



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Department of Taxation

Rule Contact Name and Contact Information: Katherine Hunter
Kathering.Hunter@tax.ohio.gov

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

Municipal Net Profit Tax Rules

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

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/ 1 rules (FYR? Yes)

Amended/ 1 rules (FYR? Yes)

Rescinded/___ rules (FYR?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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

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. No changes are recommended for this rule.

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. Non-substantive changes are proposed for this rule to remove unnecessary language and streamline the paragraphs.

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.**

5703-41-01: Authorized by 5703.05, 718.80, 718.051, 718.85, amplifies 718.051 and 718.851.

5703-41-02: Authorized by 5703.05, 718.80, amplifies 718.80 and 718.83.

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 implements a federal requirement, but 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)?

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.

7. 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.

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

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 August 1, 2023, and invited comment through August 16, 2023.

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 the 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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. 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 rule does not duplicate any existing rules.

14. 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, the rules have already been implemented and applied to taxpayers and municipalities. A link to the rules will be posted on the Department's website. Additionally, information regarding the municipal net profit tax, including general information and FAQs, is maintained on the Department's website. The Department trains staff on the rules to ensure they are applied consistently and predictably.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

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

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

No required 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. The rules simply prescribe how a taxpayer must file electronically to comply with the law, but technically it does require the report of information.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The language in 5703-41-02 has been streamlined to make it shorter and easier to read.

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

The rules provide guidance to the business community with minimal to no adverse impact.

Regulatory Flexibility

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 a paperwork violation and R.C. 119.14 allows a state agency to impose a penalty where the violation of law concerns the assessment or collection of any tax.

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

Information about the municipal net profit tax is available on the Department's website. Taxpayers seeking assistance with compliance may contact the Excise Tax Division of the Department via telephone by calling 1-855-466-3921 or via email through the Department's website.