



H.B. 399

126th General Assembly
(As Introduced)

Reps. Skindell, Allen, Key, Reidelbach, Fessler, Williams, J. McGregor, Hood, Sykes, Hartnett, Miller, Koziura, D. Stewart, Strahorn, Perry, Barrett, Harwood, Carano, Boccieri, Gilb, Brown, Cassell, Buehrer, Yuko, DeGeeter, Woodard, Willamowski, Faber, Fende, Schaffer, Hughes, Book, Mason, Oelslager, Healy, Otterman, S. Smith, Distel, Mitchell, Chandler, Redfern, Sayre, Garrison, Domenick, DeBose, Beatty, S. Patton, Driehaus, Ujvagi, Brinkman

BILL SUMMARY

- Exempts various classes of food-related gross receipts from the commercial activity tax base, including receipts from retail sales of food for off-premises consumption; from wholesale sales of food and food ingredients and packaging; from retail sales of food-containing packaging; and from sales of inputs to food and food-related businesses.

CONTENT AND OPERATION

Commercial activity tax base--current law

(R.C. 5751.01, 5751.02, 5751.03, 5751.031, and 5751.032)

The commercial activity tax is an annual tax on most legal entities having annual "taxable gross receipts" in excess of \$150,000. The tax is levied in the amount of \$150 on the first \$1 million of the entity's taxable gross receipts plus a percentage of the person's taxable gross receipts in excess of \$1 million. The percentage is phased in over several years beginning July 1, 2005, ultimately reaching 0.26% on April 1, 2009, although the percentage must be adjusted upward or downward if revenue from the tax is below or above certain targets during three revenue "test" periods.

Legally, the commercial activity tax is a business privilege tax. Privilege taxes are levied for the privilege of doing business in a state or other jurisdiction. In the tax context, the privilege is the legal right to transact business in Ohio as evidenced by, for example, a certificate of good standing or Ohio articles of

incorporation. The corporation franchise tax also is a form of privilege tax, but it is measured on the basis of net income or net worth; in the formal legal sense, it is not a tax *on* net income or net worth or *on* doing business, but a tax *measured by* net income or net worth. See, e.g., *LSDHC Corp. v. Zaino*, 98 Ohio St.3d 450 (2003), and *Diamond Financial Holdings v. Limbach*, 67 Ohio St.3d 228 (1993).

The commercial activity tax base or measure is taxable gross receipts, which are receipts from most activities conducted for, or resulting in, gain, profit, or income. Only receipts attributed to conducting these activities in Ohio are included in taxable gross receipts; the attribution or "situsing" rules are set forth in statute (R.C. 5751.033) and administrative rules (which are not final as of January 6, 2005). Currently, there are 26 categories of receipts that are exempted from the commercial activity tax base.

Exemption for food and food-related receipts

(R.C. 5751.01(F)(2)(z) to (cc))

The bill creates four new categories of exemption from the commercial activity tax base, all of which are related to food. Receipts from the following are exempted:

- From the sale of food for human consumption off the premises where sold;
- From the wholesale sale or wholesale purchase of food (including nonalcoholic beverages) for human consumption or its ingredients or packaging;
- From selling items sold to or purchased by a manufacturer, processor, packager, distributor, or reseller of food (including nonalcoholic beverages) for human consumption or ingredients for use in the purchaser's trade or business;
- From retail sales of packaging that contains food (including nonalcoholic beverages) for human consumption on or off the premises where sold.

The exempted categories are substantially the same as the four food and food-related categories of exemption from sales tax and other excise taxes provided in Ohio Constitution, Article XII, Section 3(C) and Section 13.

HISTORY

ACTION

DATE

Introduced

10-26-05

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