

**As Introduced**

**124th General Assembly  
Regular Session  
2001-2002**

**S. B. No. 200**

**SENATOR Spada**

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**A B I L L**

To amend sections 323.152, 2935.01, 3317.026, 1  
3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 2  
4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 3  
5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 4  
5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5  
5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 6  
5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 7  
5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 8  
5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 9  
5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 10  
5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 11  
5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 12  
5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 13  
5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 14  
5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 15  
5743.56, 5745.11, 5745.12, 5745.13, 5747.025, 16  
5747.06, 5747.08, 5747.13, 5749.07, and 5749.08; to 17  
amend, for the purpose of adopting a new section 18  
number as indicated in parentheses, section 19  
5735.311 (5728.05); to enact new sections 5739.07 20  
and 5741.10 and sections 5703.60, 5703.70, and 21  
5739.034; and to repeal sections 5728.05, 5735.31, 22  
5739.07, 5741.10, and 5747.181 of the Revised Code 23  
to amend the procedures for determining the amounts 24  
of, and hearing challenges to, various tax 25

assessments and refunds, to alter the method of 26  
adjusting eligibility criteria for the homestead 27  
exemption, energy subsidies, the credit for 28  
installation of emergency telephone systems, the 29  
personal exemption, and the deduction for medical 30  
savings accounts, to authorize the release by 31  
public officials of certain information relating to 32  
vendors, to increase the loss carryover period for 33  
corporations, to change record-keeping requirements 34  
for certain taxpayers, to conform state law to 35  
federal law with regard to taxation of mobile 36  
telecommunications service, to increase protection 37  
of tax department employees from assault, and to 38  
make other changes relating to the administration 39  
of the tax laws by the Department of Taxation; and 40  
to amend the versions of sections 5733.021 and 41  
5733.12 of the Revised Code that are scheduled to 42  
take effect July 1, 2002, and the versions of 43  
sections 5727.26, 5728.08, and 5735.06 of the 44  
Revised Code that are scheduled to take effect 45  
January 1, 2003, to continue the provisions of this 46  
act on and after those dates. 47

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

**Section 1.** That sections 323.152, 2935.01, 3317.026, 48  
3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 49  
4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 50  
5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 51  
5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 52  
5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 53  
5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 54  
5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 55

5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 56  
5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 57  
5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 58  
5743.56, 5745.11, 5745.12, 5745.13, 5747.025, 5747.06, 5747.08, 59  
5747.13, 5749.07, and 5749.08 be amended; that section 5735.311 60  
(5728.05) be amended for the purpose of adopting a new section 61  
number as indicated in parentheses; and that new sections 5739.07 62  
and 5741.10 and sections 5703.60, 5703.70, and 5739.034 of the 63  
Revised Code be enacted to read as follows: 64

**Sec. 323.152.** In addition to the reduction in taxes required 65  
under section 319.302 of the Revised Code, taxes shall be reduced 66  
as provided in divisions (A) and (B) of this section. 67

(A)(1) Division (A) of this section applies to any of the 68  
following: 69

(a) A person who is permanently and totally disabled; 70

(b) A person who is sixty-five years of age or older; 71

(c) A person who is the surviving spouse of a deceased person 72  
who was permanently and totally disabled or sixty-five years of 73  
age or older and who applied and qualified for a reduction in 74  
taxes under this division in the year of death, provided the 75  
surviving spouse is at least fifty-nine but not sixty-five or more 76  
years of age on the date the deceased spouse dies. 77

(2) Real property taxes on a homestead owned and occupied, or 79  
a homestead in a housing cooperative occupied, by a person to whom 80  
division (A) of this section applies shall be reduced for each 81  
year for which the owner obtains a certificate of reduction from 82  
the county auditor under section 323.154 of the Revised Code or 83  
for which the occupant obtains a certificate of reduction in 84  
accordance with section 323.159 of the Revised Code. The reduction 85

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	91
More than \$11,900 but not more than \$17,500	\$3,000 or sixty per cent	92
More than \$17,500 but not more than \$23,000	\$1,000 or twenty-five per cent	93
More than \$23,000	-0-	94

(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 115  
would be less than the total income amounts, or less than the 116  
dollar amounts by which taxable value is reduced, for the current 117  
tax year. 118

(B) Real property taxes on any homestead, and manufactured 119  
home taxes on any manufactured or mobile home on which a 120  
manufactured home tax is assessed pursuant to division (D)(2) of 121  
section 4503.06 of the Revised Code, shall be reduced for each 122  
year for which the owner obtains a certificate of reduction from 123  
the county auditor under section 323.154 of the Revised Code. The 124  
amount of the reduction shall equal one-fourth of the amount by 125  
which the taxes charged and payable on the homestead or the 126  
manufactured or mobile home are reduced for such year under 127  
section 319.302 of the Revised Code. 128

(C) The reductions granted by this section do not apply to 129  
special assessments or respread of assessments levied against the 130  
homestead, and if there is a transfer of ownership subsequent to 131  
the filing of an application for a reduction in taxes, such 132  
reductions are not forfeited for such year by virtue of such 133  
transfer. 134

(D) The reductions in taxable value referred to in this 135  
section shall be applied solely as a factor for the purpose of 136  
computing the reduction of taxes under this section and shall not 137  
affect the total value of property in any subdivision or taxing 138  
district as listed and assessed for taxation on the tax lists and 139  
duplicates, or any direct or indirect limitations on indebtedness 140  
of a subdivision or taxing district. If after application of 141  
sections 5705.31 and 5705.32 of the Revised Code, including the 142  
allocation of all levies within the ten-mill limitation to debt 143  
charges to the extent therein provided, there would be 144  
insufficient funds for payment of debt charges not provided for by 145  
levies in excess of the ten-mill limitation, the reduction of 146

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.

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(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.

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**Sec. 2935.01.** As used in this chapter:

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

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(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

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pursuant to section 1531.13 of the Revised Code, a park officer 178  
designated pursuant to section 1541.10 of the Revised Code, or a 179  
state watercraft officer designated pursuant to section 1547.521 180  
of the Revised Code; individual designated to perform law 181  
enforcement duties under section 511.232, 1545.13, or 6101.75 of 182  
the Revised Code; Ohio veterans' home police officer appointed 183  
under section 5907.02 of the Revised Code; special police officer 184  
employed by a port authority under section 4582.04 or 4582.28 of 185  
the Revised Code; police constable of any township; police officer 186  
of a township or joint township police district; the house 187  
sergeant at arms if the house sergeant at arms has arrest 188  
authority pursuant to division (E)(1) of section 101.311 of the 189  
Revised Code; and an assistant house sergeant at arms; and, for 190  
the purpose of arrests within those areas, and for the purposes of 191  
Chapter 5503. of the Revised Code, and the filing of and service 192  
of process relating to those offenses witnessed or investigated by 193  
them, includes the superintendent and troopers of the state 194  
highway patrol. 195

(C) "Prosecutor" includes the county prosecuting attorney and 196  
any assistant prosecutor designated to assist the county 197  
prosecuting attorney, and, in the case of courts inferior to 198  
courts of common pleas, includes the village solicitor, city 199  
director of law, or similar chief legal officer of a municipal 200  
corporation, any such officer's assistants, or any attorney 201  
designated by the prosecuting attorney of the county to appear for 202  
the prosecution of a given case. 203

(D) "Offense," except where the context specifically 204  
indicates otherwise, includes felonies, misdemeanors, and 205  
violations of ordinances of municipal corporations and other 206  
public bodies authorized by law to adopt penal regulations. 207

**Sec. 3317.026.** (A) As used in this section, "refunded taxes" 208  
means taxes charged and payable from real and tangible personal 209

property, including public utility property, that have been found 210  
to have been overpaid as the result of reductions in the taxable 211  
value of such property and that have been refunded, including any 212  
interest or penalty refunded with those taxes. If taxes are 213  
refunded over a period of time pursuant to division (B)(2), (3), 214  
or (4) of section 319.36 or division (C) of section 5727.471 of 215  
the Revised Code, the total amount of taxes required to be 216  
refunded, excluding any interest accruing after the day the 217  
undertaking is entered into, shall be considered to have been 218  
refunded on the day the first portion of the overpayment is paid 219  
or credited. 220

(B) Not later than the last day of February each year, each 221  
county auditor shall certify to the tax commissioner, for each 222  
school district in the county, the amount of refunded taxes 223  
refunded in the preceding calendar year and the reductions in 224  
taxable value that resulted in those refunds, except for 225  
reductions in taxable value that previously have been reported to 226  
the tax commissioner on an abstract. If the tax commissioner 227  
determines that the amount of refunded taxes certified for a 228  
school district exceeds three per cent of the total taxes charged 229  
and payable for current expenses of the school district for the 230  
calendar year in which those taxes were refunded, the tax 231  
commissioner shall certify the reductions in taxable value that 232  
resulted in those refunds on or before the first day of June to 233  
the department of education. Upon receiving the certification by 234  
the tax commissioner, the department of education shall reduce the 235  
total taxable value of the school district, as defined in section 236  
3317.02 of the Revised Code, by the total amount of the reductions 237  
in taxable value that resulted in those refunds for the purpose of 238  
computing the state aid for the school district for the current 239  
fiscal year under section 3317.022 of the Revised Code. The 240  
increase in the amount of such aid resulting from the adjustment 241  
required by this section shall be paid to the school district on 242

or before the thirtieth day of June of the current year. 243

(c) If an adjustment is made under this ~~section~~ division in 244  
the amount of state aid paid to a school district, the tax value 245  
reductions from which that adjustment results shall not be used in 246  
recomputing aid to a school district under section 3317.027 of the 247  
Revised Code. 248

(C) Not later than the first day of June each year, the tax 249  
commissioner shall certify to the department of education for each 250  
school district the total of the increases in taxable value above 251  
the amount of taxable value on which tax was paid, as provided in 252  
division (B)(1) or (2) of section 5727.47 of the Revised Code, as 253  
determined by the commissioner in the preceding calendar year. 254  
Upon receiving the certification, the department shall increase 255  
the total taxable value, as defined in section 3317.02 of the 256  
Revised Code, of the school district by the total amount of the 257  
increase in taxable value certified by the commissioner for the 258  
school district for the purpose of computing the school district's 259  
state aid for the following fiscal year under section 3317.022 of 260  
the Revised Code. 261

**Sec. 3734.905.** (A) The treasurer of state shall refund the 262  
fee imposed by section 3734.901 of the Revised Code paid illegally 263  
or erroneously, or paid on an illegal or erroneous assessment. 264  
Applications for refund shall be filed with the tax commissioner 265  
on a form prescribed by ~~him~~ the commissioner, within four years of 266  
the illegal or erroneous payment of the fee. ~~Upon~~ 267

On the filing of the application, the commissioner shall 268  
determine the amount of refund ~~due and to which the applicant is~~ 269  
entitled. If the amount is not less than that claimed, the 270  
commissioner shall certify ~~that~~ the amount to the director of 271  
budget and management and treasurer of state for payment from the 272  
tax refund fund created by section 5703.052 of the Revised Code. 273

If the amount is less than that claimed, the commissioner shall 274  
proceed in accordance with section 5703.70 of the Revised Code. 275

If the application for refund is for fees paid on an illegal 276  
or erroneous assessment, the certified amount shall include 277  
interest calculated at the rate per annum ~~pursuant to~~ prescribed 278  
by section 5703.47 of the Revised Code from the date of 279  
overpayment to the date of the commissioner's certification. 280

(B) When the fee imposed pursuant to section 3734.901 of the 281  
Revised Code has been paid on tires that are sold by a retail 282  
dealer or wholesale distributor to a motor vehicle manufacturer, 283  
or to a wholesale distributor or retail dealer for the purpose of 284  
resale outside this state, the seller in this state is entitled to 285  
a refund of the amount of the fee actually paid on the tires. To 286  
obtain a refund under this division, the seller shall apply to the 287  
tax commissioner, shall furnish documentary evidence satisfactory 288  
to the ~~tax~~ commissioner that the price paid by the purchaser did 289  
not include the fee, and shall provide the name and address of the 290  
purchaser to the ~~tax~~ commissioner. The seller shall apply on the 291  
form prescribed by the ~~tax~~ commissioner, within four years after 292  
the date of the sale. Upon receipt of an application, the ~~tax~~ 293  
commissioner shall determine the amount of any refund due and 294  
shall certify that amount to the director of budget and management 295  
and the treasurer of state for payment from the tax refund fund 296  
created in section 5703.052 of the Revised Code. 297

(C) If any person entitled to a refund of fees under this 298  
section, or section 5703.70 of the Revised Code, is indebted to 299  
the state for any tax administered by the tax commissioner, or any 300  
charge, penalties, or interest arising from such tax, the amount 301  
allowable on the application for refund first shall be applied in 302  
satisfaction of the debt. 303

**Sec. 3734.907.** (A) Any person required to pay the fee imposed 304

by section 3734.901 of the Revised Code is personally liable for 305  
the fee. The tax commissioner may make an assessment, based upon 306  
any information in the commissioner's possession, against any 307  
person who fails to file a return or pay any fee, interest, or 308  
additional charge as required by sections 3734.90 to 3734.9014 of 309  
the Revised Code. The commissioner shall give the person assessed 310  
written notice of the assessment ~~as~~ in the manner provided in 311  
section 5703.37 of the Revised Code. With the notice, the 312  
commissioner shall provide instructions on how to petition for 313  
reassessment and request a hearing on the petition. 314

(B) When the information in the possession of the tax 315  
commissioner indicates that a person liable for the fee imposed by 316  
section 3734.901 of the Revised Code has not paid the full amount 317  
of fee due, the commissioner may audit a representative sample of 318  
the person's business and may issue an assessment based on the 319  
audit. 320

(C) A penalty of up to fifteen per cent may be added to all 321  
amounts assessed under this section. The commissioner may adopt 322  
rules providing for the imposition and remission of the penalties. 323

(D) Unless the person assessed files with the tax 324  
commissioner within sixty days after service of the notice of 325  
assessment, either personally or by certified mail ~~as provided in~~ 326  
~~section 5703.056 of the Revised Code~~, a written petition for 327  
reassessment ~~in writing~~ signed by the person assessed or ~~the~~ that 328  
person's authorized agent having knowledge of the facts, the 329  
assessment becomes final and the amount of the assessment is due 330  
and payable from the person assessed to the treasurer of state. ~~A~~ 331  
The petition shall indicate the objections ~~to the assessment~~ of 332  
the person assessed, but additional objections may be raised in 333  
writing if received by the commissioner prior to the date shown on 334  
the ~~final determination of the person assessed, but additional~~ 335  
~~objections may be raised in writing prior to the date shown on the~~ 336

final determination of the tax commissioner. The commissioner 337  
shall grant the petitioner a hearing on the petition, unless 338  
waived by the petitioner. 339

The commissioner may make any correction to the assessment 340  
that the commissioner finds proper and shall issue a final 341  
determination thereon. The commissioner shall serve a copy of the 342  
final determination on the petitioner either by personal service 343  
or by certified mail, and the commissioner's decision in the 344  
matter is final, subject to appeal under section 5717.02 of the 345  
Revised Code. If the petition has been properly filed, the 346  
commissioner shall proceed under section 5703.60 of the Revised 347  
Code. 348

(E) After an assessment becomes final, if any portion of the 349  
assessment, including accrued interest, remains unpaid, a 350  
certified copy of the tax commissioner's entry making the 351  
assessment final may be filed in the office of the clerk of the 352  
court of common pleas in the county in which the person assessed 353  
resides or in which the person's business is conducted. If the 354  
person assessed maintains no place of business in this state and 355  
is not a resident of this state, the certified copy of the entry 356  
may be filed in the office of the clerk of the court of common 357  
pleas of Franklin county. 358

The clerk, ~~immediately~~ Immediately upon the filing of the 359  
entry, the clerk shall enter a judgment for the state against the 360  
person assessed in the amount shown ~~to be due~~ on the entry. The 361  
judgment may be filed by the clerk in a loose-leaf book entitled 362  
"special judgments for state tire fee," and shall have the same 363  
effect as other judgments. Execution shall issue upon the judgment 364  
upon the request of the tax commissioner, and all laws applicable 365  
to sales on execution shall apply to sales made under the 366  
judgment. 367

The portion of the assessment not paid within sixty days 368

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.

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(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.

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(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.

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**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,

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the tax commissioner may make an assessment against the permit 400  
holder based upon any information in the commissioner's 401  
possession. 402

A penalty of up to fifteen per cent may be added to the 403  
amount of every assessment made under this section. The 404  
commissioner may adopt rules providing for the imposition and 405  
remission of penalties added to assessments made under this 406  
section. 407

The commissioner shall give the party assessed written notice 408  
of the assessment ~~as~~ in the manner provided in section 5703.37 of 409  
the Revised Code. With the notice, the commissioner shall provide 410  
instructions on how to petition for reassessment and request a 411  
hearing on the petition. 412

(B) Unless the party ~~to whom the notice of assessment is~~ 413  
~~directed~~ assessed files with the tax commissioner within sixty 414  
days after service of the notice of assessment, either personally 415  
or by certified mail, a written petition for reassessment ~~in~~ 416  
~~writing~~, signed by the party assessed, ~~or by the~~ that party's 417  
authorized agent having knowledge of the facts, the assessment 418  
~~shall become~~ becomes final and the amount of the assessment ~~shall~~ 419  
~~be~~ is due and payable from the party assessed to the ~~tax~~ 420  
commissioner. The petition shall indicate the objections of the 421  
party assessed, but additional objections may be raised in writing 422  
if received by the commissioner prior to the date shown on the 423  
final determination ~~by the commissioner.~~ 424

~~Unless the petitioner waives a hearing, the commissioner~~ 425  
~~shall assign a time and place for the hearing on the petition and~~ 426  
~~notify the petitioner of the time and place of the hearing by~~ 427  
~~personal service or certified mail, but the commissioner may~~ 428  
~~continue the hearing from time to time if necessary.~~ 429

~~The commissioner may make such correction to the assessment~~ 430  
~~as the commissioner finds proper. The commissioner shall serve a~~ 431

~~copy of the commissioner's final determination on the petitioner 432  
by personal service or certified mail, and the commissioner's 433  
decision in the matter shall be final, subject to appeal as 434  
provided in section 5717.02 of the Revised Code. Only objections 435  
decided on the merits by the board of tax appeals or a court shall 436  
be given collateral estoppel or res judicata effect in considering 437  
an application for refund of amounts paid pursuant to the 438  
assessment. If the petition has been properly filed, the 439  
commissioner shall proceed under section 5703.60 of the Revised 440  
Code. 441~~

(C) After an assessment becomes final, if any portion of the 442  
assessment remains unpaid, including accrued interest, a certified 443  
copy of the tax commissioner's entry making the assessment final 444  
may be filed in the office of the clerk of the court of common 445  
pleas in the county in which the place, track, or enclosure for 446  
which the permit was issued is located or the county in which the 447  
party assessed resides or has its principal place of business. If 448  
the party assessed maintains no place of business in this state 449  
and is not a resident of this state, the certified copy of the 450  
entry may be filed in the office of the clerk of the court of 451  
common pleas of Franklin county. 452

~~The clerk, immediately Immediately upon the filing of such 453  
the entry, the clerk shall enter a judgment for the state against 454  
the party assessed in the amount shown on the entry. The judgment 455  
may be filed by the clerk in a loose-leaf book entitled "special 456  
judgments for state horse racing tax," and shall have the same 457  
effect as other judgments. Execution shall issue upon the judgment 458  
upon the request of the tax commissioner, and all laws applicable 459  
to sales on execution shall apply to sales made under the 460  
judgment. 461~~

The portion of the assessment not paid within sixty days 462  
after the day the assessment was issued shall bear interest at the 463

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.

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(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.

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**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.

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(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

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be effective for the succeeding tax year. The department shall not 495  
make the adjustment in any tax year in which the maximum deduction 496  
resulting from the adjustment is less than the maximum deduction 497  
allowed for the previous tax year. 498

(C) In determining Ohio adjusted gross income under Chapter 499  
5747. of the Revised Code, an account holder may deduct the 500  
investment earnings of a medical savings account from the account 501  
holder's federal adjusted gross income, to the extent that these 502  
earnings have been included in the account holder's federal 503  
adjusted gross income. 504

(D) In determining Ohio adjusted gross income under Chapter 505  
5747. of the Revised Code, an account holder shall add to the 506  
account holder's federal adjusted gross income an amount equal to 507  
the sum of the amounts described in divisions (D)(1) and (2) of 508  
this section to the extent that those amounts were included in the 509  
account holder's federal adjusted gross income and previously 510  
deducted in determining the account holder's Ohio adjusted gross 511  
income. In determining the extent to which amounts withdrawn from 512  
the account shall be included in the account holder's Ohio 513  
adjusted gross income, the tax commissioner shall be guided by ~~the~~ 514  
~~provisions~~ of sections 72 and 408 of the Internal Revenue Code 515  
governing the determination of the amount of withdrawals from an 516  
individual retirement account to be included in federal gross 517  
income. 518

(1) Amounts withdrawn from the account during the taxable 519  
year used for any purpose other than to reimburse the account 520  
holder for, or to pay, the eligible medical expenses of the 521  
account holder or the account holder's spouse or dependents; 522

(2) Investment earnings during the taxable year on amounts 523  
withdrawn from the account that are described in division (D)(1) 524  
of this section. 525

(E) Amounts withdrawn from a medical savings account to 526

reimburse the account holder for, or to pay, the account holder's 527  
eligible medical expenses, or the eligible medical expenses of the 528  
account holder's spouse or dependents, shall not be included in 529  
the account holder's Ohio adjusted gross income in determining 530  
taxes due under Chapter 5747. of the Revised Code. 531

(F) If a dependent of an account holder becomes ineligible to 532  
continue to participate in the account holder's policy, plan, or 533  
contract of health coverage, the account holder may withdraw funds 534  
from the account holder's account and use those funds to pay the 535  
premium for the first year of a policy, plan, or contract of 536  
health coverage for the dependent and to pay any deductible for 537  
the first year of that policy, plan, or contract. Funds withdrawn 538  
and used for that purpose shall not be included in the account 539  
holder's Ohio adjusted gross income in determining taxes due under 540  
Chapter 5747. of the Revised Code. 541

**Sec. 4305.131.** (A) If any permit holder fails to pay the 542  
taxes levied ~~in~~ by section 4301.42, 4301.43, 4301.432, or 4305.01 543  
of the Revised Code in the manner prescribed by section 4303.33 of 544  
the Revised Code, or ~~in~~ by section 4301.421 or 4301.424 of the 545  
Revised Code in the manner prescribed in section 4301.422 of the 546  
Revised Code, and by the rules of the tax commissioner, the 547  
commissioner may make an assessment against the permit holder 548  
based upon any information in the commissioner's possession. 549

No assessment shall be made against any permit holder for any 550  
taxes imposed by section 4301.42, 4301.421, 4301.424, 4301.43, 551  
4301.432, or 4305.01 of the Revised Code more than three years 552  
after the last day of the calendar month in which the sale was 553  
made or more than three years after the return for that period is 554  
filed, whichever is later. This section does not bar an assessment 555  
against any permit holder or registrant as provided in section 556  
4303.331 of the Revised Code who fails to file a return as 557

required by section 4301.422 or 4303.33 of the Revised Code, or  
who files a fraudulent return.

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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.

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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.

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(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.~~

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~~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.~~

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

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~~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.~~

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(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.

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~~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.~~

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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

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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.

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(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.

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**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~~

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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.

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(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:

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(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 bottled 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 683  
beverages become unfit for sale or any similar loss occurs. On 684

On the filing of such the application, the commissioner shall 685  
determine the amount of refund ~~due and to which the applicant is~~ 686  
entitled. If the amount is not less than that claimed, the 687  
commissioner shall certify ~~such the~~ amount to the director of 688  
budget and management and treasurer of state for payment from the 689  
tax refund fund created by section 5703.052 of the Revised Code. 690

If the amount is less than that claimed, the commissioner 692  
shall proceed in accordance with section 5703.70 of the Revised 693  
Code. 694

**Sec. 4503.065.** (A) This section applies to any of the 695  
following: 696

(1) An individual who is permanently and totally disabled; 697

(2) An individual who is sixty-five years of age or older; 698

(3) An individual who is the surviving spouse of a deceased 699  
person who was permanently and totally disabled or sixty-five 700  
years of age or older and who applied and qualified for a 701  
reduction in assessable value under this section in the year of 702  
death, provided the surviving spouse is at least fifty-nine but 703  
not sixty-five or more years of age on the date the deceased 704  
spouse dies. 705

(B)(1) The manufactured home tax on a manufactured or mobile 706  
home that is paid pursuant to division (C) of section 4503.06 of 707  
the Revised Code and that is owned and occupied as a home by an 708  
individual whose domicile is in this state and to whom this 709  
section applies, shall be reduced for any tax year for which the 710  
owner obtains a certificate of reduction from the county auditor 711  
under section 4503.067 of the Revised Code, provided the 712

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; 773  
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(3) Add the resulting products to each of the total income amounts for the preceding year; 775  
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(4) Round the resulting sums upward to the nearest multiple of ten dollars. 777  
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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. 779  
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(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. 782  
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(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. 788  
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(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. 792  
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**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: 797  
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(A) Prescribing all blank forms which the department is authorized to prescribe, and to provide such forms and distribute 801  
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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.

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(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

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in sections 5725.08 and 5725.16 of the Revised Code the taxpayer's 835  
copy of any certificates of abatement may be tendered by the payee 836  
or transferee thereof to the treasurer of state as payment, to the 837  
extent of the amount thereof, of any tax payable to the treasurer 838  
of state. 839

(C) Exercising the authority provided by law relative to 840  
consenting to the compromise and settlement of tax claims; 841

(D) Exercising the authority provided by law relative to the 842  
use of alternative tax bases by taxpayers in the making of 843  
personal property tax returns; 844

(E) Exercising the authority provided by law relative to 845  
authorizing the prepayment of taxes on retail sales of tangible 846  
personal property or on the storage, use, or consumption of 847  
personal property, and waiving the collection of such taxes from 848  
the consumers; 849

(F) Exercising the authority provided by law to revoke 850  
licenses; 851

(G) Maintaining a continuous study of the practical operation 852  
of all taxation and revenue laws of the state, the manner in which 853  
and extent to which such laws provide revenues for the support of 854  
the state and its political subdivisions, the probable effect upon 855  
such revenue of possible changes in existing laws, and the 856  
possible enactment of measures providing for other forms of 857  
taxation. For this purpose the commissioner may establish and 858  
maintain a division of research and statistics, and may appoint 859  
necessary employees who shall be in the unclassified civil 860  
service; the results of such study shall be available to the 861  
members of the general assembly and the public. 862

(H) Making all tax assessments, valuations, findings, 863  
determinations, computations, and orders the department of 864  
taxation is by law authorized and required to make and, pursuant 865

to time limitations provided by law, on the commissioner's own 866  
motion, reviewing, redetermining, or correcting any tax 867  
assessments, valuations, findings, determinations, computations, 868  
or orders the commissioner has made, but the commissioner shall 869  
not review, redetermine, or correct any tax assessment, valuation, 870  
finding, determination, computation, or order which the 871  
commissioner has made as to which an appeal or application for 872  
rehearing, review, redetermination, or correction has been filed 873  
with the board of tax appeals, unless such appeal or application 874  
is withdrawn by the appellant or applicant or dismissed; 875

(I) Appointing not more than five deputy tax commissioners, 876  
who, under such regulations as the rules of the department of 877  
taxation prescribe, may act for the commissioner in the 878  
performance of such duties as the commissioner prescribes in the 879  
administration of the laws which the commissioner is authorized 880  
and required to administer, and who shall serve in the 881  
unclassified civil service at the pleasure of the commissioner, 882  
but if a person who holds a position in the classified service is 883  
appointed, it shall not affect the civil service status of such 884  
person. The commissioner may designate not more than two of the 885  
deputy commissioners to act as commissioner in case of the 886  
absence, disability, or recusal of the commissioner or vacancy in 887  
the office of commissioner. The commissioner may adopt rules 888  
relating to the order of precedence of such designated deputy 889  
commissioners and to their assumption and administration of the 890  
office of commissioner. 891

(J) Appointing and prescribing the duties of all other 892  
employees of the department of taxation necessary in the 893  
performance of the work of the department which the tax 894  
commissioner is by law authorized and required to perform, and 895  
creating such divisions or sections of employees as, in the 896  
commissioner's judgment, is proper; 897

(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 928  
financial report or statement prepared or issued pursuant to 929  
division (A)(7) or (9) of section 126.21 of the Revised Code, the 930  
officers and employees of the auditor of state charged with 931  
conducting the audit shall have access to and the right to examine 932  
any state tax returns and state tax return information in the 933  
possession of the department to the extent that the access and 934  
examination are necessary for purposes of the audit. Any 935  
information acquired as the result of that access and examination 936  
shall not be divulged for any purpose other than as required for 937  
the audit or unless the officers and employees are required to 938  
testify in a court or proceeding under compulsion of legal 939  
process. Whoever violates this provision shall thereafter be 940  
disqualified from acting as an officer or employee or in any other 941  
capacity under appointment or employment of the auditor of state. 942

(2) As provided by section 6103(d)(2) of the Internal Revenue 943  
Code, any federal tax returns or federal tax information that the 944  
department has acquired from the internal revenue service, through 945  
federal and state statutory authority, may be disclosed to the 946  
auditor of state solely for purposes of an audit of the 947  
department. 948

(C) Division (A) of this section does not prohibit any of the 949  
following: 950

(1) Divulging information contained in applications, 951  
complaints, and related documents filed with the department under 952  
section 5715.27 of the Revised Code or in applications filed with 953  
the department under section 5715.39 of the Revised Code; 954

(2) Providing information to the office of child support 955  
within the department of job and family services pursuant to 956  
section 3125.43 of the Revised Code; 957

(3) Disclosing to the board of motor vehicle collision repair 958

registration any information in the possession of the department 959  
that is necessary for the board to verify the existence of an 960  
applicant's valid vendor's license and current state tax 961  
identification number under section 4775.07 of the Revised Code; 962

(4) Providing information to the administrator of workers' 963  
compensation pursuant to section 4123.591 of the Revised Code; 964

(5) Providing to the attorney general information the 965  
department obtains under division (J) of section 1346.01 of the 966  
Revised Code; 967

(6) Permitting properly authorized officers, employees, or 968  
agents of a municipal corporation from inspecting reports or 969  
information pursuant to rules adopted under section 5745.16 of the 970  
Revised Code. 971

(7) Providing information regarding the name, account number, 972  
or business address of a holder of a vendor's license issued 973  
pursuant to section 5739.17 of the Revised Code, a holder of a 974  
direct payment permit issued pursuant to section 5739.031 of the 975  
Revised Code, or a seller having a use tax account maintained 976  
pursuant to section 5741.17 of the Revised Code, or information 977  
regarding the active or inactive status of a vendor's license, 978  
direct payment permit, or seller's use tax account. 979

**Sec. 5703.37.** ~~Except as otherwise provided by section~~ 980  
~~5711.28, 5711.31, 5727.47, or 5731.27 of the Revised Code~~ Whenever 981  
service of a notice or order is required as provided in this 982  
section, a certified copy of every the order or notice, service of 983  
which is required, shall be served upon the person affected 984  
thereby either by personal ~~delivery~~ service or by certified mail. 985  
Within the time specified in ~~the~~ an order of the department of 986  
taxation, every person upon whom it is served, if required by the 987  
order, shall notify the department, ~~in like manner~~ by personal 988  
service, certified mail, or a delivery service authorized under 989

section 5703.056 of the Revised Code, whether the terms of the 990  
order are accepted and will be obeyed. 991

**Sec. 5703.51.** (A) The tax commissioner shall include in the 992  
instruction booklet for filing the annual return of personal 993  
property taxes a general description of the method by which the 994  
tax is assessed and collected and the rights and responsibilities 995  
of taxpayers in that process. 996

(B) At or before the commencement of an audit, the tax 997  
commissioner shall provide to the taxpayer a written description 998  
of the roles of the department of taxation and of the taxpayer 999  
during an audit and a statement of the taxpayer's rights, 1000  
including any right to obtain a refund of an overpayment of a tax. 1001  
At or before the commencement of an audit, the commissioner shall 1002  
inform the taxpayer when the audit is considered to have 1003  
commenced. 1004

(C) With or before the issuance of an assessment, the tax 1005  
commissioner or county auditor shall provide to the taxpayer: 1006

(1) A written description of the basis for the assessment and 1007  
any penalty required to be imposed with the assessment; 1008

(2) A written description of the taxpayer's right to appeal 1009  
the assessment and an explanation of the steps required to request 1010  
administrative review by the tax commissioner; 1011

(3) A written description of the collection remedies 1012  
available to the state, including a statement that if the taxpayer 1013  
fails to pay an ~~amount owed to the state~~ assessment within ~~thirty~~ 1014  
sixty days after it is due, the tax commissioner will certify the 1015  
amount to the attorney general for collection, and a summary of 1016  
the provisions contained in section 131.02 of the Revised Code. 1017

(D) With or before the issuance of a final determination of 1018  
the tax commissioner, the commissioner or county auditor shall 1019

provide to the taxpayer a written description of the steps 1020  
required to perfect an appeal to the board of tax appeals. 1021

(E) Except in cases involving suspected criminal violations 1022  
of the tax law or other criminal activity, the tax commissioner 1023  
shall conduct an audit of a taxpayer during regular business hours 1024  
and after providing reasonable notice to the taxpayer. A taxpayer 1025  
who is unable to comply with a proposed time for an audit on the 1026  
grounds that the proposed audit would cause inconvenience or 1027  
hardship must offer reasonable alternative dates for the audit. 1028

(F) At all stages of an audit or the administrative review of 1029  
the audit by the tax commissioner or county auditor, a taxpayer is 1030  
entitled to be assisted or represented by an attorney, accountant, 1031  
bookkeeper, or other tax practitioner. The tax commissioner shall 1032  
prescribe a form by which a taxpayer may designate such a person 1033  
to assist or represent ~~him~~ the taxpayer in the conduct of any 1034  
proceedings resulting from actions by the tax commissioner or 1035  
county auditor. In the absence of this form, the commissioner or 1036  
auditor may accept such other evidence as ~~he~~ the commissioner 1037  
considers appropriate that a person is the authorized 1038  
representative of a taxpayer. 1039

A taxpayer may refuse to answer any questions asked by the 1040  
person conducting the audit until ~~he~~ the taxpayer has an 1041  
opportunity to consult with ~~his~~ the taxpayer's attorney, 1042  
accountant, bookkeeper, or other tax practitioner. This division 1043  
does not authorize the practice of law by a person who is not an 1044  
attorney. 1045

(G) A taxpayer may record, electronically or otherwise, the 1046  
audit examination. 1047

(H) The failure of the tax commissioner or county auditor to 1048  
comply with a provision of this section shall neither excuse a 1049  
taxpayer from payment of any taxes shown to be owed by ~~him~~ the 1050

taxpayer nor cure any procedural defect in a taxpayer's case. 1051

(I) If the tax commissioner or county auditor fails to 1052  
substantially comply with the provisions of this section, the 1053  
commissioner, on application by the taxpayer, shall excuse the 1054  
taxpayer from penalties and interest arising from the audit or 1055  
assessment. 1056

A taxpayer shall make application to the commissioner under 1057  
this division within one year of the date the taxpayer knows of or 1058  
should have known that the commissioner or county auditor failed 1059  
to substantially comply with the provisions of this section. 1060

Sec. 5703.60. (A) If a petition for reassessment has been 1061  
properly filed under a law that specifies that this section 1062  
applies, the tax commissioner shall proceed as follows: 1063

(1) Except as provided in division (D) of this section, the 1064  
commissioner may correct the assessment by issuing a corrected 1065  
assessment. The corrected assessment may reduce or increase the 1066  
previous assessment, as the commissioner finds proper. The 1067  
commissioner shall send the corrected assessment by ordinary mail 1068  
to the same location to which the previous assessment was sent, 1069  
unless the petitioner notifies the commissioner otherwise. The 1070  
commissioner's mailing of the corrected assessment is an 1071  
assessment properly made and issued to the extent that the 1072  
previous assessment was properly made and issued, notwithstanding 1073  
any time limitation otherwise imposed by law. 1074

Within sixty days after the mailing of the corrected 1075  
assessment, the petitioner may file a new petition for 1076  
reassessment. The petition shall be filed in the same manner as 1077  
provided by law for filing the original petition. If a new 1078  
petition is properly filed within the sixty-day period, the 1079  
commissioner shall proceed under division (A)(2) or (3) of this 1080  
section. If a new petition is not properly filed within the 1081

sixty-day period, the corrected assessment becomes final, and the amount of the corrected assessment is due and payable from the person assessed.

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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.

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(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.

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(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

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of the Revised Code, and it is subject to appeal under section 1114  
5717.02 of the Revised Code. Only objections decided on the merits 1115  
by the board of tax appeals or a court shall be given the effect 1116  
of collateral estoppel or res judicata in considering an 1117  
application for refund of amounts paid pursuant to the assessment 1118  
or corrected assessment. 1119

(B) Except as provided in division (D) of this section, in 1120  
addition to the authority provided in division (A) of this section 1121  
and division (H) of section 5703.05 of the Revised Code, the tax 1122  
commissioner, on the commissioner's own motion, may issue a 1123  
corrected assessment with regard to the assessment of any tax for 1124  
which a properly filed petition for reassessment would be subject 1125  
to division (A) of this section. A corrected assessment may be 1126  
issued under this division only if the previous assessment has not 1127  
been certified to the attorney general for collection under 1128  
section 131.02 of the Revised Code, or is not an appeal pursuant 1129  
to section 5717.02 of the Revised Code. The corrected assessment 1130  
shall not increase the amount of tax, penalty, or additional 1131  
charge if the statute of limitations to issue a new assessment for 1132  
such increase has expired. The corrected assessment shall be 1133  
issued and reviewed in the same manner as a corrected assessment 1134  
under division (A)(1) of this section. 1135

(C) If the tax commissioner issues a corrected assessment or 1136  
final determination under this section that reduces an assessment 1137  
below the amount paid thereon, and the reduction is made at the 1138  
written request of the party assessed, either through the filing 1139  
of a proper petition for reassessment or otherwise, the 1140  
commissioner shall certify any overpayment as a refund due only to 1141  
the extent a refund could have been timely claimed when the 1142  
request was made. If the reduction is made on the commissioner's 1143  
own motion, the commissioner shall certify any overpayment as a 1144  
refund due only to the extent a refund could have been timely 1145

claimed at the time the reduction was made. 1146

(D) The tax commissioner shall not issue a corrected 1147  
assessment under division (A)(1) or (B) of this section after the 1148  
party assessed has requested in writing that the commissioner not 1149  
use that procedure. 1150

(E) This section does not require the tax commissioner to 1151  
issue a corrected assessment. 1152

**Sec. 5703.70.** (A) On the filing of an application for refund 1153  
under section 3734.905, 4307.05, 4307.07, 5727.28, 5727.91, 1154  
5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 1155  
5735.18, 5739.104, 5743.05, 5743.53, 5745.11, or 5749.08 of the 1156  
Revised Code, if the tax commissioner determines that the amount 1157  
of the refund to which the applicant is entitled is less than the 1158  
amount claimed in the application, the commissioner shall give the 1159  
applicant written notice by ordinary mail of the amount. The 1160  
notice shall be sent to the address shown on the application for a 1161  
refund unless the applicant notifies the commissioner of a 1162  
different address. The applicant shall have sixty days from the 1163  
date the commissioner mails the notice to provide additional 1164  
information to the commissioner or request a hearing, or both. 1165

(B) If the applicant neither requests a hearing nor provides 1166  
additional information to the tax commissioner within the time 1167  
prescribed by division (A) of this section, the commissioner shall 1168  
take no further action, and the refund amount denied becomes 1169  
final. 1170

(C)(1) If the applicant requests a hearing within the time 1171  
prescribed by division (A) of this section, the tax commissioner 1172  
shall assign a time and place for the hearing and notify the 1173  
applicant of such time and place, but the commissioner may 1174  
continue the hearing from time to time as necessary. After the 1175  
hearing, the commissioner may make such adjustments to the refund 1176

as the commissioner finds proper, and shall issue a final 1177  
determination thereon. 1178

(2) If the applicant does not request a hearing, but provides 1179  
additional information, within the time prescribed by division (A) 1180  
of this section, the commissioner shall review the information, 1181  
make such adjustments to the refund as the commissioner finds 1182  
proper, and issue a final determination thereon. 1183

(3) The commissioner shall serve a copy of the final 1185  
determination made under division (C)(1) or (2) of this section on 1186  
the applicant as provided in section 5703.37 of the Revised Code, 1187  
and the decision is final, subject to appeal under section 5717.02 1188  
of the Revised Code. 1189

(D) The tax commissioner shall certify to the director of 1190  
budget and management and treasurer of state for payment from the 1191  
tax refund fund created by section 5703.052 of the Revised Code, 1192  
the amount to be refunded under division (B) or (C) of this 1193  
section. 1194

**Sec. 5711.31.** Whenever the assessor assesses any property not 1195  
listed in or omitted from a return, or whenever the assessor 1196  
assesses any item or class of taxable property listed in a return 1197  
by the taxpayer in excess of the value or amount thereof as so 1198  
listed, or without allowing a claim duly made for deduction from 1199  
the net book value of accounts receivable, or depreciated book 1200  
value of personal property used in business, so listed, the 1201  
assessor shall give notice of such assessment to the taxpayer by 1202  
mail. The mailing of ~~such~~ the notice of assessment shall be 1203  
prima-facie evidence of the receipt of the same by the person to 1204  
whom such notice is addressed. With the notice, the assessor shall 1205  
provide instructions on how to petition for reassessment and 1206  
request a hearing on the petition. 1207

Within sixty days after the mailing of the notice of 1208  
assessment prescribed in this section, the party assessed may file 1209  
with the tax commissioner, in person or by certified mail, a 1210  
written petition for reassessment ~~in writing~~, signed by the party 1211  
assessed, or by ~~the~~ that party's authorized agent having knowledge 1212  
of the facts. If the petition is filed by certified mail, the date 1213  
of the United States postmark placed on the sender's receipt by 1214  
the postal employee to whom the petition is presented shall be 1215  
treated as the date of filing. The petition shall have attached 1216  
thereto and incorporated therein by reference a true copy of the 1217  
notice of assessment complained of, but the failure to attach a 1218  
copy of such notice and incorporate it by reference does not 1219  
invalidate the petition. The petition also shall indicate the 1220  
objections of the party assessed, but additional objections may be 1221  
raised in writing if received prior to the date shown on the final 1222  
determination by the commissioner. 1223

Upon receipt of a properly filed petition, the commissioner 1224  
shall notify the treasurer of state or the auditor and treasurer 1225  
of each county having any part of the assessment entered on the 1226  
tax list or duplicate. 1227

~~Unless~~ If the petitioner ~~waives requests~~ a hearing on the 1228  
petition, the commissioner shall assign a time and place for the 1229  
hearing ~~on the petition~~ and notify the petitioner of ~~the~~ such time 1230  
and place ~~of the hearing by personal service or certified mail~~, 1231  
but the commissioner may continue the hearing from time to time ~~if~~ 1232  
as necessary. 1233

The commissioner may make ~~such correction~~ corrections to the 1234  
assessment, as the commissioner finds proper. The commissioner 1235  
shall serve a copy of the commissioner's final determination on 1236  
the petitioner ~~by personal service or by certified mail~~, and in 1237  
the manner provided in section 5703.37 of the Revised Code. The 1238  
commissioner's decision in the matter ~~shall be~~ is final, subject 1239

to appeal ~~as provided in~~ under section 5717.02 of the Revised 1240  
Code. The commissioner also shall transmit a copy of the 1241  
commissioner's final determination to the treasurer of state or 1242  
applicable county auditor. In the absence of any further appeal, 1243  
or when a decision of the board of tax appeals or of any court to 1244  
which the decision has been appealed becomes final, the 1245  
commissioner shall notify the treasurer of state or the proper 1246  
county auditor of such final determination. If the final 1247  
determination orders correction of the assessment, the 1248  
notification may be in the form of a corrected assessment 1249  
certificate. Upon receipt of the notification, the treasurer of 1250  
state or the proper county auditor shall make any corrections to 1251  
the treasurer's or auditor's records and tax lists and duplicates 1252  
required in accordance therewith and proceed as prescribed by 1253  
section 5711.32 or 5725.22 of the Revised Code. 1254

The decision of the commissioner upon such petition for 1255  
reassessment shall be final with respect to the assessment of all 1256  
taxable property listed in the return of the taxpayer and shall 1257  
constitute to that extent the final determination of the 1258  
commissioner with respect to such assessment. Neither this section 1259  
nor a final judgment of the board of tax appeals or any court to 1260  
which such final determination may be appealed shall preclude the 1261  
subsequent assessment in the manner authorized by law of any 1262  
taxable property which such taxpayer failed to list in such 1263  
return, or which the assessor has not theretofore assessed. 1264

As used in this section, "taxpayer" includes financial 1265  
institutions, dealers in intangibles, and domestic insurance 1266  
companies as defined in section 5725.01 of the Revised Code. 1267

**Sec. 5715.49.** ~~No~~ (A) Except as provided in division (B) of 1268  
this section, no former or present county auditor or member of a 1269  
county board of revision shall divulge, except in the performance 1270  
of ~~his~~ official duties or upon the order of the department of 1271

taxation, or when called upon to testify in any court or 1272  
proceeding, any information acquired ~~by him~~ in the exercise of the 1273  
powers vested ~~in him~~ by the laws relating to taxation, or while 1274  
claiming to exercise any such powers, as to the transactions, 1275  
property, or business of any person, company, firm, corporation, 1276  
association, or partnership. Whoever violates this section shall 1277  
thereafter be disqualified from acting in any official capacity in 1278  
connection with the assessment or collection of taxes or 1279  
recoupment charges. 1280

(B) Division (A) of this section does not prohibit a county 1281  
auditor from divulging the name and business address of a vendor, 1282  
a vendor's license number, or information regarding the active or 1283  
inactive status of a vendor's license issued by the county auditor 1284  
pursuant to section 5739.17 of the Revised Code. 1285

**Sec. 5715.50.** ~~No~~ (A) Except as provided in division (B) of 1286  
this section, no former or present expert, clerk, or employee of a 1287  
county auditor, county board of revision, or the tax commissioner, 1288  
and no former or present deputy, assistant, or agent of the tax 1289  
commissioner shall divulge, except in the performance of ~~his~~ 1290  
official duties or in ~~his~~ any report to the county auditor, the 1291  
county board of revision, or the tax commissioner, or when called 1292  
upon to testify in any court or proceeding, any information 1293  
acquired ~~by him~~ in the exercise of the powers vested ~~in him~~ 1294  
therein by any law, or while claiming to exercise such powers, as 1295  
to the transactions, property, or business of any person, company, 1296  
firm, corporation, association, or partnership. Whoever violates 1297  
this section shall thereafter be disqualified from acting in any 1298  
official capacity in connection with the assessment or collection 1299  
of taxes or recoupment charges. ~~The~~ 1300

(B) Division (A) of this section does not prohibit the 1301  
divulgence of: 1302

(1) The name and address of the statutory agent in this state 1303  
and the names of officers and directors of any corporation 1304  
are not 1304  
within the prohibition of this section; 1305

(2) The name and business address of a vendor, vendor's 1306  
license number, or information regarding the active or inactive 1307  
status of a vendor's license issued by the county auditor pursuant 1308  
to section 5739.17 of the Revised Code. 1309

**Sec. 5717.02.** Except as otherwise provided by law, appeals 1310  
from final determinations by the tax commissioner of any 1311  
preliminary, amended, or final tax assessments, reassessments, 1312  
valuations, determinations, findings, computations, or orders made 1313  
by the commissioner may be taken to the board of tax appeals by 1314  
the taxpayer, by the person to whom notice of the tax assessment, 1315  
reassessment, valuation, determination, finding, computation, or 1316  
order by the commissioner is required by law to be given, by the 1317  
director of budget and management if the revenues affected by such 1318  
decision would accrue primarily to the state treasury, or by the 1319  
county auditors of the counties to the undivided general tax funds 1320  
of which the revenues affected by such decision would primarily 1321  
accrue. Appeals from the redetermination by the director of 1322  
development under division (B) of section 5709.64 or division (A) 1323  
of section 5709.66 of the Revised Code may be taken to the board 1324  
of tax appeals by the enterprise to which notice of the 1325  
redetermination is required by law to be given. Appeals from a 1326  
decision of the tax commissioner concerning an application for a 1327  
property tax exemption may be taken to the board of tax appeals by 1328  
a school district that filed a statement concerning such 1329  
application under division (C) of section 5715.27 of the Revised 1330  
Code. Appeals from a redetermination by the director of job and 1331  
family services under section 5733.42 of the Revised Code may be 1332  
taken by the person to which the notice of the redetermination is 1333  
required by law to be given under that section. 1334

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 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 1399  
assessed, but additional objections may be raised in writing if 1400  
received by the commissioner prior to the date shown on the final 1401  
determination ~~of the commissioner~~. ~~Upon receipt of~~ 1402

If a petition for reassessment has been properly filed 1403  
~~petition, the commissioner shall notify the treasurer of state.~~ 1404

~~Unless the petitioner waives a hearing, the commissioner~~ 1405  
~~shall grant the petitioner a hearing on the petition, assign a~~ 1406  
~~time and place for the hearing, and notify the petitioner of the~~ 1407  
~~time and place of the hearing as provided in proceed under section~~ 1408  
~~5703.37 5703.60 of the Revised Code. The commissioner may continue~~ 1409  
~~the hearing from time to time, if necessary.~~ 1410

~~If the party to whom the notice of assessment is directed~~ 1411  
~~does not file a petition for reassessment, the assessment is final~~ 1412  
~~and the amount of the assessment is due and payable from the~~ 1413  
~~company assessed to the treasurer of state.~~ 1414

~~(C) The tax commissioner may make any correction to the~~ 1415  
~~assessment that the commissioner finds proper and shall issue a~~ 1416  
~~final determination thereon. The commissioner shall serve a copy~~ 1417  
~~of the final determination on the petitioner as provided in~~ 1418  
~~section 5703.37 of the Revised Code, and the commissioner's~~ 1419  
~~decision in the matter is final, subject to appeal under section~~ 1420  
~~5717.02 of the Revised Code. The commissioner also shall transmit~~ 1421  
~~a copy of the final determination to the treasurer of state. Only~~ 1422  
~~objections decided on the merits by the board of tax appeals or a~~ 1423  
~~court shall be given collateral estoppel or res judicata effect in~~ 1424  
~~considering an application for refund of an amount paid pursuant~~ 1425  
~~to the assessment.~~ 1426

~~(D)~~(C) After an assessment becomes final, if any portion of 1427  
the assessment, including accrued interest, remains unpaid, a 1428  
certified copy of the tax commissioner's entry making the 1429  
assessment final may be filed in the office of the clerk of the 1430

court of common pleas in the county in which the natural gas 1431  
company's or combined company's principal place of business is 1432  
located, or in the office of the clerk of court of common pleas of 1433  
Franklin county. 1434

~~The clerk, immediately~~ Immediately on the filing of the 1435  
entry, ~~must~~ the clerk shall enter judgment for the state against 1436  
the company assessed in the amount shown on the entry. The 1437  
judgment may be filed by the clerk in a loose-leaf book entitled, 1438  
"special judgments for the public utility excise tax on natural 1439  
gas and combined companies," and shall have the same effect as 1440  
other judgments. Execution shall issue upon the judgment at the 1441  
request of the tax commissioner, and all laws applicable to sales 1442  
on execution shall apply to sales made under the judgment. 1443

The portion of the assessment not paid within sixty days 1444  
after the day the assessment was issued shall bear interest at the 1445  
rate per annum prescribed by section 5703.47 of the Revised Code 1446  
from the day the tax commissioner issues the assessment until it 1447  
is paid. Interest shall be paid in the same manner as the tax and 1448  
may be collected by the issuance of an assessment under this 1449  
section. 1450

~~(E)~~(D) If the tax commissioner believes that collection of 1451  
the tax will be jeopardized unless proceedings to collect or 1452  
secure collection of the tax are instituted without delay, the 1453  
commissioner may issue a jeopardy assessment against the ~~person~~ 1454  
company liable for the tax. ~~On~~ Immediately upon the issuance of 1455  
the jeopardy assessment, the commissioner ~~immediately~~ shall file 1456  
an entry with the clerk of the court of common pleas in the manner 1457  
prescribed by division ~~(D)~~(C) of this section. Notice of the 1458  
jeopardy assessment shall be served on the ~~party~~ company assessed 1459  
or the ~~party's legal representative as~~ company's authorized agent 1460  
in the manner provided in section 5703.37 of the Revised Code 1461  
within five days of the filing of the entry with the clerk. The 1462

total amount assessed is immediately due and payable, unless the 1463  
~~person~~ company assessed files a petition for reassessment in 1464  
accordance with division (B) of this section and provides security 1465  
in a form satisfactory to the commissioner and in an amount 1466  
sufficient to satisfy the unpaid balance of the assessment. Full 1467  
or partial payment of the assessment does not prejudice the 1468  
commissioner's consideration of the petition for reassessment. 1469

~~(F)~~(E) All interest collected by the tax commissioner under 1470  
this section shall be paid to the treasurer of state, and when 1471  
paid shall be considered revenue arising from the tax imposed by 1472  
section 5727.24 of the Revised Code. 1473

~~(G)~~(F) No assessment shall be made or issued against a 1474  
natural gas company or combined company for the tax imposed by 1475  
section 5727.24 of the Revised Code more than four years after the 1476  
return date for the period in which the tax was reported, or more 1477  
than four years after the return for the period was filed, 1478  
whichever is later. 1479

**Sec. 5727.28.** (A) The treasurer of state shall refund to a 1480  
natural gas company or combined company subject to the tax imposed 1481  
by section 5727.24 of the Revised Code, the amount of tax paid 1482  
illegally or erroneously, or paid on an illegal or erroneous 1483  
assessment. Applications for a refund shall be filed with the tax 1484  
commissioner, on a form prescribed by the commissioner, within 1485  
four years of the illegal or erroneous payment of the tax. 1486

On the filing of the application ~~for a refund~~, the 1487  
commissioner shall determine the amount of refund ~~due and to which~~ 1488  
the applicant is entitled. If the amount is not less than that 1489  
claimed, the commissioner shall certify that the amount to the 1490  
director of budget and management and treasurer of state for 1491  
payment from the tax refund fund under section 5703.052 of the 1492  
Revised Code. If the amount is less than that claimed, the 1493

commissioner shall proceed in accordance with section 5703.70 of 1494  
the Revised Code. 1495

1496

If the application for refund is for taxes paid on an illegal 1497  
or erroneous assessment, the ~~tax~~ commissioner shall include in the 1498  
certified amount interest calculated at the rate per annum 1499  
prescribed ~~under~~ by section 5703.47 of the Revised Code from the 1500  
date of overpayment to the date of the commissioner's 1501  
certification. 1502

(B) If a natural gas company or combined company entitled to 1503  
a refund of taxes under this section, or section 5703.70 of the 1504  
Revised Code, is indebted to the state for any tax or fee 1505  
administered by the tax commissioner that is paid to the state, or 1506  
any charge, penalty, or interest arising from such a tax or fee, 1507  
the amount refundable may be applied in satisfaction of that debt. 1508  
If the amount refundable is less than the amount of the debt, it 1509  
may be applied in partial satisfaction of the debt. If the amount 1510  
refundable is greater than the amount of the debt, the amount 1511  
remaining after satisfaction of the debt shall be refunded. 1512

(C) In lieu of granting a refund under division (A) or (B) of 1513  
this section, the tax commissioner may allow a natural gas company 1514  
or combined company to claim a credit of the amount of the tax 1515  
refund on the return for the period during which the tax became 1516  
refundable. The commissioner may require the company to submit 1517  
information to support a claim for a credit under this division, 1518  
and the commissioner may disallow the credit if the information is 1519  
not provided. 1520

**Sec. 5727.39.** (A) As used in this section: 1521

(1) "9-1-1 system" has the meaning given in section 4931.40 1522  
of the Revised Code. 1523

(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 1555  
section exceeds the total taxes due for the current year, ~~he~~ the 1556  
commissioner shall credit such excess against taxes due for 1557  
succeeding years until the full amount of the credit is granted. 1558

The estimated taxes required to be paid by section 5727.31 of 1559  
the Revised Code shall be based on the taxes for the preceding 1560  
year prior to any credit allowed under this section for that year. 1561

(C)(1) Within thirty days after June 18, 1985, the tax 1562  
commissioner shall compute the amount that represents twenty-five 1563  
per cent of the total taxes for all telephone companies computed 1564  
under section 5727.38 of the Revised Code based on the annual 1565  
statements required to be filed with the commissioner in 1566  
September, 1984, under section 5727.31 of the Revised Code. Such 1567  
amount shall constitute the credit ceiling for 1985. 1568

(2) Each ~~October~~ September, beginning in ~~1986~~ 2001, the 1569  
commissioner shall ~~multiply~~ determine the credit ceiling by 1570  
multiplying the preceding year's credit ceiling by the ~~current~~ 1571  
preceding calendar year's percentage change in the consumer price 1572  
index for all urban consumers for the midwest region, as 1573  
determined by the United States bureau of labor statistics. The 1574  
product thus obtained shall constitute the credit ceiling for the 1575  
current year. 1576

(D) After the last day a return may be filed by any telephone 1577  
company that is eligible to claim a credit under this section, the 1578  
commissioner shall determine whether the sum of the credits 1579  
allowed for all prior years plus the sum of the credits claimed 1580  
for the current year exceeds the current year's credit ceiling. If 1581  
it does, the credits allowed under this section for the current 1582  
year shall be reduced by a uniform percentage such that the sum of 1583  
the credits allowed for the current year plus the sum of the 1584  
credits allowed for all prior years equals the current year's 1585  
credit ceiling. Thereafter, no credit shall be granted under this 1586

division, except for the remaining portions of any credits allowed 1587  
in the current or any prior years ~~but~~ that have not been granted. 1588  
1589

**Sec. 5727.47.** (A) ~~A copy~~ Notice of each assessment certified 1590  
pursuant to section 5727.23 or 5727.38 of the Revised Code shall 1591  
be mailed to the public utility, and its mailing shall be 1592  
prima-facie evidence of its receipt by the public utility to which 1593  
it is addressed. With the notice, the tax commissioner shall 1594  
provide instructions on how to petition for reassessment and 1595  
request a hearing on the petition. If a public utility objects to 1596  
any assessment certified to it pursuant to such sections, it may 1597  
file a ~~petition for reassessment with the tax commissioner. The~~ 1598  
~~petition must be made in writing, signed by the authorized agent~~ 1599  
~~of the utility having knowledge of the facts, and filed with the~~ 1600  
~~tax commissioner, in person either personally or by certified~~ 1601  
mail, within sixty days ~~from~~ after the date that mailing of the 1602  
notice of assessment was mailed a written petition for 1603  
reassessment signed by the utility's authorized agent having 1604  
knowledge of the facts. If the petition is filed by certified 1605  
mail, the date of the United States postmark placed on the 1606  
sender's receipt by the postal employee to whom the petition is 1607  
presented shall be treated as the date of filing. The petition 1608  
shall indicate the utility's objections, but additional objections 1609  
may be raised in writing if received by the commissioner prior to 1610  
the date shown on the final determination ~~by the commissioner.~~ 1611

In the case of a petition seeking a reduction in taxable 1612  
value filed with respect to an assessment issued under section 1613  
5727.23 of the Revised Code, the petitioner shall state in the 1614  
petition the total amount of reduction in taxable value sought by 1615  
the petitioner. If the petitioner objects to the percentage of 1616  
true value at which taxable property is assessed by the ~~tax~~ 1617  
commissioner, the petitioner shall state in the petition the total 1618

amount of reduction in taxable value sought both with and without 1619  
regard to the objection pertaining to the percentage of true value 1620  
at which its taxable property is assessed. If a petitioner objects 1621  
to the ~~tax~~ commissioner's apportionment of the taxable value of 1622  
the petitioner's taxable property, the petitioner shall distinctly 1623  
state in the petition that the petitioner objects to the ~~tax~~ 1624  
commissioner's apportionment, and, within forty-five days after 1625  
filing the petition for reassessment, shall submit the 1626  
petitioner's proposed apportionment of the taxable value of its 1627  
taxable property among taxing districts. If a petitioner that 1628  
objects to the ~~tax~~ commissioner's apportionment fails to state its 1629  
objections to that apportionment in its petition for reassessment 1630  
or fails to submit its proposed apportionment within forty-five 1631  
days after filing the petition for reassessment, the ~~tax~~ 1632  
commissioner shall dismiss the petitioner's objection to the ~~tax~~ 1633  
commissioner's apportionment, and the taxable value of the 1634  
petitioner's taxable property, subject to any adjustment to 1635  
taxable value pursuant to the petition or appeal, shall be 1636  
apportioned in the manner used by the ~~tax~~ commissioner in the 1637  
preliminary or amended preliminary assessment issued under section 1638  
5727.23 of the Revised Code. 1639

If an additional objection seeking a reduction in taxable 1640  
value in excess of the reduction stated in the original petition 1641  
is properly and timely raised with respect to an assessment issued 1642  
under section 5727.23 of the Revised Code, the petitioner shall 1643  
state the total amount of the reduction in taxable value sought in 1644  
the additional objection both with and without regard to any 1645  
reduction in taxable value pertaining to the percentage of true 1646  
value at which taxable property is assessed. If a petitioner fails 1647  
to state the reduction in taxable value sought in the original 1648  
petition or in additional objections properly raised after the 1649  
petition is filed, the ~~tax~~ commissioner shall notify the 1650  
petitioner of the failure by certified mail. If the petitioner 1651

fails to notify the ~~tax~~ commissioner in writing of the reduction 1652  
in taxable value sought in the petition or in an additional 1653  
objection within thirty days after receiving the ~~tax~~ 1654  
commissioner's notice, the ~~tax~~ commissioner shall dismiss the 1655  
petition or the additional objection in which that reduction is 1656  
sought. 1657

(B)(1) Subject to divisions (B)(2) and (3) of this section, a 1658  
public utility filing a petition for reassessment regarding an 1659  
assessment issued under section 5727.23 or 5727.38 of the Revised 1660  
Code shall pay the tax with respect to the assessment objected to 1661  
as required by law. The acceptance of any tax payment by the 1662  
treasurer of state or any county treasurer shall not prejudice any 1663  
claim for taxes on final determination by the ~~tax~~ commissioner or 1664  
final decision by the board of tax appeals or any court. 1665

(2) If a public utility properly and timely files a petition 1666  
for reassessment regarding an assessment issued under section 1667  
5727.23 of the Revised Code, the petitioner shall pay the tax as 1668  
prescribed by divisions (B)(2)(a), (b), and (c) of this section: 1669

(a) If the petitioner does not object to the ~~tax~~ 1670  
commissioner's apportionment of the taxable value of the 1671  
petitioner's taxable property, the petitioner is not required to 1672  
pay the part of the tax otherwise due on the taxable value that 1673  
the petitioner seeks to have reduced, subject to division 1674  
(B)(2)(c) of this section. 1675

(b) If the petitioner objects to the ~~tax~~ commissioner's 1676  
apportionment of the taxable value of the petitioner's taxable 1677  
property, the petitioner is not required to pay the tax otherwise 1678  
due on the part of the taxable value apportioned to any taxing 1679  
district that the petitioner objects to, subject to division 1680  
(B)(2)(c) of this section. If, pursuant to division (A) of this 1681  
section, the petitioner has, in a proper and timely manner, 1682  
apportioned taxable value to a taxing district to which the ~~tax~~ 1683

commissioner did not apportion the petitioner's taxable value, the 1684  
petitioner shall pay the tax due on the taxable value that the 1685  
petitioner has apportioned to the taxing district, subject to 1686  
division (B)(2)(c) of this section. 1687

(c) If a petitioner objects to the percentage of true value 1688  
at which taxable property is assessed by the ~~tax~~ commissioner, the 1689  
petitioner shall pay the tax due on the basis of the percentage of 1690  
true value at which the public utility's taxable property is 1691  
assessed by the ~~tax~~ commissioner. In any case, the petitioner's 1692  
payment of tax shall not be less than the amount of tax due based 1693  
on the taxable value reflected on the last appeal notice issued by 1694  
the ~~tax~~ commissioner under division (C) of this section. Until the 1695  
county auditor receives notification under division (E) of this 1696  
section and proceeds under section 5727.471 of the Revised Code to 1697  
issue any refund that is found to be due, the county auditor shall 1698  
not issue a refund for any increase in the reduction in taxable 1699  
value that is sought by a petitioner later than forty-five days 1700  
after the petitioner files the original petition as required under 1701  
division (A) of this section. 1702

(3) Any part of the tax that, under division (B)(2)(a) ~~+~~ or 1703  
(b) of this section, is not paid shall be collected upon receipt 1704  
of the notification as provided in section 5727.471 of the Revised 1705  
Code with interest thereon computed in the same manner as interest 1706  
is computed under division (E) of section 5715.19 of the Revised 1707  
Code, subject to any correction of the assessment by the ~~tax~~ 1708  
commissioner under division (E) of this section or the final 1709  
judgment of the board of tax appeals or a court to which the 1710  
board's final judgment is appealed. The penalty imposed under 1711  
section 323.121 of the Revised Code shall apply only to the unpaid 1712  
portion of the tax if the petitioner's tax payment is less than 1713  
the amount of tax due based on the taxable value reflected on the 1714  
last appeal notice issued by the ~~tax~~ commissioner under division 1715

(C) of this section. 1716

(C) Upon receipt of a properly filed petition for 1717  
reassessment, the tax commissioner shall notify the treasurer of 1718  
state or the auditor of each county to which the assessment 1719  
objected to has been certified. In the case of a petition with 1720  
respect to an assessment issued under section 5727.23 of the 1721  
Revised Code, the ~~tax~~ commissioner shall issue an appeal notice 1722  
within thirty days after receiving the amount of the taxable value 1723  
reduction and apportionment changes sought by the petitioner in 1724  
the original petition or in any additional objections properly and 1725  
timely raised by the petitioner. The appeal notice shall indicate 1726  
the amount of the reduction in taxable value sought in the 1727  
petition or in the additional objections and the extent to which 1728  
the reduction in taxable value and any change in apportionment 1729  
requested by the petitioner would affect the ~~tax~~ commissioner's 1730  
apportionment of the taxable value among taxing districts in the 1731  
county as shown in the assessment. If a petitioner is seeking a 1732  
reduction in taxable value on the basis of a lower percentage of 1733  
true value than the percentage at which the ~~tax~~ commissioner 1734  
assessed the petitioner's taxable property, the appeal notice 1735  
shall indicate the reduction in taxable value sought by the 1736  
petitioner without regard to the reduction sought on the basis of 1737  
the lower percentage and shall indicate that the petitioner is 1738  
required to pay tax on the reduced taxable value determined 1739  
without regard to the reduction sought on the basis of a lower 1740  
percentage of true value, as provided under division (B)(2)(c) of 1741  
this section. The appeal notice shall include a statement that the 1742  
reduced taxable value and the apportionment indicated in the 1743  
notice are not final and are subject to adjustment by the ~~tax~~ 1744  
commissioner or by the board of tax appeals or a court on appeal. 1745  
If the ~~tax~~ commissioner finds an error in the appeal notice, the 1746  
~~tax~~ commissioner may amend the notice, but the notice is only for 1747  
informational and tax payment purposes; the notice is not subject 1748

to appeal by any person. The ~~tax~~ commissioner also shall mail a 1749  
copy of the appeal notice to the petitioner. Upon the request of a 1750  
taxing authority, the county auditor may disclose to the taxing 1751  
authority the extent to which a reduction in taxable value sought 1752  
by a petitioner would affect the apportionment of taxable value to 1753  
the taxing district or districts under the taxing authority's 1754  
jurisdiction, but such a disclosure does not constitute a notice 1755  
required by law to be given for the purpose of section 5717.02 of 1756  
the Revised Code. 1757

(D) ~~Unless~~ If the petitioner ~~waives~~ requests a hearing on the 1758  
petition, the tax commissioner shall assign a time and place for 1759  
the hearing on the petition and notify the petitioner of the such 1760  
time and place ~~of the hearing by personal service or certified~~ 1761  
~~mail~~, but the commissioner may continue the hearing from time to 1762  
time if as necessary. 1763

(E) The tax commissioner may make ~~such correction~~ corrections 1764  
to the assessment as the ~~tax~~ commissioner finds proper. The ~~tax~~ 1765  
commissioner shall serve a copy of the commissioner's final 1766  
determination on the petitioner ~~by personal service or certified~~ 1767  
~~mail, and in~~ the tax manner provided in section 5703.37 of the 1768  
Revised Code. The commissioner's decision in the matter shall be 1769  
final, subject to appeal ~~as provided in~~ under section 5717.02 of 1770  
the Revised Code. The ~~tax~~ commissioner also shall transmit a copy 1771  
of the final determination to the treasurer of state or applicable 1772  
county auditor. In the absence of any further appeal, or when a 1773  
decision of the board of tax appeals or of any court to which the 1774  
decision has been appealed becomes final, the ~~tax~~ commissioner 1775  
shall notify the public utility and, as appropriate, the treasurer 1776  
of state who shall proceed under section 5727.42 of the Revised 1777  
Code, or the applicable county auditor who shall proceed under 1778  
section 5727.471 of the Revised Code. ~~In any notification~~ 1779  
~~regarding an assessment issued under section 5727.23 of the~~ 1780

~~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.

~~(2) "State basic aid overpayment" for a school district means the amount by which the payment computed for a fiscal year under section 3317.022 of the Revised Code exceeds the amount that would have been computed for that fiscal year if the taxable value certified under division (A)(2) and (B) of section 3317.021 of the Revised Code for the tax year preceding that fiscal 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 1843  
decision within sixty days after receipt of the notification. The 1844  
auditor shall make payment of any refund under division (B)(1) or 1845  
(2) of this section within ninety days after receipt of the 1846  
notification. Except as otherwise provided in division (C)(2) of 1847  
this section, any amount to be credited under division (B)(2) or 1848  
(3) of this section shall be applied to all or a part of the taxes 1849  
otherwise due from the public utility on real and public utility 1850  
property tax installment due dates after the date on which the 1851  
notification was received, but shall not be spread over more than 1852  
the next ten ensuing installment due dates. If any portion of the 1853  
overpayment has not been refunded or credited by the tenth such 1854  
tax installment due date after the date on which the notification 1855  
was received, the auditor immediately shall refund that portion. 1856

(2) The tax commissioner may certify to a county auditor, in 1857  
writing, that a public utility is no longer required to file a 1858  
report under section 5727.08 of the Revised Code. Within ninety 1859  
days of the date of such certification, the auditor shall refund 1860  
to the utility, with applicable interest, the portion of any 1861  
overpayment that has not been refunded or credited to the utility 1862  
under this section. 1863

(D) The auditor shall add interest to the amount of any 1864  
overpayment of taxes at the rate per calendar month, rounded to 1865  
the nearest one-hundredth of one per cent, equal to one-twelfth of 1866  
the rate per annum prescribed by section 5703.47 of the Revised 1867  
Code. The interest shall begin to accrue from the first day of the 1868  
month following the date of the overpayment until the last day of 1869  
the month preceding the date the overpayment or portion of the 1870  
overpayment is refunded or credited, and shall be computed 1871  
separately on each amount actually refunded or credited. In 1872  
computing interest on credits, when an overpayment is credited 1873  
against an installment of current taxes due from the utility 1874

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 1906  
on how to petition for reassessment and request a hearing on the 1907  
petition. 1908

The tax commissioner may issue an assessment for which the 1909  
tax imposed by section 5727.81 or 5727.811 of the Revised Code was 1910  
due and unpaid on the date the person was informed by an agent of 1911  
the tax commissioner of an investigation or audit of the person. 1912  
Any payment of the tax for the period covered by the assessment, 1913  
after the person is so informed, shall be credited against the 1914  
assessment. 1915

A penalty of up to fifteen per cent may be added to all 1916  
amounts assessed under this section. The commissioner may adopt 1917  
rules providing for the imposition and remission of penalties. 1918

(B) Unless the party assessed files with the tax commissioner 1919  
within sixty days after service of the notice of assessment, 1920  
either personally or by certified mail, a written petition for 1921  
reassessment signed by the party assessed or ~~the~~ that party's 1922  
authorized agent having knowledge of the facts, the assessment ~~is~~ 1923  
becomes final and the amount of the assessment is due and payable 1924  
from the party assessed to the treasurer of state. The petition 1925  
shall indicate the objections of the party assessed, but 1926  
additional objections may be raised in writing if received by the 1927  
commissioner prior to the date shown on the final determination ~~of~~ 1928  
~~the tax commissioner. The commissioner shall grant the petitioner~~ 1929  
~~a hearing on the petition, unless waived by the petitioner.~~ 1930

1931  
~~(C) The commissioner may make any correction to the~~ 1932  
~~assessment that the commissioner finds proper and shall issue a~~ 1933  
~~final determination thereon. The commissioner shall serve a copy~~ 1934  
~~of the final determination on the petitioner either by personal~~ 1935  
~~service or by certified mail as provided in section 5703.37 of the~~ 1936  
~~Revised Code, and the commissioner's decision in the matter is~~ 1937

~~final, subject to appeal under section 5717.02 of the Revised~~ 1938  
~~Code. If the petition has been properly filed, the commissioner~~ 1939  
~~shall proceed under section 5703.60 of the Revised Code.~~ 1940

~~(D)~~(C) After an assessment becomes final, if any portion of 1941  
the assessment, including accrued interest, remains unpaid, a 1942  
certified copy of the tax commissioner's entry making the 1943  
assessment final may be filed in the office of the clerk of the 1944  
court of common pleas in the county in which the party assessed 1945  
resides or in which the party's business is conducted. If the 1946  
party assessed maintains no place of business in this state and is 1947  
not a resident of this state, the certified copy of the entry may 1948  
be filed in the office of the clerk of the court of common pleas 1949  
of Franklin county. 1950

~~The clerk, immediately~~ Immediately upon the filing of the 1951  
entry, the clerk shall enter a judgment for the state against the 1952  
person assessed in the amount shown on the entry. The judgment may 1953  
be filed by the clerk in a loose-leaf book entitled "special 1954  
judgments for the distribution excise taxes," and shall have the 1955  
same effect as other judgments. Execution shall issue upon the 1956  
judgment at the request of the tax commissioner, and all laws 1957  
applicable to sales on execution shall apply to sales made under 1958  
the judgment. 1959

The portion of the assessment not paid within sixty days 1960  
after the day the assessment was issued shall bear interest at the 1961  
rate per annum prescribed by section 5703.47 of the Revised Code 1962  
from the day the tax commissioner issues the assessment until the 1963  
day the assessment is paid. Interest shall be paid in the same 1964  
manner as the tax and may be collected by the issuance of an 1965  
assessment under this section. 1966

~~(E)~~(D) If the tax commissioner believes that collection of 1967  
the tax imposed by section 5727.81 or 5727.811 of the Revised Code 1968  
will be jeopardized unless proceedings to collect or secure 1969

collection of the tax are instituted without delay, the 1970  
commissioner may issue a jeopardy assessment against the person 1971  
liable for the tax. ~~Upon~~ Immediately upon the issuance of the 1972  
jeopardy assessment, the commissioner ~~immediately~~ shall file an 1973  
entry with the clerk of the court of common pleas in the manner 1974  
prescribed by division ~~(D)~~(C) of this section. Notice of the 1975  
jeopardy assessment shall be served on the party assessed or the 1976  
party's legal representative within five days of the filing of the 1977  
entry with the clerk. The total amount assessed is immediately due 1978  
and payable, unless the party assessed files a petition for 1979  
reassessment in accordance with division (B) of this section and 1980  
provides security in a form satisfactory to the commissioner and 1981  
in an amount sufficient to satisfy the unpaid balance of the 1982  
assessment. Full or partial payment of the assessment does not 1983  
prejudice the commissioner's consideration of the petition for 1984  
reassessment. 1985

~~(F)~~(E) All money collected by the tax commissioner under this 1986  
section shall be paid to the treasurer of state, and when paid 1987  
shall be considered as revenue arising from the taxes imposed by 1988  
sections 5727.81 and 5727.811 of the Revised Code. 1989

**Sec. 5727.91.** (A) The treasurer of state shall refund the 1990  
amount of tax paid under section 5727.81 or 5727.811 of the 1991  
Revised Code that was paid illegally or erroneously, or paid on an 1992  
illegal or erroneous assessment. A natural gas distribution 1993  
company, an electric distribution company, or a self-assessing 1994  
purchaser shall file an application for a refund with the tax 1995  
commissioner on a form prescribed by the commissioner, within four 1996  
years of the illegal or erroneous payment of the tax. 1997

~~Upon~~ On the filing of the application, the commissioner shall 1998  
determine the amount of refund ~~due and to which the applicant is~~ 1999  
entitled. If the amount is not less than that claimed, the 2000  
commissioner shall certify that amount to the director of budget 2001

and management and the treasurer of state for payment from the tax 2002  
refund fund under section 5703.052 of the Revised Code. If the 2003  
amount is less than that claimed, the commissioner shall proceed 2004  
in accordance with section 5703.70 of the Revised Code. 2005

If the application for refund is for taxes paid on an illegal 2006  
or erroneous assessment, the ~~tax~~ commissioner shall include in the 2007  
certified amount interest calculated at the rate per annum ~~under~~ 2008  
prescribed by section 5703.47 of the Revised Code from the date of 2009  
overpayment to the date of the commissioner's certification. 2010

(B) If a natural gas distribution company or an electric 2011  
distribution company entitled to a refund of taxes under this 2012  
section, or section 5703.70 of the Revised Code, is indebted to 2013  
the state for any tax or fee administered by the tax commissioner 2014  
that is paid to the state, or any charge, penalty, or interest 2015  
arising from such a tax or fee, the amount refundable may be 2016  
applied in satisfaction of the debt. If the amount refundable is 2017  
less than the amount of the debt, it may be applied in partial 2018  
satisfaction of the debt. If the amount refundable is greater than 2019  
the amount of the debt, the amount remaining after satisfaction of 2020  
the debt shall be refunded. If the natural gas distribution 2021  
company or electric distribution company has more than one such 2022  
debt, any debt subject to section 5739.33 or division (G) of 2023  
section 5747.07 of the Revised Code shall be satisfied first. This 2024  
section applies only to debts that have become final. 2025

(C)(1) Any electric distribution company that can 2027  
substantiate to the tax commissioner that the tax imposed by 2028  
section 5727.81 of the Revised Code was paid on electricity 2029  
distributed via wires and consumed at a location outside of this 2030  
state may claim a refund in the manner and within the time period 2031  
prescribed in division (A) of this section. 2032

(2) Any natural gas distribution company that can 2033

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 2127  
control and jurisdiction of the Ohio turnpike commission created 2128  
by the provisions of section 5537.02 of the Revised Code and land 2129  
and lots over which the public, either as user or owner, generally 2130  
has a right to pass even though such land or lots are closed 2131  
temporarily by public authorities for the purpose of construction, 2132  
reconstruction, maintenance, or repair. 2133

**Sec. 5728.02.** (A) Except as provided in section 5728.03 of 2134  
the Revised Code, every person who is liable for the tax imposed 2135  
by section 5728.06 of the Revised Code on the operation of a 2136  
commercial car with three or more axles when operated alone or as 2137  
part of a commercial tandem, a commercial car with two axles that 2138  
is to be operated as part of a commercial tandem with a gross 2139  
vehicle weight or a registered gross vehicle weight exceeding 2140  
twenty-six thousand pounds, or a commercial tractor that is, or is 2141  
to be, operated or driven upon a public highway shall cause to be 2142  
filed annually with the tax commissioner a written application for 2143  
a highway fuel use permit on blank forms to be furnished by the 2144  
commissioner for that purpose. 2145

Each application for a highway fuel use permit for a 2146  
commercial car or a commercial tractor shall contain any 2147  
information the tax commissioner prescribes. 2148

(B) Upon receipt of the application, the tax commissioner 2149  
shall issue to the person making the application a highway fuel 2150  
use permit and any identification device that the commissioner 2151  
considers necessary for the proper administration of this chapter. 2152  
The permit and the identification device shall be of a design and 2153  
contain any information the commissioner considers necessary. The 2154  
identification device shall be displayed on the commercial car or 2155  
commercial tractor for which it was issued at all times in the 2156  
manner the commissioner prescribes. The highway fuel use permits 2157

and the identification device shall not be transferable. In case 2158  
of the loss of a ~~highway~~ fuel use permit or identification device, 2159  
the commissioner shall issue a duplicate of the permit or device. 2160

The ~~highway~~ fuel use permit shall be valid until it expires 2161  
or is suspended or surrendered. 2162

**Sec. 5728.03.** (A) In lieu of filing an application for an 2163  
annual ~~highway~~ fuel use permit under section 5728.02 of the 2164  
Revised Code and in lieu of filing returns under section 5728.08 2165  
of the Revised Code, a person who is the owner of a commercial car 2166  
with three or more axles when operated alone or as part of a 2167  
commercial tandem, a commercial car with two axles that is to be 2168  
operated as part of a commercial tandem with a gross vehicle 2169  
weight or a registered gross vehicle weight exceeding twenty-six 2170  
thousand pounds, or a commercial tractor that is, or is to be, 2171  
operated or driven upon a public highway, may file an application 2172  
with the tax commissioner for a single-trip ~~highway~~ fuel use 2173  
permit. The application shall be based on rules adopted by the tax 2174  
commissioner and shall include an amount estimated to be 2175  
substantially equivalent to the ~~highway use and motor vehicle~~ fuel 2176  
use tax liability that the applicant will incur by driving on the 2177  
highways of this state during the period covered by the 2178  
single-trip permit. The amount so estimated shall be considered to 2179  
be the ~~highway use tax and motor vehicle~~ fuel use tax liability so 2180  
incurred. 2181

The commissioner may authorize independent permit services or 2182  
other persons to issue single-trip ~~highway~~ fuel use permits. 2183

(B) The tax commissioner shall adopt rules establishing all 2184  
of the following: 2185

(1) Procedures for the issuance of single-trip permits; 2186

(2) The length of time the permits are effective; 2187

(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; 2188  
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2190

(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. 2191  
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(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. 2195  
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(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. 2199  
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2201

**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. 2202  
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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, 2212  
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and the certificate of title number of the commercial car or 2219  
commercial tractor. 2220

**Sec. ~~5735.311~~ 5728.05.** The tax commissioner may enter into 2221  
cooperative reciprocal agreements providing for the imposition of 2222  
~~motor~~ fuel use taxes on an apportionment or allocation basis with 2223  
the proper authority of any state, any commonwealth, the District 2224  
of Columbia, a state or province of a foreign country, or a 2225  
territory or possession of the United States or of a foreign 2226  
country. The agreement may provide for determining the base state 2227  
for fuel users, users' records requirements, audit procedures, 2228  
exchange of information, the definition of qualified motor 2229  
vehicles, bonding requirements, reporting requirements, reporting 2230  
periods, specifying uniform penalty and interest for late 2231  
reporting or payment, determining methods of collecting and 2232  
remitting fuel use taxes to member jurisdictions, and such other 2233  
provisions as will facilitate the administration of the agreement. 2234

To any extent provisions of the Revised Code governing the 2235  
administration of the tax levied by section ~~5735.31~~ 5728.06 of the 2236  
Revised Code are irreconcilable with provisions of a reciprocal 2237  
agreement entered into pursuant to this section, the provisions of 2238  
the reciprocal agreement prevail. 2239

The agreement may provide for the ~~tax~~ commissioner to audit 2240  
the records of persons based in this state for purposes of the 2241  
agreement in order to determine whether the fuel use taxes due 2242  
each member jurisdiction are properly reported and paid. If any 2243  
person based in this state fails to properly report and pay fuel 2244  
use taxes as required by the agreement, the ~~tax~~ commissioner may 2245  
issue an assessment against that person pursuant to the provisions 2246  
of the agreement and section 5728.10 of the Revised Code. 2247

The ~~tax~~ commissioner may exchange with the proper officers of 2248  
other member jurisdictions and with the repository of the 2249

agreement any information in the commissioner's possession 2250  
relative to the administration and enforcement of the agreement. 2251  
The exchange of information under this section is not a violation 2252  
of section 5703.21 or 5715.50 of the Revised Code. For purposes of 2253  
this section, "proper officers of other member jurisdictions" 2254  
includes officers of any agency, department, or instrumentality of 2255  
another member jurisdiction with authority under the laws of that 2256  
jurisdiction to administer or enforce motor vehicle or taxation 2257  
laws. 2258

The ~~tax~~ commissioner may adopt rules for the administration 2259  
and enforcement of the agreement entered into pursuant to this 2260  
section, and shall prescribe and supply necessary forms. 2261

The commissioner may provide information necessary for the 2262  
administration and enforcement of this chapter to persons who 2263  
collect such information for the purpose of providing it to other 2264  
persons that are responsible for the administration and 2265  
enforcement of motor vehicle or tax laws. The information provided 2266  
by the commissioner shall identify the taxpayer and the status of 2267  
the taxpayer's account obtained from the filings required under 2268  
sections 5728.01 to 5728.14 of the Revised Code. Providing such 2269  
information under this section is not a violation of section 2270  
5703.21 or 5715.50 of the Revised Code. 2271

~~Sec. 5728.06. For the purpose of providing revenues to pay 2272~~  
~~the cost of administering and enforcing the laws pertaining to the 2273~~  
~~levy and collection of the tax imposed by this section, to provide 2274~~  
~~funds to pay the state's share of the cost of constructing or 2275~~  
~~reconstructing highways and eliminating railway grade crossings on 2276~~  
~~the major thoroughfares of the state highway system and urban 2277~~  
~~extensions thereof, and to pay the interest, principal, and 2278~~  
~~charges on highway obligations issued pursuant to Section 2i of 2279~~  
~~Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 2280~~  
~~of the Revised Code, there is hereby levied a highway use tax upon 2281~~

~~each commercial car with three or more axles when operated alone 2282  
or as part of a commercial tandem, each commercial car with two 2283  
axles used as a part of a commercial tandem with a gross vehicle 2284  
weight or a registered gross vehicle weight exceeding twenty-six 2285  
thousand pounds, and each commercial tractor operated alone or 2286  
used as part of a commercial tractor combination or commercial 2287  
tandem. Except as provided in section 5728.05 of the Revised Code, 2288  
the rates shall be as follows: 2289~~

~~(A) One-half cent for each mile traveled on a public highway 2290  
in Ohio by each commercial car with three or more axles; 2291~~

~~(B) One cent for each mile traveled on a public highway in 2292  
Ohio by a commercial tandem with three axles or a commercial 2293  
tractor operated alone or as part of a commercial tractor 2294  
combination with three axles; 2295~~

~~(C) One and one-half cents for each mile traveled on a public 2296  
highway in Ohio by a commercial tractor operated as a part of a 2297  
commercial tractor combination with four axles; 2298~~

~~(D) Two cents for each mile traveled on a public highway in 2299  
Ohio by a commercial tractor operated as part of a commercial 2300  
tractor combination with a total of five or more axles; 2301~~

~~(E) Two and one-half cents for each mile traveled on a public 2302  
highway in Ohio by each commercial car or commercial tractor 2303  
operated as part of a commercial tandem with four or more axles. 2304  
For the following purposes, an excise tax is hereby imposed on the 2305  
use of motor fuel to operate on the public highways of this state 2306  
a commercial car with three or more axles operated alone or as 2307  
part of a commercial tandem, a commercial car with two axles 2308  
operated as part of a commercial tandem having a gross vehicle 2309  
weight or registered gross vehicle weight exceeding twenty-six 2310  
thousand pounds, or a commercial tractor operated alone or as part 2311  
of a commercial tractor combination or commercial tandem: to 2312  
provide revenue for maintaining the state highway system, to widen 2313~~

existing surfaces on such highways, to resurface such highways, to 2314  
enable the counties of the state properly to plan for, maintain, 2315  
and repair their roads, to enable the municipal corporations to 2316  
plan, construct, reconstruct, repave, widen, maintain, repair, 2317  
clear, and clean public highways, roads, and streets; to pay that 2318  
portion of the construction cost of a highway project that a 2319  
county, township, or municipal corporation normally would be 2320  
required to pay, but that the director of transportation, pursuant 2321  
to division (B) of section 5531.08 of the Revised Code, determines 2322  
instead will be paid from moneys in the highway operating fund; to 2323  
maintain and repair bridges and viaducts; to purchase, erect, and 2324  
maintain street and traffic signs and markers; to purchase, erect, 2325  
and maintain traffic lights and signals; to pay the costs 2326  
apportioned to the public under section 4907.47 of the Revised 2327  
Code; and to supplement revenue already available for such 2328  
purposes, to distribute equitably among those persons using the 2329  
privilege of driving motor vehicles upon such highways and streets 2330  
the cost of maintaining and repairing the same, and to pay the 2331  
interest, principal, and charges on bonds and other obligations 2332  
issued pursuant to Section 2i of Article VIII, Ohio Constitution, 2333  
and sections 5528.30 and 5528.31 of the Revised Code. The tax is 2334  
imposed in the same amount as the motor fuel tax imposed under 2335  
Chapter 5735. of the Revised Code plus an additional tax of three 2336  
cents per gallon, as determined by the gallons consumed while 2337  
operated on the public highways of this state. Payment of the fuel 2338  
use tax shall be made by the purchase of motor fuel within Ohio of 2339  
such gallons as is equivalent to the gallons consumed while 2340  
operating such a motor vehicle on the public highways of this 2341  
state, or by direct remittance to the treasurer of state with the 2342  
fuel use tax return filed pursuant to section 5728.08 of the 2343  
Revised Code. 2344

Any person subject to the tax imposed under this section who 2345  
purchases motor fuel in this state for use in another state in 2346

excess of the amount consumed while operating such motor vehicle 2347  
on the public highways of this state shall be allowed a credit 2348  
against the tax imposed by this section or a refund equal to the 2349  
motor fuel tax paid to this state on such excess. No such credit 2350  
or refund shall be allowed for taxes paid to any state that 2351  
imposes a tax on motor fuel purchased or obtained in this state 2352  
and used on the highways of such other state but does not allow a 2353  
similar credit or refund for the tax paid to this state on motor 2354  
fuel purchased or acquired in the other state and used on the 2355  
public highways of this state. 2356

The tax commissioner is authorized to determine whether such 2357  
credits or refunds are available and to prescribe such rules as 2358  
are required for the purpose of administering this chapter. 2359

(B) Within sixty days after the last day of each month, the 2360  
tax commissioner shall determine the amount of motor fuel tax 2361  
allowed as a credit against the tax imposed by this section. The 2362  
commissioner shall certify the amount to the director of budget 2363  
and management and the treasurer of state, who shall credit the 2364  
amount in accordance with section 5728.08 of the Revised Code from 2365  
current revenue arising from the tax levied by section 5735.05 of 2366  
the Revised Code. 2367

(C) The owner of each commercial car and commercial tractor 2368  
subject to sections 5728.01 to 5728.14 of the Revised Code shall 2369  
be is liable for the payment of the full amount of the taxes 2370  
levied herein imposed by this section. 2371

An owner who is a person regularly engaged, for compensation, 2372  
in the business of leasing or renting motor vehicles without 2373  
furnishing drivers may designate that the lessee of a motor 2374  
vehicle leased for a period of thirty days or more shall report 2375  
and pay the tax incurred during the duration of the lease. An 2376  
owner who is an independent contractor that furnishes both the 2377  
driver and motor vehicle, may designate that the person so 2378

furnished with the driver and motor vehicle for a period of thirty 2379  
days or more shall report and pay the tax incurred during that 2380  
period. An independent contractor that is not an owner, but that 2381  
furnishes both the driver and motor vehicle and that has been 2382  
designated by the owner of the motor vehicle to report and pay the 2383  
tax, may designate that the person so furnished with driver and 2384  
motor vehicle for a period of thirty days or more shall report and 2385  
pay the tax incurred during that period. 2386

**Sec. 5728.061.** The treasurer of state shall refund the amount 2387  
of ~~highway fuel~~ use taxes overpaid, paid illegally or erroneously, 2388  
or paid on any illegal or erroneous assessment. Applications for 2389  
refund shall be filed with the tax commissioner, on the form 2390  
prescribed by ~~him~~ the commissioner, within four years from the 2391  
date of the overpayment, the illegal or erroneous payment of the 2392  
tax, or the payment of the illegal or erroneous assessment. An 2393  
application shall be filed by the person who made payment of the 2394  
tax for which the refund is claimed. When a refund is granted for 2395  
payment of an illegal or erroneous assessment issued by the 2396  
commissioner, the refund shall include interest on the amount of 2397  
the refund from the date of the ~~overpayment~~ payment. The interest 2398  
shall be computed at the rate per annum prescribed by section 2399  
5703.47 of the Revised Code. ~~On~~ 2400

On the filing of the application, the commissioner shall 2401  
determine the amount of refund ~~due and to which the applicant is~~ 2402  
entitled. If the amount is not less than that claimed, the 2403  
commissioner shall certify ~~that~~ the amount to the director of 2404  
budget and management and treasurer of state for payment from the 2405  
tax refund fund created by section 5703.052 of the Revised Code. 2406  
~~Application for refund shall be filed by the person who made~~ 2407  
~~payment of the tax for which refund is claimed. If the amount is~~ 2408  
less than that claimed, the commissioner shall proceed in 2409  
accordance with section 5703.70 of the Revised Code. 2410

**Sec. 5728.07.** Every person who is or becomes liable for the 2411  
payment of the tax levied in section 5728.06 of the Revised Code 2412  
shall ~~keep a complete and accurate record, upon forms prescribed~~ 2413  
~~by the tax commissioner, showing the total miles traveled on a~~ 2414  
~~public highway in this state by~~ maintain detailed distance and 2415  
fuel records for each commercial car and commercial tractor owned, 2416  
leased, rented, or otherwise operated by such person, ~~the number~~ 2417  
~~of axles actually used while traveling said miles, the highway use~~ 2418  
~~permit number for each commercial car and commercial tractor owned~~ 2419  
~~or operated and such other information as the tax commissioner may~~ 2420  
~~require.~~ Such records shall be available at any time, during 2421  
normal business hours, for the inspection of the tax commissioner 2422  
or ~~his~~ the commissioner's duly authorized agents and shall be 2423  
preserved for a period of four years from the date the return 2424  
required to be filed under section 5728.08 of the Revised Code was 2425  
due or filed, whichever is later. 2426

**Sec. 5728.08.** Except as provided in section 5728.03 of the 2427  
Revised Code and except as otherwise provided in this section, 2428  
whoever is liable for the payment of the tax levied by section 2429  
5728.06 of the Revised Code, on or before the last day of each 2430  
January, April, July, and October, shall file with the treasurer 2431  
of state, on forms prescribed by the tax commissioner, a ~~highway~~ 2432  
fuel use tax return and make payment of the full amount of the tax 2433  
due for the operation of each commercial car and commercial 2434  
tractor for the ~~next~~ preceding three calendar months. If the 2435  
commercial cars or commercial tractors are farm trucks and the 2436  
amount of motor fuel used to operate the trucks during the ~~next~~ 2437  
preceding twelve calendar months was less than fifteen thousand 2438  
gallons, the ~~highway~~ fuel use tax return shall be filed and the 2439  
full amount of tax due paid on or before the last day of each July 2440  
for the ~~next~~ preceding twelve calendar months. If the commercial 2441

cars or commercial tractors are farm trucks and the amount of 2442  
motor fuel used to operate the trucks during the ~~next~~ preceding 2443  
twelve calendar months was fifteen thousand gallons or more, the 2444  
highway fuel use tax return shall be filed and the full amount of 2445  
the tax due paid either on or before the last day of each July for 2446  
the ~~next~~ preceding twelve calendar months, or on or before the 2447  
last day of each January, April, July, and October for the ~~next~~ 2448  
preceding three calendar months, at the option of the person 2449  
liable for payment of the tax. If the commercial cars or 2450  
commercial tractors are not farm trucks, and if, in the estimation 2451  
of the ~~tax~~ commissioner, the amount of the tax due does not 2452  
warrant quarterly filing, the commissioner may authorize the 2453  
filing of the highway fuel use tax return and payment of the full 2454  
amount due on or before the last day of each July for the ~~next~~ 2455  
preceding twelve months. 2456

Immediately upon the receipt of a highway fuel use tax 2457  
return, the treasurer of state shall mark on the return the date 2458  
it was received by the treasurer of state and the amount of tax 2459  
payment accompanying the return and shall transmit the return to 2460  
the ~~tax~~ commissioner. 2461

The treasurer of state shall place to the credit of the tax 2462  
refund fund created by section 5703.052 of the Revised Code, out 2463  
of receipts from the taxes levied by section 5728.06 of the 2464  
Revised Code, amounts equal to the refund certified by the ~~tax~~ 2465  
commissioner pursuant to section 5728.061 of the Revised Code. 2466  
Receipts from the tax shall be used by the ~~tax~~ commissioner to 2467  
defray expenses incurred by the department of taxation in 2468  
administering sections 5728.01 to 5728.14 of the Revised Code. 2469

All moneys received in the state treasury from taxes levied 2470  
by section 5728.06 of the Revised Code and fees assessed under 2471  
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 2472  
that are not required to be placed to the credit of the tax refund 2473

fund as provided by this section shall, during each calendar year, 2474  
be credited to the highway improvement bond retirement fund 2475  
created by section 5528.12 of the Revised Code until the 2476  
commissioners of the sinking fund certify to the treasurer of 2477  
state, as required by section 5528.17 of the Revised Code, that 2478  
there are sufficient moneys to the credit of the highway 2479  
improvement bond retirement fund to meet in full all payments of 2480  
interest, principal, and charges for the retirement of bonds and 2481  
other obligations issued pursuant to Section 2g of Article VIII, 2482  
Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised 2483  
Code due and payable during the current calendar year and during 2484  
the ~~next succeeding~~ following calendar year. From the date of the 2485  
receipt of the certification required by section 5528.17 of the 2486  
Revised Code by the treasurer of state until the thirty-first day 2487  
of December of the calendar year in which the certification is 2488  
made, all moneys received in the state treasury from taxes levied 2489  
under section 5728.06 of the Revised Code and fees assessed under 2490  
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 2491  
that are not required to be placed to the credit of the tax refund 2492  
fund as provided by this section shall be credited to the highway 2493  
obligations bond retirement fund created by section 5528.32 of the 2494  
Revised Code until the commissioners of the sinking fund certify 2495  
to the treasurer of state, as required by section 5528.38 of the 2496  
Revised Code, that there are sufficient moneys to the credit of 2497  
the highway obligations bond retirement fund to meet in full all 2498  
payments of interest, principal, and charges for the retirement of 2499  
bonds and other obligations issued pursuant to Section 2i of 2500  
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 2501  
of the Revised Code due and payable during the current calendar 2502  
year and during the ~~next succeeding~~ following calendar year. From 2503  
the date of the receipt of the certification required by section 2504  
5528.38 of the Revised Code by the treasurer of state until the 2505  
thirty-first day of December of the calendar year in which the 2506

certification is made, all moneys received in the state treasury 2507  
from taxes levied under section 5728.06 of the Revised Code and 2508  
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 2509  
Revised Code ~~which~~ that are not required to be placed to the 2510  
credit of the tax refund fund as provided by this section shall be 2511  
credited to the highway operating fund created by section 5735.291 2512  
of the Revised Code, except as provided by the next ~~succeeding~~ 2513  
paragraph of this section. 2514

From the date of the receipt by the treasurer of state of 2515  
certifications from the commissioners of the sinking fund, as 2516  
required by sections 5528.18 and 5528.39 of the Revised Code, 2517  
certifying that the moneys to the credit of the highway 2518  
improvement bond retirement fund are sufficient to meet in full 2519  
all payments of interest, principal, and charges for the 2520  
retirement of all bonds and other obligations ~~which~~ that may be 2521  
issued pursuant to Section 2g of Article VIII, Ohio Constitution, 2522  
and sections 5528.10 and 5528.11 of the Revised Code, and to the 2523  
credit of the highway obligations bond retirement fund are 2524  
sufficient to meet in full all payments of interest, principal, 2525  
and charges for the retirement of all obligations issued pursuant 2526  
to Section 2i of Article VIII, Ohio Constitution, and sections 2527  
5528.30 and 5528.31 of the Revised Code, all moneys received in 2528  
the state treasury from the taxes levied under section 5728.06 and 2529  
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 2530  
Revised Code, ~~which~~ that are not required to be placed to the 2531  
credit of the tax refund fund as provided by this section, shall 2532  
be deposited to the credit of the highway operating fund. 2533

As used in this section, "farm truck" means any commercial 2534  
car or commercial tractor that is registered as a farm truck under 2535  
Chapter 4503. of the Revised Code. 2536

**Sec. 5728.09.** (A) Any person who fails to file timely the 2537  
return required by section 5728.08 of the Revised Code may be 2538

required to pay an additional charge equal to the greater of fifty 2539  
dollars or ten per cent of the tax due. The tax commissioner may 2540  
adopt rules providing for the imposition and remission of the 2541  
additional charges. Any additional charge imposed under this 2542  
section may be collected through an assessment as provided in 2543  
section 5728.10 of the Revised Code. 2544

(B) If the tax imposed by this chapter ~~or section 5735.31 of~~ 2545  
~~the Revised Code~~, or any portion of that tax, whether determined 2546  
by the tax commissioner or the taxpayer, is not paid on or before 2547  
the date prescribed in section 5728.08 of the Revised Code, 2548  
interest shall be collected and paid in the same manner as the 2549  
tax, upon that unpaid amount at the rate per annum prescribed by 2550  
section 5703.47 of the Revised Code from the date prescribed for 2551  
payment of the tax until it is paid or until the day an assessment 2552  
is issued under section 5728.10 of the Revised Code, whichever 2553  
occurs first. Any interest imposed under this chapter may be 2554  
collected through an assessment as provided in section 5728.10 of 2555  
the Revised Code. 2556

**Sec. 5728.10.** (A) If any person required to file a highway 2557  
fuel use tax return by sections 5728.01 to 5728.14 of the Revised 2558  
Code, fails to file the return within the time prescribed by those 2559  
sections, files an incomplete return, files an incorrect return, 2560  
or fails to remit the full amount of the tax due for the period 2561  
covered by the return, the tax commissioner may make an assessment 2562  
against the person, based upon any information in the 2563  
commissioner's possession, for the period for which the tax was 2564  
due. 2565

No assessment shall be made against any person for any tax 2566  
imposed by this chapter more than four years after the ~~last day of~~ 2567  
~~the calendar year during~~ return date for the period for which the 2568  
tax was due or more than four years after the return for the 2569  
period was filed, whichever is later. This section does not bar an 2570

assessment against any person who fails to file a highway fuel use 2571  
tax return as required by this chapter, or who files a fraudulent 2572  
highway fuel use tax return. 2573

A penalty of up to fifteen per cent may be added to the 2574  
amount of every assessment made pursuant to this section. The 2575  
commissioner may adopt rules providing for the imposition and 2576  
remission of penalties added to assessments made under this 2577  
section. 2578

The commissioner shall give the party assessed written notice 2579  
of the assessment ~~as~~ in the manner provided in section 5703.37 of 2580  
the Revised Code. With the notice, the commissioner shall provide 2581  
instructions on how to petition for reassessment and request a 2582  
hearing on the petition. 2583

(B) Unless the party ~~to whom the notice of assessment is~~ 2584  
~~directed~~ assessed files with the tax commissioner within sixty 2585  
days after service of the notice of assessment, either personally 2586  
or by certified mail, a written petition for reassessment ~~in~~ 2587  
~~writing~~, signed by the party assessed, or by the party's 2588  
authorized agent having knowledge of the facts, the assessment 2589  
~~shall become~~ becomes final and the amount of the assessment ~~shall~~ 2590  
~~be~~ is due and payable from the party assessed to the treasurer of 2591  
state. The petition shall indicate the objections of the party 2592  
assessed, but additional objections may be raised in writing if 2593  
received by the commissioner prior to the date shown on the final 2594  
determination ~~by the commissioner.~~ 2595

~~Unless the petitioner waives a hearing, the commissioner~~ 2596  
~~shall assign a time and place for the hearing on the petition and~~ 2597  
~~notify the petitioner of the time and place of the hearing by~~ 2598  
~~personal service or certified mail, but the commissioner may~~ 2599  
~~continue the hearing from time to time if necessary.~~ 2600

~~The commissioner may make such correction to the assessment~~ 2601  
~~as the commissioner finds proper. The commissioner shall serve a~~ 2602

~~copy of the commissioner's final determination on the petitioner~~ 2603  
~~by personal service or certified mail, and the commissioner's~~ 2604  
~~decision in the matter shall be final, subject to appeal as~~ 2605  
~~provided in section 5717.02 of the Revised Code. Only objections~~ 2606  
~~decided on the merits by the board of tax appeals or a court shall~~ 2607  
~~be given collateral estoppel or res judicata effect in considering~~ 2608  
~~an application for refund of amounts paid pursuant to the~~ 2609  
~~assessment. If the petition has been properly filed, the~~ 2610  
~~commissioner shall proceed under section 5703.60 of the Revised~~ 2611  
~~Code.~~ 2612

(C) After an assessment becomes final, if any portion of the 2613  
assessment remains unpaid, including accrued interest, a certified 2614  
copy of the tax commissioner's entry making the assessment final 2615  
may be filed in the office of the clerk of the court of common 2616  
pleas in the county in which the party's place of business is 2617  
located or the county in which the party assessed resides. If the 2618  
party maintains no office in this state and is not a resident of 2619  
this state, the certified copy of the entry may be filed in the 2620  
office of the clerk of the court of common pleas of Franklin 2621  
county. 2622

~~The clerk, immediately~~ Immediately upon the filing of the 2623  
entry, the clerk shall enter a judgment for the state of Ohio 2624  
against the party assessed in the amount shown on the entry. The 2625  
judgment may be filed by the clerk in a loose-leaf book entitled 2626  
"special judgments for state ~~highway~~ fuel use tax," and shall have 2627  
the same effect as other judgments. Execution shall issue upon the 2628  
judgment upon the request of the ~~tax~~ commissioner, and all laws 2629  
applicable to sales on execution shall apply to sales made under 2630  
the judgment. 2631

The portion of the assessment not paid within sixty days 2632  
after the day the assessment was issued shall bear interest at the 2633  
rate per annum prescribed by section 5703.47 of the Revised Code 2634

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.

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(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 deriving from the taxes imposed by section 5728.06  
of the Revised Code.

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**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.

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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.

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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.

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(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

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the last known address of the person. No permit which has been 2666  
suspended for failure to file a return shall be reinstated until 2667  
the person files complete and correct returns for all periods in 2668  
which no return has been filed and paid the full amount of the 2669  
tax, interest, and additional charges due. 2670

~~Sec. 5728.13. The provisions of sections Sections 5728.02 to 2671  
5728.12, inclusive, of the Revised Code, do not apply to motor 2672  
vehicles, commercial cars, or commercial tractors owned and 2673  
operated by the United States, by this state, or any political 2674  
subdivisions thereof, ~~nor to motor vehicles, commercial cars, or 2675  
commercial tractors owned by nonresidents of this state while 2676  
engaged solely in the interstate transportation of household goods 2677  
in Ohio, provided such owner has complied with the laws of the 2678  
state, district, or territory of his residence pertaining to the 2679  
registration and taxation of motor vehicles and complies with such 2680  
laws while operating and driving such motor vehicle upon the 2681  
public roads or highways of this state; provided that the owners 2682  
of motor vehicles similarly engaged and registered in this state 2683  
shall be exempt from all obligations pertaining to the 2684  
registration and taxation of motor vehicles in such other states, 2685  
districts, or territories. The provisions of this section do not 2686  
apply to vehicles, commercial cars, or commercial tractors owned 2687  
by nonresidents of this state when operated by a resident under 2688  
lease or any other arrangement. The tax commissioner shall be 2689  
authorized to determine whether or not such other states, 2690  
districts, or territories exempt such Ohio registered vehicles 2691  
from all obligations pertaining to the registration and taxation 2692  
of such motor vehicles and to prescribe such rules and regulations 2693  
as are required for the purpose of administering the provisions of 2694  
this section.~~ 2695~~

~~Household goods means all goods consisting of personal 2696  
effects and property used or to be used in a dwelling when a part 2697~~

~~of the equipment or supply of such dwellings and furniture,~~ 2698  
~~fixtures, equipment, and the property of stores, offices, museums,~~ 2699  
~~institutions, hospitals, or other establishments when part of the~~ 2700  
~~stock, equipment, or supply of such stores, offices, museums,~~ 2701  
~~institutions, hospitals, or other establishments, and articles~~ 2702  
~~including objects of art, displays, and exhibits, which because of~~ 2703  
~~their unusual nature or value require specialized handling and~~ 2704  
~~equipment usually employed in moving household goods or by any~~ 2705  
other state or its political subdivisions if that state extends a 2706  
similar exemption to motor vehicles, commercial cars, or 2707  
commercial tractors owned and operated by this state or its 2708  
political subdivisions. 2709

**Sec. 5733.021.** (A) Each taxpayer ~~which~~ that does not in the 2710  
~~month of~~ January file the report and make the payment required by 2711  
section 5733.02 of the Revised Code shall make and file a 2712  
declaration of estimated tax report for the tax year. 2713

The declaration of estimated tax report shall be filed with 2714  
the treasurer of state on or before the last day of January in 2715  
such form as prescribed by the tax commissioner, and shall reflect 2716  
an estimate of the total amount due under this chapter for the tax 2717  
year. 2718

(B) A taxpayer required to file a declaration of estimated 2719  
tax report shall make remittance of such estimated tax to the 2720  
treasurer of state as follows: 2721

(1) The entire estimated tax at the time of filing the 2722  
declaration of estimated tax report, if such estimated tax is not 2723  
in excess of the minimum tax as provided in section 5733.06 of the 2724  
Revised Code; 2725

(2) If the estimated tax is in excess of the minimum tax: 2726

(a) One-third of the estimated tax at the time of filing the 2727

declaration of estimated tax report;	2728
(b) Two-thirds of the estimated tax on or before the last day	2729
of March of the tax year, <del>unless if</del> the report <del>and payment</del>	2730
required by section 5733.02 of the Revised Code is filed <del>and paid</del>	2731
on or before the last day of March of the tax year <del>;</del> .	2732
(3) If the estimated tax <del>due</del> is in excess of the minimum tax,	2733
and an extension of time for filing the report required by section	2734
5733.02 of the Revised Code has been granted pursuant to section	2735
5733.13 of the Revised Code <del>;</del> :	2736
(a) One-third of the estimated tax at the time of filing the	2737
declaration of estimated tax report;	2738
(b) One-third of the estimated tax on or before the last day	2739
of March of the tax year;	2740
(c) One-third of the estimated tax on or before the last day	2741
of May of the tax year, <del>unless the report and payments required by</del>	2742
<del>section 5733.02 of the Revised Code are filed and paid on or</del>	2743
<del>before the last day of May of the tax year.</del>	2744
Remittance of the estimated tax shall be made in the form	2745
prescribed by the treasurer of state, including electronic funds	2746
transfer if required by section 5733.022 of the Revised Code.	2747
The treasurer of state shall credit all payments of such	2748
estimated tax as provided in section 5733.12 of the Revised Code,	2749
shall show on all reports the date each was filed and the amount	2750
of payment remitted, and shall immediately transmit all reports	2751
filed under this section to the tax commissioner.	2752
<u>(C)(1) For any period of delinquency ending prior to the</u>	2753
<u>first day of June of the tax year:</u>	2754
<u>(a) The penalty under division (A)(2) of section 5733.28 of</u>	2755
<u>the Revised Code may only be imposed on the delinquent portion of</u>	2756
<u>the estimated tax required to be paid under divisions (B)(2)(a)</u>	2757

and (b) and (B)(3)(a) and (b) of this section. 2758

(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. 2759  
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(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. 2763  
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(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: 2772  
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(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. 2775  
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(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. 2779  
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(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. 2782  
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(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 2785  
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means the amount described in division (C)(3)(a) of this division. 2789  
Otherwise, "qualifying net tax" as used in division (C) of this 2790  
section for that tax year means the lesser of the amount described 2791  
in division (C)(3)(a) or (b) of this section: 2792

(a) The tax imposed by sections 5733.06, 5733.065, and 2793  
5733.066 of the Revised Code for that tax year reduced by the 2794  
credits listed in section 5733.98 of the Revised Code. If the 2795  
credits exceed the total tax, the qualifying net tax is zero. 2796

(b) The lesser of the tax shown on the report, reduced by the 2797  
credits shown on that report, or the tax shown on an amended 2798  
report prepared and filed in good faith, reduced by the credits 2799  
shown on that amended report. If the credits shown exceed the 2800  
total tax shown, the qualifying net tax is zero. 2801

**Sec. 5733.04.** As used in this chapter: 2802

(A) "Issued and outstanding shares of stock" applies to 2803  
nonprofit corporations, as provided in section 5733.01 of the 2804  
Revised Code, and includes, but is not limited to, membership 2805  
certificates and other instruments evidencing ownership of an 2806  
interest in such nonprofit corporations, and with respect to a 2807  
financial institution that does not have capital stock, "issued 2808  
and outstanding shares of stock" includes, but is not limited to, 2809  
ownership interests of depositors in the capital employed in such 2810  
an institution. 2811

(B) "Taxpayer" means a corporation subject to the tax imposed 2812  
by section 5733.06 of the Revised Code. 2813

(C) "Resident" means a corporation organized under the laws 2814  
of this state. 2815

(D) "Commercial domicile" means the principal place from 2816  
which the trade or business of the taxpayer is directed or 2817  
managed. 2818

(E) "Taxable year" means the period prescribed by division 2819  
(A) of section 5733.031 of the Revised Code upon the net income of 2820  
which the value of the taxpayer's issued and outstanding shares of 2821  
stock is determined under division (B) of section 5733.05 of the 2822  
Revised Code or the period prescribed by division (A) of section 2823  
5733.031 of the Revised Code that immediately precedes the date as 2824  
of which the total value of the corporation is determined under 2825  
division (A) or (C) of section 5733.05 of the Revised Code. 2826

(F) "Tax year" means the calendar year in and for which the 2827  
tax imposed by section 5733.06 of the Revised Code is required to 2828  
be paid. 2829

(G) "Internal Revenue Code" means the "Internal Revenue Code 2830  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2831

(H) "Federal income tax" means the income tax imposed by the 2832  
Internal Revenue Code. 2833

(I) Except as provided in section 5733.058 of the Revised 2834  
Code, "net income" means the taxpayer's taxable income before 2835  
operating loss deduction and special deductions, as required to be 2836  
reported for the taxpayer's taxable year under the Internal 2837  
Revenue Code, subject to the following adjustments: 2838

(1)(a) Deduct any net operating loss incurred in any taxable 2839  
years ending in 1971 or thereafter but exclusive of any net 2840  
operating loss incurred in taxable years ending prior to January 2841  
1, 1971. This deduction shall not be allowed in any tax year 2842  
commencing before December 31, 1973, but shall be carried over and 2843  
allowed in tax years commencing after December 31, 1973, until 2844  
fully utilized in the next succeeding taxable year or years in 2845  
which the taxpayer has net income, but in no case for more than 2846  
the designated carryover period as described in division (I)(1)(b) 2847  
of this section. The amount of such net operating loss, as 2848  
determined under the allocation and apportionment provisions of 2849

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 2882  
deductible under division (I)(2) of this section, the amount of 2883  
gross income from all such sources other than income derived by 2884  
application of section 78 or 951 of the Internal Revenue Code 2885  
shall be reduced by: 2886

(a) The amount of any reimbursed expenses for personal 2887  
services performed by employees of the taxpayer for the 2888  
subsidiary, associate, or affiliated corporation; 2889

(b) Ten per cent of the amount of royalty income and 2890  
technical assistance fees; 2891

(c) Fifteen per cent of the amount of dividends and all other 2892  
income. 2893

The amounts described in divisions (I)(2)(a) to (c) of this 2894  
section are deemed to be the expenses attributable to the 2895  
production of deductible foreign source income unless the taxpayer 2896  
shows, by clear and convincing evidence, less actual expenses, or 2897  
the tax commissioner shows, by clear and convincing evidence, more 2898  
actual expenses. 2899

(3) Add any loss or deduct any gain resulting from the sale, 2900  
exchange, or other disposition of a capital asset, or an asset 2901  
described in section 1231 of the Internal Revenue Code, to the 2902  
extent that such loss or gain occurred prior to the first taxable 2903  
year on which the tax provided for in section 5733.06 of the 2904  
Revised Code is computed on the corporation's net income. For 2905  
purposes of division (I)(3) of this section, the amount of the 2906  
prior loss or gain shall be measured by the difference between the 2907  
original cost or other basis of the asset and the fair market 2908  
value as of the beginning of the first taxable year on which the 2909  
tax provided for in section 5733.06 of the Revised Code is 2910  
computed on the corporation's net income. At the option of the 2911  
taxpayer, the amount of the prior loss or gain may be a percentage 2912

of the gain or loss, which percentage shall be determined by 2913  
multiplying the gain or loss by a fraction, the numerator of which 2914  
is the number of months from the acquisition of the asset to the 2915  
beginning of the first taxable year on which the fee provided in 2916  
section 5733.06 of the Revised Code is computed on the 2917  
corporation's net income, and the denominator of which is the 2918  
number of months from the acquisition of the asset to the sale, 2919  
exchange, or other disposition of the asset. The adjustments 2920  
described in this division do not apply to any gain or loss where 2921  
the gain or loss is recognized by a qualifying taxpayer, as 2922  
defined in section 5733.0510 of the Revised Code, with respect to 2923  
a qualifying taxable event, as defined in that section. 2924

(4) Deduct the dividend received deduction provided by 2925  
section 243 of the Internal Revenue Code. 2926

(5) Deduct any interest or interest equivalent on public 2927  
obligations and purchase obligations to the extent included in 2928  
federal taxable income. As used in divisions (I)(5) and (6) of 2929  
this section, "public obligations," "purchase obligations," and 2930  
"interest or interest equivalent" have the same meanings as in 2931  
section 5709.76 of the Revised Code. 2932

(6) Add any loss or deduct any gain resulting from the sale, 2933  
exchange, or other disposition of public obligations to the extent 2934  
included in federal taxable income. 2935

(7) To the extent not otherwise allowed, deduct any dividends 2936  
or distributions received by a taxpayer from a public utility, 2937  
excluding an electric company, if the taxpayer owns at least 2938  
eighty per cent of the issued and outstanding common stock of the 2939  
public utility. As used in division (I)(7) of this section, 2940  
"public utility" means a public utility as defined in Chapter 2941  
5727. of the Revised Code, whether or not the public utility is 2942  
doing business in the state. 2943

(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.

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(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.

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(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.

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(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

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section 5733.05 of the Revised Code. As used in division (I)(11) 2976  
of this section, "net interest" means interest net of any expenses 2977  
taken on the federal income tax return that would not have been 2978  
allowed under section 265 of the Internal Revenue Code if the 2979  
interest were exempt from federal income tax. 2980

(12)(a) Except as set forth in division (I)(12)(d) of this 2981  
section, to the extent not included in computing the taxpayer's 2982  
federal taxable income before operating loss deduction and special 2983  
deductions, add gains and deduct losses from direct or indirect 2984  
sales, exchanges, or other dispositions, made by a related entity 2985  
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 2986  
constructive investment in the stock or debt of another entity, 2987  
unless the gain or loss has been included in computing the federal 2988  
taxable income before operating loss deduction and special 2989  
deductions of another taxpayer with a more closely related 2990  
investment in the stock or debt of the other entity. The amount of 2991  
gain added or loss deducted shall not exceed the product obtained 2992  
by multiplying such gain or loss by the taxpayer's proportionate 2993  
share, directly, indirectly, beneficially, or constructively, of 2994  
the outstanding stock of the related entity immediately prior to 2995  
the direct or indirect sale, exchange, or other disposition. 2996

(b) Except as set forth in division (I)(12)(e) of this 2998  
section, to the extent not included in computing the taxpayer's 2999  
federal taxable income before operating loss deduction and special 3000  
deductions, add gains and deduct losses from direct or indirect 3001  
sales, exchanges, or other dispositions made by a related entity 3002  
who is not a taxpayer, of intangible property other than stock, 3003  
securities, and debt, if such property was owned, or used in whole 3004  
or in part, at any time prior to or at the time of the sale, 3005  
exchange, or disposition by either the taxpayer or by a related 3006  
entity that was a taxpayer at any time during the related entity's 3007

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	3070
described in divisions (I)(12)(f)(i) and (ii) of this section:	3071
(i) Gains or losses recognized for federal income tax	3072
purposes by an individual, estate, or trust without regard to the	3073
attribution rules described in division (I)(12)(c) of this	3074
section;	3075
(ii) A related entity's gains or losses described in division	3076
(I)(12)(b) if the taxpayer's ownership of or use of such	3077
intangible property was limited to a period not exceeding nine	3078
months and was attributable to a transaction or a series of	3079
transactions executed in accordance with the election or elections	3080
made by the taxpayer or a related entity pursuant to section 338	3081
of the Internal Revenue Code.	3082
(13) Any adjustment required by section 5733.042 of the	3083
Revised Code.	3084
(14) Add any amount claimed as a credit under section	3085
5733.0611 of the Revised Code to the extent that such amount	3086
satisfies either of the following:	3087
(a) It was deducted or excluded from the computation of the	3088
corporation's taxable income before operating loss deduction and	3089
special deductions as required to be reported for the	3090
corporation's taxable year under the Internal Revenue Code;	3091
(b) It resulted in a reduction of the corporation's taxable	3092
income before operating loss deduction and special deductions as	3093
required to be reported for any of the corporation's taxable years	3094
under the Internal Revenue Code.	3095
(15) Deduct the amount contributed by the taxpayer to an	3096
individual development account program established by a county	3097
department of job and family services pursuant to sections 329.11	3098
to 329.14 of the Revised Code for the purpose of matching funds	3099
deposited by program participants. On request of the tax	3100

commissioner, the taxpayer shall provide any information that, in 3101  
the tax commissioner's opinion, is necessary to establish the 3102  
amount deducted under division (I)(15) of this section. 3103

(16) Any adjustment required by section 5733.0510 of the 3104  
Revised Code. 3105

(J) Any term used in this chapter has the same meaning as 3106  
when used in comparable context in the laws of the United States 3107  
relating to federal income taxes unless a different meaning is 3108  
clearly required. Any reference in this chapter to the Internal 3109  
Revenue Code includes other laws of the United States relating to 3110  
federal income taxes. 3111

(K) "Financial institution" has the meaning given by section 3112  
5725.01 of the Revised Code but does not include a production 3113  
credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091. 3114

(L)(1) A "qualifying holding company" is any corporation 3115  
satisfying all of the following requirements: 3116

(a) Subject to divisions (L)(2) and (3) of this section, the 3117  
net book value of the corporation's intangible assets is greater 3118  
than or equal to ninety per cent of the net book value of all of 3119  
its assets and at least fifty per cent of the net book value of 3120  
all of its assets represents direct or indirect investments in the 3121  
equity of, loans and advances to, and accounts receivable due from 3122  
related members; 3123

(b) At least ninety per cent of the corporation's gross 3124  
income for the taxable year is attributable to the following: 3125

(i) The maintenance, management, ownership, acquisition, use, 3126  
and disposition of its intangible property, its aircraft the use 3127  
of which is not subject to regulation under 14 C.F.R. part 121 or 3128  
part 135, and any real property described in division (L)(2)(c) of 3129  
this section; 3130

(ii) The collection and distribution of income from such property. 3131  
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(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; 3133  
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(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; 3136  
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(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year. 3141  
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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. 3144  
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(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 described in division (L)(1)(b)(i) of this section. 3148  
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(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. 3153  
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(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 3157  
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members' combined direct and indirect interests in the capital or 3162  
profits of such pass-through entity do not exceed fifty per cent. 3163  
If the corporation's interest in the pass-through entity is an 3164  
intangible asset for that taxable year, then the distributive 3165  
share of any income from the pass-through entity shall be income 3166  
from an intangible asset for that taxable year. 3167

(ii) If a corporation's and the corporation's related 3168  
members' combined direct and indirect interests in the capital or 3169  
profits of a pass-through entity exceed fifty per cent at any time 3170  
during the corporation's taxable year ending prior to the first 3171  
day of the tax year, "intangible asset" does not include the 3172  
corporation's direct interest in the pass-through entity, and the 3173  
corporation shall include in its assets its proportionate share of 3174  
the assets of any such pass-through entity and shall include in 3175  
its gross income its distributive share of the gross income of 3176  
such pass-through entity in the same form as was earned by the 3177  
pass-through entity. 3178

(iii) A pass-through entity's direct or indirect 3179  
proportionate share of any other pass-through entity's assets 3180  
shall be included for the purpose of computing the corporation's 3181  
proportionate share of the pass-through entity's assets under 3182  
division (L)(2)(b)(ii) of this section, and such pass-through 3183  
entity's distributive share of any other pass-through entity's 3184  
gross income shall be included for purposes of computing the 3185  
corporation's distributive share of the pass-through entity's 3186  
gross income under division (L)(2)(b)(ii) of this section. 3187

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 3188  
(2)(a)(i), and (2)(a)(ii) of this section, real property is 3189  
described in division (L)(2)(c) of this section only if all of the 3190  
following conditions are present at all times during the taxable 3191  
year ending prior to the first day of the tax year: 3192

(i) The real property serves as the headquarters of the 3193

corporation's trade or business, or is the place from which the	3194
corporation's trade or business is principally managed or	3195
directed;	3196
(ii) Not more than ten per cent of the value of the real	3197
property and not more than ten per cent of the square footage of	3198
the building or buildings that are part of the real property is	3199
used, made available, or occupied for the purpose of providing,	3200
acquiring, transferring, selling, or disposing of tangible	3201
property or services in the normal course of business to persons	3202
other than related members, the corporation's employees and their	3203
families, and such related members' employees and their families.	3204
(d) As used in division (L) of this section, "related member"	3205
has the same meaning as in division (A)(6) of section 5733.042 of	3206
the Revised Code without regard to division (B) of that section.	3207
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(3) The percentages described in division (L)(1)(a) of this	3209
section shall be equal to the quarterly average of those	3210
percentages as calculated during the corporation's taxable year	3211
ending prior to the first day of the tax year.	3212
(4) With respect to the election described in division	3213
(L)(1)(e) of this section:	3214
(a) The election need not accompany a timely filed report;	3215
(b) The election need not accompany the report; rather, the	3216
election may accompany a subsequently filed but timely application	3217
for refund and timely amended report, or a subsequently filed but	3218
timely petition for reassessment;	3219
(c) The election is not irrevocable;	3220
(d) The election applies only to the tax year specified by	3221
the corporation;	3222
(e) The corporation's related members comply with division	3223

(L)(1)(d) of this section. 3224

Nothing in division (L)(4) of this section shall be construed 3225  
to extend any statute of limitations set forth in this chapter. 3226

(M) "Qualifying controlled group" means two or more 3227  
corporations that satisfy the ownership and control requirements 3228  
of division (A) of section 5733.052 of the Revised Code. 3229

(N) "Limited liability company" means any limited liability 3230  
company formed under Chapter 1705. of the Revised Code or under 3231  
the laws of any other state. 3232

(O) "Pass-through entity" means a corporation that has made 3233  
an election under subchapter S of Chapter 1 of Subtitle A of the 3234  
Internal Revenue Code for its taxable year under that code, or a 3235  
partnership, limited liability company, or any other person, other 3236  
than an individual, trust, or estate, if the partnership, limited 3237  
liability company, or other person is not classified for federal 3238  
income tax purposes as an association taxed as a corporation. 3239

(P) "Electric company" and "combined company" have the same 3240  
meanings as in section 5727.01 of the Revised Code. 3241

**Sec. 5733.05.** As used in this section, "qualified research" 3242  
means laboratory research, experimental research, and other 3243  
similar types of research; research in developing or improving a 3244  
product; or research in developing or improving the means of 3245  
producing a product. It does not include market research, consumer 3246  
surveys, efficiency surveys, management studies, ordinary testing 3247  
or inspection of materials or products for quality control, 3248  
historical research, or literary research. "Product" as used in 3249  
this paragraph does not include services or intangible property. 3250

The annual report determines the value of the issued and 3252  
outstanding shares of stock of the taxpayer, which under division 3253

(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 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 3318  
monthly values during the taxable year, if reasonably required to 3319  
reflect properly the average value of the corporation's property. 3320

(b) The payroll factor is a fraction the numerator of which 3321  
is the total amount paid in this state during the taxable year by 3322  
the corporation for compensation, and the denominator of which is 3323  
the total compensation paid everywhere by the corporation during 3324  
such year. There shall be excluded from the numerator and the 3325  
denominator of the payroll factor the total compensation paid in 3326  
this state to employees who are primarily engaged in qualified 3327  
research. 3328

(i) Compensation means any form of remuneration paid to an 3329  
employee for personal services. 3330

(ii) Compensation is paid in this state if: (1) the 3331  
recipient's service is performed entirely within this state, (2) 3332  
the recipient's service is performed both within and without this 3333  
state, but the service performed without this state is incidental 3334  
to the recipient's service within this state, (3) some of the 3335  
service is performed within this state and either the base of 3336  
operations, or if there is no base of operations, the place from 3337  
which the service is directed or controlled is within this state, 3338  
or the base of operations or the place from which the service is 3339  
directed or controlled is not in any state in which some part of 3340  
the service is performed, but the recipient's residence is in this 3341  
state. 3342

(iii) Compensation is paid in this state to any employee of a 3343  
common or contract motor carrier corporation, who performs the 3344  
employee's regularly assigned duties on a motor vehicle in more 3345  
than one state, in the same ratio by which the mileage traveled by 3346  
such employee within the state bears to the total mileage traveled 3347  
by such employee everywhere during the taxable year. 3348

(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 3411  
June in the corporation's taxable year as determined by the county 3412  
auditor of the county in which the land is located pursuant to 3413  
section 5713.31 of the Revised Code. For the purposes of 3414  
determining that total value, any reserves shown on the 3415  
corporation's books shall be considered liabilities or contra 3416  
assets, except for any reserves that are deemed appropriations of 3417  
retained earnings under generally accepted accounting principles. 3418

(2)(a) If, on the last day of the taxpayer's taxable year 3419  
preceding the tax year, the taxpayer is a related member to a 3420  
corporation that elects to be a qualifying holding company for the 3421  
tax year beginning after the last day of the taxpayer's taxable 3422  
year, or if, on the last day of the taxpayer's taxable year 3423  
preceding the tax year, a corporation that elects to be a 3424  
qualifying holding company for the tax year beginning after the 3425  
last day of the taxpayer's taxable year is a related member to the 3426  
taxpayer, then the taxpayer's total value shall be adjusted by the 3427  
qualifying amount. Except as otherwise provided under division 3428  
(C)(2)(b) of this section, "qualifying amount" means the amount 3429  
that, when added to the taxpayer's total value, and when 3430  
subtracted from the net carrying value of the taxpayer's 3431  
liabilities computed without regard to division (C)(2) of this 3432  
section, or when subtracted from the taxpayer's total value and 3433  
when added to the net carrying value of the taxpayer's liabilities 3434  
computed without regard to division (C)(2) of this section, 3435  
results in the taxpayer's debt-to-equity ratio equaling the 3436  
debt-to-equity ratio of the qualifying controlled group on the 3437  
last day of the taxable year ending prior to the first day of the 3438  
tax year computed on a consolidated basis in accordance with 3439  
general accepted accounting principles. For the purposes of 3440  
division (C)(2)(a) of this section, the corporation's total value, 3441  
after the adjustment required by that division, shall not exceed 3442

the net book value of the corporation's assets. 3443

(b)(i) The amount added to the taxpayer's total value and 3444  
subtracted from the net carrying value of the taxpayer's 3445  
liabilities shall not exceed the amount of the net carrying value 3446  
of the taxpayer's liabilities owed to the taxpayer's related 3447  
members. 3448

(ii) A liability owed to the taxpayer's related members 3449  
includes, but is not limited to, any amount that the corporation 3450  
owes to a person that is not a related member if the corporation's 3451  
related member or related members in whole or in part guarantee 3452  
any portion or all of that amount, or pledge, hypothecate, 3453  
mortgage, or carry out any similar transactions to secure any 3454  
portion or all of that amount. 3455

(3) The base upon which the tax is levied under division (C) 3456  
of section 5733.06 of the Revised Code shall be computed by 3457  
multiplying the amount determined under divisions (C)(1) and (2) 3458  
of this section by the fraction determined under divisions 3459  
(B)(2)(a) to (c) of this section and, if applicable, divisions 3460  
(B)(2)(d)(ii) to (iv) of this section but without regard to 3461  
section 5733.052 of the Revised Code. 3462

(4) For purposes of division (C) of this section, "related 3463  
member" has the same meaning as in division (A)(6) of section 3464  
5733.042 of the Revised Code without regard to division (B) of 3465  
that section. 3466

**Sec. 5733.11.** (A) If any corporation required to file a 3467  
report under this chapter fails to file the report within the time 3468  
prescribed, files an incorrect report, or fails to remit the full 3469  
amount of the tax due for the period covered by the report, the 3470  
tax commissioner may make an assessment against the corporation 3471  
for any deficiency for the period for which the report or tax is 3472  
due, based upon any information in the commissioner's possession. 3473

No assessment shall be made or issued against a corporation 3474  
more than three years after the later of the final date the report 3475  
subject to assessment was required to be filed or the date the 3476  
report was filed. Such time limit may be extended if both the 3477  
corporation and the commissioner consent in writing to the 3478  
extension. Any such extension shall extend the three-year time 3479  
limit in division (B) of section 5733.12 of the Revised Code for 3480  
the same period of time. There shall be no bar or limit to an 3481  
assessment against a corporation that fails to file a report 3482  
subject to assessment as required by this chapter, or that files a 3483  
fraudulent report. 3484

The commissioner shall give the corporation assessed written 3485  
notice of the assessment ~~as~~ in the manner provided in section 3486  
5703.37 of the Revised Code. With the notice, the commissioner 3487  
shall provide instructions on how to petition for reassessment and 3488  
request a hearing on the petition. 3489

(B) Unless the corporation ~~to which the notice of assessment~~ 3490  
~~is directed~~ assessed files with the tax commissioner within sixty 3491  
days after service ~~thereof~~ of the notice of assessment, either 3492  
personally or by certified mail ~~as provided in section 5703.056 of~~ 3493  
~~the Revised Code~~, a written petition for reassessment ~~in writing~~, 3494  
signed by the corporation's authorized agent ~~of the corporation~~ 3495  
~~assessed~~ having knowledge of the facts, ~~and makes payment of the~~ 3496  
~~portion of the assessment required by division (E) of this~~ 3497  
~~section~~, the assessment ~~shall become~~ becomes final, and the amount 3498  
of the assessment ~~shall be~~ is due and payable from the corporation 3499  
assessed to the treasurer of state. The petition shall indicate 3500  
the corporation's objections, but additional objections may be 3501  
raised in writing if received by the commissioner prior to the 3502  
date shown on the final determination ~~by the commissioner.~~ 3503

~~Unless the petitioner waives a hearing, the commissioner~~ 3504  
~~shall assign a time and place for the hearing on the petition and~~ 3505

~~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 3538  
assessment is paid. Interest shall be paid in the same manner as 3539  
the tax and may be collected by issuing an assessment under this 3540  
section. 3541

(D) All money collected under this section shall be 3542  
considered as revenue arising from the taxes imposed by this 3543  
chapter. 3544

(E) The portion of an assessment ~~which~~ that must be paid upon 3545  
the filing of a petition for reassessment shall be as follows: 3546  
3547

(1) If the sole item objected to is the assessed penalty or 3548  
interest, payment of the assessment, including interest but not 3549  
penalty, is required; 3550

(2) If the corporation assessed failed to file, prior to the 3551  
date of issuance of the assessment, the annual report required by 3552  
section 5733.02 of the Revised Code, any amended report required 3553  
by division (C) of section 5733.031 of the Revised Code for the 3554  
tax year at issue, or any amended report required by division (D) 3555  
of section 5733.067 of the Revised Code to indicate a reduction in 3556  
the amount of the credit provided under that section, payment of 3557  
the assessment, including interest but not penalty, is required; 3558

(3) If the corporation assessed filed, prior to the date of 3559  
issuance of the assessment, the annual report required by section 3560  
5733.02 of the Revised Code, all amended reports required by 3561  
division (C) of section 5733.031 of the Revised Code for the tax 3562  
year at issue, and all amended reports required by division (D) of 3563  
section 5733.067 of the Revised Code to indicate a reduction in 3564  
the amount of the credit provided under that section, and a 3565  
balance of the taxes shown due on the reports as computed on the 3566  
reports remains unpaid, payment of only that portion of the 3567  
assessment representing the unpaid balance of tax and interest is 3568

required; 3569

(4) If the corporation assessed does not dispute that it is a 3570  
taxpayer but claims the protections of section 101 of Public Law 3571  
86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, payment of only 3572  
that portion of the assessment representing any balance of taxes 3573  
shown due on the corporation's annual report required by section 3574  
5733.02 of the Revised Code, as computed on the report, that 3575  
remains unpaid, and that represents taxes imposed by division (C) 3576  
of section 5733.06, division (C)(2) of section 5733.065, and 3577  
division (C) of section 5733.066 of the Revised Code, together 3578  
with all related interest, is required; 3579

(5) If none of the conditions specified in divisions (E)(1) 3580  
to (4) of this section apply, or if the corporation assessed 3581  
disputes that it is a taxpayer, no payment is required. 3582

(F) Notwithstanding the fact that a petition for reassessment 3583  
is pending, the corporation may pay all or a portion of the 3584  
assessment that is the subject of the petition. The acceptance of 3585  
a payment by the treasurer of state does not prejudice any claim 3586  
for refund upon final determination of the petition. 3587

If upon final determination of the petition an error in the 3588  
assessment is corrected by the tax commissioner, upon petition so 3589  
filed or pursuant to a decision of the board of tax appeals or any 3590  
court to which the determination or decision has been appealed, so 3591  
that the amount due from the corporation under the corrected 3592  
assessment is less than the portion paid, there shall be issued to 3593  
the corporation, its assigns, or legal representative a refund in 3594  
the amount of the overpayment as provided by section 5733.12 of 3595  
the Revised Code, with interest on that amount as provided by 3596  
section 5733.26 of the Revised Code, subject to section 5733.121 3597  
of the Revised Code. 3598  
3599

Sec. 5733.12. (A) Four and two-tenths per cent of all 3600  
payments received by the treasurer of state and by the tax 3601  
commissioner from the taxes imposed under sections 5733.06 and 3602  
5733.41 of the Revised Code shall be credited to the local 3603  
government fund for distribution in accordance with section 3604  
5747.50 of the Revised Code, six-tenths of one per cent shall be 3605  
credited to the local government revenue assistance fund for 3606  
distribution in accordance with section 5747.61 of the Revised 3607  
Code, and ninety-five and two-tenths per cent shall be credited to 3608  
the general revenue fund. 3609

(B) Except as otherwise provided under divisions (C) and (D) 3610  
of this section, an application to refund to the corporation the 3611  
amount of taxes imposed under section 5733.06 of the Revised Code 3612  
that are overpaid, paid illegally or erroneously, or paid on any 3613  
illegal, erroneous, or excessive assessment, with interest thereon 3614  
as provided by section 5733.26 of the Revised Code, shall be filed 3615  
with the tax commissioner, on the form prescribed by the 3616  
commissioner, within three years from the date of the illegal, 3617  
erroneous, or excessive payment of the tax, or within any 3618  
additional period allowed by division (C)(2) of section 5733.031, 3619  
division (D)(2) of section 5733.067, or division (A) of section 3620  
5733.11 of the Revised Code. For purposes of division (B) of this 3621  
section, any payment that the applicant made before the due date 3622  
or extended due date for filing the report to which the payment 3623  
relates shall be deemed to have been made on the due date or 3624  
extended due date. 3625

On the filing of the refund application, the commissioner 3626  
shall determine the amount of refund ~~due~~ and to which the 3627  
applicant is entitled. If the amount is not less than that 3628  
claimed, the commissioner shall certify such the amount to the 3629  
director of budget and management and treasurer of state for 3630  
payment from the tax refund fund created by section 5703.052 of 3631

the Revised Code. If the amount is less than that claimed, the 3632  
commissioner shall proceed in accordance with section 5703.70 of 3633  
the Revised Code. 3634

(C) "Ninety days" shall be substituted for "three years" in 3635  
division (B) of this section if the taxpayer satisfies both of the 3636  
following: 3637

(1) The taxpayer has applied for a refund based in whole or 3638  
in part upon section 5733.0611 of the Revised Code; 3639

(2) The taxpayer asserts that the imposition or collection of 3640  
the tax imposed or charged by section 5733.06 of the Revised Code 3641  
or any portion of such tax violates the Constitution of the United 3642  
States or the Constitution of this state. 3643

(D)(1) Division (D)(2) of this section applies only if all of 3644  
the following conditions are satisfied: 3645

(a) A qualifying pass-through entity pays an amount of the 3646  
tax imposed by section 5733.41 of the Revised Code; 3647

(b) The taxpayer is a qualifying investor as to that 3648  
qualifying pass-through entity; 3649

(c) The taxpayer did not claim the credit provided for in 3650  
section 5733.0611 of the Revised Code as to the tax described in 3651  
division (D)(1)(a) of this section; 3652

(d) The three-year period described in division (B) of this 3653  
section has ended as to the taxable year for which the taxpayer 3654  
otherwise would have claimed that credit. 3655

(2) A taxpayer shall file an application for refund pursuant 3656  
to this division within one year after the date the payment 3657  
described in division (D)(1)(a) of this section is made. An 3658  
application filed under this division shall only claim refund of 3659  
overpayments resulting from the taxpayer's failure to claim the 3660  
credit described in division (D)(1)(c) of this section. Nothing in 3661

this division shall be construed to relieve a taxpayer from 3662  
complying with the provisions of division (I)(14) of section 3663  
5733.04 of the Revised Code. 3664

**Sec. 5733.28.** (A) In addition to any other penalty imposed by 3665  
this chapter or Chapter 5703. of the Revised Code, the following 3666  
penalties shall apply: 3667

(1) If a taxpayer required to file any report, including an 3668  
informational notice or report, under this chapter fails to make 3669  
and file the report within the time prescribed, including any 3670  
extensions of time granted by the tax commissioner, a penalty may 3671  
be imposed not exceeding the greater of fifty dollars per month or 3672  
fraction of a month, not to exceed five hundred dollars, or five 3673  
per cent per month or fraction of a month, not to exceed fifty per 3674  
cent, of the tax required to be shown on the report, for each 3675  
month or fraction of a month elapsing between the due date, 3676  
including extensions of the due date, and the date on which filed. 3677

(2) ~~If Except as provided in division (C) of section 5733.021~~ 3678  
~~of the Revised Code, if a taxpayer fails to pay any the amount of~~ 3679  
~~tax required to be paid under this chapter, except estimated tax~~ 3680  
~~under section 5733.021 of the Revised Code, by the dates~~ 3681  
~~prescribed in this chapter for payment, a penalty may be imposed~~ 3682  
~~not exceeding twice the interest charged under division (A) of~~ 3683  
~~section 5733.26 fifteen per cent of the Revised Code for the~~ 3684  
~~delinquent payment.~~ 3685

(3) ~~If a taxpayer fails to pay any amount of estimated tax~~ 3686  
~~required to be paid under section 5733.021 of the Revised Code by~~ 3687  
~~the dates prescribed for payment, a penalty may be imposed not~~ 3688  
~~exceeding twice the interest charged under division (A) of section~~ 3689  
~~5733.29 of the Revised Code for the delinquent payment.~~ 3690

(4) If a taxpayer files what purports to be a report required 3691  
by this chapter that does not contain information upon which the 3692

substantial correctness of the report may be judged or contains 3693  
information that on its face indicates that the report is 3694  
substantially incorrect, and the filing of the report in that 3695  
manner is due to a position that is frivolous or a desire that is 3696  
apparent from the report to delay or impede the administration of 3697  
the tax levied by this chapter, a penalty of up to five hundred 3698  
dollars may be imposed. 3699

~~(5)~~(4) If a taxpayer makes a fraudulent attempt to evade the 3700  
reporting or payment of the tax required to be shown on any report 3701  
required under this chapter, a penalty may be imposed not 3702  
exceeding the greater of one thousand dollars or one hundred per 3703  
cent of the tax required to be shown on the report. 3704

~~(6)~~(5) If any person makes a false or fraudulent claim for a 3705  
refund under this chapter, a penalty may be imposed not exceeding 3706  
the greater of one thousand dollars or one hundred per cent of the 3707  
claim. The penalty imposed under division (A)~~(6)~~(5) of this 3708  
section, any refund issued on the claim, and interest on any 3709  
refund from the date of the refund, may be assessed under section 3710  
5733.11 of the Revised Code as tax, penalty, or interest imposed 3711  
under this chapter without regard to whether the person making the 3712  
claim is otherwise subject to the provisions of this chapter, and 3713  
without regard to any time limitation for the assessment imposed 3714  
by division (A) of section 5733.11 of the Revised Code. 3715

(B) For purposes of this section, the tax required to be 3716  
shown on the report shall be reduced by the amount of any part of 3717  
the tax paid on or before the date, including extensions of the 3718  
date, prescribed for filing the report. 3719

(C) Each penalty imposed under this section shall be in 3720  
addition to any other penalty provided in this section. All or 3721  
part of any penalty imposed under this section shall be abated by 3722  
the commissioner if the taxpayer shows that the failure to comply 3723  
with the provisions of this chapter is due to reasonable cause and 3724

not willful neglect.

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**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:

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(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;

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(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;

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

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(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;

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(b) Exported from this state to any other state or foreign

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country as provided in division (A)~~(3)~~(4) of section 5735.05 of 3755  
the Revised Code; 3756

(c) Sold to the United States government or any of its 3757  
agencies; 3758

(d) Sold for delivery to motor fuel dealers; 3759

(e) Sold exclusively for use in the operation of aircraft; 3760

(4) Such other information incidental to the enforcement of 3761  
the motor fuel laws of the state as the commissioner requires. 3762

(B) The report shall show the tax due, computed as follows: 3763

(1) The following deductions shall be made from the total 3764  
number of gallons of motor fuel received by the motor fuel dealer 3765  
within the state during the preceding calendar month: 3766

(a) The total number of gallons of motor fuel received by the 3767  
motor fuel dealer within the state and sold or otherwise disposed 3768  
of during the preceding calendar month as set forth in section 3769  
5735.05 of the Revised Code; 3770

(b) The total number of gallons received during the preceding 3771  
calendar month and sold or otherwise disposed of to another 3772  
licensed motor fuel dealer pursuant to section 5735.05 of the 3773  
Revised Code; 3774

(c) To cover the costs of the motor fuel dealer in compiling 3775  
the report, and evaporation, shrinkage, or other unaccounted-for 3776  
losses: 3777

(i) If the report is timely filed and the tax is timely paid, 3778  
three per cent of the total number of gallons of motor fuel 3779  
received by the motor fuel dealer within the state during the 3780  
preceding calendar month less the total number of gallons deducted 3781  
under divisions (B)(1)(a) and (b) of this section, less one per 3782  
cent of the total number of gallons of motor fuel that were sold 3783  
to a retail dealer during the preceding calendar month; 3784

(ii) If the report required by division (A) of this section 3785  
is not timely filed and the tax is not timely paid, no deduction 3786  
shall be allowed; 3787

(iii) If the report is incomplete, no deduction shall be 3788  
allowed for any fuel on which the tax is not timely reported and 3789  
paid; 3790

(2) The number of gallons remaining after the deductions have 3791  
been made shall be multiplied separately by each of the following 3792  
amounts: 3793

(a) The cents per gallon rate; 3794

(b) Two cents. 3795

The sum of the products obtained in divisions (B)(2)(a) and 3796  
(b) of this section shall be the amount of motor fuel tax for the 3797  
preceding calendar month. 3798

(C) The report shall be filed together with payment of the 3799  
tax shown on the report to be due, unless the motor fuel dealer is 3800  
required by section 5735.062 of the Revised Code to pay the tax by 3801  
electronic funds transfer, in which case the dealer shall file the 3802  
report pursuant to this section and pay the tax pursuant to 3803  
section 5735.062 of the Revised Code. The commissioner may extend 3804  
the time for filing reports and may remit all or part of penalties 3805  
which may become due under sections 5735.01 to 5735.99 of the 3806  
Revised Code. The treasurer of state shall stamp or otherwise mark 3807  
on all returns the date received by the treasurer and shall also 3808  
show thereon by stamp or otherwise the amount of payment received 3809  
for the month for which the report is filed. Thereafter, the 3810  
treasurer of state shall immediately transmit all reports filed 3811  
under this section to the commissioner. For purposes of this 3812  
section and sections 5735.062 and 5735.12 of the Revised Code, a 3813  
report required to be filed under this section is considered filed 3814  
when it is received by the treasurer of state, and remittance of 3815

the tax due is considered to be made when the remittance is 3816  
received by the treasurer of state or when credited to an account 3817  
designated by the treasurer of state for the receipt of tax 3818  
remittances. 3819

(D) The tax commissioner may require a motor fuel dealer to 3820  
file a report for a period other than one month. Such a report, 3821  
together with payment of the tax, shall be filed not later than 3822  
thirty days after the last day of the prescribed reporting period. 3823

(E) No person required by this section to file a tax report 3824  
shall file a false or fraudulent tax report or supporting 3825  
schedule. 3826

**Sec. 5735.11.** (A) If the tax or any portion of the tax 3827  
imposed by this chapter, ~~excluding the tax imposed by section~~ 3828  
~~5735.31 of the Revised Code,~~ whether determined by the tax 3829  
commissioner or the motor fuel dealer, is not paid on or before 3830  
the date prescribed in section 5735.06 of the Revised Code, 3831  
interest shall be collected and paid in the same manner as the tax 3832  
upon the unpaid amount, computed at the rate per annum prescribed 3833  
by section 5703.47 of the Revised Code, from the date prescribed 3834  
for payment of the tax to the date of payment or to the date an 3835  
assessment is issued under section 5735.12 or 5735.121 of the 3836  
Revised Code, whichever occurs first. Interest may be collected by 3837  
assessment in the manner provided in section 5735.12 or 5735.121 3838  
of the Revised Code. All interest shall be paid in the same manner 3839  
as the tax and shall be considered as revenue arising from the tax 3840  
imposed by section 5735.05 of the Revised Code. 3841

(B) Interest shall be allowed and paid upon any refund 3842  
granted in respect to the payment of an illegal or erroneous 3843  
assessment for any tax imposed under this chapter from the date of 3844  
the overpayment. The interest shall be computed at the rate per 3845  
annum prescribed by section 5703.47 of the Revised Code. 3846

Sec. 5735.12. (A) Any motor fuel dealer required by this 3847  
chapter to file reports and pay the tax levied by this chapter who 3848  
fails to file the report within the time prescribed, may be liable 3849  
for an additional charge not exceeding the greater of ten per cent 3850  
of the motor fuel dealer's tax liability for that month or fifty 3851  
dollars. The tax commissioner may remit all or a portion of the 3852  
additional charge and may adopt rules relating to the remission of 3853  
all or a portion of the charge. 3854

If any person required by this chapter to file reports and 3855  
pay the taxes, interest, or additional charge levied by this 3856  
chapter fails to file the report, files an incomplete or incorrect 3857  
report, or fails to remit the full amount of the tax, interest, or 3858  
additional charge due for the period covered by the report, the 3859  
commissioner may make an assessment against the person based upon 3860  
any information in the commissioner's possession. 3861

No assessment shall be made against any motor fuel dealer for 3862  
taxes imposed by this chapter more than four years after the date 3863  
on which the report on which the assessment was based was due or 3864  
was filed, whichever is later. This section does not bar an 3865  
assessment against any motor fuel dealer who fails to file a 3866  
report required by section 5735.06 of the Revised Code, or who 3867  
files a fraudulent motor fuel tax report. 3868

A penalty of up to fifteen per cent may be added to the 3869  
amount of every assessment made under this section. The 3870  
commissioner may adopt rules providing for the imposition and 3871  
remission of penalties added to assessments made under this 3872  
section. 3873

The commissioner shall give the party assessed written notice 3874  
of the assessment ~~as~~ in the manner provided in section 5703.37 of 3875  
the Revised Code. With the notice, the commissioner shall provide 3876  
instructions on how to petition for reassessment and request a 3877

hearing on the petition. 3878

(B) Unless the party to whom the notice of assessment is 3879  
~~directed~~ assessed files with the tax commissioner within sixty 3880  
days after service of the notice of assessment, either personally 3881  
or by certified mail, a written petition for reassessment in 3882  
writing, signed by the party assessed, or ~~by the~~ that party's 3883  
authorized agent of ~~the party assessed~~ having knowledge of the 3884  
facts, the assessment ~~shall become~~ becomes final and the amount of 3885  
the assessment ~~shall be~~ is due and payable from the party assessed 3886  
to the treasurer of state. The petition shall indicate the 3887  
objections of the party assessed, but additional objections may be 3888  
raised in writing if received by the commissioner prior to the 3889  
date shown on the final determination ~~by the commissioner.~~ 3890

~~Unless the petitioner waives a hearing, the commissioner 3891  
shall assign a time and place for the hearing on the petition and 3892  
notify the petitioner of the time and place of the hearing by 3893  
personal service or certified mail, but the commissioner may 3894  
continue the hearing from time to time if necessary.~~ 3895

~~The commissioner may make such correction to the 3896  
commissioner's assessment as the commissioner finds proper. The 3897  
commissioner shall serve a copy of the commissioner's final 3898  
determination on the petitioner by personal service or certified 3899  
mail, and the commissioner's decision in the matter shall be 3900  
final, subject to appeal as provided in section 5717.02 of the 3901  
Revised Code. If the petition has been properly filed, the 3902  
commissioner shall proceed under section 5703.60 of the Revised 3903  
Code. 3904~~

(C) After an assessment becomes final, if any portion of the 3905  
assessment remains unpaid, including accrued interest, a certified 3906  
copy of the tax commissioner's entry making the assessment final 3907  
may be filed in the office of the clerk of the court of common 3908  
pleas in the county in which the party assessed resides or in 3909

which the business of the party assessed is conducted. If the 3910  
party assessed maintains no place of business in this state and is 3911  
not a resident of this state, the certified copy of the entry may 3912  
be filed in the office of the clerk of the court of common pleas 3913  
of Franklin county. 3914

~~The clerk, immediately~~ Immediately upon the filing of the 3915  
entry, the clerk shall enter a judgment for the state against the 3916  
party assessed in the amount shown on the entry. The judgment may 3917  
be filed by the clerk in a loose-leaf book entitled "special 3918  
judgments for state motor fuel tax," and shall have the same 3919  
effect as other judgments. Execution shall issue upon the judgment 3920  
upon the request of the tax commissioner, and all laws applicable 3921  
to sales on execution shall apply to sales made under the 3922  
judgment. 3923

The portion of the assessment not paid within sixty days 3924  
after the day the assessment was issued shall bear interest at the 3925  
rate per annum prescribed by section 5703.47 of the Revised Code 3926  
from the day the ~~tax~~ commissioner issues the assessment until it 3927  
is paid. Interest shall be paid in the same manner as the tax and 3928  
may be collected by the issuance of an assessment under this 3929  
section. 3930

(D) All money collected by the tax commissioner under this 3931  
section shall be paid to the treasurer of state, and when paid 3932  
shall be considered as revenue arising from the tax imposed by 3933  
this chapter. 3934

(E) If the tax commissioner determines that the commissioner 3935  
has erroneously refunded motor fuel tax to any person, the 3936  
commissioner may make an assessment against the person for 3937  
recovery of the erroneously refunded tax. 3938

**Sec. 5735.122.** The tax commissioner shall refund to dealers 3939  
or to ~~interstate bus operators making~~ any person assessed motor 3940

fuel ~~equalization payments tax~~ the amount of taxes paid illegally 3941  
or erroneously or paid on an illegal or erroneous assessment. 3942  
Applications for refund shall be filed with the tax commissioner, 3943  
on the form prescribed by the commissioner, within four years from 3944  
the date of the illegal or erroneous payment. No person shall file 3945  
a claim for the tax on fewer than one hundred gallons of motor 3946  
fuel. ~~On~~ 3947

On the filing of the application, the commissioner shall 3948  
determine the amount of refund ~~due and to which the applicant is~~ 3949  
entitled. If the amount is not less than that claimed, the 3950  
commissioner shall certify the amount to the director of budget 3951  
and management and treasurer of state for payment from the tax 3952  
refund fund created by section 5703.052 of the Revised Code, 3953  
except that no refund shall be authorized or paid on a claim for 3954  
the tax on fewer than one hundred gallons of motor fuel. ~~The~~ If 3955  
the amount is less than that claimed, the commissioner shall 3956  
proceed in accordance with section 5703.70 of the Revised Code. 3957

The refund authorized by this section or section 5703.70 of 3958  
the Revised Code shall be reduced by the cents per gallon amount 3959  
of any qualified fuel credit received under section 5735.145 of 3960  
the Revised Code, as determined by the commissioner, for each 3961  
gallon of qualified fuel included in the total gallonage of motor 3962  
fuel upon which the refund is computed. 3963

**Sec. 5735.13.** A refund shall be made to any person for the 3964  
motor fuel tax paid on any motor fuel ~~which~~ that is lost or 3965  
destroyed through leakage, fire, explosion, lightning, flood, 3966  
tornado, windstorm, or any other cause, except theft, evaporation, 3967  
shrinkage, and unaccounted-for losses. No refund shall be 3968  
authorized or ordered under this section for any single loss of 3969  
less than one hundred gallons, nor except upon notice to the tax 3970  
commissioner within thirty days from the date of such loss or 3971  
destruction or the discovery thereof, and upon filing with the tax 3972

commissioner within sixty days thereafter an application in the 3973  
form of an affidavit sworn to by the claimant setting forth in 3974  
full the circumstances of the loss, and upon presentation of 3975  
supporting evidence satisfactory to the commissioner. ~~The~~ 3976

On the filing of the application, the commissioner shall 3977  
determine the amount of the refund ~~due and to which the applicant~~ 3978  
is entitled. If the amount is not less than that claimed, the 3979  
commissioner shall certify such the amount to the director of 3980  
budget and management and treasurer of state for payment from the 3981  
tax refund fund ~~provided for~~ created by section 5703.052 of the 3982  
Revised Code. ~~The~~ If the amount is less than that claimed, the 3983  
commissioner shall proceed in accordance with section 5703.70 of 3984  
the Revised Code. 3985

The refund authorized by this section or section 5703.70 of 3986  
the Revised Code shall be reduced by the cents per gallon amount 3987  
of any qualified fuel credit received under section 5735.145 of 3988  
the Revised Code, as determined by the commissioner, for each 3989  
gallon of qualified fuel included in the total gallonage of motor 3990  
fuel upon which the refund is computed. 3991

**Sec. 5735.14.** Any person who uses any motor fuel, on which 3992  
the tax imposed by this chapter has been paid, for the purpose of 3993  
operating stationary gas engines, tractors not used on public 3994  
highways, unlicensed motor vehicles used exclusively in intraplant 3995  
operations, vessels when used in trade, including vessels when 3996  
used in connection with an activity ~~which~~ that constitutes a 3997  
person's chief business or means of livelihood or any other vessel 3998  
used entirely for commercial purposes, vessels used for commercial 3999  
fishing, vessels used by the sea scout department of the boy 4000  
scouts of America chiefly for training scouts in seamanship, 4001  
vessels used or owned by any railroad company, railroad car ferry 4002  
company, the United States, this state, or any political 4003  
subdivision of this state, or aircraft, or who uses any such fuel 4004

upon which such tax has been paid, for cleaning or for dyeing, or 4005  
any purpose other than the operation of motor vehicles upon 4006  
highways or upon waters within the boundaries of this state, shall 4007  
be reimbursed in the amount of the tax so paid on such motor fuel 4008  
as provided in this section; provided, that any person purchasing 4009  
motor fuel in this state on which taxes levied under Title LVII of 4010  
the Revised Code have been paid shall be reimbursed for such taxes 4011  
paid in this state on such fuel used by that person in another 4012  
state on which a tax is paid for such usage, except such tax used 4013  
as a credit against the tax levied by section 5728.06 of the 4014  
Revised Code. A person shall not be reimbursed for taxes paid on 4015  
fuel that is used while a motor vehicle is idling or used to 4016  
provide comfort or safety in the operation of a motor vehicle. 4017  
Sales of motor fuel, on which the tax imposed by this chapter has 4018  
been paid, from one person to another do not constitute use of the 4019  
fuel and are not subject to a refund under this section. 4020

Such person shall file with the tax commissioner an 4021  
application for refund within one year from the date of purchase, 4022  
stating the quantity of fuel used for purposes other than the 4023  
operation of motor vehicles, except that no person shall file a 4024  
claim for the tax on fewer than one hundred gallons of motor fuel. 4025  
~~Such~~ The application shall be accompanied by the statement 4026  
described in section 5735.15 of the Revised Code showing such 4027  
purchase, together with evidence of payment thereof. ~~After~~ 4028

After consideration of ~~such~~ the application and statement, 4029  
the commissioner shall determine the amount of refund ~~due and to~~ 4030  
which the applicant is entitled. If the amount is not less than 4031  
that claimed, the commissioner shall certify ~~such~~ the amount to 4032  
the director of budget and management and treasurer of state for 4033  
payment from the tax refund fund created by section 5703.052 of 4034  
the Revised Code. ~~No~~ If the amount is less than that claimed, the 4035  
commissioner shall proceed in accordance with section 5703.70 of 4036

the Revised Code. 4037

No refund shall be authorized or paid under this section on a 4038  
single claim for tax on fewer than one hundred gallons of motor 4039  
fuel. The commissioner may require that the application be 4040  
supported by the affidavit of the claimant. ~~The~~ 4041

The refund authorized by this section or section 5703.70 of 4042  
the Revised Code shall be reduced by the cents per gallon amount 4043  
of any qualified fuel credit received under section 5735.145 of 4044  
the Revised Code, as determined by the commissioner, for each 4045  
gallon of qualified fuel included in the total gallonage of motor 4046  
fuel upon which the refund is computed. 4047

The right to receive any refund under this section or section 4048  
5703.70 of the Revised Code is not assignable. The payment of this 4049  
refund shall not be made to any person other than the person 4050  
originally entitled thereto who used the motor fuel upon which the 4051  
claim for refund is based, except that such refunds when allowed 4052  
and certified as provided in this section may be paid to the 4053  
executor, the administrator, the receiver, the trustee in 4054  
bankruptcy, or the assignee in insolvency proceedings of such 4055  
person. 4056

**Sec. 5735.141.** Any retail dealer of motor fuel shall receive 4057  
a refund for Ohio motor fuel taxes paid on fuel lost by a retail 4058  
dealer through shrinkage and evaporation. This refund shall be one 4059  
per cent of the Ohio motor fuel taxes paid on fuel purchased 4060  
during any semiannual period ending the thirtieth day of June or 4061  
the thirty-first day of December. 4062

In order to receive a refund, the retail dealer shall file 4063  
with the tax commissioner, within one hundred twenty days after 4064  
the thirtieth day of June and the thirty-first day of December of 4065  
each year, an application for a refund stating the quantity of 4066  
motor fuel ~~which~~ that was purchased for resale by the applicant 4067

during the preceding semiannual period ending the thirtieth day of 4068  
June or the thirty-first day of December and upon which the motor 4069  
fuel tax has been paid. No person shall file a claim for the tax 4070  
on fewer than one hundred gallons of motor fuel. The form and 4071  
contents of the application shall be prescribed by the ~~tax~~ 4072  
commissioner, and the application shall be signed in accordance 4073  
with section 5703.25 of the Revised Code. ~~The tax~~ On the filing of 4074  
the application, the commissioner shall determine the amount of 4075  
refund to which the applicant is entitled. If the amount is not 4076  
less than that claimed, the commissioner shall certify the amount 4077  
of the refund to the director of budget and management and 4078  
treasurer of state for payment from the tax refund fund ~~provided~~ 4079  
~~for~~ created by section 5703.052 of the Revised Code. ~~No~~ If the 4080  
amount is less than that claimed, the commissioner shall proceed 4081  
in accordance with section 5703.70 of the Revised Code. 4082

No refund shall be authorized or ordered under this section 4083  
for any single claim for the tax on fewer than one hundred gallons 4084  
of motor fuel. ~~The~~ 4085

The refund authorized by this section or section 5703.70 of 4086  
the Revised Code shall be reduced by the cents per gallon amount 4087  
of any qualified fuel credit received under section 5735.145 of 4088  
the Revised Code, as determined by the commissioner, for each 4089  
gallon of qualified fuel included in the total gallonage of motor 4090  
fuel upon which the refund is computed. 4091

The right to receive any refund under this section or section 4092  
5703.70 of the Revised Code is not assignable. The payment of the 4093  
refund shall not be made to any person other than the retail 4094  
dealer originally entitled thereto, except that the refund may be 4095  
paid to the executor, administrator, receiver, trustee in 4096  
bankruptcy, or assignee in insolvency proceedings of such 4097  
retailer. 4098

A motor fuel dealer shall be deemed to be a retail dealer 4099

when acting in a retail capacity.

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**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.

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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~~

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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.

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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

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than one hundred gallons of motor fuel. ~~The~~ 4131

The refund authorized by this section or section 5703.70 of 4132  
the Revised Code shall be reduced by the cents per gallon amount 4133  
of any qualified fuel credit received under section 5735.145 of 4134  
the Revised Code, as determined by the commissioner, for each 4135  
gallon of qualified fuel included in the total gallonage of motor 4136  
fuel upon which the refund is computed. 4137

The right to receive any refund under this section or section 4138  
5703.70 of the Revised Code is not assignable. The payment of this 4139  
refund shall not be made to any person other than the person 4140  
originally entitled thereto who used the motor fuel upon which the 4141  
claim for refund is based, except that the refund when allowed and 4142  
certified, as provided in this section, may be paid to the 4143  
executor, the administrator, the receiver, the trustee in 4144  
bankruptcy, or the assignee in insolvency proceedings of the 4145  
person. 4146

**Sec. 5735.18.** Any person other than a motor fuel dealer who 4147  
purchases motor fuel upon which the tax has been paid to this 4148  
state and who sells the same outside this state for use outside 4149  
this state or who uses the same on highways or waters outside this 4150  
state and pays a tax on such use or sells the same to the United 4151  
States government or any of its agencies may be reimbursed in the 4152  
amount of such tax as provided in this chapter. All ~~claims~~ 4153  
applications for refund of the tax paid on motor fuel sold for 4154  
export from the state or sold to the United States government or 4155  
any of its agencies shall be made in such form and shall set forth 4156  
such information as the tax commissioner prescribes, and the 4157  
~~claimant~~ applicant shall satisfy the commissioner that the motor 4158  
fuel has been sold as stated and that the tax thereon has been 4159  
paid. ~~Claims~~ Applications for refund of the tax paid on motor fuel 4160  
sold to the United States government or any of its agencies shall 4161  
be supported by an affidavit of the claimant and by a tax 4162

exemption certificate executed by the vendee in such form as is 4163  
prescribed by the commissioner. ~~Such claims for refund filed under~~ 4164  
~~this section shall be certified and paid~~ If the United States 4165  
government or any of its agencies purchases motor fuel upon which 4166  
the tax has been paid to this state, the United States government 4167  
or agency may be reimbursed in the amount of such tax as provided 4168  
in this chapter, provided that the seller of the motor fuel has 4169  
not applied for a refund on behalf of the United States government 4170  
or agency. Applications filed by the United States government or 4171  
any of its agencies for refund of the tax paid on motor fuel 4172  
purchases shall be supported by an invoice or similar fuel 4173  
purchase document issued by the seller of the fuel. 4174

On the filing of an application under this section, the 4175  
commissioner shall determine the amount of refund to which the 4176  
applicant is entitled. If the amount is not less than that 4177  
claimed, the commissioner shall certify and pay that amount in the 4178  
same manner as provided in section 5735.14 of the Revised Code. 4179  
~~The~~ If the amount is less than that claimed, the commissioner 4180  
shall proceed in accordance with section 5703.70 of the Revised 4181  
Code. 4182

The person shall file with the tax commissioner an 4183  
application for refund within one year from the date of sale or 4184  
purchase. The refund authorized by this section or section 5703.70 4185  
of the Revised Code shall be reduced by the cents per gallon 4186  
amount of any qualified fuel credit received under section 4187  
5735.145 of the Revised Code, as determined by the commissioner, 4188  
for each gallon of qualified fuel included in the total gallonage 4189  
of motor fuel upon which the refund is computed. 4190

**Sec. 5739.01.** As used in this chapter: 4191

(A) "Person" includes individuals, receivers, assignees, 4192  
trustees in bankruptcy, estates, firms, partnerships, 4193

associations, joint-stock companies, joint ventures, clubs, 4194  
societies, corporations, the state and its political subdivisions, 4195  
and combinations of individuals of any form. 4196

(B) "Sale" and "selling" include all of the following 4197  
transactions for a consideration in any manner, whether absolutely 4198  
or conditionally, whether for a price or rental, in money or by 4199  
exchange, and by any means whatsoever: 4200

(1) All transactions by which title or possession, or both, 4201  
of tangible personal property, is or is to be transferred, or a 4202  
license to use or consume tangible personal property is or is to 4203  
be granted; 4204

(2) All transactions by which lodging by a hotel is or is to 4205  
be furnished to transient guests; 4206

(3) All transactions by which: 4207

(a) An item of tangible personal property is or is to be 4208  
repaired, except property, the purchase of which would not be 4209  
~~exempt from~~ subject to the tax imposed by section 5739.02 of the 4210  
Revised Code; 4211

(b) An item of tangible personal property is or is to be 4212  
installed, except property, the purchase of which would not be 4213  
~~exempt from~~ subject to the tax imposed by section 5739.02 of the 4214  
Revised Code or property that is or is to be incorporated into and 4215  
will become a part of a production, transmission, transportation, 4216  
or distribution system for the delivery of a public utility 4217  
service; 4218

(c) The service of washing, cleaning, waxing, polishing, or 4219  
painting a motor vehicle is or is to be furnished; 4220

(d) Industrial laundry cleaning services are or are to be 4221  
provided; 4222

(e) Automatic data processing, computer services, or 4223

electronic information services are or are to be provided for use 4224  
in business when the true object of the transaction is the receipt 4225  
by the consumer of automatic data processing, computer services, 4226  
or electronic information services rather than the receipt of 4227  
personal or professional services to which automatic data 4228  
processing, computer services, or electronic information services 4229  
are incidental or supplemental. Notwithstanding any other 4230  
provision of this chapter, such transactions that occur between 4231  
members of an affiliated group are not sales. An affiliated group 4232  
means two or more persons related in such a way that one person 4233  
owns or controls the business operation of another member of the 4234  
group. In the case of corporations with stock, one corporation 4235  
owns or controls another if it owns more than fifty per cent of 4236  
the other corporation's common stock with voting rights. 4237

(f) Telecommunications service, other than mobile 4238  
telecommunications service after July 31, 2002, is or is to be 4239  
provided that originates or terminates in this state and is 4240  
charged in the records of the telecommunications service vendor to 4241  
the consumer's telephone number or account in this state, or that 4242  
both originates and terminates in this state; but does not include 4243  
transactions by which telecommunications service is paid for by 4244  
using a prepaid authorization number or prepaid telephone calling 4245  
card, or by which local telecommunications service is obtained 4246  
from a coin-operated telephone and paid for by using coin; 4247

(g) Landscaping and lawn care service is or is to be 4248  
provided; 4249

(h) Private investigation and security service is or is to be 4250  
provided; 4251

(i) Information services or tangible personal property is 4252  
provided or ordered by means of a nine hundred telephone call; 4253

(j) Building maintenance and janitorial service is or is to 4254

be provided;	4255
(k) Employment service is or is to be provided;	4256
(l) Employment placement service is or is to be provided;	4257
(m) Exterminating service is or is to be provided;	4258
(n) Physical fitness facility service is or is to be provided;	4259 4260
(o) Recreation and sports club service is or is to be provided.	4261 4262
<p><u>(p) Mobile telecommunications service after July 31, 2002, is or is to be provided in this state pursuant to the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252 (2000), 114 Stat. 626 to 632 (2000) 4 U.S.C.A. 116 to 126, as amended.</u></p>	4263 4264 4265 4266
(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;	4267 4268 4269 4270
(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	4271 4272 4273 4274 4275 4276 4277 4278 4279 4280 4281 4282 4283 4284

agricultural land tile, the sale and erection or installation of 4285  
portable grain bins, or the provision of landscaping and lawn care 4286  
service and the transfer of property as part of such service is 4287  
never a construction contract. The transfer of copyrighted motion 4288  
picture films for exhibition purposes is not a sale, except such 4289  
films as are used solely for advertising purposes. Other than as 4290  
provided in this section, "sale" and "selling" do not include 4291  
professional, insurance, or personal service transactions that 4292  
involve the transfer of tangible personal property as an 4293  
inconsequential element, for which no separate charges are made. 4294

As used in division (B)(5) of this section: 4295

(a) "Agricultural land tile" means fired clay or concrete 4296  
tile, or flexible or rigid perforated plastic pipe or tubing, 4297  
incorporated or to be incorporated into a subsurface drainage 4298  
system appurtenant to land used or to be used directly in 4299  
production by farming, agriculture, horticulture, or floriculture. 4300  
The term does not include such materials when they are or are to 4301  
be incorporated into a drainage system appurtenant to a building 4302  
or structure even if the building or structure is used or to be 4303  
used in such production. 4304

(b) "Portable grain bin" means a structure that is used or to 4305  
be used by a person engaged in farming or agriculture to shelter 4306  
the person's grain and that is designed to be disassembled without 4307  
significant damage to its component parts. 4308

(6) All transactions in which all of the shares of stock of a 4309  
closely held corporation are transferred, if the corporation is 4310  
not engaging in business and its entire assets consist of boats, 4311  
planes, motor vehicles, or other tangible personal property 4312  
operated primarily for the use and enjoyment of the shareholders; 4313

(7) All transactions in which a warranty, maintenance or 4314  
service contract, or similar agreement by which the vendor of the 4315

warranty, contract, or agreement agrees to repair or maintain the 4316  
tangible personal property of the consumer is or is to be 4317  
provided; 4318

(8) All transactions by which a prepaid authorization number 4319  
or a prepaid telephone calling card is or is to be transferred. 4320

(C) "Vendor" means the person providing the service or by 4321  
whom the transfer effected or license given by a sale is or is to 4322  
be made or given and, for sales described in division (B)(3)(i) of 4323  
this section, the telecommunications service vendor that provides 4324  
the nine hundred telephone service; if two or more persons are 4325  
engaged in business at the same place of business under a single 4326  
trade name in which all collections on account of sales by each 4327  
are made, such persons shall constitute a single vendor. 4328

Physicians, dentists, hospitals, and veterinarians who are 4329  
engaged in selling tangible personal property as received from 4330  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 4331  
articles, are vendors. Veterinarians who are engaged in 4332  
transferring to others for a consideration drugs, the dispensing 4333  
of which does not require an order of a licensed veterinarian or 4334  
physician under federal law, are vendors. 4335

(D)(1) "Consumer" means the person for whom the service is 4336  
provided, to whom the transfer effected or license given by a sale 4337  
is or is to be made or given, to whom the service described in 4338  
division (B)(3)(f) or (i) of this section is charged, or to whom 4339  
the admission is granted. 4340

(2) Physicians, dentists, hospitals, and blood banks operated 4341  
by nonprofit institutions and persons licensed to practice 4342  
veterinary medicine, surgery, and dentistry are consumers of all 4343  
tangible personal property and services purchased by them in 4344  
connection with the practice of medicine, dentistry, the rendition 4345  
of hospital or blood bank service, or the practice of veterinary 4346

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.

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(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.

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(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.

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(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.

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(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

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distributed or to any persons who purchase space in the printed 4379  
matter for advertising or other purposes. 4380

(5) A person who makes sales of any of the services listed in 4381  
division (B)(3) of this section is the consumer of any tangible 4382  
personal property used in performing the service. The purchase of 4383  
that property is not subject to the resale exception under 4384  
division (E)(1) of this section. 4385

(E) "Retail sale" and "sales at retail" include all sales 4386  
except those in which the purpose of the consumer is: 4387

(1) To resell the thing transferred or benefit of the service 4388  
provided, by a person engaging in business, in the form in which 4389  
the same is, or is to be, received by the person; 4390

(2) To incorporate the thing transferred as a material or a 4391  
part, into tangible personal property to be produced for sale by 4392  
manufacturing, assembling, processing, or refining, or to use or 4393  
consume the thing transferred directly in producing a product for 4394  
sale by mining, including without limitation the extraction from 4395  
the earth of all substances that are classed geologically as 4396  
minerals, production of crude oil and natural gas, farming, 4397  
agriculture, horticulture, or floriculture, and persons engaged in 4398  
rendering farming, agricultural, horticultural, or floricultural 4399  
services, and services in the exploration for, and production of, 4400  
crude oil and natural gas, for others are deemed engaged directly 4401  
in farming, agriculture, horticulture, and floriculture, or 4402  
exploration for, and production of, crude oil and natural gas; 4403  
directly in the rendition of a public utility service, except that 4404  
the sales tax levied by section 5739.02 of the Revised Code shall 4405  
be collected upon all meals, drinks, and food for human 4406  
consumption sold upon Pullman and railroad coaches. This paragraph 4407  
does not exempt or except from "retail sale" or "sales at retail" 4408  
the sale of tangible personal property that is to be incorporated 4409  
into a structure or improvement to real property. 4410

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;	4411 4412
(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised Code;	4413 4414 4415
(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	4416 4417
(6) To use or consume the thing directly in commercial fishing;	4418 4419
(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;	4420 4421 4422 4423
(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;	4424 4425 4426 4427 4428
(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;	4429 4430 4431
(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;	4432 4433 4434 4435 4436 4437
(11) To use the thing transferred as qualified research and development equipment;	4438 4439
(12) To use or consume the thing transferred primarily in	4440

storing, transporting, mailing, or otherwise handling purchased 4441  
sales inventory in a warehouse, distribution center, or similar 4442  
facility when the inventory is primarily distributed outside this 4443  
state to retail stores of the person who owns or controls the 4444  
warehouse, distribution center, or similar facility, to retail 4445  
stores of an affiliated group of which that person is a member, or 4446  
by means of direct marketing. Division (E)(12) of this section 4447  
does not apply to motor vehicles registered for operation on the 4448  
public highways. As used in division (E)(12) of this section, 4449  
"affiliated group" has the same meaning as in division (B)(3)(e) 4450  
of this section and "direct marketing" has the same meaning as in 4451  
division (B)~~(37)~~(36) of section 5739.02 of the Revised Code. 4452

(13) To use or consume the thing transferred to fulfill a 4453  
contractual obligation incurred by a warrantor pursuant to a 4454  
warranty provided as a part of the price of the tangible personal 4455  
property sold or by a vendor of a warranty, maintenance or service 4456  
contract, or similar agreement the provision of which is defined 4457  
as a sale under division (B)(7) of this section; 4458

(14) To use or consume the thing transferred in the 4459  
production of a newspaper for distribution to the public; 4460

(15) To use tangible personal property to perform a service 4461  
listed in division (B)(3) of this section, if the property is or 4462  
is to be permanently transferred to the consumer of the service as 4463  
an integral part of the performance of the service. 4464

As used in division (E) of this section, "thing" includes all 4465  
transactions included in divisions (B)(3)(a), (b), and (e) of this 4466  
section. 4467

Sales conducted through a coin-operated device that activates 4468  
vacuum equipment or equipment that dispenses water, whether or not 4469  
in combination with soap or other cleaning agents or wax, to the 4470  
consumer for the consumer's use on the premises in washing, 4471

cleaning, or waxing a motor vehicle, provided no other personal 4472  
property or personal service is provided as part of the 4473  
transaction, are not retail sales or sales at retail. 4474

(F) "Business" includes any activity engaged in by any person 4475  
with the object of gain, benefit, or advantage, either direct or 4476  
indirect. "Business" does not include the activity of a person in 4477  
managing and investing the person's own funds. 4478

(G) "Engaging in business" means commencing, conducting, or 4479  
continuing in business, and liquidating a business when the 4480  
liquidator thereof holds itself out to the public as conducting 4481  
such business. Making a casual sale is not engaging in business. 4482

(H)(1) "Price," except as provided in divisions (H)(2) and 4483  
(3) of this section, means the aggregate value in money of 4484  
anything paid or delivered, or promised to be paid or delivered, 4485  
in the complete performance of a retail sale, without any 4486  
deduction on account of the cost of the property sold, cost of 4487  
materials used, labor or service cost, interest, discount paid or 4488  
allowed after the sale is consummated, or any other expense. If 4489  
the retail sale consists of the rental or lease of tangible 4490  
personal property, "price" means the aggregate value in money of 4491  
anything paid or delivered, or promised to be paid or delivered, 4492  
in the complete performance of the rental or lease, without any 4493  
deduction for tax, interest, labor or service charge, damage 4494  
liability waiver, termination or damage charge, discount paid or 4495  
allowed after the lease is consummated, or any other expense. The 4496  
sales tax shall be calculated and collected by the lessor on each 4497  
payment made by the lessee. Price does not include the 4498  
consideration received as a deposit refundable to the consumer 4499  
upon return of a beverage container, the consideration received as 4500  
a deposit on a carton or case that is used for such returnable 4501  
containers, or the consideration received as a refundable security 4502  
deposit for the use of tangible personal property to the extent 4503

that it actually is refunded, if the consideration for such 4504  
refundable deposit is separately stated from the consideration 4505  
received or to be received for the tangible personal property 4506  
transferred in the retail sale. Such separation must appear in the 4507  
sales agreement or on the initial invoice or initial billing 4508  
rendered by the vendor to the consumer. Price is the amount 4509  
received inclusive of the tax, provided the vendor establishes to 4510  
the satisfaction of the tax commissioner that the tax was added to 4511  
the price. When the price includes both a charge for tangible 4512  
personal property and a charge for providing a service and the 4513  
sale of the property and the charge for the service are separately 4514  
taxable, or have a separately determinable tax status, the price 4515  
shall be separately stated for each such charge so the tax can be 4516  
correctly computed and charged. 4517

The tax collected by the vendor from the consumer under this 4518  
chapter is not part of the price, but is a tax collection for the 4519  
benefit of the state and of counties levying an additional sales 4520  
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 4521  
and of transit authorities levying an additional sales tax 4522  
pursuant to section 5739.023 of the Revised Code. Except for the 4523  
discount authorized in section 5739.12 of the Revised Code and the 4524  
effects of any rounding pursuant to section 5703.055 of the 4525  
Revised Code, no person other than the state or such a county or 4526  
transit authority shall derive any benefit from the collection or 4527  
payment of such tax. 4528

(2) In the case of a sale of any new motor vehicle by a new 4529  
motor vehicle dealer, as defined in section 4517.01 of the Revised 4530  
Code, in which another motor vehicle is accepted by the dealer as 4531  
part of the consideration received, "price" has the same meaning 4532  
as in division (H)(1) of this section, reduced by the credit 4533  
afforded the consumer by the dealer for the motor vehicle received 4534  
in trade. 4535

(3) In the case of a sale of any watercraft or outboard motor 4536  
by a watercraft dealer licensed in accordance with section 4537  
1547.543 of the Revised Code, in which another watercraft, 4538  
watercraft and trailer, or outboard motor is accepted by the 4539  
dealer as part of the consideration received, "price" has the same 4540  
meaning as in division (H)(1) of this section, reduced by the 4541  
credit afforded the consumer by the dealer for the watercraft, 4542  
watercraft and trailer, or outboard motor received in trade. As 4543  
used in division (H)(3) of this section, "watercraft" includes an 4544  
outdrive unit attached to the watercraft. 4545

(I) "Receipts" means the total amount of the prices of the 4546  
sales of vendors, provided that cash discounts allowed and taken 4547  
on sales at the time they are consummated are not included, minus 4548  
any amount deducted as a bad debt pursuant to section 5739.121 of 4549  
the Revised Code. "Receipts" does not include the sale price of 4550  
property returned or services rejected by consumers when the full 4551  
sale price and tax are refunded either in cash or by credit. 4552

(J) "Place of business" means any location at which a person 4553  
engages in business. 4554

(K) "Premises" includes any real property or portion thereof 4555  
upon which any person engages in selling tangible personal 4556  
property at retail or making retail sales and also includes any 4557  
real property or portion thereof designated for, or devoted to, 4558  
use in conjunction with the business engaged in by such person. 4559

(L) "Casual sale" means a sale of an item of tangible 4560  
personal property that was obtained by the person making the sale, 4561  
through purchase or otherwise, for the person's own use ~~in this~~ 4562  
~~state~~ and was previously subject to any state's taxing 4563  
jurisdiction on its sale or use, and includes such items acquired 4564  
for the seller's use that are sold by an auctioneer employed 4565  
directly by the person for such purpose, provided the location of 4566  
such sales is not the auctioneer's permanent place of business. As 4567

used in this division, "permanent place of business" includes any 4568  
location where such auctioneer has conducted more than two 4569  
auctions during the year. 4570

(M) "Hotel" means every establishment kept, used, maintained, 4571  
advertised, or held out to the public to be a place where sleeping 4572  
accommodations are offered to guests, in which five or more rooms 4573  
are used for the accommodation of such guests, whether the rooms 4574  
are in one or several structures. 4575

(N) "Transient guests" means persons occupying a room or 4576  
rooms for sleeping accommodations for less than thirty consecutive 4577  
days. 4578

(O) "Making retail sales" means the effecting of transactions 4579  
wherein one party is obligated to pay the price and the other 4580  
party is obligated to provide a service or to transfer title to or 4581  
possession of the item sold. "Making retail sales" does not 4582  
include the preliminary acts of promoting or soliciting the retail 4583  
sales, other than the distribution of printed matter which 4584  
displays or describes and prices the item offered for sale, nor 4585  
does it include delivery of a predetermined quantity of tangible 4586  
personal property or transportation of property or personnel to or 4587  
from a place where a service is performed, regardless of whether 4588  
the vendor is a delivery vendor. 4589

(P) "Used directly in the rendition of a public utility 4590  
service" means that property which is to be incorporated into and 4591  
will become a part of the consumer's production, transmission, 4592  
transportation, or distribution system and that retains its 4593  
classification as tangible personal property after such 4594  
incorporation; fuel or power used in the production, transmission, 4595  
transportation, or distribution system; and tangible personal 4596  
property used in the repair and maintenance of the production, 4597  
transmission, transportation, or distribution system, including 4598  
only such motor vehicles as are specially designed and equipped 4599

for such use. Tangible personal property and services used 4600  
primarily in providing highway transportation for hire are not 4601  
used in providing a public utility service as defined in this 4602  
division. 4603

(Q) "Refining" means removing or separating a desirable 4604  
product from raw or contaminated materials by distillation or 4605  
physical, mechanical, or chemical processes. 4606

(R) "Assembly" and "assembling" mean attaching or fitting 4607  
together parts to form a product, but do not include packaging a 4608  
product. 4609

(S) "Manufacturing operation" means a process in which 4610  
materials are changed, converted, or transformed into a different 4611  
state or form from which they previously existed and includes 4612  
refining materials, assembling parts, and preparing raw materials 4613  
and parts by mixing, measuring, blending, or otherwise committing 4614  
such materials or parts to the manufacturing process. 4615  
"Manufacturing operation" does not include packaging. 4616

(T) "Fiscal officer" means, with respect to a regional 4617  
transit authority, the secretary-treasurer thereof, and with 4618  
respect to a county that is a transit authority, the fiscal 4619  
officer of the county transit board if one is appointed pursuant 4620  
to section 306.03 of the Revised Code or the county auditor if the 4621  
board of county commissioners operates the county transit system. 4622

(U) "Transit authority" means a regional transit authority 4623  
created pursuant to section 306.31 of the Revised Code or a county 4624  
in which a county transit system is created pursuant to section 4625  
306.01 of the Revised Code. For the purposes of this chapter, a 4626  
transit authority must extend to at least the entire area of a 4627  
single county. A transit authority that includes territory in more 4628  
than one county must include all the area of the most populous 4629  
county that is a part of such transit authority. County population 4630

shall be measured by the most recent census taken by the United States census bureau. 4631  
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(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. 4633  
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(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. 4637  
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(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration. 4644  
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(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. 4647  
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(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. 4651  
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(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following: 4657  
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(i) Examining or acquiring data stored in or accessible to the computer equipment; 4660  
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(ii) Placing data into the computer equipment to be retrieved 4662  
by designated recipients with access to the computer equipment. 4663

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(d) "Automatic data processing, computer services, or 4665  
electronic information services" shall not include personal or 4666  
professional services. 4667

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 4668  
section, "personal and professional services" means all services 4669  
other than automatic data processing, computer services, or 4670  
electronic information services, including but not limited to: 4671

(a) Accounting and legal services such as advice on tax 4672  
matters, asset management, budgetary matters, quality control, 4673  
information security, and auditing and any other situation where 4674  
the service provider receives data or information and studies, 4675  
alters, analyzes, interprets, or adjusts such material; 4676

(b) Analyzing business policies and procedures; 4677

(c) Identifying management information needs; 4678

(d) Feasibility studies, including economic and technical 4679  
analysis of existing or potential computer hardware or software 4680  
needs and alternatives; 4681

(e) Designing policies, procedures, and custom software for 4682  
collecting business information, and determining how data should 4683  
be summarized, sequenced, formatted, processed, controlled, and 4684  
reported so that it will be meaningful to management; 4685

(f) Developing policies and procedures that document how 4686  
business events and transactions are to be authorized, executed, 4687  
and controlled; 4688

(g) Testing of business procedures; 4689

(h) Training personnel in business procedure applications; 4690

(i) Providing credit information to users of such information 4691  
by a consumer reporting agency, as defined in the "Fair Credit 4692  
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or 4693  
as hereafter amended, including but not limited to gathering, 4694  
organizing, analyzing, recording, and furnishing such information 4695  
by any oral, written, graphic, or electronic medium; 4696

(j) Providing debt collection services by any oral, written, 4697  
graphic, or electronic means. 4698

The services listed in divisions (Y)(2)(a) to (j) of this 4699  
section are not automatic data processing or computer services. 4700

(Z) "Highway transportation for hire" means the 4701  
transportation of personal property belonging to others for 4702  
consideration by any of the following: 4703

(1) The holder of a permit or certificate issued by this 4704  
state or the United States authorizing the holder to engage in 4705  
transportation of personal property belonging to others for 4706  
consideration over or on highways, roadways, streets, or any 4707  
similar public thoroughfare; 4708

(2) A person who engages in the transportation of personal 4709  
property belonging to others for consideration over or on 4710  
highways, roadways, streets, or any similar public thoroughfare 4711  
but who could not have engaged in such transportation on December 4712  
11, 1985, unless the person was the holder of a permit or 4713  
certificate of the types described in division (Z)(1) of this 4714  
section; 4715

(3) A person who leases a motor vehicle to and operates it 4716  
for a person described by division (Z)(1) or (2) of this section. 4717

(AA) "Telecommunications service" means the transmission of 4718  
any interactive, two-way electromagnetic communications, including 4719  
voice, image, data, and information, through the use of any medium 4720  
such as wires, cables, microwaves, cellular radio, radio waves, 4721

light waves, or any combination of those or similar media. 4722

"Telecommunications service" includes message toll service even 4723

though the vendor provides the message toll service by means of 4724

wide area transmission type service or private communications 4725

service purchased from another telecommunications service 4726

provider, but does not include any of the following: 4727

(1) Sales of incoming or outgoing wide area transmission 4728

service or wide area transmission type service, including eight 4729

hundred or eight-hundred-type service, to the person contracting 4730

for the receipt of that service; 4731

(2) Sales of private communications service to the person 4732

contracting for the receipt of that service that entitles the 4733

purchaser to exclusive or priority use of a communications channel 4734

or group of channels between exchanges; 4735

(3) Sales of telecommunications service by companies subject 4736

to the excise tax imposed by Chapter 5727. of the Revised Code; 4737

(4) Sales of telecommunications service to a provider of 4738

telecommunications service, including access services, for use in 4739

providing telecommunications service; 4740

(5) Value-added nonvoice services in which computer 4741

processing applications are used to act on the form, content, 4742

code, or protocol of the information to be transmitted; 4743

(6) Transmission of interactive video programming by a cable 4744

television system as defined in section 505.90 of the Revised 4745

Code; 4746

(7) After July 31, 2002, mobile telecommunications service. 4747

(BB) "Industrial laundry cleaning services" means removing 4748

soil or dirt from or supplying towels, linens, or articles of 4749

clothing that belong to others and are used in a trade or 4750

business. 4751

(CC) "Magazines distributed as controlled circulation 4752  
publications" means magazines containing at least twenty-four 4753  
pages, at least twenty-five per cent editorial content, issued at 4754  
regular intervals four or more times a year, and circulated 4755  
without charge to the recipient, provided that such magazines are 4756  
not owned or controlled by individuals or business concerns which 4757  
conduct such publications as an auxiliary to, and essentially for 4758  
the advancement of the main business or calling of, those who own 4759  
or control them. 4760

(DD) "Landscaping and lawn care service" means the services 4761  
of planting, seeding, sodding, removing, cutting, trimming, 4762  
pruning, mulching, aerating, applying chemicals, watering, 4763  
fertilizing, and providing similar services to establish, promote, 4764  
or control the growth of trees, shrubs, flowers, grass, ground 4765  
cover, and other flora, or otherwise maintaining a lawn or 4766  
landscape grown or maintained by the owner for ornamentation or 4767  
other nonagricultural purpose. However, "landscaping and lawn care 4768  
service" does not include the providing of such services by a 4769  
person who has less than five thousand dollars in sales of such 4770  
services during the calendar year. 4771

(EE) "Private investigation and security service" means the 4772  
performance of any activity for which the provider of such service 4773  
is required to be licensed pursuant to Chapter 4749. of the 4774  
Revised Code, or would be required to be so licensed in performing 4775  
such services in this state, and also includes the services of 4776  
conducting polygraph examinations and of monitoring or overseeing 4777  
the activities on or in, or the condition of, the consumer's home, 4778  
business, or other facility by means of electronic or similar 4779  
monitoring devices. "Private investigation and security service" 4780  
does not include special duty services provided by off-duty police 4781  
officers, deputy sheriffs, and other peace officers regularly 4782  
employed by the state or a political subdivision. 4783

(FF) "Information services" means providing conversation, 4784  
giving consultation or advice, playing or making a voice or other 4785  
recording, making or keeping a record of the number of callers, 4786  
and any other service provided to a consumer by means of a nine 4787  
hundred telephone call, except when the nine hundred telephone 4788  
call is the means by which the consumer makes a contribution to a 4789  
recognized charity. 4790

(GG) "Research and development" means designing, creating, or 4791  
formulating new or enhanced products, equipment, or manufacturing 4792  
processes, and also means conducting scientific or technological 4793  
inquiry and experimentation in the physical sciences with the goal 4794  
of increasing scientific knowledge which may reveal the bases for 4795  
new or enhanced products, equipment, or manufacturing processes. 4796  
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(HH) "Qualified research and development equipment" means 4798  
capitalized tangible personal property, and leased personal 4799  
property that would be capitalized if purchased, used by a person 4800  
primarily to perform research and development. Tangible personal 4801  
property primarily used in testing, as defined in division (A)(4) 4802  
of section 5739.011 of the Revised Code, or used for recording or 4803  
storing test results, is not qualified research and development 4804  
equipment unless such property is primarily used by the consumer 4805  
in testing the product, equipment, or manufacturing process being 4806  
created, designed, or formulated by the consumer in the research 4807  
and development activity or in recording or storing such test 4808  
results. 4809

(II) "Building maintenance and janitorial service" means 4810  
cleaning the interior or exterior of a building and any tangible 4811  
personal property located therein or thereon, including any 4812  
services incidental to such cleaning for which no separate charge 4813  
is made. However, "building maintenance and janitorial service" 4814  
does not include the providing of such service by a person who has 4815

less than five thousand dollars in sales of such service during 4816  
the calendar year. 4817

(JJ) "Employment service" means providing or supplying 4818  
personnel, on a temporary or long-term basis, to perform work or 4819  
labor under the supervision or control of another, when the 4820  
personnel so supplied receive their wages, salary, or other 4821  
compensation from the provider of the service. "Employment 4822  
service" does not include: 4823

(1) Acting as a contractor or subcontractor, where the 4824  
personnel performing the work are not under the direct control of 4825  
the purchaser. 4826

(2) Medical and health care services. 4827

(3) Supplying personnel to a purchaser pursuant to a contract 4828  
of at least one year between the service provider and the 4829  
purchaser that specifies that each employee covered under the 4830  
contract is assigned to the purchaser on a permanent basis. 4831

(4) Transactions between members of an affiliated group, as 4832  
defined in division (B)(3)(e) of this section. 4833

(KK) "Employment placement service" means locating or finding 4834  
employment for a person or finding or locating an employee to fill 4835  
an available position. 4836

(LL) "Exterminating service" means eradicating or attempting 4837  
to eradicate vermin infestations from a building or structure, or 4838  
the area surrounding a building or structure, and includes 4839  
activities to inspect, detect, or prevent vermin infestation of a 4840  
building or structure. 4841

(MM) "Physical fitness facility service" means all 4842  
transactions by which a membership is granted, maintained, or 4843  
renewed, including initiation fees, membership dues, renewal fees, 4844  
monthly minimum fees, and other similar fees and dues, by a 4845

physical fitness facility such as an athletic club, health spa, or 4846  
gymnasium, which entitles the member to use the facility for 4847  
physical exercise. 4848

(NN) "Recreation and sports club service" means all 4849  
transactions by which a membership is granted, maintained, or 4850  
renewed, including initiation fees, membership dues, renewal fees, 4851  
monthly minimum fees, and other similar fees and dues, by a 4852  
recreation and sports club, which entitles the member to use the 4853  
facilities of the organization. "Recreation and sports club" means 4854  
an organization that has ownership of, or controls or leases on a 4855  
continuing, long-term basis, the facilities used by its members 4856  
and includes an aviation club, gun or shooting club, yacht club, 4857  
card club, swimming club, tennis club, golf club, country club, 4858  
riding club, amateur sports club, or similar organization. 4859

(OO) "Livestock" means farm animals commonly raised for food 4860  
or food production, and includes but is not limited to cattle, 4861  
sheep, goats, swine, and poultry. "Livestock" does not include 4862  
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 4863  
animals for use in laboratories or for exhibition, or other 4864  
animals not commonly raised for food or food production. 4865

(PP) "Livestock structure" means a building or structure used 4866  
exclusively for the housing, raising, feeding, or sheltering of 4867  
livestock, and includes feed storage or handling structures and 4868  
structures for livestock waste handling. 4869

(QQ) "Horticulture" means the growing, cultivation, and 4870  
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 4871  
and nursery stock. As used in this division, "nursery stock" has 4872  
the same meaning as in section 927.51 of the Revised Code. 4873

(RR) "Horticulture structure" means a building or structure 4874  
used exclusively for the commercial growing, raising, or 4875  
overwintering of horticultural products, and includes the area 4876

used for stocking, storing, and packing horticultural products 4877  
when done in conjunction with the production of those products. 4878

(SS) "Newspaper" means an unbound publication bearing a title 4879  
or name that is regularly published, at least as frequently as 4880  
biweekly, and distributed from a fixed place of business to the 4881  
public in a specific geographic area, and that contains a 4882  
substantial amount of news matter of international, national, or 4883  
local events of interest to the general public. 4884

(TT) "Professional racing team" means a person that employs 4885  
at least twenty full-time employees for the purpose of conducting 4886  
a motor vehicle racing business for profit. The person must 4887  
conduct the business with the purpose of racing one or more motor 4888  
racing vehicles in at least ten competitive professional racing 4889  
events each year that comprise all or part of a motor racing 4890  
series sanctioned by one or more motor racing sanctioning 4891  
organizations. A "motor racing vehicle" means a vehicle for which 4892  
the chassis, engine, and parts are designed exclusively for motor 4893  
racing, and does not include a stock or production model vehicle 4894  
that may be modified for use in racing. For the purposes of this 4895  
division: 4896

(1) A "competitive professional racing event" is a motor 4897  
vehicle racing event sanctioned by one or more motor racing 4898  
sanctioning organizations, at which aggregate cash prizes in 4899  
excess of eight hundred thousand dollars are awarded to the 4900  
competitors. 4901

(2) "Full-time employee" means an individual who is employed 4902  
for consideration for thirty-five or more hours a week, or who 4903  
renders any other standard of service generally accepted by custom 4904  
or specified by contract as full-time employment. 4905

(UU)(1) "Prepaid authorization number" means a numeric or 4906  
alphanumeric combination that represents a prepaid account that 4907

can be used by the account holder solely to obtain 4908  
telecommunications service, and includes any renewals or increases 4909  
in the prepaid account. 4910

(2) "Prepaid telephone calling card" means a tangible item 4911  
that contains a prepaid authorization number that can be used 4912  
solely to obtain telecommunications service, and includes any 4913  
renewals or increases in the prepaid account. 4914

(VV) "Mobile telecommunications service" has the same meaning 4915  
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 4916  
106-252 (2000), 114 Stat. 631, 4 U.S.C.A. 124(7), as amended. 4917

**Sec. 5739.011.** (A) As used in this section: 4918

(1) "Manufacturer" means a person who is engaged in 4919  
manufacturing, processing, assembling, or refining a product for 4920  
sale. 4921

(2) "Manufacturing facility" means a single location where a 4922  
manufacturing operation is conducted, including locations 4923  
consisting of one or more buildings or structures in a contiguous 4924  
area owned or controlled by the manufacturer. 4925

(3) "Materials handling" means the movement of the product 4926  
being or to be manufactured, during which movement the product is 4927  
not undergoing any substantial change or alteration in its state 4928  
or form. 4929

(4) "Testing" means a process or procedure to identify the 4930  
properties or assure the quality of a material or product. 4931

(5) "Completed product" means a manufactured item that is in 4932  
the form and condition as it will be sold by the manufacturer. An 4933  
item is completed when all processes that change or alter its 4934  
state or form or enhance its value are finished, even though the 4935  
item subsequently will be tested to ensure its quality or be 4936  
packaged for storage or shipment. 4937

(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	4969
manufacturing a product for sale;	4970
(6) Machinery, equipment, and other tangible personal	4971
property used by a manufacturer to test raw materials, the product	4972
being manufactured, or the completed product;	4973
(7) Machinery and equipment used to handle or temporarily	4974
store scrap that is intended to be reused in the manufacturing	4975
operation at the same manufacturing facility;	4976
(8) Coke, gas, water, steam, and similar substances used in	4977
the manufacturing operation; machinery and equipment used for, and	4978
fuel consumed in, producing or extracting those substances;	4979
machinery, equipment, and other tangible personal property used to	4980
treat, filter, pump, or otherwise make the substance suitable for	4981
use in the manufacturing operation; and machinery and equipment	4982
<u>used to produce for, and fuel consumed in, producing</u> electricity	4983
for use in the manufacturing operation;	4984
(9) Machinery, equipment, and other tangible personal	4985
property used to transport or transmit electricity, coke, gas,	4986
water, steam, or similar substances used in the manufacturing	4987
operation from the point of generation, if produced by the	4988
manufacturer, or from the point where the substance enters the	4989
manufacturing facility, if purchased by the manufacturer, to the	4990
manufacturing operation;	4991
(10) Machinery, equipment, and other tangible personal	4992
property that treats, filters, cools, refines, or otherwise	4993
renders water, steam, acid, oil, solvents, or similar substances	4994
used in the manufacturing operation reusable, provided that the	4995
substances are intended for reuse and not for disposal, sale, or	4996
transportation from the manufacturing facility;	4997
(11) Parts, components, and repair and installation services	4998
for items described in division (B) of this section.	4999

(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;~~ 5031  
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~~(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;~~ 5033  
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~~(10)(9) Motor vehicles registered for operation on the public highways.~~ 5036  
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(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. 5038  
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**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. 5045  
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(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code. 5055  
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The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered. 5057  
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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 5059  
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tax, as regards such rentals, shall be measured by the 5061  
installments thereof. 5062

In the case of a sale of a service defined under division 5063  
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 5064  
which consists in whole or in part of a membership for the receipt 5065  
of the benefit of the service, the tax applicable to the sale 5066  
shall be measured by the installments thereof. 5067

(B) The tax does not apply to the following: 5068

(1) Sales to the state or any of its political subdivisions, 5069  
or to any other state or its political subdivisions if the laws of 5070  
that state exempt from taxation sales made to this state and its 5071  
political subdivisions; 5072

(2) Sales of food for human consumption off the premises 5073  
where sold; 5074

(3) Sales of food sold to students only in a cafeteria, 5075  
dormitory, fraternity, or sorority maintained in a private, 5076  
public, or parochial school, college, or university; 5077

(4) Sales of newspapers, and of magazine subscriptions 5078  
~~shipped by second class mail,~~ and sales or transfers of magazines 5079  
distributed as controlled circulation publications; 5080

(5) The furnishing, preparing, or serving of meals without 5081  
charge by an employer to an employee provided the employer records 5082  
the meals as part compensation for services performed or work 5083  
done; 5084

(6) Sales of motor fuel upon receipt, use, distribution, or 5085  
sale of which in this state a tax is imposed by the law of this 5086  
state, but this exemption shall not apply to the sale of motor 5087  
fuel on which a refund of the tax is allowable under section 5088  
5735.14 of the Revised Code; and the tax commissioner may deduct 5089  
the amount of tax levied by this section applicable to the price 5090

of motor fuel when granting a refund of motor fuel tax pursuant to 5091  
section 5735.14 of the Revised Code and shall cause the amount 5092  
deducted to be paid into the general revenue fund of this state; 5093

(7) Sales of natural gas by a natural gas company, of water 5094  
by a water-works company, or of steam by a heating company, if in 5095  
each case the thing sold is delivered to consumers through pipes 5096  
or conduits, and all sales of communications services by a 5097  
telephone or telegraph company, all terms as defined in section 5098  
5727.01 of the Revised Code; 5099

(8) Casual sales by a person, or auctioneer employed directly 5100  
by the person to conduct such sales, except as to such sales of 5101  
motor vehicles, watercraft or outboard motors required to be 5102  
titled under section 1548.06 of the Revised Code, watercraft 5103  
documented with the United States coast guard, snowmobiles, and 5104  
all-purpose vehicles as defined in section 4519.01 of the Revised 5105  
Code; 5106

(9) Sales of services or tangible personal property, other 5107  
than motor vehicles, mobile homes, and manufactured homes, by 5108  
churches, organizations exempt from taxation under section 5109  
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 5110  
organizations operated exclusively for charitable purposes as 5111  
defined in division (B)(12) of this section, provided that the 5112  
number of days on which such tangible personal property or 5113  
services, other than items never subject to the tax, are sold does 5114  
not exceed six in any calendar year. If the number of days on 5115  
which such sales are made exceeds six in any calendar year, the 5116  
church or organization shall be considered to be engaged in 5117  
business and all subsequent sales by it shall be subject to the 5118  
tax. In counting the number of days, all sales by groups within a 5119  
church or within an organization shall be considered to be sales 5120  
of that church or organization, except that sales made by separate 5121  
student clubs and other groups of students of a primary or 5122

secondary school, and sales made by a parent-teacher association, 5123  
booster group, or similar organization that raises money to 5124  
support or fund curricular or extracurricular activities of a 5125  
primary or secondary school, shall not be considered to be sales 5126  
of such school, and sales by each such club, group, association, 5127  
or organization shall be counted separately for purposes of the 5128  
six-day limitation. This division does not apply to sales by a 5129  
noncommercial educational radio or television broadcasting 5130  
station. 5131

(10) Sales not within the taxing power of this state under 5132  
the Constitution of the United States; 5133

(11) The transportation of persons or property, unless the 5134  
transportation is by a private investigation and security service; 5135

(12) Sales of tangible personal property or services to 5136  
churches, to organizations exempt from taxation under section 5137  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 5138  
nonprofit organizations operated exclusively for charitable 5139  
purposes in this state, no part of the net income of which inures 5140  
to the benefit of any private shareholder or individual, and no 5141  
substantial part of the activities of which consists of carrying 5142  
on propoganda or otherwise attempting to influence legislation; 5143  
sales to offices administering one or more homes for the aged or 5144  
one or more hospital facilities exempt under section 140.08 of the 5145  
Revised Code; and sales to organizations described in division (D) 5146  
of section 5709.12 of the Revised Code. 5147

"Charitable purposes" means the relief of poverty; the 5148  
improvement of health through the alleviation of illness, disease, 5149  
or injury; the operation of an organization exclusively for the 5150  
provision of professional, laundry, printing, and purchasing 5151  
services to hospitals or charitable institutions; the operation of 5152  
a home for the aged, as defined in section 5701.13 of the Revised 5153  
Code; the operation of a radio or television broadcasting station 5154

that is licensed by the federal communications commission as a 5155  
noncommercial educational radio or television station; the 5156  
operation of a nonprofit animal adoption service or a county 5157  
humane society; the promotion of education by an institution of 5158  
learning that maintains a faculty of qualified instructors, 5159  
teaches regular continuous courses of study, and confers a 5160  
recognized diploma upon completion of a specific curriculum; the 5161  
operation of a parent-teacher association, booster group, or 5162  
similar organization primarily engaged in the promotion and 5163  
support of the curricular or extracurricular activities of a 5164  
primary or secondary school; the operation of a community or area 5165  
center in which presentations in music, dramatics, the arts, and 5166  
related fields are made in order to foster public interest and 5167  
education therein; the production of performances in music, 5168  
dramatics, and the arts; or the promotion of education by an 5169  
organization engaged in carrying on research in, or the 5170  
dissemination of, scientific and technological knowledge and 5171  
information primarily for the public. 5172

Nothing in this division shall be deemed to exempt sales to 5173  
any organization for use in the operation or carrying on of a 5174  
trade or business, or sales to a home for the aged for use in the 5175  
operation of independent living facilities as defined in division 5176  
(A) of section 5709.12 of the Revised Code. 5177

(13) Building and construction materials and services sold to 5178  
construction contractors for incorporation into a structure or 5179  
improvement to real property under a construction contract with 5180  
this state or a political subdivision thereof, or with the United 5181  
States government or any of its agencies; building and 5182  
construction materials and services sold to construction 5183  
contractors for incorporation into a structure or improvement to 5184  
real property that are accepted for ownership by this state or any 5185  
of its political subdivisions, or by the United States government 5186

or any of its agencies at the time of completion of such 5187  
structures or improvements; building and construction materials 5188  
sold to construction contractors for incorporation into a 5189  
horticulture structure or livestock structure for a person engaged 5190  
in the business of horticulture or producing livestock; building 5191  
materials and services sold to a construction contractor for 5192  
incorporation into a house of public worship or religious 5193  
education, or a building used exclusively for charitable purposes 5194  
under a construction contract with an organization whose purpose 5195  
is as described in division (B)(12) of this section; building 5196  
materials and services sold to a construction contractor for 5197  
incorporation into a building under a construction contract with 5198  
an organization exempt from taxation under section 501(c)(3) of 5199  
the Internal Revenue Code of 1986 when the building is to be used 5200  
exclusively for the organization's exempt purposes; building and 5201  
construction materials sold for incorporation into the original 5202  
construction of a sports facility under section 307.696 of the 5203  
Revised Code; and building and construction materials and services 5204  
sold to a construction contractor for incorporation into real 5205  
property outside this state if such materials and services, when 5206  
sold to a construction contractor in the state in which the real 5207  
property is located for incorporation into real property in that 5208  
state, would be exempt from a tax on sales levied by that state; 5209

(14) Sales of ships or vessels or rail rolling stock used or 5210  
to be used principally in interstate or foreign commerce, and 5211  
repairs, alterations, fuel, and lubricants for such ships or 5212  
vessels or rail rolling stock; 5213

(15) Sales to persons engaged in any of the activities 5214  
mentioned in division (E)(2) or (9) of section 5739.01 of the 5215  
Revised Code, to persons engaged in making retail sales, or to 5216  
persons who purchase for sale from a manufacturer tangible 5217  
personal property that was produced by the manufacturer in 5218

accordance with specific designs provided by the purchaser, of 5219  
packages, including material, labels, and parts for packages, and 5220  
of machinery, equipment, and material for use primarily in 5221  
packaging tangible personal property produced for sale, including 5222  
any machinery, equipment, and supplies used to make labels or 5223  
packages, to prepare packages or products for labeling, or to 5224  
label packages or products, by or on the order of the person doing 5225  
the packaging, or sold at retail. "Packages" includes bags, 5226  
baskets, cartons, crates, boxes, cans, bottles, bindings, 5227  
wrappings, and other similar devices and containers, and 5228  
"packaging" means placing therein. 5229

(16) Sales of food to persons using food stamp benefits to 5230  
purchase the food. As used in division (B)(16) of this section, 5231  
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 5232  
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 5233  
adopted pursuant to that act. 5234

(17) Sales to persons engaged in farming, agriculture, 5235  
horticulture, or floriculture, of tangible personal property for 5236  
use or consumption directly in the production by farming, 5237  
agriculture, horticulture, or floriculture of other tangible 5238  
personal property for use or consumption directly in the 5239  
production of tangible personal property for sale by farming, 5240  
agriculture, horticulture, or floriculture; or material and parts 5241  
for incorporation into any such tangible personal property for use 5242  
or consumption in production; and of tangible personal property 5243  
for such use or consumption in the conditioning or holding of 5244  
products produced by and for such use, consumption, or sale by 5245  
persons engaged in farming, agriculture, horticulture, or 5246  
floriculture, except where such property is incorporated into real 5247  
property; 5248

(18) Sales of drugs dispensed by a licensed pharmacist upon 5249  
the order of a licensed health professional authorized to 5250

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 5283  
nonprescription drugs, medicines, or remedies; items or devices 5284  
used to supplement vision; items or devices whose function is 5285  
solely or primarily cosmetic; or physical fitness equipment. This 5286  
division does not apply to sales to a physician or medical 5287  
facility for use in the treatment of a patient. 5288

(20) Sales of emergency and fire protection vehicles and 5289  
equipment to nonprofit organizations for use solely in providing 5290  
fire protection and emergency services, including trauma care and 5291  
emergency medical services, for political subdivisions of the 5292  
state; 5293

(21) Sales of tangible personal property manufactured in this 5294  
state, if sold by the manufacturer in this state to a retailer for 5295  
use in the retail business of the retailer outside of this state 5296  
and if possession is taken from the manufacturer by the purchaser 5297  
within this state for the sole purpose of immediately removing the 5298  
same from this state in a vehicle owned by the purchaser; 5299

5300  
(22) Sales of services provided by the state or any of its 5301  
political subdivisions, agencies, instrumentalities, institutions, 5302  
or authorities, or by governmental entities of the state or any of 5303  
its political subdivisions, agencies, instrumentalities, 5304  
institutions, or authorities; 5305

(23) Sales of motor vehicles to nonresidents of this state 5306  
upon the presentation of an affidavit executed in this state by 5307  
the nonresident purchaser affirming that the purchaser is a 5308  
nonresident of this state, that possession of the motor vehicle is 5309  
taken in this state for the sole purpose of immediately removing 5310  
it from this state, that the motor vehicle will be permanently 5311  
titled and registered in another state, and that the motor vehicle 5312  
will not be used in this state; 5313

(24) Sales to persons engaged in the preparation of eggs for 5314  
sale of tangible personal property used or consumed directly in 5315  
such preparation, including such tangible personal property used 5316  
for cleaning, sanitizing, preserving, grading, sorting, and 5317  
classifying by size; packages, including material and parts for 5318  
packages, and machinery, equipment, and material for use in 5319  
packaging eggs for sale; and handling and transportation equipment 5320  
and parts therefor, except motor vehicles licensed to operate on 5321  
public highways, used in intraplant or interplant transfers or 5322  
shipment of eggs in the process of preparation for sale, when the 5323  
plant or plants within or between which such transfers or 5324  
shipments occur are operated by the same person. "Packages" 5325  
includes containers, cases, baskets, flats, fillers, filler flats, 5326  
cartons, closure materials, labels, and labeling materials, and 5327  
"packaging" means placing therein. 5328

(25)(a) Sales of water to a consumer for residential use, 5329  
except the sale of bottled water, distilled water, mineral water, 5330  
carbonated water, or ice; 5331

(b) Sales of water by a nonprofit corporation engaged 5332  
exclusively in the treatment, distribution, and sale of water to 5333  
consumers, if such water is delivered to consumers through pipes 5334  
or tubing. 5335

(26) Fees charged for inspection or reinspection of motor 5336  
vehicles under section 3704.14 of the Revised Code; 5337

(27) Sales to persons licensed to conduct a food service 5338  
operation pursuant to section 3717.43 of the Revised Code, of 5339  
tangible personal property primarily used directly for the 5340  
following: 5341

(a) To prepare food for human consumption for sale; 5342

(b) To preserve food that has been or will be prepared for 5343  
human consumption for sale by the food service operator, not 5344

including tangible personal property used to display food for selection by the consumer;	5345 5346
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	5347 5348
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	5349 5350
(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;	5351 5352 5353 5354
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	5355 5356 5357
(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;	5358 5359 5360
(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;	5361 5362 5363 5364
(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;	5365 5366 5367 5368 5369
(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,	5370 5371 5372 5373 5374

but not limited to, poles, wires, cables, switching equipment, 5375  
computers, and record storage devices and media, and component 5376  
parts for the tangible personal property. The exemption provided 5377  
in division (B)(34) of this section shall be in lieu of all other 5378  
exceptions under division (E)(2) of section 5739.01 of the Revised 5379  
Code to which a telecommunications service vendor may otherwise be 5380  
entitled based upon the use of the thing purchased in providing 5381  
the telecommunications service. 5382

(35) Sales of investment metal bullion and investment coins. 5383  
"Investment metal bullion" means any elementary precious metal 5384  
that has been put through a process of smelting or refining, 5385  
including, but not limited to, gold, silver, platinum, and 5386  
palladium, and which is in such state or condition that its value 5387  
depends upon its content and not upon its form. "Investment metal 5388  
bullion" does not include fabricated precious metal that has been 5389  
processed or manufactured for one or more specific and customary 5390  
industrial, professional, or artistic uses. "Investment coins" 5391  
means numismatic coins or other forms of money and legal tender 5392  
manufactured of gold, silver, platinum, palladium, or other metal 5393  
under the laws of the United States or any foreign nation with a 5394  
fair market value greater than any statutory or nominal value of 5395  
such coins. 5396

(36)(a) Sales where the purpose of the consumer is to use or 5397  
consume the things transferred in making retail sales and 5398  
consisting of newspaper inserts, catalogues, coupons, flyers, gift 5399  
certificates, or other advertising material that prices and 5400  
describes tangible personal property offered for retail sale. 5401

(b) Sales to direct marketing vendors of preliminary 5402  
materials such as photographs, artwork, and typesetting that will 5403  
be used in printing advertising material; of printed matter that 5404  
offers free merchandise or chances to win sweepstake prizes and 5405  
that is mailed to potential customers with advertising material 5406

described in division (B)(36)(a) of this section; and of equipment 5407  
such as telephones, computers, facsimile machines, and similar 5408  
tangible personal property primarily used to accept orders for 5409  
direct marketing retail sales. 5410

(c) Sales of automatic food vending machines that preserve 5411  
food with a shelf life of forty-five days or less by refrigeration 5412  
and dispense it to the consumer. 5413

For purposes of division (B)(36) of this section, "direct 5414  
marketing" means the method of selling where consumers order 5415  
tangible personal property by United States mail, delivery 5416  
service, or telecommunication and the vendor delivers or ships the 5417  
tangible personal property sold to the consumer from a warehouse, 5418  
catalogue distribution center, or similar fulfillment facility by 5419  
means of the United States mail, delivery service, or common 5420  
carrier. 5421

(37) Sales to a person engaged in the business of 5422  
horticulture or producing livestock of materials to be 5423  
incorporated into a horticulture structure or livestock structure; 5424

(38) The sale of a motor vehicle that is used exclusively for 5425  
a vanpool ridesharing arrangement to persons participating in the 5426  
vanpool ridesharing arrangement when the vendor is selling the 5427  
vehicle pursuant to a contract between the vendor and the 5428  
department of transportation; 5429

(39) Sales of personal computers, computer monitors, computer 5430  
keyboards, modems, and other peripheral computer equipment to an 5431  
individual who is licensed or certified to teach in an elementary 5432  
or a secondary school in this state for use by that individual in 5433  
preparation for teaching elementary or secondary school students; 5434  
5435

(40) Sales to a professional racing team of any of the 5436  
following: 5437

(a) Motor racing vehicles;	5438
(b) Repair services for motor racing vehicles;	5439
(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.	5440 5441 5442 5443 5444 5445 5446 5447
(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;	5448 5449 5450
(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.	5451 5452 5453 5454 5455 5456 5457 5458 5459 5460 5461 5462 5463 5464 5465 5466 5467
For the purpose of the proper administration of this chapter,	5468

and to prevent the evasion of the tax, it is presumed that all 5469  
sales made in this state are subject to the tax until the contrary 5470  
is established. 5471

As used in this section, except in division (B)(16) of this 5472  
section, "food" includes cereals and cereal products, milk and 5473  
milk products including ice cream, meat and meat products, fish 5474  
and fish products, eggs and egg products, vegetables and vegetable 5475  
products, fruits, fruit products, and pure fruit juices, 5476  
condiments, sugar and sugar products, coffee and coffee 5477  
substitutes, tea, and cocoa and cocoa products. It does not 5478  
include: spirituous or malt liquors; soft drinks; sodas and 5479  
beverages that are ordinarily dispensed at bars and soda fountains 5480  
or in connection therewith, other than coffee, tea, and cocoa; 5481  
root beer and root beer extracts; malt and malt extracts; mineral 5482  
oils, cod liver oils, and halibut liver oil; medicines, including 5483  
tonics, vitamin preparations, and other products sold primarily 5484  
for their medicinal properties; and water, including mineral, 5485  
bottled, and carbonated waters, and ice. 5486

(C) The levy of an excise tax on transactions by which 5487  
lodging by a hotel is or is to be furnished to transient guests 5488  
pursuant to this section and division (B) of section 5739.01 of 5489  
the Revised Code does not prevent any of the following: 5490

(1) A municipal corporation or township from levying an 5491  
excise tax for any lawful purpose not to exceed three per cent on 5492  
transactions by which lodging by a hotel is or is to be furnished 5493  
to transient guests in addition to the tax levied by this section. 5494  
If a municipal corporation or township repeals a tax imposed under 5495  
division (C)(1) of this section and a county in which the 5496  
municipal corporation or township has territory has a tax imposed 5497  
under division (C) of section 5739.024 of the Revised Code in 5498  
effect, the municipal corporation or township may not reimpose its 5499  
tax as long as that county tax remains in effect. A municipal 5500

corporation or township in which a tax is levied under division 5501  
(B)(2) of section 351.021 of the Revised Code may not increase the 5502  
rate of its tax levied under division (C)(1) of this section to 5503  
any rate that would cause the total taxes levied under both of 5504  
those divisions to exceed three per cent on any lodging 5505  
transaction within the municipal corporation or township. 5506

(2) A municipal corporation or a township from levying an 5507  
additional excise tax not to exceed three per cent on such 5508  
transactions pursuant to division (B) of section 5739.024 of the 5509  
Revised Code. Such tax is in addition to any tax imposed under 5510  
division (C)(1) of this section. 5511

(3) A county from levying an excise tax pursuant to division 5512  
(A) of section 5739.024 of the Revised Code. 5513

(4) A county from levying an excise tax not to exceed three 5514  
per cent of such transactions pursuant to division (C) of section 5515  
5739.024 of the Revised Code. Such a tax is in addition to any tax 5516  
imposed under division (C)(3) of this section. 5517

(5) A convention facilities authority, as defined in division 5518  
(A) of section 351.01 of the Revised Code, from levying the excise 5519  
taxes provided for in division (B) of section 351.021 of the 5520  
Revised Code. 5521

(6) A county from levying an excise tax not to exceed one and 5522  
one-half per cent of such transactions pursuant to division (D) of 5523  
section 5739.024 of the Revised Code. Such tax is in addition to 5524  
any tax imposed under division (C)(3) or (4) of this section. 5525

(7) A county from levying an excise tax not to exceed one and 5526  
one-half per cent of such transactions pursuant to division (E) of 5527  
section 5739.024 of the Revised Code. Such a tax is in addition to 5528  
any tax imposed under division (C)(3), (4), or (6) of this 5529  
section. 5530  
5531

(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 5562  
improvement or any class or group of permanent improvements, which 5563  
improvement or class or group of improvements shall be enumerated 5564  
in the resolution required by division (D) of this section, and to 5565  
pay principal, interest, premium, and other costs associated with 5566  
the issuance of bonds or notes in anticipation of bonds issued 5567  
pursuant to Chapter 133. of the Revised Code for the acquisition, 5568  
construction, equipping, or repair of the specific permanent 5569  
improvement or class or group of permanent improvements; 5570

(6) To provide revenue for the implementation and operation 5571  
of a 9-1-1 system in the county. If the tax is levied or the rate 5572  
increased exclusively for such purpose, the tax shall not be 5573  
levied or the rate increased for more than five years. At the end 5574  
of the last year the tax is levied or the rate increased, any 5575  
balance remaining in the special fund established for such purpose 5576  
shall remain in that fund and be used exclusively for such purpose 5577  
until the fund is completely expended, and, notwithstanding 5578  
section 5705.16 of the Revised Code, the board of county 5579  
commissioners shall not petition for the transfer of money from 5580  
such special fund, and the tax commissioner shall not approve such 5581  
a petition. 5582

If the tax is levied or the rate increased for such purpose 5583  
for more than five years, the board of county commissioners also 5584  
shall levy the tax or increase the rate of the tax for one or more 5585  
of the purposes described in divisions (A)(1) to (5) of this 5586  
section and shall prescribe the method for allocating the revenues 5587  
from the tax each year in the manner required by division (C) of 5588  
this section. 5589

(7) To provide additional revenue for the operation or 5590  
maintenance of a detention facility, as that term is defined under 5591  
division (F) of section 2921.01 of the Revised Code; 5592

(8) To provide revenue to finance the construction or 5593

renovation of a sports facility, but only if the tax is levied for 5594  
that purpose in the manner prescribed by section 5739.028 of the 5595  
Revised Code. 5596

As used in division (A)(8) of this section: 5597

(a) "Sports facility" means a facility intended to house 5598  
major league professional athletic teams. 5599

(b) "Constructing" or "construction" includes providing 5600  
fixtures, furnishings, and equipment. 5601

(9) To provide additional revenue for the acquisition of 5602  
agricultural easements, as defined in section 5301.67 of the 5603  
Revised Code; to pay principal, interest, and premium on bonds 5604  
issued under section 133.60 of the Revised Code; and for the 5605  
supervision and enforcement of agricultural easements held by the 5606  
county. 5607

Pursuant to section 755.171 of the Revised Code, a board of 5608  
county commissioners may pledge and contribute revenue from a tax 5609  
levied for the purpose of division (A)(5) of this section to the 5610  
payment of debt charges on bonds issued under section 755.17 of 5611  
the Revised Code. 5612

The rate of tax shall be a multiple of one-fourth of one per 5613  
cent, unless a portion of the rate of an existing tax levied under 5614  
section 5739.023 of the Revised Code has been reduced, and the 5615  
rate of tax levied under this section has been increased, pursuant 5616  
to section 5739.028 of the Revised Code, in which case the 5617  
aggregate of the rates of tax levied under this section and 5618  
section 5739.023 of the Revised Code shall be a multiple of 5619  
one-fourth of one per cent. The tax shall be levied and the rate 5620  
increased pursuant to a resolution adopted by a majority of the 5621  
members of the board. 5622

Prior to the adoption of any resolution to levy the tax or to 5623  
increase the rate of tax exclusively for the purpose set forth in 5624

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 5657  
section or for the purpose of a community improvements board under 5658  
division (A)(4) of this section. 5659

(C)(1) If the tax is to be used for more than one of the 5660  
purposes set forth in divisions (A)(1) to (7) and (9) of this 5661  
section, the board of county commissioners shall establish the 5662  
method that will be used to determine the amount or proportion of 5663  
the tax revenue received by the county during each year that will 5664  
be distributed for each of those purposes, including, if 5665  
applicable, provisions governing the reallocation of a convention 5666  
facilities authority's allocation if the authority is dissolved 5667  
while the tax is in effect. The allocation method may provide that 5668  
different proportions or amounts of the tax shall be distributed 5669  
among the purposes in different years, but it shall clearly 5670  
describe the method that will be used for each year. Except as 5671  
otherwise provided in division (C)(2) of this section, the 5672  
allocation method established by the board is not subject to 5673  
amendment during the life of the tax. 5674

(2) Subsequent to holding a public hearing on the proposed 5675  
amendment, the board of county commissioners may amend the 5676  
allocation method established under division (C)(1) of this 5677  
section for any year if the amendment is approved by the governing 5678  
board of each entity whose allocation for the year would be 5679  
reduced by the proposed amendment. In the case of a tax that is 5680  
levied for a continuing period of time, the board may not so amend 5681  
the allocation method for any year before the sixth year that the 5682  
tax is in effect. 5683

(a) If the additional revenues provided to the convention 5684  
facilities authority are pledged by the authority for the payment 5685  
of convention facilities authority revenue bonds for as long as 5686  
such bonds are outstanding, no reduction of the authority's 5687  
allocation of the tax shall be made for any year except to the 5688

extent that the reduced authority allocation, when combined with 5689  
the authority's other revenues pledged for that purpose, is 5690  
sufficient to meet the debt service requirements for that year on 5691  
such bonds. 5692

(b) If the additional revenues provided to the county are 5693  
pledged by the county for the payment of bonds or notes described 5694  
in division (A)(4) or (5) of this section, for as long as such 5695  
bonds or notes are outstanding, no reduction of the county's or 5696  
the community improvements board's allocation of the tax shall be 5697  
made for any year except to the extent that the reduced county or 5698  
community improvements board allocation is sufficient to meet the 5699  
debt service requirements for that year on such bonds or notes. 5700

(c) If the additional revenues provided to the transit 5701  
authority are pledged by the authority for the payment of revenue 5702  
bonds issued under section 306.37 of the Revised Code, for as long 5703  
as such bonds are outstanding, no reduction of the authority's 5704  
allocation of tax shall be made for any year except to the extent 5705  
that the authority's reduced allocation, when combined with the 5706  
authority's other revenues pledged for that purpose, is sufficient 5707  
to meet the debt service requirements for that year on such bonds. 5708

(d) If the additional revenues provided to the county are 5709  
pledged by the county for the payment of bonds or notes issued 5710  
under section 133.60 of the Revised Code, for so long as the bonds 5711  
or notes are outstanding, no reduction of the county's allocation 5712  
of the tax shall be made for any year except to the extent that 5713  
the reduced county allocation is sufficient to meet the debt 5714  
service requirements for that year on the bonds or notes. 5715

(D)(1) The resolution levying the tax or increasing the rate 5716  
of tax shall state the rate of the tax or the rate of the 5717  
increase; the purpose or purposes for which it is to be levied; 5718  
the number of years for which it is to be levied or that it is for 5719  
a continuing period of time; the allocation method required by 5720

division (C) of this section; and if required to be submitted to 5721  
the electors of the county under division (A) of this section, the 5722  
date of the election at which the proposal shall be submitted to 5723  
the electors of the county, which shall be not less than 5724  
seventy-five days after the certification of a copy of the 5725  
resolution to the board of elections and, if the tax is to be 5726  
levied exclusively for the purpose set forth in division (A)(3) of 5727  
this section, shall not occur in February or August of any year. 5728  
Upon certification of the resolution to the board of elections, 5729  
the board of county commissioners shall notify the tax 5730  
commissioner in writing of the levy question to be submitted to 5731  
the electors. If approved by a majority of the electors, the tax 5732  
shall become effective on the first day of the month specified in 5733  
the resolution but not earlier than the first day of the month 5734  
next following the thirtieth day following the certification of 5735  
the results of the election to the board of county commissioners 5736  
and the tax commissioner by the board of elections. 5737

(2)(a) A resolution specifying that the tax is to be used 5738  
exclusively for the purpose set forth in division (A)(3) of this 5739  
section that is not adopted as an emergency measure may direct the 5740  
board of elections to submit the question of levying the tax or 5741  
increasing the rate of the tax to the electors of the county at a 5742  
special election held on the date specified by the board of county 5743  
commissioners in the resolution, provided that the election occurs 5744  
not less than seventy-five days after the resolution is certified 5745  
to the board of elections and the election is not held in February 5746  
or August of any year. Upon certification of the resolution to the 5747  
board of elections, the board of county commissioners shall notify 5748  
the tax commissioner in writing of the levy question to be 5749  
submitted to the electors. No resolution adopted under division 5750  
(D)(2)(a) of this section shall go into effect unless approved by 5751  
a majority of those voting upon it and not until the first day of 5752

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.

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(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 it  
was imposed immediately prior to the increase in rate.

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(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

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be made effective on the first day of the month specified in the 5785  
resolution but not sooner than the first day of the month next 5786  
following the thirtieth day after certification of the resolution 5787  
to the tax commissioner. 5788

(F) The tax levied pursuant to this section shall be in 5789  
addition to the tax levied by section 5739.02 of the Revised Code 5790  
and any tax levied pursuant to section 5739.021 or 5739.023 of the 5791  
Revised Code. 5792

A county that levies a tax pursuant to this section shall 5793  
levy a tax at the same rate pursuant to section 5741.023 of the 5794  
Revised Code. 5795

The additional tax levied by the county shall be collected 5796  
pursuant to section 5739.025 of the Revised Code. 5797

Any tax levied pursuant to this section is subject to the 5798  
exemptions provided in section 5739.02 of the Revised Code and in 5799  
addition shall not be applicable to sales not within the taxing 5800  
power of a county under the Constitution of the United States or 5801  
the Ohio Constitution. 5802

**Sec. 5739.031.** (A) ~~The~~ Upon application, the tax commissioner 5803  
~~may authorize~~ issue a direct payment permit that authorizes a 5804  
~~manufacturer or other consumer, who purchases tangible personal~~ 5805  
~~property or services under circumstances that normally make it~~ 5806  
~~impossible at the time of the purchase to determine the manner in~~ 5807  
~~which the property or services will be used,~~ to pay the sales tax 5808  
levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5809  
5739.026 of the Revised Code or the use tax levied by or pursuant 5810  
to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised 5811  
Code directly to the state, and ~~waive~~ waives the collection of the 5812  
tax by the vendor or seller, ~~but no such authority shall be~~ 5813  
~~granted or exercised except upon application to the commissioner~~ 5814  
and the issuance by the commissioner of a direct payment permit. 5815

~~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 5848  
that section. 5849

(C) For purposes of reporting and remitting the tax, the 5850  
price of tangible personal property or services purchased by, or 5851  
of tangible personal property produced by, the permit holder shall 5852  
be determined under division (G) of section 5741.01 of the Revised 5853  
Code. Notwithstanding section 5739.033 of the Revised Code, ~~all~~ 5854  
the situs of any purchase transactions transaction made by the 5855  
permit holder ~~are conclusively determined to be consummated at~~ is 5856  
the location where the tangible personal property or service is 5857  
received by the permit holder. 5858

(D) It shall be the duty of every permit holder required to 5859  
make a return and pay ~~any~~ its tax under this section to keep and 5860  
preserve suitable records of purchases together with invoices of 5861  
purchases, bills of lading, asset ledgers, depreciation schedules, 5862  
transfer journals, and such other primary and secondary records 5863  
and documents in such form as the commissioner requires. All such 5864  
records and other documents shall be open during business hours to 5865  
the inspection of the tax commissioner, and shall be preserved for 5866  
a period of four years, unless the commissioner, in writing, has 5867  
authorized their destruction or disposal at an earlier date, or by 5868  
order or by reason of a waiver of the four-year time limitation 5869  
pursuant to section 5739.16 of the Revised Code requires that they 5870  
be kept longer. 5871

(E) A permit granted pursuant to this section shall continue 5872  
to be valid until surrendered by the holder or canceled for cause 5873  
by the tax commissioner. 5874

(F) Persons who hold a direct payment permit that has not 5875  
been canceled shall not be required to issue exemption 5876  
certificates and shall not be required to pay the tax as 5877  
prescribed in sections 5739.03, 5739.033, and 5741.12 of the 5878  
Revised Code. Such persons shall notify vendors and sellers from 5879

whom purchases of tangible personal property or services are made, 5880  
of their direct payment permit number and that the tax is being 5881  
paid directly to the state. Upon receipt of such notice, such 5882  
vendor or seller shall be absolved from all duties and liabilities 5883  
imposed by section 5739.03 or 5741.04 of the Revised Code with 5884  
respect to sales of tangible personal property or services to such 5885  
permit holder. 5886

Vendors and sellers who make sales upon which the tax is not 5887  
collected by reason of the provisions of this section shall 5888  
maintain records in such manner that the amount involved and 5889  
identity of the purchaser may be ascertained. The receipts from 5890  
such sales shall not be subject to the tax levied in section 5891  
5739.10 of the Revised Code. 5892

Upon the cancellation or surrender of a direct payment 5893  
permit, the provisions of sections 5739.03, 5741.04 and 5741.12 of 5894  
the Revised Code shall immediately apply to all purchases made 5895  
subsequent to such cancellation or surrender by the person who 5896  
previously held such permit, and such person shall so notify 5897  
vendors and sellers from whom purchases of tangible personal 5898  
property or services are made, in writing, prior to or at the time 5899  
of the first purchase after such cancellation or surrender. Upon 5900  
receipt of such notice, the vendor shall be subject to the 5901  
provisions of sections 5739.03 and 5739.10 of the Revised Code and 5902  
the seller shall be subject to the provisions of section 5741.04 5903  
of the Revised Code, with respect to all sales subsequently made 5904  
to such person. Failure of any such person to notify vendors or 5905  
sellers from whom purchases of tangible personal property or 5906  
services are made of the cancellation or surrender of a direct 5907  
payment permit shall be considered as a refusal to pay the tax by 5908  
the person required to issue such notice. 5909

**Sec. 5739.033.** The amount of tax due pursuant to sections 5910

5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is 5911  
the sum of the taxes imposed pursuant to those sections at the 5912  
situs ~~of the consummation~~ of the sale as determined under this 5913  
section or, if applicable, under division (C) of section 5739.031 5914  
of the Revised Code. 5915

(A) Except as otherwise provided in this section ~~and,~~ 5916  
division (C) of section 5739.031, and section 5739.034 of the 5917  
Revised Code, the situs of all sales ~~are conclusively determined~~ 5918  
~~to be consummated at~~ is the vendor's place of business. 5919

(1) If the consumer or the consumer's agent takes possession 5920  
of the tangible personal property at a place of business of the 5921  
vendor where the purchase contract or agreement was made, the 5922  
situs of the sale is ~~consummated at~~ that place of business. 5923

(2) If the consumer or the consumer's agent takes possession 5924  
of the tangible personal property other than at a place of 5925  
business of the vendor, or takes possession at a warehouse or 5926  
similar facility of the vendor, the situs of the sale is 5927  
~~consummated at~~ the vendor's place of business where the purchase 5928  
contract or agreement was made or the purchase order was received. 5929

(3) If the vendor provides a service specified in division 5930  
(B)(3)(a), (b), (c), (d), (n), or (o) of section 5739.01 of the 5931  
Revised Code, the situs of the sale is ~~consummated at~~ the vendor's 5932  
place of business where the service is performed or the contract 5933  
or agreement for the service was made or the purchase order was 5934  
received. 5935

(B) If the vendor is a transient vendor as specified in 5936  
division (B) of section 5739.17 of the Revised Code, the situs of 5937  
the sale is ~~conclusively determined to be consummated at~~ the 5938  
vendor's temporary place of business or, if the transient vendor 5939  
is the lessor of titled motor vehicles, titled watercraft, or 5940  
titled outboard motors, at the location where the lessee keeps the 5941  
leased property. 5942

(C) If the vendor makes sales of tangible personal property 5943  
from a stock of goods carried in a motor vehicle, from which the 5944  
purchaser makes selection and takes possession, or from which the 5945  
vendor sells tangible personal property the quantity of which has 5946  
not been determined prior to the time the purchaser takes 5947  
possession, the situs of the sale is ~~conclusively determined to be~~ 5948  
~~consummated at~~ the location of the motor vehicle when the sale is 5949  
made. 5950

(D) If the vendor is a delivery vendor as specified in 5951  
division (D) of section 5739.17 of the Revised Code, the situs of 5952  
the sale is ~~conclusively determined to be consummated at~~ the place 5953  
where the tangible personal property is delivered, where the 5954  
leased property is used, or where the service is performed or 5955  
received. 5956

(E) If the vendor provides a service specified in division 5957  
(B)(3)(e), (g), (h), (j), (k), (l), or (m) of section 5739.01 of 5958  
the Revised Code, the situs of the sale is ~~conclusively determined~~ 5959  
~~to be consummated at~~ the location of the consumer where the 5960  
service is performed or received. 5961

(F) Except as provided in division (I) or (J) of this 5962  
section, ~~if:~~ 5963

(1) If the vendor provides a service specified in division 5964  
(B)(3)(f) or (i) of section 5739.01 of the Revised Code, the situs 5965  
of the sale is ~~conclusively determined to be consummated at~~ the 5966  
location of the telephone number or account as reflected in the 5967  
records of the vendor. ~~If, in~~ 5968

(2) In the case of a telecommunications service, if the 5969  
telephone number or account is located outside this state, the 5970  
situs of the sale is ~~conclusively determined to be consummated at~~ 5971  
the location in this state from which the service originated. 5972

(G) If the vendor provides lodging to transient guests as 5973

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. 5739.034.** (A) As used in this section, "customer, enhanced zip code," "home service provider," "licensed service area," and "place of primary use" have the same meanings as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124, as amended.

(B) Notwithstanding section 5739.033 of the Revised Code, on

and after August 1, 2002, if a vendor provides mobile telecommunications service, the situs of all sales of that service is the residential or business street address that is the customer's place of primary use of the service that is within the licensed service area of the home service provider, regardless of whether such mobile telecommunications service originates, terminates, or passes through this state. No mobile telecommunications service provided to a customer with a place of primary use outside this state shall be subject to taxes, charges, or fees imposed in this state. The situs of all sales of mobile telecommunications service shall be determined under the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 626-632 (2000), 4 U.S.C.A. 116-126, as amended.

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(C) Pursuant to 4 U.S.C.A. 123, when otherwise taxable and nontaxable charges for mobile telecommunications service are aggregated, the charges for nontaxable mobile telecommunications service shall be subject to taxation, unless the home service provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business.

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(D) The tax commissioner may provide a home service provider with an electronic database that meets the requirements of 4 U.S.C.A. 119. If such database is provided, a home service provider shall be held harmless from any tax, charge, or fee liability for errors or omissions due solely to reliance on the data contained in the database, subject to 4 U.S.C.A. 119 and 121. If no electronic database is provided by the commissioner, a home service provider may use an enhanced zip code to assign each street address to a specific taxing jurisdiction, and the provider shall be held harmless from any tax, charge, or fee liability in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing

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jurisdiction, subject to 4 U.S.C.A. 120 and 121.

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(E) The tax commissioner shall require a home service provider to obtain and maintain a customer's place of primary use and shall allow the home service provider to rely on this address as provided under 4 U.S.C.A. 122. The commissioner may correct the place of primary use, or correct the assignment of a taxing jurisdiction by a home service provider, in accordance with 4 U.S.C.A. 121.

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**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.

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(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~~

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~~provisions of sections 5739.01 to 5739.31 of the Revised Code, 6068  
unless the granting of the authority would improve compliance and 6069  
increase the efficiency of the administration of the tax. The 6070  
person to whom such authority is granted prints plainly upon the 6071  
product sold or offered for sale, a statement that the tax has 6072  
been paid in advance, or otherwise conveys said information to the 6073  
consumer, by written notice. The commissioner may require security 6074  
to his satisfaction to be filed with him, in such amount as he 6075  
determines to be sufficient to secure the prepayment under the 6076  
provisions of this section of the taxes levied by or pursuant to 6077  
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 6078  
Code in the manner desired shall post a notice, if required by the 6079  
commissioner, at the location where the product is offered for 6080  
sale that the tax is included in the selling price. The 6081  
comissioner may adopt rules to administer this division. 6082~~

(C) The commissioner may authorize a vendor to pay, on the 6083  
basis of a prearranged agreement under this division, the tax 6084  
levied by section 5739.02 or pursuant to section 5739.021, 6085  
5739.023, or 5739.026 of the Revised Code, and waive the 6086  
requirement that the vendor maintain the complete and accurate 6087  
record of individual taxable sales and tax collected thereon 6088  
required by section 5739.11 of the Revised Code, upon application 6089  
~~filed with him by~~ of the vendor, if he the commissioner finds that 6090  
the conditions of the vendor-applicant's business are such that 6091  
the maintenance of such records of individual taxable sales and 6092  
tax collected thereon would impose an unreasonable burden upon the 6093  
vendor. If the commissioner determines that such unreasonable 6094  
burden has been imposed, the vendor and the commissioner shall 6095  
agree to the terms and conditions of a test check to be conducted. 6096  
If the parties are unable to agree to the terms and conditions of 6097  
the test check, the application shall be denied. The test check 6098  
conducted shall determine the proportion that taxable retail sales 6099  
bear to all of ~~his~~ the vendor's retail sales and the ratio which 6100

the tax required to be collected under sections 5739.02, 5739.021, 6101  
and 5739.023 of the Revised Code bears to the receipts from the 6102  
vendor's taxable retail sales. 6103

The vendor shall collect the tax on ~~his~~ the vendor's taxable 6104  
sales and ~~his~~ the vendor's liability for collecting or remitting 6105  
shall be based upon the proportions and ratios established by the 6106  
test check, and not upon any other basis of determination, until 6107  
such time as a subsequent test check is made at the request of 6108  
either the vendor or the commissioner where either party believes 6109  
that the nature of the vendor's business has so changed as to make 6110  
the prior or existing test check no longer representative. The 6111  
commissioner may give notice to the vendor at any time that the 6112  
authorization is revoked or the vendor may notify the commissioner 6113  
that ~~he~~ the vendor no longer elects to report under the 6114  
authorization. Such notice shall be delivered to the other party 6115  
personally or by registered mail. The revocation or cancellation 6116  
is not effective prior to the date of receipt of such notice. 6117

~~(D) The commissioner shall, for the audit of vendors' sales 6118  
tax accounts and records, employ a sufficient number of auditors, 6119  
not less than one auditor for each one thousand vendors' 6120  
certificates outstanding. 6121~~

Sec. 5739.07. (A) Where a vendor has paid taxes to the 6122  
treasurer of state or to the treasurer's agent pursuant to this 6123  
chapter, the tax commissioner shall refund to the vendor the 6124  
amount of taxes paid if the vendor has refunded to the consumer 6125  
the full amount of taxes the consumer paid illegally or 6126  
erroneously or if the vendor has illegally or erroneously billed 6127  
the consumer but has not collected the taxes from the consumer. 6128

(B) Where a consumer has paid taxes directly to the treasurer 6129  
of state or to the treasurer's agent pursuant to this chapter and 6130  
the payment or assessment was illegal or erroneous, the tax 6131

commissioner shall refund to the consumer the full amount of 6132  
illegal or erroneous taxes paid. 6133

(C) The commissioner shall refund to the consumer taxes paid 6134  
illegally or erroneously to a vendor only if: 6135

(1) The commissioner has not refunded the tax to the vendor 6136  
and the vendor has not refunded the tax to the consumer; or 6137

(2) The consumer has received a refund from a manufacturer or 6138  
other person, other than the vendor, of the full purchase price, 6139  
but not the tax, paid to the vendor in settlement of a complaint 6140  
by the consumer about the property or service purchased. 6141

The commissioner may require the consumer to obtain or the 6142  
vendor to provide a written statement confirming that the vendor 6143  
has paid the tax to the treasurer or the treasurer's agent, has 6144  
not refunded the tax to the consumer, and has not filed an 6145  
application for refund of the tax with the commissioner. 6146

(D) An application for refund shall be filed with the tax 6147  
commissioner on the form prescribed by the commissioner within 6148  
four years from the date of the illegal or erroneous payment of 6149  
the tax, unless the vendor or consumer waives the time limitation 6150  
under division (A)(3) of section 5739.16 of the Revised Code. If 6151  
the time limitation is waived, the refund application period shall 6152  
be extended for the same period as the waiver. 6153

(E) On the filing of an application for a refund, the 6154  
commissioner shall determine the amount of refund to which the 6155  
applicant is entitled. If the amount is not less than that 6156  
claimed, the commissioner shall certify that amount to the 6157  
director of budget and management and the treasurer of state for 6158  
payment from the tax refund fund created by section 5703.052 of 6159  
the Revised Code. If the amount is less than that claimed, the 6160  
commissioner shall proceed in accordance with section 5703.70 of 6161  
the Revised Code. 6162

(F) When a refund is granted under this section, it shall 6163  
include interest thereon as provided by section 5739.132 of the 6164  
Revised Code. 6165

**Sec. 5739.104.** The tax commissioner shall refund to a person 6166  
subject to a tax under section 5739.101 of the Revised Code the 6167  
amount of taxes paid illegally or erroneously or paid on an 6168  
illegal or erroneous assessment. Applications for a refund shall 6169  
be filed with the commissioner, on a form prescribed by ~~him~~ the 6170  
commissioner, within four years from the date of the illegal or 6171  
erroneous payment of the tax, except where the person subject to 6172  
the tax waives the time limitation under division (C) of section 6173  
5739.16 of the Revised Code, in which case the four-year refund 6174  
limitation shall be extended for the same period of time as the 6175  
waiver. ~~On~~ 6176

On the filing of an application for a refund, the 6177  
commissioner shall determine the amount of refund ~~due and to which~~ 6178  
the applicant is entitled. If the amount is not less than that 6179  
claimed, the commissioner shall certify ~~that~~ the amount to the 6180  
treasurer of state for payment from the current resort area excise 6181  
tax receipts of the municipal corporation or township from which 6182  
the refund is due. ~~When~~ If the amount is less than that claimed, 6183  
the commissioner shall proceed in accordance with section 5703.70 6184  
of the Revised Code. 6185

If a refund is granted for payment of an illegal or erroneous 6186  
assessment issued by the commissioner, the refund shall include 6187  
interest computed at the rate per annum prescribed under section 6188  
5703.47 of the Revised Code. 6189

**Sec. 5739.13.** (A) If any vendor collects the tax imposed by 6190  
or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 6191  
the Revised Code, and fails to remit the tax to the state as 6192

prescribed, or on the sale of a motor vehicle, watercraft, or 6193  
outboard motor required to be titled, fails to remit payment to a 6194  
clerk of a court of common pleas as provided in section 1548.06 or 6195  
4505.06 of the Revised Code, the vendor shall be personally liable 6196  
for any tax collected and not remitted. The tax commissioner may 6197  
make an assessment against such vendor based upon any information 6198  
in the commissioner's possession. 6199

If any vendor fails to collect the tax or any consumer fails 6200  
to pay the tax imposed by or pursuant to section 5739.02, 6201  
5739.021, 5739.023, or 5739.026 of the Revised Code, on any 6202  
transaction subject to the tax, the vendor or consumer shall be 6203  
personally liable for the amount of the tax applicable to the 6204  
transaction. The commissioner may make an assessment against 6205  
either the vendor or consumer, as the facts may require, based 6206  
upon any information in the commissioner's possession. 6207

An assessment against a vendor when the tax imposed by or 6208  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 6209  
the Revised Code has not been collected or paid, shall not 6210  
discharge the purchaser's or consumer's liability to reimburse the 6211  
vendor for the tax applicable to such transaction. 6212

An assessment issued against either, pursuant to this 6213  
section, shall not be considered an election of remedies, nor a 6214  
bar to an assessment against the other for the tax applicable to 6215  
the same transaction, provided that no assessment shall be issued 6216  
against any person for the tax due on a particular transaction if 6217  
the tax on that transaction actually has been paid by another. 6218

The commissioner may make an assessment against any vendor 6219  
who fails to file a return or remit the proper amount of tax 6220  
required by this chapter, or against any consumer who fails to pay 6221  
the proper amount of tax required by this chapter. When 6222  
information in the possession of the commissioner indicates that 6223  
the amount required to be collected or paid under this chapter is 6224

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 6257  
from the party assessed and payable to the treasurer of state and 6258  
remitted to the tax commissioner. The petition shall indicate the 6259  
objections of the party assessed, but additional objections may be 6260  
raised in writing if received ~~by the commissioner~~ prior to the 6261  
date shown on the final determination ~~by the commissioner.~~ 6262

~~Unless the petitioner waives a hearing, the commissioner~~ 6263  
~~shall assign a time and place for the hearing on the petition and~~ 6264  
~~notify the petitioner of the time and place of the hearing by~~ 6265  
~~personal service or certified mail, but the commissioner may~~ 6266  
~~continue the hearing from time to time if necessary.~~ 6267

~~The commissioner may make such correction to the assessment~~ 6268  
~~as the commissioner finds proper. The commissioner shall serve a~~ 6269  
~~copy of the commissioner's final determination on the petitioner~~ 6270  
~~by personal service or certified mail, and the commissioner's~~ 6271  
~~decision in the matter shall be final, subject to appeal as~~ 6272  
~~provided in section 5717.02 of the Revised Code. Only objections~~ 6273  
~~decided on the merits by the board of tax appeals or a court shall~~ 6274  
~~be given collateral estoppel or res judicata effect in considering~~ 6275  
~~an application for refund of amounts paid pursuant to the~~ 6276  
~~assessment. If the petition has been properly filed, the~~ 6277  
~~commissioner shall proceed under section 5703.60 of the Revised~~ 6278  
~~Code.~~ 6279

(C) After an assessment becomes final, if any portion of the 6280  
assessment remains unpaid, including accrued interest, a certified 6281  
copy of the commissioner's entry making the assessment final may 6282  
be filed in the office of the clerk of the court of common pleas 6283  
in the county in which the place of business of the party assessed 6284  
is located or the county in which the party assessed resides. If 6285  
the party assessed maintains no place of business in this state 6286  
and is not a resident of this state, the certified copy of the 6287  
entry may be filed in the office of the clerk of the court of 6288

common pleas of Franklin county. 6289

~~The clerk, immediately~~ Immediately upon the filing of ~~such~~ 6290  
~~the~~ entry, ~~the clerk~~ shall enter a judgment for the state against 6291  
the party assessed in the amount shown on the entry. The judgment 6292  
may be filed by the clerk in a loose-leaf book entitled "special 6293  
judgments for state, county, and transit authority retail sales 6294  
tax" or, if appropriate, "special judgments for resort area excise 6295  
tax," and shall have the same effect as other judgments. Execution 6296  
shall issue upon the judgment upon the request of the tax 6297  
commissioner, and all laws applicable to sales on execution shall 6298  
apply to sales made under the judgment except as otherwise 6299  
provided in this chapter. 6300

The portion of the assessment not paid within sixty days 6301  
after the date the assessment was issued shall bear interest at 6302  
the rate per annum prescribed by section 5703.47 of the Revised 6303  
Code from the day the tax commissioner issues the assessment until 6304  
the assessment is paid. Interest shall be paid in the same manner 6305  
as the tax and may be collected by issuing an assessment under 6306  
this section. 6307

(D) All money collected by the ~~tax~~ commissioner under this 6308  
section shall be paid to the treasurer of state, and when paid 6309  
shall be considered as revenue arising from the taxes imposed by 6310  
or pursuant to sections 5739.01 to 5739.31 of the Revised Code. 6311

**Sec. 5739.17.** (A) No person shall engage in making retail 6312  
sales subject to a tax imposed by or pursuant to section 5739.02, 6313  
5739.021, 5739.023, or 5739.026 of the Revised Code as a business 6314  
without having a license therefor, except as otherwise provided in 6315  
divisions (A)(1), (2), and (3) of this section. 6316

(1) In the dissolution of a partnership by death, the 6317  
surviving partner may operate under the license of the partnership 6318  
for a period of sixty days. 6319

(2) The heirs or legal representatives of deceased persons, 6320  
and receivers and trustees in bankruptcy, appointed by any 6321  
competent authority, may operate under the license of the person 6322  
so succeeded in possession. 6323

(3) Two or more persons who are not partners may operate a 6324  
single place of business under one license. In such case neither 6325  
the retirement of any such person from business at that place of 6326  
business, nor the entrance of any person, under an existing 6327  
arrangement, shall affect the license or require the issuance of a 6328  
new license, unless the person retiring from the business is the 6329  
individual named on the vendor's license. 6330

Except as otherwise provided in this section, each applicant 6331  
for a license shall make out and deliver to the county auditor of 6332  
each county in which the applicant desires to engage in business, 6333  
upon a blank to be furnished by such auditor for that purpose, a 6334  
statement showing the name of the applicant, each place of 6335  
business in the county where the applicant will make retail sales, 6336  
the nature of the business, and any other information the tax 6337  
commissioner reasonably prescribes in the form of a statement 6338  
prescribed by the commissioner. 6339

At the time of making the application, the applicant shall 6340  
pay into the county treasury a license fee in the sum of 6341  
twenty-five dollars for each fixed place of business in the county 6342  
~~where that will be the situs of retail sales will be consummated.~~ 6343  
Upon receipt of the application and exhibition of the county 6344  
treasurer's receipt, showing the payment of the license fee, the 6345  
county auditor shall issue to the applicant a license for each 6346  
fixed place of business designated in the application, authorizing 6347  
the applicant to engage in business at that location. If a 6348  
vendor's identity changes, the vendor shall apply for a new 6349  
license. If a vendor wishes to move an existing fixed place of 6350  
business to a new location within the same county, the vendor 6351

shall obtain a new vendor's license or submit a request to the tax 6352  
commissioner to transfer the existing vendor's license to the new 6353  
location. When the new location has been verified as being within 6354  
the same county, the ~~tax~~ commissioner shall authorize the transfer 6355  
and notify the county auditor of the change of location. If a 6356  
vendor wishes to move an existing fixed place of business to 6357  
another county, the vendor's license shall not transfer and the 6358  
vendor shall obtain a new vendor's license from the county in 6359  
which the business is to be located. The form of the license shall 6360  
be prescribed by the commissioner. The fees collected shall be 6361  
credited to the general fund of the county. 6362

A vendor that makes retail sales subject to tax under Chapter 6363  
5739. of the Revised Code pursuant to a permit issued by the 6364  
division of liquor control shall obtain a vendor's license in the 6365  
identical name and for the identical address as shown on the 6366  
permit. 6367

Except as otherwise provided in this section, if a vendor has 6368  
no fixed place of business and sells from a vehicle, each vehicle 6369  
intended to be used within a county constitutes a place of 6370  
business for the purpose of this section. 6371

(B) As used in this division, "transient vendor" means any 6372  
person who makes sales of tangible personal property from vending 6373  
machines located on land owned by others, who leases titled motor 6374  
vehicles, titled watercraft, or titled outboard motors, or who, in 6375  
the usual course of the person's business, transports inventory, 6376  
stock of goods, or similar tangible personal property to a 6377  
temporary place of business or temporary exhibition, show, fair, 6378  
flea market, or similar event in a county in which the person has 6379  
no fixed place of business, for the purpose of making retail sales 6380  
of such property. A "temporary place of business" means any public 6381  
or quasi-public place including, but not limited to, a hotel, 6382  
rooming house, storeroom, building, part of a building, tent, 6383

vacant lot, railroad car, or motor vehicle that is temporarily 6384  
occupied for the purpose of making retail sales of goods to the 6385  
public. A place of business is not temporary if the same person 6386  
conducted business at the place continuously for more than six 6387  
months or occupied the premises as the person's permanent 6388  
residence for more than six months, or if the person intends it to 6389  
be a fixed place of business. 6390

Any transient vendor, in lieu of obtaining a vendor's license 6391  
under division (A) of this section for counties in which the 6392  
transient vendor has no fixed place of business, may apply to the 6393  
tax commissioner, on a form prescribed by the commissioner, for a 6394  
transient vendor's license. The transient vendor's license 6395  
authorizes the transient vendor to make retail sales in any county 6396  
in which the transient vendor does not maintain a fixed place of 6397  
business. Any holder of a transient vendor's license shall not be 6398  
required to obtain a separate vendor's license from the county 6399  
auditor in that county. Upon the ~~tax~~ commissioner's determination 6400  
that an applicant is a transient vendor, the applicant shall pay a 6401  
license fee in the amount of twenty-five dollars, at which time 6402  
the tax commissioner shall issue the license. The tax commissioner 6403  
may require a vendor to be licensed as a transient vendor if, in 6404  
the opinion of the commissioner, such licensing is necessary for 6405  
the efficient administration of the tax. 6406

Any holder of a valid transient vendor's license may make 6407  
retail sales at a temporary place of business or temporary 6408  
exhibition, show, fair, flea market, or similar event, held 6409  
anywhere in the state without complying with any provision of 6410  
section 311.37 of the Revised Code. Any holder of a valid vendor's 6411  
license may make retail sales as a transient vendor at a temporary 6412  
place of business or temporary exhibition, show, fair, flea 6413  
market, or similar event held in any county in which the vendor 6414  
maintains a fixed place of business for which the vendor holds a 6415

vendor's license without obtaining a transient vendor's license. 6416  
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(C) As used in this division, "service vendor" means any 6418  
person who, in the usual course of the person's business, sells 6419  
services described in division (B)(3)(e), (f), (g), (h), (i), (j), 6420  
(k), (l), or (m) of section 5739.01 of the Revised Code. 6421

Every service vendor shall make application to the tax 6422  
commissioner for a service vendor's license. Each applicant shall 6423  
pay a license fee in the amount of twenty-five dollars. Upon the 6424  
commissioner's determination that an applicant is a service vendor 6425  
and payment of the fee, the commissioner shall issue the applicant 6426  
a service vendor's license. 6427

Only sales described in division (B)(3)(e), (f), (g), (h), 6428  
(i), (j), (k), (l), or (m) of section 5739.01 of the Revised Code 6429  
may be made under authority of a service vendor's license, and 6430  
that license authorizes sales to be made at any place in this 6431  
state. Any service vendor who makes sales of other services or 6432  
tangible personal property subject to the sales tax also shall be 6433  
licensed under division (A), (B), or (D) of this section. 6434

(D) As used in this division, "delivery vendor" means any 6435  
vendor who engages in one or more of the activities described in 6436  
divisions (D)(1) to (4) of this section, and who maintains no 6437  
store, showroom, or similar fixed place of business or other 6438  
location where merchandise regularly is offered for sale or 6439  
displayed or shown in catalogs for selection or pick-up by 6440  
consumers, or where consumers bring goods for repair or other 6441  
service. 6442

(1) The vendor makes retail sales of tangible personal 6443  
property; 6444

(2) The vendor rents or leases, at retail, tangible personal 6445  
property, except titled motor vehicles, titled watercraft, or 6446

titled outboard motors; 6447

(3) The vendor provides a service, at retail, described in 6448  
division (B)(3)(a), (b), (c), or (d) of section 5739.01 of the 6449  
Revised Code; or 6450

(4) The vendor makes retail sales of warranty, maintenance or 6451  
service contracts, or similar agreements as described in division 6452  
(B)(7) of section 5739.01 of the Revised Code. 6453

A transient vendor or a seller registered pursuant to section 6454  
5741.17 of the Revised Code is not a delivery vendor. 6455

Delivery vendors shall apply to the tax commissioner, on a 6456  
form prescribed by the commissioner, for a delivery vendor's 6457  
license. Each applicant shall pay a license fee of twenty-five 6458  
dollars for each delivery vendor's license, to be credited to the 6459  
general revenue fund. Upon the commissioner's determination that 6460  
the applicant is a delivery vendor, the commissioner shall issue 6461  
the license. A delivery vendor's license authorizes retail sales 6462  
to be made throughout the state. All sales of the vendor must be 6463  
reported under the delivery license. The commissioner may require 6464  
a vendor to be licensed as a delivery vendor if, in the opinion of 6465  
the commissioner, such licensing is necessary for the efficient 6466  
administration of the tax. The commissioner shall not issue a 6467  
delivery vendor license to a vendor who holds a license issued 6468  
under division (A) of this section. 6469

(E) Any transient vendor who is issued a license pursuant to 6470  
this section shall display the license or a copy of it 6471  
prominently, in plain view, at every place of business of the 6472  
transient vendor. Every owner, organizer, or promoter who operates 6473  
a fair, flea market, show, exhibition, convention, or similar 6474  
event at which transient vendors are present shall keep a 6475  
comprehensive record of all such vendors, listing the vendor's 6476  
name, permanent address, vendor's license number, and the type of 6477

goods sold. Such records shall be kept for four years and shall be 6478  
open to inspection by the tax commissioner. 6479

**Sec. 5739.31.** (A)(1) No person shall engage in the business 6480  
of selling at retail or sell at retail incidental to any other 6481  
regularly conducted business without having a license therefor, as 6482  
required by sections 5739.01 to 5739.31 of the Revised Code. 6483

(2) No person shall engage in the business of selling at 6484  
retail as a transient vendor, as defined in division (B) of 6485  
section 5739.17 of the Revised Code, without first having obtained 6486  
a license as required by that section. 6487

~~(3) No person shall engage in the business of selling at 6488  
retail as a limited vendor as defined in division (B) of section 6489  
5739.17 of the Revised Code, without first having a license as 6490  
required by that section. 6491~~

(B) No person shall continue to engage in the business of 6492  
selling at retail or sell at retail incidental to any other 6493  
regularly conducted business after the license issued to that 6494  
person pursuant to section 5739.17 of the Revised Code has been 6495  
~~revoked under section 5739.19 of the Revised Code or while the 6496  
license is~~ suspended by the tax commissioner under division (B)(2) 6497  
of section 5739.30 of the Revised Code, nor shall any person 6498  
obtain a new license from the county auditor or the tax 6499  
commissioner while such ~~revocation or~~ suspension is in effect. If 6500  
a corporation's license has been ~~revoked or~~ suspended, none of its 6501  
officers, or employees having control or supervision of or charged 6502  
with the responsibility of filing returns and making payments of 6503  
tax due, shall obtain a license from the county auditor or the tax 6504  
commissioner during the period of such ~~revocation or~~ suspension. 6505

**Sec. 5739.99.** (A) Whoever violates section 5739.26 or 5739.29 6506  
of the Revised Code shall be fined not less than twenty-five nor 6507

more than one hundred dollars for a first offense; for each 6508  
subsequent offense such person shall, if a corporation, be fined 6509  
not less than one hundred nor more than five hundred dollars, or 6510  
if an individual, or a member of a partnership, firm, or 6511  
association, be fined not less than twenty-five nor more than one 6512  
hundred dollars, or imprisoned not more than sixty days, or both. 6513  
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(B) Whoever violates division (A) of section 5739.30 of the 6515  
Revised Code shall be fined not less than one hundred nor more 6516  
than one thousand dollars, or imprisoned not more than sixty days, 6517  
or both. 6518

(C)(1) Whoever violates division (A)(1) of section 5739.31 of 6519  
the Revised Code shall be fined not less than twenty-five nor more 6520  
than one hundred dollars. If the offender previously has been 6521  
convicted of a violation of division (A)(1) of section 5739.31 of 6522  
the Revised Code, ~~he~~ the offender is guilty of a felony of the 6523  
fourth degree. 6524

(2) Whoever violates division (A)(2) of section 5739.31 of 6525  
the Revised Code shall be fined not less than one hundred dollars 6526  
nor more than five hundred dollars, or imprisoned for not more 6527  
than ten days, or both, for the first offense; for each subsequent 6528  
offense, each such person shall be fined not less than one 6529  
thousand dollars nor more than twenty-five hundred dollars, or 6530  
imprisoned not more than thirty days, or both. The motor vehicles 6531  
and goods of any person charged with violating division (A)(2) of 6532  
section 5739.31 of the Revised Code may be impounded and held 6533  
pending the disposition of the charge, and may be sold at auction 6534  
by the county sheriff in the manner prescribed by law to satisfy 6535  
any fine imposed by this division. 6536

(3) Whoever violates division (A)(3) of section 5739.31 of 6537  
the Revised Code shall be fined not less than twenty-five nor more 6538  
than one hundred dollars. 6539

(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: 6571

(A) "Person" includes individuals, receivers, assignees, 6572  
trustees in bankruptcy, estates, firms, partnerships, 6573  
associations, joint-stock companies, joint ventures, clubs, 6574  
societies, corporations, business trusts, governments, and 6575  
combinations of individuals of any form. 6576

(B) "Storage" means and includes any keeping or retention in 6577  
this state for use or other consumption in this state. 6578

(C) "Use" means and includes the exercise of any right or 6579  
power incidental to the ownership of the thing used. A thing is 6580  
also "used" in this state if its consumer gives or otherwise 6581  
distributes it, without charge, to recipients in this state. 6582

(D) "Purchase" means acquired or received for a 6583  
consideration, whether such acquisition or receipt was effected by 6584  
a transfer of title, or of possession, or of both, or a license to 6585  
use or consume; whether such transfer was absolute or conditional, 6586  
and by whatever means the transfer was effected; and whether the 6587  
consideration was money, credit, barter, or exchange. Purchase 6588  
includes production, even though the article produced was used, 6589  
stored, or consumed by the producer. The transfer of copyrighted 6590  
motion picture films for exhibition purposes is not a purchase, 6591  
except such films as are used solely for advertising purposes. 6592

(E) "Seller" means the person from whom a purchase is made, 6593  
and includes every person engaged in this state or elsewhere in 6594  
the business of selling tangible personal property or providing a 6595  
service for storage, use, or other consumption or benefit in this 6596  
state; and when, in the opinion of the tax commissioner, it is 6597  
necessary for the efficient administration of this chapter, to 6598  
regard any salesman, representative, peddler, or canvasser as the 6599  
agent of a dealer, distributor, supervisor, or employer under whom 6600  
~~he~~ the person operates, or from whom ~~he~~ the person obtains 6601

tangible personal property, sold by ~~him~~ the person for storage, 6602  
use, or other consumption in this state, irrespective of whether 6603  
or not ~~he~~ the person is making such sales on ~~his~~ the person's own 6604  
behalf, or on behalf of such dealer, distributor, supervisor, or 6605  
employer, the commissioner may regard ~~him~~ the person as such 6606  
agent, and may regard such dealer, distributor, supervisor, or 6607  
employer as the seller. "Seller" does not include any person to 6608  
the extent the person provides a communications medium, such as, 6609  
but not limited to, newspapers, magazines, radio, television, or 6610  
cable television, by means of which sellers solicit purchases of 6611  
their goods or services. 6612

(F) "Consumer" means any person who has purchased tangible 6613  
personal property or has been provided a service for storage, use, 6614  
or other consumption or benefit in this state. "Consumer" does not 6615  
include a person who receives, without charge, tangible personal 6616  
property or a service. 6617

A person who performs a facility management or similar 6618  
service contract for a contractee is a consumer of all tangible 6619  
personal property and services purchased for use in connection 6620  
with the performance of such contract, regardless of whether title 6621  
to any such property vests in the contractee. The purchase of such 6622  
property and services is not subject to the exception for resale 6623  
under division (E)(1) of section 5739.01 of the Revised Code. 6624

(G)(1) "Price," except in the case of watercraft, outboard 6626  
motors, or new motor vehicles, means the aggregate value in money 6627  
of anything paid or delivered, or promised to be paid or 6628  
delivered, by a consumer to a seller in the complete performance 6629  
of the transaction by which tangible personal property has been 6630  
purchased or a service has been provided for storage, use, or 6631  
other consumption or benefit in this state, without any deduction 6632  
or exclusion on account of the cost of the property sold, cost of 6633

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. 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 ~~him~~ 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.

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(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.

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(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.

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(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.

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(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:

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(1) Maintains a place of business within this state, whether

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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 6728  
306.03 of the Revised Code or, if the board of county 6729  
commissioners operates the county transit system, the county 6730  
auditor. 6731

(K) "Territory of the transit authority" means all of the 6732  
area included within the territorial boundaries of a transit 6733  
authority as they from time to time exist. Such territorial 6734  
boundaries must at all times include all the area of a single 6735  
county or all the area of the most populous county which is a part 6736  
of such transit authority. County population shall be measured by 6737  
the most recent census taken by the United States census bureau. 6738

(L) "Transit authority" means a regional transit authority 6739  
created pursuant to section 306.31 of the Revised Code or a county 6740  
in which a county transit system is created pursuant to section 6741  
306.01 of the Revised Code. For the purposes of this chapter, a 6742  
transit authority must extend to at least the entire area of a 6743  
single county. A transit authority which includes territory in 6744  
more than one county must include all the area of the most 6745  
populous county which is a part of such transit authority. County 6746  
population shall be measured by the most recent census taken by 6747  
the United States census bureau. 6748

(M) "Providing a service" has the same meaning as in division 6749  
(X) of section 5739.01 of the Revised Code. 6750

(N) "Other consumption" includes receiving the benefits of a 6751  
service. 6752

Sec. 5741.10. Refunds of taxes paid pursuant to this chapter 6753  
by a seller or consumer illegally or erroneously shall be made in 6754  
the same manner as refunds are made to a vendor or consumer under 6755  
section 5739.07 of the Revised Code. 6756

**Sec. 5741.13.** If any person required by section 5741.12 of 6757

the Revised Code to make a return to the tax commissioner fails to 6758  
make such return at the time required by or under authority of 6759  
such section, the commissioner may make an assessment against such 6760  
person, based upon any information within ~~his~~ the commissioner's 6761  
possession. If information in the possession of the commissioner 6762  
indicates that the tax paid by any consumer is less than that due, 6763  
the commissioner may audit a sample of that consumer's purchases 6764  
for a representative period and may issue an assessment based 6765  
thereon. The commissioner shall make a good faith effort to reach 6766  
agreement with the consumer in selecting a representative sample 6767  
period. The commissioner shall give to such person written notice 6768  
of such the assessment. Such notice may be served upon such person 6769  
personally, or by certified mail as provided in section 5703.37 of 6770  
the Revised Code. 6771

If information in the possession of the commissioner 6772  
indicates that the tax paid by any consumer is less than that due, 6773  
the commissioner may audit a representative sample of that 6774  
consumer's purchases and may issue an assessment based thereon. 6775  
The commissioner shall make a good faith effort to reach agreement 6776  
with the consumer on selecting a representative sample. 6777

If information in the possession of the commissioner 6778  
indicates that the amount required to be collected or paid under 6779  
this chapter is greater than the amount remitted by the seller, 6780  
the commissioner may audit a representative sample of the seller's 6781  
sales to determine the per cent of exempt or taxable transactions 6782  
or the effective tax rate and may issue an assessment based on the 6783  
audit. The commissioner shall make a good faith effort to reach 6784  
agreement with the seller in selecting a representative sample. 6785

**Sec. 5743.05.** All stamps provided for by section 5743.03 of 6786  
the Revised Code, when procured by the tax commissioner, shall be 6787  
immediately delivered to the treasurer of state, who shall execute 6788  
a receipt therefor showing the number and aggregate face value of 6789

each denomination received by the treasurer of state and any other 6790  
information that the commissioner requires to enforce the 6791  
collection and distribution of all taxes imposed under section 6792  
5743.024 or 5743.026 of the Revised Code, and deliver the receipt 6793  
to the commissioner. The treasurer ~~of state~~ shall sell the stamps 6794  
and, on the fifth day of each month, make a report showing all 6795  
sales made during the preceding month, with the names of 6796  
purchasers, the number of each denomination, the aggregate face 6797  
value purchased by each, and any other information as the 6798  
commissioner requires to enforce the collection and distribution 6799  
of all taxes imposed under section 5743.024 of the Revised Code, 6800  
and deliver it to the commissioner. The treasurer ~~of state~~ shall 6801  
be accountable for all stamps received and unsold. The stamps 6802  
shall be sold and accounted for at their face value, except the 6803  
commissioner shall, by rule certified to the treasurer ~~of state~~, 6804  
authorize the sale of stamps and meter impressions to wholesale or 6805  
retail dealers in this state, or to wholesale dealers outside this 6806  
state, at a discount of not less than three and six-tenths per 6807  
cent or more than ten per cent of their face value, as a 6808  
commission for affixing and canceling the stamps or meter 6809  
impressions. 6810

The ~~tax~~ commissioner, by rule certified to the treasurer ~~of~~ 6811  
~~state~~, shall authorize the delivery of stamps and meter 6812  
impressions to wholesale and retail dealers in this state and to 6813  
wholesale dealers outside this state on credit when the purchaser 6814  
files with the commissioner a bond to the state in the amount and 6815  
in the form prescribed by the commissioner, and with surety to the 6816  
satisfaction of the treasurer ~~of state~~, conditioned on payment to 6817  
the treasurer ~~of state~~ within thirty days for stamps or meter 6818  
impressions delivered within that time. The ~~tax~~ commissioner shall 6819  
limit delivery of stamps and meter impressions on credit to the 6820  
period running from the first day of July of the fiscal year until 6821  
the first day of the following May. Any discount allowed as a 6822

commission for affixing and canceling stamps or meter impressions 6823  
shall be allowed with respect to sales of stamps and meter 6824  
impressions on credit. 6825

The treasurer ~~of state~~ shall redeem and pay for any 6826  
destroyed, unused, or spoiled tax stamps and any unused meter 6827  
impressions at their net value, and ~~he~~ shall refund to wholesale 6828  
dealers the net amount of state and county taxes paid erroneously 6829  
or paid on cigarettes ~~which that~~ have been sold in interstate or 6830  
foreign commerce or ~~which that~~ have become unsalable, and the net 6831  
amount of county taxes that were paid on cigarettes that have been 6832  
sold at retail or for retail sale outside a taxing county. ~~An~~ 6833

An application for a refund of tax shall be filed with the 6834  
tax commissioner, on the form prescribed by the commissioner for 6835  
that purpose, within three years from the date the tax stamps are 6836  
destroyed or spoiled, from the date of the erroneous payment, or 6837  
from the date that cigarettes on which taxes have been paid have 6838  
been sold in interstate or foreign commerce or have become 6839  
unsalable. ~~On~~ 6840

On the filing of the application, the commissioner shall 6841  
determine the amount of refund, to which the applicant is entitled 6842  
payable from receipts of the state tax, and, if applicable, 6843  
payable from receipts of a county tax ~~and~~. If the amount is not 6844  
less than that claimed, the commissioner shall certify such 6845  
amounts the amount to the director of budget and management and 6846  
treasurer of state for payment from the tax refund fund created by 6847  
section 5703.052 of the Revised Code. ~~When~~ If the amount is less 6848  
than that claimed, the commissioner shall proceed in accordance 6849  
with section 5703.70 of the Revised Code. 6850

If a refund is granted for payment of an illegal or erroneous 6851  
assessment issued by the department, the refund shall include 6852  
interest on the amount of the refund from the date of the 6853  
overpayment. The interest shall be computed at the rate per annum 6854

prescribed by section 5703.47 of the Revised Code. 6855

**Sec. 5743.081.** (A) If any wholesale dealer or retail dealer 6856  
fails to pay the tax levied under sections 5743.02, 5743.023, 6857  
5743.024, or 5743.026 of the Revised Code as required by sections 6858  
5743.01 to 5743.20 of the Revised Code, and by the rules of the 6859  
tax commissioner, or fails to collect the tax from the purchaser 6860  
or consumer, the commissioner may make an assessment against the 6861  
wholesale or retail dealer based upon any information in the 6862  
commissioner's possession. 6863

The commissioner may make an assessment against any wholesale 6864  
or retail dealer who fails to file a return required by section 6865  
5743.03 or 5743.025 of the Revised Code. 6866

No assessment shall be made against any wholesale or retail 6867  
dealer for any taxes imposed under sections 5743.02, 5743.023, 6868  
5743.024, or 5743.026 of the Revised Code more than three years 6869  
after the last day of the calendar month ~~which~~ that immediately 6870  
follows the semiannual period prescribed in section 5743.03 of the 6871  
Revised Code in which the sale was made, or more than three years 6872  
after the semiannual return for such period is filed, whichever is 6873  
later. This section does not bar an assessment against any 6874  
wholesale or retail dealer who fails to file a return as required 6875  
by section 5743.025 or 5743.03 ~~or 5743.025~~ of the Revised Code, or 6876  
who files a fraudulent return. 6877

A penalty of up to thirty per cent may be added to the amount 6878  
of every assessment made under this section. The commissioner may 6879  
adopt rules providing for the imposition and remission of 6880  
penalties added to assessments made under this section. 6881

The commissioner shall give the party assessed written notice 6882  
of the assessment ~~as~~ in the manner provided in section 5703.37 of 6883  
the Revised Code. The notice shall specify separately any portion 6884  
of the assessment that represents a county tax. With the notice, 6885

the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition. 6886  
6887

(B) Unless the party to ~~whom the notice of assessment is~~ 6888  
~~directed~~ assessed files with the tax commissioner within sixty 6889  
days after service of the notice of assessment, either personally 6890  
or by certified mail, a written petition for reassessment ~~in~~ 6891  
~~writing,~~ signed by the party assessed, ~~or by the~~ that party's 6892  
authorized agent having knowledge of the facts, the assessment 6893  
~~shall become~~ becomes final and the amount of the assessment ~~shall~~ 6894  
~~be~~ is due and payable from the party assessed to the treasurer of 6895  
state. The petition shall indicate the objections of the party 6896  
assessed, but additional objections may be raised in writing if 6897  
received by the commissioner prior to the date shown on the final 6898  
determination ~~by the commissioner.~~ 6899

~~Unless the petitioner waives a hearing, the commissioner~~ 6900  
~~shall assign a time and place for the hearing on the petition and~~ 6901  
~~notify the petitioner of the time and place of the hearing by~~ 6902  
~~personal service or certified mail, but the commissioner may~~ 6903  
~~continue the hearing from time to time if necessary.~~ 6904

~~The commissioner may make such correction to an assessment as~~ 6905  
~~the commissioner finds proper. The commissioner shall serve a copy~~ 6906  
~~of the final determination on the petitioner by personal service~~ 6907  
~~or certified mail, and the commissioner's decision in the matter~~ 6908  
~~shall be final, subject to appeal as provided in section 5717.02~~ 6909  
~~of the Revised Code. Only objections decided on the merits by the~~ 6910  
~~board of tax appeals or a court shall be given collateral estoppel~~ 6911  
~~or res judicata effect in considering an application for refund of~~ 6912  
~~amounts paid pursuant to the assessment. If the petition has been~~ 6913  
~~properly filed, the commissioner shall proceed under section~~ 6914  
~~5703.60 of the Revised Code.~~ 6915

(C) After an assessment becomes final, if any portion of the 6916  
assessment remains unpaid, including accrued interest, a certified 6917

copy of the tax commissioner's entry making the assessment final 6918  
may be filed in the office of the clerk of the court of common 6919  
pleas in the county in which the wholesale or retail dealer's 6920  
place of business is located or the county in which the party 6921  
assessed resides. If the party assessed maintains no place of 6922  
business in this state and is not a resident of this state, the 6923  
certified copy of the entry may be filed in the office of the 6924  
clerk of the court of common pleas of Franklin county. 6925

~~The clerk, immediately~~ Immediately upon the filing of the 6926  
commissioner's entry, the clerk shall enter a judgment for the 6927  
state against the party assessed in the amount shown on the entry. 6928  
The judgment may be filed by the clerk in a loose-leaf book 6929  
entitled "special judgments for state cigarette sales tax," and 6930  
shall have the same effect as other judgments. Execution shall 6931  
issue upon the judgment upon the request of the tax commissioner, 6932  
and all laws applicable to sales on execution shall apply to sales 6933  
made under the judgment, except as otherwise provided in sections 6934  
5743.01 to 5743.20 of the Revised Code. 6935

The portion of the assessment not paid within sixty days 6936  
after the assessment was issued shall bear interest at the rate 6937  
per annum prescribed by section 5703.47 of the Revised Code from 6938  
the day the ~~tax~~ commissioner issues the assessment until it is 6939  
paid. Interest shall be paid in the same manner as the ~~tax~~ and may 6940  
be collected by the issuance of an assessment under this section. 6941

(D) All money collected by the tax commissioner under this 6943  
section shall be paid to the treasurer of state, and when paid 6944  
shall be considered as revenue arising from the taxes imposed by 6945  
sections 5743.01 to 5743.20 of the Revised Code. 6946

**Sec. 5743.53.** (A) The treasurer of state shall refund to a 6947  
taxpayer any of the following: 6948

(1) Any tobacco products tax paid erroneously; 6949

(2) Any tobacco products tax paid on an illegal or erroneous 6950  
assessment; 6951

(3) Any tax paid on tobacco products that have been sold or 6952  
shipped to retail or wholesale dealers outside this state, 6953  
returned to the manufacturer, or destroyed by the taxpayer with 6954  
the prior approval of the tax commissioner. 6955

Any application for refund shall be filed with the tax 6956  
commissioner on a form prescribed by ~~him~~ the commissioner for that 6957  
purpose. The commissioner may not pay any refund on an application 6958  
for refund filed with the ~~tax~~ commissioner more than three years 6959  
from the date of payment of the tax. 6960

(B) ~~Upon~~ On the filing of the application for refund, the 6961  
commissioner shall determine the amount of the refund ~~due and to~~ 6962  
which the applicant is entitled. If the amount is not less than 6963  
that claimed, the commissioner shall certify ~~that the~~ amount to 6964  
the director of budget and management and to the treasurer of 6965  
state for payment from the tax refund fund created by section 6966  
5703.052 of the Revised Code. ~~When~~ If the amount is less than that 6967  
claimed, the commissioner shall proceed in accordance with section 6968  
5703.70 of the Revised Code. 6969

If a refund is granted for payment of an illegal or erroneous 6970  
assessment issued by the department of taxation, the refund shall 6971  
include interest on the amount of the refund from the date of the 6972  
overpayment. The interest shall be computed at the rate per annum 6973  
in the manner prescribed by section 5703.47 of the Revised Code. 6974

(C) If any person entitled to a refund of tax under this 6975  
section or section 5703.70 of the Revised Code is indebted to the 6976  
state for any tax administered by the tax commissioner, or any 6977  
charge, penalties, or interest arising from such tax, the amount 6978  
allowable on the application for refund first shall be applied in 6979

satisfaction of the debt. 6980

(D) In lieu of granting a refund payable under division 6981  
(A)(3) of this section, the tax commissioner may allow a taxpayer 6982  
to claim a credit of the amount of refundable tax on the return 6983  
for the period during which the tax became refundable. The 6984  
commissioner may require taxpayers to submit any information 6985  
necessary to support a claim for a credit under this section, and 6986  
the commissioner shall allow no credit if that information is not 6987  
provided. 6988

**Sec. 5743.56.** (A) Any person required to pay the tax imposed 6989  
by section 5743.51, 5743.62, or 5743.63 of the Revised Code is 6990  
personally liable for the tax. The tax commissioner may make an 6991  
assessment, based upon any information in the commissioner's 6992  
possession, against any person who fails to file a return or pay 6993  
any tax, interest, or additional charge as required by this 6994  
chapter. The commissioner shall give the person assessed written 6995  
notice of such assessment ~~as~~ in the manner provided in section 6996  
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. 6997  
6998  
6999

(B) When the information in the possession of the tax 7000  
commissioner indicates that a person liable for the tax imposed by 7001  
section 5743.51, 5743.62, or 5743.63 of the Revised Code has not 7002  
paid the full amount of tax due, the commissioner may audit a 7003  
representative sample of the person's business and may issue an 7004  
assessment based on such audit. 7005

(C) A penalty of up to fifteen per cent may be added to all 7006  
amounts assessed under this section. The tax commissioner may 7007  
adopt rules providing for the imposition and remission of such 7008  
penalties. 7009

(D) Unless the person assessed files with the tax 7010

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 7043  
person assessed in the amount shown ~~to be due on the entry~~. The 7044  
judgment may be filed by the clerk in a loose-leaf book entitled 7045  
"special judgments for state tobacco products tax," and shall have 7046  
the same effect as other judgments. Execution shall issue upon the 7047  
judgment upon the request of the ~~tax~~ commissioner, and all laws 7048  
applicable to sales on execution shall apply to sales made under 7049  
the judgment. 7050

The portion of the assessment not paid within sixty days 7051  
after the day the assessment is issued shall bear interest at the 7052  
rate per annum prescribed by section 5703.47 of the Revised Code 7053  
from the day the ~~tax~~ commissioner issues the assessment until the 7054  
assessment is paid. Interest shall be paid in the same manner as 7055  
the tax and may be collected by issuing an assessment under this 7056  
section. 7057

(F) If the tax commissioner believes that collection of the 7058  
tax will be jeopardized unless proceedings to collect or secure 7059  
collection of the tax are instituted without delay, the 7060  
commissioner may issue a jeopardy assessment against the person 7061  
liable for the tax. ~~Upon~~ Immediately upon the issuance of the 7062  
jeopardy assessment, the commissioner ~~immediately~~ shall file an 7063  
entry with the clerk of the court of common pleas in the manner 7064  
prescribed by division (E) of this section. Notice of the jeopardy 7065  
assessment shall be served on the person assessed or the legal 7066  
representative of the person assessed, as provided in section 7067  
5703.37 of the Revised Code, within five days of the filing of the 7068  
entry with the clerk. The total amount assessed is immediately due 7069  
and payable, unless the person assessed files a petition for 7070  
reassessment in accordance with division (D) of this section and 7071  
provides security in a form satisfactory to the commissioner and 7072  
in an amount sufficient to satisfy the unpaid balance of the 7073  
assessment. Full or partial payment of the assessment does not 7074

prejudice the commissioner's consideration of the petition for 7075  
reassessment. 7076

(G) All money collected by the tax commissioner under this 7077  
section shall be paid to the treasurer of state as revenue arising 7078  
from the tax imposed by sections 5743.51, 5743.62, and 5743.63 of 7079  
the Revised Code. 7080

**Sec. 5745.11.** An application to refund to a taxpayer the 7081  
amount of taxes paid on any illegal, erroneous, or excessive 7082  
payment of tax under this chapter, including assessments, shall be 7083  
filed with the tax commissioner within three years after the date 7084  
of the illegal, erroneous, or excessive payment of the tax, or 7085  
within any additional period allowed by division (A) of section 7086  
5745.12 of the Revised Code. The application shall be filed in the 7087  
form prescribed by the tax commissioner. 7088

~~Upon~~ On the filing of a refund application, the ~~tax~~ 7089  
commissioner shall determine the amount of refund ~~due and to which~~ 7090  
the applicant is entitled. If the amount is not less than that 7091  
claimed, the commissioner shall certify the amount of the refund 7092  
to each municipal corporation to which the overpayment was made. 7093  
~~The~~ If the amount is less than that claimed, the commissioner 7094  
shall proceed in accordance with section 5703.70 of the Revised 7095  
Code. 7096

On receipt of a certification of a refund, the municipal 7097  
corporation shall issue a refund to the taxpayer, or, upon the 7098  
taxpayer's written request, shall credit the amount of the refund 7099  
against the taxpayer's estimated tax payments to the municipal 7100  
corporation for an ensuing taxable year. ~~Any~~ 7101

Any portion of the refund not issued within ninety days after 7102  
the tax commissioner's notice is received by the municipal 7103  
corporation shall bear interest at the rate per annum prescribed 7104  
by section 5703.47 of the Revised Code from the ninetieth day 7105

after such notice is received by the municipal corporation until 7106  
the day the refund is paid or credited. On an illegal or erroneous 7107  
assessment, interest shall be paid at that rate from the date of 7108  
payment on the illegal or erroneous assessment until the day the 7109  
refund is paid or credited. 7110

**Sec. 5745.12.** (A) If any taxpayer required to file a report 7111  
under this chapter fails to file the report within the time 7112  
prescribed, files an incorrect report, or fails to remit the full 7113  
amount of the tax due for the period covered by the report, the 7114  
tax commissioner may make an assessment against the taxpayer for 7115  
any deficiency for the period for which the report or tax is due, 7116  
based upon any information in the commissioner's possession. 7117

The tax commissioner shall not make or issue an assessment 7118  
against a taxpayer more than three years after the later of the 7119  
final date the report subject to assessment was required to be 7120  
filed or the date the report was filed. Such time limit may be 7121  
extended if both the taxpayer and the commissioner consent in 7122  
writing to the extension. Any such extension shall extend the 7123  
three-year time limit in section 5745.11 of the Revised Code for 7124  
the same period of time. There shall be no bar or limit to an 7125  
assessment against a taxpayer that fails to file a report subject 7126  
to assessment as required by this chapter, or that files a 7127  
fraudulent report. The commissioner shall give the ~~party taxpayer~~ 7128  
assessed written notice of the assessment ~~by personal service or~~ 7129  
~~certified mail as provided in section 5703.37 of the Revised Code.~~ 7130  
With the notice, the commissioner shall provide instructions on 7131  
how to petition for reassessment and request a hearing on the 7132  
petition. 7133

(B) Unless the taxpayer ~~to which the notice of assessment is~~ 7134  
~~directed~~ assessed files with the tax commissioner within sixty 7135  
days after service ~~thereof~~ of the notice of assessment, either 7136  
personally or by certified mail, a written petition for 7137

reassessment ~~in writing~~, signed by the authorized agent of the 7138  
taxpayer assessed having knowledge of the facts, ~~and makes payment~~ 7139  
~~of the portion of the assessment required by division (E) of this~~ 7140  
~~section~~, the assessment ~~shall become~~ becomes final, and the amount 7141  
of the assessment ~~shall be~~ is due and payable from the taxpayer to 7142  
the treasurer of state. The petition shall indicate the taxpayer's 7143  
objections, but additional objections may be raised in writing if 7144  
received by the commissioner prior to the date shown on the final 7145  
determination ~~by the commissioner~~. 7146

~~Unless the petitioner waives a hearing, the commissioner~~ 7147  
~~shall assign a time and place for the hearing on the petition and~~ 7148  
~~notify the petitioner of the time and place of the hearing by~~ 7149  
~~personal service or certified mail, but the commissioner may~~ 7150  
~~continue the hearing from time to time if necessary.~~ 7151

~~The commissioner may make such correction to the assessment~~ 7152  
~~as the commissioner finds proper. The commissioner shall serve a~~ 7153  
~~copy of the final determination on the petitioner by personal~~ 7154  
~~service or by certified mail, and the commissioner's decision in~~ 7155  
~~the matter shall be final, subject to appeal as provided in~~ 7156  
~~section 5717.02 of the Revised Code. Only objections decided on~~ 7157  
~~the merits by the board of tax appeals or a court shall be given~~ 7158  
~~collateral estoppel or res judicata effect in considering an~~ 7159  
~~application for refund of amounts paid pursuant to the assessment.~~ 7160  
If the petition has been properly filed, the commissioner shall 7161  
proceed under section 5703.60 of the Revised Code. 7162

(C) After an assessment becomes final, if any portion of the 7163  
assessment remains unpaid, including accrued interest, a certified 7164  
copy of the tax commissioner's entry making the assessment final 7165  
may be filed in the office of the clerk of the court of common 7166  
pleas in the county in which the taxpayer has an office or place 7167  
of business in this state, the county in which the taxpayer's 7168  
statutory agent is located, or Franklin county. 7169

Immediately upon the filing of the entry, the clerk shall 7170  
enter a judgment against the taxpayer assessed in the amount shown 7171  
on the entry. The judgment may be filed by the clerk in a 7172  
loose-leaf book entitled "special judgments for municipal income 7173  
taxes," and shall have the same effect as other judgments. 7174  
Execution shall issue upon the judgment upon the request of the 7175  
tax commissioner, and all laws applicable to sales on execution 7176  
shall apply to sales made under the judgment. 7177

The portion of an assessment not paid within sixty days after 7178  
the day the assessment was issued shall bear interest at the rate 7179  
per annum prescribed by section 5703.47 of the Revised Code from 7180  
the day the tax commissioner issues the assessment until the 7181  
assessment is paid. Interest shall be paid in the same manner as 7182  
the tax and may be collected by issuing an assessment under this 7183  
section. 7184

(D) All money collected under this section shall be credited 7185  
and distributed to the municipal corporation to which the money is 7186  
owed based on the assessment issued under this section. 7187

~~(E) The portion of an assessment which must be paid upon the 7188  
filing of a petition for reassessment shall be as follows: 7189~~

~~(1) If the sole item objected to is the assessed penalty or 7190  
interest, payment of the assessment excluding any penalty is 7191  
required. 7192~~

~~(2) If the taxpayer that is assessed failed to file, prior to 7193  
the date of issuance of the assessment, the annual report required 7194  
by section 5745.03 of the Revised Code, full payment of the 7195  
assessment including penalty and interest is required. 7196~~

~~(3) If the taxpayer that is assessed filed, prior to the date 7197  
of issuance of the assessment, the annual report required by 7198  
section 5745.03 of the Revised Code, and a balance of the taxes 7199  
shown due on the reports as computed on the reports remains 7200~~

unpaid, payment of only that portion of the assessment 7201  
representing the unpaid balance is required. 7202

~~(4) If none of the conditions specified in divisions (E)(1) 7203  
to (3) of this section apply, no payment is required. If the tax 7204  
commissioner believes that collection of the tax imposed by this 7205  
chapter will be jeopardized unless proceedings to collect or 7206  
secure collection of the tax are instituted without delay, the 7207  
commissioner may issue a jeopardy assessment against the taxpayer 7208  
liable for the tax. Immediately upon the issuance of the jeopardy 7209  
assessment, the commissioner shall file an entry with the clerk of 7210  
the court of common pleas in the manner prescribed by division (C) 7211  
of this section. Notice of the jeopardy assessment shall be served 7212  
on the taxpayer assessed or the taxpayer's legal representative in 7213  
the manner provided in section 5703.37 of the Revised Code within 7214  
five days of the filing of the entry with the clerk. The total 7215  
amount assessed is immediately due and payable, unless the 7216  
taxpayer assessed files a petition for reassessment in accordance 7217  
with division (B) of this section and provides security in a form 7218  
satisfactory to the commissioner and in an amount sufficient to 7219  
satisfy the unpaid balance of the assessment. Full or partial 7220  
payment of the assessment does not prejudice the commissioner's 7221  
consideration of the petition for reassessment. 7222~~

(F) Notwithstanding the fact that a petition for reassessment 7223  
is pending, the taxpayer may pay all or a portion of the 7224  
assessment that is the subject of the petition. The acceptance of 7225  
a payment by the treasurer of state does not prejudice any claim 7226  
for refund upon final determination of the petition. 7227

If upon final determination of the petition an error in the 7228  
assessment is corrected by the tax commissioner, upon petition so 7229  
filed or pursuant to a decision of the board of tax appeals or any 7230  
court to which the determination or decision has been appealed, so 7231  
7232

that the amount due from the taxpayer under the corrected 7233  
assessment is less than the portion paid, there shall be issued to 7234  
the taxpayer, its assigns, or legal representative a refund in the 7235  
amount of the overpayment as provided by section 5745.11 of the 7236  
Revised Code, with interest on that amount as provided by section 7237  
5745.11 of the Revised Code. 7238

**Sec. 5745.13.** If, upon examination of any books, records, 7239  
reports, or other documents of a taxpayer, the tax commissioner 7240  
determines that an adjustment shall be made in the portion of the 7241  
taxpayer's income that is to be apportioned to a municipal 7242  
corporation, the ~~tax~~ commissioner shall notify the taxpayer and, 7243  
if the adjustment causes an adjustment in the taxpayer's tax of 7244  
more than five hundred dollars, shall notify each affected 7245  
municipal corporation that the taxpayer's tax has been adjusted. 7246

Any municipal corporation to which such a notice is issued 7247  
may request a review and redetermination of the taxpayer's federal 7248  
taxable income, Ohio net income, or the portion of Ohio net income 7249  
apportioned to the municipal corporation by filing a petition with 7250  
the ~~tax~~ commissioner not later than sixty days after the ~~tax~~ 7251  
commissioner issues the notice. The petition shall be filed either 7252  
personally or by certified mail, and shall indicate the objections 7253  
of the municipal corporation. 7254

Upon receiving such a petition, if a hearing on the petition 7255  
is requested, the ~~tax~~ commissioner shall assign a time and place 7256  
for a the hearing ~~on the petition~~ and shall notify the petitioner 7257  
of ~~the~~ such time and place ~~of the hearing~~ by ordinary mail. The 7258  
~~tax~~ commissioner may continue the hearing from time to time as 7259  
necessary. The ~~tax~~ commissioner shall make any correction to the 7260  
taxpayer's federal taxable income, Ohio net income, or 7261  
apportionment of Ohio net income ~~that the commissioner finds~~ 7262  
proper pursuant to section 5703.60 of the Revised Code, and issue 7263  
notice of any correction by ordinary mail to the petitioner, to 7264

each other municipal corporation affected by the correction of the 7265  
apportionment, and to the taxpayer. The ~~tax~~ commissioner's 7266  
decision on the matter is final, and is not subject to further 7267  
appeal. 7268

**Sec. 5747.025.** (A) The personal exemption for the taxpayer 7269  
and the taxpayer's spouse shall be seven hundred fifty dollars 7270  
each for the taxable year beginning in 1996, eight hundred fifty 7271  
dollars each for the taxable year beginning in 1997, nine hundred 7272  
fifty dollars each for the taxable year beginning in 1998, and one 7273  
thousand fifty dollars each for the taxable year beginning in 1999 7274  
and taxable years beginning after 1999. The personal exemption 7275  
amount prescribed in this division for taxable years beginning 7276  
after 1999 shall be adjusted each year in the manner prescribed in 7277  
division (C) of this section. 7278

(B) The personal exemption for each dependent shall be eight 7279  
hundred fifty dollars for the taxable year beginning in 1996, and 7280  
one thousand fifty dollars for the taxable year beginning in 1997 7281  
and taxable years beginning after 1997. The personal exemption 7282  
amount prescribed in this division for taxable years beginning 7283  
after 1999 shall be adjusted each year in the manner prescribed in 7284  
division (C) of this section. 7285

(C) ~~Each~~ In September of each year, beginning in 2000, the 7286  
tax commissioner shall determine the percentage increase in the 7287  
gross domestic product deflator determined by the bureau of 7288  
economic analysis of the United States department of commerce from 7289  
the first day of ~~July~~ January of the preceding calendar year to 7290  
the last day of ~~June~~ December of the ~~current~~ preceding year, and 7291  
adjust the personal exemption amount for taxable years beginning 7292  
in the current calendar year by multiplying that amount by the 7293  
percentage increase in the gross domestic product deflator for 7294  
that period; adding the resulting product to the personal 7295  
exemption amount for taxable years beginning in the preceding 7296

calendar year; and rounding the resulting sum upward to the 7297  
nearest multiple of fifty dollars. The ~~tax~~ commissioner shall not 7298  
make such an adjustment in any calendar year in which the amount 7299  
resulting from the adjustment would be less than the amount 7300  
resulting from the adjustment in the preceding calendar year. 7301

**Sec. 5747.06.** (A) Except as provided in division (E)(3) of 7302  
this section, every employer, including the state and its 7303  
political subdivisions, maintaining an office or transacting 7304  
business within this state and making payment of any compensation 7305  
to an employee who is a taxpayer shall deduct and withhold from 7306  
such compensation for each payroll period a tax computed in such 7307  
manner as to result, as far as practicable, in withholding from 7308  
the employee's compensation during each calendar year an amount 7309  
substantially equivalent to the tax reasonably estimated to be due 7310  
from the employee under this chapter and Chapter 5748. of the 7311  
Revised Code with respect to the amount of such compensation 7312  
included in ~~his~~ the employee's adjusted gross income during the 7313  
calendar year. The employer shall deduct and withhold the tax on 7314  
the date that the employer directly, indirectly, or constructively 7315  
pays the compensation to, or credits the compensation to the 7316  
benefit of, the employee. The method of determining the amount to 7317  
be withheld shall be prescribed by rule of the tax commissioner. 7318

In addition to any other exclusions from withholding 7319  
permitted under this section, no tax shall be withheld by an 7320  
employer from the compensation of an employee when such 7321  
compensation is paid for: 7322

(1) Agricultural labor as defined in division G of section 7323  
3121 of Title 26 of the United States Code; 7324

(2) Domestic service in a private home, local college club, 7325  
or local chapter of a college fraternity or sorority; 7326

(3) Service performed in any calendar quarter by an employee 7327

unless the cash remuneration paid for such service is three 7328  
hundred dollars or more and such service is performed by an 7329  
individual who is regularly employed by such employer to perform 7330  
such service; 7331

(4) Services performed for a foreign government or an 7332  
international organization; 7333

(5) Services performed by an individual under the age of 7334  
eighteen in the delivery or distribution of newspapers or shopping 7335  
news, not including delivery or distribution to any point for 7336  
subsequent delivery or distribution, or when performed by such 7337  
individual under the age of eighteen under an arrangement where 7338  
newspapers or magazines are to be sold by ~~him~~ the individual at a 7339  
fixed price, ~~his~~ the individual's compensation being based on the 7340  
retention of the excess of such price over the amount at which the 7341  
newspapers or magazines are charged to ~~him~~ the individual; 7342

(6) Services not in the course of the employer's trade or 7343  
business to the extent paid in any medium other than cash. 7344

(B) Every employer required to deduct and withhold tax from 7345  
the compensation of an employee under this chapter shall furnish 7346  
to each employee, with respect to the compensation paid by such 7347  
employer to such employee during the calendar year, on or before 7348  
the thirty-first day of January of the succeeding year, or, if ~~his~~ 7349  
the employee's employment is terminated before the close of such 7350  
calendar year, within thirty days from the date on which the last 7351  
payment of compensation was made, a written statement as 7352  
prescribed by the tax commissioner showing the amount of 7353  
compensation paid by the employer to the employee, the amount 7354  
deducted and withheld as state income tax, any amount deducted and 7355  
withheld as school district income tax for each applicable school 7356  
district, and any other information as the commissioner 7357  
prescribes. 7358

(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. 7390

**Sec. 5747.08.** An annual return with respect to the tax 7391  
imposed by section 5747.02 of the Revised Code and each tax 7392  
imposed under Chapter 5748. of the Revised Code shall be made by 7393  
every taxpayer for any taxable year for which the taxpayer is 7394  
liable for the tax imposed by that section or under that chapter, 7395  
unless the total credits allowed under divisions (E), (F), and (G) 7396  
of section 5747.05 of the Revised Code for the year are equal to 7397  
or exceed the tax imposed by section 5747.02 of the Revised Code, 7398  
in which case no return shall be required unless the taxpayer is 7399  
liable for a tax imposed pursuant to Chapter 5748. of the Revised 7400  
Code. 7401

(A) If an individual is deceased, any return or notice 7402  
required of that individual under this chapter shall be made and 7403  
filed by that decedent's executor, administrator, or other person 7404  
charged with the property of that decedent. 7405

(B) If an individual is unable to make a return or notice 7406  
required by this chapter, the return or notice required of that 7407  
individual shall be made and filed by the individual's duly 7408  
authorized agent, guardian, conservator, fiduciary, or other 7409  
person charged with the care of the person or property of that 7410  
individual. 7411

(C) Returns or notices required of an estate or a trust shall 7412  
be made and filed by the fiduciary of the estate or trust. 7413

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 7414  
of this section, any pass-through entity may file a single return 7415  
on behalf of one or more of the entity's investors other than an 7416  
investor that is a person subject to the tax imposed under section 7417  
5733.06 of the Revised Code. The single return shall set forth the 7418  
name, address, and social security number or other identifying 7419  
number of each of those pass-through entity investors and shall 7420

indicate the distributive share of each of those pass-through 7421  
entity investor's income taxable in this state in accordance with 7422  
sections 5747.20 to 5747.231 of the Revised Code. Such 7423  
pass-through entity investors for whom the pass-through entity 7424  
elects to file a single return are not entitled to the exemption 7425  
or credit provided for by sections 5747.02 and 5747.022 of the 7426  
Revised Code; shall calculate the tax before business credits at 7427  
the highest rate of tax set forth in section 5747.02 of the 7428  
Revised Code for the taxable year for which the return is filed; 7429  
and are entitled to only their distributive share of the business 7430  
credits as defined in division (D)(2) of this section. A single 7431  
check drawn by the pass-through entity shall accompany the return 7432  
in full payment of the tax due, as shown on the single return, for 7433  
such investors, other than investors who are persons subject to 7434  
the tax imposed under section 5733.06 of the Revised Code. 7435

(b)(i) A pass-through entity shall not include in such a 7436  
single return any investor that is a trust to the extent that any 7437  
direct or indirect current, future, or contingent beneficiary of 7438  
the trust is a person subject to the tax imposed under section 7439  
5733.06 of the Revised Code. 7440

(ii) A pass-through entity shall not include in such a single 7441  
return any investor that is itself a pass-through entity to the 7442  
extent that any direct or indirect investor in the second 7443  
pass-through entity is a person subject to the tax imposed under 7444  
section 5733.06 of the Revised Code. 7445

(c) Nothing in division (D) of this section precludes the tax 7446  
commissioner from requiring such investors to file the return and 7447  
make the payment of taxes and related interest, penalty, and 7448  
interest penalty required by this section or section 5747.02, 7449  
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 7450  
of this section shall be construed to provide to such an investor 7451  
or pass-through entity any additional deduction or credit, other 7452

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 7482  
5747.05 of the Revised Code; 7483

(1) The credit for a resident's out-of-state income under 7484  
division (B) of section 5747.05 of the Revised Code. 7485

(3) The election provided for under division (D) of this 7486  
section applies only to the taxable year for which the election is 7487  
made by the pass-through entity. Unless the tax commissioner 7488  
provides otherwise, this election, once made, is binding and 7489  
irrevocable for the taxable year for which the election is made. 7490  
Nothing in this division shall be construed to provide for any 7491  
deduction or credit that would not be allowable if a nonresident 7492  
pass-through entity investor were to file an annual return. 7493

(4) If a pass-through entity makes the election provided for 7494  
under division (D) of this section, the pass-through entity shall 7495  
be liable for any additional taxes, interest, interest penalty, or 7496  
penalties imposed by this chapter if the ~~tax~~ commissioner 7497  
~~determines~~ finds that the single return does not reflect the 7498  
correct tax due by ~~nonresident~~ the pass-through entity investors 7499  
covered by that return. Nothing in this division shall be 7500  
construed to limit or alter the liability, if any, imposed on 7501  
pass-through entity investors for unpaid or underpaid taxes, 7502  
interest, interest penalty, or penalties as a result of the 7503  
pass-through entity's making the election provided for under 7504  
division (D) of this section. For the purposes of division (D) of 7505  
this section, "correct tax due" means the tax that would have been 7506  
paid by the pass-through entity had the single return been filed 7507  
in a manner reflecting ~~and including~~ the commissioner's findings 7508  
~~and determinations made by the tax commissioner~~. Nothing in 7509  
division (D) of this section shall be construed to make or hold a 7510  
pass-through entity liable for tax attributable to a pass-through 7511  
entity investor's income from a source other than the pass-through 7512  
entity electing to file the single return. 7513

(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 7546  
section and may adopt rules relating to extensions. If the 7547  
extension results in an extension of time for the payment of any 7548  
state or school district income tax liability with respect to 7549  
which the return is filed, the taxpayer shall pay at the time the 7550  
tax liability is paid an amount of interest computed at the rate 7551  
per annum prescribed by section 5703.47 of the Revised Code on 7552  
that liability from the time that payment is due without extension 7553  
to the time of actual payment. Except as provided in section 7554  
5747.132 of the Revised Code, in addition to all other interest 7555  
charges and penalties, all taxes imposed under this chapter or 7556  
Chapter 5748. of the Revised Code and remaining unpaid after they 7557  
become due, except combined amounts due of one dollar or less, 7558  
bear interest at the rate per annum prescribed by section 5703.47 7559  
of the Revised Code until paid or until the day an assessment is 7560  
issued under section 5747.13 of the Revised Code, whichever occurs 7561  
first. 7562

If the commissioner considers it necessary in order to ensure 7563  
the payment of the tax imposed by section 5747.02 of the Revised 7564  
Code or any tax imposed under Chapter 5748. of the Revised Code, 7565  
the commissioner may require returns and payments to be made 7566  
otherwise than as provided in this section. 7567

(H) If any report, claim, statement, or other document 7568  
required to be filed, or any payment required to be made, within a 7569  
prescribed period or on or before a prescribed date under this 7570  
chapter is delivered after that period or that date by United 7571  
States mail to the agency, officer, or office with which the 7572  
report, claim, statement, or other document is required to be 7573  
filed, or to which the payment is required to be made, the date of 7574  
the postmark stamped on the cover in which the report, claim, 7575  
statement, or other document, or payment is mailed shall be deemed 7576  
to be the date of delivery or the date of payment. 7577

If a payment is required to be made by electronic funds 7578  
transfer pursuant to section 5747.072 of the Revised Code, the 7579  
payment is considered to be made when the payment is received by 7580  
the treasurer of state or credited to an account designated by the 7581  
treasurer of state for the receipt of tax payments. 7582

"The date of the postmark" means, in the event there is more 7583  
than one date on the cover, the earliest date imprinted on the 7584  
cover by the United States postal service. 7585

(I) The amounts withheld by the employer pursuant to section 7586  
5747.06 of the Revised Code shall be allowed to the recipient of 7587  
the compensation as credits against payment of the appropriate 7588  
taxes imposed on the recipient by section 5747.02 and under 7589  
Chapter 5748. of the Revised Code. 7590

(J) If, in accordance with division (D) of this section, a 7591  
pass-through entity elects to file a single return and if any 7592  
investor is required to file the return and make the payment of 7593  
taxes required by this chapter on account of the investor's other 7594  
income that is not included in a single return filed by a 7595  
pass-through entity, the investor is entitled to a refundable 7596  
credit equal to the investor's proportionate share of the tax paid 7597  
by the pass-through entity on behalf of the investor. The investor 7598  
shall claim the credit for the investor's taxable year in which or 7599  
with which ends the taxable year of the pass-through entity. 7600  
Nothing in this chapter shall be construed to allow any credit 7601  
provided in this chapter to be claimed more than once. For the 7602  
purposes of computing any interest, penalty, or interest penalty, 7603  
the investor shall be deemed to have paid the refundable credit 7604  
provided by this division on the day that the pass-through entity 7605  
paid the estimated tax or the tax giving rise to the credit. 7606

7607

**Sec. 5747.13.** (A) If any employer collects the tax imposed by 7608

section 5747.02 or under Chapter 5748. of the Revised Code and 7609  
fails to remit the tax as required by law, or fails to collect the 7610  
tax, the employer is personally liable for any amount collected 7611  
~~which that~~ the employer fails to remit, or any amount ~~which that~~ 7612  
the employer fails to collect. If any taxpayer fails to file a 7613  
return or fails to pay the tax imposed by section 5747.02 or under 7614  
Chapter 5748. of the Revised Code, the taxpayer is personally 7615  
liable for the amount of the tax. 7616

If any employer, taxpayer, or qualifying entity required to 7617  
file a return under this chapter fails to file the return within 7618  
the time prescribed, files an incorrect return, fails to remit the 7619  
full amount of the taxes due for the period covered by the return, 7620  
or fails to remit any additional tax due as a result of a 7621  
reduction in the amount of the credit allowed under division (B) 7622  
of section 5747.05 of the Revised Code together with interest on 7623  
the additional tax within the time prescribed by that division, 7624  
the tax commissioner may make an assessment against any person 7625  
liable for any deficiency for the period for which the return is 7626  
or taxes are due, based upon any information in the commissioner's 7627  
possession. 7628

An assessment issued against either the employer or the 7629  
taxpayer pursuant to this section shall not be considered an 7630  
election of remedies or a bar to an assessment against the other 7631  
for failure to report or pay the same tax. No assessment shall be 7632  
issued against any person if the tax actually has been paid by 7633  
another. 7634

No assessment shall be made or issued against an employer, 7635  
taxpayer, or qualifying entity more than four years after the 7636  
final date the return subject to assessment was required to be 7637  
filed or the date the return was filed, whichever is later. 7638  
However, the commissioner may assess any balance due as the result 7639  
of a reduction in the credit allowed under division (B) of section 7640

5747.05 of the Revised Code, including applicable penalty and interest, within four years of the date on which the taxpayer reports a change in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia, or the amount of liability for an income tax or tax measured by income to another state or the District of Columbia, as required by division (B)(3) of section 5747.05 of the Revised Code. Such time limits may be extended if both the employer, taxpayer, or qualifying entity and the commissioner consent in writing to the extension. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, taxpayer, or qualifying entity that fails to file a return subject to assessment as required by this chapter, or against an employer, taxpayer, or qualifying entity that files a fraudulent return.

The commissioner shall give the party assessed written notice of the assessment ~~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 7673  
treasurer of state. The petition shall indicate the objections of 7674  
the party assessed, but additional objections may be raised in 7675  
writing if received by the commissioner prior to the date shown on 7676  
the final determination ~~by the commissioner.~~ 7677

~~Unless the petitioner waives a hearing, the commissioner 7678  
shall assign a time and place for the hearing on the petition and 7679  
notify the petitioner of the time and place of the hearing by 7680  
personal service or certified mail, but the commissioner may 7681  
continue the hearing from time to time if necessary.~~ 7682

~~The commissioner may make such correction to an assessment as 7683  
the commissioner finds proper. The commissioner shall serve a copy 7684  
of a final determination on the petitioner by personal service or 7685  
certified mail, and the commissioner's decision in the matter 7686  
shall be final, subject to appeal as provided in section 5717.02 7687  
of the Revised Code. Only objections decided on the merits by the 7688  
board of tax appeals or a court shall be given collateral estoppel 7689  
or res judicata effect in considering an application for refund of 7690  
amounts paid pursuant to the assessment. If the petition has been 7691  
properly filed, the commissioner shall proceed under section 7692  
5703.60 of the Revised Code. 7693~~

(C) After an assessment becomes final, if any portion of the 7694  
assessment remains unpaid, including accrued interest, a certified 7695  
copy of the tax commissioner's entry making the assessment final 7696  
may be filed in the office of the clerk of the court of common 7697  
pleas in the county in which the employer's, taxpayer's, or 7698  
qualifying entity's place of business is located or the county in 7699  
which the party assessed resides. If the party assessed is not a 7700  
resident of this state, the certified copy of the entry may be 7701  
filed in the office of the clerk of the court of common pleas of 7702  
Franklin county. 7703

Immediately upon the filing of the entry, the clerk shall 7704

enter a judgment against the party assessed in the amount shown on 7705  
the entry. The judgment shall be filed by the clerk in one of two 7706  
loose-leaf books, one entitled "special judgments for state and 7707  
school district income taxes," and the other entitled "special 7708  
judgments for qualifying entity taxes." The judgment shall have 7709  
the same effect as other judgments. Execution shall issue upon the 7710  
judgment upon the request of the tax commissioner, and all laws 7711  
applicable to sales on execution shall apply to sales made under 7712  
the judgment. 7713

The portion of the assessment not paid within sixty days 7714  
after the assessment was issued shall bear interest at the rate 7715  
per annum prescribed by section 5703.47 of the Revised Code from 7716  
the day the tax commissioner issues the assessment until it is 7717  
paid. Interest shall be paid in the same manner as the tax and may 7718  
be collected by the issuance of an assessment under this section. 7719

(D) All money collected under this section shall be 7721  
considered as revenue arising from the taxes imposed by this 7722  
chapter or Chapter 5733. or 5748. of the Revised Code, as 7723  
appropriate. 7724

(E) The portion of an assessment ~~which~~ that must be paid upon 7725  
the filing of a petition for reassessment shall be as follows: 7726

(1) If the sole item objected to is the assessed penalty or 7728  
interest, payment of the assessment, including interest but not 7729  
penalty, is required; 7730

(2) If the taxpayer or qualifying entity that is assessed 7731  
failed to file, prior to the date of issuance of the assessment, 7732  
the annual return or report required by section 5747.08 or 5747.42 7733  
of the Revised Code, any amended return or amended report required 7734  
by section 5747.10 or 5747.45 of the Revised Code for the taxable 7735

year at issue, or any report required by division (B) of section 7736  
5747.05 of the Revised Code to indicate a reduction in the amount 7737  
of the credit provided under that division, payment of the 7738  
assessment, including interest but not penalty, is required, 7739  
except as otherwise provided under division (E)(6) or (7) of this 7740  
section; 7741

(3) If the employer assessed had not filed, prior to the date 7742  
of issuance of the assessment, the annual return required by 7743  
division (E)(2) of section 5747.07 of the Revised Code covering 7744  
the period at issue, payment of the assessment, including interest 7745  
but not penalty, is required; 7746

(4) If the taxpayer or qualifying entity that is assessed 7747  
filed, prior to the date of issuance of the assessment, the annual 7748  
return or report required by section 5747.08 or 5747.42 of the 7749  
Revised Code, all amended returns or reports required by section 7750  
5747.10 or 5747.45 of the Revised Code for the taxable year at 7751  
issue, and all reports required by division (B) of section 5747.05 7752  
of the Revised Code to indicate a reduction in the amount of the 7753  
credit provided under that division, and a balance of the taxes 7754  
shown due on the returns or reports as computed on the returns or 7755  
reports remains unpaid, payment of only that portion of the 7756  
assessment representing the unpaid balance of tax and interest is 7757  
required; 7758

(5) If the employer assessed filed, prior to the date of 7759  
issuance of the assessment, the annual return required by division 7760  
(E)(2) of section 5747.07 of the Revised Code covering the period 7761  
at issue, and a balance of the taxes shown due on the return as 7762  
computed on the return remains unpaid, payment of only that 7763  
portion of the assessment representing the unpaid balance of tax 7764  
and interest is required; 7765

(6) In the case of a party assessed as a qualifying entity 7766  
subject to the tax levied under section 5733.41 or 5747.41 of the 7767

Revised Code, if the party does not dispute that it is a 7768  
qualifying entity subject to that tax but claims the protections 7769  
of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 7770  
381, as amended, no payment is required; 7771

(7) In the case of a party assessed as a qualifying entity 7772  
subject to the tax levied under section 5733.41 or 5747.41 of the 7773  
Revised Code, if the party does dispute that it is a qualifying 7774  
entity subject to that tax, no payment is required; 7775

(8) If none of the conditions specified in divisions (E)(1) 7776  
to (7) of this section apply, no payment is required. 7777

(F) Notwithstanding the fact that a petition for reassessment 7778  
is pending, the petitioner may pay all or a portion of the 7779  
assessment that is the subject of the petition. The acceptance of 7780  
a payment by the treasurer of state does not prejudice any claim 7781  
for refund upon final determination of the petition. 7782  
7783

If upon final determination of the petition an error in the 7784  
assessment is corrected by the tax commissioner, upon petition so 7785  
filed or pursuant to a decision of the board of tax appeals or any 7786  
court to which the determination or decision has been appealed, so 7787  
that the amount due from the party assessed under the corrected 7788  
assessment is less than the portion paid, there shall be issued to 7789  
the petitioner or to the petitioner's assigns or legal 7790  
representative a refund in the amount of the overpayment as 7791  
provided by section 5747.11 of the Revised Code, with interest on 7792  
that amount as provided by such section, subject to section 7793  
5747.12 of the Revised Code. 7794

**Sec. 5749.07.** (A) If any severer required by this chapter to 7795  
make and file returns and pay the tax levied by section 5749.02 of 7796  
the Revised Code, fails to make such return or pay such tax, the 7797  
tax commissioner may make an assessment against the severer based 7798

upon any information in the commissioner's possession. 7799

No assessment shall be made or issued against any severer for 7800  
any tax imposed by section 5749.02 of the Revised Code more than 7801  
four years after the return was due or was filed, whichever is 7802  
later. This section does not bar an assessment against a severer 7803  
who fails to file a return as required by this chapter, or who 7804  
files a fraudulent return. 7805

The commissioner shall give the party assessed written notice 7806  
of such assessment ~~as~~ in the manner provided in section 5703.37 of 7807  
the Revised Code. With the notice, the commissioner shall provide 7808  
instructions on how to petition for reassessment and request a 7809  
hearing on the petition. 7810

(B) Unless the party ~~to whom such notice of assessment is~~ 7811  
~~directed~~ assessed files with the commissioner within sixty days 7812  
after service of the notice of assessment, either personally or by 7813  
certified mail, a written petition for reassessment ~~in writing,~~ 7814  
signed by the party assessed, ~~or by an~~ that party's authorized 7815  
agent ~~of the party assessed~~ having knowledge of the facts, the 7816  
assessment ~~shall become~~ becomes final and the amount of the 7817  
assessment ~~shall be~~ is due and payable from the party assessed to 7818  
the treasurer of state. The petition shall indicate the objections 7819  
of the party assessed, but additional objections may be raised in 7820  
writing if received by the commissioner prior to the date shown on 7821  
the final determination ~~by the commissioner.~~ 7822

~~Unless the petitioner waives a hearing, the commissioner~~ 7823  
~~shall assign a time and place for the hearing on the petition and~~ 7824  
~~notify the petitioner of the time and place of the hearing by~~ 7825  
~~personal service or certified mail, but the commissioner may~~ 7826  
~~continue the hearing from time to time if necessary.~~ 7827

~~The commissioner may make such correction to the assessment~~ 7828  
~~as the commissioner finds proper. The commissioner shall serve a~~ 7829  
~~copy of the final determination on the petitioner by personal~~ 7830

~~service or by certified mail, and the commissioner's decision in~~ 7831  
~~the matter shall be final, subject to appeal as provided in~~ 7832  
~~section 5717.02 of the Revised Code. Only objections decided on~~ 7833  
~~the merits by the board of tax appeals or a court shall be given~~ 7834  
~~collateral estoppel or res judicata effect in considering an~~ 7835  
~~application for refund of amounts paid pursuant to the assessment.~~ 7836  
If the petition has been properly filed, the commissioner shall 7837  
proceed under section 5703.60 of the Revised Code. 7838

(C) After an assessment becomes final, if any portion of the 7839  
assessment remains unpaid, including accrued interest, a certified 7840  
copy of the tax commissioner's entry making the assessment final 7841  
may be filed in the office of the clerk of the court of common 7842  
pleas in the county in which the party assessed resides or in 7843  
which the party's business is conducted. If the party assessed 7844  
maintains no place of business in this state and is not a resident 7845  
of this state, the certified copy of the entry may be filed in the 7846  
office of the clerk of the court of common pleas of Franklin 7847  
county. 7848

~~The clerk, immediately~~ Immediately upon the filing of such 7849  
entry, the clerk shall enter a judgment for the state against the 7850  
party assessed in the amount shown on the entry. The judgment may 7851  
be filed by the clerk in a loose-leaf book entitled "special 7852  
judgments for state severance tax," and shall have the same effect 7853  
as other judgments. Execution shall issue upon the judgment upon 7854  
the request of the ~~tax~~ commissioner, and all laws applicable to 7855  
sales on execution shall apply to sales made under the judgment. 7856

The portion of the assessment not paid within sixty days 7857  
after the day the assessment is issued shall bear interest at the 7858  
rate per annum prescribed by section 5703.47 of the Revised Code 7859  
from the day the ~~tax~~ commissioner issues the assessment until it 7860  
is paid. Interest shall be paid in the same manner as the tax and 7861  
may be collected by the issuance of an assessment under this 7862

section. 7863

(D) All money collected by the tax commissioner under this 7864  
section shall be paid to the treasurer of state, and when paid 7865  
shall be considered as revenue arising from the tax imposed by 7866  
section 5749.02 of the Revised Code. 7867

**Sec. 5749.08.** The tax commissioner shall refund to taxpayers 7868  
the amount of taxes paid illegally or erroneously or paid on an 7869  
illegal or erroneous assessment. Applications for refund shall be 7870  
filed with the tax commissioner, on the form prescribed by the 7871  
commissioner, within four years from the date of the illegal or 7872  
erroneous payment of the tax. On the filing of ~~such~~ the 7873  
application, the commissioner shall determine the amount of refund 7874  
due to which the applicant is entitled, plus interest computed in 7875  
accordance with section 5703.47 of the Revised Code from the date 7876  
of the payment of an erroneous or illegal assessment until the 7877  
date the refund is paid ~~and~~. If the amount is not less than that 7878  
claimed, the commissioner shall certify such the amount to the 7879  
director of budget and management and treasurer of state payment 7880  
from the tax refund fund created by section 5703.052 of the 7881  
Revised Code. If the amount is less than that claimed, the 7882  
commissioner shall proceed in accordance with section 5703.70 of 7883  
the Revised Code. 7884

**Section 2.** That existing sections 323.152, 2935.01, 3317.026, 7885  
3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 7886  
4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 7887  
5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 7888  
5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 7889  
5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 7890  
5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 7891  
5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 7892  
5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 7893

5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 7894  
5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 7895  
5743.56, 5745.11, 5745.12, 5745.13, 5747.025, 5747.06, 5747.08, 7896  
5747.13, 5749.07, and 5749.08 and sections 5728.05, 5735.31, 7897  
5739.07, 5741.10, and 5747.181 of the Revised Code are hereby 7898  
repealed. 7899

**Section 3.** That the versions of sections 5733.021 and 5733.12 7900  
of the Revised Code that are scheduled to take effect July 1, 7901  
2002, be amended to read as follows: 7902

**Sec. 5733.021.** (A) Each taxpayer ~~which~~ that does not in the 7903  
~~month~~ of January file the report and make the payment required by 7904  
section 5733.02 of the Revised Code shall make and file a 7905  
declaration of estimated tax report for the tax year. 7906

The declaration of estimated tax report shall be filed with 7907  
the tax commissioner on or before the last day of January in such 7908  
form as prescribed by the tax commissioner, and shall reflect an 7909  
estimate of the total amount due under this chapter for the tax 7910  
year. 7911

(B) A taxpayer required to file a declaration of estimated 7912  
tax report shall make remittance of such estimated tax to the tax 7913  
commissioner as follows: 7914

(1) The entire estimated tax at the time of filing the 7915  
declaration of estimated tax report, if such estimated tax is not 7916  
in excess of the minimum tax as provided in section 5733.06 of the 7917  
Revised Code; 7918

(2) If the estimated tax is in excess of the minimum tax: 7919

(a) One-third of the estimated tax at the time of filing the 7920  
declaration of estimated tax report; 7921

(b) Two-thirds of the estimated tax on or before the last day 7922

of March of the tax year, ~~unless if~~ the report ~~and payment~~ 7923  
required by section 5733.02 of the Revised Code ~~are~~ is filed ~~and~~ 7924  
~~paid~~ on or before the last day of March of the tax year. 7925

(3) If the estimated tax ~~due~~ is in excess of the minimum tax, 7926  
and an extension of time for filing the report required by section 7927  
5733.02 of the Revised Code has been granted pursuant to section 7928  
5733.13 of the Revised Code: 7929

(a) One-third of the estimated tax at the time of filing the 7930  
declaration of estimated tax report; 7931

(b) One-third of the estimated tax on or before the last day 7932  
of March of the tax year; 7933

(c) One-third of the estimated tax on or before the last day 7934  
of May of the tax year, ~~unless the report and payments required by~~ 7935  
~~section 5733.02 of the Revised Code are filed and paid on or~~ 7936  
~~before the last day of May of the tax year.~~ 7937

Remittance of the estimated tax shall be made payable to the 7938  
treasurer of state and shall be made in the form prescribed by the 7939  
tax commissioner, including electronic funds transfer if required 7940  
by section 5733.022 of the Revised Code. 7941

The tax commissioner shall immediately forward to the 7942  
treasurer of state all amounts received under this section, and 7943  
the treasurer of state shall credit all payments of such estimated 7944  
tax as provided in section 5733.12 of the Revised Code. 7945

(C)(1) For any period of delinquency ending prior to the 7946  
first day of June of the tax year: 7947

(a) The penalty under division (A)(2) of section 5733.28 of 7948  
the Revised Code may only be imposed on the delinquent portion of 7949  
the estimated tax required to be paid under divisions (B)(2)(a) 7950  
and (b) and (B)(3)(a) and (b) of this section. 7951

(b) The interest under section 5733.26 of the Revised Code 7952

shall only be imposed on the delinquent portion of estimated tax 7953  
required to be paid under divisions (B)(2)(a), (B)(2)(b), 7954  
(B)(3)(a), and (B)(3)(b) of this section. 7955

(c) If the taxpayer was not subject to tax for the 7956  
immediately preceding tax year, "estimated tax" for purposes of 7957  
division (C)(1) of this section is ninety per cent of the 7958  
qualifying tax for the current tax year. If the taxpayer was 7959  
subject to the tax for the immediately preceding tax year, 7960  
"estimated tax" for purposes of division (C)(1) of this section is 7961  
the lesser of one hundred per cent of the qualifying net tax for 7962  
the immediately preceding tax year or ninety per cent of the 7963  
qualifying net tax for the current tax year. 7964

(2) For any period of delinquency commencing the first day of 7965  
June of the tax year and concluding on the extended due date 7966  
pursuant to section 5733.13 of the Revised Code: 7967

(a) The penalty under division (A)(2) of section 5733.28 of 7968  
the Revised Code may only be imposed on the delinquent portion of 7969  
the estimated tax required to be paid under division (B)(3)(c) of 7970  
this section. 7971

(b) The interest under section 5733.26 of the Revised Code 7972  
shall be imposed on the delinquent portion of the amount in 7973  
division (C)(3)(a) of this section for the current tax year. 7974

(c) For purposes of division (C)(2) of this section, 7975  
"estimated tax" is ninety per cent of the qualifying net tax for 7976  
the current tax year. 7977

(3) If the taxpayer did not file a report under section 7978  
5733.02 of the Revised Code for the tax year or failed to prepare 7979  
and file the report in good faith for the tax year, "qualifying 7980  
net tax" as used in division (C) of this section for that tax year 7981  
means the amount described in division (C)(3)(a) of this division. 7982  
Otherwise, "qualifying net tax" as used in division (C) of this 7983

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

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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.

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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.

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

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

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(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.

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

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

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

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(c) The taxpayer did not claim the credit provided for in

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section 5733.0611 of the Revised Code as to the tax described in 8045  
division (D)(1)(a) of this section; 8046

(d) The three-year period described in division (B) of this 8047  
section has ended as to the taxable year for which the taxpayer 8048  
otherwise would have claimed that credit. 8049

(2) A taxpayer shall file an application for refund pursuant 8050  
to this division within one year after the date the payment 8051  
described in division (D)(1)(a) of this section is made. An 8052  
application filed under this division shall only claim refund of 8053  
overpayments resulting from the taxpayer's failure to claim the 8054  
credit described in division (D)(1)(c) of this section. Nothing in 8055  
this division shall be construed to relieve a taxpayer from 8056  
complying with the provisions of division (I)(14) of section 8057  
5733.04 of the Revised Code. 8058

**Section 4.** That the existing versions of sections 5733.021 8059  
and 5733.12 of the Revised Code that are scheduled to take effect 8060  
July 1, 2002, are hereby repealed. 8061

**Section 5.** That the versions of sections 5727.26, 5728.08, 8062  
and 5735.06 of the Revised Code that are scheduled to take effect 8063  
January 1, 2003, be amended to read as follows: 8064

**Sec. 5727.26.** (A) The tax commissioner may make an 8065  
assessment, based on any information in the commissioner's 8066  
possession, against any natural gas company or combined company 8067  
that fails to file a return or pay any tax, interest, or 8068  
additional charge as required by sections 5727.24 to 5727.29 of 8069  
the Revised Code. The commissioner shall give the company assessed 8070  
written notice of the assessment as provided in section 5703.37 of 8071  
the Revised Code. With the notice, the commissioner shall provide 8072  
instructions on how to petition for reassessment and request a 8073

hearing on the petition. A penalty of up to fifteen per cent may 8074  
be added to all amounts assessed under this section. The tax 8075  
commissioner may adopt rules providing for the imposition and 8076  
remission of the penalty. 8077

~~(B) If a party to whom the notice of assessment is directed 8078  
objects to the assessment, the party may file a petition for 8079  
reassessment Unless the company assessed, within sixty days after 8080  
service of the notice of assessment, files with the tax 8081  
commissioner. The, either personally or by certified mail, a 8082  
written petition must be made in writing, signed by the party or 8083  
the party's company's authorized agent having knowledge of the 8084  
facts, and filed with the commissioner, either personally or by 8085  
certified mail, within sixty days after service of the notice of 8086  
assessment becomes final, and the amount of the assessment is due 8087  
and payable from the company assessed to the treasurer of state. 8088  
The petition shall indicate the objections of the company 8089  
assessed, but additional objections may be raised in writing if 8090  
received by the commissioner prior to the date shown on the final 8091  
determination of the commissioner. Upon receipt of 8092~~

~~If a petition for reassessment has been properly filed 8093  
petition, the commissioner may notify the treasurer of state. 8094  
Unless the petitioner waives a hearing, the commissioner shall 8095  
grant the petitioner a hearing on the petition, assign a time and 8096  
place for the hearing, and notify the petitioner of the time and 8097  
place of the hearing as provided in shall proceed under section 8098  
5703.37 5703.60 of the Revised Code. The commissioner may continue 8099  
the hearing from time to time, if necessary. 8100~~

~~If the party to whom the notice of assessment is directed 8101  
does not file a petition for reassessment, the assessment is final 8102  
and the amount of the assessment is due and payable from the 8103  
company assessed. The company assessed shall make the payment 8104  
payable to the treasurer of state and shall deliver the payment to 8105~~

~~the tax commissioner.~~

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~~(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.~~

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~~(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.

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~~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.

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The portion of the assessment not paid within sixty days after the day the assessment was issued shall bear interest at the

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rate per annum prescribed by section 5703.47 of the Revised Code 8138  
from the day the tax commissioner issues the assessment until it 8139  
is paid. Interest shall be paid in the same manner as the tax and 8140  
may be collected by the issuance of an assessment under this 8141  
section. 8142

~~(E)~~(D) If the tax commissioner believes that collection of 8143  
the tax will be jeopardized unless proceedings to collect or 8144  
secure collection of the tax are instituted without delay, the 8145  
commissioner may issue a jeopardy assessment against the ~~person~~ 8146  
company liable for the tax. ~~On~~ Immediately upon the issuance of 8147  
the jeopardy assessment, the commissioner ~~immediately~~ shall file 8148  
an entry with the clerk of the court of common pleas in the manner 8149  
prescribed by division ~~(D)~~(C) of this section. Notice of the 8150  
jeopardy assessment shall be served on the ~~party~~ company assessed 8151  
or the ~~party's legal representative as~~ company's authorized agent 8152  
in the manner provided in section 5703.37 of the Revised Code 8153  
within five days of the filing of the entry with the clerk. The 8154  
total amount assessed is immediately due and payable, unless the 8155  
~~person~~ company assessed files a petition for reassessment in 8156  
accordance with division (B) of this section and provides security 8157  
in a form satisfactory to the commissioner and in an amount 8158  
sufficient to satisfy the unpaid balance of the assessment. Full 8159  
or partial payment of the assessment does not prejudice the 8160  
commissioner's consideration of the petition for reassessment. 8161

~~(F)~~(E) The tax commissioner shall immediately forward to the 8162  
treasurer of state all amounts that the tax commissioner receives 8163  
under this section, and such amounts shall be considered revenue 8164  
arising from the tax imposed by section 5727.24 of the Revised 8165  
Code. 8166

~~(G)~~(F) No assessment shall be made or issued against a 8167  
natural gas company or combined company for the tax imposed by 8168  
section 5727.24 of the Revised Code more than four years after the 8169

return date for the period in which the tax was reported, or more 8170  
than four years after the return for the period was filed, 8171  
whichever is later. 8172

**Sec. 5728.08.** Except as provided in section 5728.03 of the 8173  
Revised Code and except as otherwise provided in this section, 8174  
whoever is liable for the payment of the tax levied by section 8175  
5728.06 of the Revised Code, on or before the last day of each 8176  
January, April, July, and October, shall file with the tax 8177  
commissioner, on forms prescribed by the ~~tax~~ commissioner, a 8178  
highway fuel use tax return and make payment of the full amount of 8179  
the tax due for the operation of each commercial car and 8180  
commercial tractor for the ~~next~~ preceding three calendar months. 8181  
If the commercial cars or commercial tractors are farm trucks and 8182  
the amount of motor fuel used to operate the trucks during the 8183  
~~next~~ preceding twelve calendar months was less than fifteen 8184  
thousand gallons, the highway fuel use tax return shall be filed 8185  
and the full amount of tax due paid on or before the last day of 8186  
each July for the ~~next~~ preceding twelve calendar months. If the 8187  
commercial cars or commercial tractors are farm trucks and the 8188  
amount of motor fuel used to operate the trucks during the ~~next~~ 8189  
preceding twelve calendar months was fifteen thousand gallons or 8190  
more, the highway fuel use tax return shall be filed and the full 8191  
amount of the tax due paid either on or before the last day of 8192  
each July for the ~~next~~ preceding twelve calendar months, or on or 8193  
before the last day of each January, April, July, and October for 8194  
the ~~next~~ preceding three calendar months, at the option of the 8195  
person liable for payment of the tax. If the commercial cars or 8196  
commercial tractors are not farm trucks, and if, in the estimation 8197  
of the ~~tax~~ commissioner, the amount of the tax due does not 8198  
warrant quarterly filing, the commissioner may authorize the 8199  
filing of the highway fuel use tax return and payment of the full 8200  
amount due on or before the last day of each July for the ~~next~~ 8201

preceding twelve months. 8202

The ~~tax~~ commissioner shall immediately forward to the 8203  
treasurer of state all money received from the tax levied by 8204  
section 5728.06 of the Revised Code. 8205

The treasurer of state shall place to the credit of the tax 8206  
refund fund created by section 5703.052 of the Revised Code, out 8207  
of receipts from the taxes levied by section 5728.06 of the 8208  
Revised Code, amounts equal to the refund certified by the tax 8209  
commissioner pursuant to section 5728.061 of the Revised Code. 8210  
Receipts from the tax shall be used by the ~~tax~~ commissioner to 8211  
defray expenses incurred by the department of taxation in 8212  
administering sections 5728.01 to 5728.14 of the Revised Code. 8213

All moneys received in the state treasury from taxes levied 8214  
by section 5728.06 of the Revised Code and fees assessed under 8215  
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 8216  
that are not required to be placed to the credit of the tax refund 8217  
fund as provided by this section shall, during each calendar year, 8218  
be credited to the highway improvement bond retirement fund 8219  
created by section 5528.12 of the Revised Code until the 8220  
commissioners of the sinking fund certify to the treasurer of 8221  
state, as required by section 5528.17 of the Revised Code, that 8222  
there are sufficient moneys to the credit of the highway 8223  
improvement bond retirement fund to meet in full all payments of 8224  
interest, principal, and charges for the retirement of bonds and 8225  
other obligations issued pursuant to Section 2g of Article VIII, 8226  
Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised 8227  
Code due and payable during the current calendar year and during 8228  
the ~~next succeeding~~ following calendar year. From the date of the 8229  
receipt of the certification required by section 5528.17 of the 8230  
Revised Code by the treasurer of state until the thirty-first day 8231  
of December of the calendar year in which the certification is 8232  
made, all moneys received in the state treasury from taxes levied 8233

under section 5728.06 of the Revised Code and fees assessed under 8234  
~~sections 5728.02 and section~~ 5728.03 of the Revised Code which 8235  
that are not required to be placed to the credit of the tax refund 8236  
fund as provided by this section shall be credited to the highway 8237  
obligations bond retirement fund created by section 5528.32 of the 8238  
Revised Code until the commissioners of the sinking fund certify 8239  
to the treasurer of state, as required by section 5528.38 of the 8240  
Revised Code, that there are sufficient moneys to the credit of 8241  
the highway obligations bond retirement fund to meet in full all 8242  
payments of interest, principal, and charges for the retirement of 8243  
bonds and other obligations issued pursuant to Section 2i of 8244  
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 8245  
of the Revised Code due and payable during the current calendar 8246  
year and during the ~~next succeeding~~ following calendar year. From 8247  
the date of the receipt of the certification required by section 8248  
5528.38 of the Revised Code by the treasurer of state until the 8249  
thirty-first day of December of the calendar year in which the 8250  
certification is made, all moneys received in the state treasury 8251  
from taxes levied under section 5728.06 of the Revised Code and 8252  
fees assessed under ~~sections 5728.02 and section~~ 5728.03 of the 8253  
Revised Code ~~which that~~ are not required to be placed to the 8254  
credit of the tax refund fund as provided by this section shall be 8255  
credited to the highway operating fund created by section 5735.291 8256  
of the Revised Code, except as provided by the ~~next succeeding~~ 8257  
following paragraph of this section. 8258

From the date of the receipt by the treasurer of state of 8259  
certifications from the commissioners of the sinking fund, as 8260  
required by sections 5528.18 and 5528.39 of the Revised Code, 8261  
certifying that the moneys to the credit of the highway 8262  
improvement bond retirement fund are sufficient to meet in full 8263  
all payments of interest, principal, and charges for the 8264  
retirement of all bonds and other obligations ~~which that~~ may be 8265  
issued pursuant to Section 2g of Article VIII, Ohio Constitution, 8266

and sections 5528.10 and 5528.11 of the Revised Code, and to the 8267  
credit of the highway obligations bond retirement fund are 8268  
sufficient to meet in full all payments of interest, principal, 8269  
and charges for the retirement of all obligations issued pursuant 8270  
to Section 2i of Article VIII, Ohio Constitution, and sections 8271  
5528.30 and 5528.31 of the Revised Code, all moneys received in 8272  
the state treasury from the taxes levied under section 5728.06 and 8273  
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 8274  
Revised Code, ~~which~~ that are not required to be placed to the 8275  
credit of the tax refund fund as provided by this section, shall 8276  
be deposited to the credit of the highway operating fund. 8277

As used in this section, "farm truck" means any commercial 8278  
car or commercial tractor that is registered as a farm truck under 8279  
Chapter 4503. of the Revised Code. 8280

**Sec. 5735.06.** (A) On or before the last day of each month, 8281  
each motor fuel dealer shall file with the tax commissioner a 8282  
report for the preceding calendar month, on forms prescribed by or 8283  
in a form acceptable to the tax commissioner. The report shall 8284  
include the following information: 8285

(1) An itemized statement of the number of gallons of all 8286  
motor fuel received during the preceding calendar month by such 8287  
motor fuel dealer, which has been produced, refined, prepared, 8288  
distilled, manufactured, blended, or compounded by such motor fuel 8289  
dealer in the state; 8290

(2) An itemized statement of the number of gallons of all 8291  
motor fuel received by such motor fuel dealer in the state from 8292  
any source during the preceding calendar month, other than motor 8293  
fuel included in division (A)(1) of this section, together with a 8294  
statement showing the date of receipt of such motor fuel; the name 8295  
of the person from whom purchased or received; the date of receipt 8296  
of each shipment of motor fuel; the point of origin and the point 8297

of destination of each shipment; the quantity of each of said 8298  
purchases or shipments; the name of the carrier; the number of 8299  
gallons contained in each car if shipped by rail; the point of 8300  
origin, destination, and shipper if shipped by pipe line; or the 8301  
name and owner of the boat, barge, or vessel if shipped by water; 8302

(3) An itemized statement of the number of gallons of motor 8303  
fuel which such motor fuel dealer has during the preceding 8304  
calendar month: 8305

(a) For motor fuel other than gasoline sold for use other 8306  
than for operating motor vehicles on the public highways or on 8307  
waters within the boundaries of this state; 8308

(b) Exported from this state to any other state or foreign 8309  
country as provided in division (A)~~(3)~~(4) of section 5735.05 of 8310  
the Revised Code; 8311

(c) Sold to the United States government or any of its 8312  
agencies; 8313

(d) Sold for delivery to motor fuel dealers; 8314

(e) Sold exclusively for use in the operation of aircraft; 8315

(4) Such other information incidental to the enforcement of 8316  
the motor fuel laws of the state as the commissioner requires. 8317

(B) The report shall show the tax due, computed as follows: 8318

(1) The following deductions shall be made from the total 8319  
number of gallons of motor fuel received by the motor fuel dealer 8320  
within the state during the preceding calendar month: 8321

(a) The total number of gallons of motor fuel received by the 8322  
motor fuel dealer within the state and sold or otherwise disposed 8323  
of during the preceding calendar month as set forth in section 8324  
5735.05 of the Revised Code; 8325

(b) The total number of gallons received during the preceding 8326

calendar month and sold or otherwise disposed of to another 8327  
licensed motor fuel dealer pursuant to section 5735.05 of the 8328  
Revised Code; 8329

(c) To cover the costs of the motor fuel dealer in compiling 8330  
the report, and evaporation, shrinkage, or other unaccounted-for 8331  
losses: 8332

(i) If the report is timely filed and the tax is timely paid, 8333  
three per cent of the total number of gallons of motor fuel 8334  
received by the motor fuel dealer within the state during the 8335  
preceding calendar month less the total number of gallons deducted 8336  
under divisions (B)(1)(a) and (b) of this section, less one per 8337  
cent of the total number of gallons of motor fuel that were sold 8338  
to a retail dealer during the preceding calendar month; 8339

(ii) If the report required by division (A) of this section 8340  
is not timely filed and the tax is not timely paid, no deduction 8341  
shall be allowed; 8342

(iii) If the report is incomplete, no deduction shall be 8343  
allowed for any fuel on which the tax is not timely reported and 8344  
paid; 8345

(2) The number of gallons remaining after the deductions have 8346  
been made shall be multiplied separately by each of the following 8347  
amounts: 8348

(a) The cents per gallon rate; 8349

(b) Two cents. 8350

The sum of the products obtained in divisions (B)(2)(a) and 8351  
(b) of this section shall be the amount of motor fuel tax for the 8352  
preceding calendar month. 8353

(C) The report shall be filed together with payment of the 8354  
tax shown on the report to be due, unless the motor fuel dealer is 8355  
required by section 5735.062 of the Revised Code to pay the tax by 8356

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 8387  
section as amended by both Am. Sub. H.B. 283 and Am. Sub. S.B. 3 8388  
of the 123rd General Assembly. Section 5739.02 of the Revised Code 8389  
is presented in this act as a composite of the section as amended 8390  
by Am. Sub. H.B. 138, H.B. 612, and Am. Sub. H.B. 640 all of the 8391  
123rd General Assembly. Section 5739.031 of the Revised Code is 8392  
presented in this act as a composite of the section as amended by 8393  
both Am. Sub. H.B. 740 and Sub. H.B. 791 of the 119th General 8394  
Assembly. The General Assembly, applying the principle stated in 8395  
division (B) of section 1.52 of the Revised Code that amendments 8396  
are to be harmonized if reasonably capable of simultaneous 8397  
operation, finds that the composite is the resulting version of 8398  
the section in effect prior to the effective date of the section 8399  
as presented in this act. 8400