

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: Personal Income Tax- Five Year Rule Review

Rule Number(s): 5703-7-10

Date: 6/5/2018

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☐ Rescinded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.

Ohio Admin. Code 5703-7-10 was reviewed as part of the five-year rule review process. The current version of the rule provides the method for an employer to withhold state income taxes from its employee's bonus compensation.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The amendment adds language to provide the process by which the Tax Commissioner will delineate the withholding rates for non-bonus compensation (wages, salaries, tips, etc.).

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

R.C. 5703.05

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?

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

R.C. 5747.06(A) requires the Tax Commissioner to prescribe, by rule, the method for employer withholding.

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)?

In order to ensure that income taxes are collected, R.C. 5747.06 requires employers to withhold and remit income taxes to the state of Ohio on behalf of their employees.

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

The Department currently publishes the withholding rates on its website. The rule change simply requires the Department to do what it is already doing in order to comport with R.C. 5747.06.

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.

The Department posted the proposed rule on its website and sent an email seeking comments on the proposed rule changes to all subscribers of the Department's Tax Alert notification system who signed up for alerts related to all criminal investigations, employer withholding tax, individual income taxes, news releases, pass-through entity tax, and tax education. The rule was posted and the email was sent on May 7, 2018, and invited comment through May 24, 2018.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

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No input was provided by the stakeholders.

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?

The rule only seeks conformity with federal treatment of income. Thus this question seems inapplicable.

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?

In the past, the Department has simply posted this information on its website. However, R.C. 5747.06 requires that the method for employer withholding be prescribed by rule. As such, this rule change aims to continue to the current process but to also comport with R.C. 5747.06's requirement that a rule be used.

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.*

This question seems inapplicable.

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

Review of all tax regulations, as well as income tax statutes.

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.

In the past, the Department has simply posted this information on its website. The new provisions of the rule simply require the Tax Commissioner to do what is already being done. As such, the Department will continue to post the withholding tables on its website as it has in the past and now, as required by rule.

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

This rule impacts the Tax Commissioner and every business that 1) operates in Ohio and 2) has employees. However, the rule itself only tells the business community 1) what the withholding rate is on bonus compensation, and 2) that the Tax Commissioner will publish the withholding rates for non-bonus compensation on the Department’s website within a certain time frame. It does not impose any new requirements on businesses. A business’s duty to withhold state income tax from its employee’s wages is required by statute. The rule simply aims to establish rates for said withholding.

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

R.C. 5747.06 requires employers to withhold a reasonable amount of tax from its employee’s wages; that requirement will exist regardless of this rule. This rule simply sets the rate for bonus compensation, and requires the Tax Commissioner to publish the rates for all other compensation on the Department’s website.

Regulatory Flexibility

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

No. R.C. 5747.06 requires all employers, no matter their size, to withhold a reasonable amount of tax from their employee’s wages;

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 proposed change really only puts a duty on the Tax Commissioner (i.e. to post the withholding tables on the Department’s website). The duty to withhold is contained in R.C. 5747.06(A).

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

The agency operates a call center and walk-in assistance center which could help taxpayers understand and comply with the rule. However, it's worth noting that the duty to withhold has existed since the inception of the income tax in the 1970s.