

**Lori Gayle Nuckolls, Esq.  
1237 Paddock Hills Avenue  
Cincinnati, Ohio 45229-1219**

**Lori.Nuckolls@post.harvard.edu  
lnuckoll@wellesley.edu  
lorigaylenuckolls@cinci.rr.com  
513-305-7902**

May 10, 2018

Joint Committee on Agency Rule Review  
The Ohio General Assembly  
Vern Riffe Center  
77 South High Street  
Concourse Level  
Columbus, Ohio 43215

Sent Via Email to: [jcarr1@jcarr.state.oh.us](mailto:jcarr1@jcarr.state.oh.us)

Re: Department of Taxation Proposed Amendment of Rule  
Number 5703-9-39 (Interstate commerce)

Dear Members of the Joint Committee on Agency Rule Review,

I write with interest in the proposed amendment of Rule Number 5703-9-39 of the Ohio Administrative Code by the Department of Taxation regarding the imposition of a tax upon retail sale transactions between Ohio residents and out-of-state vendors. The Rule Summary and Fiscal Analysis submitted by the Department of Taxation to accompany this proposed amendment states that the Department seeks merely to make grammatical corrections in the Rule and not adopt any substantive changes.

The proposed amendment does not adequately revise the text of the Rule to correct certain wording that is confusing to citizens and residents of the various States who would engage in commerce, as well as those engaging in commerce abroad. For, it does not clearly indicate that purchases are exempt from taxation if delivered via an interstate carrier *to either the buyer or the agent* of the buyer and, instead, gives the sense that the exemption applies *only* to interstate carrier deliveries *made to an agent*.

Similarly, the proposed amendment retains reference to “an agent of his” in acknowledgement that Ohio purchasers of goods from foreign vendors may avail themselves of an agent to receive the goods purchased. Legal drafters in the 21<sup>st</sup> century style to no longer use personal pronouns reflective of gender when the concept of gender is not materially relevant to the import and substance of the law.

Finally, the Rule would also lessen confusion if it did not refer to the sales tax as a “retail sales tax” unless such is done consistently throughout Ohio Revised Code Chapter 5703: Sales Tax and Ohio Administrative Code Chapter 5703-9: Sales and Use Tax. For, the sales tax is more often referred to as an “excise tax,” and O.R.C. §5739.02, in implementing the sales tax, expressly states that “an excise tax is hereby levied on each retail sale made in this State.”

In respect of the foregoing, I offer the following modification of the amendment, with proposed changes italicized:

5703-9-39 Interstate commerce.

When tangible personal property is sold within the State and the vendor is obligated to deliver it to a point outside of the State, or to deliver it to a carrier or to the mails for transportation to a point outside of the State, the Ohio ~~Sales Tax~~ *sales tax* does not apply. However, where tangible personal property pursuant to a sale is delivered in this State to *either* the buyer or ~~to an its~~ *agent, of his other than an interstate carrier* the ~~retail Sales Tax~~ *sales tax* applies, *unless the delivery is made by means of an interstate carrier,* notwithstanding that the buyer may subsequently transport the property out of the State.

The grant of a sales tax exemption for purchases made by Ohioans from out-of-state vendors whom, themselves, have no physical presence within Ohio or nexus with Ohio, is a great encouragement to the advance of commerce. It provides economic efficiency to domestic purchasers and encourages reciprocity in the tax policy of other States.

I thank you greatly for considering my comments on this Rule. And, I may certainly be contacted as indicated above.

Sincerely,

*Lori G. Nuckolls*

Lori G. Nuckolls

May 14, 2018

Senator Joseph Uecker, Chair  
Joint Committee on Agency Rule Review (JCARR)  
77 S. High Street  
Columbus, OH 43215



Dear Sen. Uecker:

On behalf of the board members and staff of Ohio's 88 county boards of developmental disabilities, thank you for the opportunity to provide comments regarding the proposed rule OAC 5123-9-04.

People with developmental disabilities and their families have repeatedly told us that Ohio's waiting list for Medicaid Home and Community-Based Services (HCBS) waivers is overly complex and in need of simplification. The current waiting list confuses families, misleads advocates, and hinders efforts by policymakers to direct resources where they are needed most.

This is why – over the past 17 months – we have worked alongside people with developmental disabilities, family members, and organizations representing guardians, advocates, and providers to fix Ohio's broken waiver waiting list. The "Fix The List" coalition believes replacing the current system will vastly improve the way Ohio's waiting list operates by making it more transparent, objective, and focused on the true needs of people with developmental disabilities and their families.

In particular, OACB supports the adoption of OAC 5123-9-04 because it:

1. **Allows Greater Flexibility and Creativity:** The proposed rule gives county boards more opportunities to meet the most critical needs of their constituents using all available service options – not just those funded by Medicaid waivers. For far too long, people with developmental disabilities and their families have been under the mistaken impression that a Medicaid waiver is the only way their needs can be met. In reality, county boards can access a variety of programs and funding streams to help people with developmental disabilities lead happy, healthy, and fulfilling lives in their communities.
2. **Creates a Uniform Statewide Assessment:** The proposed rule establishes transparent and objective methods for determining a person's level of need through the consistent administration of a uniform needs assessment across all 88 counties. This assessment will help people more easily understand why they are or are not being placed on a waiting list (as well as where they may be positioned on a waiting list) using practical, meaningful criteria.
3. **Promotes Better Two-Way Communication:** The proposed rule increases communication between county boards of DD and the people they serve by empowering individuals and family members to speak with their local service and support administrators any time their life circumstances change. Under the proposed rule, a person can request a re-assessment at any time (regardless of whether or not they are on a waiting list). This increased level of communication will help boards more effectively address the full scope of a person's needs while he or she is waiting for a Medicaid waiver – up to and potentially including removing the need for a person to enroll on a waiver at all.

4. **Supports More Effective Allocation of Scarce Resources:** The proposed rule helps state and local policymakers direct resources where they will be most effective by identifying those with the most pressing and immediate needs. A recent study by the Ohio DD Council of more than 1,100 families on the waiting list found that 46% of participants reported having no current unmet needs, with 15% of participants going one step further and stating they did not foresee having any needs in the near future. This is not the intended outcome of a waiting list and prevents resources from being allocated where they will have the greatest and most immediate impact in families' lives.
5. **Simplifies List Management and Ensures Greater Accuracy:** The proposed rule streamlines communication processes, eliminates wasteful duplication of efforts across county lines, and shortens the length of time required to connect people on the waiting list with resources by limiting waiting list access to a person's county of residence.

#### **Request for Delayed Effective Date**

OACB would like to thank the Ohio Department of DD for agreeing to delay the effective date of the proposed rule from July 1, 2018 to September 1, 2018 in order to ensure county boards have adequate time to implement training on new policies, processes, and data collection/information systems.

It is universally accepted that this process must operate as smoothly as possible from day one if it is to succeed. A short delay in implementation will help to ensure those staff members responsible for conducting more than 49,000 individual assessments before December 31, 2020 are adequately trained and that critical information systems to collect and store this data are functioning as intended before moving forward. To neglect these items would be to substantially risk this effort's failure upon execution – which must be avoided at all costs.

Through the efforts of the "Fix The List" coalition and informed by the feedback of people with developmental disabilities and their families, we have come to the conclusion that a new process for administering Ohio's waiver waiting list is essential and overdue. For this reason, OACB supports the current draft of proposed rule OAC 5123-9-04 and encourages its adoption. Thank you for your time and consideration of these comments.

Sincerely,



BRIDGET GARGAN  
Executive Director  
Ohio Association of County Boards of DD  
73 E. Wilson Bridge Rd., Ste-B1  
Worthington, OH 43085  
(614) 431-0616 | [www.oacbdd.org](http://www.oacbdd.org) | [www.fixthelist.info](http://www.fixthelist.info)