

**MEMORANDUM**

TO: Lindsey McCarron, Ohio Department of Taxation

FROM: Paula Steele, Regulatory Policy Advocate

DATE: May 27, 2014

RE: **CSI Review** – Sales and Use Tax (OAC 5703-9-01 through 5703-9-05, 5703-9-11 and 5703-9-12)

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

This rule package contains seven rules – one rescinded, five amended¹ and one no-change rule – that are being submitted by the Ohio Department of Taxation as a five-year review as required by ORC 119.032. The proposed rules articulate sales tax and use tax compliance requirements. The rule package was submitted to the CSI Office on February 27, 2014 with a public comment period ending on March 7, 2014. One comment was received during the public comment period.

The Ohio sales and use tax applies to the retail sale, lease, and rental of tangible personal property as well as the sale of selected services. In transactions where sales tax was due but not collected by the vendor or seller, a use tax of equal amount is due from the customer.² The use tax applies to the storage, use, or consumption of tangible personal property in Ohio. "Tangible

¹ Two of the existing rules, 5703-9-02 and 5703-9-03 are being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

² http://www.tax.ohio.gov/sales_and_use.aspx

personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.³

Rule 5703-9-01 (*Vendor's License Requirements*) is being rescinded because the requirements are specified in ORC 5739.17 and the Department deemed the rule unnecessary because it was duplicative. Rules 5703-9-02 (*Maintenance of Records*) and 5703-9-03 (*Sales and Use Tax; Exemption Certificate Forms*) are substantially amended to remove provisions of the rule that are also duplicative of applicable statutory requirements. Other amended rules address certain tangible personal property tax transactions such as an exempt purchase that is later used in a taxable manner, taxable storage services subject to use tax, and exchanged merchandise. The no-change rule addresses the tax treatment for returned merchandise and rejected services.

Upon review of the BIA and proposed rule, the CSI Office requested some revisions concerning the public purpose of the regulation, to include additional information about adverse impacts and how the Department will measure success of the regulations. After reviewing the proposed rule and the revised 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

³ http://www.tax.ohio.gov/sales_and_use/information_releases/st200306.aspx