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OCTOBER 21 - NOVEMBER 3, 2022

OHIO'S COMMERCIAL ACTIVITY TAX: DON'T LET THE CAT GET YOUR TONGUE

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Over a decade ago, Ohio fully phased in the Commercial Activity Tax ("CAT") which replaced the business franchise tax and the personal property tax. The CAT functions as a business privilege tax measured by gross receipts on commercial activities. Taxable Ohio gross receipts ("Receipts") are the amounts realized on transactions that contribute to gross income, without considering expenses. In this way, the CAT operates a lot like a sales tax. But unlike the sales tax, the CAT has no exclusion for resale and cannot be passed on to customers. Most business types and forms may be subject to the CAT. However, the CAT does not apply to many governmental entities, non-profit organizations, public utilities, insurance companies, and financial institutions.

Of qualifying taxpayers, those that have a "substantial nexus" with Ohio and collect at least $150,000 in Receipts in a calendar year must pay the tax. A "substantial nexus" exists if a taxpayer either owns or uses a part or all of its capital or property in Ohio, holds an Ohio certificate authorizing it to do business in the state, has bright-line presence in Ohio, or otherwise has nexus with Ohio under the U.S. Constitution. At any time during the calendar year, a "bright-line presence" exists with taxpayers in Ohio who either have property in the state with an aggregate value of at least $50,000, payroll of at least $50,000, or Receipts of at least $500,000. As such, the CAT applies to most Ohio businesses. It also applies broadly to many businesses outside of Ohio, even those having no physical presence in the state.

Applicable taxpayers must register for a CAT account. All CAT taxpayers must make an annual minimum tax payment ("AMT") of $150. Any taxpayer with Receipts over $1 million must pay the AMT, as well as .26% for each dollar over $1 million. These taxpayers must file quarterly. Any business or person subject to the CAT with Receipts less than $1 million only need to pay the AMT and file annually.

The Ohio Department of Taxation ("ODT") regularly audits Ohio and non-Ohio taxpayers for CAT compliance. Taxpayers should consider whether the Ohio CAT applies to them. Proactively managing compliance ensures saving money in interest and fines.

ODT does offer a Voluntary Disclosure Program. If a taxpayer discovers non-compliance, they can enter the program. This limits any look-back period to three years and waives any applicable penalties. Eligibility for the disclosure program only exists if the voluntary disclosure occurs prior to any contact from the ODT. If the ODT otherwise determines a taxpayer is subject to the CAT, the look-back period is ten years with penalties. So if a business has significant Ohio Receipts but is not paying the CAT, it should promptly analyze its potential tax obligations. ■

COMMON MISTAKES MISCLASSIFYING INDEPENDENT CONTRACTORS

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Employers have certain obligations to employees that they do not have to independent contractors. Likewise employees have certain rights when it comes to employment that 1099 independent contractors do not have. While both independent contractors and employees perform work for an employer, their relationships to the employer are quite different. The biggest difference for employees and independent contractors is that hourly employees are entitled to overtime wages (or "time and one-half") for any hours worked over 40 hours in a work week.

Employers must properly classify workers as either employees or independent contractors. Yet sometimes, either intentionally or unintentionally, an employer will misclassify a worker as an independent contractor when that worker is in fact an employee.

If you believe you have been denied overtime wages because of a misclassification, it is important to seek advice from a Columbus wage and hour lawyer who can assist you. In the meantime, the following are some of the most common mistakes that employers make that result in misclassifications. If one of these circumstances looks like it might be applicable to your circumstances, you should get in touch with a lawyer to learn more about your options.

Classifying Workers as Independent Contractors Because They Have Signed an Independent Contractor Agreement

Having a worker sign an independent contractor agreement does not have much bearing at all on whether that worker should be classified as an independent contractor or an employee. Instead, employers in Columbus must look to factors outlined by the Ohio Supreme Court and the Sixth Circuit, as well as by the U.S. Department of Labor, in determining whether a worker should be classified as an independent contractor or an employee. Employers must consider the "totality of the circumstances" test and apply the "economic realities" test to make a determination about whether a worker is entitled to wage and hour protections as an employee.

Failing to Consider Many Elements of the Worker's Relationship to the Business

Employers often make the mistake of looking at only one aspect of the employer-worker relationship, when a wide range of aspects of the worker's relationship to the employer must be considered.

Assuming Work-from-Home Workers Are Always Independent Contractors

The pandemic resulted in many workers doing jobs from home that they might otherwise have completed in other places, and those experiences have shifted much office work to having a remote option. Traditionally, many workers who performed their jobs from home (or from a location of the worker's choosing) were independent contractors, although certainly not always. An employer should never assume that, just because a worker is doing their job remotely or from home, the worker is an independent contractor who is not entitled to certain benefits, rights, or privileges of employee classification under the Fair Labor Standards Act. In fact, the location of a person's work is not typically a consideration in determining whether a worker is an employee or independent contractor. ■