

As Reported by the Senate Ways and Means Committee

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Am. H. B. No. 396

**REPRESENTATIVES Latta, Kearns, Hollister, Otterman, Seitz, Lendrum,
Reidelbach, Schmidt, Willamowski, D. Miller, Fessler, Jones, Jolivette,
Roman, Faber, Aslanides, Kilbane, Coates, Hoops, S. Smith, Gilb,
Carmichael, Barnes, Manning, Damschroder, Niehaus, Clancy, Schuring,
Hagan, Olman, R. Miller, Patton, Cates**

SENATOR Spada

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. ~~ff~~ 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 reporting a claim, acting together, may do either or both of the following if such action is in the best interests of the state: 46
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(1) Compromise the claim; 49

(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. 50
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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. 54
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(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: 59
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(1) There exists a doubt as to whether the claim can be collected. 64
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(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. 66
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(3) There exists an economic hardship such that a compromise or agreement would facilitate effective tax administration. 70
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(4) Any other standard to which the commissioner and attorney general jointly agree. 73
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(C) The rejection of a compromise or payment-over-time agreement proposed by a taxpayer with respect to a claim shall not be appealable. 75
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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. 78
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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. 83
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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 91
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receipt from the tax commissioner showing that the taxes, 106
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
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.

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(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.

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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, 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.

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(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.

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~~(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.~~

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

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