

# As Passed by the House

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REPRESENTATIVES Latta, Kearns, Hollister, Otterman, Seitz, Lendrum,  
Reidelbach, Schmidt, Willamowski, D. Miller, Fessler, Jones, Jolivette,  
Roman, Faber, Aslanides, Kilbane, Coates, Hoops, S. Smith, Gilb,  
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Hagan, Olman, R. Miller, Patton

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## A B I L L

To amend sections 131.02 and 5747.451, to enact 1  
section 5703.06, and to repeal sections 5727.59 and 2  
5733.25 of the Revised Code relative to the 3  
attorney general's authority to compromise claims 4  
for taxes and other amounts due the state. 5

### BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That sections 131.02 and 5747.451 be amended and 6  
section 5703.06 of the Revised Code be enacted to read as follows: 7

**Sec. 131.02. (A)** Whenever any amount is payable to the state, 8  
the officer, employee, or agent responsible for administering the 9  
law under which the amount is payable shall immediately proceed to 10  
collect the amount or cause the amount to be collected and shall 11  
pay the amount into the state treasury in the manner set forth 12  
pursuant to section 113.08 of the Revised Code. If the amount is 13  
not paid within forty-five days after payment is due, the officer, 14  
employee, or agent shall certify the amount due to the attorney 15  
general, in the form and manner prescribed by the attorney 16

general, and notify the director of budget and management thereof. 17

(B)(1) The attorney general shall give immediate notice by 18  
mail or otherwise to the party indebted of the nature and amount 19  
of the indebtedness. ~~If~~ 20

(2) ~~If~~ the amount payable to this state arises from a tax 21  
levied under Chapter 5733., 5739., 5741., or 5747. of the Revised 22  
Code, the notice also shall specify all of the following: 23

~~(A)~~(a) The assessment or case number; 24

~~(B)~~(b) The tax pursuant to which the assessment is made; 25

~~(C)~~(c) The reason for the liability, including, if 26  
applicable, that a penalty or interest is due; 27

~~(D)~~(d) An explanation of how and when interest will be added 28  
to the amount assessed; 29

~~(E)~~(e) That the attorney general and tax commissioner, acting 30  
together, have the authority, but are not required, to ~~extend~~ 31  
~~compromise the claim and accept payment over a reasonable time of~~ 32  
~~the payment for up to one year, if such actions are in the best~~ 33  
~~interest of the state.~~ 34

(C) The attorney general shall collect the claim or secure a 35  
judgment and issue an execution for its collection. 36

(D) Each claim shall bear interest, from the day on which the 37  
claim became due, at the base rate per annum for advances and 38  
discounts to member banks in effect at the federal reserve bank in 39  
the second federal reserve district. ~~The attorney general and the~~ 40  
~~chief officer of the agency reporting the claim may adjust any~~ 41  
~~claim in such manner as is equitable. They may extend the time of~~ 42  
~~the payment of a claim or judgment for such period of time not to~~ 43  
~~exceed one year as is best for the interests of the state, and~~ 44  
~~they may require and take security for its payment.~~ 45

(E) The attorney general and the chief officer of the agency 46

reporting a claim, acting together, may do either or both of the  
following if such action is in the best interests of the state:

(1) Compromise the claim;

(2) Extend for a reasonable period the time for payment of  
the claim by agreeing to accept monthly or other periodic  
payments. The agreement may require security for payment of the  
claim.

**Sec. 5703.06.** (A) As used in this section, "claim" means a  
claim for an amount payable to this state that arises under a  
statute administered by the tax commissioner and that has been  
certified to the attorney general for collection under section  
131.02 of the Revised Code.

(B) The tax commissioner and the attorney general shall  
consider the following standards when ascertaining with respect to  
a claim whether a compromise or payment-over-time agreement is in  
the best interests of the state under division (E) of section  
131.02 of the Revised Code:

(1) There exists a doubt as to whether the claim can be  
collected.

(2) There exists a substantial probability that, upon payment  
of the claim and submission of a timely application for refund  
with respect to that payment, the commissioner would refund an  
amount that was illegally or erroneously paid.

(3) There exists an economic hardship such that a compromise  
or agreement would facilitate effective tax administration.

(4) Any other standard to which the commissioner and attorney  
general jointly agree.

(C) The rejection of a compromise or payment-over-time

agreement proposed by a taxpayer with respect to a claim shall not  
be appealable.

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(D) A compromise or payment-over-time agreement with respect  
to a claim shall be binding upon and shall inure to the benefit of  
only the parties to the compromise or agreement, and shall not  
extinguish or otherwise affect the liability of any other person  
or governmental entity.

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(E) A compromise or payment-over-time agreement with respect  
to a claim shall be void if the taxpayer defaults under the  
compromise or agreement or if the compromise or agreement was  
obtained by fraud or by misrepresentation of a material fact. Any  
amount that was due prior to the compromise or agreement and is  
unpaid shall remain due, and any interest that would have accrued  
in the absence of the compromise or agreement shall continue to  
accrue and be due.

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**Sec. 5747.451.** (A) The mere retirement from business or  
voluntary dissolution of a domestic or foreign qualifying entity  
does not exempt it from the requirements to make reports as  
required under sections 5747.42 to 5747.44 or to pay the taxes  
imposed under section 5733.41 or 5747.41 of the Revised Code. If  
any qualifying entity subject to the taxes imposed under section  
5733.41 or 5747.41 of the Revised Code sells its business or stock  
of merchandise or quits its business, the taxes required to be  
paid prior to that time, together with any interest or penalty  
thereon, become due and payable immediately, and the qualifying  
entity shall make a final return within fifteen days after the  
date of selling or quitting business. The successor of the  
qualifying entity shall withhold a sufficient amount of the  
purchase money to cover the amount of such taxes, interest, and  
penalties due and unpaid until the qualifying entity produces a  
receipt from the tax commissioner showing that the taxes,

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interest, and penalties have been paid, or a certificate 107  
indicating that no taxes are due. If the purchaser of the business 108  
or stock of goods fails to withhold purchase money, the purchaser 109  
is personally liable for the payment of the taxes, interest, and 110  
penalties accrued and unpaid during the operation of the business 111  
by the qualifying entity. If the amount of those taxes, interest, 112  
and penalty unpaid at the time of the purchase exceeds the total 113  
purchase money, the tax commissioner may adjust the qualifying 114  
entity's liability for those taxes, interest, and penalty, or 115  
adjust the responsibility of the purchaser to pay that liability, 116  
in a manner calculated to maximize the collection of those 117  
liabilities. 118

(B) Annually, on the last day of each qualifying taxable year 119  
of a qualifying entity, the taxes imposed under section 5733.41 or 120  
5747.41 of the Revised Code, together with any penalties 121  
subsequently accruing thereon, become a lien on all property in 122  
this state of the qualifying entity, whether such property is 123  
employed by the qualifying entity in the prosecution of its 124  
business or is in the hands of an assignee, trustee, or receiver 125  
for the benefit of the qualifying entity's creditors and 126  
investors. The lien shall continue until those taxes, together 127  
with any penalties subsequently accruing, are paid. 128

Upon failure of such a qualifying entity to pay those taxes 129  
on the day fixed for payment, the treasurer of state shall 130  
thereupon notify the tax commissioner, and the commissioner may 131  
file in the office of the county recorder in each county in this 132  
state in which the qualifying entity owns or has a beneficial 133  
interest in real estate, notice of the lien containing a brief 134  
description of such real estate. No fee shall be charged for such 135  
a filing. The lien is not valid as against any mortgagee, 136  
purchaser, or judgment creditor whose rights have attached prior 137  
to the time the notice is so filed in the county in which the real 138

estate which is the subject of such mortgage, purchase, or 139  
judgment lien is located. The notice shall be recorded in a book 140  
kept by the recorder, called the qualifying entity tax lien 141  
record, and indexed under the name of the qualifying entity 142  
charged with the tax. When the tax, together with any penalties 143  
subsequently accruing thereon, have been paid, the tax 144  
commissioner shall furnish to the qualifying entity an 145  
acknowledgment of such payment that the qualifying entity may 146  
record with the recorder of each county in which notice of such 147  
lien has been filed, for which recording the recorder shall charge 148  
and receive a fee of two dollars. 149

(C) In addition to all other remedies for the collection of 150  
any taxes or penalties due under law, whenever any taxes, 151  
interest, or penalties due from any qualifying entity under 152  
section 5733.41 of the Revised Code or this chapter have remained 153  
unpaid for a period of ninety days, or whenever any qualifying 154  
entity has failed for a period of ninety days to make any report 155  
or return required by law, or to pay any penalty for failure to 156  
make or file such report or return, the attorney general, upon the 157  
request of the tax commissioner, shall file a petition in the 158  
court of common pleas in the county of the state in which such 159  
qualifying entity has its principal place of business for a 160  
judgment for the amount of the taxes, interest, or penalties 161  
appearing to be due, the enforcement of any lien in favor of the 162  
state, and an injunction to restrain such qualifying entity and 163  
its officers, directors, and managing agents from the transaction 164  
of any business within this state, other than such acts as are 165  
incidental to liquidation or winding up, until the payment of such 166  
taxes, interest, and penalties, and the costs of the proceeding 167  
fixed by the court, or the making and filing of such report or 168  
return. 169

The petition shall be in the name of the state. Any of the 170

qualifying entities having its principal places of business in the 171  
county may be joined in one suit. On the motion of the attorney 172  
general, the court of common pleas shall enter an order requiring 173  
all defendants to answer by a day certain, and may appoint a 174  
special master commissioner to take testimony, with such other 175  
power and authority as the court confers, and permitting process 176  
to be served by registered mail and by publication in a newspaper 177  
of general circulation published in the county, which publication 178  
need not be made more than once, setting forth the name of each 179  
delinquent qualifying entity, the matter in which the qualifying 180  
entity is delinquent, the names of its officers, directors, and 181  
managing agents, if set forth in the petition, and the amount of 182  
any taxes, fees, or penalties claimed to be owing by the 183  
qualifying entity. 184

All or any of the trustees or other fiduciaries, officers, 185  
directors, investors, beneficiaries, or managing agents of any 186  
qualifying entity may be joined as defendants with the qualifying 187  
entity. 188

If it appears to the court upon hearing that any qualifying 189  
entity that is a party to the proceeding is indebted to the state 190  
for taxes imposed under section 5733.41 or 5747.41 of the Revised 191  
Code, or interest or penalties thereon, judgment shall be entered 192  
therefor with interest; and if it appears that any qualifying 193  
entity has failed to make or file any report or return, a 194  
mandatory injunction may be issued against the qualifying entity, 195  
its trustees or other fiduciaries, officers, directors, and 196  
managing agents, enjoining them from the transaction of any 197  
business within this state, other than acts incidental to 198  
liquidation or winding up, until the making and filing of all 199  
proper reports or returns and until the payment in full of all 200  
taxes, interest, and penalties. 201

If the trustees or other fiduciaries, officers, directors, 202

investors, beneficiaries, or managing agents of a qualifying  
entity are not made parties in the first instance, and a judgment  
or an injunction is rendered or issued against the qualifying  
entity, those officers, directors, investors, or managing agents  
may be made parties to such proceedings upon the motion of the  
attorney general, and, upon notice to them of the form and terms  
of such injunction, they shall be bound thereby as fully as if  
they had been made parties in the first instance.

In any action authorized by this division, a statement of the  
tax commissioner, or the secretary of state, when duly certified,  
shall be prima-facie evidence of the amount of taxes, interest, or  
penalties due from any qualifying entity, or of the failure of any  
qualifying entity to file with the commissioner or the secretary  
of state any report required by law, and any such certificate of  
the commissioner or the secretary of state may be required in  
evidence in any such proceeding.

On the application of any defendant and for good cause shown,  
the court may order a separate hearing of the issues as to any  
defendant.

The costs of the proceeding shall be apportioned among the  
parties as the court deems proper.

The court in such proceeding may make, enter, and enforce  
such other judgments and orders and grant such other relief as is  
necessary or incidental to the enforcement of the claims and lien  
of the state.

In the performance of the duties enjoined upon the attorney  
general by this division, the attorney general may direct any  
prosecuting attorney to bring an action, as authorized by this  
division, in the name of the state with respect to any delinquent  
qualifying entities within the prosecuting attorney's county, and  
like proceedings and orders shall be had as if such action were



instituted by the attorney general. 234

(D) If any qualifying entity fails to make and file the 235  
reports or returns required under this chapter, or to pay the 236  
penalties provided by law for failure to make and file such 237  
reports or returns for a period of ninety days after the time 238  
prescribed by this chapter, the attorney general, on the request 239  
of the tax commissioner, shall commence an action in quo warranto 240  
in the court of appeals of the county in which that qualifying 241  
entity has its principal place of business to forfeit and annul 242  
its privileges and franchises. If the court is satisfied that any 243  
such qualifying entity is in default, it shall render judgment 244  
ousting such qualifying entity from the exercise of its privileges 245  
and franchises within this state, and shall otherwise proceed as 246  
provided in sections 2733.02 to 2733.39 of the Revised Code. 247

~~(E) With the advice and consent of the tax commissioner, the 248  
attorney general may, before or after any action for the recovery 249  
of taxes imposed under section 5733.41 or 5747.41 of the Revised 250  
Code, or interest or penalties thereon and certified to the 251  
attorney general as delinquent, compromise or settle any claim for 252  
delinquent taxes, interest, or penalties so certified. 253~~

**Section 2.** That existing sections 131.02 and 5747.451 and 254  
sections 5727.59 and 5733.25 of the Revised Code are hereby 255  
repealed. 256