

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5703-29-04

Rule Type: Rescission

Rule Title/Tagline: Excluded person -- consolidated elected and combined taxpayer groups.

Agency Name: Department of Taxation

Division:

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I. Rule Summary

1. **Is this a five year rule review? Yes**
 - A. **What is the rule's five year review date? 11/30/2023**
2. **Is this rule the result of recent legislation? Yes**
 - A. **If so, what is the bill number, General Assembly and Sponsor? HB 33 - 135
- Jay Edwards**
3. **What statute is this rule being promulgated under? 119**
4. **What statute(s) grant rule writing authority? 5703.05**
5. **What statute(s) does the rule implement or amplify? 5751.01, 5751.011, 5751.012**
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No**
 - A. **If so, what is the citation to the federal law or rule? Not Applicable**
7. **What are the reasons for proposing the rule?**

The rule is being rescinded and replaced to update the rule after changes made to the commercial activity tax by H.B. 33.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule currently 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.

Changes are proposed to update this rule in response to the changes made to the commercial activity tax by the legislature in Am. Sub. H.B. 33. The amendments require the original rule to be rescinded and replaced.

The changes are proposed to advise taxpayers how to proceed in view of the elimination of the annual minimum tax and the increased exclusion amount beginning in 2024. The proposed changes include that a consolidated elected taxpayer may cancel its account within the binding eight-calendar quarter election period if its taxable gross receipts fall below the increased exclusion; that a taxpayer whose taxable gross receipts will not exceed the exclusion amount does not need to register for the commercial activity tax; and that a taxpayer whose taxable gross receipts do exceed the exclusion amount must register for the commercial activity tax within thirty days.

9. Does the rule incorporate material by reference? No

10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Not Applicable

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

0.00

Not Applicable.

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not Applicable.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. **Was this rule filed with the Common Sense Initiative Office? Yes**

18. **Does this rule have an adverse impact on business? Yes**

A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

The rule requires the report of information as a condition of compliance. The rule requires a combined taxpayer group to register for the commercial activity tax within thirty days of having taxable gross receipts in excess of the applicable exclusion amount. This is also required by statute. See R.C. 5751.04.

D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding to this rule? 0

B. How many existing regulatory restrictions do you propose removing from this rule? 5

5703-29-04 (A) To make the election, the group must register as such a taxpayer. (rescind)

5703-29-04 (A) Even if the groups total taxable receipts are below one hundred fifty thousand dollars, with or without taking into account gross receipts excluded because they are from other members of the group, the group must still pay the flat (minimum) tax. (rescind)

5703-29-04 (B)(1) A combined taxpayer group exists pursuant to the requirements of section 5751.012 of the Revised Code.(rescind)

5703-29-04 (B)(1)Accordingly, if the groups total taxable receipts are below one hundred fifty thousand dollars, such group is not required to register or pay the flat (minimum) tax. (rescind)

5703-29-04 (B)(2) Within thirty days of having taxable gross receipts of one hundred fifty thousand dollars or more, such combined taxpayer group must register for, and is subject to, the commercial activity tax. (rescind)

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable