



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Taxation

Rule Contact Name and Contact Information:

Kerrie Ryan

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

Motor vehicles, off-highway motorcycles, and all-purpose vehicles; tax payment or exemption claim required for certificate of title.

Rule Number(s): OAC 5703-9-10

Date of Submission for CSI Review: _____

Public Comment Period End Date: February 5, 2020

Rule Type/Number of Rules:

New/ rules

No Change/ 1 rules (FYR? Y)

Amended/ rules (FYR?)

Rescinded/ rules (FYR?)

The Commonsense 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

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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.

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.

5703-9-10 Motor vehicles, off-highway motorcycles, and all-purpose vehicles; tax payment or exemption claim required for certificate of title.

The clerk of courts shall refuse to issue a certificate of title unless the application is accompanied by an exemption certificate or sworn statements by the purchaser that specifies the reason the sale is not legally subject to the sales or use tax. This rule states that if an exemption certificate or sworn statement is provided to the vendor, the document must be presented to (filed) the clerk of courts. The rule also incorporates by reference the forms promulgated by the Tax Commissioner for such purpose.

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.

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R.C. 5703.05 and 5703.14.

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.

No.

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

No.

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 this rule as part of its continuing efforts to educate vendors, sellers and consumers about sales and use tax best practices. This rule does not regulate in the traditional sense. Rather, this rule provides information that aids compliance with the applicable statutory provisions. This rule facilitates consistent application of 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 affected taxpayers 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.

On or about January 22, 2020, the Department posted the rule on its website. On the same date, the Department sent a Tax Alert to all persons enrolled to receive updates regarding sales and use tax changes.

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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 regarding this rule.

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 considered whether the educational information provided in this rule should be provided via Information Releases on its website. However, the Department believes that a rule better fulfills the mission of the Department by affording the taxpayer a vehicle on which it can rely to support its tax compliance procedures.

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.*

N/A

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 revealed that this rule does not duplicate others.

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.

The Department routinely disseminates revised rules to all Departmental employees who use the rules in performing their duties. Further, the Department regularly conducts training for its employees.

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 registered vendors or sellers. Currently this is approximately 300,000 businesses. This includes Ohio based and out-of-state businesses.

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

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Impacts on vendors, sellers and consumers may include employee training, documentation of tax-exempt sales, software and hardware requirements for point-of-sale systems, sales tax research, handling audits and appeals and programming and servicing cash registers.

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.

All vendors and sellers receive a discount of .0075% of the amount of tax timely remitted to assist with the cost of compliance.

The Department has not conducted studies regarding the general cost of compliance with the statutory sales and use tax filing and record maintenance requirements.

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

The minimal adverse impact on businesses is outweighed by the certainty that this rule provides businesses regarding sales and use tax compliance.

Regulatory Flexibility

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

No alternative means of compliance for small businesses are provided because the requirements explained by this rule are requirements established by the General Assembly in the applicable sections of the Revised Code. A rule cannot go beyond the authority established in the statutory provisions.

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?

There are no penalties or fines associated with informational rules. Rather, this rule facilitates taxpayer compliance by advising taxpayers of the best practices for tax compliance.

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

The Department of Taxation’s web site, tax.Ohio.gov, and its toll-free telephone number 1-888-722-4039 are available to provide assistance.

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