

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Taxation

Regulation/Package Title: Five-year Rule Review for General Rules

Rule Number(s): 5703-1-07 and 5703-1-11

Date: September 30, 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- Rescinded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 Adm. Code (“OAC”) 5703-1-07: In conjunction with R.C. 4301.25, this rule allows the tax commissioner to request that the liquor control commission suspend or revoke a liquor permit if the permit holder has not paid its excise taxes and the liability for such taxes is no longer subject to appeal. The rule defines “excise tax” as the excise taxes, fees, and charges

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

administered by the tax commissioner (including applicable penalties, interest, and additional charges). The revision of this rule removes a lengthy list of excise taxes that were provided as examples of excise taxes, in favor of a short, all-inclusive definition.

OAC 5703-1-11: (Rescinded) This rule provided certain excise taxpayers with the option to request the remission of the additional charge for failing to file a timely return on a separate petition for remission or to include the request in a petition for reassessment.

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

R.C. 5703.05 and R.C. 4301.25

**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)?**

OAC 5703-1-07: R.C. 4301.25(A)(6) allows the liquor control commission to suspend or revoke a liquor permit if the permit holder fails “to pay an excise tax together with any penalties imposed by the law relating to that failure and for violation of any rule of the department of taxation in pursuance of the tax and penalties.” This rule defines the circumstances under which the tax commissioner may invoke this provision—only when the permit holder has “final tax liability for unpaid excise tax.” This means that the rule may only be invoked if the tax liability is no longer on appeal or subject to appeal. This rule provides the department with an important compliance tool to ensure that delinquent taxes are paid.

OAC 5703-1-11: (Rescinded) This rule provided a mechanism by which a person assessed with an additional charge for failing to file a timely return for certain excise taxes could petition for a remission of additional charges. This petition for remission is rarely used by itself, if ever, and anyone seeking remission of the additional charge may use the petition for reassessment process because additional charges are contained in an assessment. The department has a generic form called a “petition for reassessment” that may be used to petition an assessment for *any* tax. The separate process in 5703-1-11 is unnecessary and duplicative.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

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

OAC 5703-1-07: The success of this regulation will be reflected by the number of times the Department initiates the revocation/suspension process for delinquent excise taxpayers and, if any permits are revoked/suspended, whether those taxpayer-permit holders subsequently become compliant with the excise tax laws.

OAC 5703-1-11: (Rescinded) 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.*

This is a five-year rule review of existing rules. The Department posted the proposed rules on its website and sent an email seeking comments on the proposed rule changes to all subscribers of the Department's Tax Alert notification system who signed up for alerts related to excise taxes, news releases, and tax education. The rules were posted and the email was sent on September 14, 2016, and invited comment through September 28, 2016.

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

No input was provided by the stakeholders.

**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?**

OAC 5703-1-07: The Department did not consider alternative regulations. The existing rule is known to taxpayers and achieves the desired results.

OAC 5703-1-11: (Rescinded) N/A

**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.*

OAC 5703-1-07: No. The rule is not conducive to a performance-based measure.

OAC 5703-1-11: (Rescinded) N/A

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

OAC 5703-1-07: A review of the Department's existing rules reveals that the rule does not duplicate any existing rules.

OAC 5703-1-11: (Rescinded) N/A

**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.**

Once approved, an Information Release will be posted and a tax alert sent to inform the community that the revised/rescinded rules are effective. Since these are existing rules, the regulated community is aware of the rules which apply to excise taxpayers.

**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;**

OAC 5703-1-07: Taxpayers who are subject to certain excise taxes and also hold a liquor permit.

OAC 5703-1-11: (Rescinded) Taxpayers of the following: cigarette and other tobacco products taxes, alcoholic beverages excise taxes, motor vehicle fuel and use taxes, and replacement tire fee.

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

OAC 5703-1-07: No adverse impact is anticipated as a result of the revision of this rule.

OAC 5703-1-11: (Rescinded) No adverse impact is anticipated as a result of the rescission of this rule.

**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.*

OAC 5703-1-07: N/A

OAC 5703-1-11: N/A

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

These rules are part of the five-year rule review of existing rules and there is no adverse impact to the regulated business community.

**Regulatory Flexibility**

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

No. These regulations do not have an adverse impact on businesses— big or small.

**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 of the rules contains a provision for the imposition of a fine or penalty for non-compliance.

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

Assistance with excise tax compliance is available through contact with the Excise and Energy Tax Division of the Department via telephone by calling 1-855-466-3921.