

As Reported by the House Ways and Means Committee

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H. B. No. 396

REPRESENTATIVES Latta, Kearns, Hollister, Otterman, Seitz, Lendrum,
Reidelbach, Schmidt, Willamowski, D. Miller, Fessler, Jones, Jolivette,
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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

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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~~ prescribed 45
under section 5703.47 of the Revised Code, unless a different rate 46
is provided by agreement or by other law applicable to the claim. 47

(E) The attorney general and the chief officer of the agency 48

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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.

(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.

(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.

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 109
indicating that no taxes are due. If the purchaser of the business 110
or stock of goods fails to withhold purchase money, the purchaser 111
is personally liable for the payment of the taxes, interest, and 112
penalties accrued and unpaid during the operation of the business 113
by the qualifying entity. If the amount of those taxes, interest, 114
and penalty unpaid at the time of the purchase exceeds the total 115
purchase money, the tax commissioner may adjust the qualifying 116
entity's liability for those taxes, interest, and penalty, or 117
adjust the responsibility of the purchaser to pay that liability, 118
in a manner calculated to maximize the collection of those 119
liabilities. 120

(B) Annually, on the last day of each qualifying taxable year 121
of a qualifying entity, the taxes imposed under section 5733.41 or 122
5747.41 of the Revised Code, together with any penalties 123
subsequently accruing thereon, become a lien on all property in 124
this state of the qualifying entity, whether such property is 125
employed by the qualifying entity in the prosecution of its 126
business or is in the hands of an assignee, trustee, or receiver 127
for the benefit of the qualifying entity's creditors and 128
investors. The lien shall continue until those taxes, together 129
with any penalties subsequently accruing, are paid. 130

Upon failure of such a qualifying entity to pay those taxes 131
on the day fixed for payment, the treasurer of state shall 132
thereupon notify the tax commissioner, and the commissioner may 133
file in the office of the county recorder in each county in this 134
state in which the qualifying entity owns or has a beneficial 135
interest in real estate, notice of the lien containing a brief 136
description of such real estate. No fee shall be charged for such 137
a filing. The lien is not valid as against any mortgagee, 138
purchaser, or judgment creditor whose rights have attached prior 139
to the time the notice is so filed in the county in which the real 140

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

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

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

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

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

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

If the trustees or other fiduciaries, officers, directors,

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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.

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

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

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