



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Benjamin Waterman, Ohio Department of Taxation

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: March 11, 2019

RE: **CSI Review – Commercial Activity Tax Rules (5703-29-14, 5703-29-15, 5703-29-16, 5703-29-17, 5703-29-18)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office’s comments to the Agency as provided for in ORC 107.54.

Analysis

This Ohio Department of Taxation rule package consists of five rules submitted for review, two to be amended and three with no change. This rule package was submitted to the CSI Office on November 14, 2018 and the public comment period was open through November 30, 2018.

This rule package was submitted as a statutory five-year rule review. The rules cover commercial activity tax definitions of “cash discounts” (excludes “gross receipts” from the definition), highway transportation services, qualified distribution centers, situsing of certain services for purposes of the commercial activity tax, and record retention requirements. Amendments to the rule package include updated language and updates in references to the Revised Code, as well as the addition of definitions and examples. Furthermore, in rule 5703-29-16 there are minor changes to clarify the number of decimals to include in the result of a calculation that appears on their application.

During the period of early stakeholder outreach, the Department posted the proposed rule changes to the Department’s public page; and sent a “tax alert” e-mail to all persons subscribed to the commercial activity tax e-mail notification system. One comment of approval was received on rule 5703-29-14 with suggestions for a possible alternative to the definition of “cash discount” as it

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relates to items excluded from the commercial activity tax. This comment did not oppose the changes made to the rule, but rather advocated for a change in the Department's general stance on the treatment of "cash discounts." During the period of public comment from November 14, 2018 to November 30, 2018, no additional comments were received.

This rule package would impact all persons subject to the commercial activity tax and the sub-groups identified in rules 5703-29-15, 5703-29-16, 5703-29-17, 5703-29-18. The Department asserts that these rules will serve to provide clarity and reduce differing interpretations that may result in taxpayer confusion, uncertainty, increased appeals, and litigation. The authorization for the Department to adopt these rules is set forth in ORC 106.03 and 5703.05.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.