



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Department of Taxation

Rule Contact Name and Contact Information:

Katherine Hunter 614-995-0359 katherine.hunter@tax.state.oh.us

Regulation/Package Title (a general description of the rules' substantive content):

Certification of payment of taxes for purposes of dissolution of corporate charter or surrender of license.

Rule Number(s): 5703-1-05

Date of Submission for CSI Review: 06/29/2023

Public Comment Period End Date: 07/17/2023

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

X Amended/ 1 rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

A certificate of tax clearance (indicating that all Ohio taxes have been paid) must be presented to the Secretary of State anytime a domestic, for-profit corporation dissolves its charter or merges, consolidates, or converts into an entity that will not be registered to do business in Ohio. Any other corporation/cooperative dissolving, surrendering its license, or merging, consolidating, or converting into an entity that is not registered to do business in Ohio, must use the “affidavit method” to notify the Department of Taxation when it will be ceasing operations. The “affidavit method” merely means that the corporation must provide an affidavit to the Secretary of State indicating that the entity notified the Department of Taxation in writing the date upon which it intended to file a certificate of dissolution, merger, etc., with the Secretary of State.

This regulation describes the process by which a corporation or cooperative seeking to dissolve its charter or surrender its license may request a certificate of tax clearance or notify the Department that it will be ceasing business in Ohio. This process includes filing a form (No. D-5 Notification of Dissolution or Surrender) with the Department of Taxation and paying all taxes due, if any. The form must be filed 30 days prior to dissolution / surrender if the entity is requesting a certificate of tax clearance.

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The amended rule removes regulatory restrictions, makes non-substantive corrections, and updates verbiage.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 5703.05

- 4. 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.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

- 6. 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 regulation provides simple instructions for the taxpayer on how to obtain a certificate of tax clearance or notify the Department that a business is ceasing operations in Ohio. Not only does this process aid in tax compliance efforts, but it ensures that taxpayers will have a smoother experience in filing required paperwork with the Secretary of State.

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

Success of this regulation will be measured by the number of corporations/cooperatives that continue to file the form no. D-5 with the Department and the number of businesses sold without latent tax issues.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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 amended rule on its website and sent an email seeking comments on the proposed rule change to all subscribers of the Department's Tax Alert

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notification system who signed up for alerts for tax education. The rule was posted to the website and the email was sent out on June 9, 2023, which invited comment through June 23, 2023.

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

The Department did not receive any input from stakeholders. However, the updates to the rule were non-substantive in nature, and thus the process will remain unchanged going forward.

11. 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

12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The Department did not consider alternative regulations. The existing rule is known to taxpayers and achieves the desired results.

13. 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 rules reveals that the rule does not duplicate any existing rules.

14. 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.

Since this is an existing rule, and the changes are non-substantive in nature, the regulated community is aware of the rule and the associated form.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
Corporations and cooperatives seeking to file a certificate of dissolution, merger, consolidation, conversion, or surrender with the Secretary of State.
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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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.

The nature of the adverse impact is time spent completing form no. D-5 and submitting it to the Department of Taxation.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Yes, the proposed changes update the verbiage of the rule to improve readability.

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

The regulatory intent is to provide instructions to the taxpayer on how to obtain a certificate of tax clearance or notify the Department that a business is ceasing operations in Ohio and the adverse impact to the regulated business community is minor. The tax clearance allows the purchaser of a business to know that the business they are buying is free from outstanding tax issues, which helps create confidence in the buying process.

Regulatory Flexibility

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

No. The regulation treats all businesses the same.

- 19. 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?**

N/A. The rule does not contain a provision for the imposition of a fine or penalty for non-compliance.

- 20. What resources are available to assist small businesses with compliance of the regulation?**

Assistance with the D-5 form and business tax compliance is available through contact with the Department via telephone by calling 1-888-405-4039 or by emailing Dissolution@tax.state.oh.us.