CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: Municipal Net Profit Tax

Rule Number(s): 5703-41-01, 5703-41-02, 5703-41-03, 5703-41-04

Date: October 6, 2017

Rule Type:

- X 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- ☐ Rescinded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.

   5703-41-01: This rule provides guidance for the electronic filing and payment of municipal net profit tax returns and advises of the procedures for taxpayers who wish to be excused from electronic filing or payment.

   5703-41-02: This rule is applicable to joint economic development districts (JEDDs) and joint economic development zones (JEDZs)—not taxpayers. This rule requires the board of

directors of JEDDs and JEDZs to provide the tax commissioner with documents and information necessary for the administration of the municipal net profit tax on behalf of the JEDDs and JEDZs and indicates that the tax commissioner will distribute any tax collections received to the municipal corporation identified by the JEDD/JEDZ as the municipal corporation responsible for collecting the tax.

5703-41-03: This rule provides guidance for taxpayers that have a short taxable year as to when a declaration of estimated taxes must be filed and provides that taxpayers must notify the tax commissioner if they change their taxable year.

5703-41-04: This rule provides guidance to taxpayers regarding the Department's treatment of taxpayers filing consolidated tax returns.

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

   5703-41-01: 5703.05, 718.80, 718.051, 718.851

   5703-41-02: 5703.05, 718.80

   5703-41-03: 5703.05, 718.80, 718.88

   5703-41-04: 5703.05, 718.80

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 new rules were drafted to provide guidance and clarification for the new state-administered municipal net profit tax established by the amendments to R.C. Chapter 718 passed in H.B. 49.

   5703-41-01: This regulation is required to be promulgated by R.C. 718.051 and is permitted to be promulgated under R.C. 718.851. Per the Revised Code, the rule is being used to establish the format of documents to be used by taxpayers to file returns and make payments by electronic means and the information taxpayers must submit when filing tax returns by electronic means.

   5703-41-02: This rule is required to obtain information needed to administer the municipal net profit tax on behalf of JEDDs and JEDZs. Information about JEDDs and JEDZs is not readily

available or easily obtainable from any one source and up-to-date information will be necessary to administer the tax.

5703-41-03: This rule is necessary to require taxpayers with short taxable years to file declarations of estimated taxes and to require taxpayers to advise the Department of any change in taxable year.

5703-41-04: This rule is to advise taxpayers of the Department's treatment of taxpayers filing consolidated tax returns. To file a municipal net profit tax return with the Department, taxpayers must either file a consolidated tax return for all municipal corporations or file on a separate basis for all municipal corporations.

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

   The Department will measure the success of the new rules by the quantity and character of questions received from taxpayers, practitioners, and municipalities regarding the topics covered in the rules.

Development of the Regulation

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.

   The Department posted the proposed rules on its website and sent an email seeking comments on the proposed rules to all subscribers of the Department's Tax Alert notification system who signed up for alerts related to all business taxes, excise taxes, individual income taxes, news releases, the Ohio Business Gateway, and tax education. The rules were posted and the email was sent on September 19, 2017, and invited comment through October 3, 2017.

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 only a few comments regarding the rules. One commenter provided: "Agree in total with no change to wording. Online reporting for muni tax returns for business will decrease paperwork and time." –Charlotte M. Johnston, CPA

   The Department received comments from Robert J. Lapp, president of the Manufacturing Policy Alliance (MPA), in opposition to 5703-41-04. At this point in time, for the efficient administration of this new centralized-filing option being offered to the business community, some restrictions are being imposed. The Department did not change the consolidation guidelines in the draft rule in response to MPA's input because the guidelines are necessary for the system currently being developed. However, the Department did incorporate a new

paragraph (E) in response to MPA's comment that the rule should address the inclusion of the net profit or loss of a pass-through entity on a consolidated return.

The Department also received comments on each rule from the Chief Legal Counsel of the Regional Income Tax Agency (RITA). The Department revised the rules to incorporate the majority of RITA's recommendations, most of which were technical in nature.

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 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.

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.***

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

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 reveals that the rules do not duplicate any existing rules.

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.**

    Once approved, a tax alert will be sent to inform the community that the new rules are effective. A link to the rules will be posted on the Department's website. Additionally, information regarding the state-administered municipal net profit tax, including general information and FAQs, will be maintained on the Department's municipal net profit tax webpage. The Department will train staff on the rules to ensure the rules are applied consistently and predictably.

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;

Taxpayers electing to file the municipal net profit tax return with the tax commissioner pursuant to R.C. 718.80.

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

No adverse impact is anticipated due to the promulgation of these rules as the election to file with the tax commissioner is optional and the law itself is intended to benefit businesses by providing a centralized electronic filing option for the municipal net profit tax.

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.

N/A

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

No adverse impact is anticipated from these regulations.

Regulatory Flexibility

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

The regulations do not have any adverse impact on businesses—big or small.

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?

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

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

Assistance with municipal net profit tax compliance will be available through contact with the Business Tax Division of the Department via telephone by calling 1-844-238-0403 or by emailing MNPTax@tax.state.oh.us.