

AN ACT

To amend sections 323.152, 2935.01, 3317.026, 3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 5749.07, and 5749.08; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5735.311 (5728.05); to enact new sections 5739.07 and 5741.10 and sections 5703.60 and 5703.70; and to repeal sections 5728.05, 5735.31, 5739.07, 5741.10, and 5747.181 of the Revised Code to amend the procedures for determining the amounts of, and hearing challenges to, various tax assessments and refunds, to alter the method of adjusting eligibility criteria for the homestead exemption, energy subsidies, the credit for installation of emergency telephone systems, the personal exemption, and the deduction for medical savings accounts, to authorize the release by public officials of certain information relating to vendors, to

increase the loss carryover period for corporations, to change record-keeping requirements for certain taxpayers, to conform state law to federal law with regard to taxation of mobile telecommunications service, to increase protection of tax department employees from assault, and to make other changes relating to the administration of the tax laws by the Department of Taxation; and to amend the versions of sections 5733.021 and 5733.12 of the Revised Code that are scheduled to take effect July 1, 2002, and the versions of sections 5727.26, 5728.08, and 5735.06 of the Revised Code that are scheduled to take effect January 1, 2003, to continue the provisions of this act on and after those dates.

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

SECTION 1. That sections 323.152, 2935.01, 3317.026, 3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 5749.07, and 5749.08 be amended; that section 5735.311 (5728.05) be amended for the purpose of adopting a new section number as indicated in parentheses; and that new sections 5739.07 and 5741.10 and sections 5703.60 and 5703.70 of the Revised Code be enacted to read as follows:

Sec. 323.152. In addition to the reduction in taxes required under section 319.302 of the Revised Code, taxes shall be reduced as provided in divisions (A) and (B) of this section.

(A)(1) Division (A) of this section applies to any of the following:

(a) A person who is permanently and totally disabled;

(b) A person who is sixty-five years of age or older;

(c) A person who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in taxes under this division in the year of death, provided the surviving spouse is at least fifty-nine but not sixty-five or more years of age on the date the deceased spouse dies.

(2) Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A) of this section applies shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code or for which the occupant obtains a certificate of reduction in accordance with section 323.159 of the Revised Code. The reduction shall equal the amount obtained by multiplying the tax rate for the tax year for which the certificate is issued by the reduction in taxable value shown in the following schedule:

Total Income	Reduce Taxable Value by the Lesser of:
\$11,900 or less	\$5,000 or seventy-five per cent
More than \$11,900 but not more than \$17,500	\$3,000 or sixty per cent
More than \$17,500 but not more than \$23,000	\$1,000 or twenty-five per cent
More than \$23,000	-0-

(3) Each calendar year ~~beginning in 1999~~, the tax commissioner shall adjust the foregoing schedule by completing the following ~~steps~~ calculations in September of each year:

(a) Determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce from the first day of ~~July~~ January of the preceding calendar year to the last day of ~~June~~ December of the ~~current~~ preceding calendar year;

(b) Multiply that percentage increase by each of the total income amounts, and by each dollar amount by which taxable value is reduced, for the current tax year;

(c) Add the resulting product to each of the total income amounts, and to each of the dollar amounts by which taxable value is reduced, for the current tax year;

(d) Round the resulting sum to the nearest multiple of one hundred dollars.

The commissioner shall certify the amounts resulting from the

adjustment to each county auditor not later than the first day of December each year. The certified amounts apply to the following tax year. The commissioner shall not make the adjustment in any calendar year in which the amounts resulting from the adjustment would be less than the total income amounts, or less than the dollar amounts by which taxable value is reduced, for the current tax year.

(B) Real property taxes on any homestead, and manufactured home taxes on any manufactured or mobile home on which a manufactured home tax is assessed pursuant to division (D)(2) of section 4503.06 of the Revised Code, shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code. The amount of the reduction shall equal one-fourth of the amount by which the taxes charged and payable on the homestead or the manufactured or mobile home are reduced for such year under section 319.302 of the Revised Code.

(C) The reductions granted by this section do not apply to special assessments or respread of assessments levied against the homestead, and if there is a transfer of ownership subsequent to the filing of an application for a reduction in taxes, such reductions are not forfeited for such year by virtue of such transfer.

(D) The reductions in taxable value referred to in this section shall be applied solely as a factor for the purpose of computing the reduction of taxes under this section and shall not affect the total value of property in any subdivision or taxing district as listed and assessed for taxation on the tax lists and duplicates, or any direct or indirect limitations on indebtedness of a subdivision or taxing district. If after application of sections 5705.31 and 5705.32 of the Revised Code, including the allocation of all levies within the ten-mill limitation to debt charges to the extent therein provided, there would be insufficient funds for payment of debt charges not provided for by levies in excess of the ten-mill limitation, the reduction of taxes provided for in sections 323.151 to 323.159 of the Revised Code, shall be proportionately adjusted to the extent necessary to provide such funds from levies within the ten-mill limitation.

(E) No reduction shall be made on the taxes due on the homestead of any person convicted of violating division (C) or (D) of section 323.153 of the Revised Code for a period of three years following the conviction.

Sec. 2935.01. As used in this chapter:

(A) "Magistrate" has the same meaning as in section 2931.01 of the Revised Code.

(B) "Peace officer" includes, except as provided in section 2935.081 of

the Revised Code, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code; member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code; member of a police force employed by a regional transit authority under division (Y) of section 306.05 of the Revised Code; state university law enforcement officer appointed under section 3345.04 of the Revised Code; enforcement agent of the department of public safety designated under section 5502.14 of the Revised Code; employee of the department of taxation to whom investigation powers have been delegated under section 5743.45 of the Revised Code; employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code; individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code; Ohio veterans' home police officer appointed under section 5907.02 of the Revised Code; special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; police constable of any township; police officer of a township or joint township police district; the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code; and an assistant house sergeant at arms; and, for the purpose of arrests within those areas, and for the purposes of Chapter 5503. of the Revised Code, and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the superintendent and troopers of the state highway patrol.

(C) "Prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.

(D) "Offense," except where the context specifically indicates otherwise, includes felonies, misdemeanors, and violations of ordinances of municipal corporations and other public bodies authorized by law to adopt penal regulations.

Sec. 3317.026. (A) As used in this section, "refunded taxes" means taxes charged and payable from real and tangible personal property, including public utility property, that have been found to have been overpaid as the result of reductions in the taxable value of such property and that have been refunded, including any interest or penalty refunded with those taxes. If taxes are refunded over a period of time pursuant to division (B)(2), (3), or (4) of section 319.36 or division (C) of section 5727.471 of the Revised Code, the total amount of taxes required to be refunded, excluding any interest accruing after the day the undertaking is entered into, shall be considered to have been refunded on the day the first portion of the overpayment is paid or credited.

(B) Not later than the last day of February each year, each county auditor shall certify to the tax commissioner, for each school district in the county, the amount of refunded taxes refunded in the preceding calendar year and the reductions in taxable value that resulted in those refunds, except for reductions in taxable value that previously have been reported to the tax commissioner on an abstract. If the tax commissioner determines that the amount of refunded taxes certified for a school district exceeds three per cent of the total taxes charged and payable for current expenses of the school district for the calendar year in which those taxes were refunded, the tax commissioner shall certify the reductions in taxable value that resulted in those refunds on or before the first day of June to the department of education. Upon receiving the certification by the tax commissioner, the department of education shall reduce the total taxable value of the school district, as defined in section 3317.02 of the Revised Code, by the total amount of the reductions in taxable value that resulted in those refunds for the purpose of computing the state aid for the school district for the current fiscal year under section 3317.022 of the Revised Code. The increase in the amount of such aid resulting from the adjustment required by this section shall be paid to the school district on or before the thirtieth day of June of the current year.

~~(E)~~ If an adjustment is made under this ~~section~~ division in the amount of state aid paid to a school district, the tax value reductions from which that adjustment results shall not be used in recomputing aid to a school district under section 3317.027 of the Revised Code.

(C) Not later than the first day of June each year, the tax commissioner

shall certify to the department of education for each school district the total of the increases in taxable value above the amount of taxable value on which tax was paid, as provided in division (B)(1) or (2) of section 5727.47 of the Revised Code, as determined by the commissioner, and for which a notification was sent pursuant to section 5727.471 of the Revised Code, in the preceding calendar year. Upon receiving the certification, the department shall increase the total taxable value, as defined in section 3317.02 of the Revised Code, of the school district by the total amount of the increase in taxable value certified by the commissioner for the school district for the purpose of computing the school district's state aid for the following fiscal year under sections 3317.022 and 3317.0212 of the Revised Code.

Sec. 3734.905. (A) The treasurer of state shall refund the fee imposed by section 3734.901 of the Revised Code paid illegally or erroneously, or paid on an illegal or erroneous assessment. Applications for refund shall be filed with the tax commissioner on a form prescribed by ~~him~~ the commissioner, within four years of the illegal or erroneous payment of the fee. ~~Upon~~

On the filing of the application, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify that the 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. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.~~

If the application for refund is for fees paid on an illegal or erroneous assessment, the certified amount shall include interest calculated at the rate per annum ~~pursuant to~~ prescribed by section 5703.47 of the Revised Code from the date of overpayment to the date of the commissioner's certification.

(B) When the fee imposed pursuant to section 3734.901 of the Revised Code has been paid on tires that are sold by a retail dealer or wholesale distributor to a motor vehicle manufacturer, or to a wholesale distributor or retail dealer for the purpose of resale outside this state, the seller in this state is entitled to a refund of the amount of the fee actually paid on the tires. To obtain a refund under this division, the seller shall apply to the tax commissioner, shall furnish documentary evidence satisfactory to the ~~tax~~ commissioner that the price paid by the purchaser did not include the fee, and shall provide the name and address of the purchaser to the ~~tax~~ commissioner. The seller shall apply on the form prescribed by the ~~tax~~ commissioner, within four years after the date of the sale. Upon receipt of an application, the ~~tax~~ commissioner shall determine the amount of any refund

due and shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code.

(C) If any person entitled to a refund of fees under this section, or section 5703.70 of the Revised Code, is indebted to the state for any tax administered by the tax commissioner, or any charge, penalties, or interest arising from such tax, the amount allowable on the application for refund first shall be applied in satisfaction of the debt.

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 ~~as~~ in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(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 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 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 written petition for reassessment ~~in writing~~ signed by the person assessed or ~~the~~ that 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~~ The petition shall indicate the objections ~~to the assessment~~ of the person assessed, but additional objections may be raised in writing if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the person assessed in the amount shown ~~to be due~~ on the entry. 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 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 tax 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~~ Immediately upon the 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 tax 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 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) ~~Unless the party to whom the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment ~~in writing~~, signed by the party assessed; or ~~by the~~ that party's authorized agent having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ is 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 by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of ~~such~~ the entry, the clerk 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 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 tax 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. 3924.66. (A) In determining Ohio adjusted gross income under Chapter 5747. of the Revised Code, an account holder may deduct an amount equaling the total of the deposits that the account holder, the account holder's spouse, or the account holder's employer made to the account during the taxable year, to the extent that the funds for the deposits have not otherwise been deducted or excluded in determining the account holder's federal adjusted gross income. The amount deducted by an account holder for a taxable year shall not exceed three thousand dollars. If two married persons each have an account, each spouse may claim the deduction

described in this section, and the amount deducted by each spouse shall not exceed three thousand dollars, whether the spouses file returns jointly or separately.

(B) The maximum deduction allowed under division (A) of this section shall be adjusted annually by the department of taxation to reflect increases in the consumer price index for all items for all urban consumers for the ~~north-central~~ midwest region, as ~~published~~ determined by the United States bureau of labor statistics for the period of the first day of January of the preceding calendar year to the last day of December of the preceding calendar year. The department of taxation shall determine in September of each tax year the adjustment that will be effective for the succeeding tax year. The department shall not make the adjustment in any tax year in which the maximum deduction resulting from the adjustment is less than the maximum deduction allowed for the previous tax year.

(C) In determining Ohio adjusted gross income under Chapter 5747. of the Revised Code, an account holder may deduct the investment earnings of a medical savings account from the account holder's federal adjusted gross income, to the extent that these earnings have been included in the account holder's federal adjusted gross income.

(D) In determining Ohio adjusted gross income under Chapter 5747. of the Revised Code, an account holder shall add to the account holder's federal adjusted gross income an amount equal to the sum of the amounts described in divisions (D)(1) and (2) of this section to the extent that those amounts were included in the account holder's federal adjusted gross income and previously deducted in determining the account holder's Ohio adjusted gross income. In determining the extent to which amounts withdrawn from the account shall be included in the account holder's Ohio adjusted gross income, the tax commissioner shall be guided by ~~the provisions of~~ sections 72 and 408 of the Internal Revenue Code governing the determination of the amount of withdrawals from an individual retirement account to be included in federal gross income.

(1) Amounts withdrawn from the account during the taxable year used for any purpose other than to reimburse the account holder for, or to pay, the eligible medical expenses of the account holder or the account holder's spouse or dependents;

(2) Investment earnings during the taxable year on amounts withdrawn from the account that are described in division (D)(1) of this section.

(E) Amounts withdrawn from a medical savings account to reimburse the account holder for, or to pay, the account holder's eligible medical expenses, or the eligible medical expenses of the account holder's spouse or

dependents, shall not be included in the account holder's Ohio adjusted gross income in determining taxes due under Chapter 5747. of the Revised Code.

(F) If a dependent of an account holder becomes ineligible to continue to participate in the account holder's policy, plan, or contract of health coverage, the account holder may withdraw funds from the account holder's account and use those funds to pay the premium for the first year of a policy, plan, or contract of health coverage for the dependent and to pay any deductible for the first year of that policy, plan, or contract. Funds withdrawn and used for that purpose shall not be included in the account holder's Ohio adjusted gross income in determining taxes due under Chapter 5747. of the Revised Code.

Sec. 4305.131. (A) If any permit holder fails to pay the taxes levied ~~in~~ by 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~~ by 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 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party ~~to whom the notice of assessment is directed~~ assessed files with the tax commissioner within 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 written 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~~ becomes final and the amount of the assessment ~~shall be~~ 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 if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the entry, the clerk 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 sixty days after the day the assessment was issued shall bear interest at the rate per annum

bed 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. 4307.05. (A) The tax commissioner shall refund to persons required to pay the tax levied under section 4301.42, 4301.421, 4301.424, 4301.43, 4301.432, 4303.33, or 4305.01 of the Revised Code the amount of tax paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for refund shall be filed with the commissioner, on the form prescribed by the commissioner, within three years from the date of the illegal or erroneous payment of the tax or assessment. ~~Upon~~

On the filing of the application, the commissioner shall determine the amount of the refund due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the 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. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(B) The holder of a B-3 permit is entitled to a refund of the actual amount of tax paid on wine sold for sacramental purposes, upon ~~condition~~ the conditions that the permit holder make affidavit that the wine was so sold, that the tax had been paid on the wine, and that the permit holder furnish both of the following:

(1) A written acknowledgment from the purchaser that the purchaser has received the wine and that the price paid did not include the tax;

(2) The name and address of the purchaser.

Application for a refund shall be made as an application for refund of tax erroneously paid and shall be subject to the requirements and procedures of division (A) of this section. On the filing of the application, the commissioner shall determine the amount of refund due and certify that amount to the director of budget and management and treasurer of state for payment from the tax refund fund. When a refund is granted for payment of an illegal or erroneous assessment issued by the commissioner, the refund shall include interest on the amount of the refund from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

Sec. 4307.07. When tax has been paid on bottled beverages and such

tled beverages are sold and shipped in interstate or foreign commerce, or transported by either the purchaser or seller out of the state for the purpose of resale outside the state, the seller in this state is entitled to a refund of the actual amount of tax paid, upon condition that ~~he~~ the seller furnishes documentary evidence satisfactory to the tax commissioner, which may be from the usual business records of the taxpayer, that the price paid did not include the tax, together with the name and address of the purchaser. The commissioner may adopt rules providing for refund to manufacturers or dealers of the amount of tax paid on such bottled beverage ~~which that~~ becomes unfit for sale, or any similar loss ~~which that~~ may occur, on proof of such loss. An application shall be filed with the commissioner, on the form prescribed by ~~him~~ the commissioner for such purpose, within ninety days from the date such beverages are sold and shipped in interstate or foreign commerce, or from the date that such beverages become unfit for sale or any similar loss occurs. ~~On~~

On the filing of such the application, the commissioner shall determine the amount of refund due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify such the 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.

If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

Sec. 4503.065. (A) This section applies to any of the following:

- (1) An individual who is permanently and totally disabled;
- (2) An individual who is sixty-five years of age or older;
- (3) An individual who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in assessable value under this section in the year of death, provided the surviving spouse is at least fifty-nine but not sixty-five or more years of age on the date the deceased spouse dies.

(B)(1) The manufactured home tax on a manufactured or mobile home that is paid pursuant to division (C) of section 4503.06 of the Revised Code and that is owned and occupied as a home by an individual whose domicile is in this state and to whom this section applies, shall be reduced for any tax year for which the owner obtains a certificate of reduction from the county auditor under section 4503.067 of the Revised Code, provided the individual did not acquire ownership from a person, other than the individual's spouse, related by consanguinity or affinity for the purpose of qualifying for the

reduction in assessable value. An owner includes a settlor of a revocable inter vivos trust holding the title to a manufactured or mobile home occupied by the settlor as of right under the trust. The reduction shall equal the amount obtained by multiplying the tax rate for the tax year for which the certificate is issued by the reduction in assessable value shown in the following schedule.

Total Income	Reduce Assessable Value by the Lesser of:	
	Column A	Column B
\$11,900 or less	\$5,000 or seventy-five per cent	
More than \$11,900 but not more than \$17,500	\$3,000 or sixty per cent	
More than \$17,500 but not more than \$23,000	\$1,000 or twenty-five per cent	
More than \$23,000		-0-

(2) Each calendar year ~~beginning in 1999~~, the tax commissioner shall adjust the foregoing schedule by completing the following ~~steps~~ calculations in September of each year:

(a) Determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce from the first day of ~~July~~ January of the preceding calendar year to the last day of ~~June~~ December of the ~~current~~ preceding calendar year;

(b) Multiply that percentage increase by each of the total income amounts, and by each dollar amount by which assessable value is reduced, for the ensuing tax year;

(c) Add the resulting product to each of the total income amounts, and to each of the dollar amounts by which assessable value is reduced, for the ensuing tax year;

(d) Round the resulting sum to the nearest multiple of one hundred dollars.

The commissioner shall certify the amounts resulting from the adjustment to each county auditor not later than the first day of December each year. The certified amounts apply to the second ensuing tax year. The commissioner shall not make the adjustment in any calendar year in which the amounts resulting from the adjustment would be less than the total income amounts, or less than the dollar amounts by which assessable value is reduced, for the ensuing tax year.

(C) If the owner or the spouse of the owner of a manufactured or mobile home is eligible for a homestead exemption on the land upon which the

home is located, the reduction in assessable value to which the owner or spouse is entitled under this section shall not exceed the difference between the reduction in assessable value to which the owner or spouse is entitled under column A of the above schedule and the amount of the reduction in taxable value that was used to compute the homestead exemption.

(D) No reduction shall be made on the assessable value of the home of any person convicted of violating division (C) or (D) of section 4503.066 of the Revised Code for a period of three years following the conviction.

Sec. 5117.071. (A) ~~Each~~ In September of each year, the tax commissioner shall adjust the total income amounts set forth in sections 5117.07 and 5117.09 of the Revised Code to be used for applications submitted for the heating season commencing in the next calendar year, by completing the following steps:

(1) Determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce for the preceding year;

(2) Multiply that percentage increase by each of the total income amounts for the preceding year;

(3) Add the resulting products to each of the total income amounts for the preceding year;

(4) Round the resulting sums upward to the nearest multiple of ten dollars.

The commissioner shall not make the adjustment in any year in which the amounts resulting from the adjustment would be less than the total income amounts for the preceding year.

(B) ~~Each~~ In September of each year, the tax commissioner also shall adjust the current total income amounts set forth in sections 5117.07 and 5117.09 of the Revised Code. For any year, the current total income amounts shall equal one-half of the respective total income amounts set forth in those sections and adjusted under division (A) of this section for that year.

(C) Each year, the tax commissioner shall provide both the adjusted total income amounts referred to in division (A) of this section and the current total income amounts referred to in division (B) of this section to the director of development.

(D) The director of development and each energy company and energy dealer shall use the adjusted total income amounts and the current total income amounts determined under divisions (A) and (B) of this section in performing their duties under sections 5117.01 to 5117.12 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, which 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

ternative 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 tax commissioner shall keep a record of all ~~actions taken by final determinations of 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. 5703.21. (A) Except as provided in divisions (B) and (C) of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any

information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state solely for purposes of an audit of the department.

(C) Division (A) of this section does not prohibit any of the following:

(1) Divulging information contained in applications, complaints, and related documents filed with the department under section 5715.27 of the Revised Code or in applications filed with the department under section 5715.39 of the Revised Code;

(2) Providing information to the office of child support within the department of job and family services pursuant to section 3125.43 of the Revised Code;

(3) Disclosing to the board of motor vehicle collision repair registration any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code;

(4) Providing information to the administrator of workers' compensation pursuant to section 4123.591 of the Revised Code;

(5) Providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised Code;

(6) Permitting properly authorized officers, employees, or agents of a municipal corporation from inspecting reports or information pursuant to rules adopted under section 5745.16 of the Revised Code.

(7) Providing information regarding the name, account number, or business address of a holder of a vendor's license issued pursuant to section 5739.17 of the Revised Code, a holder of a direct payment permit issued pursuant to section 5739.031 of the Revised Code, or a seller having a use tax account maintained pursuant to section 5741.17 of the Revised Code, or information regarding the active or inactive status of a vendor's license, direct payment permit, or seller's use tax account.

~~Sec. 5703.37. Except as otherwise provided by section 5711.28, 5711.31, 5727.47, or 5731.27 of the Revised Code~~ Whenever service of a

notice or order is required in the manner provided in this section, a certified copy of ~~every~~ the order or notice, ~~service of which is required~~, shall be served upon the person affected thereby either by personal ~~delivery~~ service or by certified mail. Within the time specified in ~~the~~ an order of the department of taxation, every person upon whom it is served, if required by the order, shall notify the department, ~~in like manner~~ by personal service, certified mail, or a delivery service authorized under section 5703.056 of the Revised Code, whether the terms of the order are accepted and will be obeyed.

Sec. 5703.51. (A) The tax commissioner shall include in the instruction booklet for filing the annual return of personal property taxes a general description of the method by which the tax is assessed and collected and the rights and responsibilities of taxpayers in that process.

(B) At or before the commencement of an audit, the tax commissioner shall provide to the taxpayer a written description of the roles of the department of taxation and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the commissioner shall inform the taxpayer when the audit is considered to have commenced.

(C) With or before the issuance of an assessment, the tax commissioner or county auditor shall provide to the taxpayer:

(1) A written description of the basis for the assessment and any penalty required to be imposed with the assessment;

(2) A written description of the taxpayer's right to appeal the assessment and an explanation of the steps required to request administrative review by the tax commissioner;

(3) A written description of the collection remedies available to the state, including a statement that if the taxpayer fails to pay an ~~amount owed to the state~~ assessment within ~~thirty~~ sixty days after it is due, the tax commissioner will certify the amount to the attorney general for collection, and a summary of the provisions contained in section 131.02 of the Revised Code.

(D) With or before the issuance of a final determination of the tax commissioner, the commissioner or county auditor shall provide to the taxpayer a written description of the steps required to perfect an appeal to the board of tax appeals.

(E) Except in cases involving suspected criminal violations of the tax law or other criminal activity, the tax commissioner shall conduct an audit of a taxpayer during regular business hours and after providing reasonable

notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed audit would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(F) At all stages of an audit or the administrative review of the audit by the tax commissioner or county auditor, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The tax commissioner shall prescribe a form by which a taxpayer may designate such a person to assist or represent ~~him~~ the taxpayer in the conduct of any proceedings resulting from actions by the tax commissioner or county auditor. In the absence of this form, the commissioner or auditor may accept such other evidence as ~~he~~ the commissioner considers appropriate that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting the audit until ~~he~~ the taxpayer has an opportunity to consult with ~~his~~ the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

(G) A taxpayer may record, electronically or otherwise, the audit examination.

(H) The failure of the tax commissioner or county auditor to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes shown to be owed by ~~him~~ the taxpayer nor cure any procedural defect in a taxpayer's case.

(I) If the tax commissioner or county auditor fails to substantially comply with the provisions of this section, the commissioner, on application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit or assessment.

A taxpayer shall make application to the commissioner under this division within one year of the date the taxpayer knows of or should have known that the commissioner or county auditor failed to substantially comply with the provisions of this section.

Sec. 5703.60. (A) If a petition for reassessment has been properly filed under a law that specifies that this section applies, the tax commissioner shall proceed as follows:

(1) Except as provided in division (D) of this section, the commissioner may correct the assessment by issuing a corrected assessment. The corrected assessment may reduce or increase the previous assessment, as the commissioner finds proper. The commissioner shall send the corrected

assessment by ordinary mail to the address to which the original assessment was sent, unless the petitioner notifies the commissioner of a different address. The commissioner's mailing of the corrected assessment is an assessment timely made and issued to the extent that the original assessment was timely made and issued, notwithstanding any time limitation otherwise imposed by law.

Within sixty days after the mailing of the corrected assessment, the petitioner may file a new petition for reassessment. The petition shall be filed in the same manner as provided by law for filing the original petition. If a new petition is properly filed within the sixty-day period, the commissioner shall proceed under division (A)(2) or (3) of this section. If a new petition is not properly filed within the sixty-day period, the corrected assessment becomes final, and the amount of the corrected assessment is due and payable from the person assessed.

The issuance of a corrected assessment under this division nullifies the petition for reassessment filed before such issuance, and that petition shall not be subject to further administrative review or appeal. The commissioner may issue to the person assessed only one corrected assessment under this division.

(2) The commissioner may cancel the assessment by issuing either a corrected assessment or a final determination. The commissioner may mail the cancellation in the same manner as a corrected assessment under division (A)(1) of this section. Cancellation of an assessment pursuant to this division is not subject to further administrative review or appeal.

(3) If no corrected assessment or final determination is issued under division (A)(1) or (2) of this section, or if a new petition for reassessment is properly filed under division (A)(1) of this section, the commissioner shall review the assessment or corrected assessment petition that is still pending. If the petitioner requests a hearing, the commissioner shall assign a time and place for the hearing and notify the petitioner of such time and place, but the commissioner may continue the hearing from time to time as necessary. Upon completion of the review and hearing, if requested by the person assessed, the commissioner shall either cancel the assessment or corrected assessment by issuing a corrected assessment or final determination under division (A)(2) of this section, or issue a final determination that reduces, affirms, or increases the assessment or corrected assessment, as the commissioner finds proper. If a final determination is issued under this division, a copy of it shall be served on the petitioner in the manner provided by section 5703.37 of the Revised Code, and it is subject to appeal under 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 the effect of collateral estoppel or res judicata in considering an application for refund of amounts paid pursuant to the assessment or corrected assessment.

(B) Except as provided in division (D) of this section, in addition to the authority provided in division (A) of this section and division (H) of section 5703.05 of the Revised Code, the tax commissioner, on the commissioner's own motion, may issue a corrected assessment with regard to the assessment of any tax for which a properly filed petition for reassessment would be subject to division (A) of this section. A corrected assessment may be issued under this division only if the original assessment has not been certified to the attorney general for collection under section 131.02 of the Revised Code, or is not an appeal pursuant to section 5717.02 of the Revised Code. The corrected assessment shall not increase the amount of tax, penalty, or additional charge if the statute of limitations to issue a new assessment for such increase has expired. The corrected assessment shall be issued and reviewed in the same manner as a corrected assessment under division (A)(1) of this section.

(C) If the tax commissioner issues a corrected assessment or final determination under this section that reduces an assessment below the amount paid thereon, and the reduction is made at the written request of the party assessed, either through the filing of a proper petition for reassessment or otherwise, the commissioner shall certify any overpayment as a refund due only to the extent a refund could have been timely claimed when the request was made. If the reduction is made on the commissioner's own motion, the commissioner shall certify any overpayment as a refund due only to the extent a refund could have been timely claimed at the time the reduction was made.

(D) The tax commissioner shall not issue a corrected assessment under division (A)(1) or (B) of this section after the party assessed has requested in writing that the commissioner not use that procedure.

(E) This section does not require the tax commissioner to issue a corrected assessment.

Sec. 5703.70. (A) On the filing of an application for refund under section 3734.905, 4307.05, 4307.07, 5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5739.07, 5739.071, 5739.104, 5741.10, 5743.05, 5743.53, or 5749.08 of the Revised Code, if the tax commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount claimed in the application, the commissioner shall give the applicant written notice by ordinary mail of the amount. The notice shall be sent to the address shown

on the application for a refund unless the applicant notifies the commissioner of a different address. The applicant shall have sixty days from the date the commissioner mails the notice to provide additional information to the commissioner or request a hearing, or both.

(B) If the applicant neither requests a hearing nor provides additional information to the tax commissioner within the time prescribed by division (A) of this section, the commissioner shall take no further action, and the refund amount denied becomes final.

(C)(1) If the applicant requests a hearing within the time prescribed by division (A) of this section, the tax commissioner shall assign a time and place for the hearing and notify the applicant of such time and place, but the commissioner may continue the hearing from time to time as necessary. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper, and shall issue a final determination thereon.

(2) If the applicant does not request a hearing, but provides additional information, within the time prescribed by division (A) of this section, the commissioner shall review the information, make such adjustments to the refund as the commissioner finds proper, and issue a final determination thereon.

(3) The commissioner shall serve a copy of the final determination made under division (C)(1) or (2) of this section on the applicant in the manner provided in section 5703.37 of the Revised Code, and the decision is final, subject to appeal under section 5717.02 of the Revised Code.

(D) The tax commissioner shall certify 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, the amount to be refunded under division (B) or (C) of this section.

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~~ the notice of assessment shall be prima-facie evidence of the receipt of the same by the person to whom such notice is addressed. With the notice, the assessor shall provide instructions on how to petition for reassessment and request a hearing on the petition.

Within 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 written petition for reassessment ~~in writing~~, signed by the party assessed, or by ~~the~~ that 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~~ If the petitioner ~~waives~~ requests a hearing on the petition, the commissioner shall assign a time and place for the hearing ~~on the petition~~ and notify the petitioner of ~~the~~ such time and place ~~of the hearing by personal service or certified mail~~, but the commissioner may continue the hearing from time to time ~~if~~ as necessary.

The commissioner may make ~~such correction~~ corrections 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 by certified mail, and~~ in the manner provided in section 5703.37 of the Revised Code. ~~The~~ commissioner's decision in the matter ~~shall be~~ is final, subject to appeal ~~as provided in~~ under section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of 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 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. 5715.49. ~~No~~ (A) Except as provided in division (B) of this section, ~~no~~ former or present county auditor or member of a county board of revision shall divulge, except in the performance of his official duties or upon the order of the department of taxation, or when called upon to testify in any court or proceeding, any information acquired ~~by him~~ in the exercise of the powers vested ~~in him~~ by the laws relating to taxation, or while claiming to exercise any such powers, as to the transactions, property, or business of any person, company, firm, corporation, association, or partnership. Whoever violates this section shall thereafter be disqualified from acting in any official capacity in connection with the assessment or collection of taxes or recoupment charges.

(B) Division (A) of this section does not prohibit a county auditor from divulging the name and business address of a vendor, a vendor's license number, or information regarding the active or inactive status of a vendor's license issued by the county auditor pursuant to section 5739.17 of the Revised Code.

Sec. 5715.50. ~~No~~ (A) Except as provided in division (B) of this section, ~~no~~ former or present expert, clerk, or employee of a county auditor, county board of revision, or the tax commissioner, and no former or present deputy, assistant, or agent of the tax commissioner shall divulge, except in the performance of his official duties or in his any report to the county auditor, the county board of revision, or the tax commissioner, or when called upon to testify in any court or proceeding, any information acquired ~~by him~~ in the exercise of the powers vested ~~in him~~ therein by any law, or while claiming to exercise such powers, as to the transactions, property, or business of any person, company, firm, corporation, association, or partnership. Whoever violates this section shall thereafter be disqualified from acting in any official capacity in connection with the assessment or collection of taxes or recoupment charges. ~~The~~

(B) Division (A) of this section does not prohibit the divulgence of:

(1) The name and address of the statutory agent in this state and the names of officers and directors of any corporation are not within the prohibition of this section;

(2) The name and business address of a vendor, vendor's license number, or information regarding the active or inactive status of a vendor's license issued by the county auditor pursuant to section 5739.17 of the Revised Code.

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 auditors 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. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within 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 as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 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 service ~~of~~ or 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, enterprise, or other person 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 the commissioner or director, together with all evidence considered by 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. 5727.26. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any natural gas company or combined 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 ~~as~~ in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition. 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. Unless the company assessed, within sixty days after service of the notice of assessment, files with the tax commissioner. The, either personally or by certified mail, a written petition must be made in writing, signed by the~~

~~party or the party's~~ company's authorized agent having knowledge of the facts, and ~~filed with the commissioner, either personally or by certified mail, within sixty days after service of the notice of assessment becomes final,~~ and the amount of the assessment is due and payable from the company assessed to the treasurer of state. The petition shall indicate the objections of the company assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination ~~of the commissioner. Upon receipt of~~

If a petition for reassessment has been 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 as provided in~~ proceed under section 5703.37 5703.60 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 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)~~(C) 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 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~~ Immediately upon the filing of the entry, ~~must the clerk shall~~ 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 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 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)~~(D) 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~~ company liable for the tax. ~~On~~ Immediately upon the 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)~~(C) of this section. Notice of the jeopardy assessment shall be served on the ~~party~~ company assessed or the ~~party's~~ legal representative as company's authorized agent in the manner 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~~ company 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)~~(E) 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)~~(F) No assessment shall be made or issued against a natural gas company or combined 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. 5727.28. (A) The treasurer of state shall refund to a natural gas company or combined company subject to the tax imposed by section 5727.24 of the Revised Code, the amount of tax paid illegally or erroneously, or paid on an illegal or erroneous assessment. Applications for

a refund shall be filed with the tax commissioner, on a form prescribed by the commissioner, within four years of the illegal or erroneous payment of the tax.

On the filing of the application ~~for a refund~~, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall~~ certify ~~that the~~ amount to the director of budget and management and treasurer of state for payment from the tax refund fund under section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If the application for refund is for taxes paid on an illegal or erroneous assessment, the ~~tax~~ commissioner shall include in the certified amount interest calculated at the rate per annum prescribed ~~under~~ by section 5703.47 of the Revised Code from the date of overpayment to the date of the commissioner's certification.

(B) If a natural gas company or combined company entitled to a refund of taxes under this section, or section 5703.70 of the Revised Code, is indebted to the state for any tax or fee administered by the tax commissioner that is paid to the state, or any charge, penalty, or interest arising from such a tax or fee, the amount refundable may be applied in satisfaction of that debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded.

(C) In lieu of granting a refund under division (A) or (B) of this section, the tax commissioner may allow a natural gas company or combined company to claim a credit of the amount of the tax refund on the return for the period during which the tax became refundable. The commissioner may require the company to submit information to support a claim for a credit under this division, and the commissioner may disallow the credit if the information is not provided.

Sec. 5727.39. (A) As used in this section:

(1) "9-1-1 system" has the meaning given in section 4931.40 of the Revised Code.

(2) "Nonrecurring 9-1-1 charges" means nonrecurring charges approved by the public utilities commission for the telephone network portion of a 9-1-1 system pursuant to section 4931.47 of the Revised Code.

(3) "Eligible nonrecurring 9-1-1 charges" means all nonrecurring 9-1-1 charges for a 9-1-1 system except:

(a) Charges for a system that was not established pursuant to a plan

adopted under section 4931.44 of the Revised Code or an agreement under section 4931.48 of the Revised Code; or

(b) Charges for that part of a system established pursuant to such a plan or agreement that are excluded from the credit by division (C)(2) of section 4931.47 of the Revised Code.

(4) "Current year's percentage change in the consumer price index" means the greater of one or one plus the percentage increase in the consumer price index for all urban consumers (U.S. city average, all items), prepared by the United States department of labor, bureau of labor statistics, for ~~June~~ December of the ~~current~~ preceding year over the index for ~~June~~ December of the ~~immediately~~ second preceding year.

(B) A telephone company shall be allowed a credit against the tax computed under section 5727.38 of the Revised Code equal to the amount of its eligible nonrecurring 9-1-1 charges.

The credit shall be claimed in the company's annual statement required under division (A) of section 5727.31 of the Revised Code that covers the twelve-month period in which the 9-1-1 service for which the credit is claimed becomes available for use. If the tax commissioner determines the credit claimed equals the amount of the company's eligible nonrecurring 9-1-1 charges, ~~he~~ the commissioner shall credit such amount against the total taxes shown to be due from the company for the current year and shall refund the amount of any overpayment of taxes resulting from the application of such credit. If the credit allowed under this section exceeds the total taxes due for the current year, ~~he~~ the commissioner shall credit such excess against taxes due for succeeding years until the full amount of the credit is granted.

The estimated taxes required to be paid by section 5727.31 of the Revised Code shall be based on the taxes for the preceding year prior to any credit allowed under this section for that year.

(C)(1) Within thirty days after June 18, 1985, the tax commissioner shall compute the amount that represents twenty-five per cent of the total taxes for all telephone companies computed under section 5727.38 of the Revised Code based on the annual statements required to be filed with the commissioner in September, 1984, under section 5727.31 of the Revised Code. Such amount shall constitute the credit ceiling for 1985.

(2) Each ~~October~~ September, beginning in ~~1986~~ 2001, the commissioner shall ~~multiply~~ determine the credit ceiling by multiplying the preceding year's credit ceiling by the ~~current~~ preceding calendar year's percentage change in the consumer price index for all urban consumers for the midwest region, as determined by the United States bureau of labor statistics. The

product thus obtained shall constitute the credit ceiling for the current year.

(D) After the last day a return may be filed by any telephone company that is eligible to claim a credit under this section, the commissioner shall determine whether the sum of the credits allowed for all prior years plus the sum of the credits claimed for the current year exceeds the current year's credit ceiling. If it does, the credits allowed under this section for the current year shall be reduced by a uniform percentage such that the sum of the credits allowed for the current year plus the sum of the credits allowed for all prior years equals the current year's credit ceiling. Thereafter, no credit shall be granted under this division, except for the remaining portions of any credits allowed in the current or any prior years ~~but~~ that have not been granted.

Sec. 5727.47. (A) ~~A copy~~ Notice 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. With the notice, the tax commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition. 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 tax commissioner, in person either personally or by certified mail, within sixty days from after the date that mailing of the notice of assessment was mailed a written petition for reassessment signed by the utility'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 indicate the utility's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination ~~by the commissioner.~~

In the case of a petition seeking a reduction in taxable value filed with respect to an assessment issued under section 5727.23 of the Revised Code, the petitioner shall state in the petition the total amount of reduction in taxable value sought by the petitioner. If the petitioner objects to the percentage of true value at which taxable property is assessed by the ~~tax~~ commissioner, the petitioner shall state in the petition the total amount of reduction in taxable value sought both with and without regard to the objection pertaining to the percentage of true value at which its taxable property is assessed. If a petitioner objects to the ~~tax~~ commissioner's

apportionment of the taxable value of the petitioner's taxable property, the petitioner shall distinctly state in the petition that the petitioner objects to the ~~tax~~ commissioner's apportionment, and, within forty-five days after filing the petition for reassessment, shall submit the petitioner's proposed apportionment of the taxable value of its taxable property among taxing districts. If a petitioner that objects to the ~~tax~~ commissioner's apportionment fails to state its objections to that apportionment in its petition for reassessment or fails to submit its proposed apportionment within forty-five days after filing the petition for reassessment, the ~~tax~~ commissioner shall dismiss the petitioner's objection to the ~~tax~~ commissioner's apportionment, and the taxable value of the petitioner's taxable property, subject to any adjustment to taxable value pursuant to the petition or appeal, shall be apportioned in the manner used by the ~~tax~~ commissioner in the preliminary or amended preliminary assessment issued under section 5727.23 of the Revised Code.

If an additional objection seeking a reduction in taxable value in excess of the reduction stated in the original petition is properly and timely raised with respect to an assessment issued under section 5727.23 of the Revised Code, the petitioner shall state the total amount of the reduction in taxable value sought in the additional objection both with and without regard to any reduction in taxable value pertaining to the percentage of true value at which taxable property is assessed. If a petitioner fails to state the reduction in taxable value sought in the original petition or in additional objections properly raised after the petition is filed, the ~~tax~~ commissioner shall notify the petitioner of the failure by certified mail. If the petitioner fails to notify the ~~tax~~ commissioner in writing of the reduction in taxable value sought in the petition or in an additional objection within thirty days after receiving the ~~tax~~ commissioner's notice, the ~~tax~~ commissioner shall dismiss the petition or the additional objection in which that reduction is sought.

(B)(1) Subject to divisions (B)(2) and (3) of this section, a public utility filing a petition for reassessment regarding an assessment issued under section 5727.23 or 5727.38 of the Revised Code shall pay the tax with respect to the assessment objected to as required by law. The acceptance of any tax payment by the treasurer of state or any county treasurer shall not prejudice any claim for taxes on final determination by the ~~tax~~ commissioner or final decision by the board of tax appeals or any court.

(2) If a public utility properly and timely files a petition for reassessment regarding an assessment issued under section 5727.23 of the Revised Code, the petitioner shall pay the tax as prescribed by divisions (B)(2)(a), (b), and (c) of this section:

(a) If the petitioner does not object to the ~~tax~~ commissioner's apportionment of the taxable value of the petitioner's taxable property, the petitioner is not required to pay the part of the tax otherwise due on the taxable value that the petitioner seeks to have reduced, subject to division (B)(2)(c) of this section.

(b) If the petitioner objects to the ~~tax~~ commissioner's apportionment of the taxable value of the petitioner's taxable property, the petitioner is not required to pay the tax otherwise due on the part of the taxable value apportioned to any taxing district that the petitioner objects to, subject to division (B)(2)(c) of this section. If, pursuant to division (A) of this section, the petitioner has, in a proper and timely manner, apportioned taxable value to a taxing district to which the ~~tax~~ commissioner did not apportion the petitioner's taxable value, the petitioner shall pay the tax due on the taxable value that the petitioner has apportioned to the taxing district, subject to division (B)(2)(c) of this section.

(c) If a petitioner objects to the percentage of true value at which taxable property is assessed by the ~~tax~~ commissioner, the petitioner shall pay the tax due on the basis of the percentage of true value at which the public utility's taxable property is assessed by the ~~tax~~ commissioner. In any case, the petitioner's payment of tax shall not be less than the amount of tax due based on the taxable value reflected on the last appeal notice issued by the ~~tax~~ commissioner under division (C) of this section. Until the county auditor receives notification under division (E) of this section and proceeds under section 5727.471 of the Revised Code to issue any refund that is found to be due, the county auditor shall not issue a refund for any increase in the reduction in taxable value that is sought by a petitioner later than forty-five days after the petitioner files the original petition as required under division (A) of this section.

(3) Any part of the tax that, under division (B)(2)(a) } or (b) of this section, is not paid shall be collected upon receipt of the notification as provided in section 5727.471 of the Revised Code with interest thereon computed in the same manner as interest is computed under division (E) of section 5715.19 of the Revised Code, subject to any correction of the assessment by the ~~tax~~ commissioner under division (E) of this section or the final judgment of the board of tax appeals or a court to which the board's final judgment is appealed. The penalty imposed under section 323.121 of the Revised Code shall apply only to the unpaid portion of the tax if the petitioner's tax payment is less than the amount of tax due based on the taxable value reflected on the last appeal notice issued by the ~~tax~~ commissioner under division (C) of this section.

(C) Upon receipt of a properly filed petition for reassessment, the tax commissioner shall notify the treasurer of state or the auditor of each county to which the assessment objected to has been certified. In the case of a petition with respect to an assessment issued under section 5727.23 of the Revised Code, the ~~tax~~ commissioner shall issue an appeal notice within thirty days after receiving the amount of the taxable value reduction and apportionment changes sought by the petitioner in the original petition or in any additional objections properly and timely raised by the petitioner. The appeal notice shall indicate the amount of the reduction in taxable value sought in the petition or in the additional objections and the extent to which the reduction in taxable value and any change in apportionment requested by the petitioner would affect the ~~tax~~ commissioner's apportionment of the taxable value among taxing districts in the county as shown in the assessment. If a petitioner is seeking a reduction in taxable value on the basis of a lower percentage of true value than the percentage at which the ~~tax~~ commissioner assessed the petitioner's taxable property, the appeal notice shall indicate the reduction in taxable value sought by the petitioner without regard to the reduction sought on the basis of the lower percentage and shall indicate that the petitioner is required to pay tax on the reduced taxable value determined without regard to the reduction sought on the basis of a lower percentage of true value, as provided under division (B)(2)(c) of this section. The appeal notice shall include a statement that the reduced taxable value and the apportionment indicated in the notice are not final and are subject to adjustment by the ~~tax~~ commissioner or by the board of tax appeals or a court on appeal. If the ~~tax~~ commissioner finds an error in the appeal notice, the ~~tax~~ commissioner may amend the notice, but the notice is only for informational and tax payment purposes; the notice is not subject to appeal by any person. The ~~tax~~ commissioner also shall mail a copy of the appeal notice to the petitioner. Upon the request of a taxing authority, the county auditor may disclose to the taxing authority the extent to which a reduction in taxable value sought by a petitioner would affect the apportionment of taxable value to the taxing district or districts under the taxing authority's jurisdiction, but such a disclosure does not constitute a notice required by law to be given for the purpose of section 5717.02 of the Revised Code.

(D) ~~Unless~~ If the petitioner ~~waives~~ requests a hearing ~~on the petition~~, the ~~tax~~ commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of ~~the~~ such time and place ~~of the hearing by personal service or certified mail~~, but the commissioner may continue the hearing from time to time ~~if~~ as necessary.

(E) The tax commissioner may make ~~such correction~~ corrections to the assessment as the ~~tax~~ commissioner finds proper. The ~~tax~~ commissioner shall serve a copy of the commissioner's final determination on the petitioner ~~by personal service or certified mail, and in the tax manner provided in section 5703.37 of the Revised Code.~~ The commissioner's decision in the matter shall be final, subject to appeal as provided in under section 5717.02 of the Revised Code. The ~~tax~~ 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 ~~tax~~ 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. ~~In any notification regarding an assessment issued under section 5727.23 of the Revised Code, the tax commissioner shall include a notice of the amount of any state basic aid overpayment, as defined in section 5727.471 of the Revised Code, to a school district affected by the notification. Upon the tax commissioner's request, the department of education shall certify to the tax commissioner the amount of any state basic aid overpayment to a school district.~~

The notification made under this division is not subject to further appeal.

(F) On appeal, no adjustment shall be made in the tax commissioner's assessment issued under section 5727.23 of the Revised Code that reduces the taxable value of a petitioner's taxable property by an amount that exceeds the reduction sought by the petitioner in its petition for reassessment or in any additional objections properly and timely raised after the petition is filed with the ~~tax~~ commissioner.

Sec. 5727.471. (A) As used in this section:

~~(1) "Notification",~~ "notification" means notification required by section 5727.47 of the Revised Code to be sent by the tax commissioner to the county auditor as to the disposition of a petition for reassessment, or of a decision of the board of tax appeals or any court with respect to an assessment of public utility property taxes.

~~year had been the taxable value shown in the notification for that tax year.~~

(B) On receipt of the notification, the auditor shall determine whether there has been an underpayment or overpayment of taxes by the public utility. In the case of an underpayment of taxes, the auditor shall notify the county treasurer of the amount, and the treasurer shall proceed to collect the underpayment as required by law. ~~From the proceeds of the underpayment so collected that are otherwise payable to a city, local, or exempted village school district, the county treasurer shall deduct and withhold an amount equal to the state basic aid overpayment, if any, to the school district, plus interest on that amount at the rate prescribed by section 5703.47 of the Revised Code from the last day of the fiscal year for which the state basic aid payment was made to the day the underpayment is collected. The county treasurer shall pay the amount deducted and withheld to the treasurer of state, who shall credit the payment to the general revenue fund. If the state basic aid overpayment and interest exceeds the amount of the tax underpayment collected that is otherwise payable to the school district, the county treasurer shall collect the difference from the school district or deduct and withhold the difference from the next distribution or advance payment of property taxes to the district, and shall pay that difference to the treasurer of state, who shall credit the payment to the general revenue fund.~~

In the case of an overpayment of taxes, the auditor shall do any one of the following:

- (1) Refund the full amount of the overpayment;
- (2) Refund a portion of the overpayment and prorate the remaining balance as a credit against future taxes that may be charged to the public utility;
- (3) Prorate the full amount of the overpayment as a credit against future taxes that may be charged to the public utility.

(C)(1) The auditor shall have discretion as to which method to use and shall advise the public utility of the auditor's decision within sixty days after receipt of the notification. The auditor shall make payment of any refund under division (B)(1) or (2) of this section within ninety days after receipt of the notification. Except as otherwise provided in division (C)(2) of this section, any amount to be credited under division (B)(2) or (3) of this section shall be applied to all or a part of the taxes otherwise due from the public utility on real and public utility property tax installment due dates after the date on which the notification was received, but shall not be spread over more than the next ten ensuing installment due dates. If any portion of the overpayment has not been refunded or credited by the tenth such tax

allment due date after the date on which the notification was received, the auditor immediately shall refund that portion.

(2) The tax commissioner may certify to a county auditor, in writing, that a public utility is no longer required to file a report under section 5727.08 of the Revised Code. Within ninety days of the date of such certification, the auditor shall refund to the utility, with applicable interest, the portion of any overpayment that has not been refunded or credited to the utility under this section.

(D) The auditor shall add interest to the amount of any overpayment of taxes at the rate per calendar month, rounded to the nearest one-hundredth of one per cent, equal to one-twelfth of the rate per annum prescribed by section 5703.47 of the Revised Code. The interest shall begin to accrue from the first day of the month following the date of the overpayment until the last day of the month preceding the date the overpayment or portion of the overpayment is refunded or credited, and shall be computed separately on each amount actually refunded or credited. In computing interest on credits, when an overpayment is credited against an installment of current taxes due from the utility pursuant to this section, the overpayment shall be considered to have been credited on the last date on which those taxes may be paid without penalty.

(E) The refund and crediting of any overpayment, including interest, shall be paid from or credited against the fund or funds and the taxing districts to which the overpayment originally was paid, in proportion to the amount of the overpayment received. The auditor shall correct the auditor's tax lists in accordance with the refund or credit, and shall certify corrections in the tax duplicates to the county treasurer. At each settlement affected by a refund or credit under this section, the amount of the refund or credit shall be deducted from the amount of any taxes or assessments distributable to the county or any taxing unit in the county that has received the benefit of the taxes or assessment previously overpaid, in proportion to the overpayment previously received.

Sec. 5727.89. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any natural gas distribution company, 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 or 5727.811 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~~ in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

The tax commissioner may issue an assessment for which the tax imposed by section 5727.81 or 5727.811 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 up to fifteen per cent 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 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~~ that party's authorized agent having knowledge of the facts, the assessment ~~is~~ becomes 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 if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.~~

~~(D)~~(C) 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 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~~ Immediately upon the filing of the entry, ~~the clerk~~ 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 distribution excise taxes," 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 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)(D)~~ If the tax commissioner believes that collection of the tax imposed by section 5727.81 or 5727.811 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 person liable for the tax. ~~Upon~~ Immediately upon the 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)(C)~~ 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)(E)~~ 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 taxes imposed by sections 5727.81 and 5727.811 of the Revised Code.

Sec. 5727.91. (A) The treasurer of state shall refund the amount of tax paid under section 5727.81 or 5727.811 of the Revised Code that was paid illegally or erroneously, or paid on an illegal or erroneous assessment. A natural gas distribution company, an electric distribution company, or a

self-assessing purchaser shall file an application for a refund with the tax commissioner on a form prescribed by the commissioner, within four years of the illegal or erroneous payment of the tax.

~~Upon~~ On the filing of the application, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall~~ certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund under section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If the application for refund is for taxes paid on an illegal or erroneous assessment, the ~~tax~~ commissioner shall include in the certified amount interest calculated at the rate per annum ~~under~~ prescribed by section 5703.47 of the Revised Code from the date of overpayment to the date of the commissioner's certification.

(B) If a natural gas distribution company or an electric distribution company entitled to a refund of taxes under this section, or section 5703.70 of the Revised Code, is indebted to the state for any tax or fee administered by the tax commissioner that is paid to the state, or any charge, penalty, or interest arising from such a tax or fee, the amount refundable may be applied in satisfaction of the debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded. If the natural gas distribution company or electric distribution company has more than one such debt, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

(C)(1) Any electric distribution company that can substantiate to the tax commissioner that the tax imposed by section 5727.81 of the Revised Code was paid on electricity distributed via wires and consumed at a location outside of this state may claim a refund in the manner and within the time period prescribed in division (A) of this section.

(2) Any natural gas distribution company that can substantiate to the tax commissioner that the tax imposed by section 5727.811 of the Revised Code was paid on natural gas distributed via its facilities and consumed at a location outside of this state may claim a refund in the manner and within the time period prescribed in division (A) of this section.

(D) Before a refund is issued under this section or section 5703.70 of the Revised Code, a natural gas company or an electric distribution

company shall certify, as prescribed by the tax commissioner, that it either did not include the tax imposed by section 5727.81 of the Revised Code in the case of an electric distribution company, or the tax imposed by section 5727.811 of the Revised Code in the case of a natural gas distribution company, in its distribution charge to its customer upon which a refund of the tax is claimed, or it has refunded or credited to the customer the excess distribution charge related to the tax that was erroneously included in the customer's distribution charge.

Sec. 5727.93. (A) No person shall distribute electricity or natural gas to a meter of an end user in this state or to an unmetered location in this state if that person is not registered with the tax commissioner as an electric distribution company or a natural gas distribution company.

(B) Each person required to register under division (A) of this section shall register prior to distributing electricity or natural gas to a meter of an end user in this state or to an unmetered location in this state. The tax commissioner shall prescribe the form of the registration application. The commissioner shall assign an identification number to each registration and notify the registrant of that number. The registration shall remain in effect until canceled in writing by the registrant upon the cessation of distributing electricity or natural gas to a meter of an end user in this state or to an unmetered location in this state, or until such registration is denied, revoked, or canceled by the commissioner. A registration may be revoked or canceled by the tax commissioner as provided by Chapter 119. of the Revised Code, for failure of an electric distribution company to pay the tax imposed by section 5727.81 of the Revised Code, failure of a natural gas distribution company to pay the tax imposed by section 5727.811 of the Revised Code, or failure of an electric distribution company or a natural gas distribution company to comply with sections 5727.80 and 5727.82 to 5727.95 of the Revised Code. A company whose registration is denied may petition for a hearing, in accordance with the procedures set forth in ~~divisions~~ division (B) ~~and (C)~~ of section 5727.89 of the Revised Code, not later than thirty days after receiving the denial, and the final determination is subject to appeal under section 5717.02 of the Revised Code.

(C) The tax commissioner shall maintain a list of the companies registered under this section. The list shall contain the name and address of each company registered by the commissioner. The list and subsequent updates of it shall be open to public inspection.

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

(A) "Motor vehicle" means everything on wheels 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 that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation, 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 that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation, 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, including~~ a highway under the control and jurisdiction of the Ohio turnpike commission created by the provisions of section 5537.02 of the Revised Code and land and lots over which the public, either as user or owner, generally has a right to pass even though such land or lots are closed temporarily by public authorities for the purpose of construction, reconstruction, maintenance, or repair.

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 fuel use permit on blank forms to be furnished by the commissioner for that purpose.

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

(B) Upon receipt of the application, the tax commissioner shall issue to the person making the application a highway fuel use permit and any identification device that 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 fuel use permits and the identification device shall not be transferable. In case of the loss of a highway fuel use permit or identification device, the commissioner shall issue a duplicate of the permit or device.

The highway fuel use permit shall be valid until it expires or is suspended or surrendered.

Sec. 5728.03. (A) In lieu of filing an application for an annual highway fuel 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 fuel use permit. The application shall be 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 fuel use permits.

(B) The tax 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 fuel 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 fuel 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 fuel 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~~ is 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 fuel 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. ~~5735.311~~ 5728.05. The tax commissioner may enter into cooperative reciprocal agreements providing for the imposition of ~~motor~~ fuel use taxes on an apportionment or allocation basis with the proper

authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of the United States or of a foreign country. The agreement may provide for determining the base state for fuel users, users' records requirements, audit procedures, exchange of information, the definition of qualified motor vehicles, bonding requirements, reporting requirements, reporting periods, specifying uniform penalty and interest for late reporting or payment, determining methods of collecting and remitting fuel use taxes to member jurisdictions, and such other provisions as will facilitate the administration of the agreement.

To any extent provisions of the Revised Code governing the administration of the tax levied by section ~~5735.31~~ 5728.06 of the Revised Code are irreconcilable with provisions of a reciprocal agreement entered into pursuant to this section, the provisions of the reciprocal agreement prevail.

The agreement may provide for the ~~tax~~ commissioner to audit the records of persons based in this state for purposes of the agreement in order to determine whether the fuel use taxes due each member jurisdiction are properly reported and paid. If any person based in this state fails to properly report and pay fuel use taxes as required by the agreement, the ~~tax~~ commissioner may issue an assessment against that person pursuant to the provisions of the agreement and section 5728.10 of the Revised Code.

The ~~tax~~ commissioner may exchange with the proper officers of other member jurisdictions and with the repository of the agreement any information in the commissioner's possession relative to the administration and enforcement of the agreement. The exchange of information under this section is not a violation of section 5703.21 or 5715.50 of the Revised Code. For purposes of this section, "proper officers of other member jurisdictions" includes officers of any agency, department, or instrumentality of another member jurisdiction with authority under the laws of that jurisdiction to administer or enforce motor vehicle or taxation laws.

The ~~tax~~ commissioner may adopt rules for the administration and enforcement of the agreement entered into pursuant to this section, and shall prescribe and supply necessary forms.

The commissioner may provide information necessary for the administration and enforcement of this chapter to persons who collect such information for the purpose of providing it to other persons that are responsible for the administration and enforcement of motor vehicle or tax laws. The information provided by the commissioner shall identify the taxpayer and the status of the taxpayer's account obtained from the filings required under sections 5728.01 to 5728.14 of the Revised Code. Providing

such information under this section is not a violation of section 5703.21 or 5715.50 of the Revised Code.

~~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. For the following purposes, an excise tax is hereby imposed on the use of motor fuel to operate on the public highways of this state a commercial car with three or more axles operated alone or as part of a commercial tandem, a commercial car with two axles operated as part of a commercial tandem having a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor operated alone or as part of a commercial tractor combination or commercial tandem: to provide revenue for maintaining the state highway system, to widen existing surfaces on such~~

highways, to resurface such highways, to enable the counties of the state properly to plan for, maintain, and repair their roads, to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; to pay that portion of the construction cost of a highway project that a county, township, or municipal corporation normally would be required to pay, but that 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 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 section 4907.47 of the Revised Code; and to supplement revenue already available for such purposes, to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing the same, and to pay the interest, principal, and charges on 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. The tax is imposed in the same amount as the motor fuel tax imposed under Chapter 5735, of the Revised Code plus an additional tax of three cents per gallon, as determined by the gallons consumed while operated on the public highways of this state. Payment of the fuel use tax shall be made by the purchase of motor fuel within Ohio of such gallons as is equivalent to the gallons consumed while operating such a motor vehicle on the public highways of this state, or by direct remittance to the treasurer of state with the fuel use tax return filed pursuant to section 5728.08 of the Revised Code.

Any person subject to the tax imposed under this section who purchases motor fuel in this state for use in another state in excess of the amount consumed while operating such motor vehicle on the public highways of this state shall be allowed a credit against the tax imposed by this section or a refund equal to the motor fuel tax paid to this state on such excess. No such credit or refund shall be allowed for taxes paid to any state that imposes a tax on motor fuel purchased or obtained in this state and used on the highways of such other state but does not allow a similar credit or refund for the tax paid to this state on motor fuel purchased or acquired in the other state and used on the public highways of this state.

The tax commissioner is authorized to determine whether such credits or refunds are available and to prescribe such rules as are required for the purpose of administering this chapter.

ommissioner shall determine the amount of motor fuel tax allowed as a credit against the tax imposed by this section. The commissioner shall certify the amount to the director of budget and management and the treasurer of state, who shall credit the amount in accordance with section 5728.08 of the Revised Code from current revenue arising from the tax levied by section 5735.05 of the Revised Code.

(C) The owner of each commercial car and commercial tractor subject to sections 5728.01 to 5728.14 of the Revised Code shall be is liable for the payment of the full amount of the taxes levied herein imposed by this section.

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. 5728.061. The treasurer of state shall refund the amount of ~~highway fuel~~ use taxes overpaid, paid illegally or erroneously, or paid on any 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 overpayment, the illegal or erroneous payment of the tax, or the payment of the illegal or erroneous assessment. An application shall be filed by the person who made payment of the tax for which the refund is claimed. When a refund is granted for payment of an illegal or erroneous assessment issued by the commissioner, the refund shall include interest on the amount of the refund from the date of the ~~overpayment~~ payment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

~~On~~ On the filing of the application, the commissioner shall determine the amount of refund ~~due and~~ to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify that the 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. ~~Application for refund shall be filed by the person who made payment of the tax for which refund is claimed. If the amount is less than that claimed, the~~ commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

Sec. 5728.07. Every person who is or becomes liable for the payment of the tax levied in section 5728.06 of the Revised Code shall ~~keep a complete and accurate record, upon forms prescribed by the tax commissioner, showing the total miles traveled on a public highway in this state by~~ maintain detailed distance and fuel records for each commercial car and commercial tractor owned, leased, rented, or otherwise operated by such person, ~~the number of axles actually used while traveling said miles, the highway use permit number for each commercial car and commercial tractor owned or operated and such other information as the tax commissioner may require.~~ Such records shall be available at any time, during normal business hours, for the inspection of the tax commissioner or ~~his~~ the commissioner's duly authorized agents and shall be preserved for a period of four years from the date the return required to be filed under section 5728.08 of the Revised Code was due or filed, whichever is later.

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 fuel 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 fuel 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 fuel 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 fuel 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 fuel 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 section~~ section 5728.03 of the Revised Code ~~which that~~ 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~~ following 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 section~~ section 5728.03 of the Revised Code ~~which that~~ 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

et 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~~ following 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~~ section 5728.03 of the Revised Code ~~which that~~ 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 that~~ 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~~ section 5728.03 of the Revised Code, ~~which that~~ 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 may be required to pay an additional charge equal to the greater of fifty dollars or ten per cent of the tax due. The tax 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 fuel 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 return date for the period for which the tax was due~~ or more than four years after the return for the period was filed, whichever is later. This section does not bar an assessment against any person who fails to file a highway fuel use tax return as required by this chapter, or who files a fraudulent highway fuel use tax return.

A penalty of up to fifteen per cent 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 ~~as in the manner~~ provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party ~~to whom the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written 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~~ becomes final and the amount of the assessment ~~shall be~~ 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 if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the entry, the clerk 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 fuel~~ 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 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 tax commissioner under this section shall be paid into the state treasury in the same manner as the revenues

ing from the taxes imposed by section 5728.06 of the Revised Code.

Sec. 5728.11. (A) ~~Thirty~~ Sixty days after service of an assessment under section 5728.10 of the Revised Code, or when the tax commissioner files a certified copy of an entry making an assessment as provided in that section, ~~he the commissioner~~ shall suspend all highway fuel use permits issued to the person against whom the assessment was made, provided that no highway fuel use permit shall be suspended while an appeal is pending, except in those cases in which no return has been filed, or where it is alleged a fraudulent return has been filed.

Upon suspension of a highway fuel use permit, the commissioner may require that the permit holder ~~shall~~ surrender to the commissioner the permit and identification device.

Upon payment in full of the assessment and interest, the ~~tax~~ commissioner shall immediately reinstate all highway fuel use permits issued to the person against whom the assessment was made which have been suspended.

(B) If no returns have been filed within the time prescribed for the filing of returns, or within any extension of time for filing as the ~~tax~~ commissioner may grant in accordance with section 5728.14 of the Revised Code, the commissioner, after giving written notice of ~~his the commissioner's~~ intention so to do, immediately may suspend all highway fuel use permits held by the person failing to file a return. The notice shall be sent to the last known address of the person. No permit which has been suspended for failure to file a return shall be reinstated until the person files complete and correct returns for all periods in which no return has been filed and paid the full amount of the tax, interest, and additional charges due.

Sec. 5728.13. ~~The provisions of sections Sections 5728.02 to 5728.12, inclusive, of the Revised Code; do not apply to motor vehicles, commercial cars, or commercial tractors owned and operated by the United States, by this state; or any political subdivisions thereof, nor to motor vehicles, commercial cars, or commercial tractors owned by nonresidents of this state while engaged solely in the interstate transportation of household goods in Ohio, provided such owner has complied with the laws of the state, district, or territory of his residence pertaining to the registration and taxation of motor vehicles and complies with such laws while operating and driving such motor vehicle upon the public roads or highways of this state; provided that the owners of motor vehicles similarly engaged and registered in this state shall be exempt from all obligations pertaining to the registration and taxation of motor vehicles in such other states, districts, or territories. The provisions of this section do not apply to vehicles, commercial cars, or~~

~~commercial tractors owned by nonresidents of this state when operated by a resident under lease or any other arrangement. The tax commissioner shall be authorized to determine whether or not such other states, districts, or territories exempt such Ohio registered vehicles from all obligations pertaining to the registration and taxation of such motor vehicles and to prescribe such rules and regulations as are required for the purpose of administering the provisions of this section.~~

~~Household goods means all goods consisting of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwellings and furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments, and articles including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods or by any other state or its political subdivisions if that state extends a similar exemption to motor vehicles, commercial cars, or commercial tractors owned and operated by this state or its political subdivisions.~~

~~Sec. 5733.021. (A) Each taxpayer ~~which~~ that does not in ~~the month of~~ January file the report and make the payment required by section 5733.02 of the Revised Code shall make and file a declaration of estimated tax report for the tax year.~~

~~The declaration of estimated tax report shall be filed with the treasurer of state on or before the last day of January in such form as prescribed by the tax commissioner, and shall reflect an estimate of the total amount due under this chapter for the tax year.~~

~~(B) A taxpayer required to file a declaration of estimated tax report shall make remittance of such estimated tax to the treasurer of state as follows:~~

~~(1) The entire estimated tax at the time of filing the declaration of estimated tax report, if such estimated tax is not in excess of the minimum tax as provided in section 5733.06 of the Revised Code;~~

~~(2) If the estimated tax is in excess of the minimum tax:~~

~~(a) One-third of the estimated tax at the time of filing the declaration of estimated tax report;~~

~~(b) Two-thirds of the estimated tax on or before the last day of March of the tax year, unless if the report ~~and payment~~ required by section 5733.02 of the Revised Code is filed ~~and paid~~ on or before the last day of March of the tax year;~~

~~(3) If the estimated tax ~~due~~ is in excess of the minimum tax, and an~~

extension of time for filing the report required by section 5733.02 of the Revised Code has been granted pursuant to section 5733.13 of the Revised Code;

(a) One-third of the estimated tax at the time of filing the declaration of estimated tax report;

(b) One-third of the estimated tax on or before the last day of March of the tax year;

(c) One-third of the estimated tax on or before the last day of May of the tax year, ~~unless the report and payments required by section 5733.02 of the Revised Code are filed and paid on or before the last day of May of the tax year.~~

Remittance of the estimated tax shall be made in the form prescribed by the treasurer of state, including electronic funds transfer if required by section 5733.022 of the Revised Code.

The treasurer of state shall credit all payments of such estimated tax as provided in section 5733.12 of the Revised Code, shall show on all reports the date each was filed and the amount of payment remitted, and shall immediately transmit all reports filed under this section to the tax commissioner.

(C)(1) For any period of delinquency ending prior to the first day of June of the tax year:

(a) The penalty under division (A)(2) of section 5733.28 of the Revised Code may only be imposed on the delinquent portion of the estimated tax required to be paid under divisions (B)(2)(a) and (b) and (B)(3)(a) and (b) of this section.

(b) The interest under section 5733.26 of the Revised Code shall only be imposed on the delinquent portion of estimated tax required to be paid under divisions (B)(2)(a), (B)(2)(b), (B)(3)(a), and (B)(3)(b) of this section.

(c) If the taxpayer was not subject to tax for the immediately preceding tax year, "estimated tax" for purposes of division (C)(1) of this section is ninety per cent of the qualifying tax for the current tax year. If the taxpayer was subject to the tax for the immediately preceding tax year, "estimated tax" for purposes of division (C)(1) of this section is the lesser of one hundred per cent of the qualifying net tax for the immediately preceding tax year or ninety per cent of the qualifying net tax for the current tax year.

(2) For any period of delinquency commencing the first day of June of the tax year and concluding on the extended due date pursuant to section 5733.13 of the Revised Code:

(a) The penalty under division (A)(2) of section 5733.28 of the Revised Code may only be imposed on the delinquent portion of the estimated tax

required to be paid under division (B)(3)(c) of this section.

(b) The interest under section 5733.26 of the Revised Code shall be imposed on the delinquent portion of the amount in division (C)(3)(a) of this section for the current tax year.

(c) For purposes of division (C)(2) of this section, "estimated tax" is ninety per cent of the qualifying net tax for the current tax year.

(3) If the taxpayer did not file a report under section 5733.02 of the Revised Code for the tax year or failed to prepare and file the report in good faith for the tax year, "qualifying net tax" as used in division (C) of this section for that tax year means the amount described in division (C)(3)(a) of this division. Otherwise, "qualifying net tax" as used in division (C) of this section for that tax year means the lesser of the amount described in division (C)(3)(a) or (b) of this section:

(a) The tax imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code for that tax year reduced by the credits listed in section 5733.98 of the Revised Code. If the credits exceed the total tax, the qualifying net tax is zero.

(b) The lesser of the tax shown on the report, reduced by the credits shown on that report, or the tax shown on an amended report prepared and filed in good faith, reduced by the credits shown on that amended report. If the credits shown exceed the total tax shown, the qualifying net tax is zero.

Sec. 5733.04. As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the laws of this state.

(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that

immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.

(G) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.

(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:

(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than the designated carryover period as described in division (I)(1)(b) of this section. The amount of such net operating loss, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code for the year in which the net operating loss occurs, shall be deducted from net income, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code, to the extent necessary to reduce net income to zero with the remaining unused portion of the deduction, if any, carried forward to the remaining years of the designated carryover period as described in division (I)(1)(b) of this section, or until fully utilized, whichever occurs first.

(b) For losses incurred in taxable years ending on or before December 31, 1981, the designated carryover period shall be the five consecutive taxable years after the taxable year in which the net operating loss occurred. For losses incurred in taxable years ending on or after January 1, 1982, and beginning before August 6, 1997, the designated carryover period shall be the fifteen consecutive taxable years after the taxable year in which the net operating loss occurs. For losses incurred in taxable years beginning on or after August 6, 1997, the designated carryover period shall be the twenty

consecutive taxable years after the taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish any information necessary to support a claim for deduction under division (I)(1)(a) of this section and no deduction shall be allowed unless the information is furnished.

(2) Deduct any amount included in net income by application of section 78 or 951 of the Internal Revenue Code, amounts received for royalties, technical or other services derived from sources outside the United States, and dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. For purposes of determining net foreign source income deductible under division (I)(2) of this section, the amount of gross income from all such sources other than income derived by application of section 78 or 951 of the Internal Revenue Code shall be reduced by:

(a) The amount of any reimbursed expenses for personal services performed by employees of the taxpayer for the subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and technical assistance fees;

(c) Fifteen per cent of the amount of dividends and all other income.

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses, or the tax commissioner shows, by clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from

the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset. The adjustments described in this division do not apply to any gain or loss where the gain or loss is recognized by a qualifying taxpayer, as defined in section 5733.0510 of the Revised Code, with respect to a qualifying taxable event, as defined in that section.

(4) Deduct the dividend received deduction provided by section 243 of the Internal Revenue Code.

(5) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income. As used in divisions (I)(5) and (6) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, excluding an electric company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the public utility. As used in division (I)(7) of this section, "public utility" means a public utility as defined in Chapter 5727. of the Revised Code, whether or not the public utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends received by a taxpayer from an insurance company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the insurance company. As used in division (I)(8) of this section, "insurance company" means an insurance company that is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or structures to meet American national standards institute standard A-117.1-1961 (R-1971), as amended; provided, that no deduction shall be allowed to the extent that such deduction is not permitted under federal law or under rules of the tax commissioner. Those deductions as are allowed may be taken over a period of five years. The tax commissioner shall adopt rules under Chapter 119. of the Revised Code establishing reasonable limitations on the extent that expenditures for modifying existing buildings or structures are attributable to the purpose of making the buildings or structures accessible

to and usable by physically handicapped persons.

(10) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income before operating loss deduction and special deductions for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(11) Deduct net interest income on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent the laws of the United States prohibit inclusion of the net interest for purposes of determining the value of the taxpayer's issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code. As used in division (I)(11) of this section, "net interest" means interest net of any expenses taken on the federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code if the interest were exempt from federal income tax.

(12)(a) Except as set forth in division (I)(12)(d) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions, made by a related entity who is not a taxpayer, of the taxpayer's indirect, beneficial, or constructive investment in the stock or debt of another entity, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related investment in the stock or debt of the other entity. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(b) Except as set forth in division (I)(12)(e) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions made by a related entity who is not a taxpayer, of intangible property other than stock, securities, and debt, if such property was owned, or used in whole or in part, at any time prior to or at the time of the sale, exchange, or disposition by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of such property, unless the gain

or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related ownership or use of such intangible property. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(c) As used in division (I)(12) of this section, "related entity" means those entities described in divisions (I)(12)(c)(i) to (iii) of this section:

(i) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (I)(12)(c)(iv) of this section, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock.

(iv) The attribution rules of section 318 of the Internal Revenue Code apply for purposes of determining whether the ownership requirements in divisions (I)(12)(c)(i) to (iii) of this section have been met.

(d) For purposes of the adjustments required by division (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:

(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;

(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;

(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;

(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.

The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:

(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section;

(ii) A related entity's gains or losses described in division (I)(12)(b) if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.

(13) Any adjustment required by section 5733.042 of the Revised Code.

(14) Add any amount claimed as a credit under section 5733.0611 of the Revised Code to the extent that such amount satisfies either of the following:

(a) It was deducted or excluded from the computation of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for the corporation's taxable year under the Internal Revenue Code;

(b) It resulted in a reduction of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for any of the corporation's taxable years under the Internal Revenue Code.

(15) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (I)(15) of this section.

(16) Any adjustment required by section 5733.0510 of the Revised Code.

(J) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091.

(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements:

(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members;

(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following:

(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section;

(ii) The collection and distribution of income from such property.

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year;

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (C)(2) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter;

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter.

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section, the net book value of the corporation's assets shall not include the net book value of aircraft or real property

scribed in division (L)(1)(b)(i) of this section.

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of the tax year the corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of such pass-through entity do not exceed fifty per cent. If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-through entity shall be income from an intangible asset for that taxable year.

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that

are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.

(N) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

(P) "Electric company" and "combined company" have the same meanings as in section 5727.01 of the Revised Code.

Sec. 5733.05. As used in this section, "qualified research" means laboratory research, experimental research, and other similar types of

research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. "Product" as used in this paragraph does not include services or intangible property.

The annual report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or divisions (B) and (C) of this section is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the corporation's annual accounting period that includes the first day of January of the tax year. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is a financial institution shall be deemed to be the value as calculated in accordance with division (A) of this section. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is not a financial institution shall be deemed to be the values as calculated in accordance with divisions (B) and (C) of this section. Except as otherwise required by this section or section 5733.056 of the Revised Code, the value of a taxpayer's issued and outstanding shares of stock under division (A) or (C) of this section does not include any amount that is treated as a liability under generally accepted accounting principles.

(A) The total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves shall be determined as prescribed by section 5733.056 of the Revised Code for tax years 1998 and thereafter.

(B) The sum of the corporation's net income during the corporation's taxable year, allocated or apportioned to this state as prescribed in divisions (B)(1) and (2) of this section, and subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 5733.059, and 5733.0510 of the Revised Code:

(1) The net income allocated to this state as provided by section 5733.051 of the Revised Code.

(2) The amount of Ohio apportioned net income from sources other than those allocated under section 5733.051 of the Revised Code, which shall be determined by multiplying the corporation's net income by a fraction. The numerator of the fraction is the sum of the following products: the property factor multiplied by twenty, the payroll factor multiplied by twenty, and the sales factor multiplied by sixty. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by twenty if the property factor has a denominator of zero, by twenty if the payroll factor has

a denominator of zero, and by sixty if the sales factor has a denominator of zero.

The property, payroll, and sales factors shall be determined as follows:

(a) The property factor is a fraction the numerator of which is the average value of the corporation's real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented, and used in the trade or business everywhere during such year. There shall be excluded from the numerator and denominator of the property factor the original cost of all of the following property within Ohio: property with respect to which a "pollution control facility" certificate has been issued pursuant to section 5709.21 of the Revised Code; property with respect to which an "industrial water pollution control certificate" has been issued pursuant to section 6111.31 of the Revised Code; and property used exclusively during the taxable year for qualified research.

(i) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.

(ii) The average value of property shall be determined by averaging the values at the beginning and the end of the taxable year, but the tax commissioner may require the averaging of monthly values during the taxable year, if reasonably required to reflect properly the average value of the corporation's property.

(b) The payroll factor is a fraction the numerator of which is the total amount paid in this state during the taxable year by the corporation for compensation, and the denominator of which is the total compensation paid everywhere by the corporation during such year. There shall be excluded from the numerator and the denominator of the payroll factor the total compensation paid in this state to employees who are primarily engaged in qualified research.

(i) Compensation means any form of remuneration paid to an employee for personal services.

(ii) Compensation is paid in this state if: (1) the recipient's service is performed entirely within this state, (2) the recipient's service is performed both within and without this state, but the service performed without this state is incidental to the recipient's service within this state, (3) some of the service is performed within this state and either the base of operations, or if

there is no base of operations, the place from which the service is directed or controlled is within this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in this state.

(iii) Compensation is paid in this state to any employee of a common or contract motor carrier corporation, who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by such employee within the state bears to the total mileage traveled by such employee everywhere during the taxable year.

(c) Except as provided in section 5733.059 of the Revised Code, the sales factor is a fraction the numerator of which is the total sales in this state by the corporation during the taxable year, and the denominator of which is the total sales by the corporation everywhere during such year. In determining the numerator and denominator of the sales factor, receipts from the sale or other disposal of a capital asset or an asset described in section 1231 of the Internal Revenue Code shall be eliminated. Also, in determining the numerator and denominator of the sales factor, in the case of a reporting corporation owning at least eighty per cent of the issued and outstanding common stock of one or more insurance companies or public utilities, except an electric company, or owning at least twenty-five per cent of the issued and outstanding common stock of one or more financial institutions, receipts received by the reporting corporation from such utilities, insurance companies, and financial institutions shall be eliminated.

For the purpose of this section and section 5733.03 of the Revised Code, sales of tangible personal property are in this state where such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

Except as provided in section 5733.059 of the Revised Code, sales, other than sales of tangible personal property, are in this state if either:

- (i) The income-producing activity is performed solely in this state;
- (ii) The income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is

performed within this state than in any other state, based on costs of performance.

(d) If the allocation and apportionment provisions of division (B) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, which request must be in writing and must accompany the report, timely filed petition for reassessment, or timely filed amended report, or the tax commissioner may require, in respect to all or any part of the taxpayer's allocated or apportioned base, if reasonable, any one or more of the following:

- (i) Separate accounting;
- (ii) The exclusion of any one or more of the factors;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's allocated or apportioned base in this state.

An alternative method will be effective only with approval by the tax commissioner.

Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.

(C)(1) Subject to divisions (C)(2) and (3) of this section, the total value, as shown on the books of each corporation that is not a qualified holding company, of the net book value of a corporation's assets less the net carrying value of its liabilities, and excluding from the corporation's assets land devoted exclusively to agricultural use as of the first Monday of June in the corporation's taxable year as determined by the county auditor of the county in which the land is located pursuant to section 5713.31 of the Revised Code. For the purposes of determining that total value, any reserves shown on the corporation's books shall be considered liabilities or contra assets, except for any reserves that are deemed appropriations of retained earnings under generally accepted accounting principles.

(2)(a) If, on the last day of the taxpayer's taxable year preceding the tax year, the taxpayer is a related member to a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year, or if, on the last day of the taxpayer's taxable year preceding the tax year, a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year is a related member to the taxpayer, then the taxpayer's total value shall be adjusted by the qualifying amount. Except as otherwise provided under division (C)(2)(b) of this section, "qualifying amount" means the amount that, when added to the taxpayer's total value, and when subtracted from the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, or when

subtracted from the taxpayer's total value and when added to the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, results in the taxpayer's debt-to-equity ratio equaling the debt-to-equity ratio of the qualifying controlled group on the last day of the taxable year ending prior to the first day of the tax year computed on a consolidated basis in accordance with general accepted accounting principles. For the purposes of division (C)(2)(a) of this section, the corporation's total value, after the adjustment required by that division, shall not exceed the net book value of the corporation's assets.

(b)(i) The amount added to the taxpayer's total value and subtracted from the net carrying value of the taxpayer's liabilities shall not exceed the amount of the net carrying value of the taxpayer's liabilities owed to the taxpayer's related members.

(ii) A liability owed to the taxpayer's related members includes, but is not limited to, any amount that the corporation owes to a person that is not a related member if the corporation's related member or related members in whole or in part guarantee any portion or all of that amount, or pledge, hypothecate, mortgage, or carry out any similar transactions to secure any portion or all of that amount.

(3) The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by multiplying the amount determined under divisions (C)(1) and (2) of this section by the fraction determined under divisions (B)(2)(a) to (c) of this section and, if applicable, divisions (B)(2)(d)(ii) to (iv) of this section but without regard to section 5733.052 of the Revised Code.

(4) For purposes of division (C) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

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 or if an agreement waiving or extending the time limit has been entered into pursuant to section 122.171 of the Revised Code. 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the corporation ~~to which the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service ~~thereof of the notice of assessment~~, either personally or by certified mail as ~~provided in section 5703.056 of the Revised Code~~, a written petition for reassessment ~~in writing~~, signed by the corporations 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~~ becomes final, and the amount of the assessment ~~shall be~~ is 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 by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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 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~~ that 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, payment of the assessment, including interest but not penalty, 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, payment of the assessment, including interest but not penalty, 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 tax 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. 5733.12. (A) Four and two-tenths per cent of all payments received by the treasurer of state and by the tax commissioner from the taxes imposed under sections 5733.06 and 5733.41 of the Revised Code shall be credited to the local government fund for distribution in accordance with section 5747.50 of the Revised Code, six-tenths of one per cent shall be credited to the local government revenue assistance fund for distribution in accordance with section 5747.61 of the Revised Code, and ninety-five and two-tenths per cent shall be credited to the general revenue fund.

(B) Except as otherwise provided under divisions (C) and (D) of this section, an application to refund to the corporation the amount of taxes imposed under section 5733.06 of the Revised Code that are overpaid, paid illegally or erroneously, or paid on any illegal, erroneous, or excessive assessment, with interest thereon as provided by section 5733.26 of the Revised Code, shall be filed with the tax commissioner, on the form prescribed by the commissioner, within three years from the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (C)(2) of section 5733.031, division (D)(2) of section 5733.067, or division (A) of section 5733.11 of the Revised Code. For purposes of division (B) of this section, any payment that the applicant

made before the due date or extended due date for filing the report to which the payment relates shall be deemed to have been made on the due date or extended due date.

On the filing of the refund application, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall~~ certify ~~such the~~ 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. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(C) "Ninety days" shall be substituted for "three years" in division (B) of this section if the taxpayer satisfies both of the following:

(1) The taxpayer has applied for a refund based in whole or in part upon section 5733.0611 of the Revised Code;

(2) The taxpayer asserts that the imposition or collection of the tax imposed or charged by section 5733.06 of the Revised Code or any portion of such tax violates the Constitution of the United States or the Constitution of this state.

(D)(1) Division (D)(2) of this section applies only if all of the following conditions are satisfied:

(a) A qualifying pass-through entity pays an amount of the tax imposed by section 5733.41 of the Revised Code;

(b) The taxpayer is a qualifying investor as to that qualifying pass-through entity;

(c) The taxpayer did not claim the credit provided for in section 5733.0611 of the Revised Code as to the tax described in division (D)(1)(a) of this section;

(d) The three-year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.

(2) A taxpayer shall file an application for refund pursuant to this division within one year after the date the payment described in division (D)(1)(a) of this section is made. An application filed under this division shall only claim refund of overpayments resulting from the taxpayer's failure to claim the credit described in division (D)(1)(c) of this section. Nothing in this division shall be construed to relieve a taxpayer from complying with the provisions of division (I)(14) of section 5733.04 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 may be imposed 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 Except as provided in division (C) of section 5733.021 of the Revised Code, if~~ a taxpayer fails to pay ~~any the~~ 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 ~~in this chapter~~ for payment, a penalty may be imposed not exceeding ~~twice the interest charged under division (A) of section 5733.26~~ fifteen per cent 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 may be imposed 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 may be imposed.

~~(5)~~(4) 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 may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the report.

~~(6)~~(5) If any person makes a false or fraudulent claim for a refund under this chapter, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. The penalty imposed under division (A)~~(6)~~(5) 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. 5735.06. (A) On or before the last day of each month, each motor fuel dealer shall file with the treasurer of state a report for the preceding calendar month, on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following information:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such motor fuel dealer, which has been produced, refined, prepared, distilled, manufactured, blended, or compounded by such motor fuel dealer in the state;

(2) An itemized statement of the number of gallons of all motor fuel received by such motor fuel dealer in the state from any source during the preceding calendar month, other than motor fuel included in division (A)(1) of this section, together with a statement showing the date of receipt of such motor fuel; the name of the person from whom purchased or received; the date of receipt of each shipment of motor fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of gallons contained in each car if shipped by rail; the point of origin, destination, and shipper if shipped by pipe line; or the name and owner of the boat, barge, or vessel if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel which such motor fuel dealer has during the preceding calendar month:

(a) For motor fuel other than gasoline sold for use other than for operating motor vehicles on the public highways or on waters within the boundaries of this state;

(b) Exported from this state to any other state or foreign country as provided in division (A)~~(3)~~(4) of section 5735.05 of the Revised Code;

(c) Sold to the United States government or any of its agencies;

(d) Sold for delivery to motor fuel dealers;
(e) Sold exclusively for use in the operation of aircraft;
(4) Such other information incidental to the enforcement of the motor fuel laws of the state as the commissioner requires.

(B) The report shall show the tax due, computed as follows:

(1) The following deductions shall be made from the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month:

(a) The total number of gallons of motor fuel received by the motor fuel dealer within the state and sold or otherwise disposed of during the preceding calendar month as set forth in section 5735.05 of the Revised Code;

(b) The total number of gallons received during the preceding calendar month and sold or otherwise disposed of to another licensed motor fuel dealer pursuant to section 5735.05 of the Revised Code;

(c) To cover the costs of the motor fuel dealer in compiling the report, and evaporation, shrinkage, or other unaccounted-for losses:

(i) If the report is timely filed and the tax is timely paid, three per cent of the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month less the total number of gallons deducted under divisions (B)(1)(a) and (b) of this section, less one per cent of the total number of gallons of motor fuel that were sold to a retail dealer during the preceding calendar month;

(ii) If the report required by division (A) of this section is not timely filed and the tax is not timely paid, no deduction shall be allowed;

(iii) If the report is incomplete, no deduction shall be allowed for any fuel on which the tax is not timely reported and paid;

(2) The number of gallons remaining after the deductions have been made shall be multiplied separately by each of the following amounts:

(a) The cents per gallon rate;

(b) Two cents.

The sum of the products obtained in divisions (B)(2)(a) and (b) of this section shall be the amount of motor fuel tax for the preceding calendar month.

(C) The report shall be filed together with payment of the tax shown on the report to be due, unless the motor fuel dealer is required by section 5735.062 of the Revised Code to pay the tax by electronic funds transfer, in which case the dealer shall file the report pursuant to this section and pay the tax pursuant to section 5735.062 of the Revised Code. The commissioner may extend the time for filing reports and may remit all or

part of penalties which may become due under sections 5735.01 to 5735.99 of the Revised Code. The treasurer of state shall stamp or otherwise mark on all returns the date received by the treasurer and shall also show thereon by stamp or otherwise the amount of payment received for the month for which the report is filed. Thereafter, the treasurer of state shall immediately transmit all reports filed under this section to the commissioner. For purposes of this section and sections 5735.062 and 5735.12 of the Revised Code, a report required to be filed under this section is considered filed when it is received by the treasurer of state, and remittance of the tax due is considered to be made when the remittance is received by the treasurer of state or when credited to an account designated by the treasurer of state for the receipt of tax remittances.

(D) The tax commissioner may require a motor fuel dealer to file a report for a period other than one month. Such a report, together with payment of the tax, shall be filed not later than thirty days after the last day of the prescribed reporting period.

(E) No person required by this section to file a tax report shall file a false or fraudulent tax report or supporting schedule.

Sec. 5735.11. (A) If the tax or any portion of the tax imposed by this chapter, ~~excluding the tax imposed by section 5735.31 of the Revised Code,~~ whether determined by the tax commissioner or the motor fuel dealer, is not paid on or before the date prescribed in section 5735.06 of the Revised Code, interest shall be collected and paid in the same manner as the tax upon the unpaid amount, computed at the rate per annum prescribed by section 5703.47 of the Revised Code, from the date prescribed for payment of the tax to the date of payment or to the date an assessment is issued under section 5735.12 or 5735.121 of the Revised Code, whichever occurs first. Interest may be collected by assessment in the manner provided in section 5735.12 or 5735.121 of the Revised Code. All interest shall be paid in the same manner as the tax and shall be considered as revenue arising from the tax imposed by section 5735.05 of the Revised Code.

(B) Interest shall be allowed and paid upon any refund granted in respect to the payment of an illegal or erroneous assessment for any tax imposed under this chapter from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

Sec. 5735.12. (A) Any motor fuel dealer 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, may be liable for an additional charge not exceeding the greater of ten per cent of the motor fuel dealer's tax liability

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 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 who fails to file a report required by section 5735.06 of the Revised Code, or who files a fraudulent motor fuel tax report.

A penalty of up to fifteen per cent 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) ~~Unless the party to whom the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment in writing, signed by the party assessed; ~~or by the that party's~~ authorized agent of the party assessed having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ 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 if received by the commissioner 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 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the entry, the clerk 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 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 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 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. 5735.122. The tax commissioner shall refund to dealers or to ~~interstate bus operators making~~ any person assessed motor fuel ~~equalization payments~~ tax 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 the commissioner, within four years from the date of the illegal or erroneous payment. No person shall

file a claim for the tax on fewer than one hundred gallons of motor fuel. ~~On~~

On the filing of the application, the commissioner shall determine the amount of refund due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the 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, except that no refund shall be authorized or paid on a claim for the tax on fewer than one hundred gallons of motor fuel. ~~The~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code 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. 5735.13. A refund shall be made to any person for the motor fuel tax paid on any motor fuel ~~which that~~ is lost or destroyed through leakage, fire, explosion, lightning, flood, tornado, windstorm, or any other cause, except theft, evaporation, shrinkage, and unaccounted-for losses. No refund shall be authorized or ordered under this section for any single loss of less than one hundred gallons, nor except upon notice to the tax commissioner within thirty days from the date of such loss or destruction or the discovery thereof, and upon filing with the tax commissioner within sixty days thereafter an application in the form of an affidavit sworn to by the claimant setting forth in full the circumstances of the loss, and upon presentation of supporting evidence satisfactory to the commissioner. ~~The~~

On the filing of the application, the commissioner shall determine the amount of the refund due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify such the amount to the director of budget and management and treasurer of state for payment from the tax refund fund ~~provided for~~ created by section 5703.052 of the Revised Code. ~~The~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code 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. 5735.14. 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~~ that 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. Sales of motor fuel, on which the tax imposed by this chapter has been paid, from one person to another do not constitute use of the fuel and are not subject to a refund under this section.

Such person shall file with the tax commissioner an application for refund within one 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~~ The 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~~

After consideration of ~~such~~ the application and statement, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled.~~ If the amount is not less than that claimed, the commissioner shall certify such the 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~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

No refund shall be authorized or paid under this section on a single

aim 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~~

The refund authorized by this section or section 5703.70 of the Revised Code 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 or section 5703.70 of the Revised Code 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 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 that~~ 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~~ On the filing of the application, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the 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 created by section 5703.052 of the Revised Code. No If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 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~~

The refund authorized by this section or section 5703.70 of the Revised Code 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 or section 5703.70 of the Revised Code 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 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~~

~~After~~ consideration of the application and statement, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify such the amount to the director of budget and management and treasurer of state for payment from the tax refund fund provided for in created by section 5703.052 of the Revised Code. The~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 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~~

The refund authorized by this section or section 5703.70 of the Revised

Code 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 or section 5703.70 of the Revised Code 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. 5735.18. 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 applications~~ applications for refund of the tax paid on motor fuel sold for export from the state or sold to the United States government 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~~ applicant shall satisfy the commissioner that the motor fuel has been sold as stated and that the tax thereon has been paid. ~~Claims Applications~~ Applications 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~~ If the United States government or any of its agencies purchases motor fuel upon which the tax has been paid to this state, the United States government or agency may be reimbursed in the amount of such tax as provided in this chapter, provided that the seller of the motor fuel has not applied for a refund on behalf of the United States government or agency. Applications filed by the United States government or any of its agencies for refund of the tax paid on motor fuel purchases shall be supported by an invoice or similar fuel purchase document issued by the seller of the fuel.

On the filing of an application under this section, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify and pay that amount in the same manner as provided in section 5735.14 of the

Revised Code. ~~The~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The person shall file with the tax commissioner an application for refund within one year from the date of sale or purchase. The refund authorized by this section or section 5703.70 of the Revised Code 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. 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 not be ~~exempt from~~ subject to 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 not be ~~exempt from~~ subject to 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, other than mobile telecommunications service after July 31, 2002, is or is to be 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, or by which local telecommunications service is obtained from a coin-operated telephone and paid for by using coin;

(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.

(p) After July 31, 2002, mobile telecommunications service is or is to be provided when that service is situated to this state pursuant to the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 U.S.C.A. 116 to 126, as amended.

(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 transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that 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 that 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)~~(36) 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 itself 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. Except as provided in division (H)(4) of this section, 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 and the effects of any rounding pursuant to section 5703.055 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.

(4) In the case of the lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the sales tax shall be collected by the vendor at the time the lease is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the

consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the sales tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease, and then for each subsequent renewal period as it comes due.

As used in divisions (H)(3) and (4) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "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 that was obtained by the person making the sale, through purchase or otherwise, for the person's own use ~~in this state~~ and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that 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 the 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 that 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 that 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 that includes

territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county that 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 that 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;

(7) After July 31, 2002, mobile telecommunications service.

(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 also means 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.

(VV) "Lease" means any transfer for a consideration of the possession of and right to use, but not title to, tangible personal property for a fixed period of time greater than twenty-eight days or for an open-ended period of time with a minimum fixed period of more than twenty-eight days.

(WW) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124 (7), as amended.

Sec. 5739.011. (A) As used in this section:

(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.

(2) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.

(3) "Materials handling" means the movement of the product being or to be manufactured, during which movement the product is not undergoing any substantial change or alteration in its state or form.

(4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.

(5) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

(6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby

manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation;

(2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation; or, excluding motor vehicles licensed to operate on public highways, equipment used in intraplant or interplant transfers of work in process where the plant or plants between which such transfers occur are manufacturing facilities operated by the same person;

(3) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and that are an integral part of the manufacturing operation;

(4) Machinery, equipment, and other tangible personal property used during the manufacturing operation that control, physically support, produce power for, lubricate, or are otherwise necessary for the functioning of production machinery and equipment and the continuation of the manufacturing operation;

(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale;

(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product;

(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility;

(8) Coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; machinery, equipment, and other tangible personal property used to treat, filter, pump, or otherwise make the substance suitable for use in the manufacturing

peration; and machinery and equipment used ~~to produce for, and fuel~~ consumed in, producing electricity for use in the manufacturing operation;

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility;

(11) Parts, components, and repair and installation services for items described in division (B) of this section.

(C) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record-keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) ~~Machinery, equipment, and other tangible personal property used for~~

~~research and development;~~

(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

~~(10)~~(9) Motor vehicles registered for operation on ~~the~~ public highways.

(D) For purposes of division (E)(9) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

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 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

nufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, 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 benefits 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)(a) 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; 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;

(b) Sales of wheelchairs; items incorporated into or used in conjunction with a motor vehicle for the purpose of transporting wheelchairs, other than transportation conducted in connection with the sale or delivery of wheelchairs; and items incorporated into or used in conjunction with a motor vehicle that are specifically designed to assist a person with a disability to access or operate the motor vehicle. As used in this division, "person with a disability" means any person who has lost the use of one or both legs or one or both arms, who is blind, deaf, or disabled to the extent that the person is unable to move about without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary, or other disabling condition.

(c) 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, including trauma care and emergency medical 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 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.

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

(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;

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

(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;

(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;

(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;

(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)(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.

(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.

(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)(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)(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.

(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;

(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;

(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;

(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.

(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;

(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. 5739.026. (A) A board of county commissioners may levy a tax of one-fourth or one-half of one per cent on every retail sale in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase an existing rate of one-fourth of one per cent to one-half of one per cent, to pay the expenses of administering the tax and, except as provided in division (A)(6) of this section, for any one or more of the following purposes provided that the aggregate levy for all such purposes does not exceed one-half of one per cent:

(1) To provide additional revenues for the payment of bonds or notes issued in anticipation of bonds issued by a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code and to provide additional operating revenues for the convention facilities authority;

(2) To provide additional revenues for a transit authority operating in the county;

(3) To provide additional revenue for the county's general fund;

(4) To provide additional revenue for permanent improvements within the county to be distributed by the community improvements board in accordance with section 307.283 and to pay principal, interest, and premium on bonds issued under section 307.284 of the Revised Code;

(5) To provide additional revenue for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements, which improvement or class or group of improvements shall be enumerated in the resolution required by division (D) of this section, and to pay principal, interest, premium, and other costs associated with the issuance of bonds or notes in anticipation of bonds issued pursuant to Chapter 133. of the Revised Code for the acquisition, construction, equipping, or repair of the specific permanent improvement or class or group of permanent improvements;

(6) To provide revenue for the implementation and operation of a 9-1-1 system in the county. If the tax is levied or the rate increased exclusively for such purpose, the tax shall not be levied or the rate increased for more than five years. At the end of the last year the tax is levied or the rate increased, any balance remaining in the special fund established for such purpose shall remain in that fund and be used exclusively for such purpose until the fund is completely expended, and, notwithstanding section 5705.16 of the Revised Code, the board of county commissioners shall not petition for the transfer of money from such special fund, and the tax commissioner shall not approve such a petition.

If the tax is levied or the rate increased for such purpose for more than five years, the board of county commissioners also shall levy the tax or increase the rate of the tax for one or more of the purposes described in divisions (A)(1) to (5) of this section and shall prescribe the method for allocating the revenues from the tax each year in the manner required by division (C) of this section.

(7) To provide additional revenue for the operation or maintenance of a detention facility, as that term is defined under division (F) of section 2921.01 of the Revised Code;

(8) To provide revenue to finance the construction or renovation of a sports facility, but only if the tax is levied for that purpose in the manner prescribed by section 5739.028 of the Revised Code.

As used in division (A)(8) of this section:

(a) "Sports facility" means a facility intended to house major league professional athletic teams.

(b) "Constructing" or "construction" includes providing fixtures, furnishings, and equipment.

(9) To provide additional revenue for the acquisition of agricultural easements, as defined in section 5301.67 of the Revised Code; to pay principal, interest, and premium on bonds issued under section 133.60 of the Revised Code; and for the supervision and enforcement of agricultural easements held by the county.

Pursuant to section 755.171 of the Revised Code, a board of county commissioners may pledge and contribute revenue from a tax levied for the purpose of division (A)(5) of this section to the payment of debt charges on bonds issued under section 755.17 of the Revised Code.

The rate of tax shall be a multiple of one-fourth of one per cent, unless a portion of the rate of an existing tax levied under section 5739.023 of the Revised Code has been reduced, and the rate of tax levied under this section has been increased, pursuant to section 5739.028 of the Revised Code, in which case the aggregate of the rates of tax levied under this section and section 5739.023 of the Revised Code shall be a multiple of one-fourth of one per cent. The tax shall be levied and the rate increased pursuant to a resolution adopted by a majority of the members of the board.

Prior to the adoption of any resolution to levy the tax or to increase the rate of tax exclusively for the purpose set forth in division (A)(3) of this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be no fewer than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being no fewer than ten nor more than thirty days prior to the first hearing. The resolution shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into effect on the first day of the

month following the expiration of thirty days from the date of notice by the board of county commissioners to the tax commissioner of its adoption. The emergency measure shall receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for the necessity.

If the tax is for more than one of the purposes set forth in divisions (A)(1) to (7) and (9) of this section or is exclusively for one of the purposes set forth in division (A)(1), (2), (4), (5), (6), (7), or (9) of this section, the resolution shall not go into effect unless it is approved by a majority of the electors voting on the question of the tax.

(B) The board of county commissioners shall adopt a resolution under section 351.02 of the Revised Code creating the convention facilities authority, or under section 307.283 of the Revised Code creating the community improvements board, before adopting a resolution levying a tax for the purpose of a convention facilities authority under division (A)(1) of this section or for the purpose of a community improvements board under division (A)(4) of this section.

(C)(1) If the tax is to be used for more than one of the purposes set forth in divisions (A)(1) to (7) and (9) of this section, the board of county commissioners shall establish the method that will be used to determine the amount or proportion of the tax revenue received by the county during each year that will be distributed for each of those purposes, including, if applicable, provisions governing the reallocation of a convention facilities authority's allocation if the authority is dissolved while the tax is in effect. The allocation method may provide that different proportions or amounts of the tax shall be distributed among the purposes in different years, but it shall clearly describe the method that will be used for each year. Except as otherwise provided in division (C)(2) of this section, the allocation method established by the board is not subject to amendment during the life of the tax.

(2) Subsequent to holding a public hearing on the proposed amendment, the board of county commissioners may amend the allocation method established under division (C)(1) of this section for any year if the amendment is approved by the governing board of each entity whose allocation for the year would be reduced by the proposed amendment. In the case of a tax that is levied for a continuing period of time, the board may not so amend the allocation method for any year before the sixth year that the tax is in effect.

(a) If the additional revenues provided to the convention facilities authority are pledged by the authority for the payment of convention

facilities authority revenue bonds for as long as such bonds are outstanding, no reduction of the authority's allocation of the tax shall be made for any year except to the extent that the reduced authority allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(b) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes described in division (A)(4) or (5) of this section, for as long as such bonds or notes are outstanding, no reduction of the county's or the community improvements board's allocation of the tax shall be made for any year except to the extent that the reduced county or community improvements board allocation is sufficient to meet the debt service requirements for that year on such bonds or notes.

(c) If the additional revenues provided to the transit authority are pledged by the authority for the payment of revenue bonds issued under section 306.37 of the Revised Code, for as long as such bonds are outstanding, no reduction of the authority's allocation of tax shall be made for any year except to the extent that the authority's reduced allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(d) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes issued under section 133.60 of the Revised Code, for so long as the bonds or notes are outstanding, no reduction of the county's allocation of the tax shall be made for any year except to the extent that the reduced county allocation is sufficient to meet the debt service requirements for that year on the bonds or notes.

(D)(1) The resolution levying the tax or increasing the rate of tax shall state the rate of the tax or the rate of the increase; the purpose or purposes for which it is to be levied; the number of years for which it is to be levied or that it is for a continuing period of time; the allocation method required by division (C) of this section; and if required to be submitted to the electors of the county under division (A) of this section, the date of the election at which the proposal shall be submitted to the electors of the county, which shall be not less than seventy-five days after the certification of a copy of the resolution to the board of elections and, if the tax is to be levied exclusively for the purpose set forth in division (A)(3) of this section, shall not occur in February or August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. If approved by a majority of the electors, the tax shall

become effective on the first day of the month specified in the resolution but not earlier than the first day of the month next following the thirtieth day following the certification of the results of the election to the board of county commissioners and the tax commissioner by the board of elections.

(2)(a) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of the tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than seventy-five days after the resolution is certified to the board of elections and the election is not held in February or August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (D)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and not until the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of thirty days from the date of the notice to the tax commissioner by the board of elections of the affirmative vote.

(b) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is adopted as an emergency measure shall become effective as provided in division (A) of this section but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than seventy-five days after the resolution is certified to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 of the Revised Code. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of the month following the expiration of thirty days after the date it received notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which

t was imposed immediately prior to the increase in rate.

(E) A board of county commissioners may by resolution reduce the rate of a tax levied under division (A)(3) of this section to a lower rate authorized by this section. Any such reduction shall be made effective on the first day of the month specified in the resolution but not sooner than the first day of the month next following the thirtieth day after certification of the resolution to the tax commissioner.

(F) The tax levied pursuant to this section shall be in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.021 or 5739.023 of the Revised Code.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to section 5741.023 of the Revised Code.

The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code.

Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a county under the Constitution of the United States or the Ohio Constitution.

Sec. 5739.031. (A) ~~The~~ Upon application, the tax commissioner may ~~authorize~~ issue a direct payment permit that authorizes a ~~manufacturer or other consumer, who purchases tangible personal property or services under circumstances that normally make it impossible at the time of the purchase to determine the manner in which the property or services will be used,~~ to pay the sales tax levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code or the use tax levied by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code directly to the state; and ~~waive~~ waives the collection of the tax by the vendor or seller; ~~but no such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, then payment of the sales and use taxes on all purchases, including purchases of tangible personal property and services, the use of which is known at the time of the purchase, shall be made directly to the treasurer of state by the permit holder if payment directly to the state would improve compliance and increase the efficiency of the administration of the tax. The commissioner may adopt rules establishing the criteria for the issuance of such permits.~~

(B) Each permit holder, on or before the twenty-third day of each month, shall make and file with the treasurer of state a return for the preceding month in such form as is prescribed by the tax commissioner and

shall pay the tax shown on the return to be due. The return shall show the sum of the prices of taxable merchandise used and taxable services received, the amount of tax due from the permit holder, and such other information as the commissioner deems necessary. The commissioner, upon written request by the permit holder, may extend the time for making and filing returns and paying the tax. If the commissioner determines that a permit holder's tax liability is not such as to merit monthly filing, the commissioner may authorize the permit holder to file returns and pay the tax at less frequent intervals. The treasurer of state shall show on the return the date it was filed and the amount of the payment remitted to the treasurer. Thereafter, the treasurer immediately shall transmit all returns filed under this section to the tax commissioner.

Any permit holder required to file a return and pay the tax under this section whose total payment for any calendar year ~~indicated in that section~~ equals or exceeds the amount shown in section 5739.032 of the Revised Code shall make each payment required by this section in the second ensuing and each succeeding year by electronic funds transfer as prescribed by section 5739.032 of the Revised Code, except as otherwise prescribed by that section.

(C) For purposes of reporting and remitting the tax, the price of tangible personal property or services purchased by, or of tangible personal property produced by, the permit holder shall be determined under division (G) of section 5741.01 of the Revised Code. Notwithstanding section 5739.033 of the Revised Code, ~~all the situs of any purchase transactions~~ transaction made by the permit holder ~~are conclusively determined to be consummated at~~ is the location where the tangible personal property or service is received by the permit holder.

(D) It shall be the duty of every permit holder required to make a return and pay ~~any~~ its tax under this section to keep and preserve suitable records of purchases together with invoices of purchases, bills of lading, asset ledgers, depreciation schedules, transfer journals, and such other primary and secondary records and documents in such form as the commissioner requires. All such records and other documents shall be open during business hours to the inspection of the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, has authorized their destruction or disposal at an earlier date, or by order or by reason of a waiver of the four-year time limitation pursuant to section 5739.16 of the Revised Code requires that they be kept longer.

(E) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the tax

commissioner.

(F) Persons who hold a direct payment permit that has not been canceled shall not be required to issue exemption certificates and shall not be required to pay the tax as prescribed in sections 5739.03, 5739.033, and 5741.12 of the Revised Code. Such persons shall notify vendors and sellers from whom purchases of tangible personal property or services are made, of their direct payment permit number and that the tax is being paid directly to the state. Upon receipt of such notice, such vendor or seller shall be absolved from all duties and liabilities imposed by section 5739.03 or 5741.04 of the Revised Code with respect to sales of tangible personal property or services to such permit holder.

Vendors and sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained. The receipts from such sales shall not be subject to the tax levied in section 5739.10 of the Revised Code.

Upon the cancellation or surrender of a direct payment permit, the provisions of sections 5739.03, 5741.04 and 5741.12 of the Revised Code shall immediately apply to all purchases made subsequent to such cancellation or surrender by the person who previously held such permit, and such person shall so notify vendors and sellers from whom purchases of tangible personal property or services are made, in writing, prior to or at the time of the first purchase after such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of sections 5739.03 and 5739.10 of the Revised Code and the seller shall be subject to the provisions of section 5741.04 of the Revised Code, with respect to all sales subsequently made to such person. Failure of any such person to notify vendors or sellers from whom purchases of tangible personal property or services are made of the cancellation or surrender of a direct payment permit shall be considered as a refusal to pay the tax by the person required to issue such notice.

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 or, if applicable, under division (C) of section 5739.031 of the Revised Code.

(A) Except as otherwise provided in this section ~~and~~, division (C) of section 5739.031, and section 5739.034 of the Revised Code, the situs of all sales are conclusively determined to be consummated at is 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 situs of 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 situs of 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 situs of 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 situs of 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 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 situs of the sale is conclusively determined to be consummated at the location of the motor vehicle when the sale is made.

(D) If the vendor is a delivery vendor as specified in division (D) of section 5739.17 of the Revised Code, the situs of 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.

(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 situs of the sale is conclusively determined to be consummated at the location of the consumer where the service is performed or received.

(F) Except as provided in division (I) or (J) of this section, ~~if:~~

(1) If the vendor provides a service specified in division (B)(3)(f) or (i) of section 5739.01 of the Revised Code, the situs of 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~~

(2) In the case of a telecommunications service, if the telephone number or account is located outside this state, the situs of the sale is ~~conclusively determined to be consummated~~ at the location in this state from which the service originated.

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

(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 situs of the sale is ~~conclusively determined to be consummated~~ at the location of the consumer. If the vendor is not a delivery vendor, the situs of 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 situs of the sale is ~~conclusively determined to be consummated~~ in the county of titling.

(I) Except as otherwise provided in this division, if the vendor sells a prepaid authorization number or a prepaid telephone calling card, the situs of 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 situs of 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. 5739.05. (A) The tax commissioner shall enforce and administer sections 5739.01 to 5739.31 of the Revised Code, which are hereby declared to be sections which the commissioner is required to administer within the meaning of sections 5703.17 to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The commissioner may adopt and promulgate, in accordance with sections 119.01 to 119.13 of the Revised Code, such rules as ~~he~~ the commissioner deems necessary to administer sections 5739.01 to 5739.31 of the Revised Code.

(B) ~~The~~ Upon application, the commissioner may authorize a vendor to ~~prepay~~ pay on a predetermined basis the tax levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code upon sales

of things produced or distributed or services provided by such vendor, and ~~he~~ the commissioner may waive the collection of the tax from the consumer; ~~but no such authority shall be granted or exercised except upon application to the.~~ The commissioner and shall not grant such authority unless the commissioner finds that the conditions of the applicant's business are such that the collection of the tax from the consumer in the manner provided in sections 5739.01 to 5739.31 of the Revised Code, would impose an unreasonable burden on the vendor; nor shall the authority granted be exercised, nor the vendors actually selling such products be exempted, from the other provisions of sections 5739.01 to 5739.31 of the Revised Code, unless the granting of the authority would improve compliance and increase the efficiency of the administration of the tax. The person to whom such authority is granted prints plainly upon the product sold or offered for sale, a statement that the tax has been paid in advance, or otherwise conveys said information to the consumer, by written notice. The commissioner may require security to his satisfaction to be filed with him, in such amount as he determines to be sufficient to secure the prepayment under the provisions of this section of the taxes levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code in the manner desired shall post a notice, if required by the commissioner, at the location where the product is offered for sale that the tax is included in the selling price. The commissioner may adopt rules to administer this division.

(C) The commissioner may authorize a vendor to pay, on the basis of a prearranged agreement under this division, the tax levied by section 5739.02 or pursuant to section 5739.021, 5739.023, or 5739.026 of the Revised Code, and waive the requirement that the vendor maintain the complete and accurate record of individual taxable sales and tax collected thereon required by section 5739.11 of the Revised Code, upon application ~~filed with him by~~ of the vendor, if ~~he~~ the commissioner finds that the conditions of the vendor-applicant's business are such that the maintenance of such records of individual taxable sales and tax collected thereon would impose an unreasonable burden upon the vendor. If the commissioner determines that such unreasonable burden has been imposed, the vendor and the commissioner shall agree to the terms and conditions of a test check to be conducted. If the parties are unable to agree to the terms and conditions of the test check, the application shall be denied. The test check conducted shall determine the proportion that taxable retail sales bear to all of ~~his~~ the vendor's retail sales and the ratio which the tax required to be collected under sections 5739.02, 5739.021, and 5739.023 of the Revised Code bears to the receipts from the vendor's taxable retail sales.

The vendor shall collect the tax on ~~his~~ the vendor's taxable sales and ~~his~~ the vendor's liability for collecting or remitting shall be based upon the proportions and ratios established by the test check, and not upon any other basis of determination, until such time as a subsequent test check is made at the request of either the vendor or the commissioner where either party believes that the nature of the vendor's business has so changed as to make the prior or existing test check no longer representative. The commissioner may give notice to the vendor at any time that the authorization is revoked or the vendor may notify the commissioner that ~~he~~ the vendor no longer elects to report under the authorization. Such notice shall be delivered to the other party personally or by registered mail. The revocation or cancellation is not effective prior to the date of receipt of such notice.

~~(D) The commissioner shall, for the audit of vendors' sales tax accounts and records, employ a sufficient number of auditors, not less than one auditor for each one thousand vendors' certificates outstanding.~~

Sec. 5739.07. (A) When, pursuant to this chapter, a vendor has paid taxes to the treasurer of state or the treasurer of state's agent, or to the tax commissioner or the commissioner's agent, the commissioner shall refund to the vendor the amount of taxes paid if the vendor has refunded to the consumer the full amount of taxes the consumer paid illegally or erroneously or if the vendor has illegally or erroneously billed the consumer but has not collected the taxes from the consumer.

(B) When, pursuant to this chapter, a consumer has paid taxes directly to the treasurer of state or the treasurer of state's agent, or to the tax commissioner or the commissioner's agent, and the payment or assessment was illegal or erroneous, the commissioner shall refund to the consumer the full amount of illegal or erroneous taxes paid.

(C) The commissioner shall refund to the consumer taxes paid illegally or erroneously to a vendor only if:

(1) The commissioner has not refunded the tax to the vendor and the vendor has not refunded the tax to the consumer; or

(2) The consumer has received a refund from a manufacturer or other person, other than the vendor, of the full purchase price, but not the tax, paid to the vendor in settlement of a complaint by the consumer about the property or service purchased.

The commissioner may require the consumer to obtain or the vendor to provide a written statement confirming that the vendor has not refunded the tax to the consumer and has not filed an application for refund of the tax with the commissioner.

(D) An application for refund shall be filed with the tax commissioner

on the form prescribed by the commissioner within four years from the date of the illegal or erroneous payment of the tax, unless the vendor or consumer waives the time limitation under division (A)(3) of section 5739.16 of the Revised Code. If the time limitation is waived, the refund application period shall be extended for the same period as the waiver.

(E) On the filing of an application for a refund, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(F) When a refund is granted under this section, it shall include interest thereon as provided by section 5739.132 of the Revised Code.

Sec. 5739.104. The tax commissioner shall refund to a person subject to a tax under section 5739.101 of the Revised Code the amount of taxes paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for a refund shall be filed with the commissioner, on a form prescribed by ~~him~~ the commissioner, within four years from the date of the illegal or erroneous payment of the tax, except where the person subject to the tax waives the time limitation under division (C) of section 5739.16 of the Revised Code, in which case the four-year refund limitation shall be extended for the same period of time as the waiver. ~~On~~

On the filing of an application for a refund, the commissioner shall determine the amount of refund due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify that the amount to the treasurer of state for payment from the current resort area excise tax receipts of the municipal corporation or township from which the refund is due. ~~When~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If a refund is granted for payment of an illegal or erroneous assessment issued by the commissioner, the refund shall include interest computed at the rate per annum prescribed under section 5703.47 of the Revised Code.

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 5739.026 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. 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party ~~to whom the notice of assessment is directed~~ assessed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment ~~in writing~~, signed by the party assessed, or ~~by the~~ that party's authorized agent having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ is due from the party assessed and payable to the treasurer of state and remitted to the tax commissioner. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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~~ Immediately upon the filing of ~~such~~ the entry, the clerk 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 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 tax 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. 5739.17. (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 that will be the situs of retail sales will be consummated.~~ where that will be the situs of retail sales. 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 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 makes sales of tangible personal property from vending machines located on land owned by others, who leases titled motor vehicles, titled watercraft, or titled outboard motors, who effectuates leases that are taxed according to division (H)(4) of section 5739.01 of the Revised Code, or who, 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 or temporary exhibition, show, fair, flea market, or similar event 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.

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 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 holder of a valid transient vendor's license may make retail sales at a temporary place of business or temporary exhibition, show, fair, flea market, or similar event, held anywhere in the state 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 transient vendor at a temporary place of business or 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 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 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) Any transient 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 vendor. Every owner, organizer, or promoter who operates a fair, flea market, show, exhibition, convention, or

similar event at which transient 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. 5739.31. (A)(1) No person shall engage in the business of selling at retail or sell at retail incidental to any other regularly conducted business without having a license therefor, as required by sections 5739.01 to 5739.31 of the Revised Code.

(2) No person shall engage in the business of selling at retail as a transient vendor, as defined in division (B) of section 5739.17 of the Revised Code, without first having obtained a license as required by that section.

~~(3) No person shall engage in the business of selling at retail as a limited vendor as defined in division (B) of section 5739.17 of the Revised Code, without first having a license as required by that section.~~

(B) No person shall continue to engage in the business of selling at retail or sell at retail incidental to any other regularly conducted business after the license issued to that person pursuant to section 5739.17 of the Revised Code has been ~~revoked under section 5739.19 of the Revised Code or while the license is~~ suspended by the tax commissioner under division (B)(2) of section 5739.30 of the Revised Code, nor shall any person obtain a new license from the county auditor or the tax commissioner while such ~~revocation or~~ suspension is in effect. If a corporation's license has been ~~revoked or~~ suspended, none of its officers, or employees having control or supervision of or charged with the responsibility of filing returns and making payments of tax due, shall obtain a license from the county auditor or the tax commissioner during the period of such ~~revocation or~~ suspension.

Sec. 5739.99. (A) Whoever violates section 5739.26 or 5739.29 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars for a first offense; for each subsequent offense such person shall, if a corporation, be fined not less than one hundred nor more than five hundred dollars, or if an individual, or a member of a partnership, firm, or association, be fined not less than twenty-five nor more than one hundred dollars, or imprisoned not more than sixty days, or both.

(B) Whoever violates division (A) of section 5739.30 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than sixty days, or both.

(C)(1) Whoever violates division (A)(1) of section 5739.31 of the Revised Code shall be fined not less than twenty-five nor more than one

hundred dollars. If the offender previously has been convicted of a violation of division (A)(1) of section 5739.31 of the Revised Code, ~~he~~ the offender is guilty of a felony of the fourth degree.

(2) Whoever violates division (A)(2) of section 5739.31 of the Revised Code shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not more than ten days, or both, for the first offense; for each subsequent offense, each such person shall be fined not less than one thousand dollars nor more than twenty-five hundred dollars, or imprisoned not more than thirty days, or both. The motor vehicles and goods of any person charged with violating division (A)(2) of section 5739.31 of the Revised Code may be impounded and held pending the disposition of the charge, and may be sold at auction by the county sheriff in the manner prescribed by law to satisfy any fine imposed by this division.

(3) Whoever violates division (A)(3) of section 5739.31 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars.

(4) Whoever violates division (B) of section 5739.31 of the Revised Code is guilty of a felony of the fourth degree. Each day that business is conducted while a vendor's license is suspended ~~or revoked~~ constitutes a separate offense.

(D) Except as otherwise provided in this section, whoever violates sections 5739.01 to 5739.31 of the Revised Code, or any lawful rule promulgated by the department of taxation under authority of such sections, shall be fined not less than twenty-five nor more than one hundred dollars.

(E) Whoever violates section 5739.12 of the Revised Code by failing to remit to the state the tax collected under section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code is guilty of a felony of the fourth degree and shall suffer the loss of ~~his~~ the person's vendor's license as required by section 5739.17 of the Revised Code. A person shall not be eligible for a vendor's license for two years following conviction.

(F) Whoever violates division ~~(D)~~ (E) of section 5739.17 of the Revised Code is guilty of failure to display a transient ~~or limited~~ vendor's license, a minor misdemeanor. A sheriff or police officer in a municipal corporation may enforce this division. The prosecuting attorney of a county shall inform the tax commissioner of any instance when a complaint is brought against a transient ~~or limited~~ vendor pursuant to this division.

(G) Whoever violates section 5739.103 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars. If the offender previously has been convicted of violating that section, ~~he~~ the offender is guilty of a felony of the fourth degree.

(H) The penalties provided in this section are in addition to any penalties imposed by the tax commissioner under section 5739.133 of the Revised Code.

Sec. 5741.01. 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, business trusts, governments, and combinations of individuals of any form.

(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state.

(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state.

(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; and whether the consideration was money, credit, barter, or exchange. Purchase includes production, even though the article produced was used, stored, or consumed by the producer. The transfer of copyrighted motion picture films for exhibition purposes is not a purchase, except such films as are used solely for advertising purposes.

(E) "Seller" means the person from whom a purchase is made, and includes every person engaged in this state or elsewhere in the business of selling tangible personal property or providing a service for storage, use, or other consumption or benefit in this state; and when, in the opinion of the tax commissioner, it is necessary for the efficient administration of this chapter, to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates, or from whom the person obtains tangible personal property, sold by the person for storage, use, or other consumption in this state, irrespective of whether or not the person is making such sales on the person's own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the commissioner may regard the person as such agent, and may regard such dealer, distributor, supervisor, or employer as the seller. "Seller" does not include any person to the extent the person provides a communications medium, such as, but not limited to, newspapers, magazines, radio, television, or cable television, by means of which sellers solicit purchases of their goods or services.

(F) "Consumer" means any person who has purchased tangible personal property or has been provided a service for storage, use, or other consumption or benefit in this state. "Consumer" does not include a person who receives, without charge, tangible personal property or a service.

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 section 5739.01 of the Revised Code.

(G)(1) "Price," except in the case of watercraft, outboard motors, or new motor vehicles, means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the complete performance of the transaction by which tangible personal property has been purchased or a service has been provided for storage, use, or other consumption or benefit in this state, without any deduction or exclusion 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 transaction 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 by the lessee to the lessor, in the complete performance of the rental or lease, without any deduction or exclusion of 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. Except as provided in division (G)(6) of this section, the tax shall be calculated and collected by the lessor on each payment made by the lessee. If a consumer produces the tangible personal property used by the consumer, the price is the produced cost of such tangible personal property. The tax collected by the seller from the consumer under such sections is not a part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional use tax pursuant to section 5741.021 or 5741.023 of the Revised Code and of transit authorities levying an additional use tax pursuant to section 5741.022 of the Revised Code and, except for the discount authorized under section 5741.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 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 watercraft, outboard motors, or new motor vehicles,

"price" has the same meaning as in division (H) of section 5739.01 of the Revised Code.

(3) In the case of a nonresident business consumer that purchases and uses tangible personal property outside this state and subsequently temporarily stores, uses, or otherwise consumes such tangible personal property in the conduct of business in this state, the consumer or the tax commissioner may determine the price based on the value of the temporary storage, use, or other consumption, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(4) In the case of tangible personal property held in this state as inventory for sale or lease, and that is temporarily stored, used, or otherwise consumed in a taxable manner, the price is the value of the temporary use. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(5) In the case of tangible personal property originally purchased and used by the consumer outside this state, and that becomes permanently stored, used, or otherwise consumed in this state more than six months after its acquisition by the consumer, the consumer or the ~~tax~~ commissioner may determine the price based on the current value of such tangible personal property, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(6) In the case of the purchase or lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the tax shall be collected by the vendor at the time the lease is consummated and calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease, and then for each subsequent renewal period as it comes due. As used in division (G)(6) of this section only, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(H) "Nexus with this state" means that the seller engages in continuous

and widespread solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state.

(I) "Substantial nexus with this state" means that the seller has sufficient contact with this state, in accordance with Section 8 of Article I of the Constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to consumers in this state. "Substantial nexus with this state" exists when the seller does any of the following:

(1) Maintains a place of business within this state, whether operated by employees or agents of the seller, by a member of an affiliated group, as described in division (B)(3)(e) of section 5739.01 of the Revised Code, of which the seller is a member, or by a franchisee using a trade name of the seller;

(2) Regularly has employees, agents, representatives, solicitors, installers, repairmen, salesmen, or other individuals in this state for the purpose of conducting the business of the seller;

(3) Uses a person in this state for the purpose of receiving or processing orders of the seller's goods or services;

(4) Makes regular deliveries of tangible personal property into this state by means other than common carrier;

(5) Has membership in an affiliated group, as described in division (B)(3)(e) of section 5739.01 of the Revised Code, at least one other member of which has substantial nexus with this state;

(6) Owns tangible personal property that is rented or leased to a consumer in this state, or offers tangible personal property, on approval, to consumers in this state;

(7) Is registered with the secretary of state to do business in this state or is registered or licensed by any state agency, board, or commission to transact business in this state or to make sales to persons in this state;

(8) Has any other contact with this state that would allow this state to require the seller to collect and remit use tax under Section 8 of Article I of the Constitution of the United States.

(J) "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 appointed pursuant to section 306.03 of the Revised Code or, if the board of county commissioners operates the county transit system, the county auditor.

(K) "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.

(L) "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 census bureau.

(M) "Providing a service" has the same meaning as in division (X) of section 5739.01 of the Revised Code.

(N) "Other consumption" includes receiving the benefits of a service.

(O) "Lease" means any transfer for a consideration of the possession of and right to use, but not title to, tangible personal property for a fixed period of time greater than twenty-eight days or for an open-ended period of time with a minimum fixed period of more than twenty-eight days.

Sec. 5741.10. Refunds of taxes paid pursuant to this chapter by a seller or consumer illegally or erroneously shall be made in the same manner as refunds are made to a vendor or consumer under section 5739.07 of the Revised Code.

~~Sec. 5741.13. If any person required by section 5741.12 of the Revised Code to make a return to the tax commissioner fails to make such return at the time required by or under authority of such section, the commissioner may make an assessment against such person, based upon any information within his the commissioner's possession. ~~If information in the possession of the commissioner indicates that the tax paid by any consumer is less than that due, the commissioner may audit a sample of that consumer's purchases for a representative period and may issue an assessment based thereon. The commissioner shall make a good faith effort to reach agreement with the consumer in selecting a representative sample period.~~ The commissioner shall give to such person written notice of such the assessment. ~~Such notice may be served upon such person personally, or by certified mail as provided in section 5703.37 of the Revised Code.~~~~

If information in the possession of the commissioner indicates that the tax paid by any consumer is less than that due, the commissioner may audit a representative sample of that consumer's purchases and may issue an assessment based thereon. The commissioner shall make a good faith effort

to reach agreement with the consumer on selecting a representative sample.

If 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 seller, the commissioner may audit a representative sample of the seller's sales to determine 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 seller in selecting a representative sample.

Sec. 5743.05. All stamps provided for by section 5743.03 of the Revised Code, when procured by the tax commissioner, shall be immediately delivered to the treasurer of state, who shall execute a receipt therefor showing the number and aggregate face value of each denomination received by the treasurer of state and any other information that the commissioner requires to enforce the collection and distribution of all taxes imposed under section 5743.024 or 5743.026 of the Revised Code, and deliver the receipt to the commissioner. The treasurer of state shall sell the stamps and, on the fifth day of each month, make a report showing all sales made during the preceding month, with the names of purchasers, the number of each denomination, the aggregate face value purchased by each, and any other information as the commissioner requires to enforce the collection and distribution of all taxes imposed under section 5743.024 of the Revised Code, and deliver it to the commissioner. The treasurer of state shall be accountable for all stamps received and unsold. The stamps shall be sold and accounted for at their face value, except the commissioner shall, by rule certified to the treasurer of state, authorize the sale of stamps and meter impressions to wholesale or retail dealers in this state, or to wholesale dealers outside this state, at a discount of not less than one and eight-tenths per cent or more than ten per cent of their face value, as a commission for affixing and canceling the stamps or meter impressions.

The ~~tax~~ commissioner, by rule certified to the treasurer of state, shall authorize the delivery of stamps and meter impressions to wholesale and retail dealers in this state and to wholesale dealers outside this state on credit when the purchaser files with the commissioner a bond to the state in the amount and in the form prescribed by the commissioner, and with surety to the satisfaction of the treasurer of state, conditioned on payment to the treasurer of state within thirty days for stamps or meter impressions delivered within that time. The ~~tax~~ commissioner shall limit delivery of stamps and meter impressions on credit to the period running from the first day of July of the fiscal year until the first day of the following May. Any discount allowed as a commission for affixing and canceling stamps or

meter impressions shall be allowed with respect to sales of stamps and meter impressions on credit.

The treasurer of state shall redeem and pay for any destroyed, unused, or spoiled tax stamps and any unused meter impressions at their net value, and shall refund to wholesale dealers the net amount of state and county taxes paid erroneously or paid on cigarettes ~~which~~ that have been sold in interstate or foreign commerce or ~~which~~ that have become unsalable, and the net amount of county taxes that were paid on cigarettes that have been sold at retail or for retail sale outside a taxing county. ~~An~~

An application for a refund of tax shall be filed with the tax commissioner, on the form prescribed by the commissioner for that purpose, within three years from the date the tax stamps are destroyed or spoiled, from the date of the erroneous payment, or from the date that cigarettes on which taxes have been paid have been sold in interstate or foreign commerce or have become unsalable. ~~On~~

On the filing of the application, the commissioner shall determine the amount of refund ~~due to which the applicant is entitled,~~ payable from receipts of the state tax, and, if applicable, payable from receipts of a county tax ~~and.~~ If the amount is less than that claimed, the commission shall certify such amounts the 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. ~~When~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If a refund is granted for payment of an illegal or erroneous assessment issued by the department, the refund shall include interest on the amount of the refund from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

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~~ that 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 5743.025 or 5743.03 ~~or 5743.025~~ of the Revised Code, or who files a fraudulent return.

A penalty of up to thirty per cent 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 as in the manner provided in section 5703.37 of the Revised Code. The notice shall specify separately any portion of the assessment that represents a county tax. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party ~~to whom the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment ~~in writing~~, signed by the party assessed; or ~~by the~~ that party's authorized agent having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ 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 if received by the commissioner 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. If the petition has been properly~~

filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the commissioner's entry, the clerk 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 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 tax 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. 5743.53. (A) The treasurer of state shall refund to a taxpayer any of the following:

- (1) Any tobacco products tax paid erroneously;
- (2) Any tobacco products tax paid on an illegal or erroneous assessment;
- (3) Any tax paid on tobacco products that have been sold or shipped to retail or wholesale dealers outside this state, returned to the manufacturer, or destroyed by the taxpayer with the prior approval of the tax commissioner.

Any application for refund shall be filed with the tax commissioner on a form prescribed by ~~him~~ the commissioner for that purpose. The commissioner may not pay any refund on an application for refund filed

with the ~~tax~~ commissioner more than three years from the date of payment of the tax.

(B) ~~Upon~~ On the filing of the application for refund, the commissioner shall determine the amount of the refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify that the~~ amount to the director of budget and management and to the treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. ~~When~~ If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If a refund is granted for payment of an illegal or erroneous assessment issued by the department of taxation, the refund shall include interest on the amount of the refund from the date of the overpayment. The interest shall be computed at the rate per annum in the manner prescribed by section 5703.47 of the Revised Code.

(C) If any person entitled to a refund of tax under this section or section 5703.70 of the Revised Code is indebted to the state for any tax administered by the tax commissioner, or any charge, penalties, or interest arising from such tax, the amount allowable on the application for refund first shall be applied in satisfaction of the debt.

(D) In lieu of granting a refund payable under division (A)(3) of this section, the ~~tax~~ commissioner may allow a taxpayer to claim a credit of the amount of refundable tax on the return for the period during which the tax became refundable. The commissioner may require taxpayers to submit any information necessary to support a claim for a credit under this section, and the commissioner shall allow no credit if that information is not provided.

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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(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

business and may issue an assessment based on such audit.

(C) 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 such penalties.

(D) Unless the person assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment ~~in writing signed~~ by the person assessed or ~~the~~ that person's 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 if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the person assessed in the amount shown ~~to be due on the entry~~. 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 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 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. ~~Upon~~ Immediately upon the 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 tax 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. 5745.11. An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under this chapter, including assessments, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 5745.12 of the Revised Code. The application shall be filed in the form prescribed by the tax commissioner.

~~Upon~~ On the filing of a refund application, the ~~tax~~ commissioner shall determine the amount of refund ~~due and to which the applicant is entitled.~~ If the amount is not less than that claimed, the commissioner shall certify the amount of the refund to each municipal corporation to which the overpayment was made. The If the amount is less than that claimed, the commissioner shall proceed in accordance with divisions (A) to (C) of section 5703.70 of the Revised Code and shall certify to each municipal corporation to which the overpayment was made the amount to be refunded under division (B) or (C) of that section.

On receipt of a certification of a refund, the municipal corporation shall

issue a refund to the taxpayer, or, upon the taxpayer's written request, shall credit the amount of the refund against the taxpayer's estimated tax payments to the municipal corporation for an ensuing taxable year. ~~Any~~

Any portion of the refund not issued within ninety days after the tax commissioner's notice is received by the municipal corporation shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninetieth day after such notice is received by the municipal corporation until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

Sec. 5745.12. (A) If any taxpayer 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 taxpayer for any deficiency for the period for which the report or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer 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 taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 5745.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a taxpayer 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 ~~party taxpayer~~ assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer ~~to which the notice of assessment is directed~~ assessed files with the tax commissioner within sixty days after service ~~thereof of the notice of assessment~~, either personally or by certified mail, a written petition for reassessment ~~in writing~~, signed by the authorized agent of the taxpayer 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~~ becomes final, and the amount of the assessment ~~shall be~~ is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer 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 municipal income 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 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 credited and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(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,~~

~~payment of the assessment excluding any penalty is required.~~

~~(2) If the taxpayer that is assessed failed to file, prior to the date of issuance of the assessment, the annual report required by section 5745.03 of the Revised Code, full payment of the assessment including penalty and interest is required.~~

~~(3) If the taxpayer that is assessed filed, prior to the date of issuance of the assessment, the annual report required by section 5745.03 of the Revised Code, 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 is required.~~

~~(4) If none of the conditions specified in divisions (E)(1) to (3) of this section apply, no payment is required. If the tax commissioner believes that collection of the tax imposed by this chapter 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 taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner 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 taxpayer 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) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer 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 tax 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 taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 5745.11 of the Revised Code, with interest on that amount as provided by section 5745.11 of the Revised Code.

Sec. 5747.025. (A) The personal exemption for the taxpayer and the taxpayer's spouse shall be seven hundred fifty dollars each for the taxable year beginning in 1996, eight hundred fifty dollars each for the taxable year beginning in 1997, nine hundred fifty dollars each for the taxable year beginning in 1998, and one thousand fifty dollars each for the taxable year beginning in 1999 and taxable years beginning after 1999. The personal exemption amount prescribed in this division for taxable years beginning after 1999 shall be adjusted each year in the manner prescribed in division (C) of this section.

(B) The personal exemption for each dependent shall be eight hundred fifty dollars for the taxable year beginning in 1996, and one thousand fifty dollars for the taxable year beginning in 1997 and taxable years beginning after 1997. The personal exemption amount prescribed in this division for taxable years beginning after 1999 shall be adjusted each year in the manner prescribed in division (C) of this section.

(C) ~~Each~~ In September of each year, beginning in 2000, the tax commissioner shall determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce from the first day of ~~July~~ January of the preceding calendar year to the last day of ~~June~~ December of the ~~current~~ preceding year, and adjust the personal exemption amount for taxable years beginning in the current calendar year by multiplying that amount by the percentage increase in the gross domestic product deflator for that period; adding the resulting product to the personal exemption amount for taxable years beginning in the preceding calendar year; and rounding the resulting sum upward to the nearest multiple of fifty dollars. The ~~tax~~ commissioner shall not make such an adjustment in any calendar year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding calendar year.

Sec. 5747.06. (A) Except as provided in division (E)(3) of this section, every employer, including the state and its political subdivisions, maintaining an office or transacting business within this state and making payment of any compensation to an employee who is a taxpayer shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, as far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter and Chapter 5748. of the Revised Code with respect to the amount of such compensation included in ~~his~~ the employee's adjusted gross income during the calendar year. The employer shall deduct

and withhold the tax on the date that the employer directly, indirectly, or constructively pays the compensation to, or credits the compensation to the benefit of, the employee. The method of determining the amount to be withheld shall be prescribed by rule of the tax commissioner.

In addition to any other exclusions from withholding permitted under this section, no tax shall be withheld by an employer from the compensation of an employee when such compensation is paid for:

(1) Agricultural labor as defined in division G of section 3121 of Title 26 of the United States Code;

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Service performed in any calendar quarter by an employee unless the cash remuneration paid for such service is three hundred dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service;

(4) Services performed for a foreign government or an international organization;

(5) Services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or when performed by such individual under the age of eighteen under an arrangement where newspapers or magazines are to be sold by ~~him~~ the individual at a fixed price, ~~his~~ the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual;

(6) Services not in the course of the employer's trade or business to the extent paid in any medium other than cash.

(B) Every employer required to deduct and withhold tax from the compensation of an employee under this chapter shall furnish to each employee, with respect to the compensation paid by such employer to such employee during the calendar year, on or before the thirty-first day of January of the succeeding year, or, if ~~his~~ the employee's employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of compensation was made, a written statement as prescribed by the tax commissioner showing the amount of compensation paid by the employer to the employee, the amount deducted and withheld as state income tax, any amount deducted and withheld as school district income tax for each applicable school district, and any other information as the commissioner prescribes.

(C) The failure of an employer to withhold tax as required by this

~~section or to remit such tax as required by law~~ does not relieve an employee from the liability for the tax. The failure of an employer to remit the tax as required by law does not relieve an employee from liability for the tax if the tax commissioner ascertains that the employee colluded with the employer with respect to the failure to remit the tax.

(D) If an employer fails to deduct and withhold any tax as required, and thereafter the tax is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer is not relieved from liability for penalties and interest otherwise applicable in respect to the failure to deduct and withhold the tax.

(E) To ensure that taxes imposed pursuant to Chapter 5748. of the Revised Code are deducted and withheld as provided in this section:

(1) ~~Each~~ An employer shall request that each ~~of his employees~~ employee furnish the name of the employee's school district of residence;

(2) Each employee shall furnish ~~his~~ the employer with sufficient and correct information to enable the employer to withhold the taxes imposed under Chapter 5748. of the Revised Code. The employee shall provide additional or corrected information whenever information previously provided ~~by him~~ to his the employer becomes insufficient or incorrect.

(3) If the employer complies with the requirements of division (E)(1) of this section and if the employee fails to comply with the requirements of division (E)(2) of this section, the employer is not required to withhold and pay the taxes imposed under Chapter 5748. of the Revised Code and is not subject to any penalties and interest otherwise applicable for failing to deduct and withhold such taxes.

Sec. 5747.08. An annual return with respect to the tax imposed by section 5747.02 of the Revised Code and each tax imposed under Chapter 5748. of the Revised Code shall be made by every taxpayer for any taxable year for which the taxpayer is liable for the tax imposed by that section or under that chapter, unless the total credits allowed under divisions (E), (F), and (G) of section 5747.05 of the Revised Code for the year are equal to or exceed the tax imposed by section 5747.02 of the Revised Code, in which case no return shall be required unless the taxpayer is liable for a tax imposed pursuant to Chapter 5748. of the Revised Code.

(A) If an individual is deceased, any return or notice required of that individual under this chapter shall be made and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(B) If an individual is unable to make a return or notice required by this chapter, the return or notice required of that individual shall be made and

filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(C) Returns or notices required of an estate or a trust shall be made and filed by the fiduciary of the estate or trust.

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) of this section, any pass-through entity may file a single return on behalf of one or more of the entity's investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code. The single return shall set forth the name, address, and social security number or other identifying number of each of those pass-through entity investors and shall indicate the distributive share of each of those pass-through entity investor's income taxable in this state in accordance with sections 5747.20 to 5747.231 of the Revised Code. Such pass-through entity investors for whom the pass-through entity elects to file a single return are not entitled to the exemption or credit provided for by sections 5747.02 and 5747.022 of the Revised Code; shall calculate the tax before business credits at the highest rate of tax set forth in section 5747.02 of the Revised Code for the taxable year for which the return is filed; and are entitled to only their distributive share of the business credits as defined in division (D)(2) of this section. A single check drawn by the pass-through entity shall accompany the return in full payment of the tax due, as shown on the single return, for such investors, other than investors who are persons subject to the tax imposed under section 5733.06 of the Revised Code.

(b)(i) A pass-through entity shall not include in such a single return any investor that is a trust to the extent that any direct or indirect current, future, or contingent beneficiary of the trust is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(ii) A pass-through entity shall not include in such a single return any investor that is itself a pass-through entity to the extent that any direct or indirect investor in the second pass-through entity is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(c) Nothing in division (D) of this section precludes the tax commissioner from requiring such investors to file the return and make the payment of taxes and related interest, penalty, and interest penalty required by this section or section 5747.02, 5747.09, or 5747.15 of the Revised Code. Nothing in division (D) of this section shall be construed to provide to such an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (J) of this section, solely on account of the entity's filing a return in accordance with this section. Such a

pass-through entity also shall make the filing and payment of estimated taxes on behalf of the pass-through entity investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(2) For the purposes of this section, "business credits" means the credits listed in section 5747.98 of the Revised Code excluding the following credits:

(a) The retirement credit under division (B) of section 5747.055 of the Revised Code;

(b) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;

(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;

(d) The dependent care credit under section 5747.054 of the Revised Code;

(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;

(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;

(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;

(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code.

(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.

(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any

additional taxes, interest, interest penalty, or penalties imposed by this chapter if the ~~tax~~ commissioner ~~determines~~ finds that the single return does not reflect the correct tax due by ~~nonresident~~ the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting ~~and including the commissioner's findings and determinations made by the tax commissioner.~~ Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.

(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable year, and their liabilities are joint and several, but, if the federal income tax liability of either spouse is determined on a separate federal income tax return, they shall file separate returns under this section.

If either spouse is not required to file a federal income tax return and either or both are required to file a return pursuant to this chapter, they may elect to file separate or joint returns, and, pursuant to that election, their liabilities are separate or joint and several. If a husband and wife file separate returns pursuant to this chapter, each must claim the taxpayer's own exemption, but not both, as authorized under section 5747.02 of the Revised Code on the taxpayer's own return.

(F) Each return or notice required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number. Each return shall be verified by a declaration under the penalties of perjury. The tax commissioner shall prescribe the form that the signature and declaration shall take.

(G) Each return or notice required to be filed under this section shall be made and filed as required by section 5747.04 of the Revised Code, on or before the fifteenth day of April of each year, on forms that the tax commissioner shall prescribe, together with remittance made payable to the treasurer of state in the combined amount of the state and all school district income taxes shown to be due on the form, unless the combined amount shown to be due is one dollar or less, in which case that amount need not be

remitted.

Upon good cause shown, the commissioner may extend the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions. If the extension results in an extension of time for the payment of any state or school district income tax liability with respect to which the return is filed, the taxpayer shall pay at the time the tax liability is paid an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that liability from the time that payment is due without extension to the time of actual payment. Except as provided in section 5747.132 of the Revised Code, in addition to all other interest charges and penalties, all taxes imposed under this chapter or Chapter 5748. of the Revised Code and remaining unpaid after they become due, except combined amounts due of one dollar or less, bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

If the commissioner considers it necessary in order to ensure the payment of the tax imposed by section 5747.02 of the Revised Code or any tax imposed under Chapter 5748. of the Revised Code, the commissioner may require returns and payments to be made otherwise than as provided in this section.

(H) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that date by United States mail to the agency, officer, or office with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment.

If a payment is required to be made by electronic funds transfer pursuant to section 5747.072 of the Revised Code, the payment is considered to be made when the payment is received by the treasurer of state or credited to an account designated by the treasurer of state for the receipt of tax payments.

"The date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the United States postal service.

(I) The amounts withheld by the employer pursuant to section 5747.06 of the Revised Code shall be allowed to the recipient of the compensation as

credits against payment of the appropriate taxes imposed on the recipient by section 5747.02 and under Chapter 5748. of the Revised Code.

(J) If, in accordance with division (D) of this section, a pass-through entity elects to file a single return and if any investor is required to file the return and make the payment of taxes required by this chapter on account of the investor's other income that is not included in a single return filed by a pass-through entity, the investor is entitled to a refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor. The investor shall claim the credit for the investor's taxable year in which or with which ends the taxable year of the pass-through entity. Nothing in this chapter shall be construed to allow any credit provided in this chapter to be claimed more than once. For the purposes of computing any interest, penalty, or interest penalty, the investor shall be deemed to have paid the refundable credit provided by this division on the day that the pass-through entity paid the estimated tax or the tax giving rise to the credit.

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~~ that the employer fails to remit, or any amount ~~which~~ that 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 or if an agreement waiving or extending the time limits has been entered into pursuant to section 122.171 of the Revised Code. 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) ~~Unless the party to whom the notice of assessment is directed assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment in writing, signed by the party assessed; or by the that 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 becomes final, and the amount of the assessment shall be is 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 by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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 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~~ that 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,

nt of the assessment, including interest but not penalty, 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, payment of the assessment, including interest but not penalty, 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, payment of the assessment, including interest but not penalty, 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 tax 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. 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 as in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) ~~Unless the party to whom such notice of assessment is directed~~ assessed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment ~~in writing~~, signed by the party assessed, or ~~by an~~ that party's authorized agent ~~of the party assessed~~ having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ 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 if received by the commissioner 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. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 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 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 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~~ Immediately upon the filing of such entry, the clerk 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 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 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 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 the commissioner, within four years from the date of the illegal or erroneous payment of the tax. On the filing of ~~such~~ the application, the commissioner shall determine the amount of refund ~~due~~ to which the applicant is entitled, 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~~. If the amount is not less than that claimed, the commissioner shall certify ~~such~~ the amount to the director of budget and management and treasurer of state payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

SECTION 2. That existing sections 323.152, 2935.01, 3317.026, 3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 5749.07, and 5749.08 and sections 5728.05, 5735.31, 5739.07, 5741.10, and 5747.181 of the Revised Code are hereby repealed.

SECTION 3. That the versions of sections 5733.021 and 5733.12 of the Revised Code that are scheduled to take effect July 1, 2002, be amended to read as follows:

Sec. 5733.021. (A) Each taxpayer ~~which that~~ which does not in ~~the month of~~ January file the report and make the payment required by section 5733.02 of the Revised Code shall make and file a declaration of estimated tax report for the tax year.

The declaration of estimated tax report shall be filed with the tax commissioner on or before the last day of January in such form as prescribed by the tax commissioner, and shall reflect an estimate of the total

amount due under this chapter for the tax year.

(B) A taxpayer required to file a declaration of estimated tax report shall make remittance of such estimated tax to the tax commissioner as follows:

(1) The entire estimated tax at the time of filing the declaration of estimated tax report, if such estimated tax is not in excess of the minimum tax as provided in section 5733.06 of the Revised Code;

(2) If the estimated tax is in excess of the minimum tax:

(a) One-third of the estimated tax at the time of filing the declaration of estimated tax report;

(b) Two-thirds of the estimated tax on or before the last day of March of the tax year, ~~unless if the report and payment~~ required by section 5733.02 of the Revised Code ~~are is~~ filed ~~and paid~~ on or before the last day of March of the tax year.

(3) If the estimated tax ~~due~~ is in excess of the minimum tax, and an extension of time for filing the report required by section 5733.02 of the Revised Code has been granted pursuant to section 5733.13 of the Revised Code:

(a) One-third of the estimated tax at the time of filing the declaration of estimated tax report;

(b) One-third of the estimated tax on or before the last day of March of the tax year;

(c) One-third of the estimated tax on or before the last day of May of the tax year, ~~unless the report and payments required by section 5733.02 of the Revised Code are filed and paid on or before the last day of May of the tax year.~~

Remittance of the estimated tax shall be made payable to the treasurer of state and shall be made in the form prescribed by the tax commissioner, including electronic funds transfer if required by section 5733.022 of the Revised Code.

The tax commissioner shall immediately forward to the treasurer of state all amounts received under this section, and the treasurer of state shall credit all payments of such estimated tax as provided in section 5733.12 of the Revised Code.

(C)(1) For any period of delinquency ending prior to the first day of June of the tax year:

(a) The penalty under division (A)(2) of section 5733.28 of the Revised Code may only be imposed on the delinquent portion of the estimated tax required to be paid under divisions (B)(2)(a) and (b) and (B)(3)(a) and (b) of this section.

(b) The interest under section 5733.26 of the Revised Code shall only be

imposed on the delinquent portion of estimated tax required to be paid under divisions (B)(2)(a), (B)(2)(b), (B)(3)(a), and (B)(3)(b) of this section.

(c) If the taxpayer was not subject to tax for the immediately preceding tax year, "estimated tax" for purposes of division (C)(1) of this section is ninety per cent of the qualifying tax for the current tax year. If the taxpayer was subject to the tax for the immediately preceding tax year, "estimated tax" for purposes of division (C)(1) of this section is the lesser of one hundred per cent of the qualifying net tax for the immediately preceding tax year or ninety per cent of the qualifying net tax for the current tax year.

(2) For any period of delinquency commencing the first day of June of the tax year and concluding on the extended due date pursuant to section 5733.13 of the Revised Code:

(a) The penalty under division (A)(2) of section 5733.28 of the Revised Code may only be imposed on the delinquent portion of the estimated tax required to be paid under division (B)(3)(c) of this section.

(b) The interest under section 5733.26 of the Revised Code shall be imposed on the delinquent portion of the amount in division (C)(3)(a) of this section for the current tax year.

(c) For purposes of division (C)(2) of this section, "estimated tax" is ninety per cent of the qualifying net tax for the current tax year.

(3) If the taxpayer did not file a report under section 5733.02 of the Revised Code for the tax year or failed to prepare and file the report in good faith for the tax year, "qualifying net tax" as used in division (C) of this section for that tax year means the amount described in division (C)(3)(a) of this division. Otherwise, "qualifying net tax" as used in division (C) of this section for that tax year means the lesser of the amount described in division (C)(3)(a) or (b) of this section:

(a) The tax imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code for that tax year reduced by the credits listed in section 5733.98 of the Revised Code. If the credits exceed the total tax, the qualifying net tax is zero.

(b) The lesser of the tax shown on the report, reduced by the credits shown on that report, or the tax shown on an amended report prepared and filed in good faith, reduced by the credits shown on that amended report. If the credits shown exceed the total tax shown, the qualifying net tax is zero.

Sec. 5733.12. (A) Four and two-tenths per cent of all payments received from the taxes imposed under sections 5733.06 and 5733.41 of the Revised Code shall be credited to the local government fund for distribution in accordance with section 5747.50 of the Revised Code, six-tenths of one per cent shall be credited to the local government revenue assistance fund for

distribution in accordance with section 5747.61 of the Revised Code, and ninety-five and two-tenths per cent shall be credited to the general revenue fund.

(B) Except as otherwise provided under divisions (C) and (D) of this section, an application to refund to the corporation the amount of taxes imposed under section 5733.06 of the Revised Code that are overpaid, paid illegally or erroneously, or paid on any illegal, erroneous, or excessive assessment, with interest thereon as provided by section 5733.26 of the Revised Code, shall be filed with the tax commissioner, on the form prescribed by the commissioner, within three years from the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (C)(2) of section 5733.031, division (D)(2) of section 5733.067, or division (A) of section 5733.11 of the Revised Code. For purposes of division (B) of this section, any payment that the applicant made before the due date or extended due date for filing the report to which the payment relates shall be deemed to have been made on the due date or extended due date.

On the filing of the refund application, the commissioner shall determine the amount of refund ~~due and to which the applicant is entitled. If the amount is not less than that claimed the commissioner shall~~ certify such the 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. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(C) "Ninety days" shall be substituted for "three years" in division (B) of this section if the taxpayer satisfies both of the following:

(1) The taxpayer has applied for a refund based in whole or in part upon section 5733.0611 of the Revised Code;

(2) The taxpayer asserts that the imposition or collection of the tax imposed or charged by section 5733.06 of the Revised Code or any portion of such tax violates the Constitution of the United States or the Constitution of this state.

(D)(1) Division (D)(2) of this section applies only if all of the following conditions are satisfied:

(a) A qualifying pass-through entity pays an amount of the tax imposed by section 5733.41 of the Revised Code;

(b) The taxpayer is a qualifying investor as to that qualifying pass-through entity;

(c) The taxpayer did not claim the credit provided for in section 5733.0611 of the Revised Code as to the tax described in division (D)(1)(a)

of this section;

(d) The three-year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.

(2) A taxpayer shall file an application for refund pursuant to this division within one year after the date the payment described in division (D)(1)(a) of this section is made. An application filed under this division shall only claim refund of overpayments resulting from the taxpayer's failure to claim the credit described in division (D)(1)(c) of this section. Nothing in this division shall be construed to relieve a taxpayer from complying with the provisions of division (I)(14) of section 5733.04 of the Revised Code.

SECTION 4. That the existing versions of sections 5733.021 and 5733.12 of the Revised Code that are scheduled to take effect July 1, 2002, are hereby repealed.

SECTION 5. That the versions of sections 5727.26, 5728.08, and 5735.06 of the Revised Code that are scheduled to take effect January 1, 2003, be amended to read as follows:

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 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 as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition. 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. Unless the company assessed, within sixty days after service of the notice of assessment, files with the tax commissioner. The, either personally or by certified mail, a written petition must be made in writing, signed by the party or the party's company's authorized agent having knowledge of the facts, and filed with the commissioner, either personally or by certified mail, within sixty days after service of the notice of assessment becomes final, and the amount of the assessment is due and payable from the company~~

~~assessed to the treasurer of state.~~ The petition shall indicate the objections of the company assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination ~~of the commissioner.~~ ~~Upon receipt of~~

~~If a petition for reassessment has been properly filed petition,~~ the commissioner ~~may 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 as provided in shall proceed under~~ section 5703.37 5703.60 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. The company assessed shall make the payment payable to the treasurer of state and shall deliver the payment to the tax commissioner.~~

~~(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 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 may 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)~~(C) 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 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~~ Immediately on the filing of the entry, ~~must the clerk shall~~ 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 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 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)~~(D) 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~~ company liable for the tax. ~~On~~ Immediately upon the 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)~~(C) of this section. Notice of the jeopardy assessment shall be served on the ~~party~~ company assessed or the ~~party's~~ legal representative as company's authorized agent in the manner 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~~ company 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)~~(E) The tax commissioner shall immediately forward to the treasurer of state all amounts that the tax commissioner receives under this section, and such amounts shall be considered revenue arising from the tax imposed by section 5727.24 of the Revised Code.

~~(G)~~(F) No assessment shall be made or issued against a natural gas company or combined 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. 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 tax commissioner, on forms prescribed by the ~~tax~~ commissioner, a ~~highway~~ fuel 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 fuel 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 fuel 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 fuel 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.

The ~~tax~~ commissioner shall immediately forward to the treasurer of state all money received from the tax levied by section 5728.06 of the Revised Code.

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 section~~ section 5728.03 of the Revised Code ~~which that~~ 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~~ following 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~~ section 5728.03 of the Revised Code ~~which that~~ 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~~ following 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~~ section 5728.03 of the Revised Code ~~which that~~ 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~~ following 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 that~~ 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~~

section 5728.03 of the Revised Code, ~~which~~ that 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. 5735.06. (A) On or before the last day of each month, each motor fuel dealer shall file with the tax commissioner a report for the preceding calendar month, on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following information:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such motor fuel dealer, which has been produced, refined, prepared, distilled, manufactured, blended, or compounded by such motor fuel dealer in the state;

(2) An itemized statement of the number of gallons of all motor fuel received by such motor fuel dealer in the state from any source during the preceding calendar month, other than motor fuel included in division (A)(1) of this section, together with a statement showing the date of receipt of such motor fuel; the name of the person from whom purchased or received; the date of receipt of each shipment of motor fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of gallons contained in each car if shipped by rail; the point of origin, destination, and shipper if shipped by pipe line; or the name and owner of the boat, barge, or vessel if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel which such motor fuel dealer has during the preceding calendar month:

(a) For motor fuel other than gasoline sold for use other than for operating motor vehicles on the public highways or on waters within the boundaries of this state;

(b) Exported from this state to any other state or foreign country as provided in division (A)~~(3)~~(4) of section 5735.05 of the Revised Code;

(c) Sold to the United States government or any of its agencies;

(d) Sold for delivery to motor fuel dealers;

(e) Sold exclusively for use in the operation of aircraft;

(4) Such other information incidental to the enforcement of the motor fuel laws of the state as the commissioner requires.

(B) The report shall show the tax due, computed as follows:

(1) The following deductions shall be made from the total number of gallons of motor fuel received by the motor fuel dealer within the state

during the preceding calendar month:

(a) The total number of gallons of motor fuel received by the motor fuel dealer within the state and sold or otherwise disposed of during the preceding calendar month as set forth in section 5735.05 of the Revised Code;

(b) The total number of gallons received during the preceding calendar month and sold or otherwise disposed of to another licensed motor fuel dealer pursuant to section 5735.05 of the Revised Code;

(c) To cover the costs of the motor fuel dealer in compiling the report, and evaporation, shrinkage, or other unaccounted-for losses:

(i) If the report is timely filed and the tax is timely paid, three per cent of the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month less the total number of gallons deducted under divisions (B)(1)(a) and (b) of this section, less one per cent of the total number of gallons of motor fuel that were sold to a retail dealer during the preceding calendar month;

(ii) If the report required by division (A) of this section is not timely filed and the tax is not timely paid, no deduction shall be allowed;

(iii) If the report is incomplete, no deduction shall be allowed for any fuel on which the tax is not timely reported and paid;

(2) The number of gallons remaining after the deductions have been made shall be multiplied separately by each of the following amounts:

(a) The cents per gallon rate;

(b) Two cents.

The sum of the products obtained in divisions (B)(2)(a) and (b) of this section shall be the amount of motor fuel tax for the preceding calendar month.

(C) The report shall be filed together with payment of the tax shown on the report to be due, unless the motor fuel dealer is required by section 5735.062 of the Revised Code to pay the tax by electronic funds transfer, in which case the dealer shall file the report pursuant to this section and pay the tax pursuant to section 5735.062 of the Revised Code. The commissioner may extend the time for filing reports and may remit all or part of penalties which may become due under sections 5735.01 to 5735.99 of the Revised Code. For purposes of this section and sections 5735.062 and 5735.12 of the Revised Code, a report required to be filed under this section is considered filed when it is received by the tax commissioner, and remittance of the tax due is considered to be made when the remittance is received by the tax commissioner or when credited to an account designated by the treasurer of state and the tax commissioner for the receipt of tax

remittances. The tax commissioner shall immediately forward to the treasurer of state all amounts received under this section.

(D) The tax commissioner may require a motor fuel dealer to file a report for a period other than one month. Such a report, together with payment of the tax, shall be filed not later than thirty days after the last day of the prescribed reporting period.

(E) No person required by this section to file a tax report shall file a false or fraudulent tax report or supporting schedule.

SECTION 6. That existing sections 5727.26, 5728.08, and 5735.06 of the Revised Code that are scheduled to take effect January 1, 2003, are hereby repealed.

SECTION 7. Section 5727.26 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by both H.B. 612 and Am. Sub. H.B. 640 of the 123rd General Assembly. Section 5727.47 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 589 and H.B. 612 of the 123rd General Assembly. Section 5733.05 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 283 and Am. Sub. S.B. 3 of the 123rd General Assembly. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 138, H.B. 612, and Am. Sub. H.B. 640 all of the 123rd General Assembly. Section 5739.031 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 740 and Sub. H.B. 791 of the 119th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Sub. S. B. No. 200

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Approved _____, 20____

Governor.

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 _____