

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: Sales & Use Tax Rules

Rule Number(s): 5703-9-01; 5703-9-02; 5703-9-03; 5703-9-04; 5703-9-05;

5703-9-11; 5703-9-12.

Date: March 28, 2014

Rule Type:

☐ 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☐ Rescinded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.

5703-9-01 Vendor's license requirements

This rule described the vendor's license requirements for different types of businesses. The Department recommends rescission of this rule because the vendor's license requirements are now specified in statute, R.C. 5739.17.

5703-9-02 Maintenance of records

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R.C. 5739.11 and R.C. 5741.15 require all vendors, sellers and consumers to maintain receipts, invoices, bills of lading, ledgers and other primary and secondary records regarding their taxable sales and purchases. This rule provides vendors, sellers and consumers with additional guidance regarding the types of records that must be maintained and the length of time such records must be preserved.

The Department estimates that more than 50% of the rule changed. Pursuant to the Legislative Service Commission's guidelines, the Department is rescinding the current rule and promulgating a new rule. The majority of the Department's changes are deleting provisions of the rule that repeat the applicable statutory provisions.

5703-9-03 Sales and use tax; exemption certificate forms

R.C. 5739.03 requires all vendors to collect and remit sales tax on all taxable sales unless the vendor obtains from the consumer a fully completed exemption certificate. A vendor that obtains a fully completed exemption certificate is relieved from the liability to collect sales tax on the transactions covered by the exemption certificate. This rule sets forth the information that a consumer must provide on an exemption certificate. It also advises the vendor and consumer that exemption certificate forms are available on the Department's website.

The Department estimates that more than 50% of the rule changed. Pursuant to the Legislative Service Commission's guidelines, the Department is rescinding the current rule and promulgating a new rule. The majority of the Department's changes are deleting provisions of the rule that repeat the applicable statutory provisions.

5703-9-04 Use tax; taxable use of tangible personal property manufactured for sale or purchased for resale

A vendor, manufacturer, wholesaler or other person may purchase certain tangible personal property exempt from sales or use tax pursuant to the exemptions in R.C. 5739.02. However, R.C. 5739.02(B) requires each vendor, manufacturer, wholesaler or other person that later uses that tangible personal property in a taxable manner to pay consumer's use tax on the taxable use. This rule explains that requirement.

5703-9-05 Transactions where tangible personal property is or is to be stored

R.C. 5739.02(B)(9) imposes sales tax on the storage of tangible personal property for another. This rule provides examples of taxable storage services and a methodology for calculating the amount of sales tax due on coin-operated storage facilities.

5703-9-11 Returned merchandise and rejected services

This rule explains that a vendor may deduct the amount of returned tangible personal property received during the reporting period from the taxable sales reported on the sales tax return. Further, it explains that a vendor or seller must refund the entire purchase price, including the tax paid, in order to deduct the return amount from its taxable sales.

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5703-9-12 Exchanged merchandise

This rule explains that a vendor or seller may record on its tax returns the net difference between the selling price of the item returned and the replacement item. Further, it explains that this reporting method is available only if the vendor or seller allows the customer credit for the entire purchase price, including sales tax paid.

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

R.C. 5703.05, 5703.14 and 5703.059.

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.

No.

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 Department provides these rules as part of its continuing efforts to educate vendors, sellers and consumers about sales and use tax best practices. These rules do not regulate in the traditional sense. Rather, these rules provide the vendors, sellers and consumers information that aids their compliance with the applicable statutory provisions. These rules facilitate consistent application of the applicable statutory provisions.

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

The Department evaluates the success of its rules through discussions with affected taxpayers and routine audits of taxpayers' compliance.

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.

On January 9, 2014, the Department posted the revised rule changes on its website. On the same date, the Department sent a Tax Alert to all persons enrolled to receive updates regarding sales and use tax changes. The Tax Alert is attached as Exhibit 1.

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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 two inquiries regarding the draft rules. One requested additional explanation regarding the records required under 5703-9-02. The second requested a brief explanation of the rules.

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 considered whether the educational information provided in these rules should be provided via Information Releases on its website. However, the Department believes that a rule better fulfills the mission of the Department by affording the taxpayer a vehicle on which it can rely to support its tax compliance procedures.

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.*

The Department believes these are performance based regulations because they advise taxpayers of the information they are required to maintain to support their tax returns but do not specify the process the taxpayer must use to achieve compliance.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

R.C. 5703.05 vests all powers, duties and functions of the Department of Taxation in the Tax Commissioner, including tax filings and payments. A review of the Department's existing rules revealed that these rules do not duplicate others.

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.

The Department routinely disseminates revised rules to all Departmental employees who use the rules in performing their duties. Further, the Department regularly conducts training for its employees.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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a. Identify the scope of the impacted business community;

All registered vendors, sellers and consumers. Currently this is approximately 300,000 businesses. This includes Ohio based and out-of-state businesses.

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

Impacts on vendors, sellers and consumers may include employee training, documentation of tax-exempt sales, software and hardware requirements for point-of-sale systems, sales tax research, handling audits and appeals and programming and servicing cash registers.

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.

All vendors and sellers receive a discount of .0075% of the amount of tax timely remitted to assist with the cost of compliance.

The Department has not conducted studies regarding the cost of compliance with the statutory sales tax filing and record maintenance requirements. In 2006 PricewaterhouseCoopers performed a national sales tax cost of compliance cost study. That study divided retailers into three categories: small (over \$150,000 and up to \$1 million in annual retail sales); medium (over \$1 million and up to \$10 million in annual retail sales) and large (over \$10 million in annual sales). The study estimated the annual cost of sales tax compliance to be \$2,386 for small retailers, \$5,279 for medium retailers and \$118,233 for large retailers.

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

The minimal adverse impact on businesses is outweighed by the certainty that these rules provide businesses regarding sales and use tax compliance.

Regulatory Flexibility

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

No alternative means of compliance for small businesses are provided because the requirements explained by these rules are requirements established by the General Assembly

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in the applicable sections of the Revised Code. A rule cannot go beyond the authority established in the statutory provisions.

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?

There are no penalties or fines associated with these informational rules. Rather, these rules facilitate taxpayer compliance by advising taxpayers of the best practices for tax compliance. Compliance with these rules aids taxpayers by allowing taxpayers to remit the proper amount of tax and avoid additional tax liability in the event of an audit.

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

Once the rules are finalized, the Department will post the rule changes on its website. In addition, the Department will send a Tax Alert to all persons enrolled to receive updates regarding sales and use tax changes. The Department will also include these rule changes in any presentations provided to interested parties, such as seminars or webinars provided in conjunction with associations such as the Ohio Society of Certified Public Accountants, the Ohio Society of Enrolled Agents and the Ohio Tax Conference.