

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Taxation

Regulation/Package Title: Commercial Activity Tax Rules

Rule Number(s): 5703-29-08; 5703-29-06

Date: 06/20/2016

Rule Type:

- New
 Amended

- 5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

5703-29-08 Request for member of a combined taxpayer group to file separately

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

This rule provides the procedure that member of a combined taxpayer group under section 5751.012 of the Revised Code must follow to file as a separate taxpayer and not as part of the combined group.

The Department seeks to update this rule to conform with statutory changes that have occurred over time; to address a change in the law regarding how the CAT annual exclusion is applied; and to update the examples provided.

5703-29-06 Transfers of property into the state.

This rule provides the circumstances when a taxpayer/purchaser will be required to include the value of property that is transferred into this state within one year from the receipt of the property outside of this state pursuant to section 5751.013 of the Revised Code.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 5703.14, 5703.05 and 5751.013

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The Department provides these rules in an effort to clarify, describe, or define the requirements, procedures, or policies of the Department with respect to its implementation of the tax laws. The rules provide taxpayers with information that promotes compliance with the applicable statutory provisions.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Department evaluates the success of its rules through discussions with taxpayers and routine audits of taxpayers' compliance.

Development of the Regulation

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7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On April 28, 2016, the Department posted the proposed rule changes on its website. A “Tax Alert” email was sent that same day to all persons subscribed to the commercial activity tax email notification system. The Tax Alert is attached as Exhibit 1. The Department requested that comments be received by May 12, 2016.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Department received three emails citing the proposed rule changes in the subject line. However, two emails raised unrelated questions or concerns and one recommended rescission of a different rule (the comment will be considered with respect to the rule to which it was directed).

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

The Department believes that the existing rules are useful and important tools for educating taxpayers and improving compliance.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.*

N/A –

5703-29-06 was promulgated to clarify when its authorizing statute will apply to certain activities of a taxpayer.

5703-29-08 provides the process required for certain taxpayers to maintain compliance despite filing separately from their required taxpayer group.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

A review of the Department’s existing rules revealed that these rules do not duplicate others.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

As existing rules, they have already been implemented and applied to taxpayers. An amended or revised version of an existing rule will be disseminated to Department employees that use the rule in performing their duties. The most current version of each rule is incorporated into an Information Release that is made available on the Department’s website, and a Tax Alert email will be sent to the affected community advising it that changes to the rule have been made.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All persons subject to the commercial activity tax pursuant Chapter 5751 of the Revised Code. Currently, there are approximately 185,000 filers for the commercial activity tax.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

5703-29-06 merely describes under what circumstances a statutory provision will be applied. Therefore, the Department believes that the rule does not have an adverse impact.

5703-29-08 describes the procedure that a taxpayer must use if it seeks an alternative manner of compliance with a group filing requirement. This manner of compliance is not required by the regulation, a statute, or the Department, and it only applies to those taxpayers that elect to use it. This rule was developed to provide relief from the compliance burden that some businesses experienced as a result of mandatory group filing, and is considered a beneficial option for those taxpayers. Because it is purely elective and was implemented in order to ease the burden of compliance on certain taxpayers, the Department believes that the rule does not have an adverse impact.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

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Pursuant to the answer to 14b above, the Department does not anticipate an adverse impact.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The adverse impact on businesses, if any, is outweighed by the benefits provided by these rules. 5703-29-06 clarifies and brings greater certainty to the application of a statute. 5703-29-08 is optional and each taxpayer may evaluate whether or not it is a cost-effective alternative to the statutory combined group filing.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

5703-29-06 – No. This rule clarifies a statute. The statute provides no alternative means for compliance for a small business.

5703-29-08 – No. This rule provides an alternative means of compliance for all persons otherwise required by statute to file a combined tax return regardless of size.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

5703-29-06 – There is no penalty or fine associated with this rule with respect to a paperwork violation. A penalty may be imposed for not reporting amounts subject to the rule. However such a penalty would not be imposed for administrative defects in paperwork, but rather for inaccurate tax reporting.

5703-29-08 – There is no penalty or fine associated with this rule.

18. What resources are available to assist small businesses with compliance of the regulation?

Proposed rule changes are posted to the Department's website for review and comment. Once rules are finalized, they will be incorporated into an Information Release and a Tax Alert email will be sent to all persons enrolled to receive updates regarding the commercial activity tax. Small businesses may also email questions through the Department's website or call 1-888-722-8829.