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124th General Assembly
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Sub. S. B. No. 200

SENATORS Spada, Amstutz, Carnes, Harris

REPRESENTATIVES Olman, Niehaus, Coates, Hartnett, S. Smith, Brown,
Hoops, McGregor, Latta, Roman, Schmidt, Jolivette, Fessler, Gilb, G. Smith,
Seaver

A BILL

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, 5747.025, 5747.06, 16
5747.08, 5747.13, 5749.07, and 5749.08; to amend, 17
for the purpose of adopting a new section number as 18
indicated in parentheses, section 5735.311 19
(5728.05); to enact new sections 5739.07 and 20
5741.10 and sections 5703.60 and 5703.70; and to 21
repeal sections 5728.05, 5735.31, 5739.07, 5741.10, 22

and 5747.181 of the Revised Code to amend the 23
procedures for determining the amounts of, and 24
hearing challenges to, various tax assessments and 25
refunds, to alter the method of adjusting 26
eligibility criteria for the homestead exemption, 27
energy subsidies, the credit for installation of 28
emergency telephone systems, the personal 29
exemption, and the deduction for medical savings 30
accounts, to authorize the release by public 31
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, 5747.025, 5747.06, 5747.08, 5747.13, 59
5749.07, and 5749.08 be amended; that section 5735.311 (5728.05) 60
be amended for the purpose of adopting a new section number as 61
indicated in parentheses; and that new sections 5739.07 and 62
5741.10 and sections 5703.60 and 5703.70 of the Revised Code be 63
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 78
a homestead in a housing cooperative occupied, by a person to whom 79
division (A) of this section applies shall be reduced for each 80
year for which the owner obtains a certificate of reduction from 81
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the county auditor under section 323.154 of the Revised Code or
for which the occupant obtains a certificate of reduction in
accordance with section 323.159 of the Revised Code. The reduction
shall equal the amount obtained by multiplying the tax rate for
the tax year for which the certificate is issued by the reduction
in taxable value shown in the following schedule:

Total Income	Reduce Taxable Value by the Lesser of:	
\$11,900 or less	\$5,000 or seventy-five per cent	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
would be less than the total income amounts, or less than the
dollar amounts by which taxable value is reduced, for the current
tax year.

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

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

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(D) The reductions in taxable value referred to in this
section shall be applied solely as a factor for the purpose of
computing the reduction of taxes under this section and shall not
affect the total value of property in any subdivision or taxing
district as listed and assessed for taxation on the tax lists and
duplicates, or any direct or indirect limitations on indebtedness
of a subdivision or taxing district. If after application of
sections 5705.31 and 5705.32 of the Revised Code, including the
allocation of all levies within the ten-mill limitation to debt

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charges to the extent therein provided, there would be
insufficient funds for payment of debt charges not provided for by
levies in excess of the ten-mill limitation, the reduction of
taxes provided for in sections 323.151 to 323.159 of the Revised
Code, shall be proportionately adjusted to the extent necessary to
provide such funds from levies within the ten-mill limitation.

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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

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forest officer designated pursuant to section 1503.29 of the 175
Revised Code, a preserve officer designated pursuant to section 176
1517.10 of the Revised Code, a wildlife officer designated 177
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.

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

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

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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, and for which a notification was 254
sent pursuant to section 5727.471 of the Revised Code, in the 255
preceding calendar year. Upon receiving the certification, the 256
department shall increase the total taxable value, as defined in 257
section 3317.02 of the Revised Code, of the school district by the 258
total amount of the increase in taxable value certified by the 259
commissioner for the school district for the purpose of computing 260
the school district's state aid for the following fiscal year 261
under sections 3317.022 and 3317.0212 of the Revised Code. 262

Sec. 3734.905. (A) The treasurer of state shall refund the 263
fee imposed by section 3734.901 of the Revised Code paid illegally 264
or erroneously, or paid on an illegal or erroneous assessment. 265
Applications for refund shall be filed with the tax commissioner 266
on a form prescribed by ~~him~~ the commissioner, within four years of 267
the illegal or erroneous payment of the fee. ~~Upon~~ 268

On the filing of the application, the commissioner shall 269

determine the amount of refund ~~due and to which the applicant is~~ 270
entitled. If the amount is not less than that claimed, the 271
commissioner shall certify ~~that the~~ amount to the director of 272
budget and management and treasurer of state for payment from the 273
tax refund fund created by section 5703.052 of the Revised Code. 274
If the amount is less than that claimed, the commissioner shall 275
proceed in accordance with section 5703.70 of the Revised Code. 276

If the application for refund is for fees paid on an illegal 277
or erroneous assessment, the certified amount shall include 278
interest calculated at the rate per annum ~~pursuant to~~ prescribed 279
by section 5703.47 of the Revised Code from the date of 280
overpayment to the date of the commissioner's certification. 281

(B) When the fee imposed pursuant to section 3734.901 of the 282
Revised Code has been paid on tires that are sold by a retail 283
dealer or wholesale distributor to a motor vehicle manufacturer, 284
or to a wholesale distributor or retail dealer for the purpose of 285
resale outside this state, the seller in this state is entitled to 286
a refund of the amount of the fee actually paid on the tires. To 287
obtain a refund under this division, the seller shall apply to the 288
tax commissioner, shall furnish documentary evidence satisfactory 289
to the ~~tax~~ commissioner that the price paid by the purchaser did 290
not include the fee, and shall provide the name and address of the 291
purchaser to the ~~tax~~ commissioner. The seller shall apply on the 292
form prescribed by the ~~tax~~ commissioner, within four years after 293
the date of the sale. Upon receipt of an application, the ~~tax~~ 294
commissioner shall determine the amount of any refund due and 295
shall certify that amount to the director of budget and management 296
and the treasurer of state for payment from the tax refund fund 297
created in section 5703.052 of the Revised Code. 298

(C) If any person entitled to a refund of fees under this 299
section, or section 5703.70 of the Revised Code, is indebted to 300
the state for any tax administered by the tax commissioner, or any 301

charge, penalties, or interest arising from such tax, the amount 302
allowable on the application for refund first shall be applied in 303
satisfaction of the debt. 304

Sec. 3734.907. (A) Any person required to pay the fee imposed 305
by section 3734.901 of the Revised Code is personally liable for 306
the fee. The tax commissioner may make an assessment, based upon 307
any information in the commissioner's possession, against any 308
person who fails to file a return or pay any fee, interest, or 309
additional charge as required by sections 3734.90 to 3734.9014 of 310
the Revised Code. The commissioner shall give the person assessed 311
written notice of the assessment ~~as~~ in the manner provided in 312
section 5703.37 of the Revised Code. With the notice, the 313
commissioner shall provide instructions on how to petition for 314
reassessment and request a hearing on the petition. 315

(B) When the information in the possession of the tax 316
commissioner indicates that a person liable for the fee imposed by 317
section 3734.901 of the Revised Code has not paid the full amount 318
of fee due, the commissioner may audit a representative sample of 319
the person's business and may issue an assessment based on the 320
audit. 321

(C) A penalty of up to fifteen per cent may be added to all 322
amounts assessed under this section. The commissioner may adopt 323
rules providing for the imposition and remission of the penalties. 324

(D) Unless the person assessed files with the tax 325
commissioner within sixty days after service of the notice of 326
assessment, either personally or by certified mail ~~as provided in~~ 327
~~section 5703.056 of the Revised Code~~, a written petition for 328
reassessment ~~in writing~~ signed by the person assessed or ~~the~~ that 329
person's authorized agent having knowledge of the facts, the 330
assessment becomes final and the amount of the assessment is due 331
and payable from the person assessed to the treasurer of state. ~~A~~ 332

~~The petition shall indicate the objections to the assessment of the person assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination of the person assessed, but additional objections may be raised in writing prior to the date shown on the final determination of the tax commissioner. The commissioner shall grant the petitioner a hearing on the petition, unless waived by the petitioner.~~

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

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

~~The clerk, immediately Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the person assessed in the amount shown ~~to be due~~ on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state tire fee," and shall have the same~~

effect as other judgments. Execution shall issue upon the judgment 365
upon the request of the tax commissioner, and all laws applicable 366
to sales on execution shall apply to sales made under the 367
judgment. 368

The portion of the assessment not paid within sixty days 369
after the day the assessment was issued shall bear interest at the 370
rate per annum prescribed by section 5703.47 of the Revised Code 371
from the day the ~~tax~~ commissioner issues the assessment until the 372
day the assessment is paid. Interest shall be paid in the same 373
manner as the fee and may be collected by the issuance of an 374
assessment under this section. 375

(F) If the tax commissioner believes that collection of the 376
fee will be jeopardized unless proceedings to collect or secure 377
collection of the fee are instituted without delay, the 378
commissioner may issue a jeopardy assessment against the person 379
liable for the fee. ~~Upon~~ Immediately upon the issuance of the 380
jeopardy assessment, the commissioner ~~immediately~~ shall file an 381
entry with the clerk of the court of common pleas in the manner 382
prescribed by division (E) of this section. Notice of the jeopardy 383
assessment shall be served on the person assessed or the person's 384
legal representative, as provided in section 5703.37 of the 385
Revised Code, within five days of the filing of the entry with the 386
clerk. The total amount assessed is immediately due and payable, 387
unless the person assessed files a petition for reassessment in 388
accordance with division (D) of this section and provides security 389
in a form satisfactory to the commissioner and in an amount 390
sufficient to satisfy the unpaid balance of the assessment. Full 391
or partial payment of the assessment does not prejudice the 392
commissioner's consideration of the petition for reassessment. 393

(G) All money collected by the tax commissioner under this 395
section shall be paid to the treasurer of state as revenue arising 396

from the fee imposed by section 3734.901 of the Revised Code. 397

Sec. 3769.088. (A) If any permit holder required by this 398
chapter to pay the taxes levied by sections 3769.08, 3769.087, 399
3769.26, and 3769.28 of the Revised Code fails to pay the taxes, 400
the tax commissioner may make an assessment against the permit 401
holder based upon any information in the commissioner's 402
possession. 403

A penalty of up to fifteen per cent may be added to the 404
amount of every assessment made under this section. The 405
commissioner may adopt rules providing for the imposition and 406
remission of penalties added to assessments made under this 407
section. 408

The commissioner shall give the party assessed written notice 409
of the assessment ~~as~~ in the manner provided in section 5703.37 of 410
the Revised Code. With the notice, the commissioner shall provide 411
instructions on how to petition for reassessment and request a 412
hearing on the petition. 413

(B) Unless the party ~~to whom the notice of assessment is~~ 414
~~directed~~ assessed files with the tax commissioner within sixty 415
days after service of the notice of assessment, either personally 416
or by certified mail, a written petition for reassessment ~~in~~ 417
~~writing~~, signed by the party assessed, ~~or by the~~ that party's 418
authorized agent having knowledge of the facts, the assessment 419
~~shall become~~ becomes final and the amount of the assessment ~~shall~~ 420
~~be~~ is due and payable from the party assessed to the tax 421
commissioner. The petition shall indicate the objections of the 422
party assessed, but additional objections may be raised in writing 423
if received by the commissioner prior to the date shown on the 424
final determination ~~by the commissioner.~~ 425

~~Unless the petitioner waives a hearing, the commissioner~~ 426
~~shall assign a time and place for the hearing on the petition and~~ 427

~~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.~~ 428
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~~The commissioner may make such correction to the assessment
as the commissioner finds proper. The commissioner shall serve a
copy of the commissioner's final determination on the petitioner
by personal service or certified mail, and the commissioner's
decision in the matter shall be final, subject to appeal as
provided in section 5717.02 of the Revised Code. Only objections
decided on the merits by the board of tax appeals or a court shall
be given collateral estoppel or res judicata effect in considering
an application for refund of amounts paid pursuant to the
assessment. If the petition has been properly filed, the
commissioner shall proceed under section 5703.60 of the Revised
Code.~~ 431
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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 place, track, or enclosure for
which the permit was issued is located or the county in which the
party assessed resides or has its principal place of business. If
the party assessed maintains no place of business in this state
and is not a resident of this state, the certified copy of the
entry may be filed in the office of the clerk of the court of
common pleas of Franklin county.

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~~The clerk, immediately Immediately upon the filing of such
the entry, the clerk shall enter a judgment for the state against
the party assessed in the amount shown on the entry. The judgment
may be filed by the clerk in a loose-leaf book entitled "special
judgments for state horse racing tax," and shall have the same
effect as other judgments. Execution shall issue upon the judgment~~ 454
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upon the request of the tax commissioner, and all laws applicable 460
to sales on execution shall apply to sales made under the 461
judgment. 462

The portion of the assessment not paid within sixty days 463
after the day the assessment was issued shall bear interest at the 464
rate per annum prescribed by section 5703.47 of the Revised Code 465
from the day the tax commissioner issues the assessment until the 466
day the assessment is paid. Interest shall be paid in the same 467
manner as the tax and may be collected by the issuance of an 468
assessment under this section. 469

(D) All money collected by the tax commissioner under this 470
section shall be treated as revenue arising from the taxes imposed 471
by sections 3769.08, 3769.087, 3769.26, and 3769.28 of the Revised 472
Code. 473

Sec. 3924.66. (A) In determining Ohio adjusted gross income 474
under Chapter 5747. of the Revised Code, an account holder may 475
deduct an amount equaling the total of the deposits that the 476
account holder, the account holder's spouse, or the account 477
holder's employer made to the account during the taxable year, to 478
the extent that the funds for the deposits have not otherwise been 479
deducted or excluded in determining the account holder's federal 480
adjusted gross income. The amount deducted by an account holder 481
for a taxable year shall not exceed three thousand dollars. If two 482
married persons each have an account, each spouse may claim the 483
deduction described in this section, and the amount deducted by 484
each spouse shall not exceed three thousand dollars, whether the 485
spouses file returns jointly or separately. 486

(B) The maximum deduction allowed under division (A) of this 487
section shall be adjusted annually by the department of taxation 488
to reflect increases in the consumer price index for all items for 489
all urban consumers for the ~~north-central~~ midwest region, as 490

published determined by the United States bureau of labor 491
statistics for the period of the first day of January of the 492
preceding calendar year to the last day of December of the 493
preceding calendar year. The department of taxation shall 494
determine in September of each tax year the adjustment that will 495
be effective for the succeeding tax year. The department shall not 496
make the adjustment in any tax year in which the maximum deduction 497
resulting from the adjustment is less than the maximum deduction 498
allowed for the previous tax year. 499

(C) In determining Ohio adjusted gross income under Chapter 500
5747. of the Revised Code, an account holder may deduct the 501
investment earnings of a medical savings account from the account 502
holder's federal adjusted gross income, to the extent that these 503
earnings have been included in the account holder's federal 504
adjusted gross income. 505

(D) In determining Ohio adjusted gross income under Chapter 506
5747. of the Revised Code, an account holder shall add to the 507
account holder's federal adjusted gross income an amount equal to 508
the sum of the amounts described in divisions (D)(1) and (2) of 509
this section to the extent that those amounts were included in the 510
account holder's federal adjusted gross income and previously 511
deducted in determining the account holder's Ohio adjusted gross 512
income. In determining the extent to which amounts withdrawn from 513
the account shall be included in the account holder's Ohio 514
adjusted gross income, the tax commissioner shall be guided by ~~the~~ 515
~~provisions of~~ sections 72 and 408 of the Internal Revenue Code 516
governing the determination of the amount of withdrawals from an 517
individual retirement account to be included in federal gross 518
income. 519

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

account holder or the account holder's spouse or dependents; 523

(2) Investment earnings during the taxable year on amounts 524
withdrawn from the account that are described in division (D)(1) 525
of this section. 526

(E) Amounts withdrawn from a medical savings account to 527
reimburse the account holder for, or to pay, the account holder's 528
eligible medical expenses, or the eligible medical expenses of the 529
account holder's spouse or dependents, shall not be included in 530
the account holder's Ohio adjusted gross income in determining 531
taxes due under Chapter 5747. of the Revised Code. 532

(F) If a dependent of an account holder becomes ineligible to 533
continue to participate in the account holder's policy, plan, or 534
contract of health coverage, the account holder may withdraw funds 535
from the account holder's account and use those funds to pay the 536
premium for the first year of a policy, plan, or contract of 537
health coverage for the dependent and to pay any deductible for 538
the first year of that policy, plan, or contract. Funds withdrawn 539
and used for that purpose shall not be included in the account 540
holder's Ohio adjusted gross income in determining taxes due under 541
Chapter 5747. of the Revised Code. 542

Sec. 4305.131. (A) If any permit holder fails to pay the 543
taxes levied ~~in~~ by section 4301.42, 4301.43, 4301.432, or 4305.01 544
of the Revised Code in the manner prescribed by section 4303.33 of 545
the Revised Code, or ~~in~~ by section 4301.421 or 4301.424 of the 546
Revised Code in the manner prescribed in section 4301.422 of the 547
Revised Code, and by the rules of the tax commissioner, the 548
commissioner may make an assessment against the permit holder 549
based upon any information in the commissioner's possession. 550

No assessment shall be made against any permit holder for any 551
taxes imposed by section 4301.42, 4301.421, 4301.424, 4301.43, 552
4301.432, or 4305.01 of the Revised Code more than three years 553

after the last day of the calendar month in which the sale was
made or more than three years after the return for that period is
filed, whichever is later. This section does not bar an assessment
against any permit holder or registrant as provided in section
4303.331 of the Revised Code who fails to file a return as
required by section 4301.422 or 4303.33 of the Revised Code, or
who files a fraudulent return.

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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~~

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~~personal service or certified mail, but the commissioner may~~ 586
~~continue the hearing from time to time if necessary.~~ 587

~~The commissioner may make such correction to the assessment~~ 588
~~as the commissioner finds proper. The commissioner shall serve a~~ 589
~~copy of the final determination on the petitioner by personal~~ 590
~~service or certified mail, and the commissioner's decision in the~~ 591
~~matter shall be final, subject to appeal as provided in section~~ 592
~~5717.02 of the Revised Code. Only objections decided on the merits~~ 593
~~by the board of tax appeals or a court shall be given collateral~~ 594
~~estoppel or res judicata effect in considering an application for~~ 595
~~refund of amounts paid pursuant to the assessment. If the petition~~ 596
~~has been properly filed, the commissioner shall proceed under~~ 597
~~section 5703.60 of the Revised Code.~~ 598

(C) After an assessment becomes final, if any portion of the 599
assessment remains unpaid, including accrued interest, a certified 600
copy of the tax commissioner's entry making the assessment final 601
may be filed in the office of the clerk of the court of common 602
pleas in the county in which the permit holder's place of business 603
is located or the county in which the party assessed resides. If 604
the party assessed maintains no place of business in this state 605
and is not a resident of this state, the certified copy of the 606
entry may be filed in the office of the clerk of the court of 607
common pleas of Franklin county. 608

~~The clerk, immediately~~ Immediately upon the filing of the 609
entry, the clerk shall enter a judgment for the state against the 610
party assessed in the amount shown on the entry. The judgment may 611
be filed by the clerk in a loose-leaf book entitled "special 612
judgments for state beer and liquor sales taxes," and shall have 613
the same effect as other judgments. Execution shall issue upon the 614
judgment upon the request of the ~~tax~~ commissioner, and all laws 615
applicable to sales on execution shall apply to sales made under 616
the judgment, except as otherwise provided in this chapter and 617

Chapters 4301. and 4307. of the Revised Code. 618

The portion of the assessment not paid within sixty days 619
after the day the assessment was issued shall bear interest at the 620
rate per annum prescribed by section 5703.47 of the Revised Code 621
from the day the ~~tax~~ commissioner issues the assessment until it 622
is paid. Interest shall be paid in the same manner as the tax and 623
may be collected by the issuance of an assessment under this 624
section. 625

(D) All money collected under this section shall be 626
considered as revenue arising from the taxes imposed by sections 627
4301.42, 4301.421, 4301.424, 4301.43, 4301.432, and 4305.01 of the 628
Revised Code. 629

Sec. 4307.05. (A) The tax commissioner shall refund to 630
persons required to pay the tax levied under section 4301.42, 631
4301.421, 4301.424, 4301.43, 4301.432, 4303.33, or 4305.01 of the 632
Revised Code the amount of tax paid illegally or erroneously or 633
paid on an illegal or erroneous assessment. Applications for 634
refund shall be filed with the commissioner, on the form 635
prescribed by the commissioner, within three years from the date 636
of the illegal or erroneous payment of the tax or assessment. ~~Upon~~ 637

On the filing of the application, the commissioner shall 638
determine the amount of the refund ~~due and to which the applicant~~ 639
is entitled. If the amount is not less than that claimed, the 640
commissioner shall certify the amount to the director of budget 641
and management and treasurer of state for payment from the tax 642
refund fund created by section 5703.052 of the Revised Code. If 643
the amount is less than that claimed, the commissioner shall 644
proceed in accordance with section 5703.70 of the Revised Code. 645

(B) The holder of a B-3 permit is entitled to a refund of the 647
actual amount of tax paid on wine sold for sacramental purposes, 648

upon ~~condition~~ the conditions that the permit holder make
affidavit that the wine was so sold, that the tax had been paid on
the wine, and that the permit holder furnish both of the
following:

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

(2) The name and address of the purchaser.

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

Sec. 4307.07. When tax has been paid on bottled beverages and
such 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 680
loss. An application shall be filed with the commissioner, on the 681
form prescribed by ~~him~~ the commissioner for such purpose, within 682
ninety days from the date such beverages are sold and shipped in 683
interstate or foreign commerce, or from the date that such 684
beverages become unfit for sale or any similar loss occurs. ~~On~~ 685

On the filing of ~~such~~ the application, the commissioner shall 686
determine the amount of refund ~~due and to which the applicant is~~ 687
entitled. If the amount is not less than that claimed, the 688
commissioner shall certify ~~such~~ the amount to the director of 689
budget and management and treasurer of state for payment from the 690
tax refund fund created by section 5703.052 of the Revised Code. 691

If the amount is less than that claimed, the commissioner 693
shall proceed in accordance with section 5703.70 of the Revised 694
Code. 695

Sec. 4503.065. (A) This section applies to any of the 696
following: 697

(1) An individual who is permanently and totally disabled; 698

(2) An individual who is sixty-five years of age or older; 699

(3) An individual who is the surviving spouse of a deceased 700
person who was permanently and totally disabled or sixty-five 701
years of age or older and who applied and qualified for a 702
reduction in assessable value under this section in the year of 703
death, provided the surviving spouse is at least fifty-nine but 704
not sixty-five or more years of age on the date the deceased 705
spouse dies. 706

(B)(1) The manufactured home tax on a manufactured or mobile 707
home that is paid pursuant to division (C) of section 4503.06 of 708
the Revised Code and that is owned and occupied as a home by an 709

individual whose domicile is in this state and to whom this
section applies, shall be reduced for any tax year for which the
owner obtains a certificate of reduction from the county auditor
under section 4503.067 of the Revised Code, provided the
individual did not acquire ownership from a person, other than the
individual's spouse, related by consanguinity or affinity for the
purpose of qualifying for the reduction in assessable value. An
owner includes a settlor of a revocable inter vivos trust holding
the title to a manufactured or mobile home occupied by the settlor
as of right under the trust. The reduction shall equal the amount
obtained by multiplying the tax rate for the tax year for which
the certificate is issued by the reduction in assessable value
shown in the following schedule.

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

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

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

(b) Multiply that percentage increase by each of the total
income amounts, and by each dollar amount by which assessable

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value is reduced, for the ensuing tax year; 740

(c) Add the resulting product to each of the total income 741
amounts, and to each of the dollar amounts by which assessable 742
value is reduced, for the ensuing tax year; 743

(d) Round the resulting sum to the nearest multiple of one 744
hundred dollars. 745

The commissioner shall certify the amounts resulting from the 746
adjustment to each county auditor not later than the first day of 747
December each year. The certified amounts apply to the second 748
ensuing tax year. The commissioner shall not make the adjustment 749
in any calendar year in which the amounts resulting from the 750
adjustment would be less than the total income amounts, or less 751
than the dollar amounts by which assessable value is reduced, for 752
the ensuing tax year. 753

(C) If the owner or the spouse of the owner of a manufactured 754
or mobile home is eligible for a homestead exemption on the land 755
upon which the home is located, the reduction in assessable value 756
to which the owner or spouse is entitled under this section shall 757
not exceed the difference between the reduction in assessable 758
value to which the owner or spouse is entitled under column A of 759
the above schedule and the amount of the reduction in taxable 760
value that was used to compute the homestead exemption. 761

(D) No reduction shall be made on the assessable value of the 762
home of any person convicted of violating division (C) or (D) of 763
section 4503.066 of the Revised Code for a period of three years 764
following the conviction. 765

Sec. 5117.071. (A) Each In September of each year, the tax 766
commissioner shall adjust the total income amounts set forth in 767
sections 5117.07 and 5117.09 of the Revised Code to be used for 768
applications submitted for the heating season commencing in the 769

next calendar year, by completing the following steps: 770

(1) Determine the percentage increase in the gross domestic 771
product deflator determined by the bureau of economic analysis of 772
the United States department of commerce for the preceding year; 773

(2) Multiply that percentage increase by each of the total 774
income amounts for the preceding year; 775

(3) Add the resulting products to each of the total income 776
amounts for the preceding year; 777

(4) Round the resulting sums upward to the nearest multiple 778
of ten dollars. 779

The commissioner shall not make the adjustment in any year in 780
which the amounts resulting from the adjustment would be less than 781
the total income amounts for the preceding year. 782

(B) ~~Each~~ In September of each year, the tax commissioner also 783
shall adjust the current total income amounts set forth in 784
sections 5117.07 and 5117.09 of the Revised Code. For any year, 785
the current total income amounts shall equal one-half of the 786
respective total income amounts set forth in those sections and 787
adjusted under division (A) of this section for that year. 788

(C) Each year, the tax commissioner shall provide both the 789
adjusted total income amounts referred to in division (A) of this 790
section and the current total income amounts referred to in 791
division (B) of this section to the director of development. 792

(D) The director of development and each energy company and 793
energy dealer shall use the adjusted total income amounts and the 794
current total income amounts determined under divisions (A) and 795
(B) of this section in performing their duties under sections 796
5117.01 to 5117.12 of the Revised Code. 797

Sec. 5703.05. All powers, duties, and functions of the 798
department of taxation are vested in and shall be performed by the 799

tax commissioner, which powers, duties, and functions shall 800
include, but shall not be limited to, the following: 801

(A) Prescribing all blank forms which the department is 802
authorized to prescribe, and to provide such forms and distribute 803
the same as required by law and the rules of the department. The 804
tax commissioner shall include a mail-in registration form 805
prescribed in section 3503.14 of the Revised Code within the 806
return and instructions for the tax levied in odd-numbered years 807
under section 5747.02 of the Revised Code, beginning with the tax 808
levied for 1995. The secretary of state shall bear all costs for 809
the inclusion of the mail-in registration form. That form shall be 810
addressed for return to the office of the secretary of state. 811

(B) Exercising the authority provided by law, including 812
orders from bankruptcy courts, relative to remitting or refunding 813
taxes or assessments, including penalties and interest thereon, 814
illegally or erroneously assessed or collected, or for any other 815
reason overpaid, and in addition, the commissioner may on written 816
application of any person, firm, or corporation claiming to have 817
overpaid to the treasurer of state at any time within five years 818
prior to the making of such application any tax payable under any 819
law which the department of taxation is required to administer 820
which does not contain any provision for refund, or on the 821
commissioner's own motion investigate the facts and make in 822
triplicate a written statement of the commissioner's findings, 823
and, if the commissioner finds that there has been an overpayment, 824
issue in triplicate a certificate of abatement payable to the 825
taxpayer, the taxpayer's assigns, or legal representative which 826
shows the amount of the overpayment and the kind of tax overpaid. 827
One copy of such statement shall be entered on the journal of the 828
commissioner, one shall be certified to the attorney general, and 829
one certified copy shall be delivered to the taxpayer. All copies 830
of the certificate of abatement shall be transmitted to the 831

attorney general, and if the attorney general finds it to be 832
correct the attorney general shall so certify on each copy, and 833
deliver one copy to the taxpayer, one copy to the commissioner, 834
and the third copy to the treasurer of state. Except as provided 835
in sections 5725.08 and 5725.16 of the Revised Code the taxpayer's 836
copy of any certificates of abatement may be tendered by the payee 837
or transferee thereof to the treasurer of state as payment, to the 838
extent of the amount thereof, of any tax payable to the treasurer 839
of state. 840

(C) Exercising the authority provided by law relative to 841
consenting to the compromise and settlement of tax claims; 842

(D) Exercising the authority provided by law relative to the 843
use of alternative tax bases by taxpayers in the making of 844
personal property tax returns; 845

(E) Exercising the authority provided by law relative to 846
authorizing the prepayment of taxes on retail sales of tangible 847
personal property or on the storage, use, or consumption of 848
personal property, and waiving the collection of such taxes from 849
the consumers; 850

(F) Exercising the authority provided by law to revoke 851
licenses; 852

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

members of the general assembly and the public. 863

(H) Making all tax assessments, valuations, findings, 864
determinations, computations, and orders the department of 865
taxation is by law authorized and required to make and, pursuant 866
to time limitations provided by law, on the commissioner's own 867
motion, reviewing, redetermining, or correcting any tax 868
assessments, valuations, findings, determinations, computations, 869
or orders the commissioner has made, but the commissioner shall 870
not review, redetermine, or correct any tax assessment, valuation, 871
finding, determination, computation, or order which the 872
commissioner has made as to which an appeal or application for 873
rehearing, review, redetermination, or correction has been filed 874
with the board of tax appeals, unless such appeal or application 875
is withdrawn by the appellant or applicant or dismissed; 876

(I) Appointing not more than five deputy tax commissioners, 877
who, under such regulations as the rules of the department of 878
taxation prescribe, may act for the commissioner in the 879
performance of such duties as the commissioner prescribes in the 880
administration of the laws which the commissioner is authorized 881
and required to administer, and who shall serve in the 882
unclassified civil service at the pleasure of the commissioner, 883
but if a person who holds a position in the classified service is 884
appointed, it shall not affect the civil service status of such 885
person. The commissioner may designate not more than two of the 886
deputy commissioners to act as commissioner in case of the 887
absence, disability, or recusal of the commissioner or vacancy in 888
the office of commissioner. The commissioner may adopt rules 889
relating to the order of precedence of such designated deputy 890
commissioners and to their assumption and administration of the 891
office of commissioner. 892

(J) Appointing and prescribing the duties of all other 893
employees of the department of taxation necessary in the 894

performance of the work of the department which the tax 895
commissioner is by law authorized and required to perform, and 896
creating such divisions or sections of employees as, in the 897
commissioner's judgment, is proper; 898

(K) Organizing the work of the department, which the 899
commissioner is by law authorized and required to perform, so 900
that, in the commissioner's judgment, an efficient and economical 901
administration of the laws will result; 902

(L) Maintaining a journal, which is open to public 903
inspection, in which the tax commissioner shall keep a record of 904
all ~~actions taken by~~ final determinations of the commissioner 905
~~relating to assessments and the reasons therefor;~~ 906

(M) Adopting and promulgating, in the manner provided by 907
section 5703.14 of the Revised Code, all rules of the department, 908
including rules for the administration of sections 3517.16, 909
3517.17, and 5747.081 of the Revised Code; 910

(N) Destroying any or all returns or assessment certificates 911
in the manner authorized by law; 912

(O) Adopting rules, in accordance with division (B) of 913
section 325.31 of the Revised Code, governing the expenditure of 914
moneys from the real estate assessment fund under that division. 915

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) 916
of this section, no agent of the department of taxation, except in 917
the agent's report to the department or when called on to testify 918
in any court or proceeding, shall divulge any information acquired 919
by the agent as to the transactions, property, or business of any 920
person while acting or claiming to act under orders of the 921
department. Whoever violates this provision shall thereafter be 922
disqualified from acting as an officer or employee or in any other 923
capacity under appointment or employment of the department. 924

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(B)(1) For purposes of an audit pursuant to section 117.15 of
the Revised Code, or an audit of the department pursuant to
Chapter 117. of the Revised Code, or an audit, pursuant to that
chapter, the objective of which is to express an opinion on a
financial report or statement prepared or issued pursuant to
division (A)(7) or (9) of section 126.21 of the Revised Code, the
officers and employees of the auditor of state charged with
conducting the audit shall have access to and the right to examine
any state tax returns and state tax return information in the
possession of the department to the extent that the access and
examination are necessary for purposes of the audit. Any
information acquired as the result of that access and examination
shall not be divulged for any purpose other than as required for
the audit or unless the officers and employees are required to
testify in a court or proceeding under compulsion of legal
process. Whoever violates this provision shall thereafter be
disqualified from acting as an officer or employee or in any other
capacity under appointment or employment of the auditor of state.

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

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

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

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(2) Providing information to the office of child support

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within the department of job and family services pursuant to 957
section 3125.43 of the Revised Code; 958

(3) Disclosing to the board of motor vehicle collision repair 959
registration any information in the possession of the department 960
that is necessary for the board to verify the existence of an 961
applicant's valid vendor's license and current state tax 962
identification number under section 4775.07 of the Revised Code; 963

(4) Providing information to the administrator of workers' 964
compensation pursuant to section 4123.591 of the Revised Code; 965

(5) Providing to the attorney general information the 966
department obtains under division (J) of section 1346.01 of the 967
Revised Code; 968

(6) Permitting properly authorized officers, employees, or 969
agents of a municipal corporation from inspecting reports or 970
information pursuant to rules adopted under section 5745.16 of the 971
Revised Code. 972

(7) Providing information regarding the name, account number, 973
or business address of a holder of a vendor's license issued 974
pursuant to section 5739.17 of the Revised Code, a holder of a 975
direct payment permit issued pursuant to section 5739.031 of the 976
Revised Code, or a seller having a use tax account maintained 977
pursuant to section 5741.17 of the Revised Code, or information 978
regarding the active or inactive status of a vendor's license, 979
direct payment permit, or seller's use tax account. 980

Sec. 5703.37. ~~Except as otherwise provided by section~~ 981
~~5711.28, 5711.31, 5727.47, or 5731.27 of the Revised Code~~ Whenever 982
service of a notice or order is required in the manner provided in 983
this section, a certified copy of ~~every the~~ order or notice, 984
~~service of which is required,~~ shall be served upon the person 985
affected thereby either by personal ~~delivery~~ service or by 986

certified mail. Within the time specified in ~~the~~ an order of the 987
department of taxation, every person upon whom it is served, if 988
required by the order, shall notify the department, ~~in like manner~~ 989
by personal service, certified mail, or a delivery service 990
authorized under section 5703.056 of the Revised Code, whether the 991
terms of the order are accepted and will be obeyed. 992

Sec. 5703.51. (A) The tax commissioner shall include in the 993
instruction booklet for filing the annual return of personal 994
property taxes a general description of the method by which the 995
tax is assessed and collected and the rights and responsibilities 996
of taxpayers in that process. 997

(B) At or before the commencement of an audit, the tax 998
commissioner shall provide to the taxpayer a written description 999
of the roles of the department of taxation and of the taxpayer 1000
during an audit and a statement of the taxpayer's rights, 1001
including any right to obtain a refund of an overpayment of a tax. 1002
At or before the commencement of an audit, the commissioner shall 1003
inform the taxpayer when the audit is considered to have 1004
commenced. 1005

(C) With or before the issuance of an assessment, the tax 1006
commissioner or county auditor shall provide to the taxpayer: 1007

(1) A written description of the basis for the assessment and 1008
any penalty required to be imposed with the assessment; 1009

(2) A written description of the taxpayer's right to appeal 1010
the assessment and an explanation of the steps required to request 1011
administrative review by the tax commissioner; 1012

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

the provisions contained in section 131.02 of the Revised Code. 1018

(D) With or before the issuance of a final determination of 1019
the tax commissioner, the commissioner or county auditor shall 1020
provide to the taxpayer a written description of the steps 1021
required to perfect an appeal to the board of tax appeals. 1022

(E) Except in cases involving suspected criminal violations 1023
of the tax law or other criminal activity, the tax commissioner 1024
shall conduct an audit of a taxpayer during regular business hours 1025
and after providing reasonable notice to the taxpayer. A taxpayer 1026
who is unable to comply with a proposed time for an audit on the 1027
grounds that the proposed audit would cause inconvenience or 1028
hardship must offer reasonable alternative dates for the audit. 1029

(F) At all stages of an audit or the administrative review of 1030
the audit by the tax commissioner or county auditor, a taxpayer is 1031
entitled to be assisted or represented by an attorney, accountant, 1032
bookkeeper, or other tax practitioner. The tax commissioner shall 1033
prescribe a form by which a taxpayer may designate such a person 1034
to assist or represent ~~him~~ the taxpayer in the conduct of any 1035
proceedings resulting from actions by the tax commissioner or 1036
county auditor. In the absence of this form, the commissioner or 1037
auditor may accept such other evidence as ~~he~~ the commissioner 1038
considers appropriate that a person is the authorized 1039
representative of a taxpayer. 1040

A taxpayer may refuse to answer any questions asked by the 1041
person conducting the audit until ~~he~~ the taxpayer has an 1042
opportunity to consult with ~~his~~ the taxpayer's attorney, 1043
accountant, bookkeeper, or other tax practitioner. This division 1044
does not authorize the practice of law by a person who is not an 1045
attorney. 1046

(G) A taxpayer may record, electronically or otherwise, the 1047
audit examination. 1048

(H) The failure of the tax commissioner or county auditor to 1049
comply with a provision of this section shall neither excuse a 1050
taxpayer from payment of any taxes shown to be owed by ~~him~~ the 1051
taxpayer nor cure any procedural defect in a taxpayer's case. 1052

(I) If the tax commissioner or county auditor fails to 1053
substantially comply with the provisions of this section, the 1054
commissioner, on application by the taxpayer, shall excuse the 1055
taxpayer from penalties and interest arising from the audit or 1056
assessment. 1057

A taxpayer shall make application to the commissioner under 1058
this division within one year of the date the taxpayer knows of or 1059
should have known that the commissioner or county auditor failed 1060
to substantially comply with the provisions of this section. 1061

Sec. 5703.60. (A) If a petition for reassessment has been 1062
properly filed under a law that specifies that this section 1063
applies, the tax commissioner shall proceed as follows: 1064

(1) Except as provided in division (D) of this section, the 1065
commissioner may correct the assessment by issuing a corrected 1066
assessment. The corrected assessment may reduce or increase the 1067
previous assessment, as the commissioner finds proper. The 1068
commissioner shall send the corrected assessment by ordinary mail 1069
to the address to which the original assessment was sent, unless 1070
the petitioner notifies the commissioner of a different address. 1071
The commissioner's mailing of the corrected assessment is an 1072
assessment timely made and issued to the extent that the original 1073
assessment was timely made and issued, notwithstanding any time 1074
limitation otherwise imposed by law. 1075

Within sixty days after the mailing of the corrected 1076
assessment, the petitioner may file a new petition for 1077
reassessment. The petition shall be filed in the same manner as 1078
provided by law for filing the original petition. If a new 1079

petition is properly filed within the sixty-day period, the
commissioner shall proceed under division (A)(2) or (3) of this
section. If a new petition is not properly filed within the
sixty-day period, the corrected assessment becomes final, and the
amount of the corrected assessment is due and payable from the
person assessed.

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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

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assessment, as the commissioner finds proper. If a final
determination is issued under this division, a copy of it shall be
served on the petitioner in the manner provided by section 5703.37
of the Revised Code, and it is subject to appeal under section
5717.02 of the Revised Code. Only objections decided on the merits
by the board of tax appeals or a court shall be given the effect
of collateral estoppel or res judicata in considering an
application for refund of amounts paid pursuant to the assessment
or corrected assessment.

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

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

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request was made. If the reduction is made on the commissioner's own motion, the commissioner shall certify any overpayment as a refund due only to the extent a refund could have been timely claimed at the time the reduction was made. 1144
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(D) The tax commissioner shall not issue a corrected assessment under division (A)(1) or (B) of this section after the party assessed has requested in writing that the commissioner not use that procedure. 1148
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(E) This section does not require the tax commissioner to issue a corrected assessment. 1152
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Sec. 5703.70. (A) On the filing of an application for refund under section 3734.905, 4307.05, 4307.07, 5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5739.07, 5739.071, 5739.104, 5741.10, 5743.05, 5743.53, or 5749.08 of the Revised Code, if the tax commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount claimed in the application, the commissioner shall give the applicant written notice by ordinary mail of the amount. The notice shall be sent to the address shown on the application for a refund unless the applicant notifies the commissioner of a different address. The applicant shall have sixty days from the date the commissioner mails the notice to provide additional information to the commissioner or request a hearing, or both. 1154
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(B) If the applicant neither requests a hearing nor provides additional information to the tax commissioner within the time prescribed by division (A) of this section, the commissioner shall take no further action, and the refund amount denied becomes final. 1168
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(C)(1) If the applicant requests a hearing within the time prescribed by division (A) of this section, the tax commissioner 1173
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shall assign a time and place for the hearing and notify the applicant of such time and place, but the commissioner may continue the hearing from time to time as necessary. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper, and shall issue a final determination thereon.

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

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

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

Sec. 5711.31. Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. The mailing of ~~such~~ the notice of assessment shall be

prima-facie evidence of the receipt of the same by the person to 1206
whom such notice is addressed. With the notice, the assessor shall 1207
provide instructions on how to petition for reassessment and 1208
request a hearing on the petition. 1209

Within sixty days after the mailing of the notice of 1210
assessment prescribed in this section, the party assessed may file 1211
with the tax commissioner, in person or by certified mail, a 1212
written petition for reassessment ~~in writing~~, signed by the party 1213
assessed, or by ~~the~~ that party's authorized agent having knowledge 1214
of the facts. If the petition is filed by certified mail, the date 1215
of the United States postmark placed on the sender's receipt by 1216
the postal employee to whom the petition is presented shall be 1217
treated as the date of filing. The petition shall have attached 1218
thereto and incorporated therein by reference a true copy of the 1219
notice of assessment complained of, but the failure to attach a 1220
copy of such notice and incorporate it by reference does not 1221
invalidate the petition. The petition also shall indicate the 1222
objections of the party assessed, but additional objections may be 1223
raised in writing if received prior to the date shown on the final 1224
determination by the commissioner. 1225

Upon receipt of a properly filed petition, the commissioner 1226
shall notify the treasurer of state or the auditor and treasurer 1227
of each county having any part of the assessment entered on the 1228
tax list or duplicate. 1229

~~Unless~~ If the petitioner ~~waives~~ requests a hearing on the 1230
petition, the commissioner shall assign a time and place for the 1231
hearing ~~on the petition~~ and notify the petitioner of ~~the~~ such time 1232
and place ~~of the hearing by personal service or certified mail,~~ 1233
but the commissioner may continue the hearing from time to time ~~if~~ 1234
as necessary. 1235

The commissioner may make ~~such correction~~ corrections to the 1236
assessment, as the commissioner finds proper. The commissioner 1237

shall serve a copy of the commissioner's final determination on 1238
the petitioner ~~by personal service or by certified mail, and in~~ 1239
the manner provided in section 5703.37 of the Revised Code. The 1240
commissioner's decision in the matter ~~shall be~~ is final, subject 1241
to appeal ~~as provided in~~ under section 5717.02 of the Revised 1242
Code. The commissioner also shall transmit a copy of the 1243
commissioner's final determination to the treasurer of state or 1244
applicable county auditor. In the absence of any further appeal, 1245
or when a decision of the board of tax appeals or of any court to 1246
which the decision has been appealed becomes final, the 1247
commissioner shall notify the treasurer of state or the proper 1248
county auditor of such final determination. If the final 1249
determination orders correction of the assessment, the 1250
notification may be in the form of a corrected assessment 1251
certificate. Upon receipt of the notification, the treasurer of 1252
state or the proper county auditor shall make any corrections to 1253
the treasurer's or auditor's records and tax lists and duplicates 1254
required in accordance therewith and proceed as prescribed by 1255
section 5711.32 or 5725.22 of the Revised Code. 1256

The decision of the commissioner upon such petition for 1257
reassessment shall be final with respect to the assessment of all 1258
taxable property listed in the return of the taxpayer and shall 1259
constitute to that extent the final determination of the 1260
commissioner with respect to such assessment. Neither this section 1261
nor a final judgment of the board of tax appeals or any court to 1262
which such final determination may be appealed shall preclude the 1263
subsequent assessment in the manner authorized by law of any 1264
taxable property which such taxpayer failed to list in such 1265
return, or which the assessor has not theretofore assessed. 1266

As used in this section, "taxpayer" includes financial 1267
institutions, dealers in intangibles, and domestic insurance 1268
companies as defined in section 5725.01 of the Revised Code. 1269

Sec. 5715.49. ~~No~~ (A) Except as provided in division (B) of 1270
this section, no former or present county auditor or member of a 1271
county board of revision shall divulge, except in the performance 1272
of ~~his~~ official duties or upon the order of the department of 1273
taxation, or when called upon to testify in any court or 1274
proceeding, any information acquired ~~by him~~ in the exercise of the 1275
powers vested ~~in him~~ by the laws relating to taxation, or while 1276
claiming to exercise any such powers, as to the transactions, 1277
property, or business of any person, company, firm, corporation, 1278
association, or partnership. Whoever violates this section shall 1279
thereafter be disqualified from acting in any official capacity in 1280
connection with the assessment or collection of taxes or 1281
recoupment charges. 1282

(B) Division (A) of this section does not prohibit a county 1283
auditor from divulging the name and business address of a vendor, 1284
a vendor's license number, or information regarding the active or 1285
inactive status of a vendor's license issued by the county auditor 1286
pursuant to section 5739.17 of the Revised Code. 1287

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

official capacity in connection with the assessment or collection 1301
of taxes or recoupment charges. ~~The~~ 1302

(B) Division (A) of this section does not prohibit the 1303
divulgence of: 1304

(1) The name and address of the statutory agent in this state 1305
and the names of officers and directors of any corporation are not 1306
within the prohibition of this section; 1307

(2) The name and business address of a vendor, vendor's 1308
license number, or information regarding the active or inactive 1309
status of a vendor's license issued by the county auditor pursuant 1310
to section 5739.17 of the Revised Code. 1311

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

application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service ~~of~~ or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner

or the director, as appropriate, shall certify to the board a
transcript of the record of the proceedings before the
commissioner or director, together with all evidence considered by
the commissioner or director in connection therewith. Such appeals
or applications may be heard by the board at its office in
Columbus or in the county where the appellant resides, or it may
cause its examiners to conduct such hearings and to report to it
their findings for affirmation or rejection. The board may order
the appeal to be heard upon the record and the evidence certified
to it by the commissioner or director, but upon the application of
any interested party the board shall order the hearing of
additional evidence, and it may make such investigation concerning
the appeal as it considers proper.

Sec. 5727.26. (A) The tax commissioner may make an
assessment, based on any information in the commissioner's
possession, against any natural gas company or combined company
that fails to file a return or pay any tax, interest, or
additional charge as required by sections 5727.24 to 5727.29 of
the Revised Code. The commissioner shall give the company assessed
written notice of the assessment ~~as~~ in the manner provided in
section 5703.37 of the Revised Code. With the notice, the
commissioner shall provide instructions on how to petition for
reassessment and request a hearing on the petition. A penalty of
up to fifteen per cent may be added to all amounts assessed under
this section. The tax commissioner may adopt rules providing for
the imposition and remission of the penalty.

(B) ~~If a party to whom the notice of assessment is directed~~
~~objects to the assessment, the party may file a petition for~~
~~reassessment~~ Unless the company assessed, within sixty days after
service of the notice of assessment, files with the tax
commissioner. The, either personally or by certified mail, a
written petition must be made in writing, signed by the party or

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

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

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

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

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

~~to the assessment.~~

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

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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 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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~~(E)~~(D) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the ~~person~~ company liable for the tax. ~~On~~ Immediately upon the issuance of the jeopardy assessment, the commissioner ~~immediately~~ shall file an entry with the clerk of the court of common pleas in the manner

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prescribed by division ~~(D)~~(C) of this section. Notice of the 1460
jeopardy assessment shall be served on the ~~party~~ company assessed 1461
or the ~~party's legal representative as~~ company's authorized agent 1462
in the manner provided in section 5703.37 of the Revised Code 1463
within five days of the filing of the entry with the clerk. The 1464
total amount assessed is immediately due and payable, unless the 1465
~~person~~ company assessed files a petition for reassessment in 1466
accordance with division (B) of this section and provides security 1467
in a form satisfactory to the commissioner and in an amount 1468
sufficient to satisfy the unpaid balance of the assessment. Full 1469
or partial payment of the assessment does not prejudice the 1470
commissioner's consideration of the petition for reassessment. 1471

~~(F)~~(E) All interest collected by the tax commissioner under 1472
this section shall be paid to the treasurer of state, and when 1473
paid shall be considered revenue arising from the tax imposed by 1474
section 5727.24 of the Revised Code. 1475

~~(G)~~(F) No assessment shall be made or issued against a 1476
natural gas company or combined company for the tax imposed by 1477
section 5727.24 of the Revised Code more than four years after the 1478
return date for the period in which the tax was reported, or more 1479
than four years after the return for the period was filed, 1480
whichever is later. 1481

Sec. 5727.28. (A) The treasurer of state shall refund to a 1482
natural gas company or combined company subject to the tax imposed 1483
by section 5727.24 of the Revised Code, the amount of tax paid 1484
illegally or erroneously, or paid on an illegal or erroneous 1485
assessment. Applications for a refund shall be filed with the tax 1486
commissioner, on a form prescribed by the commissioner, within 1487
four years of the illegal or erroneous payment of the tax. 1488

On the filing of the application ~~for a refund~~, the 1489
commissioner shall determine the amount of refund due and to which 1490

the applicant is entitled. If the amount is not less than that 1491
claimed, the commissioner shall certify that the amount to the 1492
director of budget and management and treasurer of state for 1493
payment from the tax refund fund under section 5703.052 of the 1494
Revised Code. If the amount is less than that claimed, the 1495
commissioner shall proceed in accordance with section 5703.70 of 1496
the Revised Code. 1497

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If the application for refund is for taxes paid on an illegal 1499
or erroneous assessment, the ~~tax~~ commissioner shall include in the 1500
certified amount interest calculated at the rate per annum 1501
prescribed ~~under~~ by section 5703.47 of the Revised Code from the 1502
date of overpayment to the date of the commissioner's 1503
certification. 1504

(B) If a natural gas company or combined company entitled to 1505
a refund of taxes under this section, or section 5703.70 of the 1506
Revised Code, is indebted to the state for any tax or fee 1507
administered by the tax commissioner that is paid to the state, or 1508
any charge, penalty, or interest arising from such a tax or fee, 1509
the amount refundable may be applied in satisfaction of that debt. 1510
If the amount refundable is less than the amount of the debt, it 1511
may be applied in partial satisfaction of the debt. If the amount 1512
refundable is greater than the amount of the debt, the amount 1513
remaining after satisfaction of the debt shall be refunded. 1514

(C) In lieu of granting a refund under division (A) or (B) of 1515
this section, the tax commissioner may allow a natural gas company 1516
or combined company to claim a credit of the amount of the tax 1517
refund on the return for the period during which the tax became 1518
refundable. The commissioner may require the company to submit 1519
information to support a claim for a credit under this division, 1520
and the commissioner may disallow the credit if the information is 1521
not provided. 1522

Sec. 5727.39. (A) As used in this section:	1523
(1) "9-1-1 system" has the meaning given in section 4931.40 of the Revised Code.	1524 1525
(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.	1526 1527 1528 1529
(3) "Eligible nonrecurring 9-1-1 charges" means all nonrecurring 9-1-1 charges for a 9-1-1 system except:	1530 1531
(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	1532 1533 1534
(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.	1535 1536 1537
(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 <u>December</u> of the current <u>preceding</u> year over the index for June <u>December</u> of the immediately <u>second</u> preceding year.	1538 1539 1540 1541 1542 1543 1544
(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.	1545 1546 1547
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	1548 1549 1550 1551 1552

the company's eligible nonrecurring 9-1-1 charges, ~~he~~ the 1553
commissioner shall credit such amount against the total taxes 1554
shown to be due from the company for the current year and shall 1555
refund the amount of any overpayment of taxes resulting from the 1556
application of such credit. If the credit allowed under this 1557
section exceeds the total taxes due for the current year, ~~he~~ the 1558
commissioner shall credit such excess against taxes due for 1559
succeeding years until the full amount of the credit is granted. 1560

The estimated taxes required to be paid by section 5727.31 of 1561
the Revised Code shall be based on the taxes for the preceding 1562
year prior to any credit allowed under this section for that year. 1563

(C)(1) Within thirty days after June 18, 1985, the tax 1564
commissioner shall compute the amount that represents twenty-five 1565
per cent of the total taxes for all telephone companies computed 1566
under section 5727.38 of the Revised Code based on the annual 1567
statements required to be filed with the commissioner in 1568
September, 1984, under section 5727.31 of the Revised Code. Such 1569
amount shall constitute the credit ceiling for 1985. 1570

(2) Each ~~October~~ September, beginning in ~~1986~~ 2001, the 1571
commissioner shall ~~multiply~~ determine the credit ceiling by 1572
multiplying the preceding year's credit ceiling by the ~~current~~ 1573
preceding calendar year's percentage change in the consumer price 1574
index for all urban consumers for the midwest region, as 1575
determined by the United States bureau of labor statistics. The 1576
product thus obtained shall constitute the credit ceiling for the 1577
current year. 1578

(D) After the last day a return may be filed by any telephone 1579
company that is eligible to claim a credit under this section, the 1580
commissioner shall determine whether the sum of the credits 1581
allowed for all prior years plus the sum of the credits claimed 1582
for the current year exceeds the current year's credit ceiling. If 1583
it does, the credits allowed under this section for the current 1584

year shall be reduced by a uniform percentage such that the sum of
the credits allowed for the current year plus the sum of the
credits allowed for all prior years equals the current year's
credit ceiling. Thereafter, no credit shall be granted under this
division, except for the remaining portions of any credits allowed
in the current or any prior years ~~but~~ that have not been granted.

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

In the case of a petition seeking a reduction in taxable
value filed with respect to an assessment issued under section
5727.23 of the Revised Code, the petitioner shall state in the

petition the total amount of reduction in taxable value sought by 1617
the petitioner. If the petitioner objects to the percentage of 1618
true value at which taxable property is assessed by the ~~tax~~ 1619
commissioner, the petitioner shall state in the petition the total 1620
amount of reduction in taxable value sought both with and without 1621
regard to the objection pertaining to the percentage of true value 1622
at which its taxable property is assessed. If a petitioner objects 1623
to the ~~tax~~ commissioner's apportionment of the taxable value of 1624
the petitioner's taxable property, the petitioner shall distinctly 1625
state in the petition that the petitioner objects to the ~~tax~~ 1626
commissioner's apportionment, and, within forty-five days after 1627
filing the petition for reassessment, shall submit the 1628
petitioner's proposed apportionment of the taxable value of its 1629
taxable property among taxing districts. If a petitioner that 1630
objects to the ~~tax~~ commissioner's apportionment fails to state its 1631
objections to that apportionment in its petition for reassessment 1632
or fails to submit its proposed apportionment within forty-five 1633
days after filing the petition for reassessment, the ~~tax~~ 1634
commissioner shall dismiss the petitioner's objection to the ~~tax~~ 1635
commissioner's apportionment, and the taxable value of the 1636
petitioner's taxable property, subject to any adjustment to 1637
taxable value pursuant to the petition or appeal, shall be 1638
apportioned in the manner used by the ~~tax~~ commissioner in the 1639
preliminary or amended preliminary assessment issued under section 1640
5727.23 of the Revised Code. 1641

If an additional objection seeking a reduction in taxable 1642
value in excess of the reduction stated in the original petition 1643
is properly and timely raised with respect to an assessment issued 1644
under section 5727.23 of the Revised Code, the petitioner shall 1645
state the total amount of the reduction in taxable value sought in 1646
the additional objection both with and without regard to any 1647
reduction in taxable value pertaining to the percentage of true 1648

value at which taxable property is assessed. If a petitioner fails 1649
to state the reduction in taxable value sought in the original 1650
petition or in additional objections properly raised after the 1651
petition is filed, the ~~tax~~ commissioner shall notify the 1652
petitioner of the failure by certified mail. If the petitioner 1653
fails to notify the ~~tax~~ commissioner in writing of the reduction 1654
in taxable value sought in the petition or in an additional 1655
objection within thirty days after receiving the ~~tax~~ 1656
commissioner's notice, the ~~tax~~ commissioner shall dismiss the 1657
petition or the additional objection in which that reduction is 1658
sought. 1659

(B)(1) Subject to divisions (B)(2) and (3) of this section, a 1660
public utility filing a petition for reassessment regarding an 1661
assessment issued under section 5727.23 or 5727.38 of the Revised 1662
Code shall pay the tax with respect to the assessment objected to 1663
as required by law. The acceptance of any tax payment by the 1664
treasurer of state or any county treasurer shall not prejudice any 1665
claim for taxes on final determination by the ~~tax~~ commissioner or 1666
final decision by the board of tax appeals or any court. 1667

(2) If a public utility properly and timely files a petition 1668
for reassessment regarding an assessment issued under section 1669
5727.23 of the Revised Code, the petitioner shall pay the tax as 1670
prescribed by divisions (B)(2)(a), (b), and (c) of this section: 1671

(a) If the petitioner does not object to the ~~tax~~ 1672
commissioner's apportionment of the taxable value of the 1673
petitioner's taxable property, the petitioner is not required to 1674
pay the part of the tax otherwise due on the taxable value that 1675
the petitioner seeks to have reduced, subject to division 1676
(B)(2)(c) of this section. 1677

(b) If the petitioner objects to the ~~tax~~ commissioner's 1678
apportionment of the taxable value of the petitioner's taxable 1679
property, the petitioner is not required to pay the tax otherwise 1680

due on the part of the taxable value apportioned to any taxing 1681
district that the petitioner objects to, subject to division 1682
(B)(2)(c) of this section. If, pursuant to division (A) of this 1683
section, the petitioner has, in a proper and timely manner, 1684
apportioned taxable value to a taxing district to which the ~~tax~~ 1685
commissioner did not apportion the petitioner's taxable value, the 1686
petitioner shall pay the tax due on the taxable value that the 1687
petitioner has apportioned to the taxing district, subject to 1688
division (B)(2)(c) of this section. 1689

(c) If a petitioner objects to the percentage of true value 1690
at which taxable property is assessed by the ~~tax~~ commissioner, the 1691
petitioner shall pay the tax due on the basis of the percentage of 1692
true value at which the public utility's taxable property is 1693
assessed by the ~~tax~~ commissioner. In any case, the petitioner's 1694
payment of tax shall not be less than the amount of tax due based 1695
on the taxable value reflected on the last appeal notice issued by 1696
the ~~tax~~ commissioner under division (C) of this section. Until the 1697
county auditor receives notification under division (E) of this 1698
section and proceeds under section 5727.471 of the Revised Code to 1699
issue any refund that is found to be due, the county auditor shall 1700
not issue a refund for any increase in the reduction in taxable 1701
value that is sought by a petitioner later than forty-five days 1702
after the petitioner files the original petition as required under 1703
division (A) of this section. 1704

(3) Any part of the tax that, under division (B)(2)(a) ~~or~~ 1705
(b) of this section, is not paid shall be collected upon receipt 1706
of the notification as provided in section 5727.471 of the Revised 1707
Code with interest thereon computed in the same manner as interest 1708
is computed under division (E) of section 5715.19 of the Revised 1709
Code, subject to any correction of the assessment by the ~~tax~~ 1710
commissioner under division (E) of this section or the final 1711
judgment of the board of tax appeals or a court to which the 1712

board's final judgment is appealed. The penalty imposed under 1713
section 323.121 of the Revised Code shall apply only to the unpaid 1714
portion of the tax if the petitioner's tax payment is less than 1715
the amount of tax due based on the taxable value reflected on the 1716
last appeal notice issued by the ~~tax~~ commissioner under division 1717
(C) of this section. 1718

(C) Upon receipt of a properly filed petition for 1719
reassessment, the tax commissioner shall notify the treasurer of 1720
state or the auditor of each county to which the assessment 1721
objected to has been certified. In the case of a petition with 1722
respect to an assessment issued under section 5727.23 of the 1723
Revised Code, the ~~tax~~ commissioner shall issue an appeal notice 1724
within thirty days after receiving the amount of the taxable value 1725
reduction and apportionment changes sought by the petitioner in 1726
the original petition or in any additional objections properly and 1727
timely raised by the petitioner. The appeal notice shall indicate 1728
the amount of the reduction in taxable value sought in the 1729
petition or in the additional objections and the extent to which 1730
the reduction in taxable value and any change in apportionment 1731
requested by the petitioner would affect the ~~tax~~ commissioner's 1732
apportionment of the taxable value among taxing districts in the 1733
county as shown in the assessment. If a petitioner is seeking a 1734
reduction in taxable value on the basis of a lower percentage of 1735
true value than the percentage at which the ~~tax~~ commissioner 1736
assessed the petitioner's taxable property, the appeal notice 1737
shall indicate the reduction in taxable value sought by the 1738
petitioner without regard to the reduction sought on the basis of 1739
the lower percentage and shall indicate that the petitioner is 1740
required to pay tax on the reduced taxable value determined 1741
without regard to the reduction sought on the basis of a lower 1742
percentage of true value, as provided under division (B)(2)(c) of 1743
this section. The appeal notice shall include a statement that the 1744
reduced taxable value and the apportionment indicated in the 1745

notice are not final and are subject to adjustment by the ~~tax~~ 1746
commissioner or by the board of tax appeals or a court on appeal. 1747
If the ~~tax~~ commissioner finds an error in the appeal notice, the 1748
~~tax~~ commissioner may amend the notice, but the notice is only for 1749
informational and tax payment purposes; the notice is not subject 1750
to appeal by any person. The ~~tax~~ commissioner also shall mail a 1751
copy of the appeal notice to the petitioner. Upon the request of a 1752
taxing authority, the county auditor may disclose to the taxing 1753
authority the extent to which a reduction in taxable value sought 1754
by a petitioner would affect the apportionment of taxable value to 1755
the taxing district or districts under the taxing authority's 1756
jurisdiction, but such a disclosure does not constitute a notice 1757
required by law to be given for the purpose of section 5717.02 of 1758
the Revised Code. 1759

(D) ~~Unless~~ If the petitioner ~~waives~~ requests a hearing on the 1760
petition, the tax commissioner shall assign a time and place for 1761
the hearing on the petition and notify the petitioner of the such 1762
time and place of the hearing by personal service or certified 1763
mail, but the commissioner may continue the hearing from time to 1764
time if as necessary. 1765

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

shall notify the public utility and, as appropriate, the treasurer 1778
of state who shall proceed under section 5727.42 of the Revised 1779
Code, or the applicable county auditor who shall proceed under 1780
section 5727.471 of the Revised Code. ~~In any notification 1781
regarding an assessment issued under section 5727.23 of the 1782
Revised Code, the tax commissioner shall include a notice of the 1783
amount of any state basic aid overpayment, as defined in section 1784
5727.471 of the Revised Code, to a school district affected by the 1785
notification. Upon the tax commissioner's request, the department 1786
of education shall certify to the tax commissioner the amount of 1787
any state basic aid overpayment to a school district. 1788~~

The notification made under this division is not subject to 1790
further appeal. 1791

(F) On appeal, no adjustment shall be made in the tax 1792
commissioner's assessment issued under section 5727.23 of the 1793
Revised Code that reduces the taxable value of a petitioner's 1794
taxable property by an amount that exceeds the reduction sought by 1795
the petitioner in its petition for reassessment or in any 1796
additional objections properly and timely raised after the 1797
petition is filed with the ~~tax~~ commissioner. 1798

Sec. 5727.471. (A) As used in this section: 1799

~~(1) "Notification", "notification" means notification 1800
required by section 5727.47 of the Revised Code to be sent by the 1801
tax commissioner to the county auditor as to the disposition of a 1802
petition for reassessment, or of a decision of the board of tax 1803
appeals or any court with respect to an assessment of public 1804
utility property taxes. 1805~~

~~(2) "State basic aid overpayment" for a school district means 1806
the amount by which the payment computed for a fiscal year under 1807
section 3317.022 of the Revised Code exceeds the amount that would 1808~~

have been computed for that fiscal year if the taxable value 1809
certified under division (A)(2) and (B) of section 3317.021 of the 1810
Revised Code for the tax year preceding that fiscal year had been 1811
the taxable value shown in the notification for that tax year. 1812

(B) On receipt of the notification, the auditor shall 1813
determine whether there has been an underpayment or overpayment of 1814
taxes by the public utility. In the case of an underpayment of 1815
taxes, the auditor shall notify the county treasurer of the 1816
amount, and the treasurer shall proceed to collect the 1817
underpayment as required by law. From the proceeds of the 1818
~~underpayment so collected that are otherwise payable to a city,~~ 1819
~~local, or exempted village school district, the county treasurer~~ 1820
~~shall deduct and withhold an amount equal to the state basic aid~~ 1821
~~overpayment, if any, to the school district, plus interest on that~~ 1822
~~amount at the rate prescribed by section 5703.47 of the Revised~~ 1823
~~Code from the last day of the fiscal year for which the state~~ 1824
~~basic aid payment was made to the day the underpayment is~~ 1825
~~collected. The county treasurer shall pay the amount deducted and~~ 1826
~~withheld to the treasurer of state, who shall credit the payment~~ 1827
~~to the general revenue fund. If the state basic aid overpayment~~ 1828
~~and interest exceeds the amount of the tax underpayment collected~~ 1829
~~that is otherwise payable to the school district, the county~~ 1830
~~treasurer shall collect the difference from the school district or~~ 1831
~~deduct and withhold the difference from the next distribution or~~ 1832
~~advance payment of property taxes to the district, and shall pay~~ 1833
~~that difference to the treasurer of state, who shall credit the~~ 1834
~~payment to the general revenue fund.~~ 1835

In the case of an overpayment of taxes, the auditor shall do 1836
any one of the following: 1837

(1) Refund the full amount of the overpayment; 1838

(2) Refund a portion of the overpayment and prorate the 1839
remaining balance as a credit against future taxes that may be 1840

charged to the public utility; 1841

(3) Prorate the full amount of the overpayment as a credit 1842
against future taxes that may be charged to the public utility. 1843

(C)(1) The auditor shall have discretion as to which method 1844
to use and shall advise the public utility of the auditor's 1845
decision within sixty days after receipt of the notification. The 1846
auditor shall make payment of any refund under division (B)(1) or 1847
(2) of this section within ninety days after receipt of the 1848
notification. Except as otherwise provided in division (C)(2) of 1849
this section, any amount to be credited under division (B)(2) or 1850
(3) of this section shall be applied to all or a part of the taxes 1851
otherwise due from the public utility on real and public utility 1852
property tax installment due dates after the date on which the 1853
notification was received, but shall not be spread over more than 1854
the next ten ensuing installment due dates. If any portion of the 1855
overpayment has not been refunded or credited by the tenth such 1856
tax installment due date after the date on which the notification 1857
was received, the auditor immediately shall refund that portion. 1858

(2) The tax commissioner may certify to a county auditor, in 1859
writing, that a public utility is no longer required to file a 1860
report under section 5727.08 of the Revised Code. Within ninety 1861
days of the date of such certification, the auditor shall refund 1862
to the utility, with applicable interest, the portion of any 1863
overpayment that has not been refunded or credited to the utility 1864
under this section. 1865

(D) The auditor shall add interest to the amount of any 1866
overpayment of taxes at the rate per calendar month, rounded to 1867
the nearest one-hundredth of one per cent, equal to one-twelfth of 1868
the rate per annum prescribed by section 5703.47 of the Revised 1869
Code. The interest shall begin to accrue from the first day of the 1870
month following the date of the overpayment until the last day of 1871
the month preceding the date the overpayment or portion of the 1872

overpayment is refunded or credited, and shall be computed 1873
separately on each amount actually refunded or credited. In 1874
computing interest on credits, when an overpayment is credited 1875
against an installment of current taxes due from the utility 1876
pursuant to this section, the overpayment shall be considered to 1877
have been credited on the last date on which those taxes may be 1878
paid without penalty. 1879

(E) The refund and crediting of any overpayment, including 1880
interest, shall be paid from or credited against the fund or funds 1881
and the taxing districts to which the overpayment originally was 1882
paid, in proportion to the amount of the overpayment received. The 1883
auditor shall correct the auditor's tax lists in accordance with 1884
the refund or credit, and shall certify corrections in the tax 1885
duplicates to the county treasurer. At each settlement affected by 1886
a refund or credit under this section, the amount of the refund or 1887
credit shall be deducted from the amount of any taxes or 1888
assessments distributable to the county or any taxing unit in the 1889
county that has received the benefit of the taxes or assessment 1890
previously overpaid, in proportion to the overpayment previously 1891
received. 1892

Sec. 5727.89. (A) The tax commissioner may make an 1893
assessment, based on any information in the commissioner's 1894
possession, against any natural gas distribution company, electric 1895
distribution company, self-assessing purchaser, or qualified end 1896
user that fails to file a return or pay any tax, interest, or 1897
additional charge as required by sections 5727.80 to 5727.95 of 1898
the Revised Code. 1899

When information in the possession of the tax commissioner 1900
indicates that a person liable for the tax imposed by section 1901
5727.81 or 5727.811 of the Revised Code has not paid the full 1902
amount of tax due, the commissioner may audit a representative 1903

sample of the person's business and may issue an assessment based
on the audit. The commissioner shall give the person assessed
written notice of the assessment ~~by personal service or certified
mail~~ in the manner provided in section 5703.37 of the Revised
Code. With the notice, the commissioner shall provide instructions
on how to petition for reassessment and request a hearing on the
petition.

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

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

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

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~~(C) The commissioner may make any correction to the
assessment that the commissioner finds proper and shall issue a~~

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~~final determination thereon. The commissioner shall serve a copy
of the final determination on the petitioner either by personal
service or by certified mail as provided in section 5703.37 of the
Revised Code, and the commissioner's decision in the matter is
final, subject to appeal under section 5717.02 of the Revised
Code. If the petition has been properly filed, the commissioner
shall proceed under section 5703.60 of the Revised Code.~~

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

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

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

assessment under this section.

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~~(E)~~(D) If the tax commissioner believes that collection of the tax imposed by section 5727.81 or 5727.811 of the Revised Code will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. ~~Upon~~ Immediately upon the issuance of the jeopardy assessment, the commissioner ~~immediately~~ shall file an entry with the clerk of the court of common pleas in the manner prescribed by division ~~(D)~~(C) of this section. Notice of the jeopardy assessment shall be served on the party assessed or the party's legal representative within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the party assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

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

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

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years of the illegal or erroneous payment of the tax. 1999

~~Upon~~ On the filing of the application, the commissioner shall 2000
determine the amount of refund ~~due and to which the applicant is~~ 2001
entitled. If the amount is not less than that claimed, the 2002
commissioner shall certify that amount to the director of budget 2003
and management and the treasurer of state for payment from the tax 2004
refund fund under section 5703.052 of the Revised Code. If the 2005
amount is less than that claimed, the commissioner shall proceed 2006
in accordance with section 5703.70 of the Revised Code. 2007

If the application for refund is for taxes paid on an illegal 2008
or erroneous assessment, the ~~tax~~ commissioner shall include in the 2009
certified amount interest calculated at the rate per annum ~~under~~ 2010
prescribed by section 5703.47 of the Revised Code from the date of 2011
overpayment to the date of the commissioner's certification. 2012

(B) If a natural gas distribution company or an electric 2013
distribution company entitled to a refund of taxes under this 2014
section, or section 5703.70 of the Revised Code, is indebted to 2015
the state for any tax or fee administered by the tax commissioner 2016
that is paid to the state, or any charge, penalty, or interest 2017
arising from such a tax or fee, the amount refundable may be 2018
applied in satisfaction of the debt. If the amount refundable is 2019
less than the amount of the debt, it may be applied in partial 2020
satisfaction of the debt. If the amount refundable is greater than 2021
the amount of the debt, the amount remaining after satisfaction of 2022
the debt shall be refunded. If the natural gas distribution 2023
company or electric distribution company has more than one such 2024
debt, any debt subject to section 5739.33 or division (G) of 2025
section 5747.07 of the Revised Code shall be satisfied first. This 2026
section applies only to debts that have become final. 2027

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

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

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(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.

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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.

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(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

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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 2092
not designed for or employed in general highway transportation, 2093
used to transport or propel property over a public highway. 2094

(B) "Commercial car" means any motor vehicle used for 2095
transporting property, wholly on its own structure on a public 2096
highway. 2097

(C) "Commercial tractor" means any motor vehicle designed and 2098
used to propel or draw a trailer or semi-trailer or both on a 2099
public highway without having any provision for carrying loads 2100
independently of such trailer or semi-trailer. 2101

(D) "Trailer" means everything on wheels that is not 2102
self-propelled, except vehicles or machinery not designed for or 2103
employed in general highway transportation, used for carrying 2104
property wholly on its own structure and for being drawn by a 2105
motor vehicle on a public highway, including any such vehicle when 2106
formed by or operated as a combination of a semi-trailer and a 2107
vehicle of the dolly type such as that commonly known as a trailer 2108
dolly. "Trailer" does not include manufactured homes as defined in 2109
division (C)(4) of section 3781.06 of the Revised Code or mobile 2110
homes as defined in division (O) of section 4501.01 of the Revised 2111
Code. 2112

(E) "Semi-trailer" means everything on wheels that is not 2113
self-propelled, except vehicles or machinery not designed for or 2114
employed in general highway transportation, designed and used for 2115
carrying property on a public highway when being propelled or 2116
drawn by a commercial tractor when part of its own weight or the 2117
weight of its load, or both, rest upon and is carried by a 2118
commercial tractor. 2119

(F) "Commercial tandem" means any commercial car and trailer 2120
or any commercial tractor, semi-trailer, and trailer when fastened 2121
together and used as one unit. 2122

(G) "Commercial tractor combination" means any commercial tractor and semi-trailer when fastened together and used as one unit. 2123
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(H) "Axle" means two or more load carrying wheels mounted in a single transverse vertical plane. 2126
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(I) "Public highway" means any highway, road, or street dedicated to public use ~~except, including~~ a highway under the control and jurisdiction of the Ohio turnpike commission created by the provisions of section 5537.02 of the Revised Code and land and lots over which the public, either as user or owner, generally has a right to pass even though such land or lots are closed temporarily by public authorities for the purpose of construction, reconstruction, maintenance, or repair. 2128
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Sec. 5728.02. (A) Except as provided in section 5728.03 of the Revised Code, every person who is liable for the tax imposed by section 5728.06 of the Revised Code on the operation of a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor that is, or is to be, operated or driven upon a public highway shall cause to be filed annually with the tax commissioner a written application for a ~~highway fuel~~ use permit on blank forms to be furnished by the commissioner for that purpose. 2136
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Each application for a ~~highway fuel~~ use permit for a commercial car or a commercial tractor shall contain any information the tax commissioner prescribes. 2148
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(B) Upon receipt of the application, the tax commissioner shall issue to the person making the application a ~~highway fuel~~ use permit and any identification device that the commissioner 2151
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considers necessary for the proper administration of this chapter. 2154
The permit and the identification device shall be of a design and 2155
contain any information the commissioner considers necessary. The 2156
identification device shall be displayed on the commercial car or 2157
commercial tractor for which it was issued at all times in the 2158
manner the commissioner prescribes. The highway fuel use permits 2159
and the identification device shall not be transferable. In case 2160
of the loss of a highway fuel use permit or identification device, 2161
the commissioner shall issue a duplicate of the permit or device. 2162

The highway fuel use permit shall be valid until it expires 2163
or is suspended or surrendered. 2164

Sec. 5728.03. (A) In lieu of filing an application for an 2165
annual highway fuel use permit under section 5728.02 of the 2166
Revised Code and in lieu of filing returns under section 5728.08 2167
of the Revised Code, a person who is the owner of a commercial car 2168
with three or more axles when operated alone or as part of a 2169
commercial tandem, a commercial car with two axles that is to be 2170
operated as part of a commercial tandem with a gross vehicle 2171
weight or a registered gross vehicle weight exceeding twenty-six 2172
thousand pounds, or a commercial tractor that is, or is to be, 2173
operated or driven upon a public highway, may file an application 2174
with the tax commissioner for a single-trip highway fuel use 2175
permit. The application shall be based on rules adopted by the tax 2176
commissioner and shall include an amount estimated to be 2177
substantially equivalent to the ~~highway use and motor vehicle~~ fuel 2178
use tax liability that the applicant will incur by driving on the 2179
highways of this state during the period covered by the 2180
single-trip permit. The amount so estimated shall be considered to 2181
be the ~~highway use tax and motor vehicle~~ fuel use tax liability so 2182
incurred. 2183

The commissioner may authorize independent permit services or 2184
other persons to issue single-trip highway fuel use permits. 2185

(B) The tax commissioner shall adopt rules establishing all 2186
of the following: 2187

(1) Procedures for the issuance of single-trip permits; 2188

(2) The length of time the permits are effective; 2189

(3) Requirements that independent permit services or other 2190
persons must meet to be authorized to issue single-trip ~~highway~~ 2191
fuel use permits and procedures for obtaining that authorization; 2192

(4) Estimates of the amount substantially equivalent to the 2193
~~highway use and motor vehicle~~ fuel use tax liability that an 2194
applicant will incur by driving on the highways of this state 2195
during the period covered by the permit. 2196

(C) No person whose ~~highway~~ fuel use permit issued under 2197
section 5728.02 of the Revised Code is currently under suspension 2198
in accordance with section 5728.11 of the Revised Code shall be 2199
issued a single-trip ~~highway~~ fuel use permit under this section. 2200

(D) All moneys collected pursuant to this section shall be 2201
deposited in the state treasury in accordance with section 5728.08 2202
of the Revised Code. 2203

Sec. 5728.04. It ~~shall be~~ is unlawful, ~~on and after September~~ 2204
~~30, 1955,~~ for any person to operate a commercial car with three or 2205
more axles when operated alone or as part of a commercial tandem, 2206
a commercial car with two axles that is to be operated as part of 2207
a commercial tandem with a gross vehicle weight or a registered 2208
gross vehicle weight exceeding twenty-six thousand pounds, or a 2209
commercial tractor when operated alone or as part of a commercial 2210
tractor combination or commercial tandem on a public highway 2211
without a valid ~~highway~~ fuel use permit for such commercial car or 2212
commercial tractor. 2213

The judge or magistrate of any court finding any person 2214
guilty of unlawfully operating a commercial car or commercial 2215

tractor as provided for in this section shall immediately notify 2216
the tax commissioner of such violation and shall transmit to the 2217
commissioner the name and the permanent address of the owner of 2218
the commercial car or commercial tractor operated in violation of 2219
this section, the registration number, the state of registration, 2220
and the certificate of title number of the commercial car or 2221
commercial tractor. 2222

Sec. ~~5735.311~~ 5728.05. The tax commissioner may enter into 2223
cooperative reciprocal agreements providing for the imposition of 2224
~~motor~~ fuel use taxes on an apportionment or allocation basis with 2225
the proper authority of any state, any commonwealth, the District 2226
of Columbia, a state or province of a foreign country, or a 2227
territory or possession of the United States or of a foreign 2228
country. The agreement may provide for determining the base state 2229
for fuel users, users' records requirements, audit procedures, 2230
exchange of information, the definition of qualified motor 2231
vehicles, bonding requirements, reporting requirements, reporting 2232
periods, specifying uniform penalty and interest for late 2233
reporting or payment, determining methods of collecting and 2234
remitting fuel use taxes to member jurisdictions, and such other 2235
provisions as will facilitate the administration of the agreement. 2236

To any extent provisions of the Revised Code governing the 2237
administration of the tax levied by section ~~5735.31~~ 5728.06 of the 2238
Revised Code are irreconcilable with provisions of a reciprocal 2239
agreement entered into pursuant to this section, the provisions of 2240
the reciprocal agreement prevail. 2241

The agreement may provide for the ~~tax~~ commissioner to audit 2242
the records of persons based in this state for purposes of the 2243
agreement in order to determine whether the fuel use taxes due 2244
each member jurisdiction are properly reported and paid. If any 2245
person based in this state fails to properly report and pay fuel 2246

use taxes as required by the agreement, the ~~tax~~ commissioner may 2247
issue an assessment against that person pursuant to the provisions 2248
of the agreement and section 5728.10 of the Revised Code. 2249

The ~~tax~~ commissioner may exchange with the proper officers of 2250
other member jurisdictions and with the repository of the 2251
agreement any information in the commissioner's possession 2252
relative to the administration and enforcement of the agreement. 2253
The exchange of information under this section is not a violation 2254
of section 5703.21 or 5715.50 of the Revised Code. For purposes of 2255
this section, "proper officers of other member jurisdictions" 2256
includes officers of any agency, department, or instrumentality of 2257
another member jurisdiction with authority under the laws of that 2258
jurisdiction to administer or enforce motor vehicle or taxation 2259
laws. 2260

The ~~tax~~ commissioner may adopt rules for the administration 2261
and enforcement of the agreement entered into pursuant to this 2262
section, and shall prescribe and supply necessary forms. 2263

The commissioner may provide information necessary for the 2264
administration and enforcement of this chapter to persons who 2265
collect such information for the purpose of providing it to other 2266
persons that are responsible for the administration and 2267
enforcement of motor vehicle or tax laws. The information provided 2268
by the commissioner shall identify the taxpayer and the status of 2269
the taxpayer's account obtained from the filings required under 2270
sections 5728.01 to 5728.14 of the Revised Code. Providing such 2271
information under this section is not a violation of section 2272
5703.21 or 5715.50 of the Revised Code. 2273

~~Sec. 5728.06. For the purpose of providing revenues to pay 2274
the cost of administering and enforcing the laws pertaining to the 2275
levy and collection of the tax imposed by this section, to provide 2276
funds to pay the state's share of the cost of constructing or 2277~~

~~reconstructing highways and eliminating railway grade crossings on 2278
the major thoroughfares of the state highway system and urban 2279
extensions thereof, and to pay the interest, principal, and 2280
charges on highway obligations issued pursuant to Section 2i of 2281
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 2282
of the Revised Code, there is hereby levied a highway use tax upon 2283
each commercial car with three or more axles when operated alone 2284
or as part of a commercial tandem, each commercial car with two 2285
axles used as a part of a commercial tandem with a gross vehicle 2286
weight or a registered gross vehicle weight exceeding twenty-six 2287
thousand pounds, and each commercial tractor operated alone or 2288
used as part of a commercial tractor combination or commercial 2289
tandem. Except as provided in section 5728.05 of the Revised Code, 2290
the rates shall be as follows: 2291~~

~~(A) One-half cent for each mile traveled on a public highway 2292
in Ohio by each commercial car with three or more axles; 2293~~

~~(B) One cent for each mile traveled on a public highway in 2294
Ohio by a commercial tandem with three axles or a commercial 2295
tractor operated alone or as part of a commercial tractor 2296
combination with three axles; 2297~~

~~(C) One and one-half cents for each mile traveled on a public 2298
highway in Ohio by a commercial tractor operated as a part of a 2299
commercial tractor combination with four axles; 2300~~

~~(D) Two cents for each mile traveled on a public highway in 2301
Ohio by a commercial tractor operated as part of a commercial 2302
tractor combination with a total of five or more axles; 2303~~

~~(E) Two and one-half cents for each mile traveled on a public 2304
highway in Ohio by each commercial car or commercial tractor 2305
operated as part of a commercial tandem with four or more axles. 2306~~

~~For the following purposes, an excise tax is hereby imposed on the 2307
use of motor fuel to operate on the public highways of this state 2308
a commercial car with three or more axles operated alone or as 2309~~

part of a commercial tandem, a commercial car with two axles 2310
operated as part of a commercial tandem having a gross vehicle 2311
weight or registered gross vehicle weight exceeding twenty-six 2312
thousand pounds, or a commercial tractor operated alone or as part 2313
of a commercial tractor combination or commercial tandem: to 2314
provide revenue for maintaining the state highway system, to widen 2315
existing surfaces on such highways, to resurface such highways, to 2316
enable the counties of the state properly to plan for, maintain, 2317
and repair their roads, to enable the municipal corporations to 2318
plan, construct, reconstruct, repave, widen, maintain, repair, 2319
clear, and clean public highways, roads, and streets; to pay that 2320
portion of the construction cost of a highway project that a 2321
county, township, or municipal corporation normally would be 2322
required to pay, but that the director of transportation, pursuant 2323
to division (B) of section 5531.08 of the Revised Code, determines 2324
instead will be paid from moneys in the highway operating fund; to 2325
maintain and repair bridges and viaducts; to purchase, erect, and 2326
maintain street and traffic signs and markers; to purchase, erect, 2327
and maintain traffic lights and signals; to pay the costs 2328
apportioned to the public under section 4907.47 of the Revised 2329
Code; and to supplement revenue already available for such 2330
purposes, to distribute equitably among those persons using the 2331
privilege of driving motor vehicles upon such highways and streets 2332
the cost of maintaining and repairing the same, and to pay the 2333
interest, principal, and charges on bonds and other obligations 2334
issued pursuant to Section 2i of Article VIII, Ohio Constitution, 2335
and sections 5528.30 and 5528.31 of the Revised Code. The tax is 2336
imposed in the same amount as the motor fuel tax imposed under 2337
Chapter 5735. of the Revised Code plus an additional tax of three 2338
cents per gallon, as determined by the gallons consumed while 2339
operated on the public highways of this state. Payment of the fuel 2340
use tax shall be made by the purchase of motor fuel within Ohio of 2341
such gallons as is equivalent to the gallons consumed while 2342

operating such a motor vehicle on the public highways of this 2343
state, or by direct remittance to the treasurer of state with the 2344
fuel use tax return filed pursuant to section 5728.08 of the 2345
Revised Code. 2346

Any person subject to the tax imposed under this section who 2347
purchases motor fuel in this state for use in another state in 2348
excess of the amount consumed while operating such motor vehicle 2349
on the public highways of this state shall be allowed a credit 2350
against the tax imposed by this section or a refund equal to the 2351
motor fuel tax paid to this state on such excess. No such credit 2352
or refund shall be allowed for taxes paid to any state that 2353
imposes a tax on motor fuel purchased or obtained in this state 2354
and used on the highways of such other state but does not allow a 2355
similar credit or refund for the tax paid to this state on motor 2356
fuel purchased or acquired in the other state and used on the 2357
public highways of this state. 2358

The tax commissioner is authorized to determine whether such 2359
credits or refunds are available and to prescribe such rules as 2360
are required for the purpose of administering this chapter. 2361

(B) Within sixty days after the last day of each month, the 2362
tax commissioner shall determine the amount of motor fuel tax 2363
allowed as a credit against the tax imposed by this section. The 2364
commissioner shall certify the amount to the director of budget 2365
and management and the treasurer of state, who shall credit the 2366
amount in accordance with section 5728.08 of the Revised Code from 2367
current revenue arising from the tax levied by section 5735.05 of 2368
the Revised Code. 2369

(C) The owner of each commercial car and commercial tractor 2370
subject to sections 5728.01 to 5728.14 of the Revised Code shall 2371
be is liable for the payment of the full amount of the taxes 2372
levied herein imposed by this section. 2373

An owner who is a person regularly engaged, for compensation, 2374

in the business of leasing or renting motor vehicles without
furnishing drivers may designate that the lessee of a motor
vehicle leased for a period of thirty days or more shall report
and pay the tax incurred during the duration of the lease. An
owner who is an independent contractor that furnishes both the
driver and motor vehicle, may designate that the person so
furnished with the driver and motor vehicle for a period of thirty
days or more shall report and pay the tax incurred during that
period. An independent contractor that is not an owner, but that
furnishes both the driver and motor vehicle and that has been
designated by the owner of the motor vehicle to report and pay the
tax, may designate that the person so furnished with driver and
motor vehicle for a period of thirty days or more shall report and
pay the tax incurred during that period.

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

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

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budget and management and treasurer of state for payment from the 2407
tax refund fund created by section 5703.052 of the Revised Code. 2408
~~Application for refund shall be filed by the person who made~~ 2409
~~payment of the tax for which refund is claimed. If the amount is~~ 2410
~~less than that claimed, the commissioner shall proceed in~~ 2411
~~accordance with section 5703.70 of the Revised Code.~~ 2412

Sec. 5728.07. Every person who is or becomes liable for the 2413
payment of the tax levied in section 5728.06 of the Revised Code 2414
shall ~~keep a complete and accurate record, upon forms prescribed~~ 2415
~~by the tax commissioner, showing the total miles traveled on a~~ 2416
~~public highway in this state by~~ maintain detailed distance and 2417
fuel records for each commercial car and commercial tractor owned, 2418
leased, rented, or otherwise operated by such person, ~~the number~~ 2419
~~of axles actually used while traveling said miles, the highway use~~ 2420
~~permit number for each commercial car and commercial tractor owned~~ 2421
~~or operated and such other information as the tax commissioner may~~ 2422
~~require.~~ Such records shall be available at any time, during 2423
normal business hours, for the inspection of the tax commissioner 2424
or ~~his~~ the commissioner's duly authorized agents and shall be 2425
preserved for a period of four years from the date the return 2426
required to be filed under section 5728.08 of the Revised Code was 2427
due or filed, whichever is later. 2428

Sec. 5728.08. Except as provided in section 5728.03 of the 2429
Revised Code and except as otherwise provided in this section, 2430
whoever is liable for the payment of the tax levied by section 2431
5728.06 of the Revised Code, on or before the last day of each 2432
January, April, July, and October, shall file with the treasurer 2433
of state, on forms prescribed by the tax commissioner, a ~~highway~~ 2434
fuel use tax return and make payment of the full amount of the tax 2435
due for the operation of each commercial car and commercial 2436
tractor for the ~~next~~ preceding three calendar months. If the 2437

commercial cars or commercial tractors are farm trucks and the 2438
amount of motor fuel used to operate the trucks during the ~~next~~ 2439
preceding twelve calendar months was less than fifteen thousand 2440
gallons, the ~~highway~~ fuel use tax return shall be filed and the 2441
full amount of tax due paid on or before the last day of each July 2442
for the ~~next~~ preceding twelve calendar months. If the commercial 2443
cars or commercial tractors are farm trucks and the amount of 2444
motor fuel used to operate the trucks during the ~~next~~ preceding 2445
twelve calendar months was fifteen thousand gallons or more, the 2446
~~highway~~ fuel use tax return shall be filed and the full amount of 2447
the tax due paid either on or before the last day of each July for 2448
the ~~next~~ preceding twelve calendar months, or on or before the 2449
last day of each January, April, July, and October for the ~~next~~ 2450
preceding three calendar months, at the option of the person 2451
liable for payment of the tax. If the commercial cars or 2452
commercial tractors are not farm trucks, and if, in the estimation 2453
of the ~~tax~~ commissioner, the amount of the tax due does not 2454
warrant quarterly filing, the commissioner may authorize the 2455
filing of the ~~highway~~ fuel use tax return and payment of the full 2456
amount due on or before the last day of each July for the ~~next~~ 2457
preceding twelve months. 2458

Immediately upon the receipt of a ~~highway~~ fuel use tax 2459
return, the treasurer of state shall mark on the return the date 2460
it was received by the treasurer of state and the amount of tax 2461
payment accompanying the return and shall transmit the return to 2462
the ~~tax~~ commissioner. 2463

The treasurer of state shall place to the credit of the tax 2464
refund fund created by section 5703.052 of the Revised Code, out 2465
of receipts from the taxes levied by section 5728.06 of the 2466
Revised Code, amounts equal to the refund certified by the ~~tax~~ 2467
commissioner pursuant to section 5728.061 of the Revised Code. 2468
Receipts from the tax shall be used by the ~~tax~~ commissioner to 2469

defray expenses incurred by the department of taxation in 2470
administering sections 5728.01 to 5728.14 of the Revised Code. 2471

All moneys received in the state treasury from taxes levied 2472
by section 5728.06 of the Revised Code and fees assessed under 2473
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 2474
that are not required to be placed to the credit of the tax refund 2475
fund as provided by this section shall, during each calendar year, 2476
be credited to the highway improvement bond retirement fund 2477
created by section 5528.12 of the Revised Code until the 2478
commissioners of the sinking fund certify to the treasurer of 2479
state, as required by section 5528.17 of the Revised Code, that 2480
there are sufficient moneys to the credit of the highway 2481
improvement bond retirement fund to meet in full all payments of 2482
interest, principal, and charges for the retirement of bonds and 2483
other obligations issued pursuant to Section 2g of Article VIII, 2484
Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised 2485
Code due and payable during the current calendar year and during 2486
the ~~next succeeding~~ following calendar year. From the date of the 2487
receipt of the certification required by section 5528.17 of the 2488
Revised Code by the treasurer of state until the thirty-first day 2489
of December of the calendar year in which the certification is 2490
made, all moneys received in the state treasury from taxes levied 2491
under section 5728.06 of the Revised Code and fees assessed under 2492
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 2493
that are not required to be placed to the credit of the tax refund 2494
fund as provided by this section shall be credited to the highway 2495
obligations bond retirement fund created by section 5528.32 of the 2496
Revised Code until the commissioners of the sinking fund certify 2497
to the treasurer of state, as required by section 5528.38 of the 2498
Revised Code, that there are sufficient moneys to the credit of 2499
the highway obligations bond retirement fund to meet in full all 2500
payments of interest, principal, and charges for the retirement of 2501
bonds and other obligations issued pursuant to Section 2i of 2502

Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 2503
of the Revised Code due and payable during the current calendar 2504
year and during the ~~next succeeding~~ following calendar year. From 2505
the date of the receipt of the certification required by section 2506
5528.38 of the Revised Code by the treasurer of state until the 2507
thirty-first day of December of the calendar year in which the 2508
certification is made, all moneys received in the state treasury 2509
from taxes levied under section 5728.06 of the Revised Code and 2510
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 2511
Revised Code ~~which that~~ are not required to be placed to the 2512
credit of the tax refund fund as provided by this section shall be 2513
credited to the highway operating fund created by section 5735.291 2514
of the Revised Code, except as provided by the next ~~succeeding~~ 2515
paragraph of this section. 2516

From the date of the receipt by the treasurer of state of 2517
certifications from the commissioners of the sinking fund, as 2518
required by sections 5528.18 and 5528.39 of the Revised Code, 2519
certifying that the moneys to the credit of the highway 2520
improvement bond retirement fund are sufficient to meet in full 2521
all payments of interest, principal, and charges for the 2522
retirement of all bonds and other obligations ~~which that~~ may be 2523
issued pursuant to Section 2g of Article VIII, Ohio Constitution, 2524
and sections 5528.10 and 5528.11 of the Revised Code, and to the 2525
credit of the highway obligations bond retirement fund are 2526
sufficient to meet in full all payments of interest, principal, 2527
and charges for the retirement of all obligations issued pursuant 2528
to Section 2i of Article VIII, Ohio Constitution, and sections 2529
5528.30 and 5528.31 of the Revised Code, all moneys received in 2530
the state treasury from the taxes levied under section 5728.06 and 2531
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 2532
Revised Code, ~~which that~~ are not required to be placed to the 2533
credit of the tax refund fund as provided by this section, shall 2534
be deposited to the credit of the highway operating fund. 2535

As used in this section, "farm truck" means any commercial 2536
car or commercial tractor that is registered as a farm truck under 2537
Chapter 4503. of the Revised Code. 2538

Sec. 5728.09. (A) Any person who fails to file timely the 2539
return required by section 5728.08 of the Revised Code may be 2540
required to pay an additional charge equal to the greater of fifty 2541
dollars or ten per cent of the tax due. The tax commissioner may 2542
adopt rules providing for the imposition and remission of the 2543
additional charges. Any additional charge imposed under this 2544
section may be collected through an assessment as provided in 2545
section 5728.10 of the Revised Code. 2546

(B) If the tax imposed by this chapter ~~or section 5735.31 of~~ 2547
~~the Revised Code~~, or any portion of that tax, whether determined 2548
by the tax commissioner or the taxpayer, is not paid on or before 2549
the date prescribed in section 5728.08 of the Revised Code, 2550
interest shall be collected and paid in the same manner as the 2551
tax, upon that unpaid amount at the rate per annum prescribed by 2552
section 5703.47 of the Revised Code from the date prescribed for 2553
payment of the tax until it is paid or until the day an assessment 2554
is issued under section 5728.10 of the Revised Code, whichever 2555
occurs first. Any interest imposed under this chapter may be 2556
collected through an assessment as provided in section 5728.10 of 2557
the Revised Code. 2558

Sec. 5728.10. (A) If any person required to file a ~~highway~~ 2559
fuel use tax return by sections 5728.01 to 5728.14 of the Revised 2560
Code, fails to file the return within the time prescribed by those 2561
sections, files an incomplete return, files an incorrect return, 2562
or fails to remit the full amount of the tax due for the period 2563
covered by the return, the tax commissioner may make an assessment 2564
against the person, based upon any information in the 2565
commissioner's possession, for the period for which the tax was 2566

due. 2567

No assessment shall be made against any person for any tax 2568
imposed by this chapter more than four years after the ~~last day of~~ 2569
~~the calendar year during~~ return date for the period for which the 2570
tax was due or more than four years after the return for the 2571
period was filed, whichever is later. This section does not bar an 2572
assessment against any person who fails to file a highway fuel use 2573
tax return as required by this chapter, or who files a fraudulent 2574
highway fuel use tax return. 2575

A penalty of up to fifteen per cent may be added to the 2576
amount of every assessment made pursuant to this section. The 2577
commissioner may adopt rules providing for the imposition and 2578
remission of penalties added to assessments made under this 2579
section. 2580

The commissioner shall give the party assessed written notice 2581
of the assessment ~~as~~ in the manner provided in section 5703.37 of 2582
the Revised Code. With the notice, the commissioner shall provide 2583
instructions on how to petition for reassessment and request a 2584
hearing on the petition. 2585

(B) Unless the party ~~to whom the notice of assessment is~~ 2586
~~directed~~ assessed files with the tax commissioner within sixty 2587
days after service of the notice of assessment, either personally 2588
or by certified mail, a written petition for reassessment ~~in~~ 2589
~~writing~~, signed by the party assessed, or by the party's 2590
authorized agent having knowledge of the facts, the assessment 2591
~~shall become~~ becomes final and the amount of the assessment ~~shall~~ 2592
~~be~~ is due and payable from the party assessed to the treasurer of 2593
state. The petition shall indicate the objections of the party 2594
assessed, but additional objections may be raised in writing if 2595
received by the commissioner prior to the date shown on the final 2596
determination ~~by the commissioner.~~ 2597

~~Unless the petitioner waives a hearing, the commissioner~~ 2598

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

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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 party's place of business is
located or the county in which the party assessed resides. If the
party maintains no office in this state and is not a resident of
this state, the certified copy of the entry may be filed in the
office of the clerk of the court of common pleas of Franklin
county.

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~~The clerk, immediately Immediately upon the filing of the
entry, the clerk shall enter a judgment for the state of Ohio
against the party assessed in the amount shown on the entry. The
judgment may be filed by the clerk in a loose-leaf book entitled
"special judgments for state highway fuel use tax," and shall have
the same effect as other judgments. Execution shall issue upon the~~

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judgment upon the request of the ~~tax~~ commissioner, and all laws 2631
applicable to sales on execution shall apply to sales made under 2632
the judgment. 2633

The portion of the assessment not paid within sixty days 2634
after the day the assessment was issued shall bear interest at the 2635
rate per annum prescribed by section 5703.47 of the Revised Code 2636
from the day the ~~tax~~ commissioner issues the assessment until it 2637
is paid. Interest shall be paid in the same manner as the tax and 2638
may be collected by the issuance of an assessment under this 2639
section. 2640

(D) All money collected by the tax commissioner under this 2641
section shall be paid into the state treasury in the same manner 2642
as the revenues deriving from the taxes imposed by section 5728.06 2643
of the Revised Code. 2644

Sec. 5728.11. (A) ~~Thirty~~ Sixty days after service of an 2645
assessment under section 5728.10 of the Revised Code, or when the 2646
tax commissioner files a certified copy of an entry making an 2647
assessment as provided in that section, ~~he~~ the commissioner shall 2648
suspend all highway fuel use permits issued to the person against 2649
whom the assessment was made, provided that no highway fuel use 2650
permit shall be suspended while an appeal is pending, except in 2651
those cases in which no return has been filed, or where it is 2652
alleged a fraudulent return has been filed. 2653

Upon suspension of a highway fuel use permit, the 2654
commissioner may require that the permit holder ~~shall~~ surrender to 2655
the commissioner the permit and identification device. 2656

Upon payment in full of the assessment and interest, the ~~tax~~ 2657
commissioner shall immediately reinstate all highway fuel use 2658
permits issued to the person against whom the assessment was made 2659
which have been suspended. 2660

(B) If no returns have been filed within the time prescribed 2661

for the filing of returns, or within any extension of time for 2662
filing as the tax commissioner may grant in accordance with 2663
section 5728.14 of the Revised Code, the commissioner, after 2664
giving written notice of ~~his~~ the commissioner's intention so to 2665
do, immediately may suspend all highway fuel use permits held by 2666
the person failing to file a return. The notice shall be sent to 2667
the last known address of the person. No permit which has been 2668
suspended for failure to file a return shall be reinstated until 2669
the person files complete and correct returns for all periods in 2670
which no return has been filed and paid the full amount of the 2671
tax, interest, and additional charges due. 2672

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

~~from all obligations pertaining to the registration and taxation 2694
of such motor vehicles and to prescribe such rules and regulations 2695
as are required for the purpose of administering the provisions of 2696
this section. 2697~~

~~Household goods means all goods consisting of personal 2698
effects and property used or to be used in a dwelling when a part 2699
of the equipment or supply of such dwellings and furniture, 2700
fixtures, equipment, and the property of stores, offices, museums, 2701
institutions, hospitals, or other establishments when part of the 2702
stock, equipment, or supply of such stores, offices, museums, 2703
institutions, hospitals, or other establishments, and articles 2704
including objects of art, displays, and exhibits, which because of 2705
their unusual nature or value require specialized handling and 2706
equipment usually employed in moving household goods or by any 2707
other state or its political subdivisions if that state extends a 2708
similar exemption to motor vehicles, commercial cars, or 2709
commercial tractors owned and operated by this state or its 2710
political subdivisions. 2711~~

Sec. 5733.021. (A) Each taxpayer ~~which~~ that does not in the 2712
~~month of~~ January file the report and make the payment required by 2713
section 5733.02 of the Revised Code shall make and file a 2714
declaration of estimated tax report for the tax year. 2715

The declaration of estimated tax report shall be filed with 2716
the treasurer of state on or before the last day of January in 2717
such form as prescribed by the tax commissioner, and shall reflect 2718
an estimate of the total amount due under this chapter for the tax 2719
year. 2720

(B) A taxpayer required to file a declaration of estimated 2721
tax report shall make remittance of such estimated tax to the 2722
treasurer of state as follows: 2723

(1) The entire estimated tax at the time of filing the 2724

declaration of estimated tax report, if such estimated tax is not
in excess of the minimum tax as provided in section 5733.06 of the
Revised Code;

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

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

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

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

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

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

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

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

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

(C)(1) For any period of delinquency ending prior to the first day of June of the tax year: 2755
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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 divisions (B)(2)(a) and (b) and (B)(3)(a) and (b) of this section. 2757
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(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. 2761
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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. 2765
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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: 2774
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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. 2777
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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. 2781
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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 2784
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the current tax year. 2786

(3) If the taxpayer did not file a report under section 2787
5733.02 of the Revised Code for the tax year or failed to prepare 2788
and file the report in good faith for the tax year, "qualifying 2789
net tax" as used in division (C) of this section for that tax year 2790
means the amount described in division (C)(3)(a) of this division. 2791
Otherwise, "qualifying net tax" as used in division (C) of this 2792
section for that tax year means the lesser of the amount described 2793
in division (C)(3)(a) or (b) of this section: 2794

(a) The tax imposed by sections 5733.06, 5733.065, and 2795
5733.066 of the Revised Code for that tax year reduced by the 2796
credits listed in section 5733.98 of the Revised Code. If the 2797
credits exceed the total tax, the qualifying net tax is zero. 2798

(b) The lesser of the tax shown on the report, reduced by the 2799
credits shown on that report, or the tax shown on an amended 2800
report prepared and filed in good faith, reduced by the credits 2801
shown on that amended report. If the credits shown exceed the 2802
total tax shown, the qualifying net tax is zero. 2803

Sec. 5733.04. As used in this chapter: 2804

(A) "Issued and outstanding shares of stock" applies to 2805
nonprofit corporations, as provided in section 5733.01 of the 2806
Revised Code, and includes, but is not limited to, membership 2807
certificates and other instruments evidencing ownership of an 2808
interest in such nonprofit corporations, and with respect to a 2809
financial institution that does not have capital stock, "issued 2810
and outstanding shares of stock" includes, but is not limited to, 2811
ownership interests of depositors in the capital employed in such 2812
an institution. 2813

(B) "Taxpayer" means a corporation subject to the tax imposed 2814
by section 5733.06 of the Revised Code. 2815

(C) "Resident" means a corporation organized under the laws of this state.	2816 2817
(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.	2818 2819 2820
(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.	2821 2822 2823 2824 2825 2826 2827 2828
(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.	2829 2830 2831
(G) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	2832 2833
(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.	2834 2835
(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:	2836 2837 2838 2839 2840
(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until	2841 2842 2843 2844 2845 2846

fully utilized in the next succeeding taxable year or years in 2847
which the taxpayer has net income, but in no case for more than 2848
the designated carryover period as described in division (I)(1)(b) 2849
of this section. The amount of such net operating loss, as 2850
determined under the allocation and apportionment provisions of 2851
section 5733.051 and division (B) of section 5733.05 of the 2852
Revised Code for the year in which the net operating loss occurs, 2853
shall be deducted from net income, as determined under the 2854
allocation and apportionment provisions of section 5733.051 and 2855
division (B) of section 5733.05 of the Revised Code, to the extent 2856
necessary to reduce net income to zero with the remaining unused 2857
portion of the deduction, if any, carried forward to the remaining 2858
years of the designated carryover period as described in division 2859
(I)(1)(b) of this section, or until fully utilized, whichever 2860
occurs first. 2861

(b) For losses incurred in taxable years ending on or before 2862
December 31, 1981, the designated carryover period shall be the 2863
five consecutive taxable years after the taxable year in which the 2864
net operating loss occurred. For losses incurred in taxable years 2865
ending on or after January 1, 1982, and beginning before August 6, 2866
1997, the designated carryover period shall be the fifteen 2867
consecutive taxable years after the taxable year in which the net 2868
operating loss occurs. For losses incurred in taxable years 2869
beginning on or after August 6, 1997, the designated carryover 2870
period shall be the twenty consecutive taxable years after the 2871
taxable year in which the net operating loss occurs. 2872

(c) The tax commissioner may require a taxpayer to furnish 2873
any information necessary to support a claim for deduction under 2874
division (I)(1)(a) of this section and no deduction shall be 2875
allowed unless the information is furnished. 2876

(2) Deduct any amount included in net income by application 2877
of section 78 or 951 of the Internal Revenue Code, amounts 2878

received for royalties, technical or other services derived from 2879
sources outside the United States, and dividends received from a 2880
subsidiary, associate, or affiliated corporation that neither 2881
transacts any substantial portion of its business nor regularly 2882
maintains any substantial portion of its assets within the United 2883
States. For purposes of determining net foreign source income 2884
deductible under division (I)(2) of this section, the amount of 2885
gross income from all such sources other than income derived by 2886
application of section 78 or 951 of the Internal Revenue Code 2887
shall be reduced by: 2888

(a) The amount of any reimbursed expenses for personal 2889
services performed by employees of the taxpayer for the 2890
subsidiary, associate, or affiliated corporation; 2891

(b) Ten per cent of the amount of royalty income and 2892
technical assistance fees; 2893

(c) Fifteen per cent of the amount of dividends and all other 2894
income. 2895

The amounts described in divisions (I)(2)(a) to (c) of this 2896
section are deemed to be the expenses attributable to the 2897
production of deductible foreign source income unless the taxpayer 2898
shows, by clear and convincing evidence, less actual expenses, or 2899
the tax commissioner shows, by clear and convincing evidence, more 2900
actual expenses. 2901

(3) Add any loss or deduct any gain resulting from the sale, 2902
exchange, or other disposition of a capital asset, or an asset 2903
described in section 1231 of the Internal Revenue Code, to the 2904
extent that such loss or gain occurred prior to the first taxable 2905
year on which the tax provided for in section 5733.06 of the 2906
Revised Code is computed on the corporation's net income. For 2907
purposes of division (I)(3) of this section, the amount of the 2908
prior loss or gain shall be measured by the difference between the 2909

original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset. The adjustments described in this division do not apply to any gain or loss where the gain or loss is recognized by a qualifying taxpayer, as defined in section 5733.0510 of the Revised Code, with respect to a qualifying taxable event, as defined in that section.

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

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

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

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, excluding an electric company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the

public utility. As used in division (I)(7) of this section, 2942
"public utility" means a public utility as defined in Chapter 2943
5727. of the Revised Code, whether or not the public utility is 2944
doing business in the state. 2945

(8) To the extent not otherwise allowed, deduct any dividends 2946
received by a taxpayer from an insurance company, if the taxpayer 2947
owns at least eighty per cent of the issued and outstanding common 2948
stock of the insurance company. As used in division (I)(8) of this 2949
section, "insurance company" means an insurance company that is 2950
taxable under Chapter 5725. or 5729. of the Revised Code. 2951
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(9) Deduct expenditures for modifying existing buildings or 2953
structures to meet American national standards institute standard 2954
A-117.1-1961 (R-1971), as amended; provided, that no deduction 2955
shall be allowed to the extent that such deduction is not 2956
permitted under federal law or under rules of the tax 2957
commissioner. Those deductions as are allowed may be taken over a 2958
period of five years. The tax commissioner shall adopt rules under 2959
Chapter 119. of the Revised Code establishing reasonable 2960
limitations on the extent that expenditures for modifying existing 2961
buildings or structures are attributable to the purpose of making 2962
the buildings or structures accessible to and usable by physically 2963
handicapped persons. 2964

(10) Deduct the amount of wages and salaries, if any, not 2965
otherwise allowable as a deduction but that would have been 2966
allowable as a deduction in computing federal taxable income 2967
before operating loss deduction and special deductions for the 2968
taxable year, had the targeted jobs credit allowed and determined 2969
under sections 38, 51, and 52 of the Internal Revenue Code not 2970
been in effect. 2971

(11) Deduct net interest income on obligations of the United 2972
States and its territories and possessions or of any authority, 2973

commission, or instrumentality of the United States to the extent 2974
the laws of the United States prohibit inclusion of the net 2975
interest for purposes of determining the value of the taxpayer's 2976
issued and outstanding shares of stock under division (B) of 2977
section 5733.05 of the Revised Code. As used in division (I)(11) 2978
of this section, "net interest" means interest net of any expenses 2979
taken on the federal income tax return that would not have been 2980
allowed under section 265 of the Internal Revenue Code if the 2981
interest were exempt from federal income tax. 2982

(12)(a) Except as set forth in division (I)(12)(d) of this 2983
section, to the extent not included in computing the taxpayer's 2984
federal taxable income before operating loss deduction and special 2985
deductions, add gains and deduct losses from direct or indirect 2986
sales, exchanges, or other dispositions, made by a related entity 2987
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 2988
constructive investment in the stock or debt of another entity, 2989
unless the gain or loss has been included in computing the federal 2990
taxable income before operating loss deduction and special 2991
deductions of another taxpayer with a more closely related 2992
investment in the stock or debt of the other entity. The amount of 2993
gain added or loss deducted shall not exceed the product obtained 2994
by multiplying such gain or loss by the taxpayer's proportionate 2995
share, directly, indirectly, beneficially, or constructively, of 2996
the outstanding stock of the related entity immediately prior to 2997
the direct or indirect sale, exchange, or other disposition. 2998

(b) Except as set forth in division (I)(12)(e) of this 3000
section, to the extent not included in computing the taxpayer's 3001
federal taxable income before operating loss deduction and special 3002
deductions, add gains and deduct losses from direct or indirect 3003
sales, exchanges, or other dispositions made by a related entity 3004
who is not a taxpayer, of intangible property other than stock, 3005

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

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

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

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

(iii) A corporation, or a party related to the corporation in
a manner that would require an attribution of stock from the
corporation to the party or from the party to the corporation

under division (I)(12)(c)(iv) of this section, if the taxpayer
owns, directly, indirectly, beneficially, or constructively, at
least fifty per cent of the value of the corporation's outstanding
stock.

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

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

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

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

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

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

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

The exclusions described in divisions (I)(12)(e)(i) to (iv)

of this section do not apply if the corporation, partnership, 3068
estate, or trust is described in any one of divisions (C)(1) to 3069
(5) of section 5733.042 of the Revised Code. 3070

(f) Nothing in division (I)(12) of this section shall require 3071
or permit a taxpayer to add any gains or deduct any losses 3072
described in divisions (I)(12)(f)(i) and (ii) of this section: 3073

(i) Gains or losses recognized for federal income tax 3074
purposes by an individual, estate, or trust without regard to the 3075
attribution rules described in division (I)(12)(c) of this 3076
section; 3077

(ii) A related entity's gains or losses described in division 3078
(I)(12)(b) if the taxpayer's ownership of or use of such 3079
intangible property was limited to a period not exceeding nine 3080
months and was attributable to a transaction or a series of 3081
transactions executed in accordance with the election or elections 3082
made by the taxpayer or a related entity pursuant to section 338 3083
of the Internal Revenue Code. 3084

(13) Any adjustment required by section 5733.042 of the 3085
Revised Code. 3086

(14) Add any amount claimed as a credit under section 3087
5733.0611 of the Revised Code to the extent that such amount 3088
satisfies either of the following: 3089

(a) It was deducted or excluded from the computation of the 3090
corporation's taxable income before operating loss deduction and 3091
special deductions as required to be reported for the 3092
corporation's taxable year under the Internal Revenue Code; 3093

(b) It resulted in a reduction of the corporation's taxable 3094
income before operating loss deduction and special deductions as 3095
required to be reported for any of the corporation's taxable years 3096
under the Internal Revenue Code. 3097

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

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

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

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

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

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

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

(i) The maintenance, management, ownership, acquisition, use,

and disposition of its intangible property, its aircraft the use 3129
of which is not subject to regulation under 14 C.F.R. part 121 or 3130
part 135, and any real property described in division (L)(2)(c) of 3131
this section; 3132

(ii) The collection and distribution of income from such 3133
property. 3134

(c) The corporation is not a financial institution on the 3135
last day of the taxable year ending prior to the first day of the 3136
tax year; 3137

(d) The corporation's related members make a good faith and 3138
reasonable effort to make timely and fully the adjustments 3139
required by division (C)(2) of section 5733.05 of the Revised Code 3140
and to pay timely and fully all uncontested taxes, interest, 3141
penalties, and other fees and charges imposed under this chapter; 3142

(e) Subject to division (L)(4) of this section, the 3143
corporation elects to be treated as a qualifying holding company 3144
for the tax year. 3145

A corporation otherwise satisfying divisions (L)(1)(a) to (e) 3146
of this section that does not elect to be a qualifying holding 3147
company is not a qualifying holding company for the purposes of 3148
this chapter. 3149

(2)(a)(i) For purposes of making the ninety per cent 3150
computation under division (L)(1)(a) of this section, the net book 3151
value of the corporation's assets shall not include the net book 3152
value of aircraft or real property described in division 3153
(L)(1)(b)(i) of this section. 3154

(ii) For purposes of making the fifty per cent computation 3155
under division (L)(1)(a) of this section, the net book value of 3156
assets shall include the net book value of aircraft or real 3157
property described in division (L)(1)(b)(i) of this section. 3158

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

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

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

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii),

(2)(a)(i), and (2)(a)(ii) of this section, real property is 3191
described in division (L)(2)(c) of this section only if all of the 3192
following conditions are present at all times during the taxable 3193
year ending prior to the first day of the tax year: 3194

(i) The real property serves as the headquarters of the 3195
corporation's trade or business, or is the place from which the 3196
corporation's trade or business is principally managed or 3197
directed; 3198

(ii) Not more than ten per cent of the value of the real 3199
property and not more than ten per cent of the square footage of 3200
the building or buildings that are part of the real property is 3201
used, made available, or occupied for the purpose of providing, 3202
acquiring, transferring, selling, or disposing of tangible 3203
property or services in the normal course of business to persons 3204
other than related members, the corporation's employees and their 3205
families, and such related members' employees and their families. 3206

(d) As used in division (L) of this section, "related member" 3207
has the same meaning as in division (A)(6) of section 5733.042 of 3208
the Revised Code without regard to division (B) of that section. 3209
3210

(3) The percentages described in division (L)(1)(a) of this 3211
section shall be equal to the quarterly average of those 3212
percentages as calculated during the corporation's taxable year 3213
ending prior to the first day of the tax year. 3214

(4) With respect to the election described in division 3215
(L)(1)(e) of this section: 3216

(a) The election need not accompany a timely filed report; 3217

(b) The election need not accompany the report; rather, the 3218
election may accompany a subsequently filed but timely application 3219
for refund and timely amended report, or a subsequently filed but 3220
timely petition for reassessment; 3221

(c) The election is not irrevocable;	3222
(d) The election applies only to the tax year specified by the corporation;	3223 3224
(e) The corporation's related members comply with division (L)(1)(d) of this section.	3225 3226
Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.	3227 3228
(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.	3229 3230 3231
(N) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.	3232 3233 3234
(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.	3235 3236 3237 3238 3239 3240 3241
(P) "Electric company" and "combined company" have the same meanings as in section 5727.01 of the Revised Code.	3242 3243
Sec. 5733.05. As used in this section, " <u>qualified research</u> " means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. " <u>Product</u> " as used in	3244 3245 3246 3247 3248 3249 3250 3251

this paragraph does not include services or intangible property. 3252
3253

The annual report determines the value of the issued and 3254
outstanding shares of stock of the taxpayer, which under division 3255
(A) or divisions (B) and (C) of this section is the base or 3256
measure of the franchise tax liability. Such determination shall 3257
be made as of the date shown by the report to have been the 3258
beginning of the corporation's annual accounting period that 3259
includes the first day of January of the tax year. For the 3260
purposes of this chapter, the value of the issued and outstanding 3261
shares of stock of any corporation that is a financial institution 3262
shall be deemed to be the value as calculated in accordance with 3263
division (A) of this section. For the purposes of this chapter, 3264
the value of the issued and outstanding shares of stock of any 3265
corporation that is not a financial institution shall be deemed to 3266
be the values as calculated in accordance with divisions (B) and 3267
(C) of this section. Except as otherwise required by this section 3268
or section 5733.056 of the Revised Code, the value of a taxpayer's 3269
issued and outstanding shares of stock under division (A) or (C) 3270
of this section does not include any amount that is treated as a 3271
liability under generally accepted accounting principles. 3272

(A) The total value, as shown by the books of the financial 3273
institution, of its capital, surplus, whether earned or unearned, 3274
undivided profits, and reserves shall be determined as prescribed 3275
by section 5733.056 of the Revised Code for tax years 1998 and 3276
thereafter. 3277

(B) The sum of the corporation's net income during the 3278
corporation's taxable year, allocated or apportioned to this state 3279
as prescribed in divisions (B)(1) and (2) of this section, and 3280
subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 3281
5733.059, and 5733.0510 of the Revised Code: 3282

(1) The net income allocated to this state as provided by 3283

section 5733.051 of the Revised Code. 3284

(2) The amount of Ohio apportioned net income from sources 3285
other than those allocated under section 5733.051 of the Revised 3286
Code, which shall be determined by multiplying the corporation's 3287
net income by a fraction. The numerator of the fraction is the sum 3288
of the following products: the property factor multiplied by 3289
twenty, the payroll factor multiplied by twenty, and the sales 3290
factor multiplied by sixty. The denominator of the fraction is one 3291
hundred, provided that the denominator shall be reduced by twenty 3292
if the property factor has a denominator of zero, by twenty if the 3293
payroll factor has a denominator of zero, and by sixty if the 3294
sales factor has a denominator of zero. 3295

The property, payroll, and sales factors shall be determined 3296
as follows: 3297

(a) The property factor is a fraction the numerator of which 3298
is the average value of the corporation's real and tangible 3299
personal property owned or rented, and used in the trade or 3300
business in this state during the taxable year, and the 3301
denominator of which is the average value of all the corporation's 3302
real and tangible personal property owned or rented, and used in 3303
the trade or business everywhere during such year. There shall be 3304
excluded from the numerator and denominator of the property factor 3305
the original cost of all of the following property within Ohio: 3306
property with respect to which a "pollution control facility" 3307
certificate has been issued pursuant to section 5709.21 of the 3308
Revised Code; property with respect to which an "industrial water" 3309
pollution control certificate" has been issued pursuant to section 3310
6111.31 of the Revised Code; and property used exclusively during 3311
the taxable year for qualified research. 3312

(i) Property owned by the corporation is valued at its 3313
original cost. Property rented by the corporation is valued at 3314
eight times the net annual rental rate. "Net annual rental rate" 3315

means the annual rental rate paid by the corporation less any 3316
annual rental rate received by the corporation from subrentals. 3317

(ii) The average value of property shall be determined by 3318
averaging the values at the beginning and the end of the taxable 3319
year, but the tax commissioner may require the averaging of 3320
monthly values during the taxable year, if reasonably required to 3321
reflect properly the average value of the corporation's property. 3322

(b) The payroll factor is a fraction the numerator of which 3323
is the total amount paid in this state during the taxable year by 3324
the corporation for compensation, and the denominator of which is 3325
the total compensation paid everywhere by the corporation during 3326
such year. There shall be excluded from the numerator and the 3327
denominator of the payroll factor the total compensation paid in 3328
this state to employees who are primarily engaged in qualified 3329
research. 3330

(i) Compensation means any form of remuneration paid to an 3331
employee for personal services. 3332

(ii) Compensation is paid in this state if: (1) the 3333
recipient's service is performed entirely within this state, (2) 3334
the recipient's service is performed both within and without this 3335
state, but the service performed without this state is incidental 3336
to the recipient's service within this state, (3) some of the 3337
service is performed within this state and either the base of 3338
operations, or if there is no base of operations, the place from 3339
which the service is directed or controlled is within this state, 3340
or the base of operations or the place from which the service is 3341
directed or controlled is not in any state in which some part of 3342
the service is performed, but the recipient's residence is in this 3343
state. 3344

(iii) Compensation is paid in this state to any employee of a 3345
common or contract motor carrier corporation, who performs the 3346
employee's regularly assigned duties on a motor vehicle in more 3347

than one state, in the same ratio by which the mileage traveled by 3348
such employee within the state bears to the total mileage traveled 3349
by such employee everywhere during the taxable year. 3350

(c) Except as provided in section 5733.059 of the Revised 3351
Code, the sales factor is a fraction the numerator of which is the 3352
total sales in this state by the corporation during the taxable 3353
year, and the denominator of which is the total sales by the 3354
corporation everywhere during such year. In determining the 3355
numerator and denominator of the sales factor, receipts from the 3356
sale or other disposal of a capital asset or an asset described in 3357
section 1231 of the Internal Revenue Code shall be eliminated. 3358
Also, in determining the numerator and denominator of the sales 3359
factor, in the case of a reporting corporation owning at least 3360
eighty per cent of the issued and outstanding common stock of one 3361
or more insurance companies or public utilities, except an 3362
electric company, or owning at least twenty-five per cent of the 3363
issued and outstanding common stock of one or more financial 3364
institutions, receipts received by the reporting corporation from 3365
such utilities, insurance companies, and financial institutions 3366
shall be eliminated. 3367

For the purpose of this section and section 5733.03 of the 3368
Revised Code, sales of tangible personal property are in this 3369
state where such property is received in this state by the 3370
purchaser. In the case of delivery of tangible personal property 3371
by common carrier or by other means of transportation, the place 3372
at which such property is ultimately received after all 3373
transportation has been completed shall be considered as the place 3374
at which such property is received by the purchaser. Direct 3375
delivery in this state, other than for purposes of transportation, 3376
to a person or firm designated by a purchaser constitutes delivery 3377
to the purchaser in this state, and direct delivery outside this 3378
state to a person or firm designated by a purchaser does not 3379

constitute delivery to the purchaser in this state, regardless of 3380
where title passes or other conditions of sale. 3381

Except as provided in section 5733.059 of the Revised Code, 3382
sales, other than sales of tangible personal property, are in this 3383
state if either: 3384

(i) The income-producing activity is performed solely in this 3385
state; 3386

(ii) The income-producing activity is performed both within 3387
and without this state and a greater proportion of the 3388
income-producing activity is performed within this state than in 3389
any other state, based on costs of performance. 3390

(d) If the allocation and apportionment provisions of 3391
division (B) of this section do not fairly represent the extent of 3392
the taxpayer's business activity in this state, the taxpayer may 3393
request, which request must be in writing and must accompany the 3394
report, timely filed petition for reassessment, or timely filed 3395
amended report, or the tax commissioner may require, in respect to 3396
all or any part of the taxpayer's allocated or apportioned base, 3397
if reasonable, any one or more of the following: 3398

(i) Separate accounting; 3399

(ii) The exclusion of any one or more of the factors; 3400

(iii) The inclusion of one or more additional factors that 3401
will fairly represent the taxpayer's allocated or apportioned base 3402
in this state. 3403

An alternative method will be effective only with approval by 3404
the tax commissioner. 3405

Nothing in this section shall be construed to extend any 3406
statute of limitations set forth in this chapter. 3407

(C)(1) Subject to divisions (C)(2) and (3) of this section, 3408
the total value, as shown on the books of each corporation that is 3409

not a qualified holding company, of the net book value of a 3410
corporation's assets less the net carrying value of its 3411
liabilities, and excluding from the corporation's assets land 3412
devoted exclusively to agricultural use as of the first Monday of 3413
June in the corporation's taxable year as determined by the county 3414
auditor of the county in which the land is located pursuant to 3415
section 5713.31 of the Revised Code. For the purposes of 3416
determining that total value, any reserves shown on the 3417
corporation's books shall be considered liabilities or contra 3418
assets, except for any reserves that are deemed appropriations of 3419
retained earnings under generally accepted accounting principles. 3420

(2)(a) If, on the last day of the taxpayer's taxable year 3421
preceding the tax year, the taxpayer is a related member to a 3422
corporation that elects to be a qualifying holding company for the 3423
tax year beginning after the last day of the taxpayer's taxable 3424
year, or if, on the last day of the taxpayer's taxable year 3425
preceding the tax year, a corporation that elects to be a 3426
qualifying holding company for the tax year beginning after the 3427
last day of the taxpayer's taxable year is a related member to the 3428
taxpayer, then the taxpayer's total value shall be adjusted by the 3429
qualifying amount. Except as otherwise provided under division 3430
(C)(2)(b) of this section, "qualifying amount" means the amount 3431
that, when added to the taxpayer's total value, and when 3432
subtracted from the net carrying value of the taxpayer's 3433
liabilities computed without regard to division (C)(2) of this 3434
section, or when subtracted from the taxpayer's total value and 3435
when added to the net carrying value of the taxpayer's liabilities 3436
computed without regard to division (C)(2) of this section, 3437
results in the taxpayer's debt-to-equity ratio equaling the 3438
debt-to-equity ratio of the qualifying controlled group on the 3439
last day of the taxable year ending prior to the first day of the 3440
tax year computed on a consolidated basis in accordance with 3441

general accepted accounting principles. For the purposes of 3442
division (C)(2)(a) of this section, the corporation's total value, 3443
after the adjustment required by that division, shall not exceed 3444
the net book value of the corporation's assets. 3445

(b)(i) The amount added to the taxpayer's total value and 3446
subtracted from the net carrying value of the taxpayer's 3447
liabilities shall not exceed the amount of the net carrying value 3448
of the taxpayer's liabilities owed to the taxpayer's related 3449
members. 3450

(ii) A liability owed to the taxpayer's related members 3451
includes, but is not limited to, any amount that the corporation 3452
owes to a person that is not a related member if the corporation's 3453
related member or related members in whole or in part guarantee 3454
any portion or all of that amount, or pledge, hypothecate, 3455
mortgage, or carry out any similar transactions to secure any 3456
portion or all of that amount. 3457

(3) The base upon which the tax is levied under division (C) 3458
of section 5733.06 of the Revised Code shall be computed by 3459
multiplying the amount determined under divisions (C)(1) and (2) 3460
of this section by the fraction determined under divisions 3461
(B)(2)(a) to (c) of this section and, if applicable, divisions 3462
(B)(2)(d)(ii) to (iv) of this section but without regard to 3463
section 5733.052 of the Revised Code. 3464

(4) For purposes of division (C) of this section, "related 3465
member" has the same meaning as in division (A)(6) of section 3466
5733.042 of the Revised Code without regard to division (B) of 3467
that section. 3468

Sec. 5733.11. (A) If any corporation required to file a 3469
report under this chapter fails to file the report within the time 3470
prescribed, files an incorrect report, or fails to remit the full 3471
amount of the tax due for the period covered by the report, the 3472

tax commissioner may make an assessment against the corporation 3473
for any deficiency for the period for which the report or tax is 3474
due, based upon any information in the commissioner's possession. 3475

No assessment shall be made or issued against a corporation 3476
more than three years after the later of the final date the report 3477
subject to assessment was required to be filed or the date the 3478
report was filed. Such time limit may be extended if both the 3479
corporation and the commissioner consent in writing to the 3480
extension or if an agreement waiving or extending the time limit 3481
has been entered into pursuant to section 122.171 of the Revised 3482
Code. Any such extension shall extend the three-year time limit in 3483
division (B) of section 5733.12 of the Revised Code for the same 3484
period of time. There shall be no bar or limit to an assessment 3485
against a corporation that fails to file a report subject to 3486
assessment as required by this chapter, or that files a fraudulent 3487
report. 3488

The commissioner shall give the corporation assessed written 3489
notice of the assessment ~~as~~ in the manner provided in section 3490
5703.37 of the Revised Code. With the notice, the commissioner 3491
shall provide instructions on how to petition for reassessment and 3492
request a hearing on the petition. 3493

(B) Unless the corporation ~~to which the notice of assessment~~ 3494
~~is directed~~ assessed files with the tax commissioner within sixty 3495
days after service ~~thereof~~ of the notice of assessment, either 3496
personally or by certified mail ~~as provided in section 5703.056 of~~ 3497
~~the Revised Code~~, a written petition for reassessment ~~in writing~~, 3498
signed by the corporations authorized agent ~~of the corporation~~ 3499
~~assessed~~ having knowledge of the facts, ~~and makes payment of the~~ 3500
~~portion of the assessment required by division (E) of this~~ 3501
~~section~~, the assessment ~~shall become~~ becomes final, and the amount 3502
of the assessment ~~shall be~~ is due and payable from the corporation 3503
assessed to the treasurer of state. The petition shall indicate 3504

the corporation's objections, but additional objections may be 3505
raised in writing if received by the commissioner prior to the 3506
date shown on the final determination ~~by the commissioner.~~ 3507

~~Unless the petitioner waives a hearing, the commissioner 3508
shall assign a time and place for the hearing on the petition and 3509
notify the petitioner of the time and place of the hearing by 3510
personal service or certified mail, but the commissioner may 3511
continue the hearing from time to time if necessary.~~ 3512

~~The commissioner may make such correction to the assessment 3513
as the commissioner finds proper. The commissioner shall serve a 3514
copy of the final determination on the petitioner by personal 3515
service or by certified mail, and the commissioner's decision in 3516
the matter shall be final, subject to appeal as provided in 3517
section 5717.02 of the Revised Code. Only objections decided on 3518
the merits by the board of tax appeals or a court shall be given 3519
collateral estoppel or res judicata effect in considering an 3520
application for refund of amounts paid pursuant to the assessment. 3521
If the petition has been properly filed, the commissioner shall 3522
proceed under section 5703.60 of the Revised Code. 3523~~

(C) After an assessment becomes final, if any portion of the 3524
assessment remains unpaid, including accrued interest, a certified 3525
copy of the tax commissioner's entry making the assessment final 3526
may be filed in the office of the clerk of the court of common 3527
pleas in the county in which the corporation has an office or 3528
place of business in this state, the county in which the 3529
corporation's statutory agent is located, or Franklin county. 3530

Immediately upon the filing of the entry, the clerk shall 3531
enter a judgment against the corporation assessed in the amount 3532
shown on the entry. The judgment may be filed by the clerk in a 3533
loose-leaf book entitled "special judgments for state corporate 3534
franchise and litter taxes," and shall have the same effect as 3535
other judgments. Execution shall issue upon the judgment upon the 3536

request of the tax commissioner, and all laws applicable to sales 3537
on execution shall apply to sales made under the judgment. 3538

The portion of an assessment not paid within sixty days after 3539
the day the assessment was issued shall bear interest at the rate 3540
per annum prescribed by section 5703.47 of the Revised Code from 3541
the day the tax commissioner issues the assessment until the 3542
assessment is paid. Interest shall be paid in the same manner as 3543
the tax and may be collected by issuing an assessment under this 3544
section. 3545

(D) All money collected under this section shall be 3546
considered as revenue arising from the taxes imposed by this 3547
chapter. 3548

(E) The portion of an assessment ~~which~~ that must be paid upon 3549
the filing of a petition for reassessment shall be as follows: 3550
3551

(1) If the sole item objected to is the assessed penalty or 3552
interest, payment of the assessment, including interest but not 3553
penalty, is required; 3554

(2) If the corporation assessed failed to file, prior to the 3555
date of issuance of the assessment, the annual report required by 3556
section 5733.02 of the Revised Code, any amended report required 3557
by division (C) of section 5733.031 of the Revised Code for the 3558
tax year at issue, or any amended report required by division (D) 3559
of section 5733.067 of the Revised Code to indicate a reduction in 3560
the amount of the credit provided under that section, payment of 3561
the assessment, including interest but not penalty, is required; 3562

(3) If the corporation assessed filed, prior to the date of 3563
issuance of the assessment, the annual report required by section 3564
5733.02 of the Revised Code, all amended reports required by 3565
division (C) of section 5733.031 of the Revised Code for the tax 3566
year at issue, and all amended reports required by division (D) of 3567

section 5733.067 of the Revised Code to indicate a reduction in 3568
the amount of the credit provided under that section, and a 3569
balance of the taxes shown due on the reports as computed on the 3570
reports remains unpaid, payment of only that portion of the 3571
assessment representing the unpaid balance of tax and interest is 3572
required; 3573

(4) If the corporation assessed does not dispute that it is a 3574
taxpayer but claims the protections of section 101 of Public Law 3575
86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, payment of only 3576
that portion of the assessment representing any balance of taxes 3577
shown due on the corporation's annual report required by section 3578
5733.02 of the Revised Code, as computed on the report, that 3579
remains unpaid, and that represents taxes imposed by division (C) 3580
of section 5733.06, division (C)(2) of section 5733.065, and 3581
division (C) of section 5733.066 of the Revised Code, together 3582
with all related interest, is required; 3583

(5) If none of the conditions specified in divisions (E)(1) 3584
to (4) of this section apply, or if the corporation assessed 3585
disputes that it is a taxpayer, no payment is required. 3586

(F) Notwithstanding the fact that a petition for reassessment 3587
is pending, the corporation may pay all or a portion of the 3588
assessment that is the subject of the petition. The acceptance of 3589
a payment by the treasurer of state does not prejudice any claim 3590
for refund upon final determination of the petition. 3591

If upon final determination of the petition an error in the 3593
assessment is corrected by the tax commissioner, upon petition so 3594
filed or pursuant to a decision of the board of tax appeals or any 3595
court to which the determination or decision has been appealed, so 3596
that the amount due from the corporation under the corrected 3597
assessment is less than the portion paid, there shall be issued to 3598
the corporation, its assigns, or legal representative a refund in 3599

the amount of the overpayment as provided by section 5733.12 of 3600
the Revised Code, with interest on that amount as provided by 3601
section 5733.26 of the Revised Code, subject to section 5733.121 3602
of the Revised Code. 3603

Sec. 5733.12. (A) Four and two-tenths per cent of all 3604
payments received by the treasurer of state and by the tax 3605
commissioner from the taxes imposed under sections 5733.06 and 3606
5733.41 of the Revised Code shall be credited to the local 3607
government fund for distribution in accordance with section 3608
5747.50 of the Revised Code, six-tenths of one per cent shall be 3609
credited to the local government revenue assistance fund for 3610
distribution in accordance with section 5747.61 of the Revised 3611
Code, and ninety-five and two-tenths per cent shall be credited to 3612
the general revenue fund. 3613

(B) Except as otherwise provided under divisions (C) and (D) 3614
of this section, an application to refund to the corporation the 3615
amount of taxes imposed under section 5733.06 of the Revised Code 3616
that are overpaid, paid illegally or erroneously, or paid on any 3617
illegal, erroneous, or excessive assessment, with interest thereon 3618
as provided by section 5733.26 of the Revised Code, shall be filed 3619
with the tax commissioner, on the form prescribed by the 3620
commissioner, within three years from the date of the illegal, 3621
erroneous, or excessive payment of the tax, or within any 3622
additional period allowed by division (C)(2) of section 5733.031, 3623
division (D)(2) of section 5733.067, or division (A) of section 3624
5733.11 of the Revised Code. For purposes of division (B) of this 3625
section, any payment that the applicant made before the due date 3626
or extended due date for filing the report to which the payment 3627
relates shall be deemed to have been made on the due date or 3628
extended due date. 3629

On the filing of the refund application, the commissioner 3630
shall determine the amount of refund ~~due and~~ to which the 3631

applicant is entitled. If the amount is not less than that 3632
claimed, the commissioner shall certify ~~such~~ the amount to the 3633
director of budget and management and treasurer of state for 3634
payment from the tax refund fund created by section 5703.052 of 3635
the Revised Code. If the amount is less than that claimed, the 3636
commissioner shall proceed in accordance with section 5703.70 of 3637
the Revised Code. 3638

(C) "Ninety days" shall be substituted for "three years" in 3639
division (B) of this section if the taxpayer satisfies both of the 3640
following: 3641

(1) The taxpayer has applied for a refund based in whole or 3642
in part upon section 5733.0611 of the Revised Code; 3643

(2) The taxpayer asserts that the imposition or collection of 3644
the tax imposed or charged by section 5733.06 of the Revised Code 3645
or any portion of such tax violates the Constitution of the United 3646
States or the Constitution of this state. 3647

(D)(1) Division (D)(2) of this section applies only if all of 3648
the following conditions are satisfied: 3649

(a) A qualifying pass-through entity pays an amount of the 3650
tax imposed by section 5733.41 of the Revised Code; 3651

(b) The taxpayer is a qualifying investor as to that 3652
qualifying pass-through entity; 3653

(c) The taxpayer did not claim the credit provided for in 3654
section 5733.0611 of the Revised Code as to the tax described in 3655
division (D)(1)(a) of this section; 3656

(d) The three-year period described in division (B) of this 3657
section has ended as to the taxable year for which the taxpayer 3658
otherwise would have claimed that credit. 3659

(2) A taxpayer shall file an application for refund pursuant 3660
to this division within one year after the date the payment 3661

described in division (D)(1)(a) of this section is made. An 3662
application filed under this division shall only claim refund of 3663
overpayments resulting from the taxpayer's failure to claim the 3664
credit described in division (D)(1)(c) of this section. Nothing in 3665
this division shall be construed to relieve a taxpayer from 3666
complying with the provisions of division (I)(14) of section 3667
5733.04 of the Revised Code. 3668

Sec. 5733.28. (A) In addition to any other penalty imposed by 3669
this chapter or Chapter 5703. of the Revised Code, the following 3670
penalties shall apply: 3671

(1) If a taxpayer required to file any report, including an 3672
informational notice or report, under this chapter fails to make 3673
and file the report within the time prescribed, including any 3674
extensions of time granted by the tax commissioner, a penalty may 3675
be imposed not exceeding the greater of fifty dollars per month or 3676
fraction of a month, not to exceed five hundred dollars, or five 3677
per cent per month or fraction of a month, not to exceed fifty per 3678
cent, of the tax required to be shown on the report, for each 3679
month or fraction of a month elapsing between the due date, 3680
including extensions of the due date, and the date on which filed. 3681

(2) ~~If Except as provided in division (C) of section 5733.021~~ 3682
~~of the Revised Code, if~~ a taxpayer fails to pay ~~any the~~ amount of 3683
tax required to be paid under this chapter, ~~except estimated tax~~ 3684
~~under section 5733.021 of the Revised Code,~~ by the dates 3685
prescribed ~~in this chapter~~ for payment, a penalty may be imposed 3686
not exceeding ~~twice the interest charged under division (A) of~~ 3687
~~section 5733.26 fifteen per cent of the Revised Code for the~~ 3688
delinquent payment. 3689

(3) ~~If a taxpayer fails to pay any amount of estimated tax~~ 3690
~~required to be paid under section 5733.021 of the Revised Code by~~ 3691
~~the dates prescribed for payment, a penalty may be imposed not~~ 3692

~~exceeding twice the interest charged under division (A) of section 3693
5733.29 of the Revised Code for the delinquent payment. 3694~~

~~(4)~~ If a taxpayer files what purports to be a report required 3695
by this chapter that does not contain information upon which the 3696
substantial correctness of the report may be judged or contains 3697
information that on its face indicates that the report is 3698
substantially incorrect, and the filing of the report in that 3699
manner is due to a position that is frivolous or a desire that is 3700
apparent from the report to delay or impede the administration of 3701
the tax levied by this chapter, a penalty of up to five hundred 3702
dollars may be imposed. 3703

~~(5)~~(4) If a taxpayer makes a fraudulent attempt to evade the 3704
reporting or payment of the tax required to be shown on any report 3705
required under this chapter, a penalty may be imposed not 3706
exceeding the greater of one thousand dollars or one hundred per 3707
cent of the tax required to be shown on the report. 3708

~~(6)~~(5) If any person makes a false or fraudulent claim for a 3709
refund under this chapter, a penalty may be imposed not exceeding 3710
the greater of one thousand dollars or one hundred per cent of the 3711
claim. The penalty imposed under division (A)~~(6)~~(5) of this 3712
section, any refund issued on the claim, and interest on any 3713
refund from the date of the refund, may be assessed under section 3714
5733.11 of the Revised Code as tax, penalty, or interest imposed 3715
under this chapter without regard to whether the person making the 3716
claim is otherwise subject to the provisions of this chapter, and 3717
without regard to any time limitation for the assessment imposed 3718
by division (A) of section 5733.11 of the Revised Code. 3719

(B) For purposes of this section, the tax required to be 3720
shown on the report shall be reduced by the amount of any part of 3721
the tax paid on or before the date, including extensions of the 3722
date, prescribed for filing the report. 3723

(C) Each penalty imposed under this section shall be in 3724

addition to any other penalty provided in this section. All or 3725
part of any penalty imposed under this section shall be abated by 3726
the commissioner if the taxpayer shows that the failure to comply 3727
with the provisions of this chapter is due to reasonable cause and 3728
not willful neglect. 3729

Sec. 5735.06. (A) On or before the last day of each month, 3730
each motor fuel dealer shall file with the treasurer of state a 3731
report for the preceding calendar month, on forms prescribed by or 3732
in a form acceptable to the tax commissioner. The report shall 3733
include the following information: 3734

(1) An itemized statement of the number of gallons of all 3735
motor fuel received during the preceding calendar month by such 3736
motor fuel dealer, which has been produced, refined, prepared, 3737
distilled, manufactured, blended, or compounded by such motor fuel 3738
dealer in the state; 3739

(2) An itemized statement of the number of gallons of all 3740
motor fuel received by such motor fuel dealer in the state from 3741
any source during the preceding calendar month, other than motor 3742
fuel included in division (A)(1) of this section, together with a 3743
statement showing the date of receipt of such motor fuel; the name 3744
of the person from whom purchased or received; the date of receipt 3745
of each shipment of motor fuel; the point of origin and the point 3746
of destination of each shipment; the quantity of each of said 3747
purchases or shipments; the name of the carrier; the number of 3748
gallons contained in each car if shipped by rail; the point of 3749
origin, destination, and shipper if shipped by pipe line; or the 3750
name and owner of the boat, barge, or vessel if shipped by water; 3751

(3) An itemized statement of the number of gallons of motor 3752
fuel which such motor fuel dealer has during the preceding 3753
calendar month: 3754

(a) For motor fuel other than gasoline sold for use other 3755

than for operating motor vehicles on the public highways or on	3756
waters within the boundaries of this state;	3757
(b) Exported from this state to any other state or foreign	3758
country as provided in division (A) (3) <u>(4)</u> of section 5735.05 of	3759
the Revised Code;	3760
(c) Sold to the United States government or any of its	3761
agencies;	3762
(d) Sold for delivery to motor fuel dealers;	3763
(e) Sold exclusively for use in the operation of aircraft;	3764
(4) Such other information incidental to the enforcement of	3765
the motor fuel laws of the state as the commissioner requires.	3766
(B) The report shall show the tax due, computed as follows:	3767
(1) The following deductions shall be made from the total	3768
number of gallons of motor fuel received by the motor fuel dealer	3769
within the state during the preceding calendar month:	3770
(a) The total number of gallons of motor fuel received by the	3771
motor fuel dealer within the state and sold or otherwise disposed	3772
of during the preceding calendar month as set forth in section	3773
5735.05 of the Revised Code;	3774
(b) The total number of gallons received during the preceding	3775
calendar month and sold or otherwise disposed of to another	3776
licensed motor fuel dealer pursuant to section 5735.05 of the	3777
Revised Code;	3778
(c) To cover the costs of the motor fuel dealer in compiling	3779
the report, and evaporation, shrinkage, or other unaccounted-for	3780
losses:	3781
(i) If the report is timely filed and the tax is timely paid,	3782
three per cent of the total number of gallons of motor fuel	3783
received by the motor fuel dealer within the state during the	3784

preceding calendar month less the total number of gallons deducted 3785
under divisions (B)(1)(a) and (b) of this section, less one per 3786
cent of the total number of gallons of motor fuel that were sold 3787
to a retail dealer during the preceding calendar month; 3788

(ii) If the report required by division (A) of this section 3789
is not timely filed and the tax is not timely paid, no deduction 3790
shall be allowed; 3791

(iii) If the report is incomplete, no deduction shall be 3792
allowed for any fuel on which the tax is not timely reported and 3793
paid; 3794

(2) The number of gallons remaining after the deductions have 3795
been made shall be multiplied separately by each of the following 3796
amounts: 3797

(a) The cents per gallon rate; 3798

(b) Two cents. 3799

The sum of the products obtained in divisions (B)(2)(a) and 3800
(b) of this section shall be the amount of motor fuel tax for the 3801
preceding calendar month. 3802

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

under this section to the commissioner. For purposes of this 3816
section and sections 5735.062 and 5735.12 of the Revised Code, a 3817
report required to be filed under this section is considered filed 3818
when it is received by the treasurer of state, and remittance of 3819
the tax due is considered to be made when the remittance is 3820
received by the treasurer of state or when credited to an account 3821
designated by the treasurer of state for the receipt of tax 3822
remittances. 3823

(D) The tax commissioner may require a motor fuel dealer to 3824
file a report for a period other than one month. Such a report, 3825
together with payment of the tax, shall be filed not later than 3826
thirty days after the last day of the prescribed reporting period. 3827

(E) No person required by this section to file a tax report 3828
shall file a false or fraudulent tax report or supporting 3829
schedule. 3830

Sec. 5735.11. (A) If the tax or any portion of the tax 3831
imposed by this chapter, ~~excluding the tax imposed by section~~ 3832
~~5735.31 of the Revised Code,~~ whether determined by the tax 3833
commissioner or the motor fuel dealer, is not paid on or before 3834
the date prescribed in section 5735.06 of the Revised Code, 3835
interest shall be collected and paid in the same manner as the tax 3836
upon the unpaid amount, computed at the rate per annum prescribed 3837
by section 5703.47 of the Revised Code, from the date prescribed 3838
for payment of the tax to the date of payment or to the date an 3839
assessment is issued under section 5735.12 or 5735.121 of the 3840
Revised Code, whichever occurs first. Interest may be collected by 3841
assessment in the manner provided in section 5735.12 or 5735.121 3842
of the Revised Code. All interest shall be paid in the same manner 3843
as the tax and shall be considered as revenue arising from the tax 3844
imposed by section 5735.05 of the Revised Code. 3845

(B) Interest shall be allowed and paid upon any refund 3846

granted in respect to the payment of an illegal or erroneous 3847
assessment for any tax imposed under this chapter from the date of 3848
the overpayment. The interest shall be computed at the rate per 3849
annum prescribed by section 5703.47 of the Revised Code. 3850

Sec. 5735.12. (A) Any motor fuel dealer required by this 3851
chapter to file reports and pay the tax levied by this chapter who 3852
fails to file the report within the time prescribed, may be liable 3853
for an additional charge not exceeding the greater of ten per cent 3854
of the motor fuel dealer's tax liability for that month or fifty 3855
dollars. The tax commissioner may remit all or a portion of the 3856
additional charge and may adopt rules relating to the remission of 3857
all or a portion of the charge. 3858

If any person required by this chapter to file reports and 3859
pay the taxes, interest, or additional charge levied by this 3860
chapter fails to file the report, files an incomplete or incorrect 3861
report, or fails to remit the full amount of the tax, interest, or 3862
additional charge due for the period covered by the report, the 3863
commissioner may make an assessment against the person based upon 3864
any information in the commissioner's possession. 3865

No assessment shall be made against any motor fuel dealer for 3866
taxes imposed by this chapter more than four years after the date 3867
on which the report on which the assessment was based was due or 3868
was filed, whichever is later. This section does not bar an 3869
assessment against any motor fuel dealer who fails to file a 3870
report required by section 5735.06 of the Revised Code, or who 3871
files a fraudulent motor fuel tax report. 3872

A penalty of up to fifteen per cent may be added to the 3873
amount of every assessment made under this section. The 3874
commissioner may adopt rules providing for the imposition and 3875
remission of penalties added to assessments made under this 3876
section. 3877

The commissioner shall give the party assessed written notice 3878
of the assessment ~~as~~ in the manner provided in section 5703.37 of 3879
the Revised Code. With the notice, the commissioner shall provide 3880
instructions on how to petition for reassessment and request a 3881
hearing on the petition. 3882

(B) Unless the party ~~to whom the notice of assessment is~~ 3883
~~directed~~ assessed files with the tax commissioner within sixty 3884
days after service of the notice of assessment, either personally 3885
or by certified mail, a written petition for reassessment in 3886
writing, signed by the party assessed, ~~or by the~~ that party's 3887
authorized agent ~~of the party assessed~~ having knowledge of the 3888
facts, the assessment ~~shall become~~ becomes final and the amount of 3889
the assessment ~~shall be~~ is due and payable from the party assessed 3890
to the treasurer of state. The petition shall indicate the 3891
objections of the party assessed, but additional objections may be 3892
raised in writing if received by the commissioner prior to the 3893
date shown on the final determination ~~by the commissioner.~~ 3894

~~Unless the petitioner waives a hearing, the commissioner~~ 3895
~~shall assign a time and place for the hearing on the petition and~~ 3896
~~notify the petitioner of the time and place of the hearing by~~ 3897
~~personal service or certified mail, but the commissioner may~~ 3898
~~continue the hearing from time to time if necessary.~~ 3899

~~The commissioner may make such correction to the~~ 3900
~~commissioner's assessment as the commissioner finds proper. The~~ 3901
~~commissioner shall serve a copy of the commissioner's final~~ 3902
~~determination on the petitioner by personal service or certified~~ 3903
~~mail, and the commissioner's decision in the matter shall be~~ 3904
~~final, subject to appeal as provided in section 5717.02 of the~~ 3905
~~Revised Code. If the petition has been properly filed, the~~ 3906
~~commissioner shall proceed under section 5703.60 of the Revised~~ 3907
~~Code.~~ 3908

(C) After an assessment becomes final, if any portion of the 3909

assessment remains unpaid, including accrued interest, a certified
copy of the tax commissioner's entry making the assessment final
may be filed in the office of the clerk of the court of common
pleas in the county in which the party assessed resides or in
which the business of the party assessed is conducted. If the
party assessed maintains no place of business in this state and is
not a resident of this state, the certified copy of the entry may
be filed in the office of the clerk of the court of common pleas
of Franklin county.

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

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

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

(E) If the tax commissioner determines that the commissioner
has erroneously refunded motor fuel tax to any person, the
commissioner may make an assessment against the person for

recovery of the erroneously refunded tax.

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Sec. 5735.122. The tax commissioner shall refund to dealers
or to ~~interstate bus operators making~~ any person assessed motor
fuel ~~equalization payments tax~~ the amount of taxes paid illegally
or erroneously or paid on an illegal or erroneous assessment.
Applications for refund shall be filed with the tax commissioner,
on the form prescribed by the commissioner, within four years from
the date of the illegal or erroneous payment. No person shall file
a claim for the tax on fewer than one hundred gallons of motor
fuel. ~~On~~

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

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

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Sec. 5735.13. A refund shall be made to any person for the
motor fuel tax paid on any motor fuel ~~which~~ that is lost or
destroyed through leakage, fire, explosion, lightning, flood,
tornado, windstorm, or any other cause, except theft, evaporation,

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shrinkage, and unaccounted-for losses. No refund shall be 3972
authorized or ordered under this section for any single loss of 3973
less than one hundred gallons, nor except upon notice to the tax 3974
commissioner within thirty days from the date of such loss or 3975
destruction or the discovery thereof, and upon filing with the tax 3976
commissioner within sixty days thereafter an application in the 3977
form of an affidavit sworn to by the claimant setting forth in 3978
full the circumstances of the loss, and upon presentation of 3979
supporting evidence satisfactory to the commissioner. ~~The~~ 3980

On the filing of the application, the commissioner shall 3981
determine the amount of the refund due and to which the applicant 3982
is entitled. If the amount is not less than that claimed, the 3983
commissioner shall certify such the amount to the director of 3984
budget and management and treasurer of state for payment from the 3985
tax refund fund ~~provided for~~ created by section 5703.052 of the 3986
Revised Code. ~~The~~ If the amount is less than that claimed, the 3987
commissioner shall proceed in accordance with section 5703.70 of 3988
the Revised Code. 3989

The refund authorized by this section or section 5703.70 of 3990
the Revised Code shall be reduced by the cents per gallon amount 3991
of any qualified fuel credit received under section 5735.145 of 3992
the Revised Code, as determined by the commissioner, for each 3993
gallon of qualified fuel included in the total gallonage of motor 3994
fuel upon which the refund is computed. 3995

Sec. 5735.14. Any person who uses any motor fuel, on which 3996
the tax imposed by this chapter has been paid, for the purpose of 3997
operating stationary gas engines, tractors not used on public 3998
highways, unlicensed motor vehicles used exclusively in intraplant 3999
operations, vessels when used in trade, including vessels when 4000
used in connection with an activity ~~which~~ that constitutes a 4001
person's chief business or means of livelihood or any other vessel 4002
used entirely for commercial purposes, vessels used for commercial 4003

fishing, vessels used by the sea scout department of the boy 4004
scouts of America chiefly for training scouts in seamanship, 4005
vessels used or owned by any railroad company, railroad car ferry 4006
company, the United States, this state, or any political 4007
subdivision of this state, or aircraft, or who uses any such fuel 4008
upon which such tax has been paid, for cleaning or for dyeing, or 4009
any purpose other than the operation of motor vehicles upon 4010
highways or upon waters within the boundaries of this state, shall 4011
be reimbursed in the amount of the tax so paid on such motor fuel 4012
as provided in this section; provided, that any person purchasing 4013
motor fuel in this state on which taxes levied under Title LVII of 4014
the Revised Code have been paid shall be reimbursed for such taxes 4015
paid in this state on such fuel used by that person in another 4016
state on which a tax is paid for such usage, except such tax used 4017
as a credit against the tax levied by section 5728.06 of the 4018
Revised Code. A person shall not be reimbursed for taxes paid on 4019
fuel that is used while a motor vehicle is idling or used to 4020
provide comfort or safety in the operation of a motor vehicle. 4021
Sales of motor fuel, on which the tax imposed by this chapter has 4022
been paid, from one person to another do not constitute use of the 4023
fuel and are not subject to a refund under this section. 4024

Such person shall file with the tax commissioner an 4025
application for refund within one year from the date of purchase, 4026
stating the quantity of fuel used for purposes other than the 4027
operation of motor vehicles, except that no person shall file a 4028
claim for the tax on fewer than one hundred gallons of motor fuel. 4029
~~Such~~ The application shall be accompanied by the statement 4030
described in section 5735.15 of the Revised Code showing such 4031
purchase, together with evidence of payment thereof. ~~After~~ 4032

After consideration of ~~such~~ the application and statement, 4033
the commissioner shall determine the amount of refund ~~due and to~~ 4034
which the applicant is entitled. If the amount is not less than 4035

that claimed, the commissioner shall certify such the amount to 4036
the director of budget and management and treasurer of state for 4037
payment from the tax refund fund created by section 5703.052 of 4038
the Revised Code. ~~No~~ If the amount is less than that claimed, the 4039
commissioner shall proceed in accordance with section 5703.70 of 4040
the Revised Code. 4041

No refund shall be authorized or paid under this section on a 4042
single claim for tax on fewer than one hundred gallons of motor 4043
fuel. The commissioner may require that the application be 4044
supported by the affidavit of the claimant. ~~The~~ 4045

The refund authorized by this section or section 5703.70 of 4046
the Revised Code shall be reduced by the cents per gallon amount 4047
of any qualified fuel credit received under section 5735.145 of 4048
the Revised Code, as determined by the commissioner, for each 4049
gallon of qualified fuel included in the total gallonage of motor 4050
fuel upon which the refund is computed. 4051

The right to receive any refund under this section or section 4052
5703.70 of the Revised Code is not assignable. The payment of this 4053
refund shall not be made to any person other than the person 4054
originally entitled thereto who used the motor fuel upon which the 4055
claim for refund is based, except that such refunds when allowed 4056
and certified as provided in this section may be paid to the 4057
executor, the administrator, the receiver, the trustee in 4058
bankruptcy, or the assignee in insolvency proceedings of such 4059
person. 4060

Sec. 5735.141. Any retail dealer of motor fuel shall receive 4061
a refund for Ohio motor fuel taxes paid on fuel lost by a retail 4062
dealer through shrinkage and evaporation. This refund shall be one 4063
per cent of the Ohio motor fuel taxes paid on fuel purchased 4064
during any semiannual period ending the thirtieth day of June or 4065
the thirty-first day of December. 4066

In order to receive a refund, the retail dealer shall file 4067
with the tax commissioner, within one hundred twenty days after 4068
the thirtieth day of June and the thirty-first day of December of 4069
each year, an application for a refund stating the quantity of 4070
motor fuel ~~which that~~ was purchased for resale by the applicant 4071
during the preceding semiannual period ending the thirtieth day of 4072
June or the thirty-first day of December and upon which the motor 4073
fuel tax has been paid. No person shall file a claim for the tax 4074
on fewer than one hundred gallons of motor fuel. The form and 4075
contents of the application shall be prescribed by the ~~tax~~ 4076
commissioner, and the application shall be signed in accordance 4077
with section 5703.25 of the Revised Code. ~~The tax~~ On the filing of 4078
the application, the commissioner shall determine the amount of 4079
refund to which the applicant is entitled. If the amount is not 4080
less than that claimed, the commissioner shall certify the amount 4081
of the refund to the director of budget and management and 4082
treasurer of state for payment from the tax refund fund ~~provided~~ 4083
~~for~~ created by section 5703.052 of the Revised Code. ~~No~~ If the 4084
amount is less than that claimed, the commissioner shall proceed 4085
in accordance with section 5703.70 of the Revised Code. 4086

No refund shall be authorized or ordered under this section 4087
for any single claim for the tax on fewer than one hundred gallons 4088
of motor fuel. ~~The~~ 4089

The refund authorized by this section or section 5703.70 of 4090
the Revised Code shall be reduced by the cents per gallon amount 4091
of any qualified fuel credit received under section 5735.145 of 4092
the Revised Code, as determined by the commissioner, for each 4093
gallon of qualified fuel included in the total gallonage of motor 4094
fuel upon which the refund is computed. 4095

The right to receive any refund under this section or section 4096
5703.70 of the Revised Code is not assignable. The payment of the 4097
refund shall not be made to any person other than the retail 4098

dealer originally entitled thereto, except that the refund may be 4099
paid to the executor, administrator, receiver, trustee in 4100
bankruptcy, or assignee in insolvency proceedings of such 4101
retailer. 4102

A motor fuel dealer shall be deemed to be a retail dealer 4103
when acting in a retail capacity. 4104

Sec. 5735.142. Any person who uses any motor fuel, on which 4105
the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the 4106
Revised Code has been paid, for the purpose of operating a transit 4107
bus shall be reimbursed in the amount of the tax paid on motor 4108
fuel used by public transportation systems providing transit or 4109
paratransit service on a regular and continuing basis within the 4110
state. 4111

Such person shall file with the tax commissioner an 4112
application for refund within one year from the date of purchase, 4113
stating the quantity of fuel used for operating transit buses used 4114
by local transit systems in furnishing scheduled common carrier, 4115
public passenger land transportation service along regular routes 4116
primarily in one or more municipal corporations, except that no 4117
person shall file a claim for the tax on fewer than one hundred 4118
gallons of motor fuel. The application shall be accompanied by the 4119
statement described in section 5735.15 of the Revised Code showing 4120
the purchase, together with evidence of payment thereof. ~~After~~ 4121
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After consideration of the application and statement, the 4123
commissioner shall determine the amount of refund ~~due and to which~~ 4124
the applicant is entitled. If the amount is not less than that 4125
claimed, the commissioner shall certify ~~such the~~ amount to the 4126
director of budget and management and treasurer of state for 4127
payment from the tax refund fund ~~provided for in~~ created by 4128
section 5703.052 of the Revised Code. ~~The~~ If the amount is less 4129

than that claimed, the commissioner shall proceed in accordance 4130
with section 5703.70 of the Revised Code. 4131

The commissioner may require that the application be 4132
supported by the affidavit of the claimant. No refund shall be 4133
authorized or ordered for any single claim for the tax on fewer 4134
than one hundred gallons of motor fuel. ~~The~~ 4135

The refund authorized by this section or section 5703.70 of 4136
the Revised Code shall be reduced by the cents per gallon amount 4137
of any qualified fuel credit received under section 5735.145 of 4138
the Revised Code, as determined by the commissioner, for each 4139
gallon of qualified fuel included in the total gallonage of motor 4140
fuel upon which the refund is computed. 4141

The right to receive any refund under this section or section 4142
5703.70 of the Revised Code is not assignable. The payment of this 4143
refund shall not be made to any person other than the person 4144
originally entitled thereto who used the motor fuel upon which the 4145
claim for refund is based, except that the refund when allowed and 4146
certified, as provided in this section, may be paid to the 4147
executor, the administrator, the receiver, the trustee in 4148
bankruptcy, or the assignee in insolvency proceedings of the 4149
person. 4150

Sec. 5735.18. Any person other than a motor fuel dealer who 4151
purchases motor fuel upon which the tax has been paid to this 4152
state and who sells the same outside this state for use outside 4153
this state or who uses the same on highways or waters outside this 4154
state and pays a tax on such use or sells the same to the United 4155
States government or any of its agencies may be reimbursed in the 4156
amount of such tax as provided in this chapter. All ~~claims~~ 4157
applications for refund of the tax paid on motor fuel sold for 4158
export from the state or sold to the United States government or 4159
any of its agencies shall be made in such form and shall set forth 4160

such information as the tax commissioner prescribes, and the 4161
~~claimant applicant~~ shall satisfy the commissioner that the motor 4162
fuel has been sold as stated and that the tax thereon has been 4163
paid. ~~Claims Applications~~ for refund of the tax paid on motor fuel 4164
sold to the United States government or any of its agencies shall 4165
be supported by an affidavit of the claimant and by a tax 4166
exemption certificate executed by the vendee in such form as is 4167
prescribed by the commissioner. ~~Such claims for refund filed under~~ 4168
~~this section shall be certified and paid~~ If the United States 4169
government or any of its agencies purchases motor fuel upon which 4170
the tax has been paid to this state, the United States government 4171
or agency may be reimbursed in the amount of such tax as provided 4172
in this chapter, provided that the seller of the motor fuel has 4173
not applied for a refund on behalf of the United States government 4174
or agency. Applications filed by the United States government or 4175
any of its agencies for refund of the tax paid on motor fuel 4176
purchases shall be supported by an invoice or similar fuel 4177
purchase document issued by the seller of the fuel. 4178

On the filing of an application under this section, the 4179
commissioner shall determine the amount of refund to which the 4180
applicant is entitled. If the amount is not less than that 4181
claimed, the commissioner shall certify and pay that amount in the 4182
same manner as provided in section 5735.14 of the Revised Code. 4183
~~The~~ If the amount is less than that claimed, the commissioner 4184
shall proceed in accordance with section 5703.70 of the Revised 4185
Code. 4186

The person shall file with the tax commissioner an 4187
application for refund within one year from the date of sale or 4188
purchase. The refund authorized by this section or section 5703.70 4189
of the Revised Code shall be reduced by the cents per gallon 4190
amount of any qualified fuel credit received under section 4191
5735.145 of the Revised Code, as determined by the commissioner, 4192

for each gallon of qualified fuel included in the total gallonage 4193
of motor fuel upon which the refund is computed. 4194

Sec. 5739.01. As used in this chapter: 4195

(A) "Person" includes individuals, receivers, assignees, 4196
trustees in bankruptcy, estates, firms, partnerships, 4197
associations, joint-stock companies, joint ventures, clubs, 4198
societies, corporations, the state and its political subdivisions, 4199
and combinations of individuals of any form. 4200

(B) "Sale" and "selling" include all of the following 4201
transactions for a consideration in any manner, whether absolutely 4202
or conditionally, whether for a price or rental, in money or by 4203
exchange, and by any means whatsoever: 4204

(1) All transactions by which title or possession, or both, 4205
of tangible personal property, is or is to be transferred, or a 4206
license to use or consume tangible personal property is or is to 4207
be granted; 4208

(2) All transactions by which lodging by a hotel is or is to 4209
be furnished to transient guests; 4210

(3) All transactions by which: 4211

(a) An item of tangible personal property is or is to be 4212
repaired, 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; 4215

(b) An item of tangible personal property is or is to be 4216
installed, except property, the purchase of which would not be 4217
~~exempt from~~ subject to the tax imposed by section 5739.02 of the 4218
Revised Code or property that is or is to be incorporated into and 4219
will become a part of a production, transmission, transportation, 4220
or distribution system for the delivery of a public utility 4221
service; 4222

(c) The service of washing, cleaning, waxing, polishing, or 4223
painting a motor vehicle is or is to be furnished; 4224

(d) Industrial laundry cleaning services are or are to be 4225
provided; 4226

(e) Automatic data processing, computer services, or 4227
electronic information services are or are to be provided for use 4228
in business when the true object of the transaction is the receipt 4229
by the consumer of automatic data processing, computer services, 4230
or electronic information services rather than the receipt of 4231
personal or professional services to which automatic data 4232
processing, computer services, or electronic information services 4233
are incidental or supplemental. Notwithstanding any other 4234
provision of this chapter, such transactions that occur between 4235
members of an affiliated group are not sales. An affiliated group 4236
means two or more persons related in such a way that one person 4237
owns or controls the business operation of another member of the 4238
group. In the case of corporations with stock, one corporation 4239
owns or controls another if it owns more than fifty per cent of 4240
the other corporation's common stock with voting rights. 4241

(f) Telecommunications service, other than mobile 4242
telecommunications service after July 31, 2002, is or is to be 4243
provided that originates or terminates in this state and is 4244
charged in the records of the telecommunications service vendor to 4245
the consumer's telephone number or account in this state, or that 4246
both originates and terminates in this state; but does not include 4247
transactions by which telecommunications service is paid for by 4248
using a prepaid authorization number or prepaid telephone calling 4249
card, or by which local telecommunications service is obtained 4250
from a coin-operated telephone and paid for by using coin; 4251

(g) Landscaping and lawn care service is or is to be 4252
provided; 4253

(h) Private investigation and security service is or is to be provided;	4254 4255
(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;	4256 4257
(j) Building maintenance and janitorial service is or is to be provided;	4258 4259
(k) Employment service is or is to be provided;	4260
(l) Employment placement service is or is to be provided;	4261
(m) Exterminating service is or is to be provided;	4262
(n) Physical fitness facility service is or is to be provided;	4263 4264
(o) Recreation and sports club service is or is to be provided.	4265 4266
<u>(p) After July 31, 2002, mobile telecommunications service is or is to be provided when that service is situated to this state pursuant to the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 U.S.C.A. 116 to 126, as amended.</u>	4267 4268 4269 4270 4271
(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;	4272 4273 4274 4275
(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	4276 4277 4278 4279 4280 4281 4282 4283

pursuant to which tangible personal property is or is to be 4284
incorporated into a structure or improvement on and becoming a 4285
part of real property is not a sale of such tangible personal 4286
property. The construction contractor is the consumer of such 4287
tangible personal property, provided that the sale and 4288
installation of carpeting, the sale and installation of 4289
agricultural land tile, the sale and erection or installation of 4290
portable grain bins, or the provision of landscaping and lawn care 4291
service and the transfer of property as part of such service is 4292
never a construction contract. The transfer of copyrighted motion 4293
picture films for exhibition purposes is not a sale, except such 4294
films as are used solely for advertising purposes. Other than as 4295
provided in this section, "sale" and "selling" do not include 4296
transfers of interest in leased property where the original lessee 4297
and the terms of the original lease agreement remain unchanged, or 4298
professional, insurance, or personal service transactions that 4299
involve the transfer of tangible personal property as an 4300
inconsequential element, for which no separate charges are made. 4301

As used in division (B)(5) of this section: 4302

(a) "Agricultural land tile" means fired clay or concrete 4303
tile, or flexible or rigid perforated plastic pipe or tubing, 4304
incorporated or to be incorporated into a subsurface drainage 4305
system appurtenant to land used or to be used directly in 4306
production by farming, agriculture, horticulture, or floriculture. 4307
The term does not include such materials when they are or are to 4308
be incorporated into a drainage system appurtenant to a building 4309
or structure even if the building or structure is used or to be 4310
used in such production. 4311

(b) "Portable grain bin" means a structure that is used or to 4312
be used by a person engaged in farming or agriculture to shelter 4313
the person's grain and that is designed to be disassembled without 4314
significant damage to its component parts. 4315

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

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

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

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

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

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

the admission is granted.

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(2) Physicians, dentists, hospitals, and blood banks operated
by nonprofit institutions and persons licensed to practice
veterinary medicine, surgery, and dentistry are consumers of all
tangible personal property and services purchased by them in
connection with the practice of medicine, dentistry, the rendition
of hospital or blood bank service, or the practice of veterinary
medicine, surgery, and dentistry. In addition to being consumers
of drugs administered by them or by their assistants according to
their direction, veterinarians also are consumers of drugs that
under federal law may be dispensed only by or upon the order of a
licensed veterinarian or physician, when transferred by them to
others for a consideration to provide treatment to animals as
directed by the veterinarian.

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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

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is not entitled to claim exception under division (E)(8) of this 4379
section for any material incorporated into the printed matter or 4380
any equipment, supplies, or services primarily used to produce the 4381
printed matter. 4382

(c) The distribution of printed matter to the public or to a 4383
designated segment of the public, free of charge, is not a sale to 4384
the members of the public to whom the printed matter is 4385
distributed or to any persons who purchase space in the printed 4386
matter for advertising or other purposes. 4387

(5) A person who makes sales of any of the services listed in 4388
division (B)(3) of this section is the consumer of any tangible 4389
personal property used in performing the service. The purchase of 4390
that property is not subject to the resale exception under 4391
division (E)(1) of this section. 4392

(E) "Retail sale" and "sales at retail" include all sales 4393
except those in which the purpose of the consumer is: 4394

(1) To resell the thing transferred or benefit of the service 4395
provided, by a person engaging in business, in the form in which 4396
the same is, or is to be, received by the person; 4397

(2) To incorporate the thing transferred as a material or a 4398
part, into tangible personal property to be produced for sale by 4399
manufacturing, assembling, processing, or refining, or to use or 4400
consume the thing transferred directly in producing a product for 4401
sale by mining, including without limitation the extraction from 4402
the earth of all substances that are classed geologically as 4403
minerals, production of crude oil and natural gas, farming, 4404
agriculture, horticulture, or floriculture, and persons engaged in 4405
rendering farming, agricultural, horticultural, or floricultural 4406
services, and services in the exploration for, and production of, 4407
crude oil and natural gas, for others are deemed engaged directly 4408
in farming, agriculture, horticulture, and floriculture, or 4409

exploration for, and production of, crude oil and natural gas; 4410
directly in the rendition of a public utility service, except that 4411
the sales tax levied by section 5739.02 of the Revised Code shall 4412
be collected upon all meals, drinks, and food for human 4413
consumption sold upon Pullman and railroad coaches. This paragraph 4414
does not exempt or except from "retail sale" or "sales at retail" 4415
the sale of tangible personal property that is to be incorporated 4416
into a structure or improvement to real property. 4417

(3) To hold the thing transferred as security for the 4418
performance of an obligation of the vendor; 4419

(4) To use or consume the thing transferred in the process of 4420
reclamation as required by Chapters 1513. and 1514. of the Revised 4421
Code; 4422

(5) To resell, hold, use, or consume the thing transferred as 4423
evidence of a contract of insurance; 4424

(6) To use or consume the thing directly in commercial 4425
fishing; 4426

(7) To incorporate the thing transferred as a material or a 4427
part into, or to use or consume the thing transferred directly in 4428
the production of, magazines distributed as controlled circulation 4429
publications; 4430

(8) To use or consume the thing transferred in the production 4431
and preparation in suitable condition for market and sale of 4432
printed, imprinted, overprinted, lithographic, multilithic, 4433
blueprinted, photostatic, or other productions or reproductions of 4434
written or graphic matter; 4435

(9) To use the thing transferred, as described in section 4436
5739.011 of the Revised Code, primarily in a manufacturing 4437
operation to produce tangible personal property for sale; 4438

(10) To use the benefit of a warranty, maintenance or service 4439

contract, or similar agreement, as defined in division (B)(7) of 4440
this section, to repair or maintain tangible personal property, if 4441
all of the property that is the subject of the warranty, contract, 4442
or agreement would be exempt on its purchase from the tax imposed 4443
by section 5739.02 of the Revised Code; 4444

(11) To use the thing transferred as qualified research and 4445
development equipment; 4446

(12) To use or consume the thing transferred primarily in 4447
storing, transporting, mailing, or otherwise handling purchased 4448
sales inventory in a warehouse, distribution center, or similar 4449
facility when the inventory is primarily distributed outside this 4450
state to retail stores of the person who owns or controls the 4451
warehouse, distribution center, or similar facility, to retail 4452
stores of an affiliated group of which that person is a member, or 4453
by means of direct marketing. Division (E)(12) of this section 4454
does not apply to motor vehicles registered for operation on the 4455
public highways. As used in division (E)(12) of this section, 4456
"affiliated group" has the same meaning as in division (B)(3)(e) 4457
of this section and "direct marketing" has the same meaning as in 4458
division (B)~~(37)~~(36) of section 5739.02 of the Revised Code. 4459

(13) To use or consume the thing transferred to fulfill a 4460
contractual obligation incurred by a warrantor pursuant to a 4461
warranty provided as a part of the price of the tangible personal 4462
property sold or by a vendor of a warranty, maintenance or service 4463
contract, or similar agreement the provision of which is defined 4464
as a sale under division (B)(7) of this section; 4465

(14) To use or consume the thing transferred in the 4466
production of a newspaper for distribution to the public; 4467

(15) To use tangible personal property to perform a service 4468
listed in division (B)(3) of this section, if the property is or 4469
is to be permanently transferred to the consumer of the service as 4470

an integral part of the performance of the service. 4471

As used in division (E) of this section, "thing" includes all 4472
transactions included in divisions (B)(3)(a), (b), and (e) of this 4473
section. 4474

Sales conducted through a coin-operated device that activates 4475
vacuum equipment or equipment that dispenses water, whether or not 4476
in combination with soap or other cleaning agents or wax, to the 4477
consumer for the consumer's use on the premises in washing, 4478
cleaning, or waxing a motor vehicle, provided no other personal 4479
property or personal service is provided as part of the 4480
transaction, are not retail sales or sales at retail. 4481

(F) "Business" includes any activity engaged in by any person 4482
with the object of gain, benefit, or advantage, either direct or 4483
indirect. "Business" does not include the activity of a person in 4484
managing and investing the person's own funds. 4485

(G) "Engaging in business" means commencing, conducting, or 4486
continuing in business, and liquidating a business when the 4487
liquidator thereof holds itself out to the public as conducting 4488
such business. Making a casual sale is not engaging in business. 4489

(H)(1) "Price," except as provided in divisions (H)(2) and 4490
(3) of this section, 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 a retail sale, without any 4493
deduction on account of the cost of the property sold, cost of 4494
materials used, labor or service cost, interest, discount paid or 4495
allowed after the sale is consummated, or any other expense. If 4496
the retail sale consists of the rental or lease of tangible 4497
personal property, "price" means the aggregate value in money of 4498
anything paid or delivered, or promised to be paid or delivered, 4499
in the complete performance of the rental or lease, without any 4500
deduction for tax, interest, labor or service charge, damage 4501

liability waiver, termination or damage charge, discount paid or 4502
allowed after the lease is consummated, or any other expense. 4503
Except as provided in division (H)(4) of this section, the sales 4504
tax shall be calculated and collected by the lessor on each 4505
payment made by the lessee. Price does not include the 4506
consideration received as a deposit refundable to the consumer 4507
upon return of a beverage container, the consideration received as 4508
a deposit on a carton or case that is used for such returnable 4509
containers, or the consideration received as a refundable security 4510
deposit for the use of tangible personal property to the extent 4511
that it actually is refunded, if the consideration for such 4512
refundable deposit is separately stated from the consideration 4513
received or to be received for the tangible personal property 4514
transferred in the retail sale. Such separation must appear in the 4515
sales agreement or on the initial invoice or initial billing 4516
rendered by the vendor to the consumer. Price is the amount 4517
received inclusive of the tax, provided the vendor establishes to 4518
the satisfaction of the tax commissioner that the tax was added to 4519
the price. When the price includes both a charge for tangible 4520
personal property and a charge for providing a service and the 4521
sale of the property and the charge for the service are separately 4522
taxable, or have a separately determinable tax status, the price 4523
shall be separately stated for each such charge so the tax can be 4524
correctly computed and charged. 4525

The tax collected by the vendor from the consumer under this 4526
chapter is not part of the price, but is a tax collection for the 4527
benefit of the state and of counties levying an additional sales 4528
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 4529
and of transit authorities levying an additional sales tax 4530
pursuant to section 5739.023 of the Revised Code. Except for the 4531
discount authorized in section 5739.12 of the Revised Code and the 4532
effects of any rounding pursuant to section 5703.055 of the 4533

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. 4534
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(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade. 4537
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(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. 4544
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(4) In the case of the lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the sales tax shall be collected by the vendor at the time the lease is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the sales tax shall be calculated by the vendor on the 4552
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basis of the total amount to be paid during the initial fixed term 4566
of the lease, and then for each subsequent renewal period as it 4567
comes due. 4568

As used in divisions (H)(3) and (4) of this section, "motor 4569
vehicle" has the same meaning as in section 4501.01 of the Revised 4570
Code, and "watercraft" includes an outdrive unit attached to the 4571
watercraft. 4572

(I) "Receipts" means the total amount of the prices of the 4573
sales of vendors, provided that cash discounts allowed and taken 4574
on sales at the time they are consummated are not included, minus 4575
any amount deducted as a bad debt pursuant to section 5739.121 of 4576
the Revised Code. "Receipts" does not include the sale price of 4577
property returned or services rejected by consumers when the full 4578
sale price and tax are refunded either in cash or by credit. 4579

(J) "Place of business" means any location at which a person 4580
engages in business. 4581

(K) "Premises" includes any real property or portion thereof 4582
upon which any person engages in selling tangible personal 4583
property at retail or making retail sales and also includes any 4584
real property or portion thereof designated for, or devoted to, 4585
use in conjunction with the business engaged in by such person. 4586

(L) "Casual sale" means a sale of an item of tangible 4587
personal property that was obtained by the person making the sale, 4588
through purchase or otherwise, for the person's own use ~~in this~~ 4589
~~state~~ and was previously subject to any state's taxing 4590
jurisdiction on its sale or use, and includes such items acquired 4591
for the seller's use that are sold by an auctioneer employed 4592
directly by the person for such purpose, provided the location of 4593
such sales is not the auctioneer's permanent place of business. As 4594
used in this division, "permanent place of business" includes any 4595
location where such auctioneer has conducted more than two 4596

auctions during the year. 4597

(M) "Hotel" means every establishment kept, used, maintained, 4598
advertised, or held out to the public to be a place where sleeping 4599
accommodations are offered to guests, in which five or more rooms 4600
are used for the accommodation of such guests, whether the rooms 4601
are in one or several structures. 4602

(N) "Transient guests" means persons occupying a room or 4603
rooms for sleeping accommodations for less than thirty consecutive 4604
days. 4605

(O) "Making retail sales" means the effecting of transactions 4606
wherein one party is obligated to pay the price and the other 4607
party is obligated to provide a service or to transfer title to or 4608
possession of the item sold. "Making retail sales" does not 4609
include the preliminary acts of promoting or soliciting the retail 4610
sales, other than the distribution of printed matter which 4611
displays or describes and prices the item offered for sale, nor 4612
does it include delivery of a predetermined quantity of tangible 4613
personal property or transportation of property or personnel to or 4614
from a place where a service is performed, regardless of whether 4615
the vendor is a delivery vendor. 4616

(P) "Used directly in the rendition of a public utility 4617
service" means that property which is to be incorporated into and 4618
will become a part of the consumer's production, transmission, 4619
transportation, or distribution system and that retains its 4620
classification as tangible personal property after such 4621
incorporation; fuel or power used in the production, transmission, 4622
transportation, or distribution system; and tangible personal 4623
property used in the repair and maintenance of the production, 4624
transmission, transportation, or distribution system, including 4625
only such motor vehicles as are specially designed and equipped 4626
for such use. Tangible personal property and services used 4627
primarily in providing highway transportation for hire are not 4628

used in providing a public utility service as defined in this 4629
division. 4630

(Q) "Refining" means removing or separating a desirable 4631
product from raw or contaminated materials by distillation or 4632
physical, mechanical, or chemical processes. 4633

(R) "Assembly" and "assembling" mean attaching or fitting 4634
together parts to form a product, but do not include packaging a 4635
product. 4636

(S) "Manufacturing operation" means a process in which 4637
materials are changed, converted, or transformed into a different 4638
state or form from which they previously existed and includes 4639
refining materials, assembling parts, and preparing raw materials 4640
and parts by mixing, measuring, blending, or otherwise committing 4641
such materials or parts to the manufacturing process. 4642
"Manufacturing operation" does not include packaging. 4643

(T) "Fiscal officer" means, with respect to a regional 4644
transit authority, the secretary-treasurer thereof, and with 4645
respect to a county that is a transit authority, the fiscal 4646
officer of the county transit board if one is appointed pursuant 4647
to section 306.03 of the Revised Code or the county auditor if the 4648
board of county commissioners operates the county transit system. 4649

(U) "Transit authority" means a regional transit authority 4650
created pursuant to section 306.31 of the Revised Code or a county 4651
in which a county transit system is created pursuant to section 4652
306.01 of the Revised Code. For the purposes of this chapter, a 4653
transit authority must extend to at least the entire area of a 4654
single county. A transit authority that includes territory in more 4655
than one county must include all the area of the most populous 4656
county that is a part of such transit authority. County population 4657
shall be measured by the most recent census taken by the United 4658
States census bureau. 4659

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

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

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

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(d) "Automatic data processing, computer services, or 4692
electronic information services" shall not include personal or 4693
professional services. 4694

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 4695
section, "personal and professional services" means all services 4696
other than automatic data processing, computer services, or 4697
electronic information services, including but not limited to: 4698

(a) Accounting and legal services such as advice on tax 4699
matters, asset management, budgetary matters, quality control, 4700
information security, and auditing and any other situation where 4701
the service provider receives data or information and studies, 4702
alters, analyzes, interprets, or adjusts such material; 4703

(b) Analyzing business policies and procedures; 4704

(c) Identifying management information needs; 4705

(d) Feasibility studies, including economic and technical 4706
analysis of existing or potential computer hardware or software 4707
needs and alternatives; 4708

(e) Designing policies, procedures, and custom software for 4709
collecting business information, and determining how data should 4710
be summarized, sequenced, formatted, processed, controlled, and 4711
reported so that it will be meaningful to management; 4712

(f) Developing policies and procedures that document how 4713
business events and transactions are to be authorized, executed, 4714
and controlled; 4715

(g) Testing of business procedures; 4716

(h) Training personnel in business procedure applications; 4717

(i) Providing credit information to users of such information 4718
by a consumer reporting agency, as defined in the "Fair Credit 4719
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or 4720

as hereafter amended, including but not limited to gathering, 4721
organizing, analyzing, recording, and furnishing such information 4722
by any oral, written, graphic, or electronic medium; 4723

(j) Providing debt collection services by any oral, written, 4724
graphic, or electronic means. 4725

The services listed in divisions (Y)(2)(a) to (j) of this 4726
section are not automatic data processing or computer services. 4727

(Z) "Highway transportation for hire" means the 4728
transportation of personal property belonging to others for 4729
consideration by any of the following: 4730

(1) The holder of a permit or certificate issued by this 4731
state or the United States authorizing the holder to engage in 4732
transportation of personal property belonging to others for 4733
consideration over or on highways, roadways, streets, or any 4734
similar public thoroughfare; 4735

(2) A person who engages in the transportation of personal 4736
property belonging to others for consideration over or on 4737
highways, roadways, streets, or any similar public thoroughfare 4738
but who could not have engaged in such transportation on December 4739
11, 1985, unless the person was the holder of a permit or 4740
certificate of the types described in division (Z)(1) of this 4741
section; 4742

(3) A person who leases a motor vehicle to and operates it 4743
for a person described by division (Z)(1) or (2) of this section. 4744

(AA) "Telecommunications service" means the transmission of 4745
any interactive, two-way electromagnetic communications, including 4746
voice, image, data, and information, through the use of any medium 4747
such as wires, cables, microwaves, cellular radio, radio waves, 4748
light waves, or any combination of those or similar media. 4749
"Telecommunications service" includes message toll service even 4750
though the vendor provides the message toll service by means of 4751

wide area transmission type service or private communications	4752
service purchased from another telecommunications service	4753
provider, but does not include any of the following:	4754
(1) Sales of incoming or outgoing wide area transmission	4755
service or wide area transmission type service, including eight	4756
hundred or eight-hundred-type service, to the person contracting	4757
for the receipt of that service;	4758
(2) Sales of private communications service to the person	4759
contracting for the receipt of that service that entitles the	4760
purchaser to exclusive or priority use of a communications channel	4761
or group of channels between exchanges;	4762
(3) Sales of telecommunications service by companies subject	4763
to the excise tax imposed by Chapter 5727. of the Revised Code;	4764
(4) Sales of telecommunications service to a provider of	4765
telecommunications service, including access services, for use in	4766
providing telecommunications service;	4767
(5) Value-added nonvoice services in which computer	4768
processing applications are used to act on the form, content,	4769
code, or protocol of the information to be transmitted;	4770
(6) Transmission of interactive video programming by a cable	4771
television system as defined in section 505.90 of the Revised	4772
Code;	4773
<u>(7) After July 31, 2002, mobile telecommunications service.</u>	4774
(BB) "Industrial laundry cleaning services" means removing	4775
soil or dirt from or supplying towels, linens, or articles of	4776
clothing that belong to others and are used in a trade or	4777
business.	4778
(CC) "Magazines distributed as controlled circulation	4779
publications" means magazines containing at least twenty-four	4780
pages, at least twenty-five per cent editorial content, issued at	4781

regular intervals four or more times a year, and circulated 4782
without charge to the recipient, provided that such magazines are 4783
not owned or controlled by individuals or business concerns which 4784
conduct such publications as an auxiliary to, and essentially for 4785
the advancement of the main business or calling of, those who own 4786
or control them. 4787

(DD) "Landscaping and lawn care service" means the services 4788
of planting, seeding, sodding, removing, cutting, trimming, 4789
pruning, mulching, aerating, applying chemicals, watering, 4790
fertilizing, and providing similar services to establish, promote, 4791
or control the growth of trees, shrubs, flowers, grass, ground 4792
cover, and other flora, or otherwise maintaining a lawn or 4793
landscape grown or maintained by the owner for ornamentation or 4794
other nonagricultural purpose. However, "landscaping and lawn care 4795
service" does not include the providing of such services by a 4796
person who has less than five thousand dollars in sales of such 4797
services during the calendar year. 4798

(EE) "Private investigation and security service" means the 4799
performance of any activity for which the provider of such service 4800
is required to be licensed pursuant to Chapter 4749. of the 4801
Revised Code, or would be required to be so licensed in performing 4802
such services in this state, and also includes the services of 4803
conducting polygraph examinations and of monitoring or overseeing 4804
the activities on or in, or the condition of, the consumer's home, 4805
business, or other facility by means of electronic or similar 4806
monitoring devices. "Private investigation and security service" 4807
does not include special duty services provided by off-duty police 4808
officers, deputy sheriffs, and other peace officers regularly 4809
employed by the state or a political subdivision. 4810

(FF) "Information services" means providing conversation, 4811
giving consultation or advice, playing or making a voice or other 4812
recording, making or keeping a record of the number of callers, 4813

and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and also means conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the calendar year.

(JJ) "Employment service" means providing or supplying

personnel, on a temporary or long-term basis, to perform work or
labor under the supervision or control of another, when the
personnel so supplied receive their wages, salary, or other
compensation from the provider of the service. "Employment
service" does not include:

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

(2) Medical and health care services.

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

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

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

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

(MM) "Physical fitness facility service" means all
transactions by which a membership is granted, maintained, or
renewed, including initiation fees, membership dues, renewal fees,
monthly minimum fees, and other similar fees and dues, by a
physical fitness facility such as an athletic club, health spa, or
gymnasium, which entitles the member to use the facility for
physical exercise.

(NN) "Recreation and sports club service" means all 4876
transactions by which a membership is granted, maintained, or 4877
renewed, including initiation fees, membership dues, renewal fees, 4878
monthly minimum fees, and other similar fees and dues, by a 4879
recreation and sports club, which entitles the member to use the 4880
facilities of the organization. "Recreation and sports club" means 4881
an organization that has ownership of, or controls or leases on a 4882
continuing, long-term basis, the facilities used by its members 4883
and includes an aviation club, gun or shooting club, yacht club, 4884
card club, swimming club, tennis club, golf club, country club, 4885
riding club, amateur sports club, or similar organization. 4886

(OO) "Livestock" means farm animals commonly raised for food 4887
or food production, and includes but is not limited to cattle, 4888
sheep, goats, swine, and poultry. "Livestock" does not include 4889
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 4890
animals for use in laboratories or for exhibition, or other 4891
animals not commonly raised for food or food production. 4892

(PP) "Livestock structure" means a building or structure used 4893
exclusively for the housing, raising, feeding, or sheltering of 4894
livestock, and includes feed storage or handling structures and 4895
structures for livestock waste handling. 4896

(QQ) "Horticulture" means the growing, cultivation, and 4897
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 4898
and nursery stock. As used in this division, "nursery stock" has 4899
the same meaning as in section 927.51 of the Revised Code. 4900

(RR) "Horticulture structure" means a building or structure 4901
used exclusively for the commercial growing, raising, or 4902
overwintering of horticultural products, and includes the area 4903
used for stocking, storing, and packing horticultural products 4904
when done in conjunction with the production of those products. 4905

(SS) "Newspaper" means an unbound publication bearing a title 4906

or name that is regularly published, at least as frequently as
biweekly, and distributed from a fixed place of business to the
public in a specific geographic area, and that contains a
substantial amount of news matter of international, national, or
local events of interest to the general public.

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

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

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

(UU)(1) "Prepaid authorization number" means a numeric or
alphanumeric combination that represents a prepaid account that
can be used by the account holder solely to obtain
telecommunications service, and includes any renewals or increases
in the prepaid account.

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(2) "Prepaid telephone calling card" means a tangible item 4938
that contains a prepaid authorization number that can be used 4939
solely to obtain telecommunications service, and includes any 4940
renewals or increases in the prepaid account. 4941

(VV) "Lease" means any transfer for a consideration of the 4942
possession of and right to use, but not title to, tangible 4943
personal property for a fixed period of time greater than 4944
twenty-eight days or for an open-ended period of time with a 4945
minimum fixed period of more than twenty-eight days. 4946

(WW) "Mobile telecommunications service" has the same meaning 4947
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 4948
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124 (7), as amended. 4949
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Sec. 5739.011. (A) As used in this section: 4951

(1) "Manufacturer" means a person who is engaged in 4952
manufacturing, processing, assembling, or refining a product for 4953
sale. 4954

(2) "Manufacturing facility" means a single location where a 4955
manufacturing operation is conducted, including locations 4956
consisting of one or more buildings or structures in a contiguous 4957
area owned or controlled by the manufacturer. 4958

(3) "Materials handling" means the movement of the product 4959
being or to be manufactured, during which movement the product is 4960
not undergoing any substantial change or alteration in its state 4961
or form. 4962

(4) "Testing" means a process or procedure to identify the 4963
properties or assure the quality of a material or product. 4964

(5) "Completed product" means a manufactured item that is in 4965
the form and condition as it will be sold by the manufacturer. An 4966
item is completed when all processes that change or alter its 4967

state or form or enhance its value are finished, even though the 4968
item subsequently will be tested to ensure its quality or be 4969
packaged for storage or shipment. 4970

(6) "Continuous manufacturing operation" means the process in 4971
which raw materials or components are moved through the steps 4972
whereby manufacturing occurs. Materials handling of raw materials 4973
or parts from the point of receipt or preproduction storage or of 4974
a completed product, to or from storage, to or from packaging, or 4975
to the place from which the completed product will be shipped, is 4976
not a part of a continuous manufacturing operation. 4977

(B) For purposes of division (E)(9) of section 5739.01 of the 4978
Revised Code, the "thing transferred" includes, but is not limited 4979
to, any of the following: 4980

(1) Production machinery and equipment that act upon the 4981
product or machinery and equipment that treat the materials or 4982
parts in preparation for the manufacturing operation; 4983

(2) Materials handling equipment that moves the product 4984
through a continuous manufacturing operation; equipment that 4985
temporarily stores the product during the manufacturing operation; 4986
or, excluding motor vehicles licensed to operate on public 4987
highways, equipment used in intraplant or interplant transfers of 4988
work in process where the plant or plants between which such 4989
transfers occur are manufacturing facilities operated by the same 4990
person; 4991

(3) Catalysts, solvents, water, acids, oil, and similar 4992
consumables that interact with the product and that are an 4993
integral part of the manufacturing operation; 4994

(4) Machinery, equipment, and other tangible personal 4995
property used during the manufacturing operation that control, 4996
physically support, produce power for, lubricate, or are otherwise 4997
necessary for the functioning of production machinery and 4998

equipment and the continuation of the manufacturing operation;	4999
(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale;	5000 5001 5002 5003
(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product;	5004 5005 5006
(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility;	5007 5008 5009
(8) Coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; machinery, equipment, and other tangible personal property used to treat, filter, pump, or otherwise make the substance suitable for use in the manufacturing operation; and machinery and equipment used to produce for, and fuel consumed in, producing electricity for use in the manufacturing operation;	5010 5011 5012 5013 5014 5015 5016 5017
(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;	5018 5019 5020 5021 5022 5023 5024
(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or	5025 5026 5027 5028 5029

transportation from the manufacturing facility;	5030
(11) Parts, components, and repair and installation services	5031
for items described in division (B) of this section.	5032
(C) For purposes of division (E)(9) of section 5739.01 of the	5033
Revised Code, the "thing transferred" does not include any of the	5034
following:	5035
(1) Tangible personal property used in administrative,	5036
personnel, security, inventory control, record-keeping, ordering,	5037
billing, or similar functions;	5038
(2) Tangible personal property used in storing raw materials	5039
or parts prior to the commencement of the manufacturing operation	5040
or used to handle or store a completed product, including storage	5041
that actively maintains a completed product in a marketable state	5042
or form;	5043
(3) Tangible personal property used to handle or store scrap	5044
or waste intended for disposal, sale, or other disposition, other	5045
than reuse in the manufacturing operation at the same	5046
manufacturing facility;	5047
(4) Tangible personal property that is or is to be	5048
incorporated into realty;	5049
(5) Machinery, equipment, and other tangible personal	5050
property used for ventilation, dust or gas collection, humidity or	5051
temperature regulation, or similar environmental control, except	5052
machinery, equipment, and other tangible personal property that	5053
totally regulates the environment in a special and limited area of	5054
the manufacturing facility where the regulation is essential for	5055
production to occur;	5056
(6) Tangible personal property used for the protection and	5057
safety of workers, unless the property is attached to or	5058
incorporated into machinery and equipment used in a continuous	5059

manufacturing operation;	5060
(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;	5061 5062 5063
(8) Machinery, equipment, and other tangible personal property used for research and development;	5064 5065
(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;	5066 5067 5068
(10) (9) Motor vehicles registered for operation on the public highways.	5069 5070
(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.	5071 5072 5073 5074 5075 5076 5077
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.	5078 5079 5080 5081 5082 5083 5084 5085 5086 5087
(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.	5088 5089

The tax applies and is collectible when the sale is made, 5090
regardless of the time when the price is paid or delivered. 5091

In the case of a sale, the price of which consists in whole 5092
or in part of rentals for the use of the thing transferred, the 5093
tax, as regards such rentals, shall be measured by the 5094
installments thereof. 5095

In the case of a sale of a service defined under division 5096
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 5097
which consists in whole or in part of a membership for the receipt 5098
of the benefit of the service, the tax applicable to the sale 5099
shall be measured by the installments thereof. 5100

(B) The tax does not apply to the following: 5101

(1) Sales to the state or any of its political subdivisions, 5102
or to any other state or its political subdivisions if the laws of 5103
that state exempt from taxation sales made to this state and its 5104
political subdivisions; 5105

(2) Sales of food for human consumption off the premises 5106
where sold; 5107

(3) Sales of food sold to students only in a cafeteria, 5108
dormitory, fraternity, or sorority maintained in a private, 5109
public, or parochial school, college, or university; 5110

(4) Sales of newspapers, and of magazine subscriptions 5111
~~shipped by second class mail,~~ and sales or transfers of magazines 5112
distributed as controlled circulation publications; 5113

(5) The furnishing, preparing, or serving of meals without 5114
charge by an employer to an employee provided the employer records 5115
the meals as part compensation for services performed or work 5116
done; 5117

(6) Sales of motor fuel upon receipt, use, distribution, or 5118
sale of which in this state a tax is imposed by the law of this 5119

state, but this exemption shall not apply to the sale of motor 5120
fuel on which a refund of the tax is allowable under section 5121
5735.14 of the Revised Code; and the tax commissioner may deduct 5122
the amount of tax levied by this section applicable to the price 5123
of motor fuel when granting a refund of motor fuel tax pursuant to 5124
section 5735.14 of the Revised Code and shall cause the amount 5125
deducted to be paid into the general revenue fund of this state; 5126

(7) Sales of natural gas by a natural gas company, of water 5127
by a water-works company, or of steam by a heating company, if in 5128
each case the thing sold is delivered to consumers through pipes 5129
or conduits, and all sales of communications services by a 5130
telephone or telegraph company, all terms as defined in section 5131
5727.01 of the Revised Code; 5132

(8) Casual sales by a person, or auctioneer employed directly 5133
by the person to conduct such sales, except as to such sales of 5134
motor vehicles, watercraft or outboard motors required to be 5135
titled under section 1548.06 of the Revised Code, watercraft 5136
documented with the United States coast guard, snowmobiles, and 5137
all-purpose vehicles as defined in section 4519.01 of the Revised 5138
Code; 5139

(9) Sales of services or tangible personal property, other 5140
than motor vehicles, mobile homes, and manufactured homes, by 5141
churches, organizations exempt from taxation under section 5142
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 5143
organizations operated exclusively for charitable purposes as 5144
defined in division (B)(12) of this section, provided that the 5145
number of days on which such tangible personal property or 5146
services, other than items never subject to the tax, are sold does 5147
not exceed six in any calendar year. If the number of days on 5148
which such sales are made exceeds six in any calendar year, the 5149
church or organization shall be considered to be engaged in 5150
business and all subsequent sales by it shall be subject to the 5151

tax. In counting the number of days, all sales by groups within a
church or within an organization shall be considered to be sales
of that church or organization, except that sales made by separate
student clubs and other groups of students of a primary or
secondary school, and sales made by a parent-teacher association,
booster group, or similar organization that raises money to
support or fund curricular or extracurricular activities of a
primary or secondary school, shall not be considered to be sales
of such school, and sales by each such club, group, association,
or organization shall be counted separately for purposes of the
six-day limitation. This division does not apply to sales by a
noncommercial educational radio or television broadcasting
station.

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

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

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

"Charitable purposes" means the relief of poverty; the
improvement of health through the alleviation of illness, disease,
or injury; the operation of an organization exclusively for the

provision of professional, laundry, printing, and purchasing 5184
services to hospitals or charitable institutions; the operation of 5185
a home for the aged, as defined in section 5701.13 of the Revised 5186
Code; the operation of a radio or television broadcasting station 5187
that is licensed by the federal communications commission as a 5188
noncommercial educational radio or television station; the 5189
operation of a nonprofit animal adoption service or a county 5190
humane society; the promotion of education by an institution of 5191
learning that maintains a faculty of qualified instructors, 5192
teaches regular continuous courses of study, and confers a 5193
recognized diploma upon completion of a specific curriculum; the 5194
operation of a parent-teacher association, booster group, or 5195
similar organization primarily engaged in the promotion and 5196
support of the curricular or extracurricular activities of a 5197
primary or secondary school; the operation of a community or area 5198
center in which presentations in music, dramatics, the arts, and 5199
related fields are made in order to foster public interest and 5200
education therein; the production of performances in music, 5201
dramatics, and the arts; or the promotion of education by an 5202
organization engaged in carrying on research in, or the 5203
dissemination of, scientific and technological knowledge and 5204
information primarily for the public. 5205

Nothing in this division shall be deemed to exempt sales to 5206
any organization for use in the operation or carrying on of a 5207
trade or business, or sales to a home for the aged for use in the 5208
operation of independent living facilities as defined in division 5209
(A) of section 5709.12 of the Revised Code. 5210

(13) Building and construction materials and services sold to 5211
construction contractors for incorporation into a structure or 5212
improvement to real property under a construction contract with 5213
this state or a political subdivision thereof, or with the United 5214
States government or any of its agencies; building and 5215

construction materials and services sold to construction 5216
contractors for incorporation into a structure or improvement to 5217
real property that are accepted for ownership by this state or any 5218
of its political subdivisions, or by the United States government 5219
or any of its agencies at the time of completion of such 5220
structures or improvements; building and construction materials 5221
sold to construction contractors for incorporation into a 5222
horticulture structure or livestock structure for a person engaged 5223
in the business of horticulture or producing livestock; building 5224
materials and services sold to a construction contractor for 5225
incorporation into a house of public worship or religious 5226
education, or a building used exclusively for charitable purposes 5227
under a construction contract with an organization whose purpose 5228
is as described in division (B)(12) of this section; building 5229
materials and services sold to a construction contractor for 5230
incorporation into a building under a construction contract with 5231
an organization exempt from taxation under section 501(c)(3) of 5232
the Internal Revenue Code of 1986 when the building is to be used 5233
exclusively for the organization's exempt purposes; building and 5234
construction materials sold for incorporation into the original 5235
construction of a sports facility under section 307.696 of the 5236
Revised Code; and building and construction materials and services 5237
sold to a construction contractor for incorporation into real 5238
property outside this state if such materials and services, when 5239
sold to a construction contractor in the state in which the real 5240
property is located for incorporation into real property in that 5241
state, would be exempt from a tax on sales levied by that state; 5242

(14) Sales of ships or vessels or rail rolling stock used or 5243
to be used principally in interstate or foreign commerce, and 5244
repairs, alterations, fuel, and lubricants for such ships or 5245
vessels or rail rolling stock; 5246

(15) Sales to persons engaged in any of the activities 5247

mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

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

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or

floriculture, except where such property is incorporated into real 5280
property; 5281

(18) Sales of drugs dispensed by a licensed pharmacist upon 5282
the order of a licensed health professional authorized to 5283
prescribe drugs to a human being, as the term "licensed health 5284
professional authorized to prescribe drugs" is defined in section 5285
4729.01 of the Revised Code; insulin as recognized in the official 5286
United States pharmacopoeia; urine and blood testing materials 5287
when used by diabetics or persons with hypoglycemia to test for 5288
glucose or acetone; hypodermic syringes and needles when used by 5289
diabetics for insulin injections; epoetin alfa when purchased for 5290
use in the treatment of persons with end-stage renal disease; 5291
hospital beds when purchased for use by persons with medical 5292
problems for medical purposes; and oxygen and oxygen-dispensing 5293
equipment when purchased for use by persons with medical problems 5294
for medical purposes; 5295

(19)(a) Sales of artificial limbs or portion thereof, breast 5296
prostheses, and other prosthetic devices for humans; braces or 5297
other devices for supporting weakened or nonfunctioning parts of 5298
the human body; crutches or other devices to aid human 5299
perambulation; and items of tangible personal property used to 5300
supplement impaired functions of the human body such as 5301
respiration, hearing, or elimination; 5302

(b) Sales of wheelchairs; items incorporated into or used in 5303
conjunction with a motor vehicle for the purpose of transporting 5304
wheelchairs, other than transportation conducted in connection 5305
with the sale or delivery of wheelchairs; and items incorporated 5306
into or used in conjunction with a motor vehicle that are 5307
specifically designed to assist a person with a disability to 5308
access or operate the motor vehicle. As used in this division, 5309
"person with a disability" means any person who has lost the use 5310
of one or both legs or one or both arms, who is blind, deaf, or 5311

disabled to the extent that the person is unable to move about 5312
without the aid of crutches or a wheelchair, or whose mobility is 5313
restricted by a permanent cardiovascular, pulmonary, or other 5314
disabling condition. 5315

(c) No exemption under this division shall be allowed for 5316
nonprescription drugs, medicines, or remedies; items or devices 5317
used to supplement vision; items or devices whose function is 5318
solely or primarily cosmetic; or physical fitness equipment. This 5319
division does not apply to sales to a physician or medical 5320
facility for use in the treatment of a patient. 5321

(20) Sales of emergency and fire protection vehicles and 5322
equipment to nonprofit organizations for use solely in providing 5323
fire protection and emergency services, including trauma care and 5324
emergency medical services, for political subdivisions of the 5325
state; 5326

(21) Sales of tangible personal property manufactured in this 5327
state, if sold by the manufacturer in this state to a retailer for 5328
use in the retail business of the retailer outside of this state 5329
and if possession is taken from the manufacturer by the purchaser 5330
within this state for the sole purpose of immediately removing the 5331
same from this state in a vehicle owned by the purchaser; 5332
5333

(22) Sales of services provided by the state or any of its 5334
political subdivisions, agencies, instrumentalities, institutions, 5335
or authorities, or by governmental entities of the state or any of 5336
its political subdivisions, agencies, instrumentalities, 5337
institutions, or authorities; 5338

(23) Sales of motor vehicles to nonresidents of this state 5339
upon the presentation of an affidavit executed in this state by 5340
the nonresident purchaser affirming that the purchaser is a 5341
nonresident of this state, that possession of the motor vehicle is 5342

taken in this state for the sole purpose of immediately removing 5343
it from this state, that the motor vehicle will be permanently 5344
titled and registered in another state, and that the motor vehicle 5345
will not be used in this state; 5346

(24) Sales to persons engaged in the preparation of eggs for 5347
sale of tangible personal property used or consumed directly in 5348
such preparation, including such tangible personal property used 5349
for cleaning, sanitizing, preserving, grading, sorting, and 5350
classifying by size; packages, including material and parts for 5351
packages, and machinery, equipment, and material for use in 5352
packaging eggs for sale; and handling and transportation equipment 5353
and parts therefor, except motor vehicles licensed to operate on 5354
public highways, used in intraplant or interplant transfers or 5355
shipment of eggs in the process of preparation for sale, when the 5356
plant or plants within or between which such transfers or 5357
shipments occur are operated by the same person. "Packages" 5358
includes containers, cases, baskets, flats, fillers, filler flats, 5359
cartons, closure materials, labels, and labeling materials, and 5360
"packaging" means placing therein. 5361

(25)(a) Sales of water to a consumer for residential use, 5362
except the sale of bottled water, distilled water, mineral water, 5363
carbonated water, or ice; 5364

(b) Sales of water by a nonprofit corporation engaged 5365
exclusively in the treatment, distribution, and sale of water to 5366
consumers, if such water is delivered to consumers through pipes 5367
or tubing. 5368

(26) Fees charged for inspection or reinspection of motor 5369
vehicles under section 3704.14 of the Revised Code; 5370

(27) Sales to persons licensed to conduct a food service 5371
operation pursuant to section 3717.43 of the Revised Code, of 5372
tangible personal property primarily used directly for the 5373

following:	5374
(a) To prepare food for human consumption for sale;	5375
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	5376 5377 5378 5379
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	5380 5381
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	5382 5383
(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;	5384 5385 5386 5387
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	5388 5389 5390
(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;	5391 5392 5393
(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;	5394 5395 5396 5397
(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;	5398 5399 5400 5401 5402
(34) Sales to a telecommunications service vendor of tangible	5403

personal property and services used directly and primarily in 5404
transmitting, receiving, switching, or recording any interactive, 5405
two-way electromagnetic communications, including voice, image, 5406
data, and information, through the use of any medium, including, 5407
but not limited to, poles, wires, cables, switching equipment, 5408
computers, and record storage devices and media, and component 5409
parts for the tangible personal property. The exemption provided 5410
in division (B)(34) of this section shall be in lieu of all other 5411
exceptions under division (E)(2) of section 5739.01 of the Revised 5412
Code to which a telecommunications service vendor may otherwise be 5413
entitled based upon the use of the thing purchased in providing 5414
the telecommunications service. 5415

(35) Sales of investment metal bullion and investment coins. 5416
"Investment metal bullion" means any elementary precious metal 5417
that has been put through a process of smelting or refining, 5418
including, but not limited to, gold, silver, platinum, and 5419
palladium, and which is in such state or condition that its value 5420
depends upon its content and not upon its form. "Investment metal 5421
bullion" does not include fabricated precious metal that has been 5422
processed or manufactured for one or more specific and customary 5423
industrial, professional, or artistic uses. "Investment coins" 5424
means numismatic coins or other forms of money and legal tender 5425
manufactured of gold, silver, platinum, palladium, or other metal 5426
under the laws of the United States or any foreign nation with a 5427
fair market value greater than any statutory or nominal value of 5428
such coins. 5429

(36)(a) Sales where the purpose of the consumer is to use or 5430
consume the things transferred in making retail sales and 5431
consisting of newspaper inserts, catalogues, coupons, flyers, gift 5432
certificates, or other advertising material that prices and 5433
describes tangible personal property offered for retail sale. 5434

(b) Sales to direct marketing vendors of preliminary 5435

materials such as photographs, artwork, and typesetting that will 5436
be used in printing advertising material; of printed matter that 5437
offers free merchandise or chances to win sweepstake prizes and 5438
that is mailed to potential customers with advertising material 5439
described in division (B)(36)(a) of this section; and of equipment 5440
such as telephones, computers, facsimile machines, and similar 5441
tangible personal property primarily used to accept orders for 5442
direct marketing retail sales. 5443

(c) Sales of automatic food vending machines that preserve 5444
food with a shelf life of forty-five days or less by refrigeration 5445
and dispense it to the consumer. 5446

For purposes of division (B)(36) of this section, "direct 5447
marketing" means the method of selling where consumers order 5448
tangible personal property by United States mail, delivery 5449
service, or telecommunication and the vendor delivers or ships the 5450
tangible personal property sold to the consumer from a warehouse, 5451
catalogue distribution center, or similar fulfillment facility by 5452
means of the United States mail, delivery service, or common 5453
carrier. 5454

(37) Sales to a person engaged in the business of 5455
horticulture or producing livestock of materials to be 5456
incorporated into a horticulture structure or livestock structure; 5457

(38) The sale of a motor vehicle that is used exclusively for 5458
a vanpool ridesharing arrangement to persons participating in the 5459
vanpool ridesharing arrangement when the vendor is selling the 5460
vehicle pursuant to a contract between the vendor and the 5461
department of transportation; 5462

(39) Sales of personal computers, computer monitors, computer 5463
keyboards, modems, and other peripheral computer equipment to an 5464
individual who is licensed or certified to teach in an elementary 5465
or a secondary school in this state for use by that individual in 5466

preparation for teaching elementary or secondary school students;	5467
	5468
(40) Sales to a professional racing team of any of the	5469
following:	5470
(a) Motor racing vehicles;	5471
(b) Repair services for motor racing vehicles;	5472
(c) Items of property that are attached to or incorporated in	5473
motor racing vehicles, including engines, chassis, and all other	5474
components of the vehicles, and all spare, replacement, and	5475
rebuilt parts or components of the vehicles; except not including	5476
tires, consumable fluids, paint, and accessories consisting of	5477
instrumentation sensors and related items added to the vehicle to	5478
collect and transmit data by means of telemetry and other forms of	5479
communication.	5480
(41) Sales of used manufactured homes and used mobile homes,	5481
as defined in section 5739.0210 of the Revised Code, made on or	5482
after January 1, 2000;	5483
(42) Sales of tangible personal property and services to a	5484
provider of electricity used or consumed directly and primarily in	5485
generating, transmitting, or distributing electricity for use by	5486
others, including property that is or is to be incorporated into	5487
and will become a part of the consumer's production, transmission,	5488
or distribution system and that retains its classification as	5489
tangible personal property after incorporation; fuel or power used	5490
in the production, transmission, or distribution of electricity;	5491
and tangible personal property and services used in the repair and	5492
maintenance of the production, transmission, or distribution	5493
system, including only those motor vehicles as are specially	5494
designed and equipped for such use. The exemption provided in this	5495
division shall be in lieu of all other exceptions in division	5496
(E)(2) of section 5739.01 of the Revised Code to which a provider	5497

of electricity may otherwise be entitled based on the use of the 5498
tangible personal property or service purchased in generating, 5499
transmitting, or distributing electricity. 5500

For the purpose of the proper administration of this chapter, 5501
and to prevent the evasion of the tax, it is presumed that all 5502
sales made in this state are subject to the tax until the contrary 5503
is established. 5504

As used in this section, except in division (B)(16) of this 5505
section, "food" includes cereals and cereal products, milk and 5506
milk products including ice cream, meat and meat products, fish 5507
and fish products, eggs and egg products, vegetables and vegetable 5508
products, fruits, fruit products, and pure fruit juices, 5509
condiments, sugar and sugar products, coffee and coffee 5510
substitutes, tea, and cocoa and cocoa products. It does not 5511
include: spirituous or malt liquors; soft drinks; sodas and 5512
beverages that are ordinarily dispensed at bars and soda fountains 5513
or in connection therewith, other than coffee, tea, and cocoa; 5514
root beer and root beer extracts; malt and malt extracts; mineral 5515
oils, cod liver oils, and halibut liver oil; medicines, including 5516
tonics, vitamin preparations, and other products sold primarily 5517
for their medicinal properties; and water, including mineral, 5518
bottled, and carbonated waters, and ice. 5519

(C) The levy of an excise tax on transactions by which 5520
lodging by a hotel is or is to be furnished to transient guests 5521
pursuant to this section and division (B) of section 5739.01 of 5522
the Revised Code does not prevent any of the following: 5523

(1) A municipal corporation or township from levying an 5524
excise tax for any lawful purpose not to exceed three per cent on 5525
transactions by which lodging by a hotel is or is to be furnished 5526
to transient guests in addition to the tax levied by this section. 5527
If a municipal corporation or township repeals a tax imposed under 5528
division (C)(1) of this section and a county in which the 5529

municipal corporation or township has territory has a tax imposed 5530
under division (C) of section 5739.024 of the Revised Code in 5531
effect, the municipal corporation or township may not reimpose its 5532
tax as long as that county tax remains in effect. A municipal 5533
corporation or township in which a tax is levied under division 5534
(B)(2) of section 351.021 of the Revised Code may not increase the 5535
rate of its tax levied under division (C)(1) of this section to 5536
any rate that would cause the total taxes levied under both of 5537
those divisions to exceed three per cent on any lodging 5538
transaction within the municipal corporation or township. 5539

(2) A municipal corporation or a township from levying an 5540
additional excise tax not to exceed three per cent on such 5541
transactions pursuant to division (B) of section 5739.024 of the 5542
Revised Code. Such tax is in addition to any tax imposed under 5543
division (C)(1) of this section. 5544

(3) A county from levying an excise tax pursuant to division 5545
(A) of section 5739.024 of the Revised Code. 5546

(4) A county from levying an excise tax not to exceed three 5547
per cent of such transactions pursuant to division (C) of section 5548
5739.024 of the Revised Code. Such a tax is in addition to any tax 5549
imposed under division (C)(3) of this section. 5550

(5) A convention facilities authority, as defined in division 5551
(A) of section 351.01 of the Revised Code, from levying the excise 5552
taxes provided for in division (B) of section 351.021 of the 5553
Revised Code. 5554

(6) A county from levying an excise tax not to exceed one and 5555
one-half per cent of such transactions pursuant to division (D) of 5556
section 5739.024 of the Revised Code. Such tax is in addition to 5557
any tax imposed under division (C)(3) or (4) of this section. 5558

(7) A county from levying an excise tax not to exceed one and 5559
5560

one-half per cent of such transactions pursuant to division (E) of 5561
section 5739.024 of the Revised Code. Such a tax is in addition to 5562
any tax imposed under division (C)(3), (4), or (6) of this 5563
section. 5564

(D) The levy of this tax on retail sales of recreation and 5565
sports club service shall not prevent a municipal corporation from 5566
levying any tax on recreation and sports club dues or on any 5567
income generated by recreation and sports club dues. 5568

Sec. 5739.026. (A) A board of county commissioners may levy a 5569
tax of one-fourth or one-half of one per cent on every retail sale 5570
in the county, except sales of watercraft and outboard motors 5571
required to be titled pursuant to Chapter 1548. of the Revised 5572
Code and sales of motor vehicles, and may increase an existing 5573
rate of one-fourth of one per cent to one-half of one per cent, to 5574
pay the expenses of administering the tax and, except as provided 5575
in division (A)(6) of this section, for any one or more of the 5576
following purposes provided that the aggregate levy for all such 5577
purposes does not exceed one-half of one per cent: 5578

(1) To provide additional revenues for the payment of bonds 5579
or notes issued in anticipation of bonds issued by a convention 5580
facilities authority established by the board of county 5581
commissioners under Chapter 351. of the Revised Code and to 5582
provide additional operating revenues for the convention 5583
facilities authority; 5584

(2) To provide additional revenues for a transit authority 5585
operating in the county; 5586

(3) To provide additional revenue for the county's general 5587
fund; 5588

(4) To provide additional revenue for permanent improvements 5589
within the county to be distributed by the community improvements 5590

board in accordance with section 307.283 and to pay principal, 5591
interest, and premium on bonds issued under section 307.284 of the 5592
Revised Code; 5593

(5) To provide additional revenue for the acquisition, 5594
construction, equipping, or repair of any specific permanent 5595
improvement or any class or group of permanent improvements, which 5596
improvement or class or group of improvements shall be enumerated 5597
in the resolution required by division (D) of this section, and to 5598
pay principal, interest, premium, and other costs associated with 5599
the issuance of bonds or notes in anticipation of bonds issued 5600
pursuant to Chapter 133. of the Revised Code for the acquisition, 5601
construction, equipping, or repair of the specific permanent 5602
improvement or class or group of permanent improvements; 5603

(6) To provide revenue for the implementation and operation 5604
of a 9-1-1 system in the county. If the tax is levied or the rate 5605
increased exclusively for such purpose, the tax shall not be 5606
levied or the rate increased for more than five years. At the end 5607
of the last year the tax is levied or the rate increased, any 5608
balance remaining in the special fund established for such purpose 5609
shall remain in that fund and be used exclusively for such purpose 5610
until the fund is completely expended, and, notwithstanding 5611
section 5705.16 of the Revised Code, the board of county 5612
commissioners shall not petition for the transfer of money from 5613
such special fund, and the tax commissioner shall not approve such 5614
a petition. 5615

If the tax is levied or the rate increased for such purpose 5616
for more than five years, the board of county commissioners also 5617
shall levy the tax or increase the rate of the tax for one or more 5618
of the purposes described in divisions (A)(1) to (5) of this 5619
section and shall prescribe the method for allocating the revenues 5620
from the tax each year in the manner required by division (C) of 5621
this section. 5622

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

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

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

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

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

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

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

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

increased pursuant to a resolution adopted by a majority of the 5654
members of the board. 5655

Prior to the adoption of any resolution to levy the tax or to 5656
increase the rate of tax exclusively for the purpose set forth in 5657
division (A)(3) of this section, the board of county commissioners 5658
shall conduct two public hearings on the resolution, the second 5659
hearing to be no fewer than three nor more than ten days after the 5660
first. Notice of the date, time, and place of the hearings shall 5661
be given by publication in a newspaper of general circulation in 5662
the county once a week on the same day of the week for two 5663
consecutive weeks, the second publication being no fewer than ten 5664
nor more than thirty days prior to the first hearing. The 5665
resolution shall become effective on the first day of the month 5666
specified in the resolution but not earlier than the first day of 5667
the month following the expiration of sixty days from the date of 5668
its adoption, subject to a referendum as provided in sections 5669
305.31 to 305.41 of the Revised Code, unless the resolution is 5670
adopted as an emergency measure necessary for the immediate 5671
preservation of the public peace, health, or safety, in which case 5672
it shall go into effect on the first day of the month following 5673
the expiration of thirty days from the date of notice by the board 5674
of county commissioners to the tax commissioner of its adoption. 5675
The emergency measure shall receive an affirmative vote of all of 5676
the members of the board of county commissioners and shall state 5677
the reasons for the necessity. 5678

If the tax is for more than one of the purposes set forth in 5679
divisions (A)(1) to (7) and (9) of this section or is exclusively 5680
for one of the purposes set forth in division (A)(1), (2), (4), 5681
(5), (6), (7), or (9) of this section, the resolution shall not go 5682
into effect unless it is approved by a majority of the electors 5683
voting on the question of the tax. 5684

(B) The board of county commissioners shall adopt a 5685

resolution under section 351.02 of the Revised Code creating the 5686
convention facilities authority, or under section 307.283 of the 5687
Revised Code creating the community improvements board, before 5688
adopting a resolution levying a tax for the purpose of a 5689
convention facilities authority under division (A)(1) of this 5690
section or for the purpose of a community improvements board under 5691
division (A)(4) of this section. 5692

(C)(1) If the tax is to be used for more than one of the 5693
purposes set forth in divisions (A)(1) to (7) and (9) of this 5694
section, the board of county commissioners shall establish the 5695
method that will be used to determine the amount or proportion of 5696
the tax revenue received by the county during each year that will 5697
be distributed for each of those purposes, including, if 5698
applicable, provisions governing the reallocation of a convention 5699
facilities authority's allocation if the authority is dissolved 5700
while the tax is in effect. The allocation method may provide that 5701
different proportions or amounts of the tax shall be distributed 5702
among the purposes in different years, but it shall clearly 5703
describe the method that will be used for each year. Except as 5704
otherwise provided in division (C)(2) of this section, the 5705
allocation method established by the board is not subject to 5706
amendment during the life of the tax. 5707

(2) Subsequent to holding a public hearing on the proposed 5708
amendment, the board of county commissioners may amend the 5709
allocation method established under division (C)(1) of this 5710
section for any year if the amendment is approved by the governing 5711
board of each entity whose allocation for the year would be 5712
reduced by the proposed amendment. In the case of a tax that is 5713
levied for a continuing period of time, the board may not so amend 5714
the allocation method for any year before the sixth year that the 5715
tax is in effect. 5716

(a) If the additional revenues provided to the convention 5717

facilities authority are pledged by the authority for the payment 5718
of convention facilities authority revenue bonds for as long as 5719
such bonds are outstanding, no reduction of the authority's 5720
allocation of the tax shall be made for any year except to the 5721
extent that the reduced authority allocation, when combined with 5722
the authority's other revenues pledged for that purpose, is 5723
sufficient to meet the debt service requirements for that year on 5724
such bonds. 5725

(b) If the additional revenues provided to the county are 5726
pledged by the county for the payment of bonds or notes described 5727
in division (A)(4) or (5) of this section, for as long as such 5728
bonds or notes are outstanding, no reduction of the county's or 5729
the community improvements board's allocation of the tax shall be 5730
made for any year except to the extent that the reduced county or 5731
community improvements board allocation is sufficient to meet the 5732
debt service requirements for that year on such bonds or notes. 5733

(c) If the additional revenues provided to the transit 5734
authority are pledged by the authority for the payment of revenue 5735
bonds issued under section 306.37 of the Revised Code, for as long 5736
as such bonds are outstanding, no reduction of the authority's 5737
allocation of tax shall be made for any year except to the extent 5738
that the authority's reduced allocation, when combined with the 5739
authority's other revenues pledged for that purpose, is sufficient 5740
to meet the debt service requirements for that year on such bonds. 5741

(d) If the additional revenues provided to the county are 5742
pledged by the county for the payment of bonds or notes issued 5743
under section 133.60 of the Revised Code, for so long as the bonds 5744
or notes are outstanding, no reduction of the county's allocation 5745
of the tax shall be made for any year except to the extent that 5746
the reduced county allocation is sufficient to meet the debt 5747
service requirements for that year on the bonds or notes. 5748

(D)(1) The resolution levying the tax or increasing the rate 5749

of tax shall state the rate of the tax or the rate of the 5750
increase; the purpose or purposes for which it is to be levied; 5751
the number of years for which it is to be levied or that it is for 5752
a continuing period of time; the allocation method required by 5753
division (C) of this section; and if required to be submitted to 5754
the electors of the county under division (A) of this section, the 5755
date of the election at which the proposal shall be submitted to 5756
the electors of the county, which shall be not less than 5757
seventy-five days after the certification of a copy of the 5758
resolution to the board of elections and, if the tax is to be 5759
levied exclusively for the purpose set forth in division (A)(3) of 5760
this section, shall not occur in February or August of any year. 5761
Upon certification of the resolution to the board of elections, 5762
the board of county commissioners shall notify the tax 5763
commissioner in writing of the levy question to be submitted to 5764
the electors. If approved by a majority of the electors, the tax 5765
shall become effective on the first day of the month specified in 5766
the resolution but not earlier than the first day of the month 5767
next following the thirtieth day following the certification of 5768
the results of the election to the board of county commissioners 5769
and the tax commissioner by the board of elections. 5770

(2)(a) A resolution specifying that the tax is to be used 5771
exclusively for the purpose set forth in division (A)(3) of this 5772
section that is not adopted as an emergency measure may direct the 5773
board of elections to submit the question of levying the tax or 5774
increasing the rate of the tax to the electors of the county at a 5775
special election held on the date specified by the board of county 5776
commissioners in the resolution, provided that the election occurs 5777
not less than seventy-five days after the resolution is certified 5778
to the board of elections and the election is not held in February 5779
or August of any year. Upon certification of the resolution to the 5780
board of elections, the board of county commissioners shall notify 5781

the tax commissioner in writing of the levy question to be 5782
submitted to the electors. No resolution adopted under division 5783
(D)(2)(a) of this section shall go into effect unless approved by 5784
a majority of those voting upon it and not until the first day of 5785
the month specified in the resolution but not earlier than the 5786
first day of the month following the expiration of thirty days 5787
from the date of the notice to the tax commissioner by the board 5788
of elections of the affirmative vote. 5789

(b) A resolution specifying that the tax is to be used 5790
exclusively for the purpose set forth in division (A)(3) of this 5791
section that is adopted as an emergency measure shall become 5792
effective as provided in division (A) of this section but may 5793
direct the board of elections to submit the question of repealing 5794
the tax or increase in the rate of the tax to the electors of the 5795
county at the next general election in the county occurring not 5796
less than seventy-five days after the resolution is certified to 5797
the board of elections. Upon certification of the resolution to 5798
the board of elections, the board of county commissioners shall 5799
notify the tax commissioner in writing of the levy question to be 5800
submitted to the electors. The ballot question shall be the same 5801
as that prescribed in section 5739.022 of the Revised Code. The 5802
board of elections shall notify the board of county commissioners 5803
and the tax commissioner of the result of the election immediately 5804
after the result has been declared. If a majority of the qualified 5805
electors voting on the question of repealing the tax or increase 5806
in the rate of the tax vote for repeal of the tax or repeal of the 5807
increase, the board of county commissioners, on the first day of 5808
the month following the expiration of thirty days after the date 5809
it received notice of the result of the election, shall, in the 5810
case of a repeal of the tax, cease to levy the tax, or, in the 5811
case of a repeal of an increase in the rate of the tax, cease to 5812
levy the increased rate and levy the tax at the rate at which it 5813

was imposed immediately prior to the increase in rate. 5814

(E) A board of county commissioners may by resolution reduce the rate of a tax levied under division (A)(3) of this section to a lower rate authorized by this section. Any such reduction shall be made effective on the first day of the month specified in the resolution but not sooner than the first day of the month next following the thirtieth day after certification of the resolution to the tax commissioner. 5815
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(F) The tax levied pursuant to this section shall be in 5822
addition to the tax levied by section 5739.02 of the Revised Code 5823
and any tax levied pursuant to section 5739.021 or 5739.023 of the 5824
Revised Code. 5825

A county that levies a tax pursuant to this section shall 5826
levy a tax at the same rate pursuant to section 5741.023 of the 5827
Revised Code. 5828

The additional tax levied by the county shall be collected 5829
pursuant to section 5739.025 of the Revised Code. 5830

Any tax levied pursuant to this section is subject to the 5831
exemptions provided in section 5739.02 of the Revised Code and in 5832
addition shall not be applicable to sales not within the taxing 5833
power of a county under the Constitution of the United States or 5834
the Ohio Constitution. 5835

Sec. 5739.031. (A) ~~The~~ Upon application, the tax commissioner 5836
may ~~authorize~~ issue a direct payment permit that authorizes a 5837
~~manufacturer or other consumer, who purchases tangible personal~~ 5838
~~property or services under circumstances that normally make it~~ 5839
~~impossible at the time of the purchase to determine the manner in~~ 5840
~~which the property or services will be used,~~ to pay the sales tax 5841
levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5842
5739.026 of the Revised Code or the use tax levied by or pursuant 5843

to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code directly to the state, and ~~waive~~ waives the collection of the tax by the vendor or seller, ~~but no such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, then payment of the sales and use taxes on all purchases, including purchases of tangible personal property and services, the use of which is known at the time of the purchase, shall be made directly to the treasurer of state by the permit holder if payment directly to the state would improve compliance and increase the efficiency of the administration of the tax. The commissioner may adopt rules establishing the criteria for the issuance of such permits.~~

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

Any permit holder required to file a return and pay the tax

under this section whose total payment for any calendar year 5876
~~indicated in that section~~ equals or exceeds the amount shown in 5877
section 5739.032 of the Revised Code shall make each payment 5878
required by this section in the second ensuing and each succeeding 5879
year by electronic funds transfer as prescribed by section 5880
5739.032 of the Revised Code, except as otherwise prescribed by 5881
that section. 5882

(C) For purposes of reporting and remitting the tax, the 5883
price of tangible personal property or services purchased by, or 5884
of tangible personal property produced by, the permit holder shall 5885
be determined under division (G) of section 5741.01 of the Revised 5886
Code. Notwithstanding section 5739.033 of the Revised Code, ~~all~~ 5887
~~the situs of any purchase transactions~~ transaction made by the 5888
permit holder ~~are conclusively determined to be consummated at~~ is 5889
the location where the tangible personal property or service is 5890
received by the permit holder. 5891

(D) It shall be the duty of every permit holder required to 5892
make a return and pay ~~any~~ its tax under this section to keep and 5893
preserve suitable records of purchases together with invoices of 5894
purchases, bills of lading, asset ledgers, depreciation schedules, 5895
transfer journals, and such other primary and secondary records 5896
and documents in such form as the commissioner requires. All such 5897
records and other documents shall be open during business hours to 5898
the inspection of the tax commissioner, and shall be preserved for 5899
a period of four years, unless the commissioner, in writing, has 5900
authorized their destruction or disposal at an earlier date, or by 5901
order or by reason of a waiver of the four-year time limitation 5902
pursuant to section 5739.16 of the Revised Code requires that they 5903
be kept longer. 5904

(E) A permit granted pursuant to this section shall continue 5905
to be valid until surrendered by the holder or canceled for cause 5906
by the tax commissioner. 5907

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

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

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

services are made of the cancellation or surrender of a direct 5940
payment permit shall be considered as a refusal to pay the tax by 5941
the person required to issue such notice. 5942

Sec. 5739.033. The amount of tax due pursuant to sections 5943
5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is 5944
the sum of the taxes imposed pursuant to those sections at the 5945
situs ~~of the consummation~~ of the sale as determined under this 5946
section or, if applicable, under division (C) of section 5739.031 5947
of the Revised Code. 5948

(A) Except as otherwise provided in this section ~~and,~~ 5949
division (C) of section 5739.031, and section 5739.034 of the 5950
Revised Code, the situs of all sales are conclusively determined 5951
~~to be consummated at~~ is the vendor's place of business. 5952

(1) If the consumer or the consumer's agent takes possession 5953
of the tangible personal property at a place of business of the 5954
vendor where the purchase contract or agreement was made, the 5955
situs of the sale is consummated at that place of business. 5956

(2) If the consumer or the consumer's agent takes possession 5957
of the tangible personal property other than at a place of 5958
business of the vendor, or takes possession at a warehouse or 5959
similar facility of the vendor, the situs of the sale is 5960
~~consummated at~~ the vendor's place of business where the purchase 5961
contract or agreement was made or the purchase order was received. 5962

(3) If the vendor provides a service specified in division 5963
(B)(3)(a), (b), (c), (d), (n), or (o) of section 5739.01 of the 5964
Revised Code, the situs of the sale is consummated at the vendor's 5965
place of business where the service is performed or the contract 5966
or agreement for the service was made or the purchase order was 5967
received. 5968

(B) If the vendor is a transient vendor as specified in 5969

division (B) of section 5739.17 of the Revised Code, the situs of 5970
the sale is ~~conclusively determined to be consummated at~~ the 5971
vendor's temporary place of business or, if the transient vendor 5972
is the lessor of titled motor vehicles, titled watercraft, or 5973
titled outboard motors, at the location where the lessee keeps the 5974
leased property. 5975

(C) If the vendor makes sales of tangible personal property 5976
from a stock of goods carried in a motor vehicle, from which the 5977
purchaser makes selection and takes possession, or from which the 5978
vendor sells tangible personal property the quantity of which has 5979
not been determined prior to the time the purchaser takes 5980
possession, the situs of the sale is ~~conclusively determined to be~~ 5981
~~consummated at~~ the location of the motor vehicle when the sale is 5982
made. 5983

(D) If the vendor is a delivery vendor as specified in 5984
division (D) of section 5739.17 of the Revised Code, the situs of 5985
the sale is ~~conclusively determined to be consummated at~~ the place 5986
where the tangible personal property is delivered, where the 5987
leased property is used, or where the service is performed or 5988
received. 5989

(E) If the vendor provides a service specified in division 5990
(B)(3)(e), (g), (h), (j), (k), (l), or (m) of section 5739.01 of 5991
the Revised Code, the situs of the sale is ~~conclusively determined~~ 5992
~~to be consummated at~~ the location of the consumer where the 5993
service is performed or received. 5994

(F) Except as provided in division (I) or (J) of this 5995
section, ~~if:~~ 5996

(1) If the vendor provides a service specified in division 5997
(B)(3)(f) or (i) of section 5739.01 of the Revised Code, the situs 5998
of the sale is ~~conclusively determined to be consummated at~~ the 5999
location of the telephone number or account as reflected in the 6000

records of the vendor. ~~If, in~~ 6001

(2) In the case of a telecommunications service, if the 6002
telephone number or account is located outside this state, the 6003
situs of the sale is ~~conclusively determined to be consummated at~~ 6004
the location in this state from which the service originated. 6005

(G) If the vendor provides lodging to transient guests as 6006
specified in division (B)(2) of section 5739.01 of the Revised 6007
Code, the situs of the sale is ~~conclusively determined to be~~ 6008
~~consummated at~~ the location where the lodging is located. 6009

(H) If the vendor sells a warranty, maintenance or service 6010
contract, or similar agreement as specified in division (B)(7) of 6011
section 5739.01 of the Revised Code and the vendor is a delivery 6012
vendor, the situs of the sale is ~~conclusively determined to be~~ 6013
~~consummated at~~ the location of the consumer. If the vendor is not 6014
a delivery vendor, the situs of the sale is ~~conclusively~~ 6015
~~determined to be consummated at~~ the vendor's place of business 6016
where the contract or agreement was made, unless the warranty or 6017
contract is a component of the sale of a titled motor vehicle, 6018
titled watercraft, or titled outboard motor, in which case the 6019
situs of the sale is ~~conclusively determined to be consummated in~~ 6020
the county of titling. 6021

(I) Except as otherwise provided in this division, if the 6022
vendor sells a prepaid authorization number or a prepaid telephone 6023
calling card, the situs of the sale is ~~conclusively determined to~~ 6024
~~be consummated at~~ the vendor's place of business and shall be 6025
taxed at the time of sale. If the vendor sells a prepaid 6026
authorization number or prepaid telephone calling card through a 6027
telephone call, electronic commerce, or any other form of remote 6028
commerce, the situs of the sale is ~~conclusively determined to be~~ 6029
~~made at~~ the consumer's shipping address, or, if there is no item 6030
shipped, at the consumer's billing address. 6031

Sec. 5739.05. (A) The tax commissioner shall enforce and 6032
administer sections 5739.01 to 5739.31 of the Revised Code, which 6033
are hereby declared to be sections which the commissioner is 6034
required to administer within the meaning of sections 5703.17 to 6035
5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. The 6036
commissioner may adopt and promulgate, in accordance with sections 6037
119.01 to 119.13 of the Revised Code, such rules as ~~he~~ the 6038
commissioner deems necessary to administer sections 5739.01 to 6039
5739.31 of the Revised Code. 6040

(B) ~~The~~ Upon application, the commissioner may authorize a 6041
vendor to ~~prepay pay on a predetermined basis~~ the tax levied by or 6042
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 6043
the Revised Code upon sales of things produced or distributed or 6044
services provided by such vendor, and ~~he~~ the commissioner may 6045
waive the collection of the tax from the consumer; ~~but no such~~ 6046
~~authority shall be granted or exercised except upon application to~~ 6047
~~the.~~ The commissioner and shall not grant such authority unless 6048
the commissioner finds that the ~~conditions of the applicant's~~ 6049
~~business are such that the collection of the tax from the consumer~~ 6050
~~in the manner provided in sections 5739.01 to 5739.31 of the~~ 6051
~~Revised Code, would impose an unreasonable burden on the vendor;~~ 6052
~~nor shall the authority granted be exercised, nor the vendors~~ 6053
~~actually selling such products be exempted, from the other~~ 6054
~~provisions of sections 5739.01 to 5739.31 of the Revised Code,~~ 6055
~~unless the~~ granting of the authority would improve compliance and 6056
increase the efficiency of the administration of the tax. The 6057
person to whom such authority is granted ~~prints plainly upon the~~ 6058
~~product sold or offered for sale, a statement that the tax has~~ 6059
~~been paid in advance, or otherwise conveys said information to the~~ 6060
~~consumer, by written notice. The commissioner may require security~~ 6061
~~to his satisfaction to be filed with him, in such amount as he~~ 6062
~~determines to be sufficient to secure the prepayment under the~~ 6063

~~provisions of this section of the taxes levied by or pursuant to~~ 6064
~~section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised~~ 6065
~~Code in the manner desired shall post a notice, if required by the~~ 6066
~~commissioner, at the location where the product is offered for~~ 6067
~~sale that the tax is included in the selling price. The~~ 6068
~~comissioner may adopt rules to administer this division.~~ 6069

(C) The commissioner may authorize a vendor to pay, on the 6070
basis of a prearranged agreement under this division, the tax 6071
levied by section 5739.02 or pursuant to section 5739.021, 6072
5739.023, or 5739.026 of the Revised Code, and waive the 6073
requirement that the vendor maintain the complete and accurate 6074
record of individual taxable sales and tax collected thereon 6075
required by section 5739.11 of the Revised Code, upon application 6076
~~filed with him by~~ of the vendor, if ~~he~~ the commissioner finds that 6077
the conditions of the vendor-applicant's business are such that 6078
the maintenance of such records of individual taxable sales and 6079
tax collected thereon would impose an unreasonable burden upon the 6080
vendor. If the commissioner determines that such unreasonable 6081
burden has been imposed, the vendor and the commissioner shall 6082
agree to the terms and conditions of a test check to be conducted. 6083
If the parties are unable to agree to the terms and conditions of 6084
the test check, the application shall be denied. The test check 6085
conducted shall determine the proportion that taxable retail sales 6086
bear to all of ~~his~~ the vendor's retail sales and the ratio which 6087
the tax required to be collected under sections 5739.02, 5739.021, 6088
and 5739.023 of the Revised Code bears to the receipts from the 6089
vendor's taxable retail sales. 6090

The vendor shall collect the tax on ~~his~~ the vendor's taxable 6091
sales and ~~his~~ the vendor's liability for collecting or remitting 6092
shall be based upon the proportions and ratios established by the 6093
test check, and not upon any other basis of determination, until 6094
such time as a subsequent test check is made at the request of 6095

either the vendor or the commissioner where either party believes 6096
that the nature of the vendor's business has so changed as to make 6097
the prior or existing test check no longer representative. The 6098
commissioner may give notice to the vendor at any time that the 6099
authorization is revoked or the vendor may notify the commissioner 6100
that ~~he~~ the vendor no longer elects to report under the 6101
authorization. Such notice shall be delivered to the other party 6102
personally or by registered mail. The revocation or cancellation 6103
is not effective prior to the date of receipt of such notice. 6104

~~(D) The commissioner shall, for the audit of vendors' sales 6105
tax accounts and records, employ a sufficient number of auditors,
not less than one auditor for each one thousand vendors' 6106
certificates outstanding. 6107
6108~~

Sec. 5739.07. (A) When, pursuant to this chapter, a vendor 6109
has paid taxes to the treasurer of state or the treasurer of 6110
state's agent, or to the tax commissioner or the commissioner's 6111
agent, the commissioner shall refund to the vendor the amount of 6112
taxes paid if the vendor has refunded to the consumer the full 6113
amount of taxes the consumer paid illegally or erroneously or if 6114
the vendor has illegally or erroneously billed the consumer but 6115
has not collected the taxes from the consumer. 6116

(B) When, pursuant to this chapter, a consumer has paid taxes 6117
directly to the treasurer of state or the treasurer of state's 6118
agent, or to the tax commissioner or the commissioner's agent, and 6119
the payment or assessment was illegal or erroneous, the 6120
commissioner shall refund to the consumer the full amount of 6121
illegal or erroneous taxes paid. 6122

(C) The commissioner shall refund to the consumer taxes paid 6123
illegally or erroneously to a vendor only if: 6124

(1) The commissioner has not refunded the tax to the vendor 6125
and the vendor has not refunded the tax to the consumer; or 6126

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

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

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

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

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

Sec. 5739.104. The tax commissioner shall refund to a person subject to a tax under section 5739.101 of the Revised Code the amount of taxes paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for a refund shall

be filed with the commissioner, on a form prescribed by ~~him~~ the 6158
commissioner, within four years from the date of the illegal or 6159
erroneous payment of the tax, except where the person subject to 6160
the tax waives the time limitation under division (C) of section 6161
5739.16 of the Revised Code, in which case the four-year refund 6162
limitation shall be extended for the same period of time as the 6163
waiver. ~~On~~ 6164

On the filing of an application for a refund, the 6165
commissioner shall determine the amount of refund ~~due and to which~~ 6166
the applicant is entitled. If the amount is not less than that 6167
claimed, the commissioner shall certify ~~that the~~ amount to the 6168
treasurer of state for payment from the current resort area excise 6169
tax receipts of the municipal corporation or township from which 6170
the refund is due. ~~When~~ If the amount is less than that claimed, 6171
the commissioner shall proceed in accordance with section 5703.70 6172
of the Revised Code. 6173

If a refund is granted for payment of an illegal or erroneous 6174
assessment issued by the commissioner, the refund shall include 6175
interest computed at the rate per annum prescribed under section 6176
5703.47 of the Revised Code. 6177

Sec. 5739.13. (A) If any vendor collects the tax imposed by 6178
or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 6179
the Revised Code, and fails to remit the tax to the state as 6180
prescribed, or on the sale of a motor vehicle, watercraft, or 6181
outboard motor required to be titled, fails to remit payment to a 6182
clerk of a court of common pleas as provided in section 1548.06 or 6183
4505.06 of the Revised Code, the vendor shall be personally liable 6184
for any tax collected and not remitted. The tax commissioner may 6185
make an assessment against such vendor based upon any information 6186
in the commissioner's possession. 6187

If any vendor fails to collect the tax or any consumer fails 6188

to pay the tax imposed by or pursuant to section 5739.02, 6189
5739.021, 5739.023, or 5739.026 of the Revised Code, on any 6190
transaction subject to the tax, the vendor or consumer shall be 6191
personally liable for the amount of the tax applicable to the 6192
transaction. The commissioner may make an assessment against 6193
either the vendor or consumer, as the facts may require, based 6194
upon any information in the commissioner's possession. 6195

An assessment against a vendor when the tax imposed by or 6196
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 6197
the Revised Code has not been collected or paid, shall not 6198
discharge the purchaser's or consumer's liability to reimburse the 6199
vendor for the tax applicable to such transaction. 6200

An assessment issued against either, pursuant to this 6201
section, shall not be considered an election of remedies, nor a 6202
bar to an assessment against the other for the tax applicable to 6203
the same transaction, provided that no assessment shall be issued 6204
against any person for the tax due on a particular transaction if 6205
the tax on that transaction actually has been paid by another. 6206

The commissioner may make an assessment against any vendor 6207
who fails to file a return or remit the proper amount of tax 6208
required by this chapter, or against any consumer who fails to pay 6209
the proper amount of tax required by this chapter. When 6210
information in the possession of the commissioner indicates that 6211
the amount required to be collected or paid under this chapter is 6212
greater than the amount remitted by the vendor or paid by the 6213
consumer, the commissioner may audit a sample of the vendor's 6214
sales or the consumer's purchases for a representative period, to 6215
ascertain the per cent of exempt or taxable transactions or the 6216
effective tax rate and may issue an assessment based on the audit. 6217
The commissioner shall make a good faith effort to reach agreement 6218
with the vendor or consumer in selecting a representative sample 6219
period. 6220

The ~~tax~~ commissioner may make an assessment, based on any 6221
information in his possession, against any person who fails to 6222
file a return or remit the proper amount of tax required by 6223
section 5739.102 of the Revised Code. 6224

The ~~tax~~ commissioner may issue an assessment on any 6225
transaction for which any tax imposed under this chapter or 6226
Chapter 5741. of the Revised Code was due and unpaid on the date 6227
the vendor or consumer was informed by an agent of the tax 6228
commissioner of an investigation or audit. If the vendor or 6229
consumer remits any payment of the tax for the period covered by 6230
the assessment after the vendor or consumer was informed of the 6231
investigation or audit, the payment shall be credited against the 6232
amount of the assessment. 6233

The commissioner shall give the party assessed written notice 6234
of the assessment ~~as~~ in the manner provided in section 5703.37 of 6235
the Revised Code. With the notice, the commissioner shall provide 6236
instructions on how to petition for reassessment and request a 6237
hearing on the petition. 6238

(B) Unless the party to ~~whom the notice of assessment is~~ 6239
~~directed~~ assessed files with the commissioner within sixty days 6240
after service of the notice of assessment, either personally or by 6241
certified mail, a written petition for reassessment ~~in writing,~~ 6242
signed by the party assessed, ~~or by the~~ that party's authorized 6243
agent having knowledge of the facts, the assessment ~~shall become~~ 6244
becomes final and the amount of the assessment ~~shall be~~ is due 6245
from the party assessed and payable to the treasurer of state and 6246
remitted to the tax commissioner. The petition shall indicate the 6247
objections of the party assessed, but additional objections may be 6248
raised in writing if received by the commissioner prior to the 6249
date shown on the final determination ~~by the commissioner.~~ 6250

~~Unless the petitioner waives a hearing, the commissioner~~ 6251
~~shall assign a time and place for the hearing on the petition and~~ 6252

~~notify the petitioner of the time and place of the hearing by~~ 6253
~~personal service or certified mail, but the commissioner may~~ 6254
~~continue the hearing from time to time if necessary.~~ 6255

~~The commissioner may make such correction to the assessment~~ 6256
~~as the commissioner finds proper. The commissioner shall serve a~~ 6257
~~copy of the commissioner's final determination on the petitioner~~ 6258
~~by personal service or certified mail, and the commissioner's~~ 6259
~~decision in the matter shall be final, subject to appeal as~~ 6260
~~provided in section 5717.02 of the Revised Code. Only objections~~ 6261
~~decided on the merits by the board of tax appeals or a court shall~~ 6262
~~be given collateral estoppel or res judicata effect in considering~~ 6263
~~an application for refund of amounts paid pursuant to the~~ 6264
~~assessment. If the petition has been properly filed, the~~ 6265
~~commissioner shall proceed under section 5703.60 of the Revised~~ 6266
~~Code.~~ 6267

(C) After an assessment becomes final, if any portion of the 6268
assessment remains unpaid, including accrued interest, a certified 6269
copy of the commissioner's entry making the assessment final may 6270
be filed in the office of the clerk of the court of common pleas 6271
in the county in which the place of business of the party assessed 6272
is located or the county in which the party assessed resides. If 6273
the party assessed maintains no place of business in this state 6274
and is not a resident of this state, the certified copy of the 6275
entry may be filed in the office of the clerk of the court of 6276
common pleas of Franklin county. 6277

~~The clerk, immediately~~ Immediately upon the filing of ~~such~~ 6278
~~the entry, the clerk~~ shall enter a judgment for the state against 6279
the party assessed in the amount shown on the entry. The judgment 6280
may be filed by the clerk in a loose-leaf book entitled "special 6281
judgments for state, county, and transit authority retail sales 6282
tax" or, if appropriate, "special judgments for resort area excise 6283
tax," and shall have the same effect as other judgments. Execution 6284

shall issue upon the judgment upon the request of the tax 6285
commissioner, and all laws applicable to sales on execution shall 6286
apply to sales made under the judgment except as otherwise 6287
provided in this chapter. 6288

The portion of the assessment not paid within sixty days 6289
after the date the assessment was issued shall bear interest at 6290
the rate per annum prescribed by section 5703.47 of the Revised 6291
Code from the day the tax commissioner issues the assessment until 6292
the assessment is paid. Interest shall be paid in the same manner 6293
as the tax and may be collected by issuing an assessment under 6294
this section. 6295

(D) All money collected by the tax commissioner under this 6296
section shall be paid to the treasurer of state, and when paid 6297
shall be considered as revenue arising from the taxes imposed by 6298
or pursuant to sections 5739.01 to 5739.31 of the Revised Code. 6299

Sec. 5739.17. (A) No person shall engage in making retail 6300
sales subject to a tax imposed by or pursuant to section 5739.02, 6301
5739.021, 5739.023, or 5739.026 of the Revised Code as a business 6302
without having a license therefor, except as otherwise provided in 6303
divisions (A)(1), (2), and (3) of this section. 6304

(1) In the dissolution of a partnership by death, the 6305
surviving partner may operate under the license of the partnership 6306
for a period of sixty days. 6307

(2) The heirs or legal representatives of deceased persons, 6308
and receivers and trustees in bankruptcy, appointed by any 6309
competent authority, may operate under the license of the person 6310
so succeeded in possession. 6311

(3) Two or more persons who are not partners may operate a 6312
single place of business under one license. In such case neither 6313
the retirement of any such person from business at that place of 6314
business, nor the entrance of any person, under an existing 6315

arrangement, shall affect the license or require the issuance of a
new license, unless the person retiring from the business is the
individual named on the vendor's license.

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

At the time of making the application, the applicant shall
pay into the county treasury a license fee in the sum of
twenty-five dollars for each fixed place of business in the county
~~where that will be the situs of retail sales will be consummated.~~
Upon receipt of the application and exhibition of the county
treasurer's receipt, showing the payment of the license fee, the
county auditor shall issue to the applicant a license for each
fixed place of business designated in the application, authorizing
the applicant to engage in business at that location. If a
vendor's identity changes, the vendor shall apply for a new
license. If a vendor wishes to move an existing fixed place of
business to a new location within the same county, the vendor
shall obtain a new vendor's license or submit a request to the tax
commissioner to transfer the existing vendor's license to the new
location. When the new location has been verified as being within
the same county, the ~~tax~~ commissioner shall authorize the transfer
and notify the county auditor of the change of location. If a
vendor wishes to move an existing fixed place of business to
another county, the vendor's license shall not transfer and the
vendor shall obtain a new vendor's license from the county in

which the business is to be located. The form of the license shall 6348
be prescribed by the commissioner. The fees collected shall be 6349
credited to the general fund of the county. 6350

A vendor that makes retail sales subject to tax under Chapter 6351
5739. of the Revised Code pursuant to a permit issued by the 6352
division of liquor control shall obtain a vendor's license in the 6353
identical name and for the identical address as shown on the 6354
permit. 6355

Except as otherwise provided in this section, if a vendor has 6356
no fixed place of business and sells from a vehicle, each vehicle 6357
intended to be used within a county constitutes a place of 6358
business for the purpose of this section. 6359

(B) As used in this division, "transient vendor" means any 6360
person who makes sales of tangible personal property from vending 6361
machines located on land owned by others, who leases titled motor 6362
vehicles, titled watercraft, or titled outboard motors, who 6363
effectuates leases that are taxed according to division (H)(4) of 6364
section 5739.01 of the Revised Code, or who, in the usual course 6365
of the person's business, transports inventory, stock of goods, or 6366
similar tangible personal property to a temporary place of 6367
business or temporary exhibition, show, fair, flea market, or 6368
similar event in a county in which the person has no fixed place 6369
of business, for the purpose of making retail sales of such 6370
property. A "temporary place of business" means any public or 6371
quasi-public place including, but not limited to, a hotel, rooming 6372
house, storeroom, building, part of a building, tent, vacant lot, 6373
railroad car, or motor vehicle that is temporarily occupied for 6374
the purpose of making retail sales of goods to the public. A place 6375
of business is not temporary if the same person conducted business 6376
at the place continuously for more than six months or occupied the 6377
premises as the person's permanent residence for more than six 6378
months, or if the person intends it to be a fixed place of 6379

business. 6380

Any transient vendor, in lieu of obtaining a vendor's license 6381
under division (A) of this section for counties in which the 6382
transient vendor has no fixed place of business, may apply to the 6383
tax commissioner, on a form prescribed by the commissioner, for a 6384
transient vendor's license. The transient vendor's license 6385
authorizes the transient vendor to make retail sales in any county 6386
in which the transient vendor does not maintain a fixed place of 6387
business. Any holder of a transient vendor's license shall not be 6388
required to obtain a separate vendor's license from the county 6389
auditor in that county. Upon the ~~tax~~ commissioner's determination 6390
that an applicant is a transient vendor, the applicant shall pay a 6391
license fee in the amount of twenty-five dollars, at which time 6392
the tax commissioner shall issue the license. The tax commissioner 6393
may require a vendor to be licensed as a transient vendor if, in 6394
the opinion of the commissioner, such licensing is necessary for 6395
the efficient administration of the tax. 6396

Any holder of a valid transient vendor's license may make 6397
retail sales at a temporary place of business or temporary 6398
exhibition, show, fair, flea market, or similar event, held 6399
anywhere in the state without complying with any provision of 6400
section 311.37 of the Revised Code. Any holder of a valid vendor's 6401
license may make retail sales as a transient vendor at a temporary 6402
place of business or temporary exhibition, show, fair, flea 6403
market, or similar event held in any county in which the vendor 6404
maintains a fixed place of business for which the vendor holds a 6405
vendor's license without obtaining a transient vendor's license. 6406

(C) As used in this division, "service vendor" means any 6408
person who, in the usual course of the person's business, sells 6409
services described in division (B)(3)(e), (f), (g), (h), (i), (j), 6410
(k), (l), or (m) of section 5739.01 of the Revised Code. 6411

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

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

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

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

(2) The vendor rents or leases, at retail, tangible personal property, except titled motor vehicles, titled watercraft, or titled outboard motors;

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

(4) The vendor makes retail sales of warranty, maintenance or service contracts, or similar agreements as described in division

(B)(7) of section 5739.01 of the Revised Code. 6443

A transient vendor or a seller registered pursuant to section 6444
5741.17 of the Revised Code is not a delivery vendor. 6445

Delivery vendors shall apply to the tax commissioner, on a 6446
form prescribed by the commissioner, for a delivery vendor's 6447
license. Each applicant shall pay a license fee of twenty-five 6448
dollars for each delivery vendor's license, to be credited to the 6449
general revenue fund. Upon the commissioner's determination that 6450
the applicant is a delivery vendor, the commissioner shall issue 6451
the license. A delivery vendor's license authorizes retail sales 6452
to be made throughout the state. All sales of the vendor must be 6453
reported under the delivery license. The commissioner may require 6454
a vendor to be licensed as a delivery vendor if, in the opinion of 6455
the commissioner, such licensing is necessary for the efficient 6456
administration of the tax. The commissioner shall not issue a 6457
delivery vendor license to a vendor who holds a license issued 6458
under division (A) of this section. 6459

(E) Any transient vendor who is issued a license pursuant to 6460
this section shall display the license or a copy of it 6461
prominently, in plain view, at every place of business of the 6462
transient vendor. Every owner, organizer, or promoter who operates 6463
a fair, flea market, show, exhibition, convention, or similar 6464
event at which transient vendors are present shall keep a 6465
comprehensive record of all such vendors, listing the vendor's 6466
name, permanent address, vendor's license number, and the type of 6467
goods sold. Such records shall be kept for four years and shall be 6468
open to inspection by the tax commissioner. 6469

Sec. 5739.31. (A)(1) No person shall engage in the business 6470
of selling at retail or sell at retail incidental to any other 6471
regularly conducted business without having a license therefor, as 6472
required by sections 5739.01 to 5739.31 of the Revised Code. 6473

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

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

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

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

6504

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

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

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

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

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

(D) Except as otherwise provided in this section, whoever violates sections 5739.01 to 5739.31 of the Revised Code, or any

lawful rule promulgated by the department of taxation under 6536
authority of such sections, shall be fined not less than 6537
twenty-five nor more than one hundred dollars. 6538

(E) Whoever violates section 5739.12 of the Revised Code by 6539
failing to remit to the state the tax collected under section 6540
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code is 6541
guilty of a felony of the fourth degree and shall suffer the loss 6542
of ~~his~~ the person's vendor's license as required by section 6543
5739.17 of the Revised Code. A person shall not be eligible for a 6544
vendor's license for two years following conviction. 6545

(F) Whoever violates division ~~(D)~~ (E) of section 5739.17 of 6546
the Revised Code is guilty of failure to display a transient ~~or~~ 6547
~~limited~~ vendor's license, a minor misdemeanor. A sheriff or police 6548
officer in a municipal corporation may enforce this division. The 6549
prosecuting attorney of a county shall inform the tax commissioner 6550
of any instance when a complaint is brought against a transient ~~or~~ 6551
~~limited~~ vendor pursuant to this division. 6552

(G) Whoever violates section 5739.103 of the Revised Code 6553
shall be fined not less than twenty-five nor more than one hundred 6554
dollars. If the offender previously has been convicted of 6555
violating that section, ~~he~~ the offender is guilty of a felony of 6556
the fourth degree. 6557

(H) The penalties provided in this section are in addition to 6558
any penalties imposed by the tax commissioner under section 6559
5739.133 of the Revised Code. 6560

Sec. 5741.01. As used in this chapter: 6561

(A) "Person" includes individuals, receivers, assignees, 6562
trustees in bankruptcy, estates, firms, partnerships, 6563
associations, joint-stock companies, joint ventures, clubs, 6564
societies, corporations, business trusts, governments, and 6565

combinations of individuals of any form. 6566

(B) "Storage" means and includes any keeping or retention in 6567
this state for use or other consumption in this state. 6568

(C) "Use" means and includes the exercise of any right or 6569
power incidental to the ownership of the thing used. A thing is 6570
also "used" in this state if its consumer gives or otherwise 6571
distributes it, without charge, to recipients in this state. 6572

(D) "Purchase" means acquired or received for a 6573
consideration, whether such acquisition or receipt was effected by 6574
a transfer of title, or of possession, or of both, or a license to 6575
use or consume; whether such transfer was absolute or conditional, 6576
and by whatever means the transfer was effected; and whether the 6577
consideration was money, credit, barter, or exchange. Purchase 6578
includes production, even though the article produced was used, 6579
stored, or consumed by the producer. The transfer of copyrighted 6580
motion picture films for exhibition purposes is not a purchase, 6581
except such films as are used solely for advertising purposes. 6582

(E) "Seller" means the person from whom a purchase is made, 6583
and includes every person engaged in this state or elsewhere in 6584
the business of selling tangible personal property or providing a 6585
service for storage, use, or other consumption or benefit in this 6586
state; and when, in the opinion of the tax commissioner, it is 6587
necessary for the efficient administration of this chapter, to 6588
regard any salesman, representative, peddler, or canvasser as the 6589
agent of a dealer, distributor, supervisor, or employer under whom 6590
the person operates, or from whom the person obtains tangible 6591
personal property, sold by the person for storage, use, or other 6592
consumption in this state, irrespective of whether or not the 6593
person is making such sales on the person's own behalf, or on 6594
behalf of such dealer, distributor, supervisor, or employer, the 6595
commissioner may regard the person as such agent, and may regard 6596
such dealer, distributor, supervisor, or employer as the seller. 6597

"Seller" does not include any person to the extent the person
provides a communications medium, such as, but not limited to,
newspapers, magazines, radio, television, or cable television, by
means of which sellers solicit purchases of their goods or
services.

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

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

(G)(1) "Price," except in the case of watercraft, outboard
motors, or new motor vehicles, means the aggregate value in money
of anything paid or delivered, or promised to be paid or
delivered, by a consumer to a seller in the complete performance
of the transaction by which tangible personal property has been
purchased or a service has been provided for storage, use, or
other consumption or benefit in this state, without any deduction
or exclusion on account of the cost of the property sold, cost of
materials used, labor or service cost, interest, discount paid or
allowed after the sale is consummated, or any other expense. If
the transaction consists of the rental or lease of tangible
personal property, "price" means the aggregate value in money of
anything paid or delivered, or promised to be paid or delivered by
the lessee to the lessor, in the complete performance of the

rental or lease, without any deduction or exclusion of tax, 6630
interest, labor or service charge, damage liability waiver, 6631
termination or damage charge, discount paid or allowed after the 6632
lease is consummated, or any other expense. Except as provided in 6633
division (G)(6) of this section, the tax shall be calculated and 6634
collected by the lessor on each payment made by the lessee. If a 6635
consumer produces the tangible personal property used by the 6636
consumer, the price is the produced cost of such tangible personal 6637
property. The tax collected by the seller from the consumer under 6638
such sections is not a part of the price, but is a tax collection 6639
for the benefit of the state, and of counties levying an 6640
additional use tax pursuant to section 5741.021 or 5741.023 of the 6641
Revised Code and of transit authorities levying an additional use 6642
tax pursuant to section 5741.022 of the Revised Code and, except 6643
for the discount authorized under section 5741.12 of the Revised 6644
Code and the effects of any rounding pursuant to section 5703.055 6645
of the Revised Code, no person other than the state or such a 6646
county or transit authority shall derive any benefit from the 6647
collection or payment of such tax. 6648

(2) In the case of watercraft, outboard motors, or new motor 6649
vehicles, "price" has the same meaning as in division (H) of 6650
section 5739.01 of the Revised Code. 6651

(3) In the case of a nonresident business consumer that 6652
purchases and uses tangible personal property outside this state 6653
and subsequently temporarily stores, uses, or otherwise consumes 6654
such tangible personal property in the conduct of business in this 6655
state, the consumer or the tax commissioner may determine the 6656
price based on the value of the temporary storage, use, or other 6657
consumption, in lieu of determining the price pursuant to division 6658
(G)(1) of this section. A price determination made by the consumer 6659
is subject to review and redetermination by the commissioner. 6660

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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.

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

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

same meaning as in section 4501.01 of the Revised Code. 6694

(H) "Nexus with this state" means that the seller engages in 6695
continuous and widespread solicitation of purchases from residents 6696
of this state or otherwise purposefully directs its business 6697
activities at residents of this state. 6698

(I) "Substantial nexus with this state" means that the seller 6699
has sufficient contact with this state, in accordance with Section 6700
8 of Article I of the Constitution of the United States, to allow 6701
the state to require the seller to collect and remit use tax on 6702
sales of tangible personal property or services made to consumers 6703
in this state. "Substantial nexus with this state" exists when the 6704
seller does any of the following: 6705

(1) Maintains a place of business within this state, whether 6706
operated by employees or agents of the seller, by a member of an 6707
affiliated group, as described in division (B)(3)(e) of section 6708
5739.01 of the Revised Code, of which the seller is a member, or 6709
by a franchisee using a trade name of the seller; 6710

(2) Regularly has employees, agents, representatives, 6711
solicitors, installers, repairmen, salesmen, or other individuals 6712
in this state for the purpose of conducting the business of the 6713
seller; 6714

(3) Uses a person in this state for the purpose of receiving 6715
or processing orders of the seller's goods or services; 6716

(4) Makes regular deliveries of tangible personal property 6717
into this state by means other than common carrier; 6718

(5) Has membership in an affiliated group, as described in 6719
division (B)(3)(e) of section 5739.01 of the Revised Code, at 6720
least one other member of which has substantial nexus with this 6721
state; 6722

(6) Owns tangible personal property that is rented or leased 6723

to a consumer in this state, or offers tangible personal property, 6724
on approval, to consumers in this state; 6725

(7) Is registered with the secretary of state to do business 6726
in this state or is registered or licensed by any state agency, 6727
board, or commission to transact business in this state or to make 6728
sales to persons in this state; 6729

(8) Has any other contact with this state that would allow 6730
this state to require the seller to collect and remit use tax 6731
under Section 8 of Article I of the Constitution of the United 6732
States. 6733

(J) "Fiscal officer" means, with respect to a regional 6734
transit authority, the secretary-treasurer thereof, and with 6735
respect to a county which is a transit authority, the fiscal 6736
officer of the county transit board appointed pursuant to section 6737
306.03 of the Revised Code or, if the board of county 6738
commissioners operates the county transit system, the county 6739
auditor. 6740

(K) "Territory of the transit authority" means all of the 6741
area included within the territorial boundaries of a transit 6742
authority as they from time to time exist. Such territorial 6743
boundaries must at all times include all the area of a single 6744
county or all the area of the most populous county which is a part 6745
of such transit authority. County population shall be measured by 6746
the most recent census taken by the United States census bureau. 6747

(L) "Transit authority" means a regional transit authority 6748
created pursuant to section 306.31 of the Revised Code or a county 6749
in which a county transit system is created pursuant to section 6750
306.01 of the Revised Code. For the purposes of this chapter, a 6751
transit authority must extend to at least the entire area of a 6752
single county. A transit authority which includes territory in 6753
more than one county must include all the area of the most 6754

populous county which is a part of such transit authority. County
population shall be measured by the most recent census taken by
the United States census bureau.

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

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

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

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

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

the Revised Code. 6785

If information in the possession of the commissioner 6786
indicates that the tax paid by any consumer is less than that due, 6787
the commissioner may audit a representative sample of that 6788
consumer's purchases and may issue an assessment based thereon. 6789
The commissioner shall make a good faith effort to reach agreement 6790
with the consumer on selecting a representative sample. 6791

If information in the possession of the commissioner 6792
indicates that the amount required to be collected or paid under 6793
this chapter is greater than the amount remitted by the seller, 6794
the commissioner may audit a representative sample of the seller's 6795
sales to determine the per cent of exempt or taxable transactions 6796
or the effective tax rate and may issue an assessment based on the 6797
audit. The commissioner shall make a good faith effort to reach 6798
agreement with the seller in selecting a representative sample. 6799

Sec. 5743.05. All stamps provided for by section 5743.03 of 6800
the Revised Code, when procured by the tax commissioner, shall be 6801
immediately delivered to the treasurer of state, who shall execute 6802
a receipt therefor showing the number and aggregate face value of 6803
each denomination received by the treasurer of state and any other 6804
information that the commissioner requires to enforce the 6805
collection and distribution of all taxes imposed under section 6806
5743.024 or 5743.026 of the Revised Code, and deliver the receipt 6807
to the commissioner. The treasurer of state shall sell the stamps 6808
and, on the fifth day of each month, make a report showing all 6809
sales made during the preceding month, with the names of 6810
purchasers, the number of each denomination, the aggregate face 6811
value purchased by each, and any other information as the 6812
commissioner requires to enforce the collection and distribution 6813
of all taxes imposed under section 5743.024 of the Revised Code, 6814
and deliver it to the commissioner. The treasurer of state shall 6815
be accountable for all stamps received and unsold. The stamps 6816

shall be sold and accounted for at their face value, except the 6817
commissioner shall, by rule certified to the treasurer of state, 6818
authorize the sale of stamps and meter impressions to wholesale or 6819
retail dealers in this state, or to wholesale dealers outside this 6820
state, at a discount of not less than one and eight-tenths per 6821
cent or more than ten per cent of their face value, as a 6822
commission for affixing and canceling the stamps or meter 6823
impressions. 6824

The ~~tax~~ commissioner, by rule certified to the treasurer of 6825
state, shall authorize the delivery of stamps and meter 6826
impressions to wholesale and retail dealers in this state and to 6827
wholesale dealers outside this state on credit when the purchaser 6828
files with the commissioner a bond to the state in the amount and 6829
in the form prescribed by the commissioner, and with surety to the 6830
satisfaction of the treasurer of state, conditioned on payment to 6831
the treasurer of state within thirty days for stamps or meter 6832
impressions delivered within that time. The ~~tax~~ commissioner shall 6833
limit delivery of stamps and meter impressions on credit to the 6834
period running from the first day of July of the fiscal year until 6835
the first day of the following May. Any discount allowed as a 6836
commission for affixing and canceling stamps or meter impressions 6837
shall be allowed with respect to sales of stamps and meter 6838
impressions on credit. 6839

The treasurer of state shall redeem and pay for any 6840
destroyed, unused, or spoiled tax stamps and any unused meter 6841
impressions at their net value, and shall refund to wholesale 6842
dealers the net amount of state and county taxes paid erroneously 6843
or paid on cigarettes ~~which that~~ have been sold in interstate or 6844
foreign commerce or ~~which that~~ have become unsalable, and the net 6845
amount of county taxes that were paid on cigarettes that have been 6846
sold at retail or for retail sale outside a taxing county. ~~An~~ 6847

An application for a refund of tax shall be filed with the 6848

tax commissioner, on the form prescribed by the commissioner for 6849
that purpose, within three years from the date the tax stamps are 6850
destroyed or spoiled, from the date of the erroneous payment, or 6851
from the date that cigarettes on which taxes have been paid have 6852
been sold in interstate or foreign commerce or have become 6853
unsalable. ~~On~~ 6854

On the filing of the application, the commissioner shall 6855
determine the amount of refund due to which the applicant is 6856
entitled, payable from receipts of the state tax, and, if 6857
applicable, payable from receipts of a county tax and. If the 6858
amount is less than that claimed, the commission shall certify 6859
such amounts the amount to the director of budget and management 6860
and treasurer of state for payment from the tax refund fund 6861
created by section 5703.052 of the Revised Code. ~~When~~ If the 6862
amount is less than that claimed, the commissioner shall proceed 6863
in accordance with section 5703.70 of the Revised Code. 6864

If a refund is granted for payment of an illegal or erroneous 6865
assessment issued by the department, the refund shall include 6866
interest on the amount of the refund from the date of the 6867
overpayment. The interest shall be computed at the rate per annum 6868
prescribed by section 5703.47 of the Revised Code. 6869

Sec. 5743.081. (A) If any wholesale dealer or retail dealer 6870
fails to pay the tax levied under sections 5743.02, 5743.023, 6871
5743.024, or 5743.026 of the Revised Code as required by sections 6872
5743.01 to 5743.20 of the Revised Code, and by the rules of the 6873
tax commissioner, or fails to collect the tax from the purchaser 6874
or consumer, the commissioner may make an assessment against the 6875
wholesale or retail dealer based upon any information in the 6876
commissioner's possession. 6877

The commissioner may make an assessment against any wholesale 6878
or retail dealer who fails to file a return required by section 6879

5743.03 or 5743.025 of the Revised Code.

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No assessment shall be made against any wholesale or retail dealer for any taxes imposed under sections 5743.02, 5743.023, 5743.024, or 5743.026 of the Revised Code more than three years after the last day of the calendar month ~~which~~ that immediately follows the semiannual period prescribed in section 5743.03 of the Revised Code in which the sale was made, or more than three years after the semiannual return for such period is filed, whichever is later. This section does not bar an assessment against any wholesale or retail dealer who fails to file a return as required by section 5743.025 or 5743.03 ~~or 5743.025~~ of the Revised Code, or who files a fraudulent return.

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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. The notice shall specify separately any portion of the assessment that represents a county tax. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

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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, a written petition for reassessment ~~in writing,~~ signed by the party assessed, ~~or by the~~ that party's authorized agent having knowledge of the facts, the assessment ~~shall become~~ becomes final and the amount of the assessment ~~shall be~~ is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if

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received by the commissioner prior to the date shown on the final 6912
determination ~~by the commissioner.~~ 6913

~~Unless the petitioner waives a hearing, the commissioner 6914
shall assign a time and place for the hearing on the petition and 6915
notify the petitioner of the time and place of the hearing by 6916
personal service or certified mail, but the commissioner may 6917
continue the hearing from time to time if necessary.~~ 6918

~~The commissioner may make such correction to an assessment as 6919
the commissioner finds proper. The commissioner shall serve a copy 6920
of the final determination on the petitioner by personal service 6921
or certified mail, and the commissioner's decision in the matter 6922
shall be final, subject to appeal as provided in section 5717.02 6923
of the Revised Code. Only objections decided on the merits by the 6924
board of tax appeals or a court shall be given collateral estoppel 6925
or res judicata effect in considering an application for refund of 6926
amounts paid pursuant to the assessment. If the petition has been 6927
properly filed, the commissioner shall proceed under section 6928
5703.60 of the Revised Code. 6929~~

(C) After an assessment becomes final, if any portion of the 6930
assessment remains unpaid, including accrued interest, a certified 6931
copy of the tax commissioner's entry making the assessment final 6932
may be filed in the office of the clerk of the court of common 6933
pleas in the county in which the wholesale or retail dealer's 6934
place of business is located or the county in which the party 6935
assessed resides. If the party assessed maintains no place of 6936
business in this state and is not a resident of this state, the 6937
certified copy of the entry may be filed in the office of the 6938
clerk of the court of common pleas of Franklin county. 6939

~~The clerk, immediately~~ Immediately upon the filing of the 6940
commissioner's entry, the clerk shall enter a judgment for the 6941
state against the party assessed in the amount shown on the entry. 6942
The judgment may be filed by the clerk in a loose-leaf book 6943

entitled "special judgments for state cigarette sales tax," and 6944
shall have the same effect as other judgments. Execution shall 6945
issue upon the judgment upon the request of the tax commissioner, 6946
and all laws applicable to sales on execution shall apply to sales 6947
made under the judgment, except as otherwise provided in sections 6948
5743.01 to 5743.20 of the Revised Code. 6949

The portion of the assessment not paid within sixty days 6950
after the assessment was issued shall bear interest at the rate 6951
per annum prescribed by section 5703.47 of the Revised Code from 6952
the day the ~~tax~~ commissioner issues the assessment until it is 6953
paid. Interest shall be paid in the same manner as the ~~tax~~ and may 6954
be collected by the issuance of an assessment under this section. 6955

(D) All money collected by the tax commissioner under this 6957
section shall be paid to the treasurer of state, and when paid 6958
shall be considered as revenue arising from the taxes imposed by 6959
sections 5743.01 to 5743.20 of the Revised Code. 6960

Sec. 5743.53. (A) The treasurer of state shall refund to a 6961
taxpayer any of the following: 6962

(1) Any tobacco products tax paid erroneously; 6963

(2) Any tobacco products tax paid on an illegal or erroneous 6964
assessment; 6965

(3) Any tax paid on tobacco products that have been sold or 6966
shipped to retail or wholesale dealers outside this state, 6967
returned to the manufacturer, or destroyed by the taxpayer with 6968
the prior approval of the tax commissioner. 6969

Any application for refund shall be filed with the tax 6970
commissioner on a form prescribed by ~~him~~ the commissioner for that 6971
purpose. The commissioner may not pay any refund on an application 6972
for refund filed with the ~~tax~~ commissioner more than three years 6973

from the date of payment of the tax. 6974

(B) ~~Upon~~ On the filing of the application for refund, the 6975
commissioner shall determine the amount of the refund ~~due and to~~ 6976
which the applicant is entitled. If the amount is not less than 6977
that claimed, the commissioner shall certify ~~that the~~ amount to 6978
the director of budget and management and to the treasurer of 6979
state for payment from the tax refund fund created by section 6980
5703.052 of the Revised Code. ~~When~~ If the amount is less than that 6981
claimed, the commissioner shall proceed in accordance with section 6982
5703.70 of the Revised Code. 6983

If a refund is granted for payment of an illegal or erroneous 6984
assessment issued by the department of taxation, the refund shall 6985
include interest on the amount of the refund from the date of the 6986
overpayment. The interest shall be computed at the rate per annum 6987
in the manner prescribed by section 5703.47 of the Revised Code. 6988

(C) If any person entitled to a refund of tax under this 6989
section or section 5703.70 of the Revised Code is indebted to the 6990
state for any tax administered by the tax commissioner, or any 6991
charge, penalties, or interest arising from such tax, the amount 6992
allowable on the application for refund first shall be applied in 6993
satisfaction of the debt. 6994

(D) In lieu of granting a refund payable under division 6995
(A)(3) of this section, the tax commissioner may allow a taxpayer 6996
to claim a credit of the amount of refundable tax on the return 6997
for the period during which the tax became refundable. The 6998
commissioner may require taxpayers to submit any information 6999
necessary to support a claim for a credit under this section, and 7000
the commissioner shall allow no credit if that information is not 7001
provided. 7002

Sec. 5743.56. (A) Any person required to pay the tax imposed 7003
by section 5743.51, 5743.62, or 5743.63 of the Revised Code is 7004

personally liable for the tax. The tax commissioner may make an 7005
assessment, based upon any information in the commissioner's 7006
possession, against any person who fails to file a return or pay 7007
any tax, interest, or additional charge as required by this 7008
chapter. The commissioner shall give the person assessed written 7009
notice of such assessment ~~as~~ in the manner provided in section 7010
5703.37 of the Revised Code. With the notice, the commissioner 7011
shall provide instructions on how to petition for reassessment and 7012
request a hearing on the petition. 7013

(B) When the information in the possession of the tax 7014
commissioner indicates that a person liable for the tax imposed by 7015
section 5743.51, 5743.62, or 5743.63 of the Revised Code has not 7016
paid the full amount of tax due, the commissioner may audit a 7017
representative sample of the person's business and may issue an 7018
assessment based on such audit. 7019

(C) A penalty of up to fifteen per cent may be added to all 7020
amounts assessed under this section. The tax commissioner may 7021
adopt rules providing for the imposition and remission of such 7022
penalties. 7023

(D) Unless the person assessed files with the tax 7024
commissioner within sixty days after service of the notice of 7025
assessment, either personally or by certified mail, a written 7026
petition for reassessment ~~in writing~~ signed by the person assessed 7027
or ~~the~~ that person's authorized agent ~~of the person assessed~~ 7028
having knowledge of the facts, the assessment becomes final and 7029
the amount of the assessment is due and payable from the person 7030
assessed to the treasurer of state. A petition shall indicate the 7031
objections ~~to the assessment~~ of the person assessed, but 7032
additional objections may be raised in writing if received by the 7033
commissioner prior to the date shown on the final determination ~~of~~ 7034
~~the tax commissioner. The commissioner shall grant the petitioner~~ 7035
~~a hearing on the petition, unless waived by the petitioner.~~ 7036

~~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.~~ 7037
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(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. 7046
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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 person assessed in the amount shown ~~to be due on the entry~~. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state tobacco products tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the ~~tax~~ commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.~~ 7056
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The portion of the assessment not paid within sixty days after the day the assessment is issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the ~~tax~~ commissioner issues the assessment until the 7065
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assessment is paid. Interest shall be paid in the same manner as 7069
the tax and may be collected by issuing an assessment under this 7070
section. 7071

(F) If the tax commissioner believes that collection of the 7072
tax will be jeopardized unless proceedings to collect or secure 7073
collection of the tax are instituted without delay, the 7074
commissioner may issue a jeopardy assessment against the person 7075
liable for the tax. ~~Upon~~ Immediately upon the issuance of the 7076
jeopardy assessment, the commissioner ~~immediately~~ shall file an 7077
entry with the clerk of the court of common pleas in the manner 7078
prescribed by division (E) of this section. Notice of the jeopardy 7079
assessment shall be served on the person assessed or the legal 7080
representative of the person assessed, as provided in section 7081
5703.37 of the Revised Code, within five days of the filing of the 7082
entry with the clerk. The total amount assessed is immediately due 7083
and payable, unless the person assessed files a petition for 7084
reassessment in accordance with division (D) of this section and 7085
provides security in a form satisfactory to the commissioner and 7086
in an amount sufficient to satisfy the unpaid balance of the 7087
assessment. Full or partial payment of the assessment does not 7088
prejudice the commissioner's consideration of the petition for 7089
reassessment. 7090

(G) All money collected by the tax commissioner under this 7091
section shall be paid to the treasurer of state as revenue arising 7092
from the tax imposed by sections 5743.51, 5743.62, and 5743.63 of 7093
the Revised Code. 7094

Sec. 5745.11. An application to refund to a taxpayer the 7095
amount of taxes paid on any illegal, erroneous, or excessive 7096
payment of tax under this chapter, including assessments, shall be 7097
filed with the tax commissioner within three years after the date 7098
of the illegal, erroneous, or excessive payment of the tax, or 7099
within any additional period allowed by division (A) of section 7100

5745.12 of the Revised Code. The application shall be filed in the form prescribed by the tax commissioner.

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

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

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

Sec. 5745.12. (A) If any taxpayer required to file a report under this chapter fails to file the report within the time prescribed, files an incorrect report, or fails to remit the full amount of the tax due for the period covered by the report, the tax commissioner may make an assessment against the taxpayer for

any deficiency for the period for which the report or tax is due, 7132
based upon any information in the commissioner's possession. 7133

The tax commissioner shall not make or issue an assessment 7134
against a taxpayer more than three years after the later of the 7135
final date the report subject to assessment was required to be 7136
filed or the date the report was filed. Such time limit may be 7137
extended if both the taxpayer and the commissioner consent in 7138
writing to the extension. Any such extension shall extend the 7139
three-year time limit in section 5745.11 of the Revised Code for 7140
the same period of time. There shall be no bar or limit to an 7141
assessment against a taxpayer that fails to file a report subject 7142
to assessment as required by this chapter, or that files a 7143
fraudulent report. The commissioner shall give the ~~party~~ taxpayer 7144
assessed written notice of the assessment ~~by personal service or~~ 7145
~~certified mail as provided in section 5703.37 of the Revised Code.~~ 7146
With the notice, the commissioner shall provide instructions on 7147
how to petition for reassessment and request a hearing on the 7148
petition. 7149

(B) Unless the taxpayer ~~to which the notice of assessment is~~ 7150
~~directed~~ assessed files with the tax commissioner within sixty 7151
days after service ~~thereof~~ of the notice of assessment, either 7152
personally or by certified mail, a written petition for 7153
reassessment ~~in writing~~, signed by the authorized agent of the 7154
taxpayer assessed having knowledge of the facts, ~~and makes payment~~ 7155
~~of the portion of the assessment required by division (E) of this~~ 7156
~~section~~, the assessment ~~shall become~~ becomes final, and the amount 7157
of the assessment ~~shall be~~ is due and payable from the taxpayer to 7158
the treasurer of state. The petition shall indicate the taxpayer's 7159
objections, but additional objections may be raised in writing if 7160
received by the commissioner prior to the date shown on the final 7161
determination ~~by the commissioner.~~ 7162

~~Unless the petitioner waives a hearing, the commissioner~~ 7163

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

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

(C) After an assessment becomes final, if any portion of the
assessment remains unpaid, including accrued interest, a certified
copy of the tax commissioner's entry making the assessment final
may be filed in the office of the clerk of the court of common
pleas in the county in which the taxpayer has an office or place
of business in this state, the county in which the taxpayer's
statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall
enter a judgment against the taxpayer assessed in the amount shown
on the entry. The judgment may be filed by the clerk in a
loose-leaf book entitled "special judgments for municipal income
taxes," and shall have the same effect as other judgments.
Execution shall issue upon the judgment upon the request of the
tax commissioner, and all laws applicable to sales on execution
shall apply to sales made under the judgment.

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

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per annum prescribed by section 5703.47 of the Revised Code from
the day the ~~tax~~ commissioner issues the assessment until the
assessment is paid. Interest shall be paid in the same manner as
the tax and may be collected by issuing an assessment under this
section.

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(D) All money collected under this section shall be credited
and distributed to the municipal corporation to which the money is
owed based on the assessment issued under this section.

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

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~~(1) If the sole item objected to is the assessed penalty or
interest, payment of the assessment excluding any penalty is
required.~~

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

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~~(3) If the taxpayer that is assessed filed, prior to the date
of issuance of the assessment, the annual report required by
section 5745.03 of the Revised Code, and a balance of the taxes
shown due on the reports as computed on the reports remains
unpaid, payment of only that portion of the assessment
representing the unpaid balance is required.~~

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~~(4) If none of the conditions specified in divisions (E)(1)
to (3) of this section apply, no payment is required If the tax
commissioner believes that collection of the tax imposed by this
chapter will be jeopardized unless proceedings to collect or
secure collection of the tax are instituted without delay, the
commissioner may issue a jeopardy assessment against the taxpayer
liable for the tax. Immediately upon the issuance of the jeopardy
assessment, the commissioner shall file an entry with the clerk of~~

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the court of common pleas in the manner prescribed by division (C) 7227
of this section. Notice of the jeopardy assessment shall be served 7228
on the taxpayer assessed or the taxpayer's legal representative in 7229
the manner provided in section 5703.37 of the Revised Code within 7230
five days of the filing of the entry with the clerk. The total 7231
amount assessed is immediately due and payable, unless the 7232
taxpayer assessed files a petition for reassessment in accordance 7233
with division (B) of this section and provides security in a form 7234
satisfactory to the commissioner and in an amount sufficient to 7235
satisfy the unpaid balance of the assessment. Full or partial 7236
payment of the assessment does not prejudice the commissioner's 7237
consideration of the petition for reassessment. 7238

(F) Notwithstanding the fact that a petition for reassessment 7239
is pending, the taxpayer may pay all or a portion of the 7240
assessment that is the subject of the petition. The acceptance of 7241
a payment by the treasurer of state does not prejudice any claim 7242
for refund upon final determination of the petition. 7243

If upon final determination of the petition an error in the 7245
assessment is corrected by the tax commissioner, upon petition so 7246
filed or pursuant to a decision of the board of tax appeals or any 7247
court to which the determination or decision has been appealed, so 7248
that the amount due from the taxpayer under the corrected 7249
assessment is less than the portion paid, there shall be issued to 7250
the taxpayer, its assigns, or legal representative a refund in the 7251
amount of the overpayment as provided by section 5745.11 of the 7252
Revised Code, with interest on that amount as provided by section 7253
5745.11 of the Revised Code. 7254

Sec. 5747.025. (A) The personal exemption for the taxpayer 7255
and the taxpayer's spouse shall be seven hundred fifty dollars 7256
each for the taxable year beginning in 1996, eight hundred fifty 7257
dollars each for the taxable year beginning in 1997, nine hundred 7258

fifty dollars each for the taxable year beginning in 1998, and one 7259
thousand fifty dollars each for the taxable year beginning in 1999 7260
and taxable years beginning after 1999. The personal exemption 7261
amount prescribed in this division for taxable years beginning 7262
after 1999 shall be adjusted each year in the manner prescribed in 7263
division (C) of this section. 7264

(B) The personal exemption for each dependent shall be eight 7265
hundred fifty dollars for the taxable year beginning in 1996, and 7266
one thousand fifty dollars for the taxable year beginning in 1997 7267
and taxable years beginning after 1997. The personal exemption 7268
amount prescribed in this division for taxable years beginning 7269
after 1999 shall be adjusted each year in the manner prescribed in 7270
division (C) of this section. 7271

(C) ~~Each~~ In September of each year, beginning in 2000, the 7272
tax commissioner shall determine the percentage increase in the 7273
gross domestic product deflator determined by the bureau of 7274
economic analysis of the United States department of commerce from 7275
the first day of ~~July~~ January of the preceding calendar year to 7276
the last day of ~~June~~ December of the ~~current~~ preceding year, and 7277
adjust the personal exemption amount for taxable years beginning 7278
in the current calendar year by multiplying that amount by the 7279
percentage increase in the gross domestic product deflator for 7280
that period; adding the resulting product to the personal 7281
exemption amount for taxable years beginning in the preceding 7282
calendar year; and rounding the resulting sum upward to the 7283
nearest multiple of fifty dollars. The ~~tax~~ commissioner shall not 7284
make such an adjustment in any calendar year in which the amount 7285
resulting from the adjustment would be less than the amount 7286
resulting from the adjustment in the preceding calendar year. 7287

Sec. 5747.06. (A) Except as provided in division (E)(3) of 7288
this section, every employer, including the state and its 7289
political subdivisions, maintaining an office or transacting 7290

business within this state and making payment of any compensation 7291
to an employee who is a taxpayer shall deduct and withhold from 7292
such compensation for each payroll period a tax computed in such 7293
manner as to result, as far as practicable, in withholding from 7294
the employee's compensation during each calendar year an amount 7295
substantially equivalent to the tax reasonably estimated to be due 7296
from the employee under this chapter and Chapter 5748. of the 7297
Revised Code with respect to the amount of such compensation 7298
included in ~~his~~ the employee's adjusted gross income during the 7299
calendar year. The employer shall deduct and withhold the tax on 7300
the date that the employer directly, indirectly, or constructively 7301
pays the compensation to, or credits the compensation to the 7302
benefit of, the employee. The method of determining the amount to 7303
be withheld shall be prescribed by rule of the tax commissioner. 7304

In addition to any other exclusions from withholding 7305
permitted under this section, no tax shall be withheld by an 7306
employer from the compensation of an employee when such 7307
compensation is paid for: 7308

(1) Agricultural labor as defined in division G of section 7309
3121 of Title 26 of the United States Code; 7310

(2) Domestic service in a private home, local college club, 7311
or local chapter of a college fraternity or sorority; 7312

(3) Service performed in any calendar quarter by an employee 7313
unless the cash remuneration paid for such service is three 7314
hundred dollars or more and such service is performed by an 7315
individual who is regularly employed by such employer to perform 7316
such service; 7317

(4) Services performed for a foreign government or an 7318
international organization; 7319

(5) Services performed by an individual under the age of 7320
eighteen in the delivery or distribution of newspapers or shopping 7321

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

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

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

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

(D) If an employer fails to deduct and withhold any tax as
required, and thereafter the tax is paid, the tax so required to

be deducted and withheld shall not be collected from the employer, 7354
but the employer is not relieved from liability for penalties and 7355
interest otherwise applicable in respect to the failure to deduct 7356
and withhold the tax. 7357

(E) To ensure that taxes imposed pursuant to Chapter 5748. of 7358
the Revised Code are deducted and withheld as provided in this 7359
section: 7360

(1) ~~Each~~ An employer shall request that each ~~of his employees~~ 7361
employee furnish the name of the employee's school district of 7362
residence; 7363

(2) Each employee shall furnish ~~his~~ the employer with 7364
sufficient and correct information to enable the employer to 7365
withhold the taxes imposed under Chapter 5748. of the Revised 7366
Code. The employee shall provide additional or corrected 7367
information whenever information previously provided ~~by him~~ to ~~his~~ 7368
the employer becomes insufficient or incorrect. 7369

(3) If the employer complies with the requirements of 7370
division (E)(1) of this section and if the employee fails to 7371
comply with the requirements of division (E)(2) of this section, 7372
the employer is not required to withhold and pay the taxes imposed 7373
under Chapter 5748. of the Revised Code and is not subject to any 7374
penalties and interest otherwise applicable for failing to deduct 7375
and withhold such taxes. 7376

Sec. 5747.08. An annual return with respect to the tax 7377
imposed by section 5747.02 of the Revised Code and each tax 7378
imposed under Chapter 5748. of the Revised Code shall be made by 7379
every taxpayer for any taxable year for which the taxpayer is 7380
liable for the tax imposed by that section or under that chapter, 7381
unless the total credits allowed under divisions (E), (F), and (G) 7382
of section 5747.05 of the Revised Code for the year are equal to 7383
or exceed the tax imposed by section 5747.02 of the Revised Code, 7384

in which case no return shall be required unless the taxpayer is 7385
liable for a tax imposed pursuant to Chapter 5748. of the Revised 7386
Code. 7387

(A) If an individual is deceased, any return or notice 7388
required of that individual under this chapter shall be made and 7389
filed by that decedent's executor, administrator, or other person 7390
charged with the property of that decedent. 7391

(B) If an individual is unable to make a return or notice 7392
required by this chapter, the return or notice required of that 7393
individual shall be made and filed by the individual's duly 7394
authorized agent, guardian, conservator, fiduciary, or other 7395
person charged with the care of the person or property of that 7396
individual. 7397

(C) Returns or notices required of an estate or a trust shall 7398
be made and filed by the fiduciary of the estate or trust. 7399

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 7400
of this section, any pass-through entity may file a single return 7401
on behalf of one or more of the entity's investors other than an 7402
investor that is a person subject to the tax imposed under section 7403
5733.06 of the Revised Code. The single return shall set forth the 7404
name, address, and social security number or other identifying 7405
number of each of those pass-through entity investors and shall 7406
indicate the distributive share of each of those pass-through 7407
entity investor's income taxable in this state in accordance with 7408
sections 5747.20 to 5747.231 of the Revised Code. Such 7409
pass-through entity investors for whom the pass-through entity 7410
elects to file a single return are not entitled to the exemption 7411
or credit provided for by sections 5747.02 and 5747.022 of the 7412
Revised Code; shall calculate the tax before business credits at 7413
the highest rate of tax set forth in section 5747.02 of the 7414
Revised Code for the taxable year for which the return is filed; 7415
and are entitled to only their distributive share of the business 7416

credits as defined in division (D)(2) of this section. A single 7417
check drawn by the pass-through entity shall accompany the return 7418
in full payment of the tax due, as shown on the single return, for 7419
such investors, other than investors who are persons subject to 7420
the tax imposed under section 5733.06 of the Revised Code. 7421

(b)(i) A pass-through entity shall not include in such a 7422
single return any investor that is a trust to the extent that any 7423
direct or indirect current, future, or contingent beneficiary of 7424
the trust is a person subject to the tax imposed under section 7425
5733.06 of the Revised Code. 7426

(ii) A pass-through entity shall not include in such a single 7427
return any investor that is itself a pass-through entity to the 7428
extent that any direct or indirect investor in the second 7429
pass-through entity is a person subject to the tax imposed under 7430
section 5733.06 of the Revised Code. 7431

(c) Nothing in division (D) of this section precludes the tax 7432
commissioner from requiring such investors to file the return and 7433
make the payment of taxes and related interest, penalty, and 7434
interest penalty required by this section or section 5747.02, 7435
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 7436
of this section shall be construed to provide to such an investor 7437
or pass-through entity any additional deduction or credit, other 7438
than the credit provided by division (J) of this section, solely 7439
on account of the entity's filing a return in accordance with this 7440
section. Such a pass-through entity also shall make the filing and 7441
payment of estimated taxes on behalf of the pass-through entity 7442
investors other than an investor that is a person subject to the 7443
tax imposed under section 5733.06 of the Revised Code. 7444

(2) For the purposes of this section, "business credits" 7445
means the credits listed in section 5747.98 of the Revised Code 7446
excluding the following credits: 7447

(a) The retirement credit under division (B) of section 7448

5747.055 of the Revised Code;	7449
(b) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;	7450 7451
(c) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;	7452 7453
(d) The dependent care credit under section 5747.054 of the Revised Code;	7454 7455
(e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	7456 7457
(f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	7458 7459
(g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	7460 7461
(h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	7462 7463
(i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	7464 7465
(j) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	7466 7467
(k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	7468 7469
(l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code.	7470 7471
(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any	7472 7473 7474 7475 7476 7477

deduction or credit that would not be allowable if a nonresident
pass-through entity investor were to file an annual return. 7478
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(4) If a pass-through entity makes the election provided for 7480
under division (D) of this section, the pass-through entity shall 7481
be liable for any additional taxes, interest, interest penalty, or 7482
penalties imposed by this chapter if the ~~tax~~ commissioner 7483
~~determines~~ finds that the single return does not reflect the 7484
correct tax due by ~~nonresident~~ the pass-through entity investors 7485
covered by that return. Nothing in this division shall be 7486
construed to limit or alter the liability, if any, imposed on 7487
pass-through entity investors for unpaid or underpaid taxes, 7488
interest, interest penalty, or penalties as a result of the 7489
pass-through entity's making the election provided for under 7490
division (D) of this section. For the purposes of division (D) of 7491
this section, "correct tax due" means the tax that would have been 7492
paid by the pass-through entity had the single return been filed 7493
in a manner reflecting ~~and including~~ the commissioner's findings 7494
~~and determinations made by the tax commissioner~~. Nothing in 7495
division (D) of this section shall be construed to make or hold a 7496
pass-through entity liable for tax attributable to a pass-through 7497
entity investor's income from a source other than the pass-through 7498
entity electing to file the single return. 7499

(E) If a husband and wife file a joint federal income tax 7500
return for a taxable year, they shall file a joint return under 7501
this section for that taxable year, and their liabilities are 7502
joint and several, but, if the federal income tax liability of 7503
either spouse is determined on a separate federal income tax 7504
return, they shall file separate returns under this section. 7505

If either spouse is not required to file a federal income tax 7506
return and either or both are required to file a return pursuant 7507
to this chapter, they may elect to file separate or joint returns, 7508
and, pursuant to that election, their liabilities are separate or 7509

joint and several. If a husband and wife file separate returns 7510
pursuant to this chapter, each must claim the taxpayer's own 7511
exemption, but not both, as authorized under section 5747.02 of 7512
the Revised Code on the taxpayer's own return. 7513

(F) Each return or notice required to be filed under this 7514
section shall contain the signature of the taxpayer or the 7515
taxpayer's duly authorized agent and of the person who prepared 7516
the return for the taxpayer, and shall include the taxpayer's 7517
social security number. Each return shall be verified by a 7518
declaration under the penalties of perjury. The tax commissioner 7519
shall prescribe the form that the signature and declaration shall 7520
take. 7521

(G) Each return or notice required to be filed under this 7522
section shall be made and filed as required by section 5747.04 of 7523
the Revised Code, on or before the fifteenth day of April of each 7524
year, on forms that the tax commissioner shall prescribe, together 7525
with remittance made payable to the treasurer of state in the 7526
combined amount of the state and all school district income taxes 7527
shown to be due on the form, unless the combined amount shown to 7528
be due is one dollar or less, in which case that amount need not 7529
be remitted. 7530

Upon good cause shown, the commissioner may extend the period 7531
for filing any notice or return required to be filed under this 7532
section and may adopt rules relating to extensions. If the 7533
extension results in an extension of time for the payment of any 7534
state or school district income tax liability with respect to 7535
which the return is filed, the taxpayer shall pay at the time the 7536
tax liability is paid an amount of interest computed at the rate 7537
per annum prescribed by section 5703.47 of the Revised Code on 7538
that liability from the time that payment is due without extension 7539
to the time of actual payment. Except as provided in section 7540
5747.132 of the Revised Code, in addition to all other interest 7541

charges and penalties, all taxes imposed under this chapter or 7542
Chapter 5748. of the Revised Code and remaining unpaid after they 7543
become due, except combined amounts due of one dollar or less, 7544
bear interest at the rate per annum prescribed by section 5703.47 7545
of the Revised Code until paid or until the day an assessment is 7546
issued under section 5747.13 of the Revised Code, whichever occurs 7547
first. 7548

If the commissioner considers it necessary in order to ensure 7549
the payment of the tax imposed by section 5747.02 of the Revised 7550
Code or any tax imposed under Chapter 5748. of the Revised Code, 7551
the commissioner may require returns and payments to be made 7552
otherwise than as provided in this section. 7553

(H) If any report, claim, statement, or other document 7554
required to be filed, or any payment required to be made, within a 7555
prescribed period or on or before a prescribed date under this 7556
chapter is delivered after that period or that date by United 7557
States mail to the agency, officer, or office with which the 7558
report, claim, statement, or other document is required to be 7559
filed, or to which the payment is required to be made, the date of 7560
the postmark stamped on the cover in which the report, claim, 7561
statement, or other document, or payment is mailed shall be deemed 7562
to be the date of delivery or the date of payment. 7563

If a payment is required to be made by electronic funds 7564
transfer pursuant to section 5747.072 of the Revised Code, the 7565
payment is considered to be made when the payment is received by 7566
the treasurer of state or credited to an account designated by the 7567
treasurer of state for the receipt of tax payments. 7568

"The date of the postmark" means, in the event there is more 7569
than one date on the cover, the earliest date imprinted on the 7570
cover by the United States postal service. 7571

(I) The amounts withheld by the employer pursuant to section 7572

5747.06 of the Revised Code shall be allowed to the recipient of 7573
the compensation as credits against payment of the appropriate 7574
taxes imposed on the recipient by section 5747.02 and under 7575
Chapter 5748. of the Revised Code. 7576

(J) If, in accordance with division (D) of this section, a 7577
pass-through entity elects to file a single return and if any 7578
investor is required to file the return and make the payment of 7579
taxes required by this chapter on account of the investor's other 7580
income that is not included in a single return filed by a 7581
pass-through entity, the investor is entitled to a refundable 7582
credit equal to the investor's proportionate share of the tax paid 7583
by the pass-through entity on behalf of the investor. The investor 7584
shall claim the credit for the investor's taxable year in which or 7585
with which ends the taxable year of the pass-through entity. 7586
Nothing in this chapter shall be construed to allow any credit 7587
provided in this chapter to be claimed more than once. For the 7588
purposes of computing any interest, penalty, or interest penalty, 7589
the investor shall be deemed to have paid the refundable credit 7590
provided by this division on the day that the pass-through entity 7591
paid the estimated tax or the tax giving rise to the credit. 7592
7593

Sec. 5747.13. (A) If any employer collects the tax imposed by 7594
section 5747.02 or under Chapter 5748. of the Revised Code and 7595
fails to remit the tax as required by law, or fails to collect the 7596
tax, the employer is personally liable for any amount collected 7597
~~which~~ that the employer fails to remit, or any amount ~~which~~ that 7598
the employer fails to collect. If any taxpayer fails to file a 7599
return or fails to pay the tax imposed by section 5747.02 or under 7600
Chapter 5748. of the Revised Code, the taxpayer is personally 7601
liable for the amount of the tax. 7602

If any employer, taxpayer, or qualifying entity required to 7603

file a return under this chapter fails to file the return within
the time prescribed, files an incorrect return, fails to remit the
full amount of the taxes due for the period covered by the return,
or fails to remit any additional tax due as a result of a
reduction in the amount of the credit allowed under division (B)
of section 5747.05 of the Revised Code together with interest on
the additional tax within the time prescribed by that division,
the tax commissioner may make an assessment against any person
liable for any deficiency for the period for which the return is
or taxes are due, based upon any information in the commissioner's
possession.

An assessment issued against either the employer or the
taxpayer pursuant to this section shall not be considered an
election of remedies or a bar to an assessment against the other
for failure to report or pay the same tax. No assessment shall be
issued against any person if the tax actually has been paid by
another.

No assessment shall be made or issued against an employer,
taxpayer, or qualifying entity more than four years after the
final date the return subject to assessment was required to be
filed or the date the return was filed, whichever is later.
However, the commissioner may assess any balance due as the result
of a reduction in the credit allowed under division (B) of section
5747.05 of the Revised Code, including applicable penalty and
interest, within four years of the date on which the taxpayer
reports a change in either the portion of the taxpayer's adjusted
gross income subjected to an income tax or tax measured by income
in another state or the District of Columbia, or the amount of
liability for an income tax or tax measured by income to another
state or the District of Columbia, as required by division (B)(3)
of section 5747.05 of the Revised Code. Such time limits may be
extended if both the employer, taxpayer, or qualifying entity and

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the commissioner consent in writing to the extension or if an 7636
agreement waiving or extending the time limits has been entered 7637
into pursuant to section 122.171 of the Revised Code. Any such 7638
extension shall extend the four-year time limit in division (B) of 7639
section 5747.11 of the Revised Code for the same period of time. 7640
There shall be no bar or limit to an assessment against an 7641
employer for taxes withheld from employees and not remitted to the 7642
state, against an employer, taxpayer, or qualifying entity that 7643
fails to file a return subject to assessment as required by this 7644
chapter, or against an employer, taxpayer, or qualifying entity 7645
that files a fraudulent return. 7646

The commissioner shall give the party assessed written notice 7647
of the assessment ~~as in the manner~~ provided in section 5703.37 of 7648
the Revised Code. With the notice, the commissioner shall provide 7649
instructions on how to petition for reassessment and request a 7650
hearing on the petition. 7651

(B) Unless the party ~~to whom the notice of assessment is~~ 7652
~~directed assessed~~ files with the tax commissioner within sixty 7653
days after service of the notice of assessment, either personally 7654
or by certified mail, a written petition for reassessment ~~in~~ 7655
~~writing~~, signed by the party assessed, ~~or by the~~ that party's 7656
authorized agent having knowledge of the facts ~~and makes payment~~ 7657
~~of the portion of the assessment required by division (E) of this~~ 7658
~~section, the assessment shall become~~ becomes final, and the amount 7659
of the assessment ~~shall be~~ is due and payable from the party 7660
assessed to the commissioner with remittance made payable to the 7661
treasurer of state. The petition shall indicate the objections of 7662
the party assessed, but additional objections may be raised in 7663
writing if received by the commissioner prior to the date shown on 7664
the final determination ~~by the commissioner.~~ 7665

~~Unless the petitioner waives a hearing, the commissioner~~ 7666
~~shall assign a time and place for the hearing on the petition and~~ 7667

~~notify the petitioner of the time and place of the hearing by
personal service or certified mail, but the commissioner may
continue the hearing from time to time if necessary.~~

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

(C) After an assessment becomes final, if any portion of the
assessment remains unpaid, including accrued interest, a certified
copy of the tax commissioner's entry making the assessment final
may be filed in the office of the clerk of the court of common
pleas in the county in which the employer's, taxpayer's, or
qualifying entity's place of business is located or the county in
which the party assessed resides. If the party assessed is not a
resident of this state, the certified copy of the entry may be
filed in the office of the clerk of the court of common pleas of
Franklin county.

Immediately upon the filing of the entry, the clerk shall
enter a judgment against the party assessed in the amount shown on
the entry. The judgment shall be filed by the clerk in one of two
loose-leaf books, one entitled "special judgments for state and
school district income taxes," and the other entitled "special
judgments for qualifying entity taxes." The judgment shall have
the same effect as other judgments. Execution shall issue upon the
judgment upon the request of the tax commissioner, and all laws

applicable to sales on execution shall apply to sales made under
the judgment.

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

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(D) All money collected under this section shall be
considered as revenue arising from the taxes imposed by this
chapter or Chapter 5733. or 5748. of the Revised Code, as
appropriate.

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

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

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(2) If the taxpayer or qualifying entity that is assessed
failed to file, prior to the date of issuance of the assessment,
the annual return or report required by section 5747.08 or 5747.42
of the Revised Code, any amended return or amended report required
by section 5747.10 or 5747.45 of the Revised Code for the taxable
year at issue, or any report required by division (B) of section
5747.05 of the Revised Code to indicate a reduction in the amount
of the credit provided under that division, payment of the
assessment, including interest but not penalty, is required,
except as otherwise provided under division (E)(6) or (7) of this
section;

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(3) If the employer assessed had not filed, prior to the date

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of issuance of the assessment, the annual return required by 7731
division (E)(2) of section 5747.07 of the Revised Code covering 7732
the period at issue, payment of the assessment, including interest 7733
but not penalty, is required; 7734

(4) If the taxpayer or qualifying entity that is assessed 7735
filed, prior to the date of issuance of the assessment, the annual 7736
return or report required by section 5747.08 or 5747.42 of the 7737
Revised Code, all amended returns or reports required by section 7738
5747.10 or 5747.45 of the Revised Code for the taxable year at 7739
issue, and all reports required by division (B) of section 5747.05 7740
of the Revised Code to indicate a reduction in the amount of the 7741
credit provided under that division, and a balance of the taxes 7742
shown due on the returns or reports as computed on the returns or 7743
reports remains unpaid, payment of only that portion of the 7744
assessment representing the unpaid balance of tax and interest is 7745
required; 7746

(5) If the employer assessed filed, prior to the date of 7747
issuance of the assessment, the annual return required by division 7748
(E)(2) of section 5747.07 of the Revised Code covering the period 7749
at issue, and a balance of the taxes shown due on the return as 7750
computed on the return remains unpaid, payment of only that 7751
portion of the assessment representing the unpaid balance of tax 7752
and interest is required; 7753

(6) In the case of a party assessed as a qualifying entity 7754
subject to the tax levied under section 5733.41 or 5747.41 of the 7755
Revised Code, if the party does not dispute that it is a 7756
qualifying entity subject to that tax but claims the protections 7757
of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 7758
381, as amended, no payment is required; 7759

(7) In the case of a party assessed as a qualifying entity 7760
subject to the tax levied under section 5733.41 or 5747.41 of the 7761
Revised Code, if the party does dispute that it is a qualifying 7762

entity subject to that tax, no payment is required; 7763

(8) If none of the conditions specified in divisions (E)(1) 7764
to (7) of this section apply, no payment is required. 7765

(F) Notwithstanding the fact that a petition for reassessment 7766
is pending, the petitioner may pay all or a portion of the 7767
assessment that is the subject of the petition. The acceptance of 7768
a payment by the treasurer of state does not prejudice any claim 7769
for refund upon final determination of the petition. 7770

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If upon final determination of the petition an error in the 7772
assessment is corrected by the tax commissioner, upon petition so 7773
filed or pursuant to a decision of the board of tax appeals or any 7774
court to which the determination or decision has been appealed, so 7775
that the amount due from the party assessed under the corrected 7776
assessment is less than the portion paid, there shall be issued to 7777
the petitioner or to the petitioner's assigns or legal 7778
representative a refund in the amount of the overpayment as 7779
provided by section 5747.11 of the Revised Code, with interest on 7780
that amount as provided by such section, subject to section 7781
5747.12 of the Revised Code. 7782

Sec. 5749.07. (A) If any severer required by this chapter to 7783
make and file returns and pay the tax levied by section 5749.02 of 7784
the Revised Code, fails to make such return or pay such tax, the 7785
tax commissioner may make an assessment against the severer based 7786
upon any information in the commissioner's possession. 7787

No assessment shall be made or issued against any severer for 7788
any tax imposed by section 5749.02 of the Revised Code more than 7789
four years after the return was due or was filed, whichever is 7790
later. This section does not bar an assessment against a severer 7791
who fails to file a return as required by this chapter, or who 7792
files a fraudulent return. 7793

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

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

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

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

proceed under section 5703.60 of the Revised Code. 7826

(C) After an assessment becomes final, if any portion of the 7827
assessment remains unpaid, including accrued interest, a certified 7828
copy of the tax commissioner's entry making the assessment final 7829
may be filed in the office of the clerk of the court of common 7830
pleas in the county in which the party assessed resides or in 7831
which the party's business is conducted. If the party assessed 7832
maintains no place of business in this state and is not a resident 7833
of this state, the certified copy of the entry may be filed in the 7834
office of the clerk of the court of common pleas of Franklin 7835
county. 7836

~~The clerk, immediately~~ Immediately upon the filing of such 7837
entry, the clerk shall enter a judgment for the state against the 7838
party assessed in the amount shown on the entry. The judgment may 7839
be filed by the clerk in a loose-leaf book entitled "special 7840
judgments for state severance tax," and shall have the same effect 7841
as other judgments. Execution shall issue upon the judgment upon 7842
the request of the ~~tax~~ commissioner, and all laws applicable to 7843
sales on execution shall apply to sales made under the judgment. 7844

The portion of the assessment not paid within sixty days 7845
after the day the assessment is issued shall bear interest at the 7846
rate per annum prescribed by section 5703.47 of the Revised Code 7847
from the day the ~~tax~~ commissioner issues the assessment until it 7848
is paid. Interest shall be paid in the same manner as the tax and 7849
may be collected by the issuance of an assessment under this 7850
section. 7851

(D) All money collected by the tax commissioner under this 7852
section shall be paid to the treasurer of state, and when paid 7853
shall be considered as revenue arising from the tax imposed by 7854
section 5749.02 of the Revised Code. 7855

Sec. 5749.08. The tax commissioner shall refund to taxpayers 7856

the amount of taxes paid illegally or erroneously or paid on an 7857
illegal or erroneous assessment. Applications for refund shall be 7858
filed with the tax commissioner, on the form prescribed by the 7859
commissioner, within four years from the date of the illegal or 7860
erroneous payment of the tax. On the filing of ~~such the~~ 7861
application, the commissioner shall determine the amount of refund 7862
due to which the applicant is entitled, plus interest computed in 7863
accordance with section 5703.47 of the Revised Code from the date 7864
of the payment of an erroneous or illegal assessment until the 7865
date the refund is paid ~~and.~~ If the amount is not less than that 7866
claimed, the commissioner shall certify ~~such the~~ amount to the 7867
director of budget and management and treasurer of state payment 7868
from the tax refund fund created by section 5703.052 of the 7869
Revised Code. If the amount is less than that claimed, the 7870
commissioner shall proceed in accordance with section 5703.70 of 7871
the Revised Code. 7872

Section 2. That existing sections 323.152, 2935.01, 3317.026, 7873
3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 7874
4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 7875
5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 7876
5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 7877
5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 7878
5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 7879
5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 7880
5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 7881
5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 7882
5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 7883
5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 7884
5749.07, and 5749.08 and sections 5728.05, 5735.31, 5739.07, 7885
5741.10, and 5747.181 of the Revised Code are hereby repealed. 7886

Section 3. That the versions of sections 5733.021 and 5733.12 7887

of the Revised Code that are scheduled to take effect July 1, 7888
2002, be amended to read as follows: 7889

Sec. 5733.021. (A) Each taxpayer ~~which~~ that does not in the 7890
~~month~~ of January file the report and make the payment required by 7891
section 5733.02 of the Revised Code shall make and file a 7892
declaration of estimated tax report for the tax year. 7893

The declaration of estimated tax report shall be filed with 7894
the tax commissioner on or before the last day of January in such 7895
form as prescribed by the tax commissioner, and shall reflect an 7896
estimate of the total amount due under this chapter for the tax 7897
year. 7898

(B) A taxpayer required to file a declaration of estimated 7899
tax report shall make remittance of such estimated tax to the tax 7900
commissioner as follows: 7901

(1) The entire estimated tax at the time of filing the 7902
declaration of estimated tax report, if such estimated tax is not 7903
in excess of the minimum tax as provided in section 5733.06 of the 7904
Revised Code; 7905

(2) If the estimated tax is in excess of the minimum tax: 7906

(a) One-third of the estimated tax at the time of filing the 7907
declaration of estimated tax report; 7908

(b) Two-thirds of the estimated tax on or before the last day 7909
of March of the tax year, ~~unless if~~ the report ~~and payment~~ 7910
required by section 5733.02 of the Revised Code ~~are~~ is filed ~~and~~ 7911
~~paid~~ on or before the last day of March of the tax year. 7912

(3) If the estimated tax ~~due~~ is in excess of the minimum tax, 7913
and an extension of time for filing the report required by section 7914
5733.02 of the Revised Code has been granted pursuant to section 7915
5733.13 of the Revised Code: 7916

(a) One-third of the estimated tax at the time of filing the 7917

declaration of estimated tax report; 7918

(b) One-third of the estimated tax on or before the last day 7919
of March of the tax year; 7920

(c) One-third of the estimated tax on or before the last day 7921
of May of the tax year, ~~unless the report and payments required by~~ 7922
~~section 5733.02 of the Revised Code are filed and paid on or~~ 7923
~~before the last day of May of the tax year.~~ 7924

Remittance of the estimated tax shall be made payable to the 7925
treasurer of state and shall be made in the form prescribed by the 7926
tax commissioner, including electronic funds transfer if required 7927
by section 5733.022 of the Revised Code. 7928

The tax commissioner shall immediately forward to the 7929
treasurer of state all amounts received under this section, and 7930
the treasurer of state shall credit all payments of such estimated 7931
tax as provided in section 5733.12 of the Revised Code. 7932

(C)(1) For any period of delinquency ending prior to the 7933
first day of June of the tax year: 7934

(a) The penalty under division (A)(2) of section 5733.28 of 7935
the Revised Code may only be imposed on the delinquent portion of 7936
the estimated tax required to be paid under divisions (B)(2)(a) 7937
and (b) and (B)(3)(a) and (b) of this section. 7938

(b) The interest under section 5733.26 of the Revised Code 7939
shall only be imposed on the delinquent portion of estimated tax 7940
required to be paid under divisions (B)(2)(a), (B)(2)(b), 7941
(B)(3)(a), and (B)(3)(b) of this section. 7942

(c) If the taxpayer was not subject to tax for the 7943
immediately preceding tax year, "estimated tax" for purposes of 7944
division (C)(1) of this section is ninety per cent of the 7945
qualifying tax for the current tax year. If the taxpayer was 7946
subject to the tax for the immediately preceding tax year, 7947

"estimated tax" for purposes of division (C)(1) of this section is 7948
the lesser of one hundred per cent of the qualifying net tax for 7949
the immediately preceding tax year or ninety per cent of the 7950
qualifying net tax for the current tax year. 7951

(2) For any period of delinquency commencing the first day of 7952
June of the tax year and concluding on the extended due date 7953
pursuant to section 5733.13 of the Revised Code: 7954

(a) The penalty under division (A)(2) of section 5733.28 of 7955
the Revised Code may only be imposed on the delinquent portion of 7956
the estimated tax required to be paid under division (B)(3)(c) of 7957
this section. 7958

(b) The interest under section 5733.26 of the Revised Code 7959
shall be imposed on the delinquent portion of the amount in 7960
division (C)(3)(a) of this section for the current tax year. 7961

(c) For purposes of division (C)(2) of this section, 7962
"estimated tax" is ninety per cent of the qualifying net tax for 7963
the current tax year. 7964

(3) If the taxpayer did not file a report under section 7965
5733.02 of the Revised Code for the tax year or failed to prepare 7966
and file the report in good faith for the tax year, "qualifying 7967
net tax" as used in division (C) of this section for that tax year 7968
means the amount described in division (C)(3)(a) of this division. 7969
Otherwise, "qualifying net tax" as used in division (C) of this 7970
section for that tax year means the lesser of the amount described 7971
in division (C)(3)(a) or (b) of this section: 7972

(a) The tax imposed by sections 5733.06, 5733.065, and 7973
5733.066 of the Revised Code for that tax year reduced by the 7974
credits listed in section 5733.98 of the Revised Code. If the 7975
credits exceed the total tax, the qualifying net tax is zero. 7976

(b) The lesser of the tax shown on the report, reduced by the 7977
credits shown on that report, or the tax shown on an amended 7978

report prepared and filed in good faith, reduced by the credits 7979
shown on that amended report. If the credits shown exceed the 7980
total tax shown, the qualifying net tax is zero. 7981

Sec. 5733.12. (A) Four and two-tenths per cent of all 7982
payments received from the taxes imposed under sections 5733.06 7983
and 5733.41 of the Revised Code shall be credited to the local 7984
government fund for distribution in accordance with section 7985
5747.50 of the Revised Code, six-tenths of one per cent shall be 7986
credited to the local government revenue assistance fund for 7987
distribution in accordance with section 5747.61 of the Revised 7988
Code, and ninety-five and two-tenths per cent shall be credited to 7989
the general revenue fund. 7990

(B) Except as otherwise provided under divisions (C) and (D) 7991
of this section, an application to refund to the corporation the 7992
amount of taxes imposed under section 5733.06 of the Revised Code 7993
that are overpaid, paid illegally or erroneously, or paid on any 7994
illegal, erroneous, or excessive assessment, with interest thereon 7995
as provided by section 5733.26 of the Revised Code, shall be filed 7996
with the tax commissioner, on the form prescribed by the 7997
commissioner, within three years from the date of the illegal, 7998
erroneous, or excessive payment of the tax, or within any 7999
additional period allowed by division (C)(2) of section 5733.031, 8000
division (D)(2) of section 5733.067, or division (A) of section 8001
5733.11 of the Revised Code. For purposes of division (B) of this 8002
section, any payment that the applicant made before the due date 8003
or extended due date for filing the report to which the payment 8004
relates shall be deemed to have been made on the due date or 8005
extended due date. 8006

On the filing of the refund application, the commissioner 8007
shall determine the amount of refund ~~due~~ and to which the 8008
applicant is entitled. If the amount is not less than that claimed 8009

the commissioner shall certify such the amount to the director of 8010
budget and management and treasurer of state for payment from the 8011
tax refund fund created by section 5703.052 of the Revised Code. 8012
If the amount is less than that claimed, the commissioner shall 8013
proceed in accordance with section 5703.70 of the Revised Code. 8014
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(C) "Ninety days" shall be substituted for "three years" in 8016
division (B) of this section if the taxpayer satisfies both of the 8017
following: 8018

(1) The taxpayer has applied for a refund based in whole or 8019
in part upon section 5733.0611 of the Revised Code; 8020

(2) The taxpayer asserts that the imposition or collection of 8021
the tax imposed or charged by section 5733.06 of the Revised Code 8022
or any portion of such tax violates the Constitution of the United 8023
States or the Constitution of this state. 8024

(D)(1) Division (D)(2) of this section applies only if all of 8025
the following conditions are satisfied: 8026

(a) A qualifying pass-through entity pays an amount of the 8027
tax imposed by section 5733.41 of the Revised Code; 8028

(b) The taxpayer is a qualifying investor as to that 8029
qualifying pass-through entity; 8030

(c) The taxpayer did not claim the credit provided for in 8031
section 5733.0611 of the Revised Code as to the tax described in 8032
division (D)(1)(a) of this section; 8033

(d) The three-year period described in division (B) of this 8034
section has ended as to the taxable year for which the taxpayer 8035
otherwise would have claimed that credit. 8036

(2) A taxpayer shall file an application for refund pursuant 8037
to this division within one year after the date the payment 8038
described in division (D)(1)(a) of this section is made. An 8039

application filed under this division shall only claim refund of 8040
overpayments resulting from the taxpayer's failure to claim the 8041
credit described in division (D)(1)(c) of this section. Nothing in 8042
this division shall be construed to relieve a taxpayer from 8043
complying with the provisions of division (I)(14) of section 8044
5733.04 of the Revised Code. 8045

Section 4. That the existing versions of sections 5733.021 8046
and 5733.12 of the Revised Code that are scheduled to take effect 8047
July 1, 2002, are hereby repealed. 8048

Section 5. That the versions of sections 5727.26, 5728.08, 8049
and 5735.06 of the Revised Code that are scheduled to take effect 8050
January 1, 2003, be amended to read as follows: 8051

Sec. 5727.26. (A) The tax commissioner may make an 8052
assessment, based on any information in the commissioner's 8053
possession, against any natural gas company or combined company 8054
that fails to file a return or pay any tax, interest, or 8055
additional charge as required by sections 5727.24 to 5727.29 of 8056
the Revised Code. The commissioner shall give the company assessed 8057
written notice of the assessment as provided in section 5703.37 of 8058
the Revised Code. With the notice, the commissioner shall provide 8059
instructions on how to petition for reassessment and request a 8060
hearing on the petition. A penalty of up to fifteen per cent may 8061
be added to all amounts assessed under this section. The tax 8062
commissioner may adopt rules providing for the imposition and 8063
remission of the penalty. 8064

(B) ~~If a party to whom the notice of assessment is directed~~ 8065
~~objects to the assessment, the party may file a petition for~~ 8066
~~reassessment~~ Unless the company assessed, within sixty days after 8067
service of the notice of assessment, files with the tax 8068
commissioner. The, either personally or by certified mail, a 8069

~~written~~ petition must be made in writing, signed by the party or 8070
the party's company's authorized agent having knowledge of the 8071
facts, and ~~filed with the commissioner, either personally or by~~ 8072
~~certified mail, within sixty days after service of the notice of~~ 8073
assessment becomes final, and the amount of the assessment is due 8074
and payable from the company assessed to the treasurer of state. 8075

The petition shall indicate the objections of the company 8076
assessed, but additional objections may be raised in writing if 8077
received by the commissioner prior to the date shown on the final 8078
~~determination of the commissioner. Upon receipt of~~ 8079

If a petition for reassessment has been properly filed 8080
~~petition, the commissioner may notify the treasurer of state.~~ 8081
~~Unless the petitioner waives a hearing, the commissioner shall~~ 8082
~~grant the petitioner a hearing on the petition, assign a time and~~ 8083
~~place for the hearing, and notify the petitioner of the time and~~ 8084
~~place of the hearing as provided in shall proceed under section~~ 8085
5703.37 5703.60 of the Revised Code. The commissioner may continue 8086
~~the hearing from time to time, if necessary.~~ 8087

If the party to whom the notice of assessment is directed 8088
~~does not file a petition for reassessment, the assessment is final~~ 8089
~~and the amount of the assessment is due and payable from the~~ 8090
~~company assessed. The company assessed shall make the payment~~ 8091
~~payable to the treasurer of state and shall deliver the payment to~~ 8092
~~the tax commissioner.~~ 8093

~~(C) The tax commissioner may make any correction to the~~ 8094
~~assessment that the commissioner finds proper and shall issue a~~ 8095
~~final determination thereon. The commissioner shall serve a copy~~ 8096
~~of the final determination on the petitioner as provided in~~ 8097
~~section 5703.37 of the Revised Code, and the commissioner's~~ 8098
~~decision in the matter is final, subject to appeal under section~~ 8099
5717.02 of the Revised Code. The commissioner may transmit a copy 8100
~~of the final determination to the treasurer of state. Only~~ 8101

~~objections decided on the merits by the board of tax appeals or a~~ 8102
~~court shall be given collateral estoppel or res judicata effect in~~ 8103
~~considering an application for refund of an amount paid pursuant~~ 8104
~~to the assessment.~~ 8105

~~(D)~~(C) After an assessment becomes final, if any portion of 8106
the assessment, including accrued interest, remains unpaid, a 8107
certified copy of the tax commissioner's entry making the 8108
assessment final may be filed in the office of the clerk of the 8109
court of common pleas in the county in which the natural gas 8110
company's or combined company's principal place of business is 8111
located, or in the office of the clerk of court of common pleas of 8112
Franklin county. 8113

~~The clerk, immediately~~ Immediately on the filing of the 8114
entry, ~~must~~ the clerk shall enter judgment for the state against 8115
the company assessed in the amount shown on the entry. The 8116
judgment may be filed by the clerk in a loose-leaf book entitled, 8117
"special judgments for the public utility excise tax on natural 8118
gas and combined companies," and shall have the same effect as 8119
other judgments. Execution shall issue upon the judgment at the 8120
request of the tax commissioner, and all laws applicable to sales 8121
on execution shall apply to sales made under the judgment. 8122

The portion of the assessment not paid within sixty days 8123
after the day the assessment was issued shall bear interest at the 8124
rate per annum prescribed by section 5703.47 of the Revised Code 8125
from the day the tax commissioner issues the assessment until it 8126
is paid. Interest shall be paid in the same manner as the tax and 8127
may be collected by the issuance of an assessment under this 8128
section. 8129

~~(E)~~(D) If the tax commissioner believes that collection of 8130
the tax will be jeopardized unless proceedings to collect or 8131
secure collection of the tax are instituted without delay, the 8132
commissioner may issue a jeopardy assessment against the ~~person~~ 8133

company liable for the tax. ~~On~~ Immediately upon the issuance of 8134
the jeopardy assessment, the commissioner ~~immediately~~ shall file 8135
an entry with the clerk of the court of common pleas in the manner 8136
prescribed by division ~~(D)~~(C) of this section. Notice of the 8137
jeopardy assessment shall be served on the ~~party~~ company assessed 8138
or the ~~party's legal representative as~~ company's authorized agent 8139
in the manner provided in section 5703.37 of the Revised Code 8140
within five days of the filing of the entry with the clerk. The 8141
total amount assessed is immediately due and payable, unless the 8142
~~person~~ company assessed files a petition for reassessment in 8143
accordance with division (B) of this section and provides security 8144
in a form satisfactory to the commissioner and in an amount 8145
sufficient to satisfy the unpaid balance of the assessment. Full 8146
or partial payment of the assessment does not prejudice the 8147
commissioner's consideration of the petition for reassessment. 8148

~~(F)~~(E) The tax commissioner shall immediately forward to the 8149
treasurer of state all amounts that the tax commissioner receives 8150
under this section, and such amounts shall be considered revenue 8151
arising from the tax imposed by section 5727.24 of the Revised 8152
Code. 8153

~~(G)~~(F) No assessment shall be made or issued against a 8154
natural gas company or combined company for the tax imposed by 8155
section 5727.24 of the Revised Code more than four years after the 8156
return date for the period in which the tax was reported, or more 8157
than four years after the return for the period was filed, 8158
whichever is later. 8159

Sec. 5728.08. Except as provided in section 5728.03 of the 8160
Revised Code and except as otherwise provided in this section, 8161
whoever is liable for the payment of the tax levied by section 8162
5728.06 of the Revised Code, on or before the last day of each 8163
January, April, July, and October, shall file with the tax 8164
commissioner, on forms prescribed by the ~~tax~~ commissioner, a 8165

highway fuel use tax return and make payment of the full amount of 8166
the tax due for the operation of each commercial car and 8167
commercial tractor for the ~~next~~ preceding three calendar months. 8168
If the commercial cars or commercial tractors are farm trucks and 8169
the amount of motor fuel used to operate the trucks during the 8170
~~next~~ preceding twelve calendar months was less than fifteen 8171
thousand gallons, the highway fuel use tax return shall be filed 8172
and the full amount of tax due paid on or before the last day of 8173
each July for the ~~next~~ preceding twelve calendar months. If the 8174
commercial cars or commercial tractors are farm trucks and the 8175
amount of motor fuel used to operate the trucks during the ~~next~~ 8176
preceding twelve calendar months was fifteen thousand gallons or 8177
more, the highway fuel use tax return shall be filed and the full 8178
amount of the tax due paid either on or before the last day of 8179
each July for the ~~next~~ preceding twelve calendar months, or on or 8180
before the last day of each January, April, July, and October for 8181
the ~~next~~ preceding three calendar months, at the option of the 8182
person liable for payment of the tax. If the commercial cars or 8183
commercial tractors are not farm trucks, and if, in the estimation 8184
of the ~~tax~~ commissioner, the amount of the tax due does not 8185
warrant quarterly filing, the commissioner may authorize the 8186
filing of the highway fuel use tax return and payment of the full 8187
amount due on or before the last day of each July for the ~~next~~ 8188
preceding twelve months. 8189

The ~~tax~~ commissioner shall immediately forward to the 8190
treasurer of state all money received from the tax levied by 8191
section 5728.06 of the Revised Code. 8192

The treasurer of state shall place to the credit of the tax 8193
refund fund created by section 5703.052 of the Revised Code, out 8194
of receipts from the taxes levied by section 5728.06 of the 8195
Revised Code, amounts equal to the refund certified by the tax 8196
commissioner pursuant to section 5728.061 of the Revised Code. 8197

Receipts from the tax shall be used by the ~~tax~~ commissioner to 8198
defray expenses incurred by the department of taxation in 8199
administering sections 5728.01 to 5728.14 of the Revised Code. 8200

All moneys received in the state treasury from taxes levied 8201
by section 5728.06 of the Revised Code and fees assessed under 8202
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 8203
that are not required to be placed to the credit of the tax refund 8204
fund as provided by this section shall, during each calendar year, 8205
be credited to the highway improvement bond retirement fund 8206
created by section 5528.12 of the Revised Code until the 8207
commissioners of the sinking fund certify to the treasurer of 8208
state, as required by section 5528.17 of the Revised Code, that 8209
there are sufficient moneys to the credit of the highway 8210
improvement bond retirement fund to meet in full all payments of 8211
interest, principal, and charges for the retirement of bonds and 8212
other obligations issued pursuant to Section 2g of Article VIII, 8213
Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised 8214
Code due and payable during the current calendar year and during 8215
the ~~next succeeding~~ following calendar year. From the date of the 8216
receipt of the certification required by section 5528.17 of the 8217
Revised Code by the treasurer of state until the thirty-first day 8218
of December of the calendar year in which the certification is 8219
made, all moneys received in the state treasury from taxes levied 8220
under section 5728.06 of the Revised Code and fees assessed under 8221
~~sections 5728.02 and~~ section 5728.03 of the Revised Code ~~which~~ 8222
that are not required to be placed to the credit of the tax refund 8223
fund as provided by this section shall be credited to the highway 8224
obligations bond retirement fund created by section 5528.32 of the 8225
Revised Code until the commissioners of the sinking fund certify 8226
to the treasurer of state, as required by section 5528.38 of the 8227
Revised Code, that there are sufficient moneys to the credit of 8228
the highway obligations bond retirement fund to meet in full all 8229

payments of interest, principal, and charges for the retirement of 8230
bonds and other obligations issued pursuant to Section 2i of 8231
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 8232
of the Revised Code due and payable during the current calendar 8233
year and during the ~~next succeeding~~ following calendar year. From 8234
the date of the receipt of the certification required by section 8235
5528.38 of the Revised Code by the treasurer of state until the 8236
thirty-first day of December of the calendar year in which the 8237
certification is made, all moneys received in the state treasury 8238
from taxes levied under section 5728.06 of the Revised Code and 8239
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 8240
Revised Code ~~which that~~ are not required to be placed to the 8241
credit of the tax refund fund as provided by this section shall be 8242
credited to the highway operating fund created by section 5735.291 8243
of the Revised Code, except as provided by the ~~next succeeding~~ 8244
following paragraph of this section. 8245

From the date of the receipt by the treasurer of state of 8246
certifications from the commissioners of the sinking fund, as 8247
required by sections 5528.18 and 5528.39 of the Revised Code, 8248
certifying that the moneys to the credit of the highway 8249
improvement bond retirement fund are sufficient to meet in full 8250
all payments of interest, principal, and charges for the 8251
retirement of all bonds and other obligations ~~which that~~ may be 8252
issued pursuant to Section 2g of Article VIII, Ohio Constitution, 8253
and sections 5528.10 and 5528.11 of the Revised Code, and to the 8254
credit of the highway obligations bond retirement fund are 8255
sufficient to meet in full all payments of interest, principal, 8256
and charges for the retirement of all obligations issued pursuant 8257
to Section 2i of Article VIII, Ohio Constitution, and sections 8258
5528.30 and 5528.31 of the Revised Code, all moneys received in 8259
the state treasury from the taxes levied under section 5728.06 and 8260
fees assessed under ~~sections 5728.02 and~~ section 5728.03 of the 8261
Revised Code, ~~which that~~ are not required to be placed to the 8262

credit of the tax refund fund as provided by this section, shall 8263
be deposited to the credit of the highway operating fund. 8264

As used in this section, "farm truck" means any commercial 8265
car or commercial tractor that is registered as a farm truck under 8266
Chapter 4503. of the Revised Code. 8267

Sec. 5735.06. (A) On or before the last day of each month, 8268
each motor fuel dealer shall file with the tax commissioner a 8269
report for the preceding calendar month, on forms prescribed by or 8270
in a form acceptable to the tax commissioner. The report shall 8271
include the following information: 8272

(1) An itemized statement of the number of gallons of all 8273
motor fuel received during the preceding calendar month by such 8274
motor fuel dealer, which has been produced, refined, prepared, 8275
distilled, manufactured, blended, or compounded by such motor fuel 8276
dealer in the state; 8277

(2) An itemized statement of the number of gallons of all 8278
motor fuel received by such motor fuel dealer in the state from 8279
any source during the preceding calendar month, other than motor 8280
fuel included in division (A)(1) of this section, together with a 8281
statement showing the date of receipt of such motor fuel; the name 8282
of the person from whom purchased or received; the date of receipt 8283
of each shipment of motor fuel; the point of origin and the point 8284
of destination of each shipment; the quantity of each of said 8285
purchases or shipments; the name of the carrier; the number of 8286
gallons contained in each car if shipped by rail; the point of 8287
origin, destination, and shipper if shipped by pipe line; or the 8288
name and owner of the boat, barge, or vessel if shipped by water; 8289

(3) An itemized statement of the number of gallons of motor 8290
fuel which such motor fuel dealer has during the preceding 8291
calendar month: 8292

(a) For motor fuel other than gasoline sold for use other 8293

than for operating motor vehicles on the public highways or on	8294
waters within the boundaries of this state;	8295
(b) Exported from this state to any other state or foreign	8296
country as provided in division (A) (3) <u>(4)</u> of section 5735.05 of	8297
the Revised Code;	8298
(c) Sold to the United States government or any of its	8299
agencies;	8300
(d) Sold for delivery to motor fuel dealers;	8301
(e) Sold exclusively for use in the operation of aircraft;	8302
(4) Such other information incidental to the enforcement of	8303
the motor fuel laws of the state as the commissioner requires.	8304
(B) The report shall show the tax due, computed as follows:	8305
(1) The following deductions shall be made from the total	8306
number of gallons of motor fuel received by the motor fuel dealer	8307
within the state during the preceding calendar month:	8308
(a) The total number of gallons of motor fuel received by the	8309
motor fuel dealer within the state and sold or otherwise disposed	8310
of during the preceding calendar month as set forth in section	8311
5735.05 of the Revised Code;	8312
(b) The total number of gallons received during the preceding	8313
calendar month and sold or otherwise disposed of to another	8314
licensed motor fuel dealer pursuant to section 5735.05 of the	8315
Revised Code;	8316
(c) To cover the costs of the motor fuel dealer in compiling	8317
the report, and evaporation, shrinkage, or other unaccounted-for	8318
losses:	8319
(i) If the report is timely filed and the tax is timely paid,	8320
three per cent of the total number of gallons of motor fuel	8321
received by the motor fuel dealer within the state during the	8322

preceding calendar month less the total number of gallons deducted 8323
under divisions (B)(1)(a) and (b) of this section, less one per 8324
cent of the total number of gallons of motor fuel that were sold 8325
to a retail dealer during the preceding calendar month; 8326

(ii) If the report required by division (A) of this section 8327
is not timely filed and the tax is not timely paid, no deduction 8328
shall be allowed; 8329

(iii) If the report is incomplete, no deduction shall be 8330
allowed for any fuel on which the tax is not timely reported and 8331
paid; 8332

(2) The number of gallons remaining after the deductions have 8333
been made shall be multiplied separately by each of the following 8334
amounts: 8335

(a) The cents per gallon rate; 8336

(b) Two cents. 8337

The sum of the products obtained in divisions (B)(2)(a) and 8338
(b) of this section shall be the amount of motor fuel tax for the 8339
preceding calendar month. 8340

(C) The report shall be filed together with payment of the 8341
tax shown on the report to be due, unless the motor fuel dealer is 8342
required by section 5735.062 of the Revised Code to pay the tax by 8343
electronic funds transfer, in which case the dealer shall file the 8344
report pursuant to this section and pay the tax pursuant to 8345
section 5735.062 of the Revised Code. The commissioner may extend 8346
the time for filing reports and may remit all or part of penalties 8347
which may become due under sections 5735.01 to 5735.99 of the 8348
Revised Code. For purposes of this section and sections 5735.062 8349
and 5735.12 of the Revised Code, a report required to be filed 8350
under this section is considered filed when it is received by the 8351
tax commissioner, and remittance of the tax due is considered to 8352
be made when the remittance is received by the tax commissioner or 8353

when credited to an account designated by the treasurer of state 8354
and the tax commissioner for the receipt of tax remittances. The 8355
tax commissioner shall immediately forward to the treasurer of 8356
state all amounts received under this section. 8357

(D) The tax commissioner may require a motor fuel dealer to 8358
file a report for a period other than one month. Such a report, 8359
together with payment of the tax, shall be filed not later than 8360
thirty days after the last day of the prescribed reporting period. 8361

(E) No person required by this section to file a tax report 8362
shall file a false or fraudulent tax report or supporting 8363
schedule. 8364

Section 6. That existing sections 5727.26, 5728.08, and 8365
5735.06 of the Revised Code that are scheduled to take effect 8366
January 1, 2003, are hereby repealed. 8367

Section 7. Section 5727.26 of the Revised Code is presented 8368
in Section 1 of this act as a composite of the section as amended 8369
by both H.B. 612 and Am. Sub. H.B. 640 of the 123rd General 8370
Assembly. Section 5727.47 of the Revised Code is presented in this 8371
act as a composite of the section as amended by both Sub. H.B. 589 8372
and H.B. 612 of the 123rd General Assembly. Section 5733.05 of the 8373
Revised Code is presented in this act as a composite of the 8374
section as amended by both Am. Sub. H.B. 283 and Am. Sub. S.B. 3 8375
of the 123rd General Assembly. Section 5739.02 of the Revised Code 8376
is presented in this act as a composite of the section as amended 8377
by Am. Sub. H.B. 138, H.B. 612, and Am. Sub. H.B. 640 all of the 8378
123rd General Assembly. Section 5739.031 of the Revised Code is 8379
presented in this act as a composite of the section as amended by 8380
both Am. Sub. H.B. 740 and Sub. H.B. 791 of the 119th General 8381
Assembly. The General Assembly, applying the principle stated in 8382
division (B) of section 1.52 of the Revised Code that amendments 8383

are to be harmonized if reasonably capable of simultaneous	8384
operation, finds that the composite is the resulting version of	8385
the section in effect prior to the effective date of the section	8386
as presented in this act.	8387