



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Department of Taxation (ODT)

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

Adult Use Cannabis Tax

Rule Number(s): 5703-43-01, 5703-43-02, 5703-43-03, 5703-43-04, 5703-43-05, 5703-43-06, 5703-43-07, 5703-43-08, 5703-43-09, 5703-43-10, 5703-43-11, and 5703-43-12.

Date of Submission for CSI Review: 6/11/2024

Public Comment Period End Date: 6/18/2024

Rule Type/Number of Rules:

New/ 12 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ rules (FYR?)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 5703-43-01 Definitions: The proposed rule defines terms for the adult use cannabis tax.

Ohio Adm. Code 5703-43-02 Licensing: The proposed rule provides that the commissioner will establish an adult use cannabis tax account for each adult use dispensary licensed by the Department of Commerce. The rule provides that the commissioner may notify the Department of Commerce if an adult use dispensary is out of compliance with the tax laws of the State of Ohio and may recommend that the Department of Commerce suspend or revoke an adult use dispensary license under certain circumstances. The proposed rule specifies that a person operating as an adult use dispensary without a valid license is still liable for the adult use cannabis tax.

Ohio Adm. Code 5703-43-03 Exchange of Information: The proposed rule provides for the exchange of information between the tax commissioner and the Department of Commerce.

Ohio Adm. Code 5703-43-04 Electronic Filing and Payment: The proposed rule provides the filing and payment requirements for the adult use cannabis tax. The tax is to be filed and paid electronically and on a monthly basis, consistent with the Ohio sales tax.

Ohio Adm. Code 5703-43-05 Distribution: The proposed rule clarifies that the adult use cannabis tax funds distribution is calculated based on the tax collected during the calendar

quarter and that delivery, online, and mobile sales made by a taxpayer are attributed to the municipal corporation or township where those sales originated.

Ohio Adm. Code 5703-43-06 Refunds: The proposed rule establishes the procedures for refund requests of the adult use cannabis tax consistent with the procedures currently used for the Ohio sales tax. The proposed rule indicates that the statute of limitations for requesting a refund is four years from the date of the illegal or erroneous payment and prescribes the form and documentation that must be submitted when requesting a refund of the tax.

Ohio Adm. Code 5703-43-07 Assessments: The proposed rule establishes the procedures regarding assessments of the adult use cannabis tax by adopting the same procedures used for the assessment of the Ohio sales tax.

Ohio Adm. Code 5703-43-08 Liability of Unpaid Taxes: The proposed rule indicates that interest accrues on unpaid amounts from the day the amounts were due until the day the amounts are paid. The rule also proposes that refunds accrue interest in the same manner from the date of the overpayment until refunded. The proposed rule describes the personal responsibility for unpaid adult use cannabis tax of certain persons charged with the responsibility of filing or paying the tax.

Ohio Adm. Code 5703-43-09 Record Keeping: The proposed rule provides the record keeping requirements of the adult use cannabis tax, including that a taxpayer must maintain adequate records of the tax paid for four years.

Ohio Adm. Code 5703-43-10 Penalties: The proposed rule describes penalties that may be added to adult use cannabis tax assessments, consistent with the penalties applicable to the Ohio sales tax.

Ohio Adm. Code 5703-43-11 Tax Administration: The proposed rule provides that the adult use cannabis tax will be administered consistent with Ohio Revised Code Chapters 5703 (Department of Taxation) and 5739 (Sales Tax).

Ohio Adm. Code 5703-43-12 Enforcement: The proposed rule allows the tax commissioner to delegate investigation powers to certified Ohio peace officers to enforce the adult use cannabis tax.

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 rules in this package are authorized by R.C. 5703.05, R.C. 3780.22, R.C. 3780.23, and R.C. 3780.24

Ohio Adm. Code 5703-43-01 through 5703-43-04, and Ohio Adm. Code 5703-43-06 through 5703-43-12 amplify R.C. 3780.22 and R.C. 3780.24.

Ohio Adm. Code 5703-43-05 amplifies R.C. 3780.23.

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 implements a federal requirement, but 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)?**

These rules clarify, describe, and define the requirements, procedures, and policies of ODT as it implements its administration of the adult use cannabis tax. These rules are especially vital as the statutory structure of the adult cannabis use tax is not as defined as other taxes.

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

ODT 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.

ODT posted the proposed rules on its website and sent an email seeking comments on the proposed rules to subscribers of ODT's Tax Alert notification system. The rules were posted, and the email was sent, on May 31, 2024, and accepted comments through June 7, 2024.

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 proposed rules.

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?**
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

ODT did not consider alternative regulations. ODT did not consider regulatory alternatives because for guidance from ODT 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. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

A review of ODT's existing rules reveals that the rules do not duplicate any existing rules.

- 14. 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, a tax alert will be sent to inform the regulated community that the new rules are effective. A link to the rules will be posted on ODT's website. Additionally, information regarding the state-administered adult use cannabis tax, including general information and FAQs, will be maintained on ODT's website. ODT will train staff on the rules to ensure the rules are applied consistently and predictably.

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**

All adult use dispensaries subject to the adult use cannabis tax.

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

Ohio Adm. Code 5703-43-02: ODT may cancel an adult use cannabis tax account if the Department of Commerce notifies ODT of action taken against the adult use dispensary

license. ODT may ask the Department of Commerce to suspend or revoke the dispensary's license for failing to comply with the tax laws of the State of Ohio.

Ohio Adm. Code 5703-43-04: Requires taxpayers to electronically file monthly returns and remit the tax due.

Ohio Adm. Code 5703-43-06: Requires the submission of certain information if the taxpayer requests a refund of the tax paid.

Ohio Adm. Code 5703-43-07: Allows the tax commissioner to issue an assessment for any amounts due. Interest and penalties may accrue on amounts owed to the state consistent with the Ohio sales tax.

Ohio Adm. Code 5703-43-08: Liability is imposed on certain persons responsible for filing and paying the tax for the failure to file or pay the tax.

Ohio Adm. Code 5703-43-09: Outlines recordkeeping requirements consistent with the requirements of the Ohio sales tax.

Ohio Adm. Code 5703-43-40: Describes the penalties the commissioner may add to an assessment for the failure to collect and remit or the failure to remit the tax due and allows the commissioner to abate any penalty provided. This proposed rule also provides that a person that violates the provisions related to the adult use cannabis tax may be fined between \$25 and \$100 and a person who fails to remit the adult use cannabis tax collected under R.C. 3780.22 may be guilty of a felony of the fourth degree.

Ohio Adm. Code 5703-43-11: The proposed rule incorporates the applicable provisions of R.C. Chapter 5703, which includes the general authority and powers of the tax commissioner and also provisions relating to the filing of documents by taxpayers, the inspection of books and records, the penalty for making a false or fraudulent report, the penalty for the failure to respond to requests of the tax commissioner, and the penalty for the violation of any law ODT is required to administer, etc.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The Revised Code provides that the adult use cannabis tax must be collected consistent with the collection of the Ohio sales tax and requires the commissioner to adopt rules necessary for the administration of the tax. The rules provide additional guidance and transparency as to how ODT will collect the adult use cannabis tax and provides taxpayers with clarity on what is required to file and remit the tax.

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

R.C. 3780.22 requires the tax commissioner to adopt rules necessary for the administration of the adult use cannabis tax. These rules are necessary to ensure that the administrative procedures are defined and clear to all parties involved.

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.

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 rules do not contain a provision for the imposition of a fine or penalty for a paperwork violation and R.C. 119.14 allows a state agency to impose a penalty where the violation of law concerns the assessment or collection of any tax.

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

Information about the adult use cannabis tax is available on ODT's website. Taxpayers seeking assistance with compliance may contact the Excise/Energy Tax Division of ODT via telephone by calling (855) 466-3921 or via email through ODT's website.