

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5703-29-21

Rule Type: Rescission

Rule Title/Tagline: Pre-income tax trusts, explained with revocation procedures.

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? 10/4/2023**
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, 5747.01**
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The rule is being rescinded and replaced to update the rule after changes made to the commercial activity tax by H.B. 33.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.**

The rule describes the administrative procedures, including the revocation procedures, for trusts that made a qualifying election pursuant to R.C. 5747.01(EE) (3) and R.C. 5751.01(E)(7) to be subject to the commercial activity tax rather than the income tax. The rule is being rescinded and replaced to update the rule after changes made to the commercial activity tax by H.B. 33.

- 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? No

18. Does this rule have an adverse impact on business? No

- 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? No
- 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? 12

5703-29-21 (A) (1) Subject to paragraph (D) of this rule, each pre-income tax trust making a qualifying pre-income tax trust election pursuant to section 5747.01 of the Revised Code must register for the commercial activity tax imposed under section 5751.02 of the Revised Code by April 17, 2007. (rescind)

5703-29-21 (A) (1) In addition, all such trusts must file tax returns and pay at least a minimum tax of one hundred fifty dollars for each year, regardless of the trust's taxable gross receipts. (rescind)

5703-29-21 (A) (1) This is required pursuant to the last sentence of division (E)(7) of section 5751.01 of the Revised Code that states in pertinent part "If the pre-income tax trust has made a qualifying pre-income tax trust election under division (FF)(3) of section 5747.01 of the Revised Code, then the trust * * shall not be [an] excluded [person] for purposes of the tax imposed under section 5751.02 of the Revised Code." (rescind)

5703-29-21 (A) (1) This is required pursuant to the last sentence of division (E)(7) of section 5751.01 of the Revised Code that states in pertinent part "If the pre-income tax trust has made a qualifying pre-income tax trust election under division (FF)(3) of section 5747.01 of the Revised Code, then the trust * * shall not be [an] excluded [person] for purposes of the tax imposed under section 5751.02 of the Revised Code." (rescind)

5703-29-21 (B) A "pre-income tax trust" is a trust that meets all of the following requirements under section 5747.01 of the Revised Code: (1) the document creating the trust was executed prior to January 1, 1972; (2) the trust became irrevocable upon creation; and (3) the grantor was domiciled in Ohio when the trust was created. (rescind)

5703-29-21 (D)(1) If the trustee of a qualified pre-income tax trust wishes to revoke the trust's election, the trustee must do so prior to the due date for the minimum tax for the current calendar year as provided for in division (A)(5) of section 5751.051 of the Revised Code. Such revocation is irrevocable and shall apply to the full taxable year for which the revocation is timely made. (rescind)

5703-29-21 (D)(1) If the trustee of a qualified pre-income tax trust wishes to revoke the trust's election, the trustee must do so prior to the due date for the minimum tax for the current calendar year as provided for in division (A)(5) of section 5751.051 of the Revised Code. Such revocation is irrevocable and shall apply to the full taxable year for which the revocation is timely made. (rescind)

5703-29-21 (D)(2) The trustee of a trust revoking its election must file a personal income tax return for the trust for the taxable year for which the revocation is timely made and make all corresponding payments by the due date for such return in order to avoid the imposition of penalties. (rescind)

5703-29-21 (D)(2) For all future tax periods, a trustee of a trust revoking its election must timely file all applicable personal income tax returns and timely make all corresponding payments. (rescind)

5703-29-21 (E) If a qualified pre-income tax trust would otherwise be the common owner of either a combined taxpayer group or a consolidated elected taxpayer group, and the trust has less than four thousand five hundred dollars in taxable gross receipts, such trust is not required to register for the commercial activity tax pursuant to paragraph (B)(2) of rule 5703-29-02 of the Administrative Code. (rescind)

5703-29-21 (E) However, in the case of a qualified pre-income tax trust that is not a common owner of either a combined taxpayer group or a consolidated elected taxpayer group, such trust must be registered for the commercial activity tax and must file all applicable returns, regardless of its taxable gross receipts. (rescind)

5703-29-21 (E) However, in the case of a qualified pre-income tax trust that is not a common owner of either a combined taxpayer group or a consolidated elected taxpayer group, such trust must be registered for the commercial activity tax and must file all applicable returns, regardless of its taxable gross receipts. (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