

**MEMORANDUM**

TO: Lindsay Degnan, Ohio Department of Taxation

FROM: Paula Steele, Regulatory Policy Advocate

DATE: September 26, 2013

RE: **CSI Review – Financial Institution Tax (OAC 5703-33-01 through 5703-33-06)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The Ohio Department of Taxation submitted the proposed new rules to provide guidance and clarification of ORC 5726 which regulates the taxation of financial institutions. The rule package was filed with the CSI Office on August 23, 2013 with a public comment period ending on September 3, 2013. One group representing the banking industry provided comment during the public comment period.

The primary intent of the proposed rules is to help taxpayers determine whether they are subject to the financial institutions tax and help taxpayers compute the financial institutions tax owed. Specifically, the rules provide guidance for electronic filing, determination of a captive finance company, notification requirements, treatment of pawn shops and pawnbrokers, reporting of total equity capital, and general situsing provisions.

According to the BIA, the Department developed the rules using a comprehensive stakeholder outreach process which resulted in a number of revisions based on stakeholder feedback. Public comment provided additional feedback regarding the total equity capital and situsing rules.

Through the course of several conversations with the banking industry, the Department determined that additional clarifying changes were appropriate. For example, in the total equity rule, the Department added a requested reference to FR Y-9C which created consistency as the forms used by other entities were listed in the rule, and removed the rule reference to “state tax concepts.” In the situsing rule, the Department agreed to remove the use of proxies in several divisions.. Other issues discussed and clarified by the Department concerned the use of the concept “customer benefit,” and the use of draft guidance developed by the Multi-State Tax Commission (MTC). The Department explained its rationale for the use of the “customer benefit” term as providing both the financial institutions and the Department the greatest amount of flexibility when facing atypical situations for determining gross receipts to this state. Finally, the Department explained that the situsing rule was developed to incorporate the proposed MTC updated concepts and terminology. The MTC’s last approved guidance was adopted in 1994. The CSI Office confirmed that by adopting some of the MTC updates, the Department would not be creating overly burdensome regulations regarding the treatment of gross receipts for Ohio’s banking industry.

After reviewing the proposed revised rules and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule justifies the adverse impact identified in the BIA.

Recommendations

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Director of Regulatory Policy