



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Katherine Hunter, Ohio Department of Taxation

FROM: Caleb White, Business Advocate

DATE: November 29, 2023

RE: **CSI Review – Commercial Activity Tax (OAC 5703-29-04)**

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This rule package consists of one rescinded rule and one new rule proposed by the Ohio Department of Taxation (Department). This rule package was submitted to the CSI Office on October 10, 2023, and the public comment period was held open through October 24, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 10, 2023.

Ohio Administrative Code (OAC) 5703-29-04 outlines consolidated elected taxpayer groups and combined taxpayer groups as they relate to the Commercial Activity Tax (CAT) and sets forth how these groups are formed as well as the registration and taxation obligations these groups are subject to. This rule clarifies that while elected taxpayer groups are formed by election, combined taxpayer groups do not require an election to be formed. This rule also differentiates the two groups by requiring consolidated elected taxpayer groups to pay a flat minimum tax regardless of the dollar amount of their total taxable receipts. Conversely, a combined taxpayer group is required to only pay the minimum tax and register for the CAT if their taxable gross receipts exceed one hundred and fifty thousand dollars. This rule is to be rescinded and replaced with a new rule of the same number. This new rule addresses the same content as the rescinded rule but incorporates changes made to the CAT in Ohio House Bill 33 of the 135th General Assembly. These changes are being made in response to

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the elimination of the annual minimum tax for the CAT and the increased exclusion amount, both of which take effect in 2024. These changes include increasing the exclusion amount to three million dollars in 2024 and six million dollars beginning in 2025, and allowing consolidated elected taxpayers to cancel their account if their taxable gross receipts fall below the increased exclusion amount. The changes also eliminate the requirement for taxpayers to register for the CAT if their gross taxable receipts will fall below the exclusion amount and require taxpayers whose taxable receipts exceed the exclusion rate to register for the CAT within thirty days.

During early stakeholder outreach, the Department posted the proposed rules on their website and sent the rules to interested parties through its Tax Alert notification system. No comments were received during that time or during the CSI public comment period.

The business community impacted by the rules includes all taxpayers subject to the CAT. The adverse impacts created by the rules include the reporting of information as a condition of compliance and the requirement for a combined taxpayer group to register for the CAT within thirty days when they exceed the exclusion amount. The Department states that the adverse impacts are necessary to provide guidance to the business community and to fulfill the need to clarify, describe, or define the requirements, procedures, policies, and laws related to the CAT.

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.