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Ohio Administrative Code

Rule 5703-29-19 Changes in ownership.

Effective: January 21, 2021

(A) Consolidated elections, generally.

(1) For purposes of the commercial activity tax, a group of two or more persons may elect under section 5751.011 of the Revised Code to be in a consolidated elected taxpayer group that includes all persons that are at least fifty per cent owned and controlled or at least eighty per cent owned and controlled by common owners. The group also may elect to include or exclude all non-United States entities that otherwise meet the requirements to be in the group.

(2) The percentage chosen by the members of a consolidated elected taxpayer group applies to all persons meeting the requisite common ownership requirements. For example, person A, a corporation, elects to consolidate at eighty per cent with its wholly owned subsidiary, B. Person B owns two of its own subsidiaries (C and D) at sixty per cent. Because A, the common owner, elected to consolidate at eighty per cent with B, entities C and D are not included in the consolidated elected taxpayer group of their common owners (A and B). Instead, C and D are part of a combined taxpayer group that is commonly owned by A and B. In addition, C and D may not make a separate election to consolidate at fifty per cent in order to exclude their receipts. Since A and B are members of both taxpayer groups, As and Bs taxable gross receipts are reported with the consolidated elected taxpayer group.

(B) Change of ownership and control.

(1) Any time the ownership structure changes such that a common owner no longer owns and controls a person by the requisite percentage chosen, that person shall be removed from the group. The group shall notify the commissioner of this change at the time it files its next return or in writing prior to the due date of that return. Taxpayers wishing to notify the commissioner of such change prior to filing the next return may obtain a form on the department of taxations website or notify the commissioner electronically through the Ohio business gateway. As applicable, the person no longer meeting the requirements shall register for the commercial activity tax as a stand-alone taxpayer or

be added as a member of another group.

(2) It is important to note that a change in the ownership structure may impact the tax liability of a taxpayer group. For example, assume that a calendar year taxpayer acquires a person at some point during the tax period that has taxable gross receipts in excess of one million dollars. Since the calendar year taxpayer previously had only a minimum tax liability, by acquiring an additional person, the calendar year taxpayers tax liability will surpass its previous liability. If the calendar year taxpayer does not timely notify the commissioner of this change, there will be an underpayment, which is subject to statutory interest and may be subject to penalties. Therefore, when it is reasonably certain that a calendar year taxpayer will have taxable gross receipts in excess of one million dollars during the calendar year, that taxpayer shall switch to a quarterly taxpayer. In this situation, it is advised that the taxpayer notify the commissioner of the acquisition and/or change in filing frequency within a reasonable period of time. A form to make such notice may be obtained on the department of taxations website.

(C) Acquiring a member.

(1) If a consolidated elected taxpayer group acquires a person, such person will be included in the consolidated elected taxpayer group if that person meets the requisite ownership and control threshold requirements. It is important to note that if the group elected to consolidate at eighty per cent and the new person is owned and controlled by less than eighty per cent but more than fifty per cent, that person would become part of a combined taxpayer group along with any other potential members having less than eighty per cent but more than fifty per cent common ownership. For example, A elects to consolidate at eighty per cent with B, its wholly-owned subsidiary. A later acquires C at sixty per cent. Since A made an eighty per cent election, C is not included in the group; instead, C will be in a combined taxpayer group with its common owner, A.

(2) The rules in paragraph (C)(1) of this rule apply to a consolidated elected taxpayer group that acquires either a combined taxpayer group or another consolidated elected taxpayer group. In such case, the ownership threshold of the acquiring group controls. For example, consolidated elected taxpayer group A elects to consolidate at fifty per cent. Group A later acquires consolidated elected taxpayer group B, which, at the time of registration, elected to consolidate at eighty per cent. Since two separate consolidated elected taxpayer groups cannot coexist under a single common owner, As

fifty per cent threshold controls and group B is included in its entirety. In contrast, if A had elected to consolidate at eighty per cent and became Bs common owner at sixty per cent, B would be required to file as a combined taxpayer group with A as the common owner.

(3) Alternatively, if a combined taxpayer group acquires a pre-existing consolidated elected taxpayer group, the common ownership of the acquiring group, i.e. the combined taxpayer group, controls. For example, group A did not elect to consolidate; instead, A owned and controlled enough of its lower-tiered persons such that A filed as a combined taxpayer group. When group A acquires group B, a consolidated elected taxpayer group, the new taxpayer is a combined taxpayer group in accordance with As status. Please note that as a combined taxpayer group, such group may elect to consolidate at any time pursuant to division (D) of section 5751.011 of the Revised Code.

(D) Canceling an election to consolidate.

Pursuant to division (A)(3)(b) of section 5751.011 of the Revised Code, a taxpayer group must notify the commissioner if it elects to cancel its election to consolidate before the final day in the eighth calendar quarter after the election is made, not the due date of the return filed for the period including that quarter. The cancellation will be effective beginning the first day of the quarter following the eighth quarter after the election is made. A form to notify the commissioner of the desire to cancel an election may be obtained on the department of taxations website.