



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Katherine Hunter, Ohio Department of Taxation

FROM: Michael Bender, Business Advocate

DATE: January 25, 2024

RE: **CSI Review – Sales Tax Annual Rule Review 2023 (OAC 5703-9-07, 5703-9-36, 5703-9-44, and 5703-9-46)**

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule, three amended rules, and one rescinded rule proposed by the Ohio Department of Taxation (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on December 18, 2023, and the public comment period was held open through January 2, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 18, 2023.

Ohio Administrative Code (OAC) 5703-9-07 provides for applications which are filed to obtain a refund of sales or use tax that was illegally or erroneously paid. The rule is amended to update language and require spreadsheets of twenty-five or more invoices to be submitted electronically rather than through a computer disc or drive. OAC 5703-9-36 outlines the various ways in which negative equity in motor vehicles sales and leases may be accounted for, which consequently affects the sales and use tax charged. The rule is amended to remove documentary service fees. OAC 5703-9-44 is rescinded and replaced by a new rule with the same number. The new rule allows for vendors to deduct bad debts in the reporting of gross sales and net taxable sales. Compared to the rescinded

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version of the rule, the new version is revised to add definitions, clarify the purchases for which a vendor may deduct bad debts, and require vendors to maintain records of all outstanding credit sale transactions. OAC 5703-9-46 describes when the provision of automatic data processing services, computer services, or electronic information services in Ohio is subject to sales tax. The rule is amended to update language and remove references from the definition of “automatic data processing” to the number of individuals performing activities of this type.

During early stakeholder outreach, the Department posted the draft rules on its website on October 2, 2023, and emailed a link that same day to subscribers of its tax alert email notification system. Stakeholders included tax professionals, businesses owners, and other interested parties that wish to be informed on tax law and policy. The Department subsequently received three comments from stakeholders. One taxpayer submitted a draft rule that completely rewrote OAC 5703-9-44 to adopt statutory provisions into the rule itself, in addition to suggestions regarding proof of claim and verification of debt, among others. The Department did not incorporate these suggestions but did commit to holding discussions to consider them at a later time. Another taxpayer proposed changes to OAC 5703-9-44 pertaining to when debt occurs, which debt is subject to the bad debt deduction, the amount of debt permitted to be deducted, and proof of the claim. The Department adopted some of these suggestions, such as allowing taxpayers to use an account number to track debt accounts and clarifying the effective date of the provisions. One final comment proposed changes to the structure and clarity of OAC 5703-9-36, which were adopted by the Department. No comments were received during the CSI public comment period, although the Department revised the rules to make technical and grammatical corrections.

The business community impacted by the rules includes vendors that offer products and/or services in Ohio subject to the sales tax. The adverse impacts created by the rules include payment of sales tax, completing an application, reporting negative equity, recordkeeping, and obtaining and maintaining licensure. The Department notes that the changes to the rules enable the electronic delivery of spreadsheets and remove documentary service fees. The Departments states that the adverse impacts to business are justified to implement statutory requirements and ensure equitable treatment to all taxpayers.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.