

Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: Electronic Filing and Payment of Cigarette, Master Settlement Agreement and Other Tobacco Products

Rule Number(s): 5703-15-23

Date: September 26, 2016

Rule Type:

NEW

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Ohio Rev. Code 5703.059 authorizes the Tax Commissioner to mandate electronic filing of any tax return and to promulgate rules requiring any payment of the tax be made electronically. This rule implements the electronic filing and payment requirement for Cigarette, Other Tobacco Products (“OTP”) and Master Settlement Agreement (“MSA”) reports and returns and requires filing and payment through the Ohio Business Gateway (“OBG”). Electronic filing and payment of taxes is more cost-effective and efficient for taxpayers. Furthermore, electronic filing provides the taxpayer with an electronic repository of return and payment history. Finally, electronic filing promotes an efficient and economical

administration of tax laws and reduces the costs associated with tax collection. The rule also allows a taxpayer to request to opt-out of electronic filing for good cause.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 5703.05, 5703.14, 5703.059

3. 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?

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A.

5. 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)?

The Department of Taxation (“Department”) currently receives approximately 190 cigarette paper returns every month and 100 paper checks, 550 OTP returns a month and 400 paper checks and 400 monthly MSA reports. This requires the Department to expend resources to key every return and process every check. The purpose of the rule is to require electronic filing and payment, which would save the Department valuable resources.

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

The success of this rule will be measured by the percentage of the taxpayers that electronically file and pay. The goal is to have all cigarette, OTP and MSA filers file and pay electronically.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

On September 8, 2016, the Department posted the draft rule in an information release on its website and emailed a link to the draft rule to all subscribers of its Tax Alert email notification system. The Department maintains the Tax Alert email notification system to keep tax professionals, business owners and other interested parties up to date on Ohio’s tax laws. Taxpayers can sign up for Tax Alerts via the Department’s website.

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

The Department received three comments about the proposed rule. The first commenter “wholeheartedly” supported the proposed rule because “[i]t is faster, cuts down on paperwork, and cuts down on human error.” The second commenter conveyed their disappointing experience with the State of Indiana’s electronic filing system and encouraged Ohio to “find the simplest reporting process that works with all kinds of software.” The third comment was from the Ohio Wholesale Marketers Association who had no issues with the proposed rule. The input had no effect on the draft rule, as the Department’s system will accommodate several filing methods.

9. 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

10. 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?

The Department did not consider alternative regulations. A rule is the only method available to the Tax Commissioner to implement the electronic filing requirement.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

N/A

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

R.C. 5703.05 vests all powers, duties and functions of the Department in the Tax Commissioner, including tax filings and payments. R.C. 5703.059 authorizes the Tax Commissioner to require the electronic filing of returns and electronic payment of the tax. A review of the Department’s existing rules reveals no current rule regarding electronic filing and payment for cigarette, OTP or MSA.

13. 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.

The Department plans to implement the electronic filing mandate for cigarette and OTP returns filed on or after February 1, 2017, and MSA reports filed on or after May 1, 2017. These dates allow plenty of time to notify and educate the affected taxpayers about these requirements. The Department will post advanced notice on its website and mail notices to the affected stakeholders to inform them about the electronic filing and payment requirement. Additionally, the Department will create a tutorial on how to file these reports and returns and make payments electronically.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

This rule will impact the 1,140 monthly tobacco returns. In order to promote the efficient and economical administration of the cigarette and OTP taxes, as well as MSA filing, persons may, for good cause, be excused from the electronic filing requirement. Taxpayers and filers may request to opt-out of electronic filing by utilizing the form available on the Department's website. If a taxpayer cannot access the form on the Department's website, the taxpayer may call the Excise & Energy Tax Division and have the form mailed to them.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The Department anticipates that businesses will experience minimal adverse impacts from this regulation. This regulation does not require a business to collect any additional information in order to file and pay electronically. The information provided via electronic filing is the same as that currently required by a paper returns and reports.

If not already registered with OBG, return and report filers will have to register and follow the instructions to file the returns and reports and pay through the OBG. Once registered, the process will be easier for each successive return and payment. In addition, if a taxpayer requests to opt-out of electronic filing, the taxpayer can submit the request to the Department in writing.

c. Quantify the expected adverse impact from the regulation.

The only adverse impact on taxpayers is the time it will take to register on OBG if they are not currently registered on the OBG. Taxpayers and filers may contact the Department at 1-855-466-3921 for step-by-step instructions on registration and filing on OBG or may access the Department's website for a tutorial to be posted upon implementation. The Department estimates that a taxpayer who uses that method will need approximately 15 minutes to register, file and pay. Once registered, the process of filing and paying will be shorter for each successive filing period.

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

The time-savings and cost-effectiveness of electronic filing and payment far outweighs the minimal impact on the taxpayers. Electronic filing allows the Department to more efficiently

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process returns and payments and provides taxpayers with an electronic history of all filings and payments. The Department has committed significant time and resources to develop the OBG/STARS electronic filing system. The system will make it easier for taxpayers to meet their filing and payment obligations.

Regulatory Flexibility

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

The rule allows a taxpayer to apply to the Tax Commissioner to be excused from the electronic filing and payment requirements.

17. 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. Neither the rule nor the authorizing statute contains provisions for the imposition of a penalty for non-compliance with the electronic filing and payment requirement.

18. What resources are available to assist small businesses with compliance of the regulation?

The Department plans to provide information to the taxpayers in a variety of ways in advance of the implementation of the electronic filing mandate. Further, assistance in filing tax returns and making payments is available through contact with Department via telephone by calling 1-855-466-3921.