

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: General Provisions- Five Year Rule Review

Rule Number(s): 5703-1-15 , 5703-7-20

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☐ Rescinded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 5703-1-15 is meant to replace Ohio Admin. Code 5703-7-20, which is proposed to be rescinded. Both prescribe the application process to become an Ohio e-file provider. Both rules also list the reasons for which the tax commissioner can revoke or suspend a provider.

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The difference is that the rule that is being rescinded only applied to Ohio's individual income tax. However, the new rule applies to all taxes that the commissioner administers, and thus will allow for Ohio MeF approval relating to the municipal net profit tax.

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?

Not directly. However, many of the terms used are prescribed by the Internal Revenue Service (IRS). The publications are referenced in the rule.

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

The rule uses similar guidelines as those used by the IRS, but tailors them to Ohio's state taxes.

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 rule requires commercial tax preparation software providers to comply with published guidelines when they sign up to participate in one of Ohio's electronic filing programs. This ensures a more efficient filing process and reduces instances of rejected or incompatible returns due to software errors. No one is required to be a software vendor, and thus the electronic filing program is voluntary; however, if a business chooses to be an electronic software provider and accept Ohio filings, then this rule is applicable.

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

As we have in the past regarding 5703-7-20.

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

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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?

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?

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?

Instead of rescinding 5703-7-20 and creating this general provision, the Department considered leaving 5703-7-20 as is and just creating a new regulation specifically for the municipal net profit tax. However, the processes were nearly the same, and as such, it seemed to make more sense to have one regulation for all taxes, as opposed to several regulations that must be compared and followed.

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.*

In a sense, this is a performance-based regulation. The outcome is that the vendor creates a software package that is compatible with Ohio's filing system and internal system of record. The Department does not require a software vendor to program their software to look a certain way. Instead the requirements relate to certain compatibility and validity specifications, the tests the software must pass, and the timeframe in which such tests must be completed.

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.

The class of businesses to whom the regulation applies is already identified (since they currently follow OAC 5703-7-20). We intend to do an alert prior to filing season to let

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software vendors know that the application and guidelines are on the Department's website (as is required by the 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.

Since Ohio Admin. Code 5703-1-15 replaces Ohio Admin. Code 5703-7-20, which is proposed to be rescinded, many of the those affected are far from first-timers to the program. Also, guidelines and testing for software vendors are common among all states that impose some form of income tax. As such, for most businesses, this regulation will not create any additional costs, except those associated with creating new schema should they want to take advantage of the new return filing opportunities created by HB 49.

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

Without prior approval and uniformity in commercial tax preparation software, taxpayers would be harmed by not having their returns be able to be submitted, processed, and reviewed by the Department of Taxation.

Regulatory Flexibility

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

No. Since the goal is compatibility with the Department's software to ensure taxpayer returns are able to be accepted and processed, all software providers will have to meet the same criteria.

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?

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N/A. The proposed rule, like its predecessor, does not mandate “the collection of information by a state agency or regulatory body.” Instead, a software provider’s decision to participate in the electronic filing program is voluntary, and thus the collection of information related to the electronic filing program is also voluntary.

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

The Department has established designated phone lines and email boxes to assist software providers with the process and to answer questions/ collect submissions. Our response time is usually within 1 to 2 business days. The rule also requires the commissioner to publish guidelines on the topic.