OHIO BOARD OF TAX APPEALS

PERRIGO SALES CORPORATION, (et al.), Appellant(s), vs. PATRICIA HARRIS, TAX COMMISSIONER OF OHIO, (et al.), Appellee(s).	))))))))))	CASE NO(S). 2024-485 (COMMERCIAL ACTIVITY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PERRIGO SALES CORPORATION
Represented by:
PAUL E. MELNICZAK
REED SMITH LLP
THREE LOGAN SQUARE, SUITE 3100
1717 ARCH STREET
PHILADELPHIA, PA 19103

For the Appellee(s) - PATRICIA HARRIS, TAX COMMISSIONER OF OHIO
Represented by:
JEFFREY LIPPS
ESQ.
CARPENTER LIPPS LLP
280 NORTH HIGH STREET, SUITE 1300
COLUMBUS, OH 43215

Entered Thursday, October 9, 2025

Ms. Clements, Ms. Allison, and Mr. Seitz concur.

Perrigo Sales Corporation ("Perrigo") appeals a final determination of the Tax Commissioner, affirming two assessments for the periods July 1, 2012, through June 30, 2015, and January 1, 2016, through December 31, 2018. The core issue is whether the Commissioner properly assessed Perrigo for commercial activity tax ("CAT") based on the list price Perrigo uses for generic pharmaceutical drugs or whether the actual sale price paid by its customers should have been used. We conclude that the actual sale price is the appropriate standard.

BACKGROUND AND PROCEDURAL HISTORY

Perrigo manufactures and sells consumer goods, pharmaceuticals, and healthcare products. The receipts at issue in this appeal relate to its pharmaceutical sales. Perrigo contracts directly with retailers like CVS or Walgreens to supply drugs at an agreed-upon price. The drugs are distributed to retailers through wholesale distributors, such as AmerisourceBergen, Cardinal Health, or McKesson, who honor those contracts. When Perrigo ships its prescription products to wholesale distributors, it issues an invoice at a wholesale acquisition cost, or "WAC," though neither party expects the WAC to reflect the actual cost of drugs. Instead, the parties anticipate a chargeback will reduce the purchase price based on the agreements with downstream retailers. Based on its agreements with the downstream retailers, Perrigo estimates its actual sales prices at the time of invoicing with approximately 99% accuracy, excluding chargebacks from recorded revenue. In other words, all parties understand that WAC is not the actual price.

When the distributor sells prescription drugs to retailers, it submits a chargeback adjustment to Perrigo based on the difference between the WAC and the contracted purchase price. The chargeback is typically processed within 48 hours. The distributor then remits the net sale price (WAC less the chargeback) to Perrigo. Though they appear under two separate accounts in Perrigo's accrual method of accounting, in practice, the chargeback reduces the distributor's purchase price and is not a separate transaction.

Perrigo timely filed CAT returns for the tax periods at issue, reporting receipts based on the sale price after all chargebacks, rebates, shortages, and other discounts, asserting that this amount reflects the price its customers pay for its products. The Department of Taxation selected Perrigo for an audit to verify its registration and the amount of its taxable gross receipts for the audit period. Perrigo objected to the audit results because it claimed that the auditor used a list price to calculate liability, without consideration of sale price adjustments, including chargebacks, rebates, shortages, and other discounts. Ultimately, the Commissioner assessed Perrigo a total of $3,033,924 for unpaid tax, plus interest and penalties.

Perrigo petitioned for reassessment, again claiming it was entitled to exclude gross receipts attributable to cash discounts, returns, and allowances. These returns and allowances primarily consisted of chargebacks, shortages, and Medicaid rebates, though it has since conceded the issues of shortages and Medicaid rebates. Perrigo asserted that the chargebacks, which comprised more than 90% of the adjustments at issue, essentially reduce the sale price that a wholesaler pays for its goods. Chargebacks are calculated based on the difference between the amount paid by the wholesaler to Perrigo and the amount paid to the wholesaler by its customer. Perrigo claimed that chargebacks are not discounts to the wholesaler's customer.

The Commissioner considered Perrigo's claims and observed that "cash discounts" could be excluded from taxable gross receipts but asserted that they constitute incentive-based discounts or rebates received by the purchaser, not the purchaser's customer. She likewise explained that "returns and allowances" could be excluded from taxable gross receipts, but the term was not defined in state or federal tax law. She asserted that returns and allowances represent either a complete undoing of the original transaction or a partial undoing or renegotiation of the original transaction based on some defect. Applying these definitions to Perrigo's claims, the Commissioner likened the chargebacks to a manufacturer's coupon, for which a manufacturer cannot claim exclusion from its gross receipts based on reimbursement to the retailer that accepted the coupon from its customer. She further found that the chargeback was not a return or allowance because there was no undoing or partial undoing of the original transaction. For these reasons, the Commissioner found Perrigo's arguments about chargebacks were not well-taken.

With respect to shortages, the Commissioner allowed the shortages granted by the audit staff based on each entity's sales ratio percentage, as shown in the audit workpapers. She did not allow any further exclusions based on claimed shortages. She likewise rejected Perrigo's arguments related to the Medicaid rebates, finding that the parties receiving the rebates were at least two levels removed from Perrigo in the sales chain. She agreed with Perrigo regarding the computation of the qualified distribution center exclusion for tax period 1/1/2016-12/31/2018. The correction to this exclusion resulted in a reduction from $1,671,470 to $304,023 in tax due for that assessment. Finally, the Commissioner granted partial abatement for penalties.

Perrigo appealed the final determination to this Board, maintaining that the list price for each product sold is not a taxable gross receipt because Perrigo does not realize the amount exceeding the chargebacks, rebates, shortages, and other discounts. Perrigo further argued that the requested amounts should be excluded even if the full list price were considered a gross receipt. Perrigo conceded its arguments concerning the portion of the assessment attributable to admin fees, Medicaid rebates, shortages, and all other adjustments in the assessment. It only seeks for this Board to find that chargebacks, customer programs, and cash discounts are not included in gross receipts.

At this Board's hearing, Ed Ajodah, a former Senior Director of Global Tax Controversy at Perrigo, testified on behalf of Perrigo. He explained that Perrigo sells prescription drugs to wholesalers at WAC but has prearranged pricing agreements with downstream customers (e.g., CVS). When wholesalers sell to these customers at the lower contract price, they submit a chargeback to Perrigo for the difference. Perrigo then receives only the net amount (e.g., $60 of a $100 WAC), which it treats as the actual sales price for accounting and tax purposes. Ajodah emphasized that chargebacks are not separate payments but offsets deducted from the wholesaler's payment. He stressed that Perrigo records revenue under GAAP based on the net amount received, not the WAC. The company's federal tax returns and financial statements consistently reflect this treatment.

Following the hearing, the parties submitted briefs in support of their positions. As noted above, Perrigo conceded the portion of the assessment related to shortages, Medicaid rebates, and other discounts. Perrigo maintains that chargebacks are not gross receipts because they are never received. Perrigo argues that the WAC is not a gross receipt because it is not an amount realized, citing GAAP and federal tax accounting guidelines. As further persuasive evidence, Perrigo also highlights that the Tax Commissioner's own regulation, Adm.Code 5703-29-14(B)(3), now defines cash discounts to include "unilateral or negotiated price adjustments" that do not require material consideration by the purchaser. Perrigo asserts that even if the Board considers the full WAC a gross receipt, the chargebacks qualify as a cash discount. The Commissioner argues that chargebacks should not reduce the taxable gross receipts because they constitute an "expense incurred" related to Perrigo's prescription drug business and cannot be deducted.

LAW AND ANALYSIS

Standard of Review

On appeal, a taxpayer challenging a final determination of the Commissioner must prove that the findings were incorrect because "findings are presumed valid subject to rebuttal." *Accel, Inc. v. Testa*, 2017-Ohio-8798, ¶ 14. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar*, 38 Ohio St.2d 135 (1974); *Midwest Transfer Co. v. Porterfield*, 13 Ohio St.2d 138 (1968). In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the Commissioner's determination is in error. *Kern v. Tracy*, 72 Ohio St.3d 347, 349 (1995); *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St. 3d 213 (1983). In applying the law, our role 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." *Stingray Pressure Pumping, L.L.C. v. Harris*, 2023-Ohio-2598, ¶ 22.

CAT

The CAT is a broad-based privilege of doing business tax measured by gross receipts. R.C. 5751.02(A); *NASCAR Holdings, Inc. v. McClain*, 2022-Ohio-4131. "Gross receipts" are "the total amount realized by a person without deduction for cost of goods sold or expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration." R.C. 5751.01(F). A taxpayer's method for accounting for gross receipts must be consistent with its method for accounting for federal income tax purposes. R.C. 5751.01(F)(4). The Board has found federal law, accounting standards, and generally accepted accounting principles ("GAAP") pertinent to our analysis when characterizing transactions for CAT purposes. *Hyundai Motor Fin. Co. v. McClain*, BTA No. 2015-785, 2020 Ohio Tax LEXIS 281 (Feb. 6, 2020).

The Amounts at Issue Are Not "Gross Receipts" Under R.C. 5751.01(F)

Our first inquiry starts with whether the WAC should be used as the standard for the gross receipts base instead of the actual sale price received by Perrigo. Again, under R.C. 5751.01(F)(1), "gross receipts" are defined as "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person." No party disputes that the sale price (WAC adjusted by the chargeback) is a taxable gross receipt. The question is whether the Commissioner erred in finding that the full WAC should have been included in the gross receipts calculation.

Perrigo argues that chargebacks are not deductible expenses but rather price adjustments that reduce the original invoice amount. Since Perrigo never actually receives the WAC, there is nothing to deduct. Citing federal tax authorities, Perrigo emphasizes that these adjustments are "above-the-line" price reductions rather than below-the-line expenses, and thus are not included in gross receipts in the first instance. Perrigo further asserts that its position is consistent with federal law and GAAP. It stresses that it used the accrual method of accounting required by federal law, and it reported CAT consistent with those standards as required by R.C. 5751.01(F)(4).

We agree. The Board finds that Perrigo has met its burden to demonstrate that the contested amounts do not constitute gross receipts. Perrigo provided credible evidence that it did not receive the WAC invoiced to its distributors. The Tax Commissioner argues that the proper starting point is the invoice amount and that these adjustments are unapproved deductions from gross receipts. By emphasizing the timing of the chargebacks, the Commissioner's interpretation elevates form over substance. Under preexisting agreements with downstream pharmacies, the actual price received by Perrigo was significantly reduced through a contractual chargeback process. The economic reality shows the end customer paid a lower contract price to the distributor, who then sought reimbursement from Perrigo for the difference between that price and the WAC. As a result, Perrigo received only the adjusted sales price, not the full WAC. The distributor provides no consideration in exchange for the chargeback. As Perrigo notes, "the expectation of an amount of the chargeback is already established and contemplated by the contract between Perrigo and the distributor." Perrigo Br. at 5.

The record clearly establishes that the chargeback pricing mechanism is not incidental or obscure to the parties in the transaction. Adjodah testified that the payment systems are deliberately structured and control how Perrigo gets its drugs to the end user through the wholesaler. It is uncontroverted that Perrigo essentially never receives the full WAC because of the prearranged pricing agreements with downstream customers. Perrigo invoices the WAC, knowing the price will be adjusted later on. The wholesaler agrees to be initially charged, knowing the price will be adjusted later. The wholesaler remits only the net amount, and no separate payment is ever made for the difference. As Ajodah testified, Perrigo's actual receipts are limited to the net amount, and the chargeback is not a subsequent refund or rebate. It is a pricing mechanism that determines the amount Perrigo receives in the first instance.

Importantly, the wholesalers are not passive participants in this process. They understand that the WAC is not the true price of the product and that they will ultimately remit, or be responsible for, only the cost established between Perrigo and the downstream customer. Adjodah credibly testified that the wholesalers' systems are designed to track these transactions, and their payments to Perrigo reflect the net price after chargebacks are applied. In short, this is a unified transaction, not a "separate" or "second" transaction, as the Commissioner asserts, nor does a chargeback represent an improper deduction. To treat the WAC as a “receipt” under the CAT ignores the commercial reality of how these transactions are structured and executed.

The fact that Perrigo issues an invoice at WAC does not transform that figure into a realized receipt when the company knows, with near certainty, that it will never collect that amount. As the testimony established, Perrigo’s accruals for chargebacks are over 99% accurate, and the company’s financial statements and tax returns consistently reflect only the net amount as revenue.

The parties discuss various exclusions in their analysis, but because the actual sale price should have been used in the base (not the WAC), we need not delve into possible exclusions.

In sum, the Commissioner’s interpretation expands the CAT base beyond what the statute permits. The CAT is a tax on receipts *realized by the taxpayer*, not the WAC, not on theoretical invoice amounts, and not on amounts that are contractually offset before payment is ever made. Because Perrigo never received the amounts at issue, they are not “gross receipts” under R.C. 5751.01(F), and the assessment must be reversed. Because the WAC is, in substance, an accounting placeholder, the chargeback reduction is not an expense but rather the accounting mechanism to establish the actual purchase price, i.e., the gross amount realized.

CONCLUSION

Accordingly, the Board concludes that Perrigo has carried its burden to demonstrate that the chargebacks should reduce the WAC to calculate its taxable gross receipts. Therefore, the final determination is reversed in part. As Perrigo conceded its objections to the other issues in its brief, the final determination is otherwise affirmed. We remand the matter to the Commissioner to modify the assessments consistent with this opinion.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Ms. Clements		
Ms. Allison		
Mr. Seitz		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

Kathleen M. Crowley, Board Secretary