

## Ohio Supreme Court Skins CAT Receipts Derived From Activities "Related to" Motor Vehicle Sales

December 7, 2012

[Full text of the Court's opinion](#)

In a much-anticipated decision, the Ohio Supreme Court today issued a decision in which it held that the commercial activity tax ("CAT") revenues based on gross receipts derived from transactions involving sales of motor vehicle fuel must be expended only for the purposes specified in the Ohio Constitution. It held that its decision would be prospective, and that CAT receipts derived from such transactions were to be held until properly appropriated by the General Assembly. *Beaver Excavating Co. v. Testa*, Slip Opinion No. 2012-Ohio-5776 (December 7, 2012).

**Background.** As part of its historic tax reform effort, in 2005 the Ohio General Assembly began to phase out the corporation franchise tax and personal property tax and, in their place, to phase in the commercial activity tax. The CAT is imposed upon the privilege of doing business in Ohio and is measured by gross receipts derived from most commercial activities. Receipts from the tax are deposited in the general revenue fund to be used for general purposes, as well as to reimburse certain political subdivisions for lost revenue associated with the elimination of the other two taxes.

Plaintiffs consist of a group of motor fuel dealers, road construction contractor, and county engineers. They contended that in so far as the commercial activity tax applies to receipts from the sale of motor fuel, the tax is unconstitutional because the proceeds of the tax, being devoted to purposes other than highway maintenance and safety, violate Art. XII, Section 5a of the Ohio Constitution. Art. XII Section 5a provides that any tax "relating to" motor fuel must be devoted to specified purposes.

The taxpayers claimed that the CAT is a tax that "relates to" motor fuel and its proceeds must, therefore, be devoted to the requisite purposes. They sought a declaration that the failure to dedicate revenues from the CAT to the requisite purposes violated Art. XII, Section 5a. They sought prospective application of such a declaration, but whether collection of the tax would be enjoined, or could be collected but not appropriated, was unclear.

The Department of Taxation contended that as a general tax imposed upon the privilege of doing business in Ohio, the CAT does not run afoul of the provision because it is not sufficiently related to motor fuel; rather, it applies to the privilege of doing business generally, regardless of the nature of the business.

Both the trial court and the court of appeals sided with the Tax Commissioner. They held that the CAT was not sufficiently "related to" motor vehicle fuel so fall under the proscription of Art. XII, Section 5a. The Supreme Court allowed a discretionary appeal by the taxpayers.

**Ruling.** Looking to the history behind the adoption of Art. XII, Section 5a, the Court observed that its purpose was to prevent the diversion of revenues from taxes on motor fuel from the construction, repair and maintenance of roads and highway safety. Looking at the history of the provision, it noted that the phrase "related to" was intended to be interpreted broadly. It then stated that in that context the CAT bore a "logical and close" connection to motor-vehicle fuels.

The proceeds were "(1) money (2) derived (3) from an excise (4) on motor-vehicle-fuel sales." Although not a tax on the individual

transactions, themselves, the Court believed the CAT was “directly based” on motor vehicle fuel sales revenue. Thus, in its view, “one is hard pressed to deny the close connection between the tax paid (moneys derived) and the source (excise on “fuels used”) of that tax revenue.” Para 33.

The Court distinguished its earlier decision in *Ohio Grocers Assn. v. Levin*, 123 Ohio St. 3d 303, 2009-Ohio-4872, 619 N.E.2d 446, on the basis that the key issue in that case was whether or not the CAT was a transaction tax that fell within the proscription of such a tax on food contained in Art. XII Sections 3(C) and 13. It also noted the phrase “relating to” was more broad than the language used in the food provisions. Therefore, Ohio Grocers did not control the disposition of this case.

Remedy. The Court next turned to the appropriate remedy to apply. It noted the Constitution does not prohibit the imposition of a tax on the transactions in question; rather, it merely directed where the proceeds from that tax could be appropriated. The parties had urged that a decision favorable to the taxpayers should be applied prospectively only. The Court agreed that prospective application was appropriate in this case because (1) this was a case of first impression; (2) retroactive application of the decision would neither promote, nor retard, the purpose behind the decision; and (3) retroactive application would cause an inequitable result with respect to revenues that had been expended in prior years. Therefore, the Court concluded that its decision would be applied prospectively only.

The Court did not expressly state whether the tax could continue to be collected with respect to the transactions in question. However, the language in its decision seems to invite the General Assembly to earmark CAT revenues derived from these transactions for the purposes set forth in Art. XII, Section 5a.

