

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Taxation

Regulation/Package Title: Sales Tax Rule Review Spring/Summer 2016

Rule Number(s): 5703-9-13; 5703-9-14; 5703-9-15; 5703-9-16; 5739-9-17; 5739-9-18; 5703-9-19; 5703-9-20; 5703-9-23; 5703-9-24; 5703-9-25; 5703-9-27; 5703-9-29

Date: July 14, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

- **Ohio Administrative Code (OAC) 5703-9-13** – The statute requires that taxpayers file monthly, but that the Tax Commissioner may authorize a taxpayer to file on a less frequent basis. This rule is amended to align out-of-state sellers and vendors under the same filing thresholds. Previously, certain sellers could file annually and, if a seller collected over \$18,000 of tax in a calendar year, the seller would be required to file on a monthly basis. In-state vendor's responsibility was (and continues to be) to file monthly unless their average monthly tax liability was less than two hundred dollars. In that situation, vendors are authorized to file semi-annually.
- **OAC 5703-9-14** – This rule discusses construction contracts as they are applicable to sales and use tax. This rule assists taxpayers in interpreting many sales and use tax statutes that are applicable to this industry. This rule was updated only to address the change in the title of a form.

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- **OAC 5703-9-15** – This rule describes coupons, coupon books, and gift cards for purposes of the definition of price found in R.C. 5739.01(H). The changes address a modification to the Ohio Revised Code (R.C.) which defined gift card and addressed situations where gift cards are not treated as consideration.
- **OAC 5703-9-16** – This rule further defines affiliate group as found in R.C. 5739.01(B)(3)(e) with regards to partnerships. This was originally suggested as a rescinded rule because affiliate group was defined in statute. However, it was later determined that the understanding of the application to partnerships was not included in the statute. Therefore, this rule is now proposed as “no change”.
- **OAC 5703-9-17** – This rule defines “conditional sale” for purposes of sales and use tax. There were no proposed changes to this rule.
- **OAC 5703-9-18** – This rule defines “subscriber” for purposes of R.C. 5739.01(XX). There were no proposed changes to this rule.
- **OAC 5703-9-19** - This rule defined “installment sale” and “credit sale” for purposes of sales and use tax. There were no proposed changes to this rule.
- **OAC 5703-9-20** – This rule further explains production or fabrication of tangible personal property with regards to the sales and use tax. Additionally, it states that a person engaging in production or fabrication for consideration is engaged in manufacturing. There were no proposed changes to this rule.
- **OAC 5703-9-23** – This rule provides for definitions of farming, agriculture, horticulture, and floriculture. Additionally, it reiterates the statute’s exemptions applicable to farming, agriculture, horticulture or floriculture. The rule updated language that was changed in the statute and simplifies the language in the rule so that it is easier to read.
- **OAC 5703-9-24** – This rule addresses examples of items that are included and excluded from the exemption found in R.C. 5739.02(B)(32) as the exemption applies to household good movers engaged in highway transportation for hire. There were no proposed changes to this rule.
- **OAC 5703-9-25** – This rule addresses the application of the payment of tax or use of exemption certificates with regards to watercraft, outboard motors, and personal watercraft when titling such item at the clerk of courts. This rule was updated only to address the change in the title of a form.
- **OAC 5703-9-27** – This rule assists in the understanding of the exemption found in R.C. 5739.02(B)(3) for sales of food by fraternities, sororities, cafeterias and dormitories. This rule was updated only to account for proper citation.
- **OAC 5703-9-29** – This rule states that a person selling outdoor advertising space on real property owned by the person for the purposes of displaying advertisements to the general public are not vendors. This rule was updated only to account for proper citation.

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

R.C. 5703.05 and R.C. 5703.14

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?
If yes, please briefly explain the source and substance of the federal requirement.

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)?

Please see the responses to question 1 for purposes of the regulations. For purposes of R.C. 5703-9-13, the statutes authorize the commissioner to establish a less frequent filing period. Additionally, the rest of the rules provide clarification to the statute.

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

N/A

Development of the Regulation

7. 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.

On April 13, 2016, the Department of Taxation posted the draft rules on its website. Additionally, on April 14, 2016, the Department emailed an alert which contained a link to the draft rules to all of its Sales and Use Tax subscribers of its Tax Alert 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 several comments from stakeholders. All comments that were not general or unresponsive in nature were in reply to OAC 5703-9-13, OAC 5703-9-15, and OAC 5703-9-23. The comments can be classified in the following manner:

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1. **Changes to In-state Vendors' Filing Requirements** – Two taxpayers reiterated that they would like to maintain the ability to file semi-annually. There was no change to the in-state vendors. The ability to file semi-annually still exists for vendors that are within those identified thresholds.
2. **Changing the Threshold for Semi-annual Filers** – One taxpayer and the Common Sense Initiative (CSI) Office inquired about threshold amount. The taxpayer requested that the threshold be set at a higher amount to qualify for semi-annual filing. This was discussed this option with Tax Analysis Division and it was determined that the change would result in an impact to the counties. A change, at this time, was not pursued by the Department.
3. **Suggested Changes to OAC 5703-9-15** – The Ohio Council Retail Merchants (OCRM) inquired as to the additions of the “gift card” language in the rule. Discussions occurred with the OCRM representative. It was explained that the changes to the rule were based on statutory changes that occurred in 2011. We opened a dialog with the OCRM representative and hoped that an understanding could be reached by both parties. However, it appears that additional change to the rule may not be a viable avenue at this time. While the Department is willing to work with the OCRM to clarify the statute, this proposed rule appropriately addresses the language of the statute. The Department desires to move forward with the proposed rule.
4. **Suggested Changes to OAC 5703-9-23** – The Ohio Farm Bureau requested several changes. All changes that resulted in clarity were incorporated into the next version of the rule. However, one suggested change was to reference R.C. 1.61's definition of agriculture in the rule. As the sales tax statutes delineate between farming, agriculture, horticulture and floriculture, this reference was not included at this time.
5. **Miscellaneous Comments** – There were some comments that did not apply to the changes in the rules. Each of those were responded to but are not addressed in this Business Impact Analysis.

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?

N/A for all rules except OAC 5703-9-15. With regards to OAC 5703-9-15, during the comment period, OCRM expressed concerns with the rule as discussed above in question 8. An alternative approach was not officially released to the public, but was provided as a draft to the OCRM representative to open discussion. After deliberating the rule and the applicable statute with one of the representatives, the Department decided that the rule should not be further amended. As such, the language that was initially posted to the website and was in complete compliance with R.C. 5739.01(H), remains unchanged for this next phase.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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N/A

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

A review of the Department's existing sales and use tax rules revealed that the rules at issue were still applicable to the Department's business activity and did not duplicate an existing tax regulation.

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.

These rules are already authorized. Based on these changes, the Department does not need to take additional measures for all rules except for OAC 5703-9-13. With regards to OAC 5703-9-13, the Department will query its system to identify impacted taxpayers that will incur a new filing frequency. A notification will be sent to any impacted taxpayers. As for the changes in OAC 5703-9-13 with respect to the individual reporting his/her liability on an individual income tax return, the Department will put an FAQ on its website.

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;

Generally, these rules impact sales and use tax taxpayers.

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

There is no adverse impact. Generally, the changes are related to clarifications. With regards to OAC 5703-9-15, the updates that taxpayers may take issue with (as addressed in question 8) relate to statutory changes that occurred in 2011.

c. Quantify the expected adverse impact from the regulation.

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.

N/A

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

The changes have no adverse impact on the business community. Any changes that the OCRM may feel adversely impact the business community were statutory changes and not rule based changes.

Regulatory Flexibility

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

The changes have no adverse impact on the business community.

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?

The changes have no adverse impact on the business community.

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

While there is no perceived adverse impact to small business, the Department of Taxation’s web site, tax.Ohio.gov, and its toll free telephone number 1-888-722-8829 are available to provide assistance.