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Subject: Ohio CAT Registration Deadline is Fast Approaching
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To Our Clients and Friends:

The initial registration date for taxpayers subject to the newly enacted commercial activity tax ("CAT") in Ohio is rapidly approaching. By way of background, the CAT, an annual privilege tax measured by gross receipts, replaces (subject to a five year phase-in period) the corporation franchise tax. The CAT first applies to taxable receipts received on and after July 1, 2005. Taxpayers having over \$150,000 in taxable gross receipts are required to register for the CAT by November 15, 2005.

Per the Ohio statute, the CAT applies if a taxpayer: (1) owns or uses a part or all of its capital or property in Ohio; (2) holds a certificate of compliance with the laws of Ohio authorizing the taxpayer to do business in Ohio; (3) has a bright-line presence in Ohio (described below); or (4) otherwise has nexus with Ohio to an extent that the taxpayer may be required to remit the CAT under the United States Constitution. A taxpayer has a bright-line presence in Ohio for a reporting period and for the remaining portion of the calendar year if the taxpayer: (a) has at any time during the calendar year property in Ohio with an aggregate value of at least \$50,000; (b) has during the calendar year payroll in Ohio of at least \$50,000; (c) has during the calendar year taxable gross receipts in Ohio of at least \$500,000; (d) has at any time during the calendar year within Ohio at least 25% of the taxpayer's total property, total payroll or total gross receipts, or (e) is domiciled in Ohio as an individual or for corporate, commercial or other business purposes.

Based on the Ohio nexus provisions, it is possible for a taxpayer to be subject to the CAT without any physical presence in Ohio. In such instance, a taxpayer should evaluate whether to register for and pay the CAT based on an economic nexus standard, or to take a position that nexus does not exist. There are various procedural options for taxpayers that do not believe economic nexus is a sufficient basis for registering for and paying the CAT. The economic nexus issue is highly controversial, and should ultimately be resolved through litigation.

If you have any questions regarding the CAT or any other state and local tax matters, please do not hesitate to contact me.

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