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Scope of Ohio Commercial Activity Tax Agency Exclusion Remains Unsettled Following Ohio Supreme Court's Decision in *Aramark Corp. v. Harris*

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Aramark provided food service operations to various clients (e.g., hospitals, universities, corporations, sports arenas, etc.). The clients paid Aramark a management fee. In addition, the clients reimbursed Aramark for the food and miscellaneous materials that Aramark purchased on behalf of the clients to operate their clients' cafeterias. Aramark paid CAT on the management fees but argued it did not have to pay CAT on the reimbursements because Aramark made those purchases as an agent of their clients. The Supreme Court of Ohio ruled against Aramark in a 5-2 decision. The majority made several statements of note:

1. The record lacks any evidence establishing that Aramark passed on to its third-party vendors the reimbursements it received from its management-fee clients. See, ¶14.
2. We apply here the definition of "agent" based on the words the General Assembly used in the statute, not the gloss that was put on those words in *Willoughby Hills Dev. & Distrib., Inc. v. Testa*, 2018-Ohio-4488 (Nov. 17, 2018). We accordingly disapprove of *Willoughby Hills* to the extent that it requires a showing of actual authority on the part of the taxpayer to qualify as an agent for purposes of the CAT. See, ¶¶18 and 22.
3. Because Aramark has not met the statutory definition of "agent" to qualify for the CAT exclusion, that ends the inquiry—no matter what the tax commissioner has said to the contrary in a rule or other administrative guidance. See, ¶23.
4. Aramark is not acting as a payment conduit. The record shows that Aramark incurs expenses on behalf of its management-fee clients, then receives reimbursement from the clients. Nothing in the record establishes that Aramark passes these reimbursements on to its third-party vendors." See, ¶27.

Aramark overrules a significant portion of the Commissioner's Administrative Rule (i.e., O.A.C. 5703-29-13 styled Commercial activity tax definition of "agent"). This is noteworthy because the Rule provides examples where the Commissioner sets forth her views as to whether the example qualifies for the agency's exclusion or not. *Aramark* creates uncertainty as to whether the Commissioner's conclusions are correct. Taxpayers and practitioners will need to give careful consideration to *Aramark* when drafting (or amending) contracts.