



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
Katherine.Hunter@tax.ohio.gov

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

Sales Tax Annual Rule Review 2023

Rule Number(s): 5703-09-07; 5703-9-36; 5703-9-44; 5703-9-46;

Date of Submission for CSI Review: 12/18/2023

Public Comment Period End Date: 01/02/2024

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 3 rules (FYR? Yes)

Rescinded/ 1 rules (FYR? Yes)

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.

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

CSIPublicComments@governor.ohio.gov

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.

- Ohio Administrative Code (OAC) 5703-9-07 – The rule governs administration of sales tax refund requests. The amendment removes the option of providing supporting information via computer disc or drive for both data security and accessibility reasons. The change does not limit the types of supporting documentation that can be provided with a refund request, only limits how that information is provided to the Department to avoid possible corruption, theft, or manipulation of Department systems and records.
- Ohio Administrative Code (OAC) 5703-9-36 – This rule has been amended to reflect the removal of documentary service fees from taxable price pursuant to House Bill 66.
- Ohio Administrative Code (OAC) 5703-9-44 – This rule has been substantially updated to conform with legislative changes relating to the deduction from sales tax liability of accounts and receivables bad debt brought about by House Bill 223.
- Ohio Administrative Code (OAC) 5703-9-46 – Minor changes have been made to this rule to adopt direction provided in recent Supreme Court case regarding professional services and the taxability of automatic data processing and electronic information services.

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.**

Ohio Administrative Code (OAC) 5703-9-07 –Authorized by 5703.05; amplifies 5703.14, 5741.17, 5741.12, 5741.10, 5739.14, 5739.13, 5739.12, 5739.072,5739.07.

Ohio Administrative Code (OAC) 5703-9-36 – Authorized by 5703.05; amplifies 5739.02.

Ohio Administrative Code (OAC) 5703-9-44 – Authorized by 5703.05; amplifies 5739.01(I), 5739.121, 571.17.

Ohio Administrative Code (OAC) 5703-9-46 –Authorized by 5703.05; amplifies 5739.01, 5739.02, 5739.17,5741.02, 5741.17.

- 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, it does not.

- 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.**

As there is no federal requirement implicated, none is exceeded.

- 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)?**

Ohio Administrative Code (OAC) 5703-9-07 – This rule ensures sufficient proof is provided in support of a refund for sales tax. Sales tax is a trust tax; therefore, a higher standard of proof for refund is required.

Ohio Administrative Code (OAC) 5703-9-36 – This amendment reflects the removal of documentary service fees from taxable price pursuant to House Bill 66.

Ohio Administrative Code (OAC) 5703-9-44 – This rule provides guidelines for claiming an exemption against sales tax for bad debt incurred by the vendor. As sales tax is a trust tax necessary for the state budget, proper guidelines must be adopted to regulate exemptions from such tax.

Ohio Administrative Code (OAC) 5703-9-46 – The changes adopted in this rule broaden and clarify the provisions of the statute in the Ohio Revised Code.

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

As the proposed rule changes do not include new rules, the Department will be taking no additional steps to measure the success of these regulations.

- 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, none of the proposed rules are being submitted under those Code sections.

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.

On October 2, 2023 the Department of Taxation posted the draft rules on its website. Additionally, on October 2, 2023 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.

10. 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 regarding OAC 5703-9-44. They can be classified in the following manner:

1. A taxpayer submitted a draft of the rule which, for the most part, re-writes the rule in its entirety. The changes include adopting many portions of the statute itself into the rule, as well as suggestions regarding proof of claim and verification of debt, among others. The suggested changes are beyond the scope of the annual rule review or not necessary for this rule. These changes, at this time, were not pursued by the Department. The Department will set a time to discuss the taxpayer's concerns with the rule.
2. A taxpayer submitted suggested changes to the rule that pertain to when the debt occurs, which debt is subject to the bad debt deduction, amount of debt permitted to be deducted, and proof of the claim. Portions of the suggested changes were reviewed and adopted, including adding a provision for allowing taxpayers to use account number to track bad debt accounts, as well as clarifying the effective date of the provisions.

The Department also received a comment from a stakeholder regarding the changes to 5703-9-36. The comment pertained to the structure and clarity of the examples in the rule. The suggested changes were adopted by the Department.

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?

No scientific data was used.

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.

As the proposed were changes to existing rules and were in response to legislative or judicial clarifications and decisions in the areas covered by these rules, no alternative regulations were considered.

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 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.

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.

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

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**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

Ohio Administrative Code (OAC) 5703-9-07 – This rule establishes the expectations for our application for sales/use tax refunds. Compliance with this rule is important to establish a right to a refund of sales and use tax. Failure to comply with this procedure will result in a denial of a refund application.

Ohio Administrative Code (OAC) 5703-9-36 – Negative equity in a motor vehicle sale is a recurrent issue for motor vehicle dealers. This rule provides for how a motor vehicle dealer is to report negative equity on a retail buyer’s agreement. Compliance with this rule will avoid inaccurate collection of sales tax from a motor vehicle dealer’s customer.

Ohio Administrative Code (OAC) 5703-9-44 – This rule explains the maintenance of records requirements necessary for claiming a bad debt deduction for purposes of sales tax. Failure to comply with these requirements could result in a disallowance of a taxpayer’s bad debt deduction.

Ohio Administrative Code (OAC) 5703-9-46 – The rule restates the statutory requirement that a person making retail sales is required to have a license. The rule highlights this statutory requirement for purposes of persons providing automatic data processing, electronic information services, and computer services.

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*).

Ohio Administrative Code (OAC) 5703-9-07 – This rule provides guidance and parameters for filing for a refund from sales and use tax paid. The rule contains restrictions only inasmuch as it requires a higher standard for proof than other taxes, as sales tax is a trust tax. The rule outlines what forms are required to be filed and what documents should be presented, for both vendor and consumer refund requests. The changes remove the option of providing such documentation via hardware and peripherals that are not supported at the Department, avoiding confusion and delay in administering the refund request.

Ohio Administrative Code (OAC) 5703-9-36 – This rule provides examples of how negative equity is treated in motor vehicle sales by motor vehicle dealers. There is no adverse business impact from this rule, as it does not prohibit the application of negative equity, but merely provides guidance to dealers in how to treat such negative equity in different sales circumstances in order to receive credit against sales price. This rule provides more in the way of explanation than restriction. The changes remove documentary fees from the examples per recent legislation. This change will lead to greater clarification for taxpayers.

Ohio Administrative Code (OAC) 5703-9-44 – These rules surround the deduction of bad debt from vendor sales tax liability. The rule does not prohibit bad debt deductions, but merely provides restrictions and guidance as to its applicability such that the taxpayer vendor is able to use the deduction most effectively. These changes adopt those passed by the Ohio General Assembly. The changes will provide better clarity to taxpayers on how these changes apply.

Ohio Administrative Code (OAC) 5703-9-46 – This rule provides guidance on the applicability of the sales tax exemption for automatic data processing, electronic information services, and computer services. The changes proposed and the rule itself do not create undue burdens; rather, the rule and the proposed changes add clarity to the requirements for claiming these exemptions based on a recent Ohio Supreme Court decision.

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

These rules have been established to provide guidance to taxpayers and to ensure the Department's expectations are in writing. Even though these rules establish additional steps necessary to claim a refund, report negative equity or establish a bad debt deduction, it is imperative to ensure equitable treatment to all taxpayers.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance for small businesses. All sizes of businesses are treated equally.

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?

Generally, if there is not an intentional disregard for the requirements in these rules, ODT is reasonable in its remittance of penalties.

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

The Department of Taxation's web site, tax.Ohio.gov, and its toll-free telephone number 1-888-405-4039 are available to provide assistance to all taxpayers.