the Commissioner that more evidence was required. This approach signals important guidance for tax assessment review and appeals because it supports a balanced and evidence-based review instead of a heightened burden of proof on taxpayers. Specifically, the Board found that Perrigo provided credible testimony to support its claim based on business practice that the actual price paid after chargebacks was part of a unified sales transaction. The testimony established that the Commissioner's attempt to treat the WAC as a separate, gross receipt for CAT purposes elevated form over substance to impose more tax contrary to the applicable statutes.

Many of us involved in defending tax audits and prosecuting tax appeals have witnessed over the years the willingness of the Department of Taxation to impose tax in contradiction to taxpayer testimony. We have witnessed the requirement that proof be offered only in the form of business records that often did not exist or are not fully dispositive. The Board's consideration of testimony in this decision correctly reflects recent pronouncements from the Ohio Supreme Court. In *Stingray Pressure Pumping, LLC v. Harris*, 2023-Ohio-2598, at ¶22, the Court highlighted that a tribunal's role in tax matters is to "provide a fair reading of what the legislature has enacted: one that is based on the plain language of the enactment and not slanted toward one side or the other." More recently, in *Claugus Family Farm, L.P. v. Harris*, 2025-Ohio-2807, the Court emphasized that testimonial evidence could support a claim that a transaction is exempt from tax. There, the Commissioner's argument that the item's use was not substantiated by written logs was rejected because the tax exemption statute did not require such logs. *Id.* ¶138. The request was rejected by the Court as an attempt by the Commissioner to usurp the role of the General Assembly by adding her own requirements to the statute enacted. Thus, the Board's approach in *Perrigo* encourages a fair hearing for taxpayers and that decisions must be grounded in both law and fact.