

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Taxation

Regulation/Package Title: Commercial Activity Tax Rules

Rule Number(s): 5703-29-14, 5703-29-15, 5703-29-16, 5703-29-17, 5703-29-18

Date: 09/4/2018

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☐ Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

5703-29-14 Commercial activity tax definition of cash discounts.

This regulation defines “cash discounts” for purposes of R.C. 5751.01(F)(2)(bb) which describes an exclusion from the definition of “gross receipts” for purposes of the commercial

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CSIOhio@governor.ohio.gov

activity tax. The regulation also provides examples of excluded and included items based on the definition of “cash discount” as described in the regulation. A change is proposed that clarifies the difference between a price adjustment and a discount or rebate for purposes of the CAT.

5703-29-15 Highway transportation services – bright-line presence and situsing.

This regulation provides the test that ODT uses to evaluate whether the provider of transportation services has established nexus with the state pursuant to the CAT’s bright-line presence standard and describes how such taxpayers should situs the gross receipts from their activities to Ohio. No changes are proposed for this regulation.

5703-29-16 Qualified distribution center.

This regulation describes the requirements and application procedures that taxpayers must follow to apply for and receive a certificate as a qualified distribution center pursuant to R.C. 5751.01(F)(2)(z). A majority of the regulation merely expounds upon concepts and requirements found in the statute. A minor change is proposed to clarify how many decimals a taxpayer should include in the result of a calculation that appears on their application.

5703-29-17 Situsing of certain services for purposes of the commercial activity tax.

This regulation describes how the gross receipts of various different service industries should be sitused in accordance with the situsing statute, R.C. 5751.033. No changes are proposed for this regulation.

5703-29-18 Records retention requirements.

This rule provides the time periods that persons must maintain various records related to the commercial activity tax and the source materials used to prepare CAT forms and filings. No changes are proposed for this regulation.

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

R.C. 106.03 and 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?

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.

N/A

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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 in an effort to clarify, describe, or define the requirements, procedures, or policies of the Department with respect to its implementation of the tax laws. These rules do not regulate in the traditional sense. Rather, these rules provide taxpayers with information that promotes compliance with 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 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 May 7, 2018, the Department posted the proposed rule changes on its website for public comment. A "Tax Alert" email was sent that same day to all persons subscribed to the commercial activity tax email notification system. The Tax Alert is attached as Exhibit 1. The Department requested that comments be received by May 24th, 2018.

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 one response regarding 5703-29-14. The response recommended a possible alternative interpretation of the "cash discount" definition as it relates to certain items that are excluded from the commercial activity tax base under the existing rule. The response was not, however, opposed to the proposed amendments to the rule. The response favored the new clarification and examples offered in the proposed rule, though the author advocated instead for a change in the Department's position on the treatment of "cash discounts" generally.

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 believes that the existing regulations are useful and important tools for educating taxpayers and improving compliance.

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

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 regulations revealed that these regulations 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.

As existing regulations, they have already been implemented and applied to taxpayers. The Department does not seek significant changes to these regulations. Accordingly, the Department does not believe that a plan for implementation is required. The Department will continue its ongoing efforts to ensure that these regulations are applied consistently and predictably to the regulated community.

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;

5703-29-14 – All persons that are or could be subject to the commercial activity tax.

5703-29-15 – All persons subject to the commercial activity tax that provide highway transportation services.

5703-29-16 – All persons subject to the commercial activity tax that are qualified distribution centers (there are seven (7) for the 2018 tax year) or a supplier to such qualified distribution centers.

5703-29-17 – All persons subject to the commercial activity tax that earn gross receipts from providing services.

5703-29-18 – All persons subject to the commercial activity tax that claim a credit against the commercial activity tax, that make sales or purchases that may be subject

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to the commercial activity tax (whether or not such activities ultimately give rise to commercial activity tax liability), or that have gross receipts that are situated in Ohio pursuant to R.C. 5751.033.

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

5703-29-14 – The Department does not believe it creates an adverse impact.

5703-29-15 – The Department does not believe it creates an adverse impact.

5703-29-16 – The Department does not believe it creates an adverse impact.

5703-29-17 – The Department does not believe it creates an adverse impact.

5703-29-18 – The Department does not believe it creates an adverse impact.

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.

Pursuant to the answer to 14b above, the Department does not anticipate an adverse impact.

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

The adverse impact on businesses, if any, is outweighed by the benefits provided by these rules. These rules help to define important terms and provide guidance on the application of certain commercial activity tax statutes. Without the additional clarity provided by these rules, the defined terms could be subjected to many more differing interpretations and result in taxpayer confusion, uncertainty, and increased appeals and litigation.

Regulatory Flexibility

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

5703-29-14 – N/A. This regulation defines a term used in the commercial activity tax statute. It is instructive in nature and does not contain a compliance requirement.

5703-29-15 – N/A. This regulation describes nexus and siting of gross receipts for a specific industry without regard to the size of a business. That said, the application of this rule relies on information that persons in this industry already maintain in the regular course

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of business, and compliance with this regulation should be simple and straightforward for businesses of all sizes.

5703-29-16 – N/A. Qualified distribution centers are large businesses. However, suppliers to a qualified distribution center, including small businesses, benefit from the simplified method for determining the supplier's taxable gross receipts from business conducted with a qualified distribution center.

5703-29-17 – Yes. Certain enumerated services under this rule allow for situsing gross receipts based on either the person's best available records or pursuant to an election to use an approved simplified method. These options assist small businesses and/or businesses that lack sophisticated accounting capabilities or software with compliance.

5703-29-18 – N/A. The record retention requirements apply to the relevant records of all businesses regardless of size.

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?

5703-29-14 – There is no penalty or fine associated with this regulation.

5703-29-15 – There is no penalty or fine associated with this regulation.

5703-29-16 – There is no penalty or fine associated with this regulation.

5703-29-17 – There is no penalty or fine associated with this regulation.

5703-29-18 – There is no penalty or fine associated with this regulation.

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

The Department of Taxation offers free quarterly webinars that cover a wide variety of topics relevant to taxpayer compliance and best practices. All past webinars, including the informational slides, are posted to our website, www.tax.ohio.gov, for viewing. The Department also maintains information releases and frequently asked questions for each tax type. This information can also be accessed on the Department's website. Small businesses that are not sure how or if these regulations apply to them may email questions through the Department's website (www.tax.ohio.gov) or call 1-888-722-8829.