



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Department of Taxation

Rule Contact Name and Contact Information:

Kerrie Ryan

Regulation/Package Title (a general description of the rules' substantive content):

Commercial Activity Tax (CAT) Five-Year Rule Review

Rule Number(s): 5703-29-04, 5703-29-05 & 5703-29-16

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Ohio Adm. Code 5703-29-04—This rule explains that consolidated elected taxpayer groups are formed by election and combined taxpayer groups do not require an election. The rule requires a combined taxpayer group to register for the commercial activity tax within thirty days of having taxable gross receipts of one hundred fifty thousand dollars or more. No changes are proposed for this rule.

Ohio Adm. Code 5703-29-05—This rule requires commercial activity tax returns and payments to be filed and paid electronically pursuant to R.C. 5751.07. The rule also allows a taxpayer to request to be excused from the electronic filing and payment requirement. Minor changes to the rule are proposed to update a cross reference and delete outdated references.

Ohio Adm. Code 5703-29-16—This rule provides guidance on the exclusion from gross receipts for “qualifying distribution center receipts” under R.C. 5751.01(F)(2)(z). Minor changes to the rule are proposed to update references to the Ohio Revised Code due to changes made by Am. Sub. H.B. 197 as passed by the 133rd General Assembly.

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

The rules are authorized by R.C. 5703.05 and 5751.07.

Ohio Adm. Code 5703-29-04 amplifies R.C. 5751.01, 5751.011, and 5751.012.

Ohio Adm. Code 5703-29-05 amplifies R.C. 5751.03, 5751.051, and 5751.07.

Ohio Adm. Code 5703-29-16 amplifies R.C. 5751.01 and 5751.40.

- 4. 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.

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

N/A

- 6. 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.

- 7. 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 practitioners and routine audits of taxpayers' compliance.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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9. 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.

The Department posted the proposed rules on its website and sent an email seeking comments on the proposed rules to subscribers of the Department's Tax Alert notification system. The rules were posted, and the email was sent on July 2, 2020, and invited comment through July 13, 2020. The rules remained posted and available for comment through September 2020.

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

No comments were received on these rules.

11. 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

12. 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 did not consider alternative regulations. The Department did not consider regulatory alternatives because for guidance from the Department to be binding upon taxpayers, the guidance must be done through regulations. See *Progressive Plastics, Inc. v. Testa*, 113 Ohio St.3d 490, 2012-Ohio-4759, and *Renacci v. Testa*, 148 Ohio St.3d 470, 2016-Ohio-3394.

13. 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.

No. The rules are not conducive to performance-based measures.

14. 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 reveals that the rules do not duplicate any existing rules.

15. 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.

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As existing rules, the rules have already been implemented and applied to taxpayers. A link to the rules will be posted on the Department's website. Additionally, information regarding the CAT, including general information and FAQs, is maintained on the Department's website. The Department will train staff on the rules to ensure the rules are applied consistently and predictably.

Adverse Impact to Business

16. 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; and

All persons subject to the CAT.

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

The rules require the report of information as a condition of compliance. Ohio Adm. Code 5703-29-04 requires a combined taxpayer group to register for the commercial activity tax within thirty days of having taxable gross receipts of one hundred fifty thousand dollars or more. Ohio Adm. Code 5703-29-05 requires taxpayers to file and pay the tax electronically. Ohio Adm. Code 5703-29-16 requires an applicant that wishes to become a qualified distribution center to provide certain information as part of the application process.

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.

The existing rules are necessary to administer the commercial activity tax and the adverse impact is minimal. Taxpayers are easily able to register, file, and pay the commercial activity tax electronically through the Ohio Business Gateway. Additionally, the rule related to qualified distribution center applications provides useful information to applicants by explaining requirements found in the relevant statute.

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

Any adverse impact on businesses is outweighed by the benefits provided by these rules. These rules provide guidance on the application of certain CAT statutes. Without the additional clarity provided by these rules, taxpayer confusion, uncertainty, and increased appeals and litigation may result.

Regulatory Flexibility

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

No. Taxes are administered fairly and equitably with respect to all businesses—big or small.

19. 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?

N/A. The rules do not contain a provision for the imposition of a fine or penalty for non-compliance.

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

Information about the CAT is available on the Department's website. Taxpayers seeking assistance with CAT compliance may contact the Business Tax Division of the Department via telephone by calling 1-844-722-8829 or via email through the Department's website.