

AN ACT

To amend sections 3734.904, 3734.907, 3769.088, 4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 5703.37, 5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 5717.01, 5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 5733.11, 5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 5739.02, 5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 5739.133, 5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 5747.13, 5747.15, 5749.07, 5749.08, and 5749.15, to enact sections 5703.054, 5703.055, 5703.056, and 5735.012, and to repeal sections 5703.141, 5735.17, 5735.32, 5739.161, and 5747.082 of the Revised Code to authorize the electronic filing of certain documents with the tax commissioner and treasurer of state, extend the time for filing petitions for reassessments, make various charges and penalties discretionary rather than mandatory, change the method of service of notices by the tax commissioner, authorize the use of delivery services instead of the postal service for delivery of certain documents to the tax commissioner, board of tax appeals, and treasurer of state, redefine and specify certain vehicles for purposes of the highway use and motor fuel taxes, establish procedures for claiming exemptions from the use tax, and make other changes related to the administration of the

tax laws by the department of taxation, and to amend the version of section 5741.02 of the Revised Code that is scheduled to take effect July 1, 2001, to continue the provisions of this act on and after that date.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3734.904, 3734.907, 3769.088, 4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 5703.37, 5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 5717.01, 5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 5733.11, 5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 5739.02, 5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 5739.133, 5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 5747.13, 5747.15, 5749.07, 5749.08, and 5749.15 be amended and sections 5703.054, 5703.055, 5703.056, and 5735.012 of the Revised Code be enacted to read as follows:

Sec. 3734.904. (A) By the twentieth day of each month, each person required to pay the fee imposed by section 3734.901 of the Revised Code shall file with the treasurer of state a return as prescribed by the tax commissioner and shall make payment of the full amount of the fee due for the preceding month after deduction of any discount provided for under division (E) of this section. The return shall be signed by the person required to file it, or an authorized employee, officer, or agent. The treasurer shall mark on the return the date it was received and indicate payment or nonpayment of the fee shown to be due on the return. The treasurer immediately shall transmit all returns to the tax commissioner. The return shall be deemed filed when received by the treasurer of state.

(B) Any person required by this section to file a return who fails to file such a return within the period prescribed ~~shall~~ may be required to pay an additional charge of fifty dollars or ten per cent of the fee required to be paid for the reporting period, whichever is greater. The commissioner may collect the additional charge by assessment pursuant to section 3734.907 of the Revised Code. The commissioner may remit all or a portion of the additional charge and may adopt rules relating thereto.

(C) If any fee due is not paid timely in accordance with this section, the person liable for the fee shall pay interest, calculated at the rate per annum

as prescribed by section 5703.47 of the Revised Code, from the date the fee payment was due to the date of payment or to the date an assessment is issued, whichever occurs first. Interest shall be paid in the same manner as the fee, and the commissioner may collect the interest by assessment pursuant to section 3734.907 of the Revised Code.

(D) If, in the estimation of the tax commissioner, the average liability of the person liable for the fee is such as not to merit monthly filing, the commissioner may authorize the person to file and pay at less frequent intervals. Returns are due by the twentieth day of the month following the close of the applicable reporting period authorized under this division.

(E) If a return is filed and the amount of the fee shown to be due on the return is paid on or before the date that the return is required to be filed under division (A) of this section or pursuant to division (D) of this section, whichever is applicable, the person liable for the fee is entitled to a discount of four per cent of the amount shown to be due on the return.

Sec. 3734.907. (A) Any person required to pay the fee imposed by section 3734.901 of the Revised Code is personally liable for the fee. The tax commissioner may make an assessment, based upon any information in the commissioner's possession, against any person who fails to file a return or pay any fee, interest, or additional charge as required by sections 3734.90 to 3734.9014 of the Revised Code. The commissioner shall give the person assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) When the information in the possession of the tax commissioner indicates that a person liable for the fee imposed by section 3734.901 of the Revised Code has not paid the full amount of fee due, the commissioner may audit a representative sample of the person's business and may issue an assessment based on the audit.

(C) A penalty of up to fifteen per cent ~~shall~~ may be added to all amounts assessed under this section. The commissioner may adopt rules providing for the imposition and remission of the penalties.

(D) Unless the person assessed files with the tax commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail as provided in section 5703.056 of the Revised Code, a petition for reassessment in writing by the person assessed or the person's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the person assessed to the treasurer of state. A petition shall indicate the objections to the assessment of the person assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the

person assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the tax commissioner. The commissioner shall grant the petitioner a hearing on the petition, unless waived by the petitioner.

The commissioner may make any correction to the assessment that the commissioner finds proper and shall issue a final determination thereon. The commissioner shall serve a copy of the final determination on the petitioner either by personal service or by certified mail, and the commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code.

(E) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the person assessed resides or in which the person's business is conducted. If the person assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the person assessed in the amount shown to be due. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state tire fee," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the day the assessment is paid. Interest shall be paid in the same manner as the fee and may be collected by the issuance of an assessment under this section.

(F) If the commissioner believes that collection of the fee will be jeopardized unless proceedings to collect or secure collection of the fee are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the fee. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (E) of this section. Notice of the jeopardy assessment shall be served on the person assessed or the person's legal representative, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry with the

clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (D) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(G) All money collected by the commissioner under this section shall be paid to the treasurer of state as revenue arising from the fee imposed by section 3734.901 of the Revised Code.

Sec. 3769.088. (A) If any permit holder required by this chapter to pay the taxes levied by sections 3769.08, 3769.087, 3769.26, and 3769.28 of the Revised Code fails to pay the taxes, the tax commissioner may make an assessment against the permit holder based upon any information in the commissioner's possession.

A penalty of up to fifteen per cent ~~shall~~ may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the tax commissioner. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall

be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the place, track, or enclosure for which the permit was issued is located or the county in which the party assessed resides or has its principal place of business. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of such entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state horse racing tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the day the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the commissioner under this section shall be treated as revenue arising from the taxes imposed by sections 3769.08, 3769.087, 3769.26, and 3769.28 of the Revised Code.

Sec. 4301.422. (A) Any person who makes sales of beer, cider, wine, or mixed beverages to persons for resale at retail in a county in which a tax has been enacted pursuant to section 4301.421 or 4301.424 of the Revised Code, and any manufacturer, bottler, importer, or other person who makes sales at retail in the a county upon which the tax has not been paid, is liable for the tax. Each person liable for the tax shall register with the tax commissioner on a form prescribed by the commissioner and provide whatever information the commissioner considers necessary.

(B) Each person liable for the tax shall file a return and pay the tax to the treasurer of state by the last day of the month following the month in which the sale occurred. The return is considered to be filed when received by the treasurer of state. The return shall be prescribed by the commissioner, and no person filing such a return shall fail to provide the information

specified on the return. If the return is filed and the amount of tax shown on the return to be due is paid on or before the date the return is required to be filed, the person required to file the return shall receive an administrative fee of two and one-half per cent of that person's total tax liability under section 4301.421 of the Revised Code for the purpose of offsetting additional costs incurred in collecting and remitting the tax. Any person required to file a return who fails to file timely ~~shall~~ may be required to forfeit and pay into the state treasury an amount not exceeding fifty dollars or ten per cent of the tax due, whichever is greater, as revenue arising from the tax. That amount may be collected by assessment in the manner specified in sections 4305.13 and 4305.131 of the Revised Code.

(C) A tax levied pursuant to section 4301.421 or 4301.424 of the Revised Code shall be administered by the tax commissioner. The commissioner shall have all powers and authority incident to such administration, including examination of records, audit, refund, assessment, and seizure and forfeiture of untaxed beverages. The procedures, rights, privileges, limitations, prohibitions, responsibilities, and duties specified in sections 4301.48 to 4301.52, 4305.13, 4305.131, and 4307.01 to 4307.12 of the Revised Code apply in the administration of the tax.

(D) Each person required to pay the tax levied pursuant to section 4301.421 or 4301.424 of the Revised Code who sells beer, cider, wine, or mixed beverages for resale at retail within a county in which the tax is levied shall clearly mark on all invoices, billings, and similar documents the amount of tax and the name of the county in which the tax is levied.

(E) Each person required to pay the tax levied by section 4301.421 or 4301.424 of the Revised Code shall maintain complete records of all sales for at least three years. The records shall be open to inspection by the tax commissioner.

Sec. 4303.33. (A) Every A-1 permit holder in this state, every bottler, importer, wholesale dealer, broker, producer, or manufacturer of beer outside this state and within the United States, and every B-1 permit holder and importer importing beer from any manufacturer, bottler, person, or group of persons however organized outside the United States for sale or distribution for sale in this state, on or before the eighteenth day of each month, shall make and file with the treasurer of state upon a form prescribed by the tax commissioner an advance tax payment in an amount estimated to equal the taxpayer's tax liability for the month in which the advance tax payment is made. If the advance tax payment credits claimed on the report are for advance tax payments received by the treasurer of state on or before the eighteenth day of the month covered by the report, the taxpayer is

led to an additional credit of three per cent of the advance tax payment and a discount of three per cent shall be allowed the taxpayer at the time of filing the report if filed as provided in division (B) of this section on any amount by which the tax liability reflected in the report exceeds the advance tax payment estimate by not more than ten per cent. The additional three per cent credit and three per cent discount shall be in consideration for advancing the payment of the tax and other services performed by the permit holder and other taxpayers in the collection of the tax. The treasurer of state shall stamp or otherwise mark thereon the date the advance tax payment was received by the treasurer and the amount of the advance tax payment, and shall transmit that information to the tax commissioner.

"Advance tax payment credit" means credit for payments made by an A-1 or B-1 permit holder and any other persons during the period covered by a report which was made in anticipation of the tax liability required to be reported on that report.

"Tax liability" as used in division (A) of this section means the total gross tax liability of an A-1 or B-1 permit holder and any other persons for the period covered by a report before any allowance for credits and discount.

(B) Every A-1 permit holder in this state, every bottler, importer, wholesale dealer, broker, producer, or manufacturer of beer outside this state and within the United States, and every B-1 permit holder importing beer from any manufacturer, bottler, person, or group of persons however organized outside the United States, on or before the tenth day of each month, shall make and file a report for the preceding month upon a form prescribed by the tax commissioner which report shall show the amount of beer produced, sold, and distributed for sale in this state by the A-1 permit holder, sold and distributed for sale in this state by each manufacturer, bottler, importer, wholesale dealer, or broker outside this state and within the United States, and the amount of beer imported into this state from outside the United States and sold and distributed for sale in this state by the B-1 permit holder or importer.

The report shall be filed by mailing it to the treasurer of state, together with payment of the tax levied by sections 4301.42 and 4305.01 of the Revised Code shown to be due on the report after deduction of advance payment credits and any additional credits or discounts provided for under this section. The treasurer of state shall stamp or otherwise mark on each report the date it was received by the treasurer, the amount of the tax payment accompanying the report, and shall transmit the report to the tax commissioner.

(C) Every A-2 and A-4, B-2, B-3, B-4, and B-5 permit holder in this

state, on or before the eighteenth day of each month, shall make and file a report with the treasurer of state upon a form prescribed by the tax commissioner which report shall show, on the report of each A-2 and A-4 permit holder the amount of wine, cider, and mixed beverages produced and sold, or sold in this state by each such A-2 and A-4 permit holder for the next preceding calendar month and such other information as the tax commissioner requires, and on the report of each such B-2, B-3, B-4, and B-5 permit holder the amount of wine, cider, and mixed beverages purchased from an importer, broker, wholesale dealer, producer, or manufacturer located outside this state and sold and distributed in this state by such B-2, B-3, B-4, and B-5 permit holder, for the next preceding calendar month and such other information as the tax commissioner requires.

Every such A-2, A-4, B-2, B-3, B-4, and B-5 permit holder in this state shall remit with the report the tax levied by sections 4301.43 and, if applicable, 4301.432 of the Revised Code less a discount thereon of three per cent of the total tax so levied and paid, provided the return is filed together with remittance of the amount of tax shown to be due thereon, within the time prescribed. The treasurer of state shall stamp or otherwise mark on all reports the date it was received by the treasurer and the amount of tax payment accompanying all reports and shall transmit the return to the commissioner. Any permit holder or other persons who fail to file a report under this section, for each day the person so fails, ~~shall~~ may be required to forfeit and pay into the state treasury the sum of one dollar as revenue arising from the tax imposed by sections 4301.42, 4301.43, 4301.432, and 4305.01 of the Revised Code, and that sum may be collected by assessment in the manner provided in section 4305.13 of the Revised Code.

(D) Every B-1 permit holder and importer in this state importing beer from any manufacturer, bottler, person, or group of persons however organized, outside the United States, if required by the tax commissioner shall post a bond payable to the state in such form and amount as the commissioner prescribes with surety to the satisfaction of the tax commissioner, conditioned upon the payment to the treasurer of state of taxes levied by sections 4301.42 and 4305.01 of the Revised Code.

(E) No such wine, beer, cider, or mixed beverages sold or distributed in this state shall be taxed more than once under sections 4301.42, 4301.43, and 4305.01 of the Revised Code.

(F) As used in this section:

(1) "Cider" has the same meaning as in section 4301.01 of the Revised Code.

(2) "Wine" has the same meaning as in section 4301.01 of the Revised Code, except that "wine" does not include cider.

Sec. 4305.13. (A) If the tax commissioner finds that any permit holder, liable for tax under Chapter 4301., 4305., or 4307. of the Revised Code, is about to depart from the state, remove the permit holder's property from the state, conceal the permit holder's self or property, or do any other act tending to prejudice, obstruct, or render wholly or partially ineffectual proceedings to collect the tax, unless the proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any permit holder will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the permit holder for the amount of the tax, plus a penalty of up to thirty per cent. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest as prescribed by section 4305.131 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 4305.131 of the Revised Code. Notice of the jeopardy assessment shall be served on the permit holder assessed or the permit holder's legal representative, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The permit holder assessed may petition for reassessment within ~~thirty~~ sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 4305.131 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to section 2923.35, 2933.41, or 2933.43 of the Revised Code need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the permit holder subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for

reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the permit holder previously seized. Upon satisfaction of the assessment the commissioner shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments under this section.

Sec. 4305.131. (A) If any permit holder fails to pay the taxes levied in section 4301.42, 4301.43, 4301.432, or 4305.01 of the Revised Code in the manner prescribed by section 4303.33 of the Revised Code, or in section 4301.421 or 4301.424 of the Revised Code in the manner prescribed in section 4301.422 of the Revised Code, and by the rules of the tax commissioner, the commissioner may make an assessment against the permit holder based upon any information in the commissioner's possession.

No assessment shall be made against any permit holder for any taxes imposed by section 4301.42, 4301.421, 4301.424, 4301.43, 4301.432, or 4305.01 of the Revised Code more than three years after the last day of the calendar month in which the sale was made or more than three years after the return for that period is filed, whichever is later. This section does not bar an assessment against any permit holder or registrant as provided in section 4303.331 of the Revised Code who fails to file a return as required by section 4301.422 or 4303.33 of the Revised Code, or who files a fraudulent return.

A penalty of up to thirty per cent ~~shall~~ may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail as provided in section 5703.056 of the Revised Code, a petition for reassessment in writing, signed by the party assessed, or by that party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the permit holder's place of business is located or the county in which the party assessed resides. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state beer and liquor sales taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment except as otherwise provided in this chapter and Chapters 4301. and 4307. of the Revised Code.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by sections 4301.42, 4301.421, 4301.424, 4301.43, 4301.432, and 4305.01 of the Revised Code.

Sec. 5703.05. All powers, duties, and functions of the department of taxation are vested in and shall be performed by the tax commissioner,

h powers, duties, and functions shall include, but shall not be limited to, the following:

(A) Prescribing all blank forms which the department is authorized to prescribe, and to provide such forms and distribute the same as required by law and the rules of the department. The tax commissioner shall include a mail-in registration form prescribed in section 3503.14 of the Revised Code within the return and instructions for the tax levied in odd-numbered years under section 5747.02 of the Revised Code, beginning with the tax levied for 1995. The secretary of state shall bear all costs for the inclusion of the mail-in registration form. That form shall be addressed for return to the office of the secretary of state.

(B) Exercising the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes or assessments, including penalties and interest thereon, illegally or erroneously assessed or collected, or for any other reason overpaid, and in addition, the commissioner may on written application of any person, firm, or corporation claiming to have overpaid to the treasurer of state at any time within five years prior to the making of such application any tax payable under any law which the department of taxation is required to administer which does not contain any provision for refund, or on the commissioner's own motion investigate the facts and make in triplicate a written statement of the commissioner's findings, and, if the commissioner finds that there has been an overpayment, issue in triplicate a certificate of abatement payable to the taxpayer, the taxpayer's assigns, or legal representative which shows the amount of the overpayment and the kind of tax overpaid. One copy of such statement shall be entered on the journal of the commissioner, one shall be certified to the attorney general, and one certified copy shall be delivered to the taxpayer. All copies of the certificate of abatement shall be transmitted to the attorney general, and if the attorney general finds it to be correct the attorney general shall so certify on each copy, and deliver one copy to the taxpayer, one copy to the commissioner, and the third copy to the treasurer of state. Except as provided in sections 5725.08 and 5725.16 of the Revised Code the taxpayer's copy of any certificates of abatement may be tendered by the payee or transferee thereof to the treasurer of state as payment, to the extent of the amount thereof, of any tax payable to the treasurer of state.

(C) Exercising the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(D) Exercising the authority provided by law relative to the use of alternative tax bases by taxpayers in the making of personal property tax returns;

(E) Exercising the authority provided by law relative to authorizing the prepayment of taxes on retail sales of tangible personal property or on the storage, use, or consumption of personal property, and waiving the collection of such taxes from the consumers;

(F) Exercising the authority provided by law to revoke licenses;

(G) Maintaining a continuous study of the practical operation of all taxation and revenue laws of the state, the manner in which and extent to which such laws provide revenues for the support of the state and its political subdivisions, the probable effect upon such revenue of possible changes in existing laws, and the possible enactment of measures providing for other forms of taxation. For this purpose the commissioner may establish and maintain a division of research and statistics, and may appoint necessary employees who shall be in the unclassified civil service; the results of such study shall be available to the members of the general assembly and the public.

(H) Making all tax assessments, valuations, findings, determinations, computations, and orders the department of taxation is by law authorized and required to make and, pursuant to time limitations provided by law, on the commissioner's own motion, reviewing, redetermining, or correcting any tax assessments, valuations, findings, determinations, computations, or orders the commissioner has made, but the commissioner shall not review, redetermine, or correct any tax assessment, valuation, finding, determination, computation, or order which the commissioner has made as to which an appeal or application for rehearing, review, redetermination, or correction has been filed with the board of tax appeals, unless such appeal or application is withdrawn by the appellant or applicant or dismissed;

(I) Appointing not more than five deputy tax commissioners, who, under such regulations as the rules of the department of taxation prescribe, may act for the commissioner in the performance of such duties as the commissioner prescribes in the administration of the laws which the commissioner is authorized and required to administer, and who shall serve in the unclassified civil service at the pleasure of the commissioner, but if a person who holds a position in the classified service is appointed, it shall not affect the civil service status of such person; The commissioner may designate not more than two of the deputy commissioners to act as commissioner in case of the absence, disability, or recusal of the commissioner or vacancy in the office of commissioner. The commissioner may adopt rules relating to the order of precedence of such designated deputy commissioners and to their assumption and administration of the office of commissioner.

(J) Appointing and prescribing the duties of all other employees of the department of taxation necessary in the performance of the work of the department which the tax commissioner is by law authorized and required to perform, and creating such divisions or sections of employees as, in the commissioner's judgment, is proper;

(K) Organizing the work of the department, which the commissioner is by law authorized and required to perform, so that, in the commissioner's judgment, an efficient and economical administration of the laws will result;

(L) Maintaining a journal, which is open to public inspection, in which the commissioner shall keep a record of all actions taken by the commissioner relating to assessments and the reasons therefor;

(M) Adopting and promulgating, in the manner provided by section 5703.14 of the Revised Code, all rules of the department, including rules for the administration of sections 3517.16, 3517.17, and 5747.081 of the Revised Code;

(N) Destroying any or all returns or assessment certificates in the manner authorized by law;

(O) Adopting rules, in accordance with division (B) of section 325.31 of the Revised Code, governing the expenditure of moneys from the real estate assessment fund under that division.

Sec. 5703.054. The tax commissioner shall prescribe the form that the signature and declaration, if any, shall take on any document required to be filed with the commissioner and on any document required under Chapter 3734., 3769., 4303., or 4305. or Title LVII of the Revised Code to be filed with the treasurer of state. The commissioner may authorize an electronic or other alternative form of filing of any document required to be filed with the commissioner or the treasurer of state under Chapter 3734., 3769., 4303., or 4305. or Title LVII of the Revised Code.

Sec. 5703.055. A person may, and if required by the tax commissioner shall, round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped. If a person chooses or is required to round amounts entered on the document, the person shall round all amounts entered.

Sec. 5703.056. (A) As used in any section of the Revised Code that requires or permits a payment to be made or document to be submitted to the tax commissioner or the board of tax appeals by mail and As used in any section of Chapter 3734., 3769., 4303., or 4305. or Title lvii of the Revised Code that requires or permits a payment to be made or document to be

submitted to the treasurer of state by mail:

(1) "Certified mail," "express mail," "United States mail," "United States Postal Service," and similar terms include any delivery service authorized pursuant to division (B) of this section.

(2) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of this section.

(B) The tax commissioner may authorize the use of a delivery service for the delivery of any payment or document described in division (A) of this section if the commissioner finds that the delivery service:

(1) Is available to the general public;

(2) is at least as timely and reliable on a regular basis as the United States postal service;

(3) Records electronically to a database kept in the regular course of its business, and marks on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery;

(4) Records electronically to a database kept in the regular course of its business the date on which the payment or document was given by the delivery service to the person who signed the receipt of delivery and the name of the person who signed the receipt; and

(5) meets any other criteria that the tax commissioner may by rule prescribe.

~~Sec. 5703.11. The department of taxation shall be in continuous session and open for the transaction of business during the business hours of every day, except Saturdays, Sundays, and legal holidays. All sessions shall be open to the public, and sessions of the department shall stand and be adjourned without further notice thereof on its records.~~

~~All of the proceedings of the department shall be shown on its record of proceedings, which shall be a public record, and all voting shall be by calling each member's name by the secretary, and each member's vote shall be recorded on the record of proceedings as cast.~~

~~Sec. 5703.37. Every~~ Except as otherwise provided by section 5711.28, 5711.31, 5727.47, or 5731.27 of the Revised Code, a certified copy of every order or notice, service of which is required, shall be served upon the person ~~or corporation~~ affected thereby either by personal delivery ~~of a certified copy~~ or by mailing a certified copy by registered mail to the person affected thereby, or in case of a corporation, to any officer or agent upon whom a summons may be served. Within the time specified in the order of the department of taxation every person ~~or corporation~~ upon whom it is served,

if required by the order, shall notify the department, in like manner, whether the terms of the order are accepted and will be obeyed.

Sec. 5705.37. The taxing authority of any subdivision that is dissatisfied with any action of the county budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by the subdivision of the official certificate or notice of the commission's action. In like manner, but through its clerk, the board of trustees of any public library, nonprofit corporation, or library association maintaining a free public library that has adopted and certified rules under section 5705.28 of the Revised Code, or any park district may appeal to the board of tax appeals. An appeal under this section shall be taken by the filing of a notice of appeal, either in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, with the board and with the commission. If notice of appeal is filed by certified mail, express mail, or authorized delivery service, date of the United States postmark placed on the sender's receipt by the postal ~~employee to whom the notice of appeal is presented~~ service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of the notice of appeal, the commission, by certified mail, shall notify all persons who were parties to the proceeding before the commission of the filing of the notice of appeal and shall file proof of notice with the board of tax appeals. The secretary of the commission shall forthwith certify to the board a transcript of the full and accurate record of all proceedings before the commission, together with all evidence presented in the proceedings or considered by the commission, pertaining to the action from which the appeal is taken. The secretary of the commission also shall certify to the board any additional information that the board may request.

The board of tax appeals, in a de novo proceeding, shall forthwith consider the matter presented to the commission, and may modify any action of the commission with reference to the budget, the estimate of revenues and balances, the allocation of the library and local government support fund, or the fixing of tax rates. The finding of the board of tax appeals shall be substituted for the findings of the commission, and shall be certified to the tax commissioner, the county auditor, and the taxing authority of the subdivision affected, or to the board of public library trustees affected, as the action of the commission under sections 5705.01 to 5705.47 of the Revised Code.

This section does not give the board of tax appeals any authority to place any tax levy authorized by law within the ten-mill limitation outside of that limitation, or to reduce any levy below any minimum fixed by law.

Sec. 5711.04. ~~Returns~~ (A) Except as otherwise provided in division (B) of the section, returns shall be made, annually, between the fifteenth day of February and the thirtieth day of April; but when a person or taxpayer engages in business in this state after the first day of January in any year he shall make a return within ninety days of commencing such business Upon verified application of any taxpayer, and for good cause shown, the county auditor may extend the time within which such taxpayer may make ~~his a~~ a return ~~for a further specified period, not exceeding forty-five days to the fifteenth day of June~~ If the county auditor fails to allow, in whole, a timely application of the taxpayer for an extension of time for filing ~~his a~~ a return, the taxpayer, upon payment on or before the thirtieth day of April of an amount equal to one-half of ~~his the taxpayer's~~ the taxpayer's tax for the next preceding year, shall make ~~his a~~ a return on or before the fifteenth day of June. ~~The~~

(B) When a taxpayer first engages in business in this state after the first day of January in any year, the taxpayer shall make a return within ninety days of commencing such business. Upon verified application of the taxpayer, and for good cause shown, the county auditor may extend the time within which the taxpayer may make the return for a further specified period not exceeding forty-five days.

(C) The county auditor shall certify any extension of time acquired by the taxpayer to the tax commissioner, and the commissioner shall have the same power as to a taxpayer who is required to make return to ~~him~~ the commissioner.

Sec. 5711.18. In the case of accounts receivable, the book value thereof less book reserves shall be listed and shall be taken as the true value thereof unless the assessor finds that such net book value is greater or less than the then true value of such accounts receivable in money. In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money. Claim for any deduction from net book value of accounts receivable or depreciated book value of personal property must be made in writing by the taxpayer at the time of making ~~his the taxpayer's~~ the taxpayer's return; and when such return is made to the county auditor who is required by sections 5711.01 to 5711.36, inclusive, of the Revised Code, to transmit it to the tax commissioner for assessment, the auditor shall, as deputy of the commissioner, investigate such claim and shall enter thereon, or attach thereto, in such form as the commissioner prescribes, ~~his the auditor's~~ the auditor's findings and recommendations with respect thereto; when such return is

made to the commissioner, such claim for deduction from depreciated book value of personal property shall be referred to the auditor, as such deputy, of each county in which the property affected thereby is listed for investigation and report.

Any change in the method of determining true value, as prescribed by the tax commissioner on a prospective basis, shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions of any taxpayer obtained by the commissioner for the purpose of adopting or modifying any such method shall not be subject to discovery or disclosure.

Sec. 5711.25. On or before the second Monday of August, annually, the tax commissioner shall transmit to the county auditor of each county the preliminary assessment certificates pertaining to ~~his~~ the auditor's county of taxpayers having taxable property in more than one county. The commissioner shall transmit to the auditor any amended assessment certificate issued by ~~him~~ the commissioner, and the auditor shall transmit to the commissioner copies of all amended assessment certificates made and issued by ~~him~~ the auditor. Each preliminary assessment certificate, and if amended such preliminary assessment certificate as last amended, shall become final on the second Monday of August of the second year after the filing of a return with the county auditor or after the certification of the preliminary assessment certificate, or ~~thirty~~ sixty days after the certification of an amended assessment certificate which has been issued less than ~~thirty~~ sixty days prior to such second Monday of August; unless prior to the expiration of said period or extended period one of the following occurred:

(A) A final assessment certificate as to the taxpayer represented thereby has been issued pursuant to section 5711.26 of the Revised Code;

(B) Such taxpayer in writing has waived such time limitation and consented to the issuance of ~~his~~ the taxpayer's assessment certificate after the expiration of such time limitation, in which case the assessment certificate issued after the expiration of such time limitation, if an amended preliminary assessment certificate, shall become final ~~thirty~~ sixty days after the mailing of the notice of such assessment if no petition for reassessment of the assessment has been filed pursuant to section 5711.31 of the Revised Code;

(C) A petition for reassessment of the assessment represented thereby has been filed pursuant to section 5711.31 of the Revised Code, in which event the filing of such petition shall waive such time limitation and be a consent to the issuance of the petitioner's final assessment certificate at the

time, under the circumstances, and by the authority provided by any law relating to further administrative or judicial review of the assessment represented thereby; provided that in the event of the dismissal of such petition by the petitioner, the assessment shall become final as provided in this section as though no petition for reassessment had been filed. This section does not deprive any taxpayer who has not received the notice prescribed by section 5711.31 of the Revised Code at least ~~thirty~~ sixty days prior to the expiration of such period of limitation of the right to file such petition for reassessment. This section shall apply to all assessments made and certified under sections 5711.01 to 5711.36, 5725.08, and 5725.16 of the Revised Code.

The assessment certificates and copies thereof mentioned in this section shall not be open to public inspection.

Sec. 5711.28. Whenever the assessor imposes a penalty prescribed by section 5711.27 of the Revised Code, ~~he~~ the assessor shall send notice of such penalty assessment to the taxpayer by mail. If the notice also reflects the assessment of any property not listed in or omitted from a return, or the assessment of any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, and the taxpayer objects to one or more of such corrections in addition to the penalty, ~~he~~ the taxpayer shall proceed as prescribed by section 5711.31 of the Revised Code, but if no such correction is reflected in the notice, or if the taxpayer does not object to any such correction made, he shall proceed as prescribed herein.

Within ~~thirty~~ sixty days after the mailing of the notice of a penalty assessment prescribed by this section, the taxpayer may file with the tax commissioner, in person or by certified mail, a petition for abatement of such penalty assessment. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, BUT THE FAILURE TO ATTACH A copy of such notice and incorporate it by reference does not invalidate the petition. The petition shall also indicate that the taxpayer's only objection is to the assessed penalty and the reason for such objection.

Upon the filing of a petition for abatement of penalty, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county

having any part of the penalty assessment entered on the tax list or duplicate. The commissioner shall review the petition without the need for hearing. If it appears that the failure of the taxpayer to timely return or list was due to reasonable cause and not willful neglect, the commissioner may abate in whole or in part the penalty assessment. The commissioner shall transmit a certificate of ~~his~~ the commissioner's determination to the taxpayer, and if no appeal is taken therefrom as provided by law, or upon the final determination of an appeal which may be taken, ~~he~~ the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders abatement of the penalty assessment, the notification may be in the form of an amended assessment certificate. Upon receipt of the notification, the treasurer of state or county auditor shall make any corrections to ~~his~~ the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The decision of the commissioner shall be final with respect to the percentage of penalty, if any, ~~he~~ the commissioner finds appropriate for the failure to return timely or list the property, but neither ~~his~~ the commissioner's decision nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall finalize the assessment of such property.

Sec. 5711.31. Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. The mailing of such notice of assessment shall be prima-facie evidence of the receipt of the same by the person to whom such notice is addressed.

Within ~~thirty~~ sixty days after the mailing of the notice of assessment prescribed in this section, the party assessed may file with the tax commissioner, in person or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by ~~his~~ the party's authorized agent having knowledge of the facts. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of,

but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition also shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the assessment entered on the tax list or duplicate.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment, as ~~he~~ the commissioner finds proper. The commissioner shall serve a copy of ~~his~~ the commissioner's final determination on the petitioner by personal service or by certified mail, and ~~his~~ the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of ~~his~~ the commissioner's final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders correction of the assessment, the notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the proper county auditor shall make any corrections to ~~his~~ the treasurer's or auditor's records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The decision of the commissioner upon such petition for reassessment shall be final with respect to the assessment of all taxable property listed in the return of the taxpayer and shall constitute to that extent the final determination of the commissioner with respect to such assessment. Neither this section nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall preclude the subsequent assessment in the manner authorized by law of any taxable property which such taxpayer failed to list in such return, or which the assessor has not theretofore assessed.

As used in this section, "taxpayer" includes financial institutions, dealers in intangibles, and domestic insurance companies as defined in

section 5725.01 of the Revised Code.

Sec. 5717.01. An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, ~~either~~ in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal ~~employee to whom the notice of appeal is presented~~ service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

Sec. 5717.02. Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county

rs of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if ~~his~~ the tax commissioner's action is the subject of the appeal or with the director of development if ~~his~~ the director's action is the subject of the appeal, within ~~thirty~~ sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given ~~or otherwise evidenced as required by law~~ as provided in section 5703.37 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal ~~employee to whom the notice of appeal is presented~~ service of the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer or enterprise of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before ~~him~~ the commissioner or director, together with all evidence considered by ~~him~~ the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or

director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

Sec. 5727.11. (A) Except as otherwise provided in this section, the true value of all taxable property required by division (A)(2) or (3) of section 5727.06 of the Revised Code to be assessed by the tax commissioner shall be determined by a method of valuation using cost as capitalized on the public utility's books and records less composite annual allowances as prescribed by the commissioner. If the commissioner finds that application of this method will not result in the determination of true value of the public utility's taxable property, the commissioner may use another method of valuation.

(B) The true value of current gas stored underground is the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

(C) The true value of noncurrent gas stored underground is thirty-five per cent of the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

(D)(1) Except as provided in division (D)(2) of this section, the true value of the production equipment of an electric company and the true value of all taxable property of a rural electric company is the equipment's or property's cost as capitalized on the company's books and records less fifty per cent of that cost as an allowance for depreciation and obsolescence.

(2) The true value of the production equipment of an electric company or rural electric company purchased, transferred, or placed into service after the effective date of this amendment is the purchase price of the equipment as capitalized on the company's books and records less composite annual allowances as prescribed by the tax commissioner.

(E) The true value of taxable property described in division (A)(2) or (3) of section 5727.06 of the Revised Code shall not include the allowance for funds used during construction or interest during construction that has been capitalized on the public utility's books and records as part of the total cost of the taxable property. This division shall not apply to the taxable property of an electric company or a rural electric company, excluding transmission and distribution property, first placed into service after December 31, 2000, or to the taxable property a person purchases, which includes transfers, if that property was used in business by the seller prior to the purchase.

(F) The true value of watercraft owned or operated by a water transportation company shall be determined by multiplying the true value of the watercraft as determined under division (A) of this section by a fraction,

the numerator of which is the number of revenue-earning miles traveled by the watercraft in the waters of this state and the denominator of which is the number of revenue-earning miles traveled by the watercraft in all waters.

(G) The cost of property subject to a sale and leaseback transaction is the cost of the property as capitalized on the books and records of the public utility owning the property immediately prior to the sale and leaseback transaction.

(H) The cost as capitalized on the books and records of a public utility includes amounts capitalized that represent regulatory assets, if such amounts previously were included on the company's books and records as capitalized costs of taxable personal property.

(I) Any change in the composite annual allowances as prescribed by the commissioner on a prospective basis shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions of any taxpayer obtained by the commissioner for the purpose of adopting or modifying the composite annual allowances shall not be subject to discovery or disclosure.

Sec. 5727.26. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any natural gas company or combined electric and gas company that fails to file a return or pay any tax, interest, or additional charge as required by sections 5727.24 to 5727.29 of the Revised Code. The commissioner shall give the company assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code. A penalty of up to fifteen per cent may be added to all amounts assessed under this section. The tax commissioner may adopt rules providing for the imposition and remission of the penalty.

(B) If a party to whom the notice of assessment is directed objects to the assessment, the party may file a petition for reassessment with the tax commissioner. The petition must be made in writing, signed by the party or the party's authorized agent having knowledge of the facts, and filed with the commissioner, either personally or by certified mail, within ~~thirty~~ sixty days after service of the notice of assessment. The petition shall indicate the objections of the company assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination of the commissioner. Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state.

Unless the petitioner waives a hearing, the commissioner shall grant the petitioner a hearing on the petition, assign a time and place for the hearing,

and notify the petitioner of the time and place of the hearing, ~~by personal service or certified mail as provided in section 5703.37 of the Revised Code.~~ The commissioner may continue the hearing from time to time, if necessary.

If the party to whom the notice of assessment is directed does not file a petition for reassessment, the assessment is final and the amount of the assessment is due and payable from the company assessed to the treasurer of state.

(C) The tax commissioner may make any correction to the assessment that the commissioner finds proper and shall issue a final determination thereon. The commissioner shall serve a copy of the final determination on the petitioner ~~either by personal service or certified mail as provided in section 5703.37 of the Revised Code,~~ and the commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of the final determination to the treasurer of state. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of an amount paid pursuant to the assessment.

(D) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the natural gas company's or combined electric and gas company's principal place of business is located, or in the office of the clerk of court of common pleas of Franklin county.

The clerk, immediately on the filing of the entry, must enter judgment for the state against the company assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled, "special judgments for the public utility excise tax on natural gas and combined electric and gas companies," and shall have the same effect as other judgments. Execution shall issue upon the judgment at the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(E) If the tax commissioner believes that collection of the tax will be

jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. On issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (D) of this section. Notice of the jeopardy assessment shall be served on the party assessed or the party's legal representative as provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) All interest collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered revenue arising from the tax imposed by section 5727.24 of the Revised Code.

(G) No assessment shall be made or issued against a natural gas company or combined electric and gas company for the tax imposed by section 5727.24 of the Revised Code more than four years after the return date for the period in which the tax was reported, or more than four years after the return for the period was filed, whichever is later.

Sec. 5727.47. A copy of each assessment certified pursuant to section 5727.23 or 5727.38 of the Revised Code shall be mailed to the public utility, and its mailing shall be prima-facie evidence of its receipt by the public utility to which it is addressed. If a public utility objects to any assessment certified to it pursuant to such sections, it may file a petition for reassessment with the tax commissioner. The petition must be made in writing, signed by the authorized agent of the utility having knowledge of the facts, and filed with the commissioner, in person or by certified mail, within ~~thirty~~ sixty days from the date that the assessment was mailed. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. A true copy of the assessment objected to shall be attached to the petition and shall be incorporated by reference into the petition, but the failure to attach a copy of the assessment and incorporate it by reference does not invalidate the petition. The petition also shall indicate the utility's objections, but additional objections may be raised in writing if received prior to the date shown on the final

determination by the commissioner.

Notwithstanding the fact that a petition has been filed, the tax with respect to the assessment objected to shall be paid as required by law. The acceptance of the tax payment by the treasurer of state or any county treasurer shall not prejudice any claim for taxes on final determination by the commissioner or final decision by the board of tax appeals or any court.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor of each county to which the assessment objected to has been certified.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of the final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the public utility and, as appropriate, the treasurer of state who shall proceed under section 5727.42 of the Revised Code, or the applicable county auditor who shall proceed under section 5727.471 of the Revised Code. The notification is not subject to further appeal.

Sec. 5727.89. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any electric distribution company, self-assessing purchaser, or qualified end user that fails to file a return or pay any tax, interest, or additional charge as required by sections 5727.80 to 5727.95 of the Revised Code.

When information in the possession of the tax commissioner indicates that a person liable for the tax imposed by section 5727.81 of the Revised Code has not paid the full amount of tax due, the commissioner may audit a representative sample of the person's business and may issue an assessment based on the audit. The commissioner shall give the person assessed written notice of the assessment by personal service or certified mail.

The tax commissioner may issue an assessment for which the tax imposed by section 5727.81 of the Revised Code was due and unpaid on the date the person was informed by an agent of the tax commissioner of an

investigation or audit of the person. Any payment of the tax for the period covered by the assessment, after the person is so informed, shall be credited against the assessment.

A penalty of fifteen per cent ~~shall~~ may be added to all amounts assessed under this section. The commissioner may adopt rules providing for the imposition and remission of penalties.

(B) Unless the party assessed files with the tax commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the party assessed or the party's authorized agent having knowledge of the facts, the assessment is final and the amount of the assessment is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the tax commissioner. The commissioner shall grant the petitioner a hearing on the petition, unless waived by the petitioner.

(C) The commissioner may make any correction to the assessment that the commissioner finds proper and shall issue a final determination thereon. The commissioner shall serve a copy of the final determination on the petitioner either by personal service or by certified mail as provided in section 5703.37 of the Revised Code, and the commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code.

(D) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the party's business is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for the kilowatt-hour tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment at the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax

commissioner issues the assessment until the day the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(E) If the tax commissioner believes that collection of the tax imposed by section 5727.81 of the Revised Code will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the electric distribution company, self-assessing purchaser, or qualified end user liable for the tax. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (D) of this section. Notice of the jeopardy assessment shall be served on the party assessed or the party's legal representative within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the party assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by section 5727.81 of the Revised Code.

Sec. 5728.01. As used in sections 5728.02 to 5728.14, ~~inclusive~~, of the Revised Code:

(A) "Motor vehicle" means everything on wheels ~~which~~ that is self-propelled, other than by muscular power or power collected from electric trolley wires and other than vehicles or machinery not designed for or employed in general highway transportation, used to transport or propel property over a public highway.

(B) "Commercial car" means any motor vehicle used for transporting property, wholly on its own structure on a public highway.

(C) "Commercial tractor" means any motor vehicle designed and used to propel or draw a trailer or semi-trailer or both on a public highway without having any provision for carrying loads independently of such trailer or semi-trailer.

(D) "Trailer" means everything on wheels ~~which~~ that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation ~~and except vehicles whose total weight excluding load is less than three thousand pounds~~, used for carrying

property wholly on its own structure and for being drawn by a motor vehicle on a public highway, including any such vehicle when formed by or operated as a combination of a semi-trailer and a vehicle of the dolly type such as that commonly known as a trailer dolly. "Trailer" does not include manufactured homes as defined in division (C)(4) of section 3781.06 of the Revised Code or mobile homes as defined in division (O) of section 4501.01 of the Revised Code.

(E) "Semi-trailer" means everything on wheels ~~which~~ that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation ~~and except vehicles whose total weight excluding load is less than three thousand pounds~~, designed and used for carrying property on a public highway when being propelled or drawn by a commercial tractor when part of its own weight or the weight of its load, or both, rest upon and is carried by a commercial tractor.

(F) "Commercial tandem" means any commercial car and trailer or any commercial tractor, semi-trailer, and trailer when fastened together and used as one unit.

(G) "Commercial tractor combination" means any commercial tractor and semi-trailer when fastened together and used as one unit.

(H) "Axle" means two or more load carrying wheels mounted in a single transverse vertical plane.

(I) "Public highway" means any highway, road, or street dedicated to public use except a highway under the control and jurisdiction of the Ohio turnpike commission created by the provisions of section 5537.02 of the Revised Code.

Sec. 5728.02. (A) Except as provided in section 5728.03 of the Revised Code, every person who is liable for the tax imposed by section 5728.06 of the Revised Code on the operation of a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor that is, or is to be, operated or driven upon a public highway shall cause to be filed annually with the tax commissioner a written application for a highway use permit on blank forms to be furnished by the commissioner for that purpose.

Each application for a highway use permit for a commercial car or a commercial tractor shall contain any information the tax commissioner prescribes.

~~The application shall be accompanied by a fee of two dollars.~~

(B) Upon receipt of the application ~~and fee~~, the commissioner shall

issue to the person making the application a highway use permit and any identification device that ~~he~~ the commissioner considers necessary for the proper administration of this chapter. The permit and the identification device shall be of a design and contain any information the commissioner considers necessary. The identification device shall be displayed on the commercial car or commercial tractor for which it was issued at all times in the manner the commissioner prescribes. The highway use permits and the identification device shall not be transferable. In case of the loss of a highway use permit or identification device, the commissioner shall issue a duplicate of the permit or device ~~upon payment of a fee of one dollar.~~

The highway use permit shall be valid until it expires or is suspended or surrendered. ~~All moneys collected pursuant to the provisions of this section shall be deposited in the state treasury in accordance with the provisions of section 5728.08 of the Revised Code.~~

Sec. 5728.03. (A) In lieu of filing an application for a AN annual highway use permit under section 5728.02 of the Revised Code and in lieu of filing returns under section 5728.08 of the Revised Code, a person who is the owner of a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor that is, or is to be, operated or driven upon a public highway, may file an application with the tax commissioner for a single-trip highway use permit. The application shall be ~~accompanied by a fee of two dollars and~~, based on rules adopted by the tax commissioner, and shall include an amount estimated to be substantially equivalent to the highway use and motor vehicle fuel use tax liability that the applicant will incur by driving on the highways of this state during the period covered by the single-trip permit. The amount so estimated shall be considered to be the highway use tax and motor vehicle fuel use tax liability so incurred.

The commissioner may authorize independent permit services or other persons to issue single-trip highway use permits.

(B) The commissioner shall adopt rules establishing all of the following:

- (1) Procedures for the issuance of single-trip permits;
- (2) The length of time the permits are effective;
- (3) Requirements that independent permit services or other persons must meet to be authorized to issue single-trip highway use permits and procedures for obtaining that authorization;
- (4) Estimates of the amount substantially equivalent to the highway use and motor vehicle fuel use tax liability that an applicant will incur by

driving on the highways of this state during the period covered by the permit.

(C) No person whose highway use permit issued under section 5728.02 of the Revised Code is currently under suspension in accordance with section 5728.11 of the Revised Code shall be issued a single-trip highway use permit under this section.

(D) All moneys collected pursuant to this section shall be deposited in the state treasury in accordance with section 5728.08 of the Revised Code.

Sec. 5728.04. It shall be unlawful, on and after September 30, 1955, for any person to operate a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor when operated alone or as part of a commercial tractor combination or commercial tandem on a public highway without a valid highway use permit for such commercial car or commercial tractor.

The judge or magistrate of any court finding any person guilty of unlawfully operating a commercial car or commercial tractor as provided for in this section shall immediately notify the tax commissioner of such violation and shall transmit to the commissioner the name and the permanent address of the owner of the commercial car or commercial tractor operated in violation of this section, the registration number, the state of registration, and the certificate of title number of the commercial car or commercial tractor.

Sec. 5728.06. For the purpose of providing revenues to pay the cost of administering and enforcing the laws pertaining to the levy and collection of the tax imposed by this section, to provide funds to pay the state's share of the cost of constructing or reconstructing highways and eliminating railway grade crossings on the major thoroughfares of the state highway system and urban extensions thereof, and to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, there is hereby levied a highway use tax upon each commercial car with three or more axles when operated alone or as part of a commercial tandem, each commercial car with two axles used as a part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, and each commercial tractor operated alone or used as part of a commercial tractor combination or commercial tandem. Except as provided in section 5728.05 of the Revised Code, the rates shall

be as follows:

(A) One-half cent for each mile traveled on a public highway in Ohio by each commercial car with three or more axles;

(B) One cent for each mile traveled on a public highway in Ohio by a commercial tandem with three axles or a commercial tractor operated alone or as part of a commercial tractor combination with three axles;

(C) One and one-half cents for each mile traveled on a public highway in Ohio by a commercial tractor operated as a part of a commercial tractor combination with four axles;

(D) Two cents for each mile traveled on a public highway in Ohio by a commercial tractor operated as part of a commercial tractor combination with a total of five or more axles;

(E) Two and one-half cents for each mile traveled on a public highway in Ohio by each commercial car or commercial tractor operated as part of a commercial tandem with four or more axles.

The owner of each commercial car and commercial tractor subject to sections 5728.01 to 5728.14 of the Revised Code shall be liable for the payment of the full amount of the taxes levied herein.

An owner who is a person regularly engaged, for compensation, in the business of leasing or renting motor vehicles without furnishing drivers may designate that the lessee of a motor vehicle leased for a period of thirty days or more shall report and pay the tax incurred during the duration of the lease. An owner who is an independent contractor that furnishes both the driver and motor vehicle, may designate that the person so furnished with the driver and motor vehicle for a period of thirty days or more shall report and pay the tax incurred during that period. An independent contractor that is not an owner, but that furnishes both the driver and motor vehicle and that has been designated by the owner of the motor vehicle to report and pay the tax, may designate that the person so furnished with driver and motor vehicle for a period of thirty days or more shall report and pay the tax incurred during that period.

Sec. 5728.08. Except as provided in section 5728.03 of the Revised Code and except as otherwise provided in this section, whoever is liable for the payment of the tax levied by section 5728.06 of the Revised Code, on or before the last day of each January, April, July, and October, shall file with the treasurer of state, on forms prescribed by the tax commissioner, a highway use tax return and make payment of the full amount of the tax due for the operation of each commercial car and commercial tractor for the next preceding three calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the

trucks during the next preceding twelve calendar months was less than fifteen thousand gallons, the highway use tax return shall be filed and the full amount of tax due paid on or before the last day of each July for the next preceding twelve calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the trucks during the next preceding twelve calendar months was fifteen thousand gallons or more, the highway use tax return shall be filed and the full amount of the tax due paid either on or before the last day of each July for the next preceding twelve calendar months, or on or before the last day of each January, April, July, and October for the next preceding three calendar months, at the option of the person liable for payment of the tax. If the commercial cars or commercial tractors are not farm trucks, and if, in the estimation of the tax commissioner, the amount of the tax due does not warrant quarterly filing, the commissioner may authorize the filing of the highway use tax return and payment of the full amount due on or before the last day of each July for the next preceding twelve months.

Immediately upon the receipt of a highway use tax return, the treasurer of state shall mark on the return the date it was received by the treasurer of state and the amount of tax payment accompanying the return and shall transmit the return to the tax commissioner.

The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the taxes levied by section 5728.06 of the Revised Code, amounts equal to the refund certified by the tax commissioner pursuant to section 5728.061 of the Revised Code. Receipts from the tax shall be used by the tax commissioner to defray expenses incurred by the department of taxation in administering sections 5728.01 to 5728.14 of the Revised Code.

All moneys received in the state treasury from taxes levied by section 5728.06 of the Revised Code and fees assessed under sections 5728.02 and 5728.03 of the Revised Code which are not required to be placed to the credit of the tax refund fund as provided by this section shall, during each calendar year, be credited to the highway improvement bond retirement fund created by section 5528.12 of the Revised Code until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.17 of the Revised Code, that there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year and during the next succeeding

calendar year. From the date of the receipt of the certification required by section 5528.17 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which the certification is made, all moneys received in the state treasury from taxes levied under section 5728.06 of the Revised Code and fees assessed under sections 5728.02 and 5728.03 of the Revised Code which are not required to be placed to the credit of the tax refund fund as provided by this section shall be credited to the highway obligations bond retirement fund created by section 5528.32 of the Revised Code until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.38 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year and during the next succeeding calendar year. From the date of the receipt of the certification required by section 5528.38 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which the certification is made, all moneys received in the state treasury from taxes levied under section 5728.06 of the Revised Code and fees assessed under sections 5728.02 and 5728.03 of the Revised Code which are not required to be placed to the credit of the tax refund fund as provided by this section shall be credited to the highway operating fund created by section 5735.291 of the Revised Code, except as provided by the next succeeding paragraph of this section.

From the date of the receipt by the treasurer of state of certifications from the commissioners of the sinking fund, as required by sections 5528.18 and 5528.39 of the Revised Code, certifying that the moneys to the credit of the highway improvement bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all bonds and other obligations which may be issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code, and to the credit of the highway obligations bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, all moneys received in the state treasury from the taxes levied under section 5728.06 and fees assessed under sections 5728.02 and 5728.03 of the Revised Code, which are not required to be placed to the credit of the tax refund fund as provided by this section, shall be deposited

to the credit of the highway operating fund.

As used in this section, "farm truck" means any commercial car or commercial tractor that is registered as a farm truck under Chapter 4503. of the Revised Code.

Sec. 5728.09. (A) Any person who fails to file timely the return required by section 5728.08 of the Revised Code ~~shall~~ may be required to pay an additional charge equal to the greater of fifty dollars or ten per cent of the tax due. The commissioner may adopt rules providing for the imposition and remission of the additional charges. Any additional charge imposed under this section may be collected through an assessment as provided in section 5728.10 of the Revised Code.

(B) If the tax imposed by this chapter or section 5735.31 of the Revised Code, or any portion of that tax, whether determined by the tax commissioner or the taxpayer, is not paid on or before the date prescribed in section 5728.08 of the Revised Code, interest shall be collected and paid in the same manner as the tax, upon that unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for payment of the tax until it is paid or until the day an assessment is issued under section 5728.10 of the Revised Code, whichever occurs first. Any interest imposed under this chapter may be collected through an assessment as provided in section 5728.10 of the Revised Code.

Sec. 5728.10. (A) If any person required to file a highway use tax return by sections 5728.01 to 5728.14 of the Revised Code, fails to file the return within the time prescribed by those sections, files an incomplete return, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner may make an assessment against the person, based upon any information in the commissioner's possession, for the period for which the tax was due.

No assessment shall be made against any person for any tax imposed by this chapter more than four years after the last day of the calendar year during which the tax was due. This section does not bar an assessment against any person who fails to file a highway use tax return as required by this chapter, or who files a fraudulent highway use tax return.

A penalty of up to fifteen per cent ~~shall~~ may be added to the amount of every assessment made pursuant to this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party's place of business is located or the county in which the party assessed resides. If the party maintains no office in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state of Ohio against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state highway use tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in

the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the commissioner under this section shall be paid into the state treasury in the same manner as the revenues deriving from the taxes imposed by section 5728.06 of the Revised Code.

Sec. 5733.11. (A) If any corporation required to file a report under this chapter fails to file the report within the time prescribed, files an incorrect report, or fails to remit the full amount of the tax due for the period covered by the report, the tax commissioner may make an assessment against the corporation for any deficiency for the period for which the report or tax is due, based upon any information in the commissioner's possession.

No assessment shall be made or issued against a corporation more than three years after the later of the final date the report subject to assessment was required to be filed or the date the report was filed. Such time limit may be extended if both the corporation and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in division (B) of section 5733.12 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a corporation that fails to file a report subject to assessment as required by this chapter, or that files a fraudulent report.

The commissioner shall give the corporation assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the corporation to which the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service thereof, either personally or by certified mail as provided in section 5703.056 of the Revised Code, a petition for reassessment in writing, signed by the authorized agent of the corporation assessed having knowledge of the facts, and makes payment of the portion of the assessment required by division (E) of this section, the assessment shall become final, and the amount of the assessment shall be due and payable from the corporation assessed to the treasurer of state. The petition shall indicate the corporation's objections, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the final

determination on the petitioner by personal service or by certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the corporation has an office or place of business in this state, the county in which the corporation's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the corporation assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state corporate franchise and litter taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of an assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter.

(E) The portion of an assessment which must be paid upon the filing of a petition for reassessment shall be as follows:

(1) If the sole item objected to is the assessed penalty or interest, ~~full~~ payment of the assessment, including interest but not penalty ~~and interest~~, is required;

(2) If the corporation assessed failed to file, prior to the date of issuance of the assessment, the annual report required by section 5733.02 of the Revised Code, any amended report required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, or any amended report required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, ~~full~~ payment of the assessment, including interest but not penalty ~~and interest~~, is required;

(3) If the corporation assessed filed, prior to the date of issuance of the assessment, the annual report required by section 5733.02 of the Revised Code, all amended reports required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, and all amended reports required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, and a balance of the taxes shown due on the reports as computed on the reports remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(4) If the corporation assessed does not dispute that it is a taxpayer but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, payment of only that portion of the assessment representing any balance of taxes shown due on the corporation's annual report required by section 5733.02 of the Revised Code, as computed on the report, that remains unpaid, and that represents taxes imposed by division (C) of section 5733.06, division (C)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code, together with all related interest, is required;

(5) If none of the conditions specified in divisions (E)(1) to (4) of this section apply, or if the corporation assessed disputes that it is a taxpayer, no payment is required.

(F) Notwithstanding the fact that a petition for reassessment is pending, the corporation may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the corporation under the corrected assessment is less than the portion paid, there shall be issued to the corporation, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 5733.12 of the Revised Code, with interest on that amount as provided by section 5733.26 of the Revised Code, subject to section 5733.121 of the Revised Code.

Sec. 5733.28. (A) In addition to any other penalty imposed by this chapter or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer required to file any report, including an informational notice or report, under this chapter fails to make and file the report within the time prescribed, including any extensions of time granted by the tax

commissioner, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars, or five per cent per month or fraction of a month, not to exceed fifty per cent, of the tax required to be shown on the report, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which filed.

(2) If a taxpayer fails to pay any amount of tax required to be paid under this chapter, except estimated tax under section 5733.021 of the Revised Code, by the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding twice the interest charged under division (A) of section 5733.26 of the Revised Code for the delinquent payment.

(3) If a taxpayer fails to pay any amount of estimated tax required to be paid under section 5733.021 of the Revised Code by the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding twice the interest charged under division (A) of section 5733.29 of the Revised Code for the delinquent payment.

(4) If a taxpayer files what purports to be a report required by this chapter that does not contain information upon which the substantial correctness of the report may be judged or contains information that on its face indicates that the report is substantially incorrect, and the filing of the report in that manner is due to a position that is frivolous or a desire that is apparent from the report to delay or impede the administration of the tax levied by this chapter, a penalty of up to five hundred dollars ~~shall~~ may be imposed.

(5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any report required under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the report.

(6) If any person makes a false or fraudulent claim for a refund under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of one thousand dollars or one hundred per cent of the claim. The penalty imposed under division (A)(6) of this section, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 5733.11 of the Revised Code as tax, penalty, or interest imposed under this chapter without regard to whether the person making the claim is otherwise subject to the provisions of this chapter, and without regard to any time limitation for the assessment imposed by division (A) of section 5733.11 of the Revised Code.

(B) For purposes of this section, the tax required to be shown on the

report shall be reduced by the amount of any part of the tax paid on or before the date, including extensions of the date, prescribed for filing the report.

(C) Each penalty imposed under this section shall be in addition to any other penalty provided in this section. All or part of any penalty imposed under this section shall be abated by the commissioner if the taxpayer shows that the failure to comply with the provisions of this chapter is due to reasonable cause and not willful neglect.

Sec. 5735.01. As used in this chapter:

(A) "Motor vehicles" includes all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances which are powered by internal combustion engines or motors.

(B) "Motor fuel" means gasoline, diesel fuel, K-1 (~~water-clear~~) kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas, but excluding substances prepackaged and sold in containers of five gallons or less.

(C) "K-1 Kerosene (~~water-clear~~)" means fuel that conforms to the chemical and physical standards for kerosene no. 1-K as set forth in the american society for testing and materials (ASTM) designated D-3699 "standard for specification for kerosene," as that standard may be modified from time to time. For purposes of inspection and testing, laboratory analysis shall be conducted using methods recognized by the ASTM designation D-3699.

(D) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel.

(E) "Gasoline" means any of the following:

(1) All products, commonly or commercially known or sold as gasoline;

(2) Any blend stocks or additives, ~~other than~~ including alcohol, that are sold for blending with gasoline, other than products typically sold in containers of five gallons or less;

(3) Transmix when mixed with gasoline, unless certified, as required by the tax commissioner, for withdrawal from terminals for reprocessing at refineries;

(4) Alcohol that is offered for sale or sold for use as, or commonly and commercially used as, a fuel for internal combustion engines.

Gasoline does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a motor fuel for a motor vehicle or vessel. The blending of any of the products listed in the preceding

sentence, regardless of name or characteristics, is conclusively presumed to have been done to produce gasoline, unless the product obtained by the blending is entirely incapable for use as fuel to operate a motor vehicle. An additive, blend stock, or alcohol is presumed to be sold for blending unless a certification is obtained as required by the tax commissioner.

(F) "Public highways" means lands and lots over which the public, either as user or owner, generally has a right to pass, even though the same are closed temporarily by the authorities for the purpose of construction, reconstruction, maintenance, or repair.

(G) "Waters within the boundaries of this state" means all streams, lakes, ponds, marshes, water courses, and all other bodies of surface water, natural or artificial, which are situated wholly or partially within this state or within its jurisdiction, except private impounded bodies of water.

(H) "Person" includes individuals, partnerships, firms, associations, corporations, receivers, trustees in bankruptcy, estates, joint-stock companies, joint ventures, the state and its political subdivisions, and any combination of persons of any form.

(I)(1) "Motor fuel dealer" means any person who satisfies any of the following:

(a) The person imports from another state or foreign country or acquires motor fuel by any means into a terminal in this state;

(b) The person imports motor fuel from another state or foreign country in bulk lot vehicles for subsequent sale and distribution in this state from bulk lot vehicles;

(c) The person refines motor fuel in this state;

(d) The person acquires motor fuel from a motor fuel dealer for subsequent sale and distribution by that person in this state from bulk lot vehicles;

(e) The person possesses an unrevoked permissive motor fuel dealer's license.

(2) Any person who obtains dyed diesel fuel for use other than the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, but later uses that motor fuel for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, is deemed a motor fuel dealer as regards any unpaid motor fuel taxes levied on the motor fuel so used.

(J) As used in sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code only:

(1) With respect to gasoline, "received" or "receipt" shall be construed as follows:

(a) Gasoline produced at a refinery in this state or delivered to a terminal in this state is deemed received when it is disbursed through a loading rack at that refinery or terminal;

(b) Except as provided in division (J)(1)(a) of this section, gasoline imported into this state or purchased or otherwise acquired in this state by any person is deemed received within this state by that person when the gasoline is withdrawn from the container in which it was transported;

(c) Gasoline delivered or disbursed by any means from a terminal directly to another terminal is not deemed received.

(2) With respect to motor fuel other than gasoline, "received" or "receipt" means distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state. All diesel fuel that is not dyed diesel fuel, regardless of its use, shall be considered as used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state when the fuel is sold or distributed to a person other than a licensed motor fuel dealer or to a person licensed under section 5735.026 of the Revised Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Cents per gallon rate" means the amount computed by the tax commissioner under section 5735.011 of the Revised Code that is used to determine that portion of the tax levied by section 5735.05 of the Revised Code that is computed in the manner prescribed by division (B)(2) of section 5735.06 of the Revised Code and that is applicable for the period that begins on the first day of July following the date on which the commissioner makes the computation.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle having a seating capacity of more than ten persons which is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the Revised Code, or a regional transit commission pursuant to sections 306.80 to 306.90 of the Revised Code. Public transit or paratransit service may include fixed route, demand-responsive, or subscription bus service transportation, but does not include shared-ride taxi service, carpools, vanpools, jitney service, school bus transportation, or charter or sightseeing services.

(R) "Export" means motor fuel delivered outside this state. Motor fuel delivered outside this state by or for the seller constitutes an export by the seller. Motor fuel delivered outside this state by or for the purchaser constitutes an export by the purchaser.

(S) "Import" means motor fuel delivered into this state from outside this state. Motor fuel delivered into this state from outside this state by or for the seller constitutes an import by the seller. Motor fuel delivered into this state from outside this state by or for the purchaser constitutes an import by the purchaser.

(T) "Terminal" means a motor fuel storage or distribution facility that is supplied by pipeline or marine vessel.

(U) "Consumer" means a buyer of motor fuel for purposes other than resale in any form.

(V) "Bulk lot vehicle" means railroad tank cars, transport tank trucks and tank wagons with a capacity of at least 1,400 gallons.

(W) "Licensed permissive motor fuel dealer" means any person possessing an unrevoked permissive motor fuel dealer's license issued by the tax commissioner under section 5735.021 of the Revised Code.

(X) "Licensed terminal operator" means any person possessing an unrevoked terminal operator's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Y) "Licensed exporter" means any person possessing an unrevoked exporter's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Z) "Dyed diesel fuel" means any diesel fuel dyed pursuant to regulations issued by the internal revenue service or a rule promulgated by the tax commissioner.

(AA) "Gross gallons" means U.S. gallons without temperature or barometric adjustments.

(BB) "Net gallons" means U.S. gallons with a temperature adjustment to sixty degrees fahrenheit.

Sec. 5735.012. Amounts of motor fuel reported under this chapter shall be measured in gross gallons, except that amounts reported for terminal to terminal transactions shall be measured in net gallons and amounts reported for terminal to Ohio licensed dealer transactions shall be measured in both net gallons and gross gallons.

Sec. 5735.023. (A) No person operating a retail service station shall store, sell, or attempt to sell or distribute any untaxed motor fuel, except K-1 ~~(water clear)~~ kerosene, at a retail service station.

(B) A licensed motor fuel dealer that operates a bulk storage plant and also maintains at the same location a retail pump that is connected to a bulk storage tank is not subject to division (A) of this section, except that the licensed motor fuel dealer shall pay the tax on all motor fuel dispensed through the retail pump.

(C) Each day, or part thereof, that a person is in violation of division (A) or (B) of this section constitutes a separate offense for purposes of section 5735.99 of the Revised Code.

Sec. 5735.05. (A) To provide revenue for maintaining the state highway system; to widen existing surfaces on such highways; to resurface such highways; to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to enable the counties of the state properly to plan, maintain, and repair their roads and to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for highway improvements; to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets, and to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for highway improvements; to enable the Ohio turnpike commission to construct, reconstruct, maintain, and repair turnpike projects; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under sections 4907.47 and 4907.471 of the Revised Code and to supplement revenue already available for such purposes; to pay the costs incurred by the public utilities commission in administering sections 4907.47 to 4907.476 of the Revised Code; to

distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing them; to pay the interest, principal, and charges on highway capital improvements bonds and other obligations issued pursuant to Section 2m of Article VIII, Ohio Constitution, and sections 5528.51 to 5528.56 of the Revised Code; to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code; and to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon receipt of motor fuel within this state at the rate of two cents plus the cents per gallon rate on each gallon so received, to be computed in the manner set forth in section 5735.06 of the Revised Code; provided that no tax is hereby imposed upon the following transactions:

(1) The sale of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station provided the licensed motor fuel dealer places on the face of the delivery document or invoice, or both if both are used, a conspicuous notice stating that the fuel is dyed and is not for taxable use, and that taxable use of that fuel is subject to a penalty. The tax commissioner, by rule, may provide that any notice conforming to rules or regulations issued by the United States department of the treasury or the Internal Revenue Service is sufficient notice for the purposes of division (A)(1) of this section;

(2) The sale of K-1 (~~water-clear~~) kerosene to a retail service station, except when placed directly in the fuel supply tank of a motor vehicle. Such sale shall be rebuttably presumed to not be distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon the waters within the boundaries of this state.

(3) The sale of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer;

(4) The exportation of motor fuel by a licensed motor fuel dealer from this state to any other state or foreign country;

(5) The sale of motor fuel to the United States government or any of its agencies, except such tax as is permitted by it, where such sale is evidenced by an exemption certificate, in form approved by the tax commissioner, executed by the United States government or an agency thereof certifying that the motor fuel therein identified has been purchased for the exclusive use of the United States government or its agency;

(6) The sale of motor fuel which is in the process of transportation in foreign or interstate commerce, except in so far as it may be taxable under

the Constitution and statutes of the United States, and except as may be agreed upon in writing by the dealer and the commissioner;

(7) The sale of motor fuel when sold exclusively for use in the operation of aircraft, where such sale is evidenced by an exemption certificate prescribed by the commissioner and executed by the purchaser certifying that the motor fuel purchased has been purchased for exclusive use in the operation of aircraft;

(8) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type A;

(9) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type B, provided that the destination state motor fuel tax has been paid or will be accrued and paid by the licensed motor fuel dealer.

(10) The sale to a consumer of diesel fuel, by a motor fuel dealer for delivery from a bulk lot vehicle, for consumption in operating a vessel when the use of such fuel in a vessel would otherwise qualify for a refund under section 5735.14 of the Revised Code.

Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the Internal Revenue Service to so use dyed diesel fuel.

(B) The two cent motor fuel tax levied by this section is also for the purpose of paying the expenses of administering and enforcing the state law relating to the registration and operation of motor vehicles.

After the tax provided for by this section on the receipt of any motor fuel has been paid by the motor fuel dealer, the motor fuel may thereafter be used, sold, or resold by any person having lawful title to it, without incurring liability for such tax.

If a licensed motor fuel dealer sells motor fuel received by the licensed motor fuel dealer to another licensed motor fuel dealer, the seller may deduct on the report required by section 5735.06 of the Revised Code the number of gallons so sold for the month within which the motor fuel was sold or delivered. In this event the number of gallons is deemed to have been received by the purchaser, who shall report and pay the tax imposed thereon.

Sec. 5735.12. (A) Any motor fuel dealer ~~or qualified interstate bus operator~~ required by this chapter to file reports and pay the tax levied by this chapter who fails to file the report within the time prescribed, ~~shall~~ may be liable for an additional charge ~~equal to not exceeding~~ the greater of ten per cent of the motor fuel dealer's ~~or qualified interstate bus operator's~~ tax

lity for that month or fifty dollars. The tax commissioner may remit all or a portion of the additional charge and may adopt rules relating to the remission of all or a portion of the charge.

If any person required by this chapter to file reports and pay the taxes, interest, or additional charge levied by this chapter fails to file the report, files an incomplete or incorrect report, or fails to remit the full amount of the tax, interest, or additional charge due for the period covered by the report, the commissioner may make an assessment against the person based upon any information in the commissioner's possession.

No assessment shall be made against any motor fuel dealer ~~or interstate bus operator~~ for taxes imposed by this chapter more than four years after the date on which the report on which the assessment was based was due or was filed, whichever is later. This section does not bar an assessment against any motor fuel dealer ~~or qualified interstate bus operator~~ who fails to file a report required by ~~either~~ section 5735.06 ~~or 5735.32~~ of the Revised Code, or who files a fraudulent motor fuel tax report.

A penalty of up to fifteen per cent ~~shall~~ may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the authorized agent of the party assessed having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the commissioner's assessment as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner by

nal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the business of the party assessed is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state motor fuel tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by this chapter.

(E) If the tax commissioner determines that the commissioner has erroneously refunded motor fuel tax to any person, the commissioner may make an assessment against the person for recovery of the erroneously refunded tax.

Sec. 5735.121. (A) If the tax commissioner finds that any person liable for tax under this chapter is about to depart from the state, remove property from the state, conceal self, or conceal the person's property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax, unless proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any person will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the person for the amount of the tax, plus a penalty of up to fifteen per cent. Upon issuance of a jeopardy assessment

under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest in the manner prescribed in section 5735.12 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 5735.12 of the Revised Code. Notice of the jeopardy assessment shall be served on the person assessed or the legal representative of the person assessed, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The person assessed may petition for reassessment within ~~thirty~~ sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 5735.12 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the person subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the person that previously were seized. Upon satisfaction of the assessment, the commissioner shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

Sec. 5735.14. Any person who uses any motor fuel, on which the tax imposed by this chapter has been paid, for the purpose of operating stationary gas engines, tractors not used on public highways, unlicensed motor vehicles used exclusively in intraplant operations, vessels when used in trade, including vessels when used in connection with an activity which

constitutes a person's chief business or means of livelihood or any other vessel used entirely for commercial purposes, vessels used for commercial fishing, vessels used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship, vessels used or owned by any railroad company, railroad car ferry company, the United States, this state, or any political subdivision of this state, or aircraft, or who uses any such fuel upon which such tax has been paid, for cleaning or for dyeing, or any purpose other than the operation of motor vehicles upon highways or upon waters within the boundaries of this state, shall be reimbursed in the amount of the tax so paid on such motor fuel as provided in this section; provided, that any person purchasing motor fuel in this state on which taxes levied under Title LVII of the Revised Code have been paid shall be reimbursed for such taxes paid in this state on such fuel used by that person in another state on which a tax is paid for such usage, except such tax used as a credit against the tax levied by section 5728.06 of the Revised Code. A person shall not be reimbursed for taxes paid on fuel that is used while a motor vehicle is idling or used to provide comfort or safety in the operation of a motor vehicle.

Such person shall file with the tax commissioner an application for refund within one ~~hundred eighty days~~ year from the date of purchase, stating the quantity of fuel used for purposes other than the operation of motor vehicles, except that no person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. Such application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing such purchase, together with evidence of payment thereof. After consideration of such application and statement, the commissioner shall determine the amount of refund due and certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. No refund shall be authorized or paid under this section on a single claim for tax on fewer than one hundred gallons of motor fuel. The commissioner may require that the application be supported by the affidavit of the claimant. The refund authorized by this section shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

The right to receive any refund under this section is not assignable. The payment of this refund shall not be made to any person other than the person originally entitled thereto who used the motor fuel upon which the claim for

refund is based, except that such refunds when allowed and certified as provided in this section may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of such person.

Sec. 5735.141. Any retail dealer of motor fuel shall receive a refund for Ohio motor fuel taxes paid on fuel lost by a retail dealer through shrinkage and evaporation. This refund shall be one per cent of the Ohio motor fuel taxes paid on fuel purchased during any semiannual period ending the thirtieth day of June or the thirty-first day of December.

In order to receive a refund the retail dealer shall file with the tax commissioner, within ~~sixty~~ one hundred twenty days after the thirtieth day of June and the thirty-first day of December of each year, an application for a refund stating the quantity of motor fuel which was purchased for resale by the applicant during the preceding semiannual period ending the thirtieth day of June or the thirty-first day of December and upon which the motor fuel tax has been paid. No person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. The form and contents of the application shall be prescribed by the tax commissioner, and the application shall be signed in accordance with section 5703.25 of the Revised Code. The tax commissioner shall certify the amount of the refund to the director of budget and management and treasurer of state for payment from the tax refund fund provided for by section 5703.052 of the Revised Code. No refund shall be authorized or ordered under this section for any single claim for the tax on fewer than one hundred gallons of motor fuel. The refund authorized by this section shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

The right to receive any refund under this section is not assignable. The payment of the refund shall not be made to any person other than the retail dealer originally entitled thereto, except that the refund may be paid to the executor, administrator, receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such retailer.

A motor fuel dealer shall be deemed to be a retail dealer when acting in a retail capacity.

Sec. 5735.142. Any person who uses any motor fuel, on which the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code has been paid, for the purpose of operating a transit bus shall be reimbursed in the amount of the tax paid on motor fuel used by public transportation systems providing transit or paratransit service on a regular and continuing

basis within the state.

Such person shall file with the tax commissioner an application for refund within one ~~hundred eighty days~~ year from the date of purchase, stating the quantity of fuel used for operating transit buses used by local transit systems in furnishing scheduled common carrier, public passenger land transportation service along regular routes primarily in one or more municipal corporations, except that no person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing the purchase, together with evidence of payment thereof. After consideration of the application and statement, the commissioner shall determine the amount of refund due and shall certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund provided for in section 5703.052 of the Revised Code. The commissioner may require that the application be supported by the affidavit of the claimant. No refund shall be authorized or ordered for any single claim for the tax on fewer than one hundred gallons of motor fuel. The refund authorized by this section shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

The right to receive any refund under this section is not assignable. The payment of this refund shall not be made to any person other than the person originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that the refund when allowed and certified, as provided in this section, may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of the person.

Sec. 5735.145. (A) As used in this section and sections 5735.13, 5735.14, 5735.141, and 5735.142, ~~and 5735.17~~ of the Revised Code:

(1) "Qualified fuel" means ethanol that is to be combined with gasoline to create a blend of not more than ten per cent by volume of ethanol and that when so blended is used, sold, or distributed as a motor fuel.

(2) "Ethanol" means:

(a) Ethanol produced in a manufacturing facility with an annual production capacity of less than two million gallons from wood or the grain of a cereal grass and denatured in accordance with United States bureau of alcohol and tax regulations; or

(b) Ethanol produced through a coal-fired process from wood or the

grain of a cereal grass and denatured in accordance with United States bureau of alcohol and tax regulations.

(B) Any motor fuel dealer shall receive a qualified fuel credit on each gallon of qualified fuel used, sold, or distributed by the dealer and on which the dealer is liable for the taxes imposed by this chapter of the Revised Code. To receive a credit, the dealer shall certify on the monthly report required by section 5735.06 of the Revised Code the number of gallons of qualified fuel used, sold, or distributed during the month to which the report applies and upon which such taxes are imposed. After computation of the amount of the tax in accordance with division (B) of section 5735.06 of the Revised Code, the number of gallons of qualified fuel used, sold, or distributed during the month to which the report applies and included in the gallons of motor fuel upon which the tax is imposed shall be multiplied by ten cents per gallon. The resulting product shall be subtracted from the tax computed under division (B) of section 5735.06 of the Revised Code and shall constitute the qualified fuel credit provided by this section.

(C) The aggregate amount of credits permitted under this section shall be subject to the limitations prescribed in this division.

(1) Beginning July 1, 1993, and ending June 30, 1997, for each fiscal year, the credit shall not exceed a total of fifteen million dollars, and for each month of each such year shall not exceed the amount specified for that month as follows:

July	\$1,390,125	January	\$1,133,625
August	1,312,125	February	1,106,625
September	1,229,625	March	1,211,625
October	1,268,625	April	1,192,125
November	1,235,625	May	1,270,125
December	1,280,625	June	1,369,125

(2) If in any month the credit is less than the limit set forth for that month, the unused portion shall be carried forward and added to the succeeding month's limit until the end of the fiscal year.

(3) If in any month the credit, including any amount carried forward from a preceding month, exceeds the limit for that month by less than five per cent, the tax commissioner shall either reduce the limit for the succeeding month by the amount of the excess, or collect the excess from each motor fuel dealer, apportioning the amount collected among motor fuel dealers in proportion to the amount of credit claimed by each motor fuel dealer for that month.

If in any month the credit, including any amount carried forward from a preceding month, exceeds the limit for that month by five per cent or more,

the tax commissioner shall collect the excess from each motor fuel dealer, apportioning the amount collected among motor fuel dealers in proportion to the amount of credit claimed by each motor fuel dealer for that month.

(4) Any credit in excess of the amounts prescribed in this section and subject to collection by the tax commissioner pursuant to division (C)(2) or (3) of this section shall be paid to the treasurer of state as revenue arising from taxes imposed under this chapter and is subject to assessment as provided in sections 5735.12 and 5735.121 of the Revised Code.

Sec. 5735.18. Any person other than a motor fuel dealer who purchases motor fuel upon which the tax has been paid to this state and who sells the same outside this state for use outside this state or who uses the same on highways or waters outside this state and pays a tax on such use or sells the same to the United States government or any of its agencies may be reimbursed in the amount of such tax as provided in this chapter. All claims for refund of the tax paid on motor fuel sold for export from the state or sold to the United States or any of its agencies shall be made in such form and shall set forth such information as the tax commissioner prescribes, and the claimant shall satisfy the commissioner that the motor fuel has been sold as stated and that the tax thereon has been paid. Claims for refund of the tax paid on motor fuel sold to the United States government or any of its agencies shall be supported by an affidavit of the claimant and by a tax exemption certificate executed by the vendee in such form as is prescribed by the commissioner. Such claims for refund filed under this section shall be certified and paid in the same manner as provided in section 5735.14 of the Revised Code. The person shall file with the tax commissioner an application for refund within one ~~hundred eighty days~~ year from the date of sale. The refund authorized by this section shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

Sec. 5735.23. (A) Out of receipts from the tax levied by section 5735.05 of the Revised Code, the treasurer of state shall place to the credit of the tax refund fund established by section 5703.052 of the Revised Code amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.13, 5735.14, 5735.141, 5735.142, and 5735.16, ~~and 5735.17~~ of the Revised Code. The treasurer of state shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund and the amount required by section 4907.472 of the Revised Code to the grade crossing protection fund.

(B) Except as provided in division (D) of this section, each month the balance of the receipts from the tax levied by section 5735.05 of the Revised Code shall be credited, after receipt by the treasurer of state of certification from the commissioners of the sinking fund, as required by section 5528.35 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year, as follows:

(1) To the state and local government highway distribution fund, which is hereby created in the state treasury, an amount that is the same percentage of the balance to be credited as that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code is of the total tax per gallon determined under divisions (B)(2)(a) and (b) of that section.

(2) After making the distribution to the state and local government highway distribution fund, the remainder shall be credited as follows:

(a) Thirty per cent to the gasoline excise tax fund for distribution pursuant to division (A)(1) of section 5735.27 of the Revised Code;

(b) Twenty-five per cent to the gasoline excise tax fund for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code;

(c) Except as provided in division (D) of this section, forty-five per cent to the highway operating fund for distribution pursuant to division (B)(1) of section 5735.27 of the Revised Code.

(C) From the balance in the state and local government highway distribution fund on the last day of each month there shall be paid the following amounts:

(1) To the local transportation improvement program fund created by section 164.14 of the Revised Code, an amount equal to a fraction of the balance in the state and local government highway distribution fund, the numerator of which fraction is one and the denominator of which fraction is that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code;

(2) An amount equal to five cents multiplied by the number of gallons of motor fuel sold at stations operated by the Ohio turnpike commission, such gallonage to be certified by the commission to the treasurer of state not later than the last day of the month following. The funds paid to the commission pursuant to this section shall be expended for the construction, reconstruction, maintenance, and repair of turnpike projects, except that the

funds may not be expended for the construction of new interchanges. The funds also may be expended for the construction, reconstruction, maintenance, and repair of those portions of connecting public roads that serve existing interchanges and are determined by the commission and the director of transportation to be necessary for the safe merging of traffic between the turnpike and those public roads.

The remainder of the balance shall be distributed as follows on the fifteenth day of the following month:

(a) Ten and seven-tenths per cent shall be paid to municipal corporations for distribution pursuant to division (A)(1) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used.

(b) Five per cent shall be paid to townships for distribution pursuant to division (A)(5) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used.

(c) Nine and three-tenths per cent shall be paid to counties for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used.

(d) Except as provided in division (D) of this section, the balance shall be transferred to the highway operating fund and used for the purposes set forth in division (B)(1) of section 5735.27 of the Revised Code.

(D) Beginning on the first day of September each year and continuing until such time as the office of budget and management receives certification from the commissioners of the sinking fund pursuant to division (B) of section 5528.56 of the Revised Code, any amounts required to be credited or transferred to the highway operating fund pursuant to division (B)(2)(c) or (C)(2)(d) of this section shall be credited or transferred to the highway capital improvements bond service fund created in section 5528.55 of the Revised Code.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible

personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Industrial laundry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service is provided that originates or terminates in this state and is charged in the records of the telecommunications service vendor to the consumer's telephone number or account in this state, or that both originates and terminates in this state; but does not include transactions by which telecommunications service is paid for by using a prepaid authorization number or prepaid telephone calling card;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

- (j) Building maintenance and janitorial service is or is to be provided;
- (k) Employment service is or is to be provided;
- (l) Employment placement service is or is to be provided;
- (m) Exterminating service is or is to be provided;
- (n) Physical fitness facility service is or is to be provided;
- (o) Recreation and sports club service is or is to be provided.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. Other than as provided in this section, "sale" and "selling" do not include professional, insurance, or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a

person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) All transactions by which a prepaid authorization number or a prepaid telephone calling card is or is to be transferred.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or

physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exception under division (E)(8) of this section for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E)(1) of this section.

(E) "Retail sale" and "sales at retail" include all sales except those in which the purpose of the consumer is:

(1) To resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person;

(2) To incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the thing transferred directly in producing a product for sale by mining, including without limitation the extraction from the earth of all substances which are classed geologically as minerals, production of crude oil and natural gas,

farming, agriculture, horticulture, or floriculture, and persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas; directly in the rendition of a public utility service, except that the sales tax levied by section 5739.02 of the Revised Code shall be collected upon all meals, drinks, and food for human consumption sold upon Pullman and railroad coaches. This paragraph does not exempt or except from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;

(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised Code;

(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(6) To use or consume the thing directly in commercial fishing;

(7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;

(11) To use the thing transferred as qualified research and development equipment;

(12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to

retail stores of an affiliated group of which that person is a member, or by means of direct marketing. Division (E)(12) of this section does not apply to motor vehicles registered for operation on the public highways. As used in division (E)(12) of this section, "affiliated group" has the same meaning as in division (B)(3)(e) of this section and "direct marketing" has the same meaning as in division (B)(37) of section 5739.02 of the Revised Code.

(13) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of this section;

(14) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(15) To use tangible personal property to perform a service listed in division (B)(3) of this section, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service.

As used in division (E) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of this section.

Sales conducted through a coin-operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction, are not retail sales or sales at retail.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds self out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1) "Price," except as provided in divisions (H)(2) and (3) of this section, means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the retail sale consists of the rental or lease of tangible personal property, "price" means

the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of the rental or lease, without any deduction for tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. The sales tax shall be calculated and collected by the lessor on each payment made by the lessee. Price does not include the consideration received as a deposit refundable to the consumer upon return of a beverage container, the consideration received as a deposit on a carton or case that is used for such returnable containers, or the consideration received as a refundable security deposit for the use of tangible personal property to the extent that it actually is refunded, if the consideration for such refundable deposit is separately stated from the consideration received or to be received for the tangible personal property transferred in the retail sale. Such separation must appear in the sales agreement or on the initial invoice or initial billing rendered by the vendor to the consumer. Price is the amount received inclusive of the tax, provided the vendor establishes to the satisfaction of the tax commissioner that the tax was added to the price. When the price includes both a charge for tangible personal property and a charge for providing a service and the sale of the property and the charge for the service are separately taxable, or have a separately determinable tax status, the price shall be separately stated for each such charge so the tax can be correctly computed and charged.

The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized in section 5739.12 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration

received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in division (H)(3) of this section, "watercraft" includes an outdrive unit attached to the watercraft.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property which was obtained by the person making the sale, through purchase or otherwise, for the person's own use in this state and which was previously subject to ~~the~~ any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use which are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which

displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or transportation of property or personnel to or from a place where a service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property which is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and which retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used in providing a public utility service as defined in this division.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to section 306.03 of the Revised Code or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States

ensus bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county which is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) "Telecommunications service" means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. "Telecommunications service"

includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private communications service purchased from another telecommunications service provider, but does not include any of the following:

(1) Sales of incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service, to the person contracting for the receipt of that service;

(2) Sales of private communications service to the person contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;

(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;

(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;

(5) Value-added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;

(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code.

(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care

service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and

janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the calendar year.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food or food production, and includes but is not limited to cattle, sheep, goats, swine, and poultry. "Livestock" does not include invertebrates, fish, amphibians, reptiles, horses, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.

(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in section 927.51 of the Revised Code.

(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.

(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.

(TT) "Professional racing team" means a person that employs at least twenty full-time employees for the purpose of conducting a motor vehicle racing business for profit. The person must conduct the business with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. A "motor racing vehicle" means a vehicle for which the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other

standard of service generally accepted by custom or specified by contract as full-time employment.

(UU)(1) "Prepaid authorization number" means a numeric or alphanumeric combination that represents a prepaid account that can be used by the account holder solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(2) "Prepaid telephone calling card" means a tangible item that contains a prepaid authorization number that can be used solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards such rentals, shall be measured by the installments thereof.

In the case of a sale of a service defined under division (MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as

controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or ~~by~~ nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such

school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser,

of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional authorized to prescribe drugs to a human being, as the term "licensed health professional authorized to prescribe drugs" is defined in section 4729.01 of the Revised Code; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with end-stage renal disease; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption

under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

~~(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;~~

~~(28)~~ Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

~~(29)~~(28) Sales of animals by nonprofit animal adoption services or county humane societies;

~~(30)~~(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

~~(31)~~(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

~~(32)~~(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

~~(33)~~(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;

~~(34)~~(33) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

~~(35)~~(34) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting,

receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)~~(35)~~(34) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.

~~(36)~~(35) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

~~(37)~~(36)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)~~(37)~~(36)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)~~(37)~~(36) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and

the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

~~(38)~~(37) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

~~(39)~~(38) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

~~(40)~~(39) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

~~(41)~~(40) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

~~(42)~~(41) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;

~~(43)~~(42) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exceptions in

division (E)(2) of section 5739.01 of the Revised Code to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to

division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the Revised Code.

(6) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) or (4) of this section.

(7) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3), (4), or (6) of this section.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

Sec. 5739.03. Except as provided in section 5739.05 of the Revised Code, the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale, in the manner and at the times provided as follows:

(A) If the price is, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer or ~~his~~ the consumer's agent to the vendor or ~~his~~ the vendor's agent, the vendor or ~~his~~ the vendor's agent shall collect the tax with and at the same time as the price;

(B) If the price is otherwise paid or to be paid, the vendor or ~~his~~ the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such

sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or ~~(29)~~(28) of section 5739.02 of the Revised Code, the consumer must furnish to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. If the transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the exemption certificate shall be signed by both the contractor and ~~his~~ the contractee and such contractee shall be deemed to be the consumer of all items purchased under such claim of exemption in the event it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by regulation prescribes. If no certificate is furnished or obtained within the period for filing the return for the period in which such sale is consummated, it shall be presumed that the tax applies. The failure to have so furnished, or to have so obtained, a certificate shall not prevent a vendor or consumer from establishing that the sale is not subject to the tax within ~~sixty~~ sixty one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, in which event the tax shall not apply.

Certificates need not be obtained nor furnished where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(C) As used in this division, "contractee" means a person who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property.

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt requested. Upon receipt of such request and prior to entering into the contract or agreement, the contractee shall furnish to the contractor or vendor a certification

iciently detailed to enable the contractor or vendor to ascertain the resulting classification of all materials purchased or fabricated by the contractor or vendor and transferred to the contractee. This requirement applies to a contractee regardless of whether the contractee holds a direct payment permit under section 5739.031 of the Revised Code or furnishes to the contractor or vendor an exemption certificate as provided under this section.

For the purposes of the taxes levied by this chapter and Chapter 5741. of the Revised Code, the contractor or vendor may in good faith rely on the contractee's certification. Notwithstanding division (B) of section 5739.01 of the Revised Code, if the tax commissioner determines that certain property certified by the contractee as tangible personal property pursuant to this division is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the contractor or vendor shall be excused from any liability on those materials.

If a contractee fails to provide such certification upon the request of the contractor or vendor, the contractor or vendor shall comply with the provisions of this chapter and Chapter 5741. of the Revised Code without the certification. If the tax commissioner determines that such compliance has been performed in good faith and that certain property treated as tangible personal property by the contractor or vendor is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax and the construction contractor or vendor shall be excused from any liability on those materials.

This division does not apply to any contract or agreement where the tax commissioner determines as a fact that a certification under this division was made solely on the decision or advice of the contractor or vendor.

(D) Notwithstanding division (B) of section 5739.01 of the Revised Code, whenever the total rate of tax imposed under this chapter is increased after the date after a construction contract is entered into, the contractee shall reimburse the construction contractor for any additional tax paid on tangible property consumed or services received pursuant to the contract.

(E) A vendor who files a petition for reassessment ~~contesting~~ **CONTESTING** the assessment of tax on sales for which the vendor obtained no valid exemption certificates and for which the vendor failed to establish that the sales were properly not subject to the tax during the ~~sixty-day~~ one-hundred-twenty-day period allowed under division (B) of this section, may present to the tax commissioner additional evidence to prove that the sales were properly subject to a claim of exception or exemption. The

vendor shall file such evidence within ninety days of the receipt by the vendor of the notice of assessment, except that, upon application and for reasonable cause, the period for submitting such evidence shall be extended thirty days.

The commissioner shall consider such additional evidence in reaching the final determination on the assessment and petition for reassessment.

(F) Whenever a vendor refunds to the consumer the full price of an item of tangible personal property on which the tax imposed under this chapter has been paid, ~~he~~ the vendor shall also refund the full amount of the tax paid.

Sec. 5739.032. (A) If the total amount of tax required to be paid by a permit holder under section 5739.031 of the Revised Code for any calendar year indicated in the following schedule equals or exceeds the amounts prescribed for that year in the schedule, the permit holder shall remit each monthly tax payment in the second ensuing and each succeeding year by electronic funds transfer as prescribed by division (B) of this section.

Year	1992	1993 and thereafter	<u>2000</u>
		<u>through 1999</u>	<u>and thereafter</u>
Tax	\$1,200,000	\$600,000	<u>\$60,000</u>
payment			

If a permit holder's tax payment for each of two consecutive years beginning with ~~1993~~ 2000 is less than ~~six hundred sixty~~ six hundred sixty thousand dollars, the permit holder is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the tax payment is less than ~~six hundred sixty~~ six hundred sixty thousand dollars, and is relieved of that requirement for each succeeding year unless the tax payment in a subsequent year equals or exceeds ~~six hundred sixty~~ six hundred sixty thousand dollars.

The tax commissioner shall notify each permit holder required to remit taxes by electronic funds transfer of the permit holder's obligation to do so, shall maintain an updated list of those permit holders, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a permit holder subject to this section to remit taxes by electronic funds transfer does not relieve the permit holder of its obligation to remit taxes by electronic funds transfer.

(B) Permit holders required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates

fied under section 5739.031 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a permit holder's obligation to file the monthly return as required under section 5739.031 of the Revised Code.

A permit holder required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the permit holder from remittance by electronic funds transfer for good cause shown for the period of time requested by the permit holder or for a portion of that period. The treasurer shall notify the tax commissioner and the permit holder of the treasurer's decision as soon as is practicable.

(C) If a permit holder required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5739.13 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this division against a permit holder that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the permit holder remits by some means other than electronic funds transfer.

Sec. 5739.033. The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is the sum of the taxes imposed pursuant to those sections at the situs of the consummation of the sale as determined under this section.

(A) Except as otherwise provided in this section and division (C) of section 5739.031 of the Revised Code, all sales are conclusively determined to be consummated at the vendor's place of business.

(1) If the consumer or the consumer's agent takes possession of the tangible personal property at a place of business of the vendor where the purchase contract or agreement was made, the sale is consummated at that place of business.

(2) If the consumer or the consumer's agent takes possession of the tangible personal property other than at a place of business of the vendor, or takes possession at a warehouse or similar facility of the vendor, the sale is consummated at the vendor's place of business where the purchase contract or agreement was made or the purchase order was received.

(3) If the vendor provides a service specified in division (B)(3)(a), (b), (c), (d), (n), or (o) of section 5739.01 of the Revised Code, the sale is consummated at the vendor's place of business where the service is performed or the contract or agreement for the service was made or the purchase order was received.

(B) If the vendor is a transient vendor as specified in division (B) of section 5739.17 of the Revised Code, the sale is conclusively determined to be consummated at the vendor's temporary place of business or, if the transient vendor is the lessor of titled motor vehicles, titled watercraft, or titled outboard motors, at the location where the lessee keeps the leased property.

~~(C) If the vendor is a limited vendor as specified in division (B) of section 5739.17 of the Revised Code, the sale is conclusively determined to be consummated at the temporary event at which the vendor is making sales.~~

~~(D)~~ If the vendor makes sales of tangible personal property from a stock of goods carried in a motor vehicle, from which the purchaser makes selection and takes possession, or from which the vendor sells tangible personal property the quantity of which has not been determined prior to the time the purchaser takes possession, the sale is conclusively determined to be consummated at the location of the motor vehicle when the sale is made.

~~(E)~~(D) If the vendor is a delivery vendor as specified in division (D) of section 5739.17 of the Revised Code, the sale is conclusively determined to be consummated at the place where the tangible personal property is delivered, where the leased property is used, or where the service is performed or received.

~~(F)~~(E) If the vendor provides a service specified in division (B)(3)(e), (g), (h), (j), (k), (l), or (m) of section 5739.01 of the Revised Code, the sale is conclusively determined to be consummated at the location of the consumer where the service is performed or received.

~~(G)~~(F) Except as provided in division ~~(J)~~(I) of this section, if the vendor provides a service specified in division (B)(3)(f) or (i) of section 5739.01 of

the Revised Code, the sale is conclusively determined to be consummated at the location of the telephone number or account as reflected in the records of the vendor. If, in the case of a telecommunications service, the telephone number or account is located outside this state, the sale is conclusively determined to be consummated at the location in this state from which the service originated.

~~(H)~~(G) If the vendor provides lodging to transient guests as specified in division (B)(2) of section 5739.01 of the Revised Code, the sale is conclusively determined to be consummated at the location where the lodging is located.

~~(H)~~(H) If the vendor sells a warranty, maintenance or service contract, or similar agreement as specified in division (B)(7) of section 5739.01 of the Revised Code and the vendor is a delivery vendor, the sale is conclusively determined to be consummated at the location of the consumer. If the vendor is not a delivery vendor, the sale is conclusively determined to be consummated at the vendor's place of business where the contract or agreement was made, unless the warranty or contract is a component of the sale of a titled motor vehicle, titled watercraft, or titled outboard motor, in which case the sale is conclusively determined to be consummated in the county of titling.

~~(H)~~(I) Except as otherwise provided in this division, if the vendor sells a prepaid authorization number or a prepaid telephone calling card, the sale is conclusively determined to be consummated at the vendor's place of business and shall be taxed at the time of sale. If the vendor sells a prepaid authorization number or prepaid telephone calling card through a telephone call, electronic commerce, or any other form of remote commerce, the sale is conclusively determined to be made at the consumer's shipping address, or, if there is no item shipped, at the consumer's billing address.

Sec. 5739.12. Each person who has or is required to have a vendor's license, on or before the twenty-third day of each month, shall make and file a return for the preceding month, on forms prescribed by the tax commissioner, and shall pay the tax shown on the return to be due. The return shall show the amount of tax due from the vendor to the state for the period covered by the return and such other information as the commissioner deems necessary for the proper administration of this chapter. The commissioner may extend the time for making and filing returns and paying the tax, and may require that the return for the last month of any annual or semiannual period, as determined by the commissioner, be a reconciliation return detailing the vendor's sales activity for the preceding annual or semiannual period. The reconciliation return shall be filed by the

last day of the month following the last month of the annual or semiannual period. The commissioner may remit all or any part of amounts or penalties which may become due under this chapter and may adopt rules relating thereto. Such return shall be filed by mailing the same to the treasurer of state, together with payment of the amount of tax shown to be due thereon after deduction of any discount provided for under this section. The return shall be considered filed when received by the treasurer of state, and the payment shall be considered made when received by the treasurer of state or when credited to an account designated by the treasurer of state. If the return is filed and the amount of tax shown thereon to be due is paid on or before the date such return is required to be filed, the vendor shall be entitled to a discount of three-fourths of one per cent of the amount shown to be due on the return. Amounts paid to the clerk of courts pursuant to section 4505.06 of the Revised Code shall be subject to the three-fourths of one per cent discount. The discount shall be in consideration for prompt payment to the clerk of courts and for other services performed by the vendor in the collection of the tax.

Upon application to the commissioner, a vendor who is required to file monthly returns may be relieved of the requirement to report and pay the actual tax due, provided that the vendor agrees to remit to the treasurer of state payment of not less than an amount determined by the commissioner to be the average monthly tax liability of the vendor, based upon a review of the returns or other information pertaining to such vendor for a period of not less than six months nor more than two years immediately preceding the filing of the application. Vendors who agree to the above conditions shall make and file an annual or semiannual reconciliation return, as prescribed by the commissioner. The reconciliation return shall be filed by mailing or delivering the same to the treasurer of state, together with payment of the amount of tax shown to be due thereon after deduction of any discount provided in this section. Failure of a vendor to comply with any of the above conditions may result in immediate reinstatement of the requirement of reporting and paying the actual tax liability on each monthly return, and the commissioner may at ~~his~~ the commissioner's discretion deny the vendor the right to report and pay based upon the average monthly liability for a period not to exceed two years. The amount determined by the commissioner to be the average monthly tax liability of a vendor may be adjusted, based upon a review of the returns or other information pertaining to the vendor for a period of not less than six months nor more than two years preceding such adjustment.

The commissioner may authorize vendors whose tax liability is not such

as to merit monthly returns, as determined by the commissioner upon the basis of administrative costs to the state, to make and file returns at less frequent intervals. When returns are filed at less frequent intervals in accordance with such a determination, the vendor shall be allowed the discount of three-fourths of one per cent in consideration for prompt payment with the return, provided the return is filed together with payment of the amount of tax shown to be due thereon, at the time specified by the commissioner.

The treasurer of state shall stamp or otherwise mark on all returns the date received by ~~him~~ the treasurer of state and shall also show thereon by stamp or otherwise the amount of payment received for the period for which the return is filed. Thereafter, the treasurer of state shall immediately transmit all returns filed under this section to the commissioner. Any vendor who fails to file a return or pay the full amount of the tax shown on the return to be due under this section and the rules of the commissioner ~~shall~~ may, for each such return ~~he~~ the vendor fails to file or each such tax ~~he~~ the vendor fails to pay in full as shown on the return within the period prescribed by this section and the rules of the commissioner, be required to forfeit and pay into the state treasury an additional charge ~~of not exceeding~~ fifty dollars or ten per cent of the tax required to be paid for the reporting period, whichever is greater, as revenue arising from the tax imposed by this chapter, and such sum may be collected by assessment in the manner provided in section 5739.13 of the Revised Code. The commissioner may remit all or a portion of the additional charge and may adopt rules relating ~~thereto~~ to the imposition and remission of the additional charge.

If the amount required to be collected by a vendor from consumers is in excess of five per cent of ~~his~~ the vendor's receipts from sales which are taxable under section 5739.02 of the Revised Code, or in the case of sales subject to a tax levied pursuant to section 5739.021, 5739.023, or 5739.026 of the Revised Code, in excess of the percentage equal to the aggregate rate of such taxes and the tax levied by section 5739.02 of the Revised Code, such excess shall be remitted along with the remittance of the amount of tax due under section 5739.10 of the Revised Code.

The commissioner, if ~~he~~ the commissioner deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments to be made for other than monthly periods. The returns shall be signed by the vendor or ~~his~~ the vendor's authorized agent.

Any vendor required to file a return and pay the tax under this section whose total payment in any year indicated in division (A) of section 5739.122 of the Revised Code equals or exceeds the amount shown in that

division shall make each payment required by this section in the second ensuing and each succeeding year by electronic funds transfer as prescribed by section 5739.122 of the Revised Code, except as otherwise prescribed by that section.

Sec. 5739.122. (A) If the total amount of tax required to be paid by a vendor under section 5739.12 of the Revised Code for any calendar year indicated in the following schedule equals or exceeds the amounts prescribed for that year in the schedule, the vendor shall remit each monthly tax payment in the second ensuing and each succeeding tax year by electronic funds transfer as prescribed by divisions (B) and (C) of this section.

Year	1992	1993 and thereafter <u>through 1999</u>	<u>2000</u> <u>and thereafter</u>
Tax payment	\$1,200,000	\$600,000	<u>\$60,000</u>

If a vendor's tax payment for each of two consecutive years beginning with ~~1993~~ 2000 is less than ~~six hundred sixty~~ six hundred thousand dollars, the vendor is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the tax payment is less than ~~six hundred sixty~~ six hundred thousand dollars, and is relieved of that requirement for each succeeding year unless the tax payment in a subsequent year equals or exceeds ~~six hundred sixty~~ six hundred thousand dollars.

The tax commissioner shall notify each vendor required to remit taxes by electronic funds transfer of the vendor's obligation to do so, shall maintain an updated list of those vendors, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a vendor subject to this section to remit taxes by electronic funds transfer does not relieve the vendor of its obligation to remit taxes by electronic funds transfer.

(B) Vendors required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates specified under section 5739.12 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a vendor's obligation to file the monthly return as required under section 5739.12 of the Revised Code.

~~(C) Any vendor who files returns under section 5739.12 of the Revised Code for two or more vendor's licenses shall remit tax payments for those licenses by electronic funds transfer if the sum of those payments exceeds the amount specified in division (A) of this section.~~

A vendor required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the vendor from remittance by electronic funds transfer for good cause shown for the period of time requested by the vendor or for a portion of that period. The treasurer shall notify the tax commissioner and the vendor of the treasurer's decision as soon as is practicable.

(D) If a vendor required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5739.13 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this division against a vendor that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the vendor remits by some means other than electronic funds transfer.

Sec. 5739.13. (A) If any vendor collects the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code, and fails to remit the tax to the state as prescribed, or on the sale of a motor vehicle, watercraft, or outboard motor required to be titled, fails to remit payment to a clerk of a court of common pleas as provided in section 1548.06 or 4505.06 of the Revised Code, the vendor shall be personally liable for any tax collected and not remitted. The tax commissioner may make an assessment against such vendor based upon any information in the commissioner's possession.

If any vendor fails to collect the tax or any consumer fails to pay the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or

739.026 of the Revised Code, on any transaction subject to the tax, the vendor or consumer shall be personally liable for the amount of the tax applicable to the transaction. ~~If any vendor fails to pay the annual license renewal fee required by division (E) of section 5739.17 of the Revised Code, the vendor shall be personally liable for the unpaid fee.~~ The commissioner may make an assessment against either the vendor or consumer, as the facts may require, based upon any information in the commissioner's possession.

An assessment against a vendor when the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code has not been collected or paid, shall not discharge the purchaser's or consumer's liability to reimburse the vendor for the tax applicable to such transaction.

An assessment issued against either, pursuant to this section, shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any person for the tax due on a particular transaction if the tax on that transaction actually has been paid by another.

The commissioner may make an assessment against any vendor who fails to file a return or remit the proper amount of tax required by this chapter, or against any consumer who fails to pay the proper amount of tax required by this chapter. When information in the possession of the commissioner indicates that the amount required to be collected or paid under this chapter is greater than the amount remitted by the vendor or paid by the consumer, the commissioner may audit a sample of the vendor's sales or the consumer's purchases for a representative period, to ascertain the per cent of exempt or taxable transactions or the effective tax rate and may issue an assessment based on the audit. The commissioner shall make a good faith effort to reach agreement with the vendor or consumer in selecting a representative sample period.

The tax commissioner may make an assessment, based on any information in his possession, against any person who fails to file a return or remit the proper amount of tax required by section 5739.102 of the Revised Code.

The tax commissioner may issue an assessment on any transaction for which any tax imposed under this chapter or Chapter 5741. of the Revised Code was due and unpaid on the date the vendor or consumer was informed by an agent of the tax commissioner of an investigation or audit. If the vendor or consumer remits any payment of the tax for the period covered by the assessment after the vendor or consumer was informed of the investigation or audit, the payment shall be credited against the amount of

the assessment.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the commissioner's final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the place of business of the party assessed is located or the county in which the party assessed resides. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of such entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state, county, and transit authority retail sales tax" or, if appropriate, "special judgments for resort area excise tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment

upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment except as otherwise provided in this chapter.

The portion of the assessment not paid within ~~thirty~~ sixty days after the date the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected by the commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the taxes imposed by or pursuant to sections 5739.01 to 5739.31 of the Revised Code.

Sec. 5739.133. (A) A penalty ~~shall~~ may be added to every amount assessed under section 5739.13 or 5739.15 of the Revised Code as follows:

(1) In the case of an assessment against a person who fails to ~~file a return~~ collect and remit the tax required by this chapter or Chapter 5741. of the Revised Code, up to fifty per cent of the amount assessed;

(2) In the case of a person whom the tax commissioner believes has collected the tax but failed to remit it to the state as required by this chapter or Chapter 5741. of the Revised Code, up to fifty per cent of the amount assessed;

(3) In the case of all other assessments, up to fifteen per cent of the amount assessed.

No amount assessed under section 5739.13 or 5739.15 of the Revised Code shall be subject to a penalty under this ~~division~~ section in excess of fifty per cent of the amount assessed.

(B) All assessments issued under section 5739.13 and 5739.15 of the Revised Code shall include preassessment interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code. Beginning January 1, 1988, preassessment interest shall begin to accrue on the first day of January of the year following the date on which the person assessed was required to report and pay the tax under this chapter or Chapter 5741. of the Revised Code, and shall run until the date of the notice of assessment. If an assessment is issued within the first twelve months after the interest begins to accrue, no preassessment interest shall be assessed. With respect to taxes required to be paid under this chapter or Chapter 5741. of the Revised Code on or after January 1, 1998, interest shall accrue as prescribed in division (A) of section 5739.132 of the Revised Code.

(C) The commissioner may adopt rules providing for the imposition and

remission of any penalty provided for under this section.

Sec. 5739.15. (A) If the tax commissioner finds that a vendor, consumer, or officer, employee, or trustee of a corporation or business trust who is liable for any tax or charge levied by this chapter or Chapter 5741. of the Revised Code is about to depart from the state, remove the person's property from the state, conceal the person's self or property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax unless the proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any vendor, consumer, or officer, employee, or trustee of a corporation or business trust will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the person for the amount of the tax or charge plus a penalty as provided by section 5739.133 of the Revised Code. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest as prescribed by section 5739.13 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 5739.13 of the Revised Code. Notice of the jeopardy assessment shall be served on the person assessed or the person's legal representative, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The person assessed may petition for reassessment within ~~thirty~~ sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 5739.13 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the person subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an

amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the person previously seized. Upon satisfaction of the assessment, the commissioner shall order the security released and the judgment vacated.

Sec. 5739.17. (A) No person shall engage in making retail sales subject to a tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code as a business without having a license therefor, except as otherwise provided in divisions (A)(1), (2), and (3) of this section.

(1) In the dissolution of a partnership by death, the surviving partner may operate under the license of the partnership for a period of sixty days.

(2) The heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy, appointed by any competent authority, may operate under the license of the person so succeeded in possession.

(3) Two or more persons who are not partners may operate a single place of business under one license. In such case neither the retirement of any such person from business at that place of business, nor the entrance of any person, under an existing arrangement, shall affect the license or require the issuance of a new license, unless the person retiring from the business is the individual named on the vendor's license.

Except as otherwise provided in this section, each applicant for a license shall make out and deliver to the county auditor of each county in which the applicant desires to engage in business, upon a blank to be furnished by such auditor for that purpose, a statement showing the name of the applicant, each place of business in the county where the applicant will make retail sales, the nature of the business, and any other information the tax commissioner reasonably prescribes in the form of a statement prescribed by the commissioner.

At the time of making the application, the applicant shall pay into the county treasury a license fee in the sum of twenty-five dollars for each fixed place of business in the county where retail sales will be consummated. Upon receipt of the application and exhibition of the county treasurer's receipt, showing the payment of the license fee, the county auditor shall issue to the applicant a license for each fixed place of business designated in the application, authorizing the applicant to engage in business at that location. If a vendor's identity ~~or the location of the vendor's place of business~~ changes, the vendor shall apply for a new license. If a vendor

wishes to move an existing fixed place of business to a new location within the same county, the vendor shall obtain a new vendor's license or submit a request to the tax commissioner to transfer the existing vendor's license to the new location. When the new location has been verified as being within the same county, the tax commissioner shall authorize the transfer and notify the county auditor of the change of location. If a vendor wishes to move an existing fixed place of business to another county, the vendor's license shall not transfer and the vendor shall obtain a new vendor's license from the county in which the business is to be located. The form of the license shall be prescribed by the commissioner. The fees collected shall be credited to the general fund of the county.

A vendor that makes retail sales subject to tax under Chapter 5739. of the Revised Code pursuant to a permit issued by the division of liquor control shall obtain a vendor's license in the identical name and for the identical address as shown on the permit.

Except as otherwise provided in this section, if a vendor has no fixed place of business and sells from a vehicle, each vehicle intended to be used within a county constitutes a place of business for the purpose of this section.

(B) As used in this division, "transient vendor" means any person who leases titled motor vehicles, titled watercraft, or titled outboard motors or, in the usual course of the person's business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business in a county in which the person has no fixed place of business, for the purpose of making retail sales of such property. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of making retail sales of goods to the public. A place of business is not temporary if the same person conducted business at the place continuously for more than six months or occupied the premises as the person's permanent residence for more than six months, or if the person intends it to be a fixed place of business.

~~As used in this division, "limited vendor" means any person who, in order to participate in a temporary exhibition, show, fair, flea market, or similar event, transports inventory, stock of goods, or similar property to a temporary place of business located at a temporary exhibition, show, fair, flea market, or similar event held in a county in which the person has no fixed place of business for which the person holds a vendor's license for the purpose of making retail sales of such property.~~

Any transient vendor, in lieu of obtaining a vendor's license under division (A) of this section for counties in which the transient vendor has no fixed place of business, may apply to the tax commissioner, on a form prescribed by the commissioner, for a transient vendor's license. The transient vendor's license authorizes the transient vendor to make retail sales in any county in which the transient vendor does not maintain a fixed place of business. Any holder of a transient vendor's license shall not be required to obtain a separate vendor's license from the county auditor in that county. Upon the tax commissioner's determination that an applicant is a transient vendor, the applicant shall pay a license fee in the amount of ~~one hundred~~ twenty-five dollars, at which time the tax commissioner shall issue the license. The tax commissioner may require a vendor to be licensed as a transient vendor if, in the opinion of the commissioner, such licensing is necessary for the efficient administration of the tax.

~~Any limited vendor, in lieu of obtaining a vendor's license under division (A) of this section for a county in which the limited vendor has no fixed place of business for which the limited vendor holds a vendor's license may apply to the tax commissioner or the county auditor of that county, on a form prescribed by the commissioner, for a limited vendor's license. The limited vendor's license authorizes the limited vendor to make retail sales at a temporary exhibition, show, fair, flea market, or similar event held in that county for the duration of the event or twenty days, whichever period is shorter. Any holder of a limited vendor's license shall not be required to obtain a separate vendor's license pursuant to division (A) of this section from the county auditor in that county or transient vendor's license from the tax commissioner in order to participate in the event. The applicant shall pay a license fee in the amount of five dollars, at which time the tax commissioner or county auditor shall issue a license for making retail sales at the event designated in the application. Fees collected for licenses issued by a county auditor shall be credited to the general fund of the county. Fees collected for licenses issued by the tax commissioner shall be credited to the state general revenue fund.~~

~~A limited vendor who makes retail sales at an event and who is not the holder of a transient vendor's license or a vendor's license for the county in which the event is held, shall file a tax return for and remit the tax on any sales made at the event according and subject to the requirements of section 5739.12 of the Revised Code; except that the return and the remittance shall be made within fifteen days of the close of the event.~~

Any holder of a valid transient vendor's license may make retail sales as ~~a limited vendor~~ at a temporary exhibition, show, fair, flea market, or

similar event, held anywhere in the state ~~without obtaining a limited vendor's license and~~ without complying with any provision of section 311.37 of the Revised Code. Any holder of a valid vendor's license may make retail sales as a ~~limited~~ transient vendor at a temporary exhibition, show, fair, flea market, or similar event held in any county in which the vendor maintains a fixed place of business for which the vendor holds a vendor's license without obtaining a ~~limited~~ transient vendor's license.

(C) As used in this division, "service vendor" means any person who, in the usual course of the person's business, sells services described in division (B)(3)(e), (f), (g), (h), (i), (j), (k), (l), or (m) of section 5739.01 of the Revised Code.

Every service vendor shall make application to the tax commissioner for a service vendor's license. Each applicant shall pay a license fee in the amount of twenty-five dollars. Upon the commissioner's determination that an applicant is a service vendor and payment of the fee, the commissioner shall issue the applicant a service vendor's license.

Only sales described in division (B)(3)(e), (f), (g), (h), (i), (j), (k), (l), or (m) of section 5739.01 of the Revised Code may be made under authority of a service vendor's license, and that license authorizes sales to be made at any place in this state. Any service vendor who makes sales of other services or tangible personal property subject to the sales tax also shall be licensed under division (A), (B), or (D) of this section.

(D) As used in this division, "delivery vendor" means any vendor who engages in one or more of the activities described in divisions (D)(1) to (4) of this section, and who maintains no store, showroom, or similar fixed place of business or other location where merchandise regularly is offered for sale or displayed or shown in catalogs for selection or pick-up by consumers, or where consumers bring goods for repair or other service.

(1) The vendor makes retail sales of tangible personal property;

(2) The vendor rents or leases, at retail, tangible personal property, except titled motor vehicles, titled watercraft, or titled outboard motors;

(3) The vendor provides a service, at retail, described in division (B)(3)(a), (b), (c), or (d) of section 5739.01 of the Revised Code; or

(4) The vendor makes retail sales of warranty, maintenance or service contracts, or similar agreements as described in division (B)(7) of section 5739.01 of the Revised Code.

A transient ~~or limited~~ vendor or a seller registered pursuant to section 5741.17 of the Revised Code is not a delivery vendor.

Delivery vendors shall apply to the tax commissioner, on a form prescribed by the commissioner, for a delivery vendor's license. Each

applicant shall pay a license fee of twenty-five dollars for each delivery vendor's license, to be credited to the general revenue fund. Upon the commissioner's determination that the applicant is a delivery vendor, the commissioner shall issue the license. A delivery vendor's license authorizes retail sales to be made throughout the state. All sales of the vendor must be reported under the delivery license. The commissioner may require a vendor to be licensed as a delivery vendor if, in the opinion of the commissioner, such licensing is necessary for the efficient administration of the tax. The commissioner shall not issue a delivery vendor license to a vendor who holds a license issued under division (A) of this section.

~~(E) On or before the first day of February of each year, each vendor, except limited vendors, shall renew each vendor's license in the manner prescribed by the commissioner. The vendor shall pay a renewal fee of ten dollars for each license other than a transient vendor's license, and forty dollars for a transient vendor's license. Failure to pay the renewal fee timely shall be cause for the commissioner to revoke the license pursuant to section 5739.19 of the Revised Code or to suspend the license pursuant to section 5739.30 of the Revised Code. All renewal fees shall be credited to the general revenue fund.~~

~~(F) Any transient vendor or limited vendor who is issued a license pursuant to this section shall display the license or a copy of it prominently, in plain view, at every place of business of the transient or limited vendor. Every owner, organizer, or promoter who operates a fair, flea market, show, exhibition, convention, or similar event at which transient or limited vendors are present shall keep a comprehensive record of all such vendors, listing the vendor's name, permanent address, vendor's license number, and the type of goods sold. Such records shall be kept for four years and shall be open to inspection by the tax commissioner.~~

Sec. 5739.19. The tax commissioner may revoke any retail vendor's license if he determines upon ascertaining that the vendor has failed to comply with the requirements of this chapter and that the vendor has no need for the license because he the vendor is not engaged in making taxable retail sales. Notice of the revocation shall be delivered to the vendor personally or by certified mail, return receipt requested. The revocation shall be effective on the first day of the month following the expiration of fifteen days after the vendor received the notice of the revocation.

The revocation of the vendor's license shall be stayed if, within fifteen days after receiving notice of the revocation, the vendor objects, in writing, to the revocation ~~and pays all outstanding tax and penalties resulting from his failure to comply with the provisions of this chapter, or provides~~

~~ence that the tax and any penalties have been paid.~~ The commissioner shall consider the written objections of the vendor and issue a final determination on the revocation of the vendor's license. The commissioner's final determination may be appealed to the board of tax appeals pursuant to section 5717.02 of the Revised Code. The revocation shall be effective on the first day of the month following the expiration of all time limits for appeal.

Sec. 5739.30. (A) No person, including any officer, employee, or trustee of a corporation or business trust, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or ~~fraudulent~~ fraudulent return, report, or statement, or aid or abet another in the filing of any false or fraudulent return, report, or statement.

(B) If any vendor required to file monthly returns under section 5739.12 of the Revised Code fails, on two consecutive months or on three or more months within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any vendor authorized by the tax commissioner to file semiannual returns; fails on two or more occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, ~~or if any vendor fails to pay the annual license renewal fee required by division (E) of section 5739.17 of the Revised Code,~~ the commissioner may do any of the following:

(1) Require the vendor to furnish security in an amount equal to the average tax liability of the vendor for a period of one year, as determined by the commissioner from a review of returns or other information pertaining to the vendor, which amount shall in no event be less than one thousand dollars. The security may be in the form of a corporate surety bond, satisfactory to the commissioner, conditioned upon payment of the tax due with the returns from the vendor. The security shall be filed within ten days following the vendor's receipt of the notice from the commissioner of its requirements.

(2) Suspend the license issued to the vendor pursuant to section 5739.17 of the Revised Code. The suspension shall be effective ten days after service of written notice to the vendor of the commissioner's intention to do so. The notice shall be served upon the vendor personally or by certified mail. On the first day of the suspension, the commissioner shall cause to be posted, at every public entrance of the vendor's premises, a notice identifying the vendor and the location and informing the public that the vendor's license is under suspension and that no retail sales may be transacted at that location. No person, other than the commissioner or ~~his~~ the commissioner's agent or

employee, shall remove, cover, or deface the posted notice. No license which has been suspended under this section shall be reinstated, and no posted notice shall be removed, until the vendor has filed complete and correct returns for all periods in which no return had been filed and paid the full amount of the tax, penalties, and other charges due on those returns.

A corporate surety bond filed under this section shall be returned to the vendor if, for a period of twelve consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment with them within the time prescribed in section 5739.12 of the Revised Code.

Sec. 5741.02. (A) For the use of the general revenue fund of the state, an excise tax is hereby levied on the storage, use, or other consumption in this state of tangible personal property or the benefit realized in this state of any service provided. The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

(B) Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state; provided, that the consumer shall be relieved from further liability for the tax if the tax has been paid to a seller in accordance with section 5741.04 of the Revised Code or prepaid by the seller in accordance with section 5741.06 of the Revised Code.

(C) The tax does not apply to the storage, use, or consumption in this state of the following described tangible personal property or services, nor to the storage, use, or consumption or benefit in this state of tangible personal property or services purchased under the following described circumstances:

(1) When the sale of property or service in this state is subject to the excise tax imposed by sections 5739.01 to 5739.31 of the Revised Code, provided said tax has been paid;

(2) Except as provided in division (D) of this section, tangible personal property or services, the acquisition of which, if made in Ohio, would be a sale not subject to the tax imposed by sections 5739.01 to 5739.31 of the Revised Code;

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this

state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and section 5739.02 of the Revised Code;

(4) Transient use of tangible personal property in this state by a nonresident tourist or vacationer, or a non-business use within this state by a nonresident of this state, if the property so used was purchased outside this state for use outside this state and is not required to be registered or licensed under the laws of this state;

(5) Tangible personal property or services rendered upon which taxes have been paid to another jurisdiction to the extent of the amount of the tax paid to such other jurisdiction. Where the amount of the tax imposed by this section and imposed pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code exceeds the amount paid to another jurisdiction, the difference shall be allocated between the tax imposed by this section and any tax imposed by a county or a transit authority pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion to the respective rates of such taxes.

As used in this subdivision, "taxes paid to another jurisdiction" means the total amount of retail sales or use tax or similar tax based upon the sale, purchase, or use of tangible personal property or services rendered legally, levied by and paid to another state or political subdivision thereof, or to the District of Columbia, where the payment of such tax does not entitle the taxpayer to any refund or credit for such payment.

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or (29) of section 5739.02 of the Revised Code, the consumer shall furnish to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. If the transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the

Revised Code, the exemption certificate shall be signed by both the contractor and contractee, and the contractee shall be deemed to be the consumer of all items purchased under the claim of exemption if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. If no certificate is furnished or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be presumed that the tax applies. The failure to have so furnished or obtained a certificate shall not preclude a seller or consumer from establishing, within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, that the transaction is not subject to the tax.

(E) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

Sec. 5741.121. (A) If the total amount of tax required to be paid by a consumer under section 5741.12 of the Revised Code for any year indicated in the following schedule equals or exceeds the amount prescribed for that year in the schedule, the consumer shall remit each monthly tax payment in the second ensuing and each succeeding year by electronic funds transfer as prescribed by division (B) of this section.

Year	1992	1993 and thereafter	2000
		<u>through 1999</u>	<u>and thereafter</u>
Tax	\$1,200,000	\$600,000	<u>\$60,000</u>
payment			

If a consumer's tax payment for each of two consecutive years beginning with ~~1993~~ 2000 is less than ~~six hundred sixty~~ sixty thousand dollars, the consumer is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive

ars in which the tax payment is less than ~~six hundred~~ sixty thousand dollars, and is relieved of that requirement for each succeeding year unless the tax payment in a subsequent year equals or exceeds ~~six hundred~~ sixty thousand dollars.

The tax commissioner shall notify each consumer required to remit taxes by electronic funds transfer of the consumer's obligation to do so, shall maintain an updated list of those consumers, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a consumer subject to this section to remit taxes by electronic funds transfer does not relieve the consumer of ~~its~~ the consumer's obligation to remit taxes by electronic funds transfer.

(B) Consumers required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates specified under section 5741.12 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a consumer's obligation to file the monthly return as required under section 5741.12 of the Revised Code.

A consumer required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the consumer from remittance by electronic funds transfer for good cause shown for the period of time requested by the consumer or for a portion of that period. The treasurer shall notify the tax commissioner and the consumer of the treasurer's decision as soon as is practicable.

(C) If a consumer required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5741.13 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt

rules governing such remission.

No additional charge shall be assessed under this division against a consumer that has been notified of ~~its~~ the consumer's obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the consumer remits by some means other than electronic funds transfer.

Sec. 5743.03. Except as provided in section 5743.04 of the Revised Code, the taxes imposed under sections 5743.02, 5743.023, 5743.024, and 5743.026 of the Revised Code shall be paid by the purchase of stamps. A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. The stamp, so affixed, shall be prima-facie evidence of payment of the tax. Except as is provided in the rules prescribed by the tax commissioner under authority of sections 5743.01 to 5743.20 of the Revised Code, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer, and canceled by writing or stamping across the face thereof the number assigned to such wholesale dealer by the tax commissioner for that purpose, prior to the delivery of any cigarettes to any person in this state, or in the case of a tax levied pursuant to section 5743.024 or 5743.026 of the Revised Code, prior to the delivery of cigarettes to any person in the county in which the tax is levied.

Except as provided in the rules prescribed by the commissioner under authority of sections 5743.01 to 5743.20 of the Revised Code, and unless such stamps have been previously affixed, each retail dealer shall within twenty-four hours after the receipt of any cigarettes at the retail dealer's place of business and prior to the delivery thereof to any person in this state, or in the case of a tax levied pursuant to section 5743.024 or 5743.026 of the Revised Code prior to the delivery thereof to any person in the county in which the tax is levied, so affix such stamps and cancel same by writing or stamping across the face thereof the number assigned to such retail dealer by the commissioner for that purpose.

Whenever any cigarettes are found in the place of business of any retail dealer without proper tax stamps affixed thereto and canceled, it is presumed that such cigarettes are kept therein in violation of sections 5743.01 to 5743.20 of the Revised Code.

Each wholesale dealer and each retail dealer who purchases cigarettes without proper tax stamps affixed thereto shall, on or before the thirty-first day of the month following the close of each semiannual period, which

period shall end on the thirtieth day of June and the thirty-first day of December of each year, make and file a return of the preceding semiannual period, on such form as is prescribed by the tax commissioner, showing ~~his~~ the dealer's entire purchases and sales of cigarettes and stamps or impressions for such semiannual period and accurate inventories as of the beginning and end of each semiannual period of cigarettes, stamped or unstamped; cigarette tax stamps affixed or unaffixed and unused meter impressions; and such other information as the commissioner finds necessary to the proper administration of sections 5743.01 to 5743.20 of the Revised Code. The commissioner may extend the time for making and filing returns and may remit all or any part of amounts of penalties which may become due under sections 5743.01 to 5743.20 of the Revised Code. The wholesale or retail dealer shall deliver the return together with a remittance of the tax deficiency reported thereon to the treasurer of state. The treasurer of state shall stamp or otherwise mark on the return the date it was received and shall also show thereon by stamp or otherwise a payment or nonpayment of the deficiency shown by the return. Thereafter, the treasurer of state shall immediately transmit all returns filed under this section to the commissioner. Any wholesale or retail dealer who fails to file a return under this section and the rules of the commissioner ~~shall~~ may be required, for each day the dealer so fails, to forfeit and pay into the state treasury the sum of one dollar as revenue arising from the tax imposed by sections 5743.01 to 5743.20 of the Revised Code and such sum may be collected by assessment in the manner provided in section 5743.081 of the Revised Code. If the commissioner finds it necessary in order to insure the payment of the tax imposed by sections 5743.01 to 5743.20 of the Revised Code, the commissioner may require returns and payments to be made other than semiannually. The returns shall be signed by the wholesale or retail dealer or ~~his~~ an authorized agent thereof.

Sec. 5743.081. (A) If any wholesale dealer or retail dealer fails to pay the tax levied under sections 5743.02, 5743.023, 5743.024, or 5743.026 of the Revised Code as required by sections 5743.01 to 5743.20 of the Revised Code, and by the rules of the tax commissioner, or fails to collect the tax from the purchaser or consumer, the commissioner may make an assessment against the wholesale or retail dealer based upon any information in the commissioner's possession.

The commissioner may make an assessment against any wholesale or retail dealer who fails to file a return required by section 5743.03 or 5743.025 of the Revised Code.

No assessment shall be made against any wholesale or retail dealer for

any taxes imposed under sections 5743.02, 5743.023, 5743.024, or 5743.026 of the Revised Code more than three years after the last day of the calendar month which immediately follows the semiannual period prescribed in section 5743.03 of the Revised Code in which the sale was made, or more than three years after the semiannual return for such period is filed, whichever is later. This section does not bar an assessment against any wholesale or retail dealer who fails to file a return as required by section 5743.03 or 5743.025 of the Revised Code, or who files a fraudulent return.

A penalty of up to thirty per cent ~~shall~~ may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail as provided in section 5703.37 of the Revised Code.~~ The notice shall specify separately any portion of the assessment that represents a county tax.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to an assessment as the commissioner finds proper. The commissioner shall serve a copy of the final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office

of the clerk of the court of common pleas in the county in which the wholesale or retail dealer's place of business is located or the county in which the party assessed resides. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the commissioner's entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state cigarette sales tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment except as otherwise provided in sections 5743.01 to 5743.20 of the Revised Code.

The portion of the assessment not paid within ~~thirty~~ sixty days after the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the taxes imposed by sections 5743.01 to 5743.20 of the Revised Code.

Sec. 5743.082. (A) If the tax commissioner finds that a wholesale dealer or retail dealer, liable for tax under sections 5743.01 to 5743.20 of the Revised Code, is about to depart from the state, remove the wholesale or retail dealer's property from the state, conceal the wholesale or retail dealer's person or property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax, unless the proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any wholesale dealer or retail dealer will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the wholesale or retail dealer for the amount of the tax, plus a penalty of up to thirty per cent. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest as prescribed by section 5743.081 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of

the court of common pleas in the same manner and with the same effect as provided in section 5743.081 of the Revised Code. Notice of the jeopardy assessment shall be served on the dealer assessed or the dealer's legal representative, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The dealer assessed may petition for reassessment within ~~thirty~~ sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 5743.081 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the dealer subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the dealer that previously were seized. Upon satisfaction of the assessment the commissioner shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the imposition and remission of penalties imposed under this section.

Sec. 5743.52. (A) Each distributor of tobacco products subject to the tax levied by section 5743.51 of the Revised Code, on or before the last day of each month, shall file with the treasurer of state a return for the preceding month showing any information the tax commissioner finds necessary for the proper administration of sections 5743.51 to 5743.66 of the Revised Code, together with remittance of the tax due. The treasurer of state shall stamp or otherwise mark on the return the date it was received and shall also show thereon by stamp or otherwise the amount of payment received with the return. Thereafter, the treasurer of state shall immediately transmit all returns filed under this section to the tax commissioner. The return and

payment of the tax required by this section shall be filed in such a manner that it is received by the treasurer of state on or before the last day of the month following the reporting period. If the return is filed and the amount of tax shown on the return to be due is paid on or before the date the return is required to be filed, the distributor is entitled to a discount equal to two and five-tenths per cent of the amount shown on the return to be due.

(B) Any person who fails to timely file the return and make payment of taxes as required under this section, section 5743.62, or section 5743.63 of the Revised Code ~~shall~~ may be required to pay an additional charge ~~equal to not exceeding~~ the greater of fifty dollars or ten per cent of the tax due. Any additional charge imposed under this section may be collected by assessment as provided in section 5743.56 of the Revised Code.

(C) If any tax due is not paid timely in accordance with sections 5743.52, 5743.62, or 5743.63 of the Revised Code, the person liable for the tax shall pay interest, calculated at the rate per annum as prescribed by section 5703.47 of the Revised Code, from the date the tax payment was due to the date of payment or to the date an assessment is issued under section 5743.56 of the Revised Code, whichever occurs first. The commissioner may collect such interest by assessment pursuant to section 5743.56 of the Revised Code.

(D) The commissioner may authorize the filing of returns and the payment of the tax required by this section, section 5743.62, or section 5743.63 of the Revised Code for periods longer than a calendar month.

(E) The commissioner may order any taxpayer to file with the commissioner security to the satisfaction of the commissioner conditioned upon filing the return and paying the taxes required under this section, section 5743.62, or section 5743.63 of the Revised Code if the commissioner believes that the collection of the tax may be in jeopardy.

Sec. 5743.56. (A) Any person required to pay the tax imposed by section 5743.51, 5743.62, or 5743.63 of the Revised Code is personally liable for the tax. The tax commissioner may make an assessment, based upon any information in the commissioner's possession, against any person who fails to file a return or pay any tax, interest, or additional charge as required by this chapter. The commissioner shall give the person assessed written notice of such assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) When the information in the possession of the tax commissioner indicates that a person liable for the tax imposed by section 5743.51, 5743.62, or 5743.63 of the Revised Code has not paid the full amount of tax due, the commissioner may audit a representative sample of the person's

iness and may issue an assessment based on such audit.

(C) A penalty of up to fifteen per cent ~~shall~~ may be added to all amounts assessed under this section. The commissioner may adopt rules providing for the imposition and remission of such penalties.

(D) Unless the person assessed files with the tax commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing by the person assessed or the authorized agent of the person assessed having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the person assessed to the treasurer of state. A petition shall indicate the objections to the assessment of the person assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the tax commissioner. The commissioner shall grant the petitioner a hearing on the petition, unless waived by the petitioner.

The commissioner may make such correction to the assessment as the commissioner finds proper and shall issue a final determination thereon. The commissioner shall serve a copy of the final determination on the petitioner either by personal service or by certified mail, and the commissioner's decision in the matter is final, subject to appeal under section 5717.02 of the Revised Code.

(E) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the person assessed resides or in which the person assessed conducts business. If the person assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the person assessed in the amount shown to be due. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state tobacco products tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment is issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing

an assessment under this section.

(F) If the commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (E) of this section. Notice of the jeopardy assessment shall be served on the person assessed or the legal representative of the person assessed, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (D) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(G) All money collected by the commissioner under this section shall be paid to the treasurer of state as revenue arising from the tax imposed by sections 5743.51, 5743.62, and 5743.63 of the Revised Code.

Sec. 5747.07. (A) As used in this section:

(1) "Partial weekly withholding period" means a period during which an employer directly, indirectly, or constructively pays compensation to, or credits compensation to the benefit of, an employee, and that consists of a consecutive Saturday, Sunday, Monday, and Tuesday or a consecutive Wednesday, Thursday, and Friday. There are two partial weekly withholding periods each week, except that a partial weekly withholding period cannot extend from one calendar year into the next calendar year; if the first day of January falls on a day other than Saturday or Wednesday, the partial weekly withholding period ends on the thirty-first day of December and there are three partial weekly withholding periods during that week.

(2) "Undeposited taxes" means the taxes an employer is required to deduct and withhold from an employee's compensation pursuant to section 5747.06 of the Revised Code that have not been remitted to the tax commissioner pursuant to this section or to the treasurer of state pursuant to section 5747.072 of the Revised Code.

(3) A "week" begins on Saturday and concludes at the end of the following Friday.

(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer

required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows:

(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

(2)(a) Except as required by division (B)(1) of this section, an employer described in division (B)(2)(b) of this section shall make the payment of undeposited taxes within three banking days after the close of a partial weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

(b) For amounts required to be deducted and withheld during 1994, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending June 30, 1993. For amounts required to be deducted and withheld during 1995 and each year thereafter, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section were at least eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(3) Except as required by divisions (B)(1) and (2) of this section, if an employer's actual or required payments were more than two thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year, the employer shall make the payment of undeposited taxes for each month during which they were required to be withheld no later than fifteen days following the last day of that month. The employer shall file the return prescribed by the tax commissioner with the payment.

(4) Except as required by divisions (B)(1), (2), and (3) of this section, an employer shall make the payment of undeposited taxes for each calendar quarter during which they were required to be withheld no later than the last day of the month following the last day of March, June, September, and December each year. The employer shall file the return prescribed by the tax commissioner with the payment.

(C) The return and payment schedules prescribed by divisions (B)(1) and (2) of this section do not apply to the return and payment of undeposited school district income taxes arising from taxes levied pursuant to Chapter 5748. of the Revised Code. Undeposited school district income taxes shall be returned and paid pursuant to divisions (B)(3) and (4) of this section, as applicable.

(D)(1) The requirements of division (B) of this section are met if the amount paid is not less than ninety-five per cent of the actual tax withheld or required to be withheld for the prior quarterly, monthly, or partial weekly withholding period, and the underpayment is not due to willful neglect. Any underpayment of withheld tax shall be paid within thirty days of the date on which the withheld tax was due without regard to division (D)(1) of this section. An employer described in division (B)(1) or (2) of this section shall make the payment by electronic funds transfer under section 5747.072 of the Revised Code.

(2) If the tax commissioner believes that quarterly or monthly payments would result in a delay that might jeopardize the remittance of withholding payments, the commissioner may order that the payments be made weekly, or more frequently if necessary, and the payments shall be made no later than three banking days following the close of the period for which the jeopardy order is made. An order requiring weekly or more frequent payments shall be delivered to the employer personally or by certified mail and remains in effect until the commissioner notifies the employer to the contrary.

(3) If compelling circumstances exist concerning the remittance of undeposited taxes, the commissioner may order the employer to make payments under any of the payment schedules under division (B) of this section. The order shall be delivered to the employer personally or by certified mail and shall remain in effect until the commissioner notifies the employer to the contrary. For purposes of division (D)(3) of this section, "compelling circumstances" exist if either or both of the following are true:

(a) Based upon annualization of payments made or required to be made during the preceding calendar year and during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(b) Based upon annualization of payments made or required to be made during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(E)(1) An employer described in division (B)(1) or (2) of this section shall file, not later than the last day of the month following the end of each

calendar quarter, a return covering, but not limited to, both the actual amount deducted and withheld and the amount required to be deducted and withheld for the tax imposed under section 5747.02 of the Revised Code during each partial weekly withholding period or portion of a partial weekly withholding period during that quarter. The employer shall file the quarterly return even if the aggregate amount required to be deducted and withheld for the quarter is zero dollars. At the time of filing the return, the employer shall pay any amounts of undeposited taxes for the quarter, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. If required under division (I) of this section, the payment shall be made by electronic funds transfer. The tax commissioner shall prescribe the form and other requirements of the quarterly return.

(2) In addition to other returns required to be filed and payments required to be made under this section, every employer required to deduct and withhold taxes shall file, not later than the thirty-first day of January of each year, an annual return covering, but not limited to, both the aggregate amount deducted and withheld and the aggregate amount required to be deducted and withheld during the entire preceding year for the tax imposed under section 5747.02 of the Revised Code and for each tax imposed under Chapter 5748. of the Revised Code. At the time of filing that return, the employer shall pay over any amounts of undeposited taxes for the preceding year, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. The employer shall make the annual report, to each employee and to the tax commissioner, of the compensation paid and each tax withheld, as the commissioner by rule may prescribe.

Each employer required to deduct and withhold any tax is liable for the payment of that amount required to be deducted and withheld, whether or not the tax has in fact been withheld, unless the failure to withhold was based upon the employer's good faith in reliance upon the statement of the employee as to liability, and the amount shall be deemed to be a special fund in trust for the general revenue fund.

(F) Each employer shall file with the employer's annual return the following items of information on employees for whom withholding is required under section 5747.06 of the Revised Code:

- (1) The full name of each employee, the employee's address, the employee's school district of residence, and in the case of a nonresident employee, the employee's principal county of employment;
- (2) The social security number of each employee;
- (3) The total amount of compensation paid before any deductions to

each employee for the period for which the annual return is made;

(4) The amount of the tax imposed by section 5747.02 of the Revised Code and the amount of each tax imposed under Chapter 5748. of the Revised Code withheld from the compensation of the employee for the period for which the annual return is made. The commissioner may extend upon good cause the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions of time. If the extension results in an extension of time for the payment of the amounts withheld with respect to which the return is filed, the employer shall pay, at the time the amount withheld is paid, an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that amount withheld, from the day that amount was originally required to be paid to the day of actual payment or to the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(5) In addition to all other interest charges and penalties imposed, all amounts of taxes withheld or required to be withheld and remaining unpaid after the day the amounts are required to be paid shall bear interest from the date prescribed for payment at the rate per annum prescribed by section 5703.47 of the Revised Code on the amount unpaid, in addition to the amount withheld, until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(G) An employee of a corporation, limited liability company, or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer, member, manager, or trustee of a corporation, limited liability company, or business trust who is responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge a responsible officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay tax due.

(H) If an employer required to deduct and withhold income tax from compensation and to pay that tax to the state under sections 5747.06 and 5747.07 of the Revised Code sells the employer's business or stock of merchandise or quits the employer's business, the taxes required to be deducted and withheld and paid to the state pursuant to those sections prior to that time, together with any interest and penalties imposed on those taxes, become due and payable immediately, and that person shall make a final

return within fifteen days after the date of selling or quitting business. The employer's successor shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid, until the former owner produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid or a certificate indicating that no such taxes are due. If the purchaser of the business or stock of merchandise fails to withhold purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the former owner. If the amount of taxes, interest, and penalties outstanding at the time of the purchase exceeds the total purchase money, the tax commissioner in the commissioner's discretion may adjust the liability of the seller or the responsibility of the purchaser to pay that liability to maximize the collection of withholding tax revenue.

(I)(1) An employer described in division (I)(2) of this section shall make all payments required by this section for the year by electronic funds transfer under section 5747.072 of the Revised Code.

(2)(a) For 1994, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1993.

(b) For 1995, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1994.

(c) For 1996, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded three hundred thousand dollars during the twelve-month period ending June 30, 1995.

(d) For 1997 ~~and thereafter~~ through 2000, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(e) For 2001 and thereafter, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

Sec. 5747.09. (A) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer estimates to

be ~~his~~ the taxpayer's combined tax liability under this chapter and ~~Chapter~~ Chapter 5748. of the Revised Code for the current taxable year.

(2) "Tax liability" means the total taxes due for the taxable year, after allowing any credit to which the taxpayer is entitled, but prior to applying any estimated tax payment, withholding payment, or refund from another tax year.

(3) "Taxes paid" include payments of estimated taxes made under division (C) of this section, taxes withheld from the taxpayer's compensation, and tax refunds applied by the taxpayer in payment of estimated taxes.

(B) Every taxpayer shall make declaration of estimated taxes for the current taxable year, in the form that the tax commissioner shall prescribe, if the amount payable as estimated taxes, less the amount to be withheld from the taxpayer's compensation, is more than ~~three~~ five hundred dollars. For purposes of this section, taxes withheld from compensation shall be considered as paid in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld. Taxpayers filing joint returns pursuant to section 5747.08 of the Revised Code shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the commissioner. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner. The declaration of estimated taxes for an individual under a disability shall be made and filed by the person who is required to file the income tax return.

The declaration of estimated taxes shall be filed on or before the fifteenth day of April of each year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

The declaration shall be filed upon a form prescribed by the commissioner and furnished by or obtainable from the commissioner.

The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the treasurer of state, including the application of tax refunds to estimated taxes, and withholding

on or before the applicable payment date shall be as follows:

(1) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the tax liability for the taxable year;

(2) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the tax liability for the taxable year;

(3) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the tax liability for the taxable year;

(4) On or before the fifteenth day of the first month of the following taxable year, ninety per cent of the tax liability for the taxable year.

When an amended return has been filed, the unpaid balance shown due on the amended return shall be paid in equal installments on or before the remaining payment dates.

On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with section 5747.08 of the Revised Code.

(D) In the case of any underpayment of estimated taxes, an interest penalty shall be added to the taxes for the tax year at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(1) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(2) For the second payment of estimated taxes each year, forty-five per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(3) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(4) For the fourth payment of estimated taxes each year, ninety per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any

payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

The interest penalty imposed under division (D) of this section shall be in lieu of any other interest charge or penalty imposed for failure to file an estimated return and make estimated payments as required by this section.

(E) An underpayment of estimated taxes determined under division (D) of this section shall be due to reasonable cause and the interest penalty imposed by this section shall not be added to the taxes for the tax year if either of the following apply:

(1) The amount of tax that was paid equals at least ninety per cent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due;

(2) The amount of tax that was paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return under section 5747.08 of the Revised Code for that year.

The tax commissioner may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers ~~if he finds~~ after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

Sec. 5747.13. (A) If any employer collects the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code and fails to remit the tax as required by law, or fails to collect the tax, the employer is personally liable for any amount collected which the employer fails to remit, or any amount which the employer fails to collect. If any taxpayer fails to file a return or fails to pay the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code, the taxpayer is personally liable for the amount of the tax.

If any employer, taxpayer, or qualifying entity required to file a return under this chapter fails to file the return within the time prescribed, files an incorrect return, fails to remit the full amount of the taxes due for the period covered by the return, or fails to remit any additional tax due as a result of a reduction in the amount of the credit allowed under division (B) of section 5747.05 of the Revised Code together with interest on the additional tax within the time prescribed by that division, the tax commissioner may make an assessment against any person liable for any deficiency for the period for which the return is or taxes are due, based upon any information in the

commissioner's possession.

An assessment issued against either the employer or the taxpayer pursuant to this section shall not be considered an election of remedies or a bar to an assessment against the other for failure to report or pay the same tax. No assessment shall be issued against any person if the tax actually has been paid by another.

No assessment shall be made or issued against an employer, taxpayer, or qualifying entity more than four years after the final date the return subject to assessment was required to be filed or the date the return was filed, whichever is later. However, the commissioner may assess any balance due as the result of a reduction in the credit allowed under division (B) of section 5747.05 of the Revised Code, including applicable penalty and interest, within four years of the date on which the taxpayer reports a change in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia or the amount of liability for an income tax or tax measured by income to another state or the District of Columbia, as required by division (B)(3) of section 5747.05 of the Revised Code. Such time limits may be extended if both the employer, taxpayer, or qualifying entity and the commissioner consent in writing to the extension. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, taxpayer, or qualifying entity that fails to file a return subject to assessment as required by this chapter, or against an employer, taxpayer, or qualifying entity that files a fraudulent return.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail as provided in section 5703.37 of the Revised Code.~~

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts and makes payment of the portion of the assessment required by division (E) of this section, the assessment shall become final, and the amount of the assessment shall be due and payable from the party assessed to the commissioner with remittance made payable to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received

prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to an assessment as the commissioner finds proper. The commissioner shall serve a copy of a final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the employer's, taxpayer's, or qualifying entity's place of business is located or the county in which the party assessed resides. If the party assessed is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the party assessed in the amount shown on the entry. The judgment shall be filed by the clerk in one of two loose-leaf books, one entitled "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity taxes." The judgment shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter or Chapter 5733. or 5748. of the Revised Code, as appropriate.

(E) The portion of an assessment which must be paid upon the filing of

a petition for reassessment shall be as follows:

(1) If the sole item objected to is the assessed penalty or interest, ~~full~~ payment of the assessment, including interest but not penalty ~~and interest~~, is required;

(2) If the taxpayer or qualifying entity that is assessed failed to file, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, any amended return or amended report required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, or any report required by division (B) of section 5747.05 of the Revised Code to indicate a reduction in the amount of the credit provided under that division, ~~full~~ payment of the assessment, including interest but not penalty ~~and interest~~, is required, except as otherwise provided under division (E)(6) or (7) of this section;

(3) If the employer assessed had not filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, ~~full~~ payment of the assessment, including interest but not penalty ~~and interest~~, is required;

(4) If the taxpayer or qualifying entity that is assessed filed, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, all amended returns or reports required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, and all reports required by division (B) of section 5747.05 of the Revised Code to indicate a reduction in the amount of the credit provided under that division, and a balance of the taxes shown due on the returns or reports as computed on the returns or reports remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(5) If the employer assessed filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, and a balance of the taxes shown due on the return as computed on the return remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(6) In the case of a party assessed as a qualifying entity subject to the tax levied under section 5733.41 or 5747.41 of the Revised Code, if the party does not dispute that it is a qualifying entity subject to that tax but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, no payment is required;

(7) In the case of a party assessed as a qualifying entity subject to the tax levied under section 5733.41 or 5747.41 of the Revised Code, if the

party does dispute that it is a qualifying entity subject to that tax, no payment is required;

(8) If none of the conditions specified in divisions (E)(1) to (7) of this section apply, no payment is required.

(F) Notwithstanding the fact that a petition for reassessment is pending, the petitioner may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the portion paid, there shall be issued to the petitioner or to the petitioner's assigns or legal representative a refund in the amount of the overpayment as provided by section 5747.11 of the Revised Code, with interest on that amount as provided by such section, subject to section 5747.12 of the Revised Code.

Sec. 5747.15. (A) In addition to any other penalty imposed by this chapter or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer, qualifying entity, or employer required to file any report or return, including an informational notice, report, or return, under this chapter fails to make and file the report or return within the time prescribed, including any extensions of time granted by the tax commissioner, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars, or five per cent per month or fraction of a month, not to exceed fifty per cent, of the sum of the taxes required to be shown on the report or return, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which filed.

(2) If a taxpayer fails to pay any amount of tax required to be paid under section 5733.41 or 5747.41 or Chapter 5748. of the Revised Code, except estimated tax under section 5747.09 or 5747.43 of the Revised Code, by the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding twice the applicable interest charged under division (G) of section 5747.08 of the Revised Code for the delinquent payment.

(3)(a) If an employer fails to pay any amount of tax imposed by section 5747.02 of the Revised Code and required to be paid under this chapter by the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the sum of ten per cent of the delinquent payment plus twice

the interest charged under division (F)(5) of section 5747.07 of the Revised Code for the delinquent payment.

(b) If a qualifying entity fails to pay any amount of tax imposed by section 5733.41 or 5747.41 of the Revised Code and required to be paid under this chapter by the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the sum of ten per cent of the delinquent payment plus twice the applicable interest charged under division (G) of section 5747.08 of the Revised Code for the delinquent payment.

(4)(a) If an employer withholds from employees the tax imposed by section 5747.02 of the Revised Code and fails to remit the tax withheld to the state as required by this chapter on or before the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding fifty per cent of the delinquent payment.

(b) If a qualifying entity withholds any amount of tax imposed under section 5747.41 of the Revised Code from an individual's qualifying amount and fails to remit that amount to the state as required by sections 5747.42 to 5747.453 of the Revised Code on or before the dates prescribed for payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding fifty per cent of the delinquent payment.

(5) If a taxpayer, qualifying entity, or employer files what purports to be a return required by this chapter that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of the tax levied by section 5733.41, 5747.02, or 5747.41, or Chapter 5748. of the Revised Code, a penalty of up to five hundred dollars ~~shall~~ may be imposed.

(6) If a taxpayer or qualifying entity makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.

(7) If any person makes a false or fraudulent claim for a refund under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of one thousand dollars or one hundred per cent of the claim. The penalty imposed under division (A)(7) of this section, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 5747.13 of the Revised Code as tax, penalty, or interest imposed under section 5733.41, 5747.02, or 5747.41 of the Revised

Code, without regard to whether the person making the claim is otherwise subject to the provisions of this chapter or Chapter 5733. of the Revised Code, and without regard to any time limitation for the assessment imposed by division (A) of section 5747.13 of the Revised Code.

(B) For purposes of this section, the taxes required to be shown on the return shall be reduced by the amount of any part of the taxes paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Any penalty imposed under this section shall be in addition to all other penalties imposed under this section. All or part of any penalty imposed under this section may be abated by the commissioner. All or part of any penalty imposed under this section may be abated by the commissioner if the taxpayer, qualifying entity, or employer shows that the failure to comply with the provisions of this chapter is due to reasonable cause and not willful neglect.

Sec. 5749.07. (A) If any severer required by this chapter to make and file returns and pay the tax levied by section 5749.02 of the Revised Code, fails to make such return or pay such tax, the tax commissioner may make an assessment against the severer based upon any information in the commissioner's possession.

No assessment shall be made or issued against any severer for any tax imposed by section 5749.02 of the Revised Code more than four years after the return was due or was filed, whichever is later. This section does not bar an assessment against a severer who fails to file a return as required by this chapter, or who files a fraudulent return.

The commissioner shall give the party assessed written notice of such assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom such notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by an authorized agent of the party assessed having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the

time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the final determination on the petitioner by personal service or by certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the party's business is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

The clerk, immediately upon the filing of such entry, shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state severance tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment is issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by section 5749.02 of the Revised Code.

Sec. 5749.08. The tax commissioner shall refund to taxpayers the amount of taxes paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for refund shall be filed with the tax commissioner, on the form prescribed by ~~him~~ the commissioner, within four years from the date of the illegal or erroneous payment of the tax. On the filing of such application the commissioner shall determine the amount of

refund due plus interest computed in accordance with section 5703.47 of the Revised Code from the date of the payment of an erroneous or illegal assessment until the date the refund is paid and certify such amount to the director of budget and management and treasurer of state payment from the tax refund created by section 5703.052 of the Revised Code.

Sec. 5749.15. Any person who fails to file a return or pay the tax as required who is assessed such taxes pursuant to section 5749.07 or 5749.10 of the Revised Code is may be liable for a penalty of ~~five per cent per month or portion of a month on the amount of the unpaid taxes due, not to exceed a maximum penalty of up to~~ twenty-five per cent of the amount assessed. The tax commissioner may ~~remit all or a portion of the penalty, and may~~ adopt rules relating to the imposition and remission of penalties imposed under this section.

SECTION 2. That existing sections 3734.904, 3734.907, 3769.088, 4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 5703.37, 5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 5717.01, 5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 5733.11, 5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 5739.02, 5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 5739.133, 5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 5747.13, 5747.15, 5749.07, 5749.08, and 5749.15 and sections 5703.141, 5735.17, 5735.32, 5739.161, and 5747.082 of the Revised Code are hereby repealed.

SECTION 3. That the version of section 5741.02 of the Revised Code that is to take effect July 1, 2001, be amended to read as follows:

Sec. 5741.02. (A) For the use of the general revenue fund of the state, an excise tax is hereby levied on the storage, use, or other consumption in this state of tangible personal property or the benefit realized in this state of any service provided. The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

(B) Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state; provided, that the consumer shall be relieved from further liability for the tax if the tax has

been paid to a seller in accordance with section 5741.04 of the Revised Code or prepaid by the seller in accordance with section 5741.06 of the Revised Code.

(C) The tax does not apply to the storage, use, or consumption in this state of the following described tangible personal property or services, nor to the storage, use, or consumption or benefit in this state of tangible personal property or services purchased under the following described circumstances:

(1) When the sale of property or service in this state is subject to the excise tax imposed by sections 5739.01 to 5739.31 of the Revised Code, provided said tax has been paid;

(2) Except as provided in division (D) of this section, tangible personal property or services, the acquisition of which, if made in Ohio, would be a sale not subject to the tax imposed by sections 5739.01 to 5739.31 of the Revised Code;

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and section 5739.02 of the Revised Code;

(4) Transient use of tangible personal property in this state by a nonresident tourist or vacationer, or a non-business use within this state by a nonresident of this state, if the property so used was purchased outside this state for use outside this state and is not required to be registered or licensed under the laws of this state;

(5) Tangible personal property or services rendered upon which taxes have been paid to another jurisdiction to the extent of the amount of the tax paid to such other jurisdiction. Where the amount of the tax imposed by this section and imposed pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code exceeds the amount paid to another jurisdiction, the difference shall be allocated between the tax imposed by this section and any tax imposed by a county or a transit authority pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion to the respective rates of such taxes.

As used in this subdivision, "taxes paid to another jurisdiction" means

the total amount of retail sales or use tax or similar tax based upon the sale, purchase, or use of tangible personal property or services rendered legally, levied by and paid to another state or political subdivision thereof, or to the District of Columbia, where the payment of such tax does not entitle the taxpayer to any refund or credit for such payment.

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the consumer shall furnish to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. If the transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the exemption certificate shall be signed by both the contractor and contractee, and the contractee shall be deemed to be the consumer of all items purchased under the claim of exemption if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. If no certificate is furnished or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be presumed that the tax applies. The failure to have so furnished or obtained a certificate shall not preclude a seller or consumer from establishing, within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, that the transaction is not subject to the tax.

(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day

period allowed under division (E) of this section may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

SECTION 4. That the existing version of section 5741.02 of the Revised Code that is to take effect July 1, 2001, is hereby repealed.

SECTION 5. Section 4301.422 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 239 and Am. Sub. S.B. 188 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 223 and Am. Sub. S.B. 3 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

H. B. No. 612

139

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____