

OHIO BOARD OF TAX APPEALS

CSX TRANSPORTATION, INC., (et)
al.),)
Appellant(s),) CASE NO(S). 2021-575
vs.)
(COMMERCIAL ACTIVITY TAX)
PATRICIA HARRIS, TAX)
COMMISSIONER OF OHIO, (et al.),) DECISION AND ORDER
Appellee(s).)

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Entered Friday, January 2, 2026

Ms. Clements and Mr. Seitz concur. Ms. Allison not participating.

Appellant CSX Transportation (“CSXT”) appeals final determinations of the Tax Commissioner related to petitions for reassessment of its commercial activity tax (“CAT”) obligations during the tax periods of January 1, 2011, through December 31, 2013, and January 1, 2014, through December 31, 2016. This matter is now considered upon the notice of appeal, the statutory transcript certified by the Commissioner, the record of the hearing before this Board, and the parties’ written argument.

BACKGROUND AND PROCEDURAL HISTORY

CSXT is a rail-based freight transportation provider, wholly owned by CSX Corporation. The rail system comprises approximately 22,000 route miles in the Eastern US, linking 23 states, 70 ports, 240 short-line railroads, the District of Columbia, and two Canadian provinces. The freight includes a wide variety of merchandise, coal, and automotive products. CSXT also transports intermodal containers and trailers.

Assessment and Petition for Reassessment

The Department of Taxation selected CSXT for an audit to follow up on a prior audit for earlier tax periods and to review the implementation of the adjustments made in the prior audit. Following the audit, the Department issued assessments for \$3,464,295 and \$3,476,854 (\$6,941,149 total), plus interest (\$973,401.51), and penalties (\$1,041,172.09), for a total amount due of \$8,955,722.60. Though it conceded to portions of the audit, CSXT filed petitions for reassessment challenging the audit results related to its situsing methodology and the tax treatment of pass-through and non-revenue accounts. CSXT also sought abatement of the penalties.

Following a hearing, the Commissioner issued a Final Determination rejecting CSXT’s situsing arguments, concluding that R.C. 5751.033 (G) controlled the taxability of CSXT’s

activities. She further considered CSXT's arguments that certain receipts should not be included as taxable gross receipts, including car hire and horsepower sharing fees, receipts related to rebills and penalties, crossing grade signal construction fees, and rents and royalty receipts. The Commissioner found that CSXT did not provide sufficient evidence or a legal basis to show that the receipts were not taxable gross receipts and denied those claims. She did, however, fully abate the previously imposed penalties, noting that the interest was statutory and could not be reduced.

Appeal to this Board

CSXT appealed the final determinations to this Board. CSXT argued that the Commissioner improperly applied R.C. 5751.033(G) to situs its gross receipts because it is not a motor carrier. CSXT further argued that properly situsing its gross receipts under R.C. 5751.033(I) would show that it overpaid (not underpaid) CAT when it filed its CAT returns using its alternative situsing methodology, which it claims is an authorized methodology. CSXT disputed the treatment of pass-through accounts as taxable gross receipts, asserting they are not realized within the meaning of R.C. 5751.01(F), which defines gross receipts. CSXT next claimed that accounts used solely for reconciliation and tracking credits for joint operations among railroads and other industry participants do not contribute to the production of gross income and are not gross receipts. CSXT also maintained that the Commissioner improperly included an expense account used to record allowance and rebate amounts as gross receipts. CSXT opposed an adjustment made by the auditor, claiming it resulted in improper double-counting of certain rent receipts. CSXT also raised constitutional arguments and incorporated the objections made during the audit and administrative review process.

This Board convened a merit hearing to allow the parties an opportunity to submit additional evidence. The Board heard testimony from CSXT's Senior Director of Tax Compliance about the method by which CSXT had calculated its CAT liability based on a 1995 memorandum that established its apportionment methodology for the corporate franchise tax ("CFT"). He also

discussed the accounts CSXT maintains were improperly included as gross receipts by the Commissioner. CSXT also offered an expert witness to testify about the applicable situsing provision. He described the changes that took place as a result of a 2012 amendment of the situsing provision in R.C. 5751.033(G) and definitions related to that section. Three individuals from the Department testified regarding various topics related to audits of railroads, including the railroad memorandum, the Department's treatment of other railroads, and the subsection used for situsing.

STANDARD OF REVIEW

This Board reviews the Commissioner's findings de novo, and those findings are presumptively valid, subject to rebuttal. *Accel, Inc. v. Testa*, 152 Ohio St.3d 262, 2017-Ohio-8798, 95 N.E.3d 345, ¶ 14 (finding the taxpayer's burden for rebutting findings "is simply to prove that the findings were incorrect."). As we consider 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*, No. 2023-Ohio-2598, ¶ 22.

ANALYSIS

Commercial Activity Tax and Situsing

Ohio levies the CAT on taxpayers with substantial nexus with the state for the privilege of doing business in Ohio. R.C. 5751.02. Gross receipts are sitused to Ohio based on R.C. 5751.033. Gross receipts from the sale of "transportation services" are sitused under R.C. 5751.033(G):

Gross receipts from the sale of transportation services by a motor carrier shall be sitused to this state in proportion to the mileage traveled by the carrier during the tax period on roadways, waterways, airways, and railways in this state to the mileage traveled by the carrier during the tax period on roadways, waterways, airways, and railways everywhere. With prior written approval of the tax

commissioner, a motor carrier may use an alternative situsing procedure for transportation services.

R.C. 5751.033(G) was amended by 2012 Am.Sub.H.B. No. 487 (“H.B. 487”), effective June 11, 2012. This amendment substituted “motor carrier” for “common or contract carrier” in the first and second sentences of (G) and added (L), which provides “[a]s used in this section, ‘motor carrier’ has the same meaning as in section 4923.01 of the Revised Code.” Gross receipts from the sale of all other services are sitused under R.C 5751.033(I):

Gross receipts from the sale of all other services, and all other gross receipts not otherwise sitused under this section, shall be sitused to this state in the proportion that the purchaser’s benefit in this state with respect to what was purchased bears to the purchaser’s benefit everywhere with respect to what was purchased. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased shall be paramount in determining the proportion of the benefit in this state to the benefit everywhere. If a taxpayer’s records do not allow the taxpayer to determine that location, the taxpayer may use an alternative method to situs gross receipts under this division if the alternative method is reasonable, is consistently and uniformly applied, and is supported by the taxpayer’s records as the records exist when the service is provided or within a reasonable period of time thereafter.

The Ohio Supreme Court has said this Board has the authority to affirm an assessment based on a different statutory situsing provision or alternative grounds. *NASCAR Holdings, Inc. v. McClain*, 2022-Ohio-4131, ¶ 24-26. However, we must interpret the statutory provisions to determine whether the Commissioner properly sitused CSXT’s receipts. *Id.* Thus, to determine whether the receipts were properly sitused to Ohio, we must first review the applicable subsection.

The Railroad Memorandum

At the outset, we find that the memorandum that formed the basis for CSXT's apportionment methodology does not control its CAT liability. Notably, the memorandum related to the CFT, which was phased out and replaced by the CAT. While we may look to case law about the CFT for guidance in interpreting certain aspects of the CAT, they are distinct taxes. The memorandum sets forth the acceptable approaches to compute a railroad's net income and net worth factors to calculate its CFT. Neither of those computations is part of the CAT calculation, which is based on gross receipts. Moreover, the memorandum expressly stated that the Department would accept the approaches until the year 2000 or until the relevant portions of Title 57 were amended. Both of those events occurred before the audit periods at issue in this appeal. Thus, the railroad memorandum is not dispositive in determining CSXT's CAT situsing.

CSXT maintains that this alternative apportionment method should be accepted for the tax periods at issue because it had long been accepted by the Department, including during a prior audit. We are not persuaded by this argument, given that the audit took place in 2009 and the CAT fully replaced the CFT in 2010. Given the short period of time between these events and the tax periods at issue, we agree with the Commissioner that there was nothing "longstanding" about the interpretation of the CAT situsing laws. Therefore, we find that the railroad memorandum does not control the situsing methodology.

R.C. 5751.033

Having determined that the alternative methodology utilized by CSXT is not appropriate, the Board must next consider which method is correct. The Commissioner classified the receipts at issue under R.C. 5751.033(G) for the entire audit period. CSXT does not appear to contest that it qualifies as a "common carrier" that would situs its gross receipts for transportation services under former R.C. 5751.033(G). Accordingly, for the tax period from January 1, 2011, through June 2012, the Commissioner's situsing methodology was correct.

Notwithstanding, CSXT argues that after the enactment of H.B. 487, subsection (G) no

longer applied because it is not a “motor carrier” as required by the statute, and therefore, the provision does not apply to its receipts. Instead, CSXT maintains that its receipts should be situated based on R.C. 5751.033(I). We agree with respect to those receipts that took place after the 2012 amendment of the statute.

For purposes of the CAT, gross receipts for transportation services are situated to Ohio under R.C. 5751.033(G). Since June 2012, receipts qualify for situsing under this subdivision if they are from “sale of transportation services by a motor carrier.” The term “motor carrier” incorporates the definition from R.C. 4923.01. R.C. 5751.033(L). A motor carrier can be either a for-hire or private motor carrier “engaged in the business of transporting persons or property by motor vehicle for compensation.” R.C. 4923.01. A “motor vehicle” is:

any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, or any combination thereof, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

R.C. 4921.01(F). Because any vehicle, locomotive, or car operated exclusively on rail or rails is excluded from the definition of “motor vehicle,” it is likewise excluded from the definition of “motor carrier” that relies on that definition. Thus, receipts from the sale of transportation services by a vehicle, locomotive, or car operated exclusively on a rail or rails are not subject to R.C. 5751.033(G). There is no dispute that all CSXT’s receipts are for transportation operating exclusively on rail or rails, and it does not operate upon any highways. These receipts are not for the sale of transportation services by a motor carrier. Accordingly, amended R.C. 5751.033(G) cannot apply to CSXT’s receipts.

The Commissioner observed that subsection (G) includes references to mileage by railway

and argues that we must give meaning to the statute. To exclude railroads from this siting provision does not render this language meaningless. R.C. 5751.033(G) applies to any motor carrier with sales of transportation services in Ohio. The subsection requires such motor carriers to include any mileage traveled by rail in their calculation of gross receipts. Thus, that language is relevant to any multimodal carrier that uses rail transportation, and is, therefore, applicable to a class of taxpayers, even if not railroads.

Because CSXT's receipts for the sale of its services are not sitused by another section, R.C. 5751.033(I) applies. Although the Commissioner initially relied on an incorrect subsection, the assessment may be affirmed if the receipts are properly sitused. Under R.C. 5751.033(I), CSXT's gross receipts for its transportation services must be sitused to Ohio "in the proportion that the purchaser's benefit in this state with respect to what was purchased bears to the purchaser's benefit everywhere with respect to what was purchased." The "paramount" consideration is the physical location where CSXT's customers ultimately use or receive the benefit of what was purchased, i.e., the transportation services. *Id.*; *Defender Sec. Co. v. McClain*, 2020-Ohio-4594.

The Commissioner argues that the mileage method she applied based on R.C. 5751.033(G) was fair and reasonable and translates into the same measure of receipts sitused under R.C. 5751.033(I). She asserts that CSXT cannot use the destination-based theory under R.C. 5751.033(I) because it ignores the benefits its customers receive from each mile CSXT transports freight through Ohio safely and efficiently. Indeed, under R.C. 5751.033(J), "[i]f the siting provisions of divisions (A) to (H) of this section do not fairly represent the extent of a person's activity in this state, the person may request, or the tax commissioner may require or permit, an alternative method. Such a request by a person must be made within the applicable statute of limitations set forth in this chapter."

We disagree with the Commissioner that she can rely on an alternative subsection or

Adm.Code 5703-29-17(C)(51) to justify her reliance on the methodology from R.C. 5751.033(G), asserting that the methodology would be the same regardless of which subsection applied. The General Assembly amended R.C. 5751.033(G), changing “common or contract carrier” to “motor carrier,” which removed railroads from the taxpayers whose services are governed by the statute. If the Board were to conclude that the situsing methodology from (G) should nevertheless apply, it would essentially render the change meaningless. We decline to read the statutory change in such a manner that would give no effect to the amendment in H.B. 487. *See Stingray*, 2023-Ohio-2598, ¶ 58 (“We are not inclined to believe that the legislature chose to engage in such a pointless exercise.”). Much like the Commissioner argued that CSXT could not rely on the railroad memorandum due to a change in the law, she is likewise barred from relying on a methodology that ignores changes to the pertinent statute.

Moreover, for purposes of subsection (I), it is essential that we do not conflate the benefit to CSXT with the benefit of CSXT’s services to its customers. Thus, our inquiry does not hinge on where CSXT performs each portion of its services, but rather where its customers receive them. *See Defender Sec.* at ¶ 32 (“Under division (I), situs is determined not by looking at where ADT uses the contract rights, but where ADT ‘uses or receives *the benefit of*’ the contract rights.” (Emphasis sic.)). The ultimate benefit to the customer is the timely delivery of their goods to their final destination after all transportation has been completed. Thus, it follows that the physical location of the customers was the ultimate destination of the travel. Therefore, under (I), CSXT’s transportation receipts are properly sitused to where CSXT ultimately delivered the goods it transported to its customers.

We acknowledge that the location of the benefit to the customer is “paramount” but not absolute, and there are certainly alternative methods that may better represent the extent of a railroad’s activity in Ohio. However, of the options before us, we find that CSXT’s destination-based methodology is the most legally supported approach in the record.

Other Fees and Accounts

CSXT also disputes the inclusion of various other accounts as taxable gross receipts, arguing that they do not contribute to the production of gross income and do not satisfy the definition of “gross receipts.” 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.” CSXT specifically challenges pass-through accounts, expense reimbursement charges, and required credit programs. Because CSXT’s claims primarily center on the situsing methodology, the record is less developed with respect to these claims.

The pass-through accounts track amounts for reimbursement expenses incurred by CSXT on behalf of other entities that have agreed to repay CSXT. Other entities may include other railroads, common carriers, governmental entities, or other industry participants. CSXT’s “credit accounts” are used to track credits due primarily from other railroads, based on asset arrangements required to maintain network fluidity. The accounts are used to true up asset utilization with the other railroads.

CSXT argues that it is improper to include these accounts because they do not contribute to its gross income. It maintains that the pass-through accounts represent the expense reimbursement of other entities, which CSXT passes through without any markup or profit. It further claims that the credit accounts are not “realized” as they are not guaranteed to collect these amounts.

We disagree with CSXT regarding these two accounts. The pass-through accounts reflect payments that CSXT received from industry participants, and the credit accounts reflect amounts that would be due if there were no offsetting costs from CSXT. The fact that CSXT does not inflate the cost of these reimbursements does not alter their status as a receipt, nor does the subsequent offset based on its liabilities to other market participants. The CAT is a gross-receipts tax, and other expenses are not deducted for purposes of calculating the tax. These revenues all

contribute to its ability to operate within the larger system of railroads, which is central to CSXT's ability to generate gross income. Thus, we find that these accounts reflect income that is realized, even if expense amounts accrued by CSXT later offset that amount. To the extent that it argues these amounts are effectively loan repayments, which are excluded from gross receipts under R.C. 5751.01(F)(2)(d), it failed to provide sufficient evidence to demonstrate that these payments are loans being repaid as contemplated by this statute. Accordingly, we reject CSXT's argument regarding the purported pass-through accounts.

CSXT also challenges the inclusion of its rebill account, which records allowance and rebates returned to CSXT by its supplier for locomotive maintenance services provided by the supplier that do not meet contractual specifications. This appears to be an offset for maintenance expenses owed to a service provider. We agree with CSXT that this account does not reflect an amount realized and does not qualify as a taxable gross receipt.

Finally, CSXT argues that certain annual adjustments were double-counted. We agree that all revenue should be counted only once. However, the record is insufficient to demonstrate the proper amount for these accounts. Accordingly, we find that CSXT failed to meet its burden with respect to this claim.

Evidentiary Issues

The Commissioner took issue with two evidentiary rulings made by the attorney examiner during the hearing. First, the Commissioner argues that the Board should strike a proffer of evidence presented by CSXT. This proffer was made in response to an order quashing a subpoena, which prevented CSXT from eliciting certain information from the witness. Though we give it no weight in our analysis, we find that the attorney examiner's ruling is appropriate. Therefore, the Commissioner's request to strike it is denied.

Second, the Commissioner argues that the attorney examiner improperly excluded a video that was not offered during the hearing but was referenced as a link in the parties' stipulations. We

find that the Commissioner has not demonstrated any error in the attorney examiner’s ruling. Accordingly, this request is likewise denied.

Constitutional Arguments


We acknowledge that CSXT argued that the tax violates the Commerce Clause, Due Process Clause, and Equal Protection Clause of the United States Constitution. We make no findings regarding the constitutional arguments; however, as such arguments may only be addressed on appeal by a court that has the authority to decide constitutional challenges. *MCI Telecommunications Corp. v. Limbach*, 1994-Ohio-489; *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988).

CONCLUSION

Based upon the foregoing, we find that CSXT demonstrated that the Commissioner erred in her situsing methodology for purposes of the CAT and her inclusion of the rebill account. Accordingly, these portions of the Commissioner’s final determination are reversed. The final determination is affirmed with respect to CSXT’s other claims. We remand the matter to the Commissioner to recalculate CSXT’s liability consistent with this Board’s findings.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Ms. Clements	<i>AC</i>	
Ms. Allison		
Mr. Seitz	<i>WSS</i>	

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