Ohio Administrative Code

Rule 5703-29-18 Records retention requirements.

Effective: June 20, 2019

(A) Pursuant to the authority granted under section 5751.12 of the Revised Code, the tax commissioner hereby promulgates a rule that establishes a record retention policy for purposes of the commercial activity tax. Under that section, the commissioner may identify certain records that are necessary for a person to maintain in order to show whether, and the extent to which, that person is subject to the tax imposed by Chapter 5751. of the Revised Code.

(B) For purposes of determining gross receipts under division (F) of section 5751.01 of the Revised Code, all persons subject to the tax imposed under section 5751.02 of the Revised Code shall keep and maintain primary and supporting records including but not limited to the following: sales journals, financial statements, charts of accounts, cash journals, annual reports, general ledgers, income statements and tax returns, and invoices. In addition, all persons must maintain organizational structures that reflect ownership and control percentages as they exist in each filing period.

(1) With regard to records concerning net operating loss credits available under section 5751.53 of the Revised Code, persons must retain records relating to such credit until June 30, 2010. Since companies may generate net operating losses long before being able to claim a deduction for the loss, records relating to the calculation of the corporation franchise tax reports for all years between the year the Ohio net operating loss was generated and each year in which the loss is being applied against Ohio taxable income must be maintained until June 30, 2010. Further, the statute of limitations does not prohibit either the commissioner or the taxpayer from adjusting the net operating loss carried forward from a tax year closed to assessment to a year still open to assessment or refund. See Consumer Direct v. Limbach (1991), 62 Ohio St. 3d 180.

(2) For example, company A generated a net operating loss in Ohio corporate franchise tax year 1989 (taxable year ending in 1988). Because of previous losses and correlating loss carryforward amounts, company A does not begin to claim the loss generated in the taxable year ending in 1988 until Ohio corporate franchise tax year 2005 (taxable year ending in 2004). For purposes of claiming

any credit for commercial activity tax purposes, company A is required to retain all records relating to the calculation of the credit, including all Ohio corporate franchise tax returns for the tax years 1989 through 2005 until June 30, 2010.

(D) All persons making purchases must maintain the purchase records and make them available to the commissioner for inspection in accordance with the provisions in section 5751.12 of the Revised Code. Such records must be maintained for at least four years from the later of the filing of or the due date of the return covering the period in which the purchases were made.

(E) For purposes of divisions (E) and (I) of section 5751.033 of the Revised Code, any invoices or documents relating to the situsing of receipts from the sale of tangible personal property or from the sale of services must be maintained for at least four years from the later of the filing of or the due date of the return covering the period in which the sales were made.

(F) This rule also applies to all records discussed in information releases and/or administrative rules relating to the commercial activity tax. Pursuant to section 5751.12 of the Revised Code, all records must be maintained for a period of four years from the later of the filing of or the due date of the return covering the period to which the records relate unless the commissioner either consents in writing to their earlier destruction or, by written order, extends the time period required for retention.