



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Department of Taxation

Rule Contact Name and Contact Information:

Kerrie Ryan

Regulation/Package Title (a general description of the rules' substantive content):

Petroleum Activity Tax (PAT) Five-Year Rule Review

Rule Number(s): 5703-37-03

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ __X__ rules (FYR? __X__)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. 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 5703-37-03— This rule requires petroleum activity tax returns and payments to be filed and paid electronically pursuant to R.C. 5736.04. The rule also allows a taxpayer to request to be excused from the electronic filing and payment requirement. Minor changes to the rule are proposed to update cross references and to correct a typo.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

The rule is authorized by R.C. 5703.05 and 5703.059.

Ohio Adm. Code 5703-37-03 amplifies R.C. 5736.04.

4. 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.

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No.

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

N/A

- 6. 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 provides rules in an effort to clarify, describe, or define the requirements, procedures, or policies of the Department with respect to its implementation of the tax laws. The rules provide taxpayers with information that promotes compliance with the applicable statutory provisions.

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

The Department evaluates the success of its rules through discussions with taxpayers and practitioners and routine audits of taxpayers' compliance.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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.

The Department posted the proposed rule on its website and sent an email seeking comments on the proposed rule to subscribers of the Department's Tax Alert notification system. The rule was posted, and the email was sent on July 2, 2020, and invited comment through July 13, 2020. The rule has remained up and available for comment through September 2020.

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

No comments were received on the rule.

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11. 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

12. 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. The Department did not consider regulatory alternatives because for guidance from the Department to be binding upon taxpayers, the guidance must be done through regulations. See *Progressive Plastics, Inc. v. Testa*, 113 Ohio St.3d 490, 2012-Ohio-4759, and *Renacci v. Testa*, 148 Ohio St.3d 470, 2016-Ohio-3394.

13. 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.*

No. The rule is not conducive to performance-based measures.

14. 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 the rule does not duplicate any existing rules.

15. 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.

As an existing rule, it has already been implemented and applied to taxpayers. A link to the rule will be posted on the Department's website. Additionally, information regarding the PAT, including general information and FAQs, is maintained on the Department's website. The Department will train staff on the rule to ensure the rule is applied consistently and predictably.

Adverse Impact to Business

16. 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; and

All persons subject to the PAT.

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

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The rule requires the report of information as a condition of compliance. Ohio Adm. Code 5703-37-03 requires PAT taxpayers to file and pay electronically as authorized by R.C. 5736.04.

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.

The existing rule is necessary to administer the PAT and the adverse impact is minimal. Taxpayers are easily able to file and pay the PAT electronically through the Ohio Business Gateway.

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

Any adverse impact on businesses is outweighed by the benefits provided by the rule. The rule provides guidance on the electronic filing and payment requirements. Electronic filing and payment saves time and money for both taxpayers and the Department.

Regulatory Flexibility

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

No. Taxes are administered fairly and equitably with respect to all businesses—big or small. The rule allows all businesses to request to be excused from the electronic filing and payment requirements for good cause.

19. 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. The rule does not contain a provision for the imposition of a fine or penalty for non-compliance.

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

Information about the PAT is available on the Department’s website. Taxpayers seeking assistance with PAT compliance may contact the Business Tax Division of the Department via telephone by calling 1-844-722-8829 or via email through the Department’s website.