

THE OHIO DEPARTMENT OF TAXATION AMENDS CAT RULE TO EXPLAIN CASH DISCOUNTS EXCLUSION

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Effective June 20, 2019, the Department of Taxation has revised Commercial Activity Tax (CAT) Ohio Administrative Code 5703-29-14 (“Rule”), which addresses the definition of “cash discounts.” Cash discounts are an allowable exclusion from the definition of gross receipts as provided in Ohio Revised Code 5751.01(F)(2)(bb) (formerly 5751.01(F)(4)(a)).

The Department updated the Rule to further explain the Department’s interpretation of when cash discounts are an allowable exclusion. The Rule still provides that cash discounts are allowable exclusions for (i) timely payments (i.e., 2%/10 days) and (ii) volume purchases (which include incentive-based rebates and discounts allowed if taken by the purchaser and not the purchaser’s customer). The Rule now provides an additional example of a discount that qualifies as an exclusion:

- Unilateral or negotiated price adjustments that are not based on, or do not require, the provision of anything of material value on the part of the purchaser as consideration for the price adjustment.

Through the examples provided in the Rule, the Department has identified scenarios that the Department interprets as providing a material value on the part of the

purchaser as consideration for the price adjustment:

- **Example 4** — provides that price adjustments received by a retailer for shelving allowances (displaying the product in a prime location) provided to a manufacturer/wholesaler are not allowable exclusions for the manufacturer and are gross receipts for the retailer.
- **Example 5** — provides that fees earned by a fast food franchise from a franchisee for providing local advertising are gross receipts for the fast food franchise and not an allowable exclusion for the franchisee.
- **Example 6 (New Example)** — provides for an off-invoice discount provided by the manufacturer to a retailer to help move the manufacturer's excess inventory. The discount would be an allowable exclusion for the manufacturer if the discount is not:
 - Required to be passed through to the retailer's customer;
 - To promote the manufacturer's product through advertisements or circulars;
 - To be used for shelving allowances (prominent placement);
 - For any other type of reciprocal promise or service to the manufacturer in order to receive the discount.

ZHF Observation — While the Rule does expand “cash discounts” for CAT purposes to include price adjustments not previously treated as a cash discount in the old rule, there is a question as to whether there is a need to address such price adjustments in a rule when those deductions are not included in gross receipts (methods of accounting for federal income tax or GAAP). Further, even if some price adjustments are not treated as “cash discounts” for CAT purposes, those price adjustments may qualify as a return or allowance, depending on the facts and circumstances.

Further, in our experience the types of price adjustments addressed in the Rule are often lumped together as one overall price adjustment, which will make it difficult to identify those price adjustments allowed and not allowed by the Department.

If you would like to discuss this matter, please contact [Richard Farrin](#), [John Trippier](#), or [any other ZHF professional](#).

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