



Common Sense Initiative

Mike DeWine, *Governor*
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Taxation (ODT)

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

Commercial Activity Tax

Rule Number(s): 5703-29-04

Date of Submission for CSI Review: 10/10/2023

Public Comment Period End Date: 10/24/2023

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ 1 rules (FYR? No)

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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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 Adm. Code 5703-29-04— This rule currently explains that consolidated elected taxpayer groups are formed by election and combined taxpayer groups do not require an election. The rule requires a combined taxpayer group to register for the commercial activity tax within thirty days of having taxable gross receipts of one hundred fifty thousand dollars or more.

Changes are proposed to update this rule in response to the changes made to the commercial activity tax by the legislature in Am. Sub. H.B. 33. The amendments require the original rule to be rescinded and replaced.

The changes are proposed to advise taxpayers how to proceed in view of the elimination of the annual minimum tax and the increased exclusion amount beginning in 2024. The proposed changes include that a consolidated elected taxpayer may cancel its account within the binding eight-calendar quarter election period if its taxable gross receipts fall below the increased exclusion; that a taxpayer whose taxable gross receipts will not exceed the exclusion amount does not need to register for the commercial activity tax; and that a taxpayer whose taxable gross receipts do exceed the exclusion amount must register for the commercial activity tax within thirty days.

- 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.**

The rule is authorized by R.C. 5703.05.

Ohio Adm. Code 5703-29-04 amplifies R.C. 5751.01, 5751.011, 5751.012, and 5751.04.

- 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)?**

ODT provides the rule in an effort to clarify, describe, or define the requirements, procedures, or policies of ODT with respect to its implementation of the tax laws. The rule provides taxpayers with information that promotes compliance with the applicable statutory provisions.

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

ODT evaluates the success of its rules through discussions with taxpayers and practitioners and routine audits of taxpayers' compliance.

- 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.

ODT posted the proposed rule on its website and sent an email seeking comments on the proposed rule to subscribers of ODT’s Tax Alert notification system. The rules were posted, and the email was sent, on September 18, 2023, and invited comment through October 2, 2023.

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

No comments were received on the rule.

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.*

ODT did not consider regulatory alternatives because for guidance from ODT to be binding upon taxpayers, the guidance must be done through regulations. See *Progressive Plastics, Inc. v. Testa*, 113 Ohio St.3d 490, 2012-Ohio-4759, and *Renacci v. Testa*, 148 Ohio St.3d 470, 2016-Ohio-3394.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

A review of ODT’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.

As an existing rule, it has already been implemented and applied to taxpayers. However, once the amended rule is approved, a tax alert will be sent to inform the community that the amended rule is effective. A link to the rule will be posted on ODT’s website. Additionally, information regarding the CAT, including general information and FAQs, is maintained on ODT’s website. ODT will train staff on the rule to ensure the rule is applied consistently and predictably.

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**
All persons subject to the commercial activity tax.
- 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.

The rule requires the report of information as a condition of compliance. Ohio Adm. Code 5703-29-04 requires a combined taxpayer group to register for the commercial activity tax within thirty days of having taxable gross receipts in excess of the applicable exclusion amount. This is also required by statute. See R.C. 5751.04.

- 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*).**

The rule is being amended, in part, to ensure that taxpayers are not required to register or file tax returns when no tax will be due.

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

The rule provides guidance to the business community with minimal to no adverse impact that is not already required by law.

Regulatory Flexibility

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

No. Taxes are administered fairly and equitably with respect to all businesses—big or small.

- 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 rules do not contain a provision for the imposition of a fine or penalty for a paperwork violation and R.C. 119.14 allows a state agency to impose a penalty where the violation of law concerns the assessment or collection of any tax.

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

Information about the commercial activity tax is available on ODT's website. Taxpayers seeking assistance with compliance may contact the Business Tax Division of ODT via telephone by calling 1-888-722-8829 or via email through ODT's website.