

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Taxation

Regulation/Package Title: Five Year Rule Review Sales and Use Taxes

Rule Number(s): OAC 5703-9-30; OAC 5703-9-39; OAC 5703-9-40; OAC 5703-9-41; OAC 5703-9-42; OAC 5703-9-43; OAC 5703-9-44; OAC 5703-9-45; OAC 5703-9-46; OAC 5703-9-50

Date: November 6, 2017

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☐ Rescinded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.

OAC 5703-9-30 – This rule identifies when auctions/auctioneers are considered responsible for the collections of sales tax. There was no change to this rule.

OAC 5703-9-39 – This rule discusses when an item of tangible personal property is considered in interstate commerce. There were grammar changes to this rule that should have no impact on its interpretation.

OAC 5703-9-40 – This rule discusses when agents are considered the vendor of sales of items belonging to other people. There were grammar changes and an “e.g.” example added to this rule that should have no impact on its interpretation.

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OAC 5703-9-41 – This rule identifies the responsibilities for persons engaged in the field of advertising or in the preparation of advertising matter who sell tangible personal property obtained from others or who produce tangible personal property for transfer to another for a consideration. This rule was updated to clarify a sentence structure that should have no impact on its interpretation.

OAC 5703-9-42 – This rule identifies who is the vendor on installation of septic tanks. There was no change to this rule.

OAC 5703-9-43 – This rule identifies as sales, transactions which involve the transfer, for a consideration, of title or possession of books, manuals, bulletins, lists or similar materials providing current information or data on a particular subject which are furnished and/or supplemented on a continuing basis pursuant to a contract. There was no change to this rule.

OAC 5703-9-44 – This rule addresses the application of bad debts to the sales and use tax laws. This rule was updated to address the finding in *Home Depot USA, Inc. v. Levin*, 121 Ohio St. 3d 482, 483, 2009-Ohio-1431.

OAC 5703-9-45 – This rule identifies that a vendor who files a petition for contesting the assessment of sales tax on sales for which the vendor obtained no valid exemption certificate and for which the vendor failed to establish that the sale was not subject to the tax within sixty days after receiving notice by the tax commissioner of the intent to levy an assessment may, present additional evidence to the commissioner for the purpose of establishing that the contested assessed transactions are properly subject to a statutory claim of exception or exemption from the tax. There was no change to this rule.

OAC 5703-9-46 – This rule defines sales and use taxes application with regards to the taxable services of automatic data processing, computer services, and electronic information services. There was no change to this rule.

OAC 5703-9-48 – This rule discusses purchases made with food stamp coupons. This rule was updated to address the implementation of the supplementation nutrition assistance program and the use of other forms of currency other than food stamp “coupons”.

OAC 5703-9-50 – This rule was updated to incorporate a form adopted by the Streamlined Sales Tax Governing Board that authorizes certified service providers to respond on behalf of taxpayers.

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

R.C. 5703.05 and R.C. 5703.14

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.

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N/A

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)?**

Please see the responses to question 1 for purposes of the regulations. Additionally, the rules provide clarification to the statute.

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

N/A

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 or about September 8, 2017, the Department of Taxation posted the draft rules on its website. Additionally, on September 8, 2017, the Department emailed an alert which contained a link to the draft rules to all of its Sales and Use Tax subscribers of its Tax Alert System. The Department maintains the Tax Alert email notification system to keep tax professionals, business owners and other interested parties up to date on Ohio's tax laws. Taxpayers can sign up for Tax Alerts via the Department's website

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 comments from stakeholders. The comments did not apply to the changes in the rules and are not addressed in this Business Impact Analysis.

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?**

N/A

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.

N/A

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12. 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 sales and use tax rules revealed that the rules at issue were still applicable to the Department's business activity and did not duplicate an existing tax regulation.

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.

These rules are already authorized. Based on these changes, the Department does not need to take additional measures.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Generally, these rules impact sales and use tax taxpayers.

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

There is no adverse impact. Generally, the changes are related to clarifications.

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.

N/A

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

The changes have no adverse impact on the business community.

Regulatory Flexibility

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

The changes have no adverse impact on the business community.

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?

The changes have no adverse impact on the business community.

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

While there is no perceived adverse impact to small business, the Department of Taxation’s web site, tax.Ohio.gov, and its toll free telephone number 1-888-722-8829 are available to provide assistance.