

Business Impact Analysis

Agency Name: Department of Taxation

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

Rule Number(s): 5703-15-06, 5703-15-07, 5703-15-08 and 5703-15-09

Date: March 23, 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Rescinded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 Adm. Code (“OAC”) 5703-15-06: This rule defines the circumstances under which the Department of Taxation (“Department”) may deny a wholesale cigarette dealer the right to any cigarette tax stamp discount and states that the denial may be through a final determination. This rule was revised to remove the reference to a “journal entry” certified to the Treasurer of State (now a “final determination”) and to remove the reference to meter impressions that are no longer authorized by the Ohio Revised Code due to the changes in Am. Sub. H.B. 492.

OAC 5703-15-07: This rule is being rescinded. Previously, the rule stated that unless the tax commissioner permits otherwise, the treasurer of state may only sell cigarette tax stamps to licensed wholesale or retail cigarette dealers. (Rescind).

OAC 5703-15-08: This rule provides an alternative method to pay the cigarette tax in the event that cigarette tax stamps are unavailable. Under the rule, the tax for any given month shall be paid to the Department by the 10th day of the following month. After receiving comments from the Ohio Wholesale Marketers Association on the proposed rule amendment, the only revisions to this rule have been the substitution of a reference to R.C. 5743.021 and deletion of the reference to R.C. 5743.023, as well as, a substitution of the Department for the treasurer of state. R.C. 5743.021 was enacted in 2006, and R.C. 5743.023 was repealed effective in 2002.

OAC 5703-15-09: This rule specifies that if cigarettes or cigarette packages are perforated so that each cigarette may be easily cut into parts, for purposes of taxation, the cigarettes are to be counted as if they were cut at the perforations. (No change to this rule)

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

R.C. 5703.05 and 5743.04

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)?

OAC 5703-15-06: This regulation provides the Department with an essential tool that is used to encourage compliance with the cigarette tax laws. The discount on cigarette stamps is intended to encourage compliance with the tax law. A cigarette taxpayer that violates the cigarette tax law or fails to pay its cigarette tax should not be entitled to any discount related to the purchase of cigarette tax stamps.

OAC 5703-15-07 (Rescinded): The purpose of the rule was to limit the sale of cigarette stamps by the Treasurer of State to licensed dealers. The rule is being rescinded because statutory changes in Am. Sub. H.B. 492 of the 130th General Assembly shifted the responsibility for processing cigarette tax stamp orders made by licensed cigarette stamping wholesalers from the Treasurer of State's office to the Department. The Treasurer of State no longer accepts or processes cigarette tax stamp orders, thus this regulation is no longer necessary.

OAC 5703-15-08: R.C. 5743.04 allows the Tax Commissioner to prescribe by rule an alternative to cigarette tax stamps that may be used to pay cigarette taxes. Although the Department exclusively relies on cigarette stamps to collect the cigarette tax, this rule is necessary in the unlikely event that cigarette stamps are unavailable. Without this rule, there would be no alternative to tax stamps.

OAC 5703-15-09 (No change): This rule ensures that the cigarette tax laws cannot be circumvented by cigarette design and ensures that the cigarette tax law will be applied equitably to all taxpayers.

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

OAC 5703-15-06: The success of this regulation will be reflected by the number of times the Department actually denies a discount by final determination and, if any discounts are denied, whether those persons subsequently become compliant with the cigarette tax laws.

OAC 5703-15-07 (Rescinded): N/A

OAC 5703-15-08: This regulation is only to be used if cigarette stamps become unavailable. It may never be necessary, and in fact, success would occur if no one had to invoke this rule. However, it is necessary to provide an option to collect the cigarette tax in the unlikely event cigarette stamps are unavailable.

OAC 5703-15-09: This regulation will be successful if it prevents persons from evading cigarette tax laws by manufacturing perforated cigarettes.

Development of the Regulation

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

This is a five-year review of existing rules. The Department twice posted an Information Release on its website describing the proposed changes to these rules and invited comments from any concerned taxpayers. Notification of the Information Release was sent by email to all subscribers to the Department's Tax Alert notification system and invited comments. The Department received substantive comments from, and met with, the Ohio Wholesale Marketers Association ("OWMA"). After meeting with OWMA changes were made to the proposed changes to OAC 5703-15-08. OWMA now has no issues with the current proposed changes to any of these four rules.

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

This is a five-year review of existing rules. Only one substantive comment was provided by the OWMA in relation to OAC 5703-15-08. That comment suggested that the rule add R.C.

5743.021 (county arts and cultural district tax) and remove reference to R.C. 5743.023 since this section has been repealed. The comment also recommended that the Department not delete the second paragraph of the rule as was originally proposed. The Department added R.C. 5743.021, removed R.C. 5743.023 from the rule and accepted the OWMA's suggestion to maintain the current language of the second paragraph.

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 5703-15-06: The Department did not consider alternative regulations. This existing regulation is known to taxpayers and achieves the desired results. The one comment received from the OWMA about this rule was: "Because this is only a change in terminology, [OWMA] has no concerns with the proposed change to [the] rule."

OAC 5703-15-07 (Rescinded): N/A

OAC 5703-15-08: The Department considered the recommended changes to the rule and the comments from the OWMA and determined that the rule is the most appropriate regulation.

OAC 5703-15-09 (No change): The Department did not consider alternative regulations. This existing regulation is known to taxpayers and achieves the desired results. The one comment received from the industry about this rule was: "[The commenter] has no concerns renewing the rule with no changes."

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

No. The rules are not conducive to performance-based measures.

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 rules reveals that these rules do not duplicate any existing rules.

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 rules are effective. Since these are existing rules, the regulated community is aware of the rules which currently apply to the cigarette tax and cigarette tax

taxpayers. The changes with regard to the Treasurer of State have already been publicized by the Department and the regulated community is aware of the impact of that change. Additionally, the OWMA has no issues with any of the current proposed rule changes.

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;

These changes apply to Ohio cigarette taxpayers: 12,044 retailers; 27 out-of-state manufacturers; and 159 wholesalers.

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

There is no adverse impact.

c. Quantify the expected adverse impact from the regulation.

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 of these rules.

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 any adverse impact on businesses and will not have any adverse impact on small businesses.

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. None 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 cigarette tax compliance is available through contact with the Excise and Energy Tax Division of the Department via telephone by calling 1-855-466-3921.

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