SLIP OPINION NO. 2026-OHIO-3648

PERRIGO SALES CORP., APPELLEE, *v.* HARRIS, TAX COMMR., APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Perrigo Sales Corp. v. Harris*, Slip Opinion No. 2026-Ohio-3648.]

Taxation—Commercial-activity tax—R.C. 5751.02(A)—Amount that prescription-drug manufacturer received from sale of its drugs to retailers was "amount realized" for purposes of calculating gross receipts and levying commercial-activity tax under R.C. 5751.02(A)—Board of Tax Appeals' decision affirmed.

(No. 2025-1477—Submitted July 1, 2026—Decided September 22, 2026.)

APPEAL from the Board of Tax Appeals, No. 2024-485.

DEWINE, J., authored the opinion of the court, which KENNEDY, C.J., and FISCHER, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ., joined.

DEWINE, J.

{¶ 1} Perrigo Sales Corporation manufactures generic drugs and supplies them to wholesale distributors who, in turn, sell the drugs to retail drug stores. This case involves the tax treatment of a billing practice employed by Perrigo. When selling its products, Perrigo sends distributors an invoice that contains a list price for its products. But Perrigo also negotiates separately with individual retailers and agrees to a price that is typically lower than the list price. The distributors pay Perrigo based on the agreed-upon price with the retailers, not the higher list price contained in the invoices. The issue in this case is whether Ohio's commercial-activity tax (the "CAT") on gross receipts applies to the list price or to the price that is actually paid by the distributors.

{¶ 2} After an audit of Perrigo, the tax commissioner claimed the higher list price invoiced to the distributors was the gross receipt subject to the CAT. We disagree. The problem with the tax commissioner's theory is that Perrigo never receives the list price invoiced to the distributors. Rather, the distributors pay Perrigo the (typically lower) price agreed upon with the retailer. Because the gross-receipts tax applies to the "amount realized" from a transaction, only the amount that Perrigo actually received is subject to the CAT. Because the Board of Tax Appeals reached the same conclusion, we affirm its decision.

I. BACKGROUND

{¶ 3} This case involves the application of the CAT to Perrigo's sales of generic prescription drugs. The CAT is a tax levied "on each person with taxable gross receipts for the privilege of doing business in this state." R.C. 5751.02(A).

A. Perrigo's Billing Practice

{¶ 4} Perrigo sells the prescription drugs it manufactures at wholesale to distributors. These distributors in turn sell the drugs to retailers, like CVS and Walmart. Perrigo invoices distributors according to a price the parties refer to as a wholesale acquisition cost, but which we will simply call the "list price." Perrigo also has relationships with retailers that buy Perrigo's drugs from distributors. These relationships are memorialized in contracts establishing that Perrigo's drugs will be provided to retailers at a specific price—a price that is generally lower than the list price.

{¶ 5} The crux of these arrangements is that when the distributors pay Perrigo after selling Perrigo's drugs to retailers, the distributors pay Perrigo according to the price listed in the pricing agreements that Perrigo negotiated with the retailers, not the list price. The difference between the list price and what Perrigo actually receives from the sale of the drugs by the retailers is known as a "chargeback." This usually all occurs as a single transaction, with the distributor deducting the chargeback from the list price and sending the payment to Perrigo. By contract with the distributors, Perrigo is required to honor this chargeback arrangement. About 97 percent of Perrigo's sales to distributors are subject to this chargeback process. And while the arrangement seems unusual, we are told that it is a longstanding practice in the pharmaceutical industry.

B. The Proceedings Below

{¶ 6} In 2019, the Ohio Department of Taxation conducted a CAT audit of Perrigo's taxable gross receipts from January 1, 2016, through December 31, 2018. The department determined that Perrigo had underreported its gross receipts by not reporting the full list price that it invoiced distributors but instead reporting the amount that it actually received. Perrigo challenged the tax commissioner's assessment of additional taxes. It argued that the list price was not the "amount realized" under the CAT and that the chargeback should be excluded from its gross receipts. The tax commissioner saw it differently, concluding that Perrigo's gross receipts were properly measured by the list prices set forth in Perrigo's invoices to the distributors.

{¶ 7} The Board of Tax Appeals ("BTA") reversed the tax commissioner's determination, agreeing with Perrigo that the list price minus the chargeback provided the measure of Perrigo's gross receipts. *See* BTA No. 2024-285, 2025 WL 3037312, *1, 5 (Oct. 9, 2025). The BTA emphasized that the "CAT is a tax on receipts *realized by the taxpayer*, not the [list price], not on theoretical invoice amounts, and not on amounts that are contractually offset before payment is ever made." (Emphasis in original.) *Id.* at *5. It held that "[b]ecause Perrigo never received the amounts at issue, they are not 'gross receipts'" and, therefore, "the assessment must be reversed." *Id.* This appeal followed.

II. ANALYSIS

{¶ 8} We begin with a straightforward application of the CAT to Perrigo's business practice. The CAT is levied on "gross receipts." R.C. 5751.02(A). "Gross receipts" is 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." R.C. 5751.01(F).

{¶ 9} This case turns on the phrase "amount realized." In the tax commissioner's view, the amount realized was the list price that Perrigo invoiced its distributors. In Perrigo and the BTA's view, the amount realized was the amount the distributors actually paid for the drugs—the list price minus the chargeback. We review the BTA's determination for whether it was reasonable and lawful. *See* R.C. 5717.04.

A. The List Price Is Not the Amount Realized Under the CAT

{¶ 10} Ohio's Tax Code does not define "amount realized." It does, however, provide an example of gross receipts: "[a]mounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another." R.C. 5751.01(F)(1)(a). From this example, it is evident that the amount a person receives in exchange for the sale of property—such as prescriptions drugs—constitutes a gross receipt. This understanding is consistent with the definition provided by *Black's Law Dictionary*, which defines "amount realized" as "[t]he amount received by a taxpayer for the sale or exchange of an asset, such as cash, property, services received, or debts assumed by a buyer." *Black's Law Dictionary* (10th Ed. 2014).

{¶ 11} The Internal Revenue Code similarly defines "amount realized," providing that "[t]he amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received," 26 U.S.C. 1001(b). And Ohio's Tax Code specifically provides that "[a]ny term used in [R.C. Ch. 5751] that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required," R.C. 5751.01(K).

{¶ 12} So here, the amount realized is the amount that is received by Perrigo from its distributors in exchange for its prescription drugs. The BTA found that "Perrigo essentially never receives the full [list price] because of prearranged pricing agreements with downstream customers. . . . Perrigo's actual receipts are limited to the net amount, and the chargeback is not a subsequent refund or rebate." BTA No. 2024-285, 2025 WL 3037312, at *5.

{¶ 13} We agree with this logic. A straightforward application of "amount realized" shows that the amount realized by Perrigo is not the list price amount invoiced to distributors but rather the amount Perrigo receives from the sale of its prescription drugs to retailers. Perrigo deals with both wholesale distributors and retailers. It sends an invoice to each distributor that includes a list price for the drugs the distributor will sell to the retailers. Perrigo also makes contracts with retailers directly, specifying the price at which the retailer will buy Perrigo's products. And despite the list price often being higher than the price agreed upon with the retailer, the distributors honor the retailer agreements and pay Perrigo the price it negotiated with the retailer.

{¶ 14} Consider an example. Perrigo invoices a distributor at the list price of $100. Perrigo also has a pricing agreement with a retailer providing that the drug will be provided to the retailer at $60. Because the distributor honors Perrigo's pricing agreement with the retailer, it invoices the retailer at $60. In turn, the distributor pays $60 to Perrigo accompanied by a chargeback claim of $40. Perrigo never receives the list price of $100. Rather, it receives only the $60 it agreed to sell the drug for with the retailer—the list price minus the chargeback. This is the "amount realized" from the transaction. It is the sum of money received from "the sale, exchange, or other disposition of [Perrigo's] property to or with another," R.C. 5751.01(F)(1)(a). And because Perrigo receives only the amount agreed upon with the retailer—rather than the list price invoiced to the distributor—it is the retailer price that is the "amount realized" for the calculation of Perrigo's "gross receipts." This is the amount subject to the CAT.

B. The Tax Commissioner's Contrary Arguments Are Unpersuasive

{¶ 15} The tax commissioner raised six propositions of law in her appeal from the BTA's decision. Remarkably, though, the tax commissioner does not seriously engage with the statutory definition of "gross receipts." Instead, the tax commissioner primarily focuses on other statutory and administrative-code provisions. But none of the tax commissioner's arguments are persuasive.

{¶ 16} The tax commissioner's first proposition asserts that the BTA incorrectly equated "gross receipts" under the CAT with "gross income" under the Internal Revenue Code. But a quick review of the BTA's decision shows no such thing. Rather, the BTA's decision refers to "gross income" only twice, and that is when it is quoting the statutory definition of "gross receipts" from R.C. 5751.01(F). Fairly read, the BTA's decision does not treat "Ohio gross receipts and federal gross income the same" as the tax commissioner contends; the BTA simply applied Ohio's statutory definition of "gross receipts."

{¶ 17} Second, the tax commissioner argues that by allowing Perrigo to deduct the chargeback from the list price, the BTA violated a requirement in R.C. 5751.01(F) that gross receipts be calculated "without deduction for the cost of goods sold or other expenses incurred." In the tax commissioner's view, the chargebacks were "an expense of doing business" and thus could not properly be deducted from the list price in determining Perrigo's gross receipts. The flaw in this argument is that Perrigo never received the list price. What it received was the list price minus the chargeback—that is, the amount actually paid to it by the distributors. Perrigo is not attempting to deduct expenses from the amounts it realized: it never realized the list price amount. The chargeback amounts were not the "cost of goods sold" or "other expenses," R.C. 5751.01(F); they were simply an accounting entry necessary to reflect the amount that Perrigo actually realized on the transactions.

{¶ 18} The tax commissioner asserts in her third proposition that the BTA erred by focusing on the definition of "gross receipts" and failing to consider the import of various statutory exclusions from gross receipts. Her argument focuses on R.C. 5751.01(F)(2), which provides that "gross receipts" "excludes the following amounts" and then provides a list of exclusions. According to the tax commissioner, the BTA's interpretation of "amount realized" would render some statutory exclusions superfluous, such as the exclusion for "[c]ash discounts allowed and taken," R.C. 5751.01(F)(2)(bb), and the exclusion for "returns and allowances," R.C. 5751.01(F)(2)(cc). The problem with this logic is that there is no need to get to the exclusions from gross receipts if something is plainly not a gross receipt under the statutory definition. It may well be the case that the General Assembly took a belt-and-suspenders approach in drafting the exclusions, providing clarity (and protection against misinterpretation) by explicitly excluding some items that might not fall within the definition of "gross receipts" as the amount realized. *See Atlantic Richfield Co. v. Christian*, 590 U.S. 1, 14, fn. 5 (2020) (legislature may employ a "belt and suspenders approach" to ensure its aims are met). But such legislative choices cannot change the fact that the legislature also plainly imposed the CAT on the "amount realized" from a transaction. Because

Perrigo did not realize the list price, we reject the tax commissioner's superfluity argument.

{¶ 19} In her fourth proposition, the tax commissioner focuses on the exclusion from gross receipts for "cash discounts allowed and taken." R.C. 5751.01(F)(2)(bb). She argues that because the chargeback does not qualify as a cash discount allowed and taken under a regulation issued by the tax commissioner, *see* Former Adm.Code 5703-29-14, 2006-2007 Ohio Monthly Record 323-324 (effective Aug. 11, 2006), Perrigo cannot exclude the chargeback amounts from its gross receipts. But all this is beside the point. The BTA did not rely on the exclusion for cash discounts allowed and taken. It concluded that Perrigo did not realize the list price. BTA No. 2024-485, 2025 WL 3037312, at *4. So whether the cash-discount exclusion would or would not apply is simply irrelevant.

{¶ 20} In her fifth proposition, the tax commissioner returns to the argument that the BTA unlawfully allowed Perrigo to deduct a business expense. She contends that under the BTA's reading of the statute, "any business that also buys goods or services from one of its suppliers could reduce its gross receipts by settling those amounts through setoff." As an example, the tax commissioner offers a bakery selling muffins to a grocery store and buying wax paper from the same store to package those muffins. If the bakery invoices the grocery store $1,000 for the muffins and offsets the invoiced amount against $200 for the cost of the wax paper from the store, the tax commissioner reasons that the bakery could, under the BTA's decision, represent that it had $800 in gross receipts.

{¶ 21} The tax commissioner's hypothetical is far wide of the mark. It concerns a bakery's buying-and-selling relationship with a grocery store, whereas this case involves only Perrigo's selling activities. Under the BTA's logic—and the plain terms of R.C. 5751.01(F)—both the $800 payment and the $200 value of the wax paper would be taxable because that is what the bakery received in return for its sale of goods. Here, the full list price is not taxable because Perrigo did not receive this amount in return for its sale of prescription drugs.

{¶ 22} In her final proposition, the tax commissioner argues the BTA made a factual error in finding that Perrigo never received the list price amount. She bases this argument on testimony that Perrigo maintained internal accounting records that recorded the list price of drugs at the time they were shipped. But regardless of how Perrigo maintained its internal records, there was substantial evidence in the record that Perrigo never received the full list price amount.

{¶ 23} The tax commissioner also suggests in her final proposition that Perrigo somehow violated a provision of the state tax code requiring it use the same method of accounting for gross receipts "as the taxpayer's method of accounting for federal income tax purposes." R.C. 5751.01(F)(4). We fail to understand this argument. There is no evidence that Perrigo applied one method at the federal level and another at the state level. And, as the BTA found, Perrigo consistently reported on its federal tax returns that it received the amount that was actually paid by the distributors—the list price less the chargeback. *See* BTA No. 2024-485, 2025 WL 3037312, at *5. So we have little difficulty rejecting the tax commissioner's final proposition of law.

III. CONCLUSION

{¶ 24} The BTA's determination that the amount Perrigo received from the sale of its prescription drugs to retailers was the "amount realized" for Perrigo's gross receipts under the CAT was reasonable and lawful. We accordingly affirm the decision of the BTA.

Decision affirmed.

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