

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5703-9-46

Rule Type: Amendment

Rule Title/Tagline: Sales and use taxes: automatic data processing, computer services, and electronic information services.

Agency Name: Department of Taxation

Division:

Address: 4485 Northland Ridge Blvd. Columbus OH 43229

Contact: Katherine Hunter **Phone:** 614-995-0359

Email: katherine.hunter@tax.state.oh.us

I. Rule Summary

1. Is this a five year rule review? Yes
 - A. What is the rule's five year review date? 1/30/2024
2. Is this rule the result of recent legislation? No
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? 5739.01, 5739.02, 5739.071, 5739.17, 5741.02, 5741.17
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?

This rule was reviewed as part of five year rule review.
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The rule restates the statutory requirement that a person making retail sales is required to have a license. The rule highlights this statutory requirement for purposes of persons providing automatic data processing, electronic information services, and computer services. Minor changes have been made to this rule to adopt direction provided in recent Supreme Court case regarding professional services and the taxability of automatic data processing and electronic information services.

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? Yes

The rule restates the statutory requirement that a person making retail sales is required to have a license. The rule highlights this statutory requirement for purposes of persons providing automatic data processing, electronic information services, and computer services.

- 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? 6

5703-9-46 (A)(2)(d) Computer services must be provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems to fall within the scope of this rule. ("must" to "are to")

5703-9-46 (B)(4) The various components of a mixed transaction shall be separately stated in the contract or initial billing and the price applicable to each component shall similarly be separated. ("shall" to "will")

5703-9-46 (B)(4) The various components of a mixed transaction shall be separately stated in the contract or initial billing and the price applicable to each component shall similarly be separated. ("shall" to "will")

5703-9-46 (B)(4) It shall be sufficient for purposes of this rule to separate components to the extent they are separate categories under division (B) of section 5739.01 of the Revised Code. ("shall" to "will")

5703-9-46 (C) Every person in this state who is making sales of automatic data processing, computer services, or electronic information services for use in business must be licensed pursuant to section 5739.17 of the Revised Code. ("must" to "needs to")

5703-9-46 (C) Every person outside this state who is providing automatic data processing, computer services, or electronic information services in this state, and who has substantial nexus with this state as provided in division (H) of section 5741.01 of the Revised Code must be registered as a seller pursuant to section 5741.17 of the Revised Code. ("must" to "need")

- 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