

As Passed by the House

**126th General Assembly
Regular Session
2005-2006**

Sub. H. B. No. 390

**Representatives Taylor, Brinkman, Brown, Gibbs, Gilb, Hood, Kilbane,
Trakas, Hagan, Blessing, Schaffer, Latta, Aslanides, Bubp, Carano, Cassell,
Collier, Core, Domenick, Evans, C., Faber, Garrison, Hartnett, Key, Raussen,
Reidelbach, Reinhard, Schneider, Seitz, Uecker, Widowfield, Willamowski,
Yuko**

—

A BILL

To amend sections 109.082, 131.02, 2329.07, 5735.03, 1
5747.08, and 5749.02, to enact sections 2305.26, 2
5703.58, 5733.262, 5739.134, 5747.082, 5747.134, 3
and 5751.061, and to repeal section 5733.18 of the 4
Revised Code to place a time limit on the 5
collection of certain finalized but outstanding 6
tax liabilities, to restore and lengthen a prior 7
statute of limitation on certain statutory liens, 8
to restore a former requirement that the state 9
must periodically take affirmative action to keep 10
alive judgment liens in the state's favor, to 11
limit the total amount of penalties that may be 12
added to late or underpaid taxes if the amount at 13
issue is \$1,000 or less, and to provide "innocent 14
spouse relief" from joint and several liability 15
for income tax under prescribed circumstances. 16

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

Section 1. That sections 109.082, 131.02, 2329.07, 5735.03, 17

5747.08, and 5749.02 be amended and sections 2305.26, 5703.58, 18
5733.262, 5739.134, 5747.082, 5747.134, and 5751.061 of the 19
Revised Code be enacted to read as follows: 20

Sec. 109.082. The attorney general shall appoint one or more 21
problem resolution officers from among the employees of the office 22
of the attorney general. These officers shall receive and review 23
inquiries and complaints concerning collections made pursuant to 24
Chapters 5733., 5739., 5741., ~~and 5747.~~, and 5751. of the Revised 25
Code regarding which the taxpayer has been unable to obtain 26
satisfactory information after several attempts to communicate 27
with the employee of the office assigned to the taxpayer's 28
collection case or the employee's immediate supervisor, or the 29
special counsel assigned to the case. 30

Sec. 131.02. (A) Whenever any amount is payable to the state, 31
the officer, employee, or agent responsible for administering the 32
law under which the amount is payable shall immediately proceed to 33
collect the amount or cause the amount to be collected and shall 34
pay the amount into the state treasury or into the appropriate 35
custodial fund in the manner set forth pursuant to section 113.08 36
of the Revised Code. Except as otherwise provided in this 37
division, if the amount is not paid within forty-five days after 38
payment is due, the officer, employee, or agent shall certify the 39
amount due to the attorney general, in the form and manner 40
prescribed by the attorney general, and notify the director of 41
budget and management thereof. In the case of an amount payable by 42
a student enrolled in a state institution of higher education, the 43
amount shall be certified within the later of forty-five days 44
after the amount is due or the tenth day after the beginning of 45
the next academic semester, quarter, or other session following 46
the session for which the payment is payable. The attorney general 47

may assess the collection cost to the amount certified in such 48
manner and amount as prescribed by the attorney general. 49

(B)(1) The attorney general shall give immediate notice by 50
mail or otherwise to the party indebted of the nature and amount 51
of the indebtedness. 52

(2) If the amount payable to this state arises from a tax 53
levied under Chapter 5733., 5739., 5741., ~~or 5747.~~, or 5751. of 54
the Revised Code, the notice also shall specify all of the 55
following: 56

(a) The assessment or case number; 57

(b) The tax pursuant to which the assessment is made; 58

(c) The reason for the liability, including, if applicable, 59
that a penalty or interest is due; 60

(d) An explanation of how and when interest will be added to 61
the amount assessed; 62

(e) That the attorney general and tax commissioner, acting 63
together, have the authority, but are not required, to compromise 64
the claim and accept payment over a reasonable time, if such 65
actions are in the best interest of the state. 66

(C) The attorney general shall collect the claim or secure a 67
judgment and issue an execution for its collection. 68

(D) Each claim shall bear interest, from the day on which the 69
claim became due, at the rate per annum required by section 70
5703.47 of the Revised Code. 71

(E) The attorney general and the chief officer of the agency 72
reporting a claim, acting together, may do any of the following if 73
such action is in the best interests of the state: 74

(1) Compromise the claim; 75

(2) Extend for a reasonable period the time for payment of 76

the claim by agreeing to accept monthly or other periodic
payments. The agreement may require security for payment of the
claim.

(3) Add fees to recover the cost of processing checks or
other draft instruments returned for insufficient funds and the
cost of providing electronic payment options.

(F)(1) Except as provided in division (F)(2) of this section,
if the attorney general finds, after investigation, that any claim
due and owing to the state is uncollectible, the attorney general,
with the consent of the chief officer of the agency reporting the
claim, may do the following:

(a) Sell, convey, or otherwise transfer the claim to one or
more private entities for collection;

(b) Cancel the claim or cause it to be ~~cancelled~~ canceled.

(2) The attorney general shall cancel or cause to be
~~cancelled~~ canceled an unsatisfied claim on the date that is forty
years after the date the claim is certified.

(3) No action shall be commenced to collect any tax payable
to the state that is administered by the tax commissioner, whether
or not such tax is subject to division (B) of this section, or any
penalty, interest, or additional charge on such tax, after the
expiration of the period ending on the later of the dates
specified in divisions (F)(3)(a) and (b) of this section, provided
that such period shall be extended by the period of any stay to
such collection or by any other period to which the parties
mutually agree:

(a) Ten years after the assessment of the tax, penalty,
interest, or additional charge is issued.

(b) One year after the assessment of the tax, penalty,
interest, or additional charge becomes final. For the purposes of

division (F)(3)(b) of this section, the assessment becomes final
at the latest of the following: upon expiration of the period to
petition for reassessment, or if applicable, to appeal a final
determination of the commissioner or decision of the board of tax
appeals or a court, or, if applicable, upon decision of the United
States supreme court.

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For the purposes of division (F)(3) of this section, an
action to collect a tax debt is commenced at the time when any
action, including any action in aid of execution on a judgment,
commences after a certified copy of the tax commissioner's entry
making an assessment final has been filed in the office of the
clerk of court of common pleas in the county in which the taxpayer
resides or has its principal place of business in this state, or
in the office of the clerk of court of common pleas of Franklin
county, as provided in section 5739.13, 5741.14, 5747.13, or
5751.09 of the Revised Code or in any other applicable law
requiring such a filing. If an assessment has not been issued and
there is no time limitation on the issuance of an assessment under
applicable law, an action to collect a tax debt commences when the
action is filed in the courts of this state to collect the
liability.

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(4) If information contained in a claim that is sold,
conveyed, or transferred to a private entity pursuant to this
section is confidential pursuant to federal law or a section of
the Revised Code that implements a federal law governing
confidentiality, such information remains subject to that law
during and following the sale, conveyance, or transfer.

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Sec. 2305.26. (A) An action by the state or an agency or
political subdivision of the state to enforce a lien upon real or
personal property created under and by virtue of section 1901.21,
2505.13, 2937.25, 4123.76, 4123.78, 4141.23, 4509.60, or 5719.04

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of the Revised Code shall be brought within twelve years from the 138
date when the lien or notice of continuation of the lien has been 139
filed in the office of the county recorder. 140

(B)(1) Except as otherwise provided in division (B)(2) of 141
this section, a notice of continuation of lien may be filed in the 142
office of the county recorder within six months prior to the 143
expiration of the twelve-year period following the original filing 144
of the lien or the filing of the notice of continuation of the 145
lien as specified in division (A) of this section. The notice must 146
identify the original notice of lien and state that the original 147
lien is still effective. Upon timely filing of a notice of 148
continuation of lien, the effectiveness of the original lien is 149
continued for twelve years after the last date on which the lien 150
was effective, whereupon it lapses, unless another notice of 151
continuation of lien is filed prior to the lapse. Succeeding 152
notices of continuation of lien may be filed in the same manner to 153
continue the effectiveness of the original lien. 154

(2) As used in division (B)(2) of this section, "interim 155
period" means the period beginning September 26, 2003, and ending 156
the day before the effective date of H.B. 390 of the 126th general 157
assembly. 158

Division (B)(2) of this section applies only to liens 159
enforceable by an action subject to the limitation of division (A) 160
of this section on September 25, 2003, as this section existed on 161
that date, and notice of continuation of which would have had to 162
have been filed under division (B) of this section, as this 163
section existed on that date, during the interim period if this 164
section had been in effect during the interim period. 165

Notice of continuation of such a lien may be filed as 166
otherwise provided in division (B)(1) of this section except the 167
notice shall be filed within six months prior to the expiration of 168

three years following the expiration of the six-year period within
which such notice was required to have been filed under this
section as this section existed on September 25, 2003.

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(C) The recorder shall mark each notice of continuation of
lien with a consecutive file number and with the date of filing
and shall hold the notice open for public inspection. In addition,
the recorder shall index the notices according to the names of the
person against whom they are effective, and shall note in the
index the file numbers of the notices. Except in cases of liens
arising under section 5719.04 of the Revised Code, the recorder
shall mark the record of the original lien "continued" and note
thereon the date on which the notice of continuation of lien was
filed. The recorder may remove a lapsed lien or lapsed notice of
continuation of lien from the file and destroy it. For any
services performed under this section, the county recorder shall
charge and collect the fees set forth in section 317.32 of the
Revised Code.

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(D) A notice of continuation of lien must be signed and filed
by the clerk of the court or the magistrate in cases of liens
arising under sections 1901.21, 2505.13, and 2937.25 of the
Revised Code, by the industrial commission in cases of liens
arising under sections 4123.76 and 4123.78 of the Revised Code, by
the director of job and family services in cases of liens arising
under section 4141.23 of the Revised Code, by the registrar of
motor vehicles in cases of liens arising under section 4509.60 of
the Revised Code, and by the county auditor in cases of liens
arising under section 5719.04 of the Revised Code.

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Sec. 2329.07. (A)(1) If neither execution on a judgment
rendered in a court of record or certified to the clerk of the
court of common pleas in the county in which the judgment was
rendered is issued, nor a certificate of judgment for obtaining a

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lien upon lands and tenements is issued and filed, as provided in 200
sections 2329.02 and 2329.04 of the Revised Code, within five 201
years from the date of the judgment or within five years from the 202
date of the issuance of the last execution thereon or the issuance 203
and filing of the last such certificate, whichever is later, then, 204
unless the judgment is in favor of the state, the judgment shall 205
be dormant and shall not operate as a lien upon the estate of the 206
judgment debtor. 207

(2) If the judgment is in favor of the state, the judgment 208
shall not become dormant and shall not cease to operate as a lien 209
against the estate of the judgment debtor provided that either 210
execution on the judgment is issued or a certificate of judgment 211
is issued and filed, as provided in sections 2329.02 and 2329.04 212
of the Revised Code, within ten years from the date of the 213
judgment or within twelve years from the date of the issuance of 214
the last execution thereon or the issuance and filing of the last 215
such certificate, whichever is later, except as otherwise provided 216
in division (C) of this section. 217

(B) If, in any county other than that in which a judgment was 218
rendered, the judgment has become a lien by reason of the filing, 219
in the office of the clerk of the court of common pleas of that 220
county, of a certificate of the judgment as provided in sections 221
2329.02 and 2329.04 of the Revised Code, and if no execution is 222
issued for the enforcement of the judgment within that county, or 223
no further certificate of the judgment is filed in that county, 224
within five years or, if the judgment is in favor of the state, 225
within twelve years from the date of issuance of the last 226
execution for the enforcement of the judgment within that county 227
or the date of filing of the last certificate in that county, 228
whichever is the later, then the judgment shall cease to operate 229
as a lien upon lands and tenements of the judgment debtor within 230
that county, ~~unless the judgment is in favor of the state, in~~ 231

which case the judgment shall not become dormant, except as 232
otherwise provided in division (C) of this section. 233

(C)(1) As used in division (C) of this section, "interim 234
period" means the period beginning September 26, 2003, and ending 235
the day before the effective date of H.B. 390 of the 126th general 236
assembly. 237

(2) Division (C) of this section applies only to judgments in 238
favor of the state that are subject to this section and to which 239
both of the following apply: 240

(a) The first issuance of execution on the judgment, or the 241
first issuance and filing of the certificate of judgment, was 242
issued or issued and filed within the ten-year period provided in 243
this section before the beginning of the interim period; 244

(b) Subsequent issuance of execution on the judgment or 245
subsequent issuance and filing of the certificate of judgment 246
would have been required during the interim period in order to 247
keep the lien from becoming dormant under this section as this 248
section existed on September 25, 2003, and as if this section as 249
it existed on that date had been in effect during the interim 250
period. 251

(3) Such a judgment shall not become dormant and shall not 252
cease to operate as a lien against the estate of the judgment 253
debtor if either execution on the judgment is issued or a 254
certificate of judgment is issued and filed, as provided in 255
sections 2329.02 and 2329.04 of the Revised Code, within three 256
years after the expiration of the ten-year period following 257
issuance of the last execution on the judgment or following the 258
issuance and filing of the last such certificate, whichever is 259
later. 260

Sec. 5703.58. (A) The tax commissioner shall not make or 261

issue an assessment for any tax payable to the state that is 262
administered by the tax commissioner, or any penalty, interest, or 263
additional charge on such tax, after the expiration of ten years 264
from the final date, including any extension, on which such amount 265
was required to be reported and paid, provided that the ten-year 266
period shall be extended by the period of any lawful stay to such 267
assessment. As used in this section, "assessment" has the same 268
meaning as in section 5703.50 of the Revised Code. 269

(B) This section does not apply to either of the following: 270

(1) Any amount collected for the state by a vendor or seller 271
under Chapter 5739. or 5741. of the Revised Code or withheld by an 272
employer under Chapter 5747. of the Revised Code. 273

(2) Any person who fraudulently attempts to avoid such tax. 274

(C) This section does not authorize the assessment or 275
collection of a tax for which the applicable period of limitation 276
prescribed by law has expired and for which no valid assessment 277
has been made and served as prescribed by law. 278

Sec. 5733.262. (A) The total amount of any penalty imposed 279
under this chapter in connection with the failure to timely report 280
and pay a tax in the amount of one thousand dollars or less shall 281
not exceed fifteen per cent of the tax that was required to be 282
reported and paid but that was not timely reported and paid. In 283
computing the amount of tax not timely reported and paid for the 284
purpose of this division, the amount not timely reported and paid 285
with each report shall be considered separately. 286

(B) The total amount of penalty imposed under this chapter in 287
connection with the failure to timely pay an assessment issued 288
under this chapter in the amount of one thousand dollars or less 289
shall not exceed fifteen per cent of the tax that was required to 290
be paid but that was not timely paid under the assessment. In 291

computing the amount of tax not timely paid for the purpose of 292
this division, the amount not timely paid under each assessment 293
shall be considered separately. 294

Sec. 5735.03. Every motor fuel dealer shall file with the tax 295
commissioner a surety bond of not less than five thousand dollars, 296
but may be required by the tax commissioner to submit a surety 297
bond equal to three months' average tax liability, on a form 298
approved by and with a surety satisfactory to the commissioner, 299
upon which the motor fuel dealer shall be the principal obligor 300
and the state shall be the obligee, conditioned upon the prompt 301
filing of true reports and the payment by the motor fuel dealer to 302
the treasurer of state of all motor fuel excise taxes levied by 303
the state, provided that after notice is received from the state 304
by the surety of the delinquency of any taxes, if the surety pays 305
the taxes within thirty days after the receipt of the notice no 306
penalties or interest shall be charged against the surety. If the 307
surety does not pay the taxes within thirty days, but does pay 308
within ninety days from the date of the receipt of notice from the 309
state by the surety, no penalty shall be assessed against the 310
surety but the surety shall pay interest at the rate of six per 311
cent per annum on the unpaid taxes from the date the taxes are due 312
and payable. If the surety does not pay within ninety days then 313
the surety shall be liable for interest and penalties, and the tax 314
commissioner may cancel all bonds issued by the surety. 315

The commissioner may increase or reduce the amount of the 317
bond required to be filed by any licensed motor fuel dealer. If 318
the commissioner finds that it is necessary to increase the bond 319
to assure payment of the tax, the bond may be increased to an 320
amount equal to three months/average liability or fifty thousand 321
dollars, whichever is greater. 322

If liability upon the bond thus filed by the motor fuel dealer with the commissioner is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if, in the opinion of the commissioner any surety on the bond theretofore given has become unsatisfactory or unacceptable, the commissioner may require the motor fuel dealer to file a new bond with satisfactory sureties in the same amount, and if a new bond is not filed the commissioner shall forthwith cancel the license of the motor fuel dealer. If a new bond is furnished by the motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

A surety on a bond furnished by a motor fuel dealer shall be released from all liability to the state accruing on the bond after the expiration of sixty days from the date upon which the surety lodges with the commissioner a written request to be released. The request shall not operate to release the surety from any liability already accrued, or which accrues before the expiration of the sixty-day period. The commissioner shall promptly on receipt of notice of the request notify the motor fuel dealer who furnished the bond and, unless the motor fuel dealer on or before the expiration of the sixty-day period files with the commissioner a new bond with a surety satisfactory to the commissioner in the amount and form provided in this section, the commissioner shall forthwith cancel the license of the motor fuel dealer. If the new bond is furnished by said motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

The commissioner, in lieu of any surety bond required by this section, may accept a deposit by a motor fuel dealer of cash. Any cash thus accepted shall be deposited with the treasurer of state to be held by the treasurer of state, in the same manner as other cash required to be deposited with the treasurer of state under

the laws of the state, for the account of such motor fuel dealer 355
and subject to any lawful claim of the state for any excise tax 356
upon motor fuel, and penalties and interest thereon levied by the 357
laws of this state. The state shall have a lien upon cash thus 358
deposited for the amount of any motor fuel excise taxes and 359
penalty and interest due to the state from the motor fuel dealer 360
in whose behalf they were deposited. The amount of cash to be thus 361
accepted shall in all respects be determined in the same manner as 362
provided in this section for the amount of surety bonds. Any cash 363
deposited shall be subject to levy upon execution to satisfy any 364
judgment secured in any action by the state to recover any motor 365
fuel excise taxes, and penalties and interest found to be due to 366
the state from such motor fuel dealer. The cash shall be released 367
by the treasurer of state upon certificate of the commissioner 368
that the license of the motor fuel dealer in whose behalf they 369
have been deposited has been canceled or that other security has 370
been accepted in lieu thereof, and that the state asserts no claim 371
thereto. 372

~~Where any person is accepted by the commissioner as surety 373
upon any bond required to be filed by this section, a statement of 374
the surety under oath shall be filed with the commissioner showing 375
real estate owned by the surety, together with all liens and 376
encumbrances thereon, as shown by the records of the county 377
auditor and county recorder of the county in which the property is 378
located, which statement shall also show that the appraised value 379
of the interest and equity of the surety is at least double the 380
face value of the bond, and thereupon the commissioner shall file 381
with the recorder of the county a certificate, under the seal of 382
the commissioner, setting forth the name of the motor fuel dealer 383
in whose behalf the bond is given and the amount of the bond, 384
together with a description of the parcel of real estate owned in 385
the county by the person accepted as surety, which certificate 386~~

shall be recorded by such recorder, and thereupon the amount of 387
the bond shall become a lien upon said property and shall so 388
continue until satisfied or released upon certificate of the 389
commissioner, which certificate of release shall be furnished when 390
other security has been offered by the motor fuel dealer and 391
accepted by the commissioner, or when the license of the motor 392
fuel dealer, in whose behalf the property was pledged as security, 393
has been cancelled and it is found by the commissioner that the 394
licensed motor fuel dealer has paid to the state all excise taxes 395
upon motor fuel payable by the licensed motor fuel dealer under 396
the laws of this state, together with all penalties, interest and 397
fines accruing by reason of any failure on the part of the motor 398
fuel dealer to make accurate reports of receipts of taxable motor 399
fuel and to pay the taxes, penalties, interest, and fines accruing 400
in connection therewith. The commissioner may issue a certificate 401
of partial release of the lien on real estate of the surety where 402
property of an equivalent amount has been substituted, or it 403
appears that the value of the property remaining subject to the 404
lien is satisfactory in amount to the commissioner. If any person 405
accepted as surety whose real estate has been subjected to a lien 406
desires to terminate the liability to the state, the person 407
accepted as a surety may file with the commissioner a written 408
request to be released. The commissioner shall promptly notify the 409
motor fuel dealer of the surety's request, and unless the motor 410
fuel dealer on or before the expiration of sixty days after 411
receipt of such notice files with the commissioner a new bond with 412
a surety satisfactory to the commissioner in the amount and form 413
provided in this section the commissioner shall forthwith cancel 414
the license of said motor fuel dealer. Promptly upon the 415
expiration of sixty days after receipt from the surety of such 416
written request for release, or upon the filing of a new and 417
acceptable bond with satisfactory sureties by the motor fuel 418
dealer, the commissioner shall determine whether the surety is 419

~~subject to any claim of the state for any unpaid taxes and 420
penalties and interest upon motor fuel under the laws of this 421
state by reason of the relationship as surety, and if no liability 422
is asserted the commissioner shall furnish to said surety a 423
certificate under the seal of the commissioner stating that no 424
liability is thus asserted and describing the property owned by 425
the surety subject to the lien of the state for any taxes and 426
penalties, and said certificate upon presentation shall be 427
recorded by the recorder of the county in which said property is 428
located and shall operate from the date of recording as a release 429
of the property therein described from such lien. 430~~

Sec. 5739.134. (A) The total amount of any penalty imposed 431
under this chapter in connection with the failure to timely report 432
and pay or remit a tax in the amount of one thousand dollars or 433
less shall not exceed fifteen per cent of the tax that was 434
required to be reported and paid or remitted but that was not 435
timely reported and paid or remitted. In computing the amount of 436
tax not timely reported and paid or remitted for the purpose of 437
this division, the amount not timely reported and paid or remitted 438
with each report shall be considered separately. 439

(B) The total amount of penalty imposed under this chapter in 440
connection with the failure to timely pay an assessment issued 441
under this chapter in the amount of one thousand dollars or less 442
shall not exceed fifteen per cent of the tax that was required to 443
be paid but that was not timely paid under the assessment. In 444
computing the amount of tax not timely paid for the purpose of 445
this division, the amount not timely paid under each assessment 446
shall be considered separately. 447

Sec. 5747.08. An annual return with respect to the tax 448
imposed by section 5747.02 of the Revised Code and each tax 449

imposed under Chapter 5748. of the Revised Code shall be made by 450
every taxpayer for any taxable year for which the taxpayer is 451
liable for the tax imposed by that section or under that chapter, 452
unless the total credits allowed under divisions (E), (F), and (G) 453
of section 5747.05 of the Revised Code for the year are equal to 454
or exceed the tax imposed by section 5747.02 of the Revised Code, 455
in which case no return shall be required unless the taxpayer is 456
liable for a tax imposed pursuant to Chapter 5748. of the Revised 457
Code. 458

(A) If an individual is deceased, any return or notice 459
required of that individual under this chapter shall be made and 460
filed by that decedent's executor, administrator, or other person 461
charged with the property of that decedent. 462

(B) If an individual is unable to make a return or notice 463
required by this chapter, the return or notice required of that 464
individual shall be made and filed by the individual's duly 465
authorized agent, guardian, conservator, fiduciary, or other 466
person charged with the care of the person or property of that 467
individual. 468

(C) Returns or notices required of an estate or a trust shall 469
be made and filed by the fiduciary of the estate or trust. 470

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 471
of this section, any pass-through entity may file a single return 472
on behalf of one or more of the entity's investors other than an 473
investor that is a person subject to the tax imposed under section 474
5733.06 of the Revised Code. The single return shall set forth the 475
name, address, and social security number or other identifying 476
number of each of those pass-through entity investors and shall 477
indicate the distributive share of each of those pass-through 478
entity investor's income taxable in this state in accordance with 479
sections 5747.20 to 5747.231 of the Revised Code. Such 480
pass-through entity investors for whom the pass-through entity 481

elects to file a single return are not entitled to the exemption 482
or credit provided for by sections 5747.02 and 5747.022 of the 483
Revised Code; shall calculate the tax before business credits at 484
the highest rate of tax set forth in section 5747.02 of the 485
Revised Code for the taxable year for which the return is filed; 486
and are entitled to only their distributive share of the business 487
credits as defined in division (D)(2) of this section. A single 488
check drawn by the pass-through entity shall accompany the return 489
in full payment of the tax due, as shown on the single return, for 490
such investors, other than investors who are persons subject to 491
the tax imposed under section 5733.06 of the Revised Code. 492

(b)(i) A pass-through entity shall not include in such a 493
single return any investor that is a trust to the extent that any 494
direct or indirect current, future, or contingent beneficiary of 495
the trust is a person subject to the tax imposed under section 496
5733.06 of the Revised Code. 497

(ii) A pass-through entity shall not include in such a single 498
return any investor that is itself a pass-through entity to the 499
extent that any direct or indirect investor in the second 500
pass-through entity is a person subject to the tax imposed under 501
section 5733.06 of the Revised Code. 502

(c) Nothing in division (D) of this section precludes the tax 503
commissioner from requiring such investors to file the return and 504
make the payment of taxes and related interest, penalty, and 505
interest penalty required by this section or section 5747.02, 506
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 507
of this section shall be construed to provide to such an investor 508
or pass-through entity any additional deduction or credit, other 509
than the credit provided by division (J) of this section, solely 510
on account of the entity's filing a return in accordance with this 511
section. Such a pass-through entity also shall make the filing and 512
payment of estimated taxes on behalf of the pass-through entity 513

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| investors other than an investor that is a person subject to the | 514 |
| tax imposed under section 5733.06 of the Revised Code. | 515 |
| (2) For the purposes of this section, "business credits" | 516 |
| means the credits listed in section 5747.98 of the Revised Code | 517 |
| excluding the following credits: | 518 |
| (a) The retirement credit under division (B) of section | 519 |
| 5747.055 of the Revised Code; | 520 |
| (b) The senior citizen credit under division (C) of section | 521 |
| 5747.05 of the Revised Code; | 522 |
| (c) The lump sum distribution credit under division (D) of | 523 |
| section 5747.05 of the Revised Code; | 524 |
| (d) The dependent care credit under section 5747.054 of the | 525 |
| Revised Code; | 526 |
| (e) The lump sum retirement income credit under division (C) | 527 |
| of section 5747.055 of the Revised Code; | 528 |
| (f) The lump sum retirement income credit under division (D) | 529 |
| of section 5747.055 of the Revised Code; | 530 |
| (g) The lump sum retirement income credit under division (E) | 531 |
| of section 5747.055 of the Revised Code; | 532 |
| (h) The credit for displaced workers who pay for job training | 533 |
| under section 5747.27 of the Revised Code; | 534 |
| (i) The twenty-dollar personal exemption credit under section | 535 |
| 5747.022 of the Revised Code; | 536 |
| (j) The joint filing credit under division (G) of section | 537 |
| 5747.05 of the Revised Code; | 538 |
| (k) The nonresident credit under division (A) of section | 539 |
| 5747.05 of the Revised Code; | 540 |
| (l) The credit for a resident's out-of-state income under | 541 |
| division (B) of section 5747.05 of the Revised Code; | 542 |

(m) The low-income credit under section 5747.056 of the Revised Code. 543
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(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return. 545
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(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the correct tax due by the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting the tax commissioner's findings. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return. 553
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(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable year, and their liabilities are 572
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joint and several, ~~but, if~~ except as otherwise provided in section 575
5747.082 of the Revised Code. If the federal income tax liability 576
of either spouse is determined on a separate federal income tax 577
return, they shall file separate returns under this section. 578

If either spouse is not required to file a federal income tax 579
return and either or both are required to file a return pursuant 580
to this chapter, they may elect to file separate or joint returns, 581
and, pursuant to that election, their liabilities are separate, or 582
are joint and several except as provided in section 5747.082 of 583
the Revised Code. If a husband and wife file separate returns 584
pursuant to this chapter, each must claim the taxpayer's own 585
exemption, but not both, as authorized under section 5747.02 of 586
the Revised Code on the taxpayer's own return. 587

(F) Each return or notice required to be filed under this 588
section shall contain the signature of the taxpayer or the 589
taxpayer's duly authorized agent and of the person who prepared 590
the return for the taxpayer, and shall include the taxpayer's 591
social security number. Each return shall be verified by a 592
declaration under the penalties of perjury. The tax commissioner 593
shall prescribe the form that the signature and declaration shall 594
take. 595

(G) Each return or notice required to be filed under this 596
section shall be made and filed as required by section 5747.04 of 597
the Revised Code, on or before the fifteenth day of April of each 598
year, on forms that the tax commissioner shall prescribe, together 599
with remittance made payable to the treasurer of state in the 600
combined amount of the state and all school district income taxes 601
shown to be due on the form, unless the combined amount shown to 602
be due is one dollar or less, in which case that amount need not 603
be remitted. 604

Upon good cause shown, the tax commissioner may extend the 605

period for filing any notice or return required to be filed under 606
this section and may adopt rules relating to extensions. If the 607
extension results in an extension of time for the payment of any 608
state or school district income tax liability with respect to 609
which the return is filed, the taxpayer shall pay at the time the 610
tax liability is paid an amount of interest computed at the rate 611
per annum prescribed by section 5703.47 of the Revised Code on 612
that liability from the time that payment is due without extension 613
to the time of actual payment. Except as provided in section 614
5747.132 of the Revised Code, in addition to all other interest 615
charges and penalties, all taxes imposed under this chapter or 616
Chapter 5748. of the Revised Code and remaining unpaid after they 617
become due, except combined amounts due of one dollar or less, 618
bear interest at the rate per annum prescribed by section 5703.47 619
of the Revised Code until paid or until the day an assessment is 620
issued under section 5747.13 of the Revised Code, whichever occurs 621
first. 622

If the tax commissioner considers it necessary in order to 623
ensure the payment of the tax imposed by section 5747.02 of the 624
Revised Code or any tax imposed under Chapter 5748. of the Revised 625
Code, the tax commissioner may require returns and payments to be 626
made otherwise than as provided in this section. 627

To the extent that any provision in this division conflicts 628
with any provision in section 5747.026 of the Revised Code, the 629
provision in that section prevails. 630

(H) If any report, claim, statement, or other document 631
required to be filed, or any payment required to be made, within a 632
prescribed period or on or before a prescribed date under this 633
chapter is delivered after that period or that date by United 634
States mail to the agency, officer, or office with which the 635
report, claim, statement, or other document is required to be 636
filed, or to which the payment is required to be made, the date of 637

the postmark stamped on the cover in which the report, claim, 638
statement, or other document, or payment is mailed shall be deemed 639
to be the date of delivery or the date of payment. 640

If a payment is required to be made by electronic funds 641
transfer pursuant to section 5747.072 of the Revised Code, the 642
payment is considered to be made when the payment is received by 643
the treasurer of state or credited to an account designated by the 644
treasurer of state for the receipt of tax payments. 645

"The date of the postmark" means, in the event there is more 646
than one date on the cover, the earliest date imprinted on the 647
cover by the United States postal service. 648

(I) The amounts withheld by the employer pursuant to section 649
5747.06 of the Revised Code shall be allowed to the recipient of 650
the compensation as credits against payment of the appropriate 651
taxes imposed on the recipient by section 5747.02 and under 652
Chapter 5748. of the Revised Code. 653

(J) If, in accordance with division (D) of this section, a 654
pass-through entity elects to file a single return and if any 655
investor is required to file the return and make the payment of 656
taxes required by this chapter on account of the investor's other 657
income that is not included in a single return filed by a 658
pass-through entity, the investor is entitled to a refundable 659
credit equal to the investor's proportionate share of the tax paid 660
by the pass-through entity on behalf of the investor. The investor 661
shall claim the credit for the investor's taxable year in which or 662
with which ends the taxable year of the pass-through entity. 663
Nothing in this chapter shall be construed to allow any credit 664
provided in this chapter to be claimed more than once. For the 665
purposes of computing any interest, penalty, or interest penalty, 666
the investor shall be deemed to have paid the refundable credit 667
provided by this division on the day that the pass-through entity 668

paid the estimated tax or the tax giving rise to the credit.

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Sec. 5747.082. (A) As used in this section:

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(1) "Income item" means an item of income, gain, loss, credit, deduction, or other erroneous item with respect to which relief from liability may be granted under section 6015 of the Internal Revenue Code.

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(2) "Spouse" means an individual's spouse included on a joint return filed under section 5747.08 of the Revised Code for a taxable year even if the individual and the spouse are not married when division (B) or (C) of this section applies.

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(B) Any individual who has been granted relief from federal income tax liability under section 6015 of the Internal Revenue Code with respect to any income item for a taxable year shall be granted the same relief from liability for the tax imposed under section 5747.02 of the Revised Code for the same taxable year to the extent the income item for which relief was granted under section 6015 of the Internal Revenue Code is included in or otherwise affects the computation of the individual's liability for the tax imposed under section 5747.02 of the Revised Code, including any penalty or interest imposed under this chapter.

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(C) This division does not apply to an understatement of tax due under section 5747.02 of the Revised Code if the understatement is attributable to an item of income to which division (B) of this section applies.

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An individual who filed a joint return with the individual's spouse under section 5747.08 of the Revised Code which contains an understatement of tax shall be relieved of liability for the tax imposed under section 5747.02 of the Revised Code to the extent of the individual's allocable share of the liability with respect to the understatement of tax, and any penalties and interest arising

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from such understatement, if the tax commissioner finds all of the following:

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(1) That, in signing the joint return, the individual did not know and had no reason to know there was an understatement of tax on the return;

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(2) That, under all the facts and circumstances, it would be inequitable to hold the individual liable for the understatement of tax;

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(3) That assets were not transferred between the individuals who filed the joint return as part of a fraudulent scheme to avoid reporting or payment of the tax imposed under section 5747.02 of the Revised Code.

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For the purposes of division (C) of this section, an individual's allocable share of liability shall be the liability on the joint return multiplied by a fraction. The numerator of the fraction shall equal the tax that would be due from the individual if the individual had filed a separate return for the taxable year, before deducting credits allocable to that individual and before crediting tax payments withheld or paid as estimated taxes by or on behalf of that individual. The denominator of the fraction shall equal the sum of the taxes that would be due from the individual and from the individual's spouse if each had filed a separate return for the taxable year, before deducting credits allocable to either individual and before crediting tax payments withheld or paid as estimated taxes by or on behalf of either individual. If one or more exemptions were claimed on the joint return for a dependent, other than for one of the spouses, under section 5747.025 of the Revised Code, and the claim for exemption is not an item contributing to the understatement, the tax that would be due from each individual shall be computed on the basis of one-half of the total exemption amount being allocated to each

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individual. If the Ohio adjusted gross income on the joint return 730
was affected by the addition or deduction of an amount with 731
respect only to a dependent, other than one of the spouses, and 732
the addition or deduction is not an item contributing to the 733
understatement of tax, the tax that would be due from each 734
individual shall be computed on the basis of one-half of the 735
amount added or deducted being allocated to each individual. 736

(D) To obtain relief from liability under division (B) or (C) 737
of this section, an individual shall apply to the tax commissioner 738
if the liability has not been certified to the attorney general 739
under section 131.02 of the Revised Code, or shall apply to the 740
attorney general if the liability has been certified to the 741
attorney general. Application shall be made in the manner 742
prescribed by the tax commissioner or attorney general, as 743
applicable, and may be filed not later than two years after the 744
date the attorney general commences collection activities against 745
the individual. For the purposes of this section, collection 746
activities commence when any action, including any action in aid 747
of execution on a judgment, is begun after a certified copy of the 748
tax commissioner's entry making the assessment final has been 749
filed in the office of the clerk of the court of common pleas in 750
the county in which the taxpayer resides or in the office of the 751
clerk of the court of common pleas of Franklin county, as provided 752
in section 5747.13 of the Revised Code. 753

If application is required to be made to the tax 754
commissioner, the tax commissioner shall consider the application. 755
If application is required to be made to the attorney general and 756
is properly and timely made, the attorney general shall transmit 757
the application to the tax commissioner for the tax commissioner's 758
consideration. If application is timely and otherwise properly 759
made but is made to the tax commissioner after the liability has 760
been certified to the attorney general, the tax commissioner shall 761

consider the application but shall notify the attorney general 762
that application for relief has been made and is being considered 763
in connection with the certified liability. 764

The tax commissioner shall make a finding on the relief 765
sought in any properly and timely filed application and shall 766
serve notice of the commissioner's findings on the applicant in 767
the manner prescribed in section 5703.37 of the Revised Code. If 768
the application was filed with the attorney general, the tax 769
commissioner also shall notify the attorney general of the 770
commissioner's findings. The notice to the applicant shall include 771
a statement informing the individual that the individual may 772
appeal the tax commissioner's determination to the board of tax 773
appeals by filing a notice of appeal under section 5717.02 of the 774
Revised Code, and shall include instructions for filing the notice 775
of appeal. The tax commissioner's determination under this 776
division is a final determination of the tax commissioner 777
appealable under section 5717.02 of the Revised Code. 778

Division (D) of this section does not prohibit the tax 779
commissioner or attorney general from applying the relief provided 780
under division (B) or (C) of this section to an individual who 781
qualifies for such relief but who fails to apply for such relief 782
as prescribed in this division. 783

Sec. 5747.134. (A) The total amount of any penalty imposed 784
under this chapter in connection with the failure to timely report 785
and pay or remit a tax in the amount of one thousand dollars or 786
less shall not exceed fifteen per cent of the tax that was 787
required to be reported and paid or remitted but that was not 788
timely reported and paid or remitted. In computing the amount of 789
tax not timely reported and paid or remitted for the purpose of 790
this division, the amount not timely reported and paid or remitted 791
with each report shall be considered separately. For the purposes 792

of this division, "report" includes a declaration of estimated 793
taxes. 794

(B) The total amount of penalty imposed under this chapter in 795
connection with the failure to timely pay an assessment issued 796
under this chapter in the amount of one thousand dollars or less 797
shall not exceed fifteen per cent of the tax that was required to 798
be paid but that was not timely paid under the assessment. In 799
computing the amount of tax not timely paid for the purpose of 800
this division, the amount not timely paid under each assessment 801
shall be considered separately. 802

Sec. 5749.02. (A) For the purpose of providing revenue to 803
administer the state's coal mining and reclamation regulatory 804
program, to meet the environmental and resource management needs 805
of this state, and to reclaim land affected by mining, an excise 806
tax is hereby levied on the privilege of engaging in the severance 807
of natural resources from the soil or water of this state. The tax 808
shall be imposed upon the severer and shall be: 809

(1) Seven cents per ton of coal; 810

(2) Four cents per ton of salt; 811

(3) Two cents per ton of limestone or dolomite; 812

(4) Two cents per ton of sand and gravel; 813

(5) Ten cents per barrel of oil; 814

(6) Two and one-half cents per thousand cubic feet of natural 815
gas; 816

(7) One cent per ton of clay, sandstone or conglomerate, 817
shale, gypsum, or quartzite. 818

(B) Of the moneys received by the treasurer of state from the 819
tax levied in division (A)(1) of this section, six and 820

three-tenths per cent shall be credited to the geological mapping 821
fund created in section 1505.09 of the Revised Code, fourteen and 822
two-tenths per cent shall be credited to the reclamation 823
forfeiture fund created in section 1513.18 of the Revised Code, 824
fifty-seven and nine-tenths per cent shall be credited to the coal 825
mining administration and reclamation reserve fund created in 826
section 1513.181 of the Revised Code, and the remainder shall be 827
credited to the unreclaimed lands fund created in section 1513.30 828
of the Revised Code. When, at any time during a fiscal year, the 829
chief of the division of mineral resources management finds that 830
the balance of the coal mining administration and reclamation 831
reserve fund is below two million dollars, the chief shall certify 832
that fact to the director of budget and management. Upon receipt 833
of the chief's certification, the director shall direct the tax 834
commissioner to instead credit to the coal mining administration 835
and reclamation reserve fund during the remainder of the fiscal 836
year for which the certification is made the fourteen and 837
two-tenths per cent of the moneys collected from the tax levied in 838
division (A)(1) of this section and otherwise required by this 839
division to be credited to the reclamation forfeiture fund. 840

Fifteen per cent of the moneys received by the treasurer of 841
state from the tax levied in division (A)(2) of this section shall 842
be credited to the geological mapping fund and the remainder shall 843
be credited to the unreclaimed lands fund. 844

Of the moneys received by the treasurer of state from the tax 845
levied in divisions (A)(3) and (4) of this section, seven and 846
five-tenths per cent shall be credited to the geological mapping 847
fund, forty-two and five-tenths per cent shall be credited to the 848
unreclaimed lands fund, and the remainder shall be credited to the 849
surface mining fund created in section 1514.06 of the Revised 850
Code. 851

Of the moneys received by the treasurer of state from the tax 852

levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

(C) For the purpose of paying the state's expenses for reclaiming mined lands that the operator failed to reclaim under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code, or under a surface mining permit issued under Chapter 1514. of the Revised Code, for which the operator's bond is not sufficient to pay the state's expense for reclamation, there is hereby levied an excise tax on the privilege of engaging in the severance of coal from the soil or water of this state in addition to the taxes levied by divisions (A)(1) and (D) of this section. The tax shall be imposed at the rate of one cent per ton of coal. Moneys received by the treasurer of state from the tax levied under this division shall be credited to the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

(D) For the purpose of paying the state's expenses for reclaiming coal mined lands that the operator failed to reclaim in accordance with Chapter 1513. of the Revised Code under a coal mining and reclamation permit issued after April 10, 1972, but before September 1, 1981, for which the operator's bond is not sufficient to pay the state's expense for reclamation and paying the expenses for administering the state's coal mining and reclamation regulatory program, there is hereby levied an excise tax on the privilege of engaging in the severance of coal from the soil or water of this state in addition to the taxes levied by divisions (A)(1) and (C) of this section. The tax shall be imposed at the rate of one cent per ton of coal as prescribed in this

division. Moneys received by the treasurer of state from the tax 885
levied by this division shall be credited to the reclamation 886
forfeiture fund created in section 1513.18 of the Revised Code. 887

When, at the close of any fiscal year, the chief finds that 888
the balance of the reclamation forfeiture fund, plus estimated 889
transfers to it from the coal mining and reclamation reserve fund 890
under section 1513.181 of the Revised Code, plus the estimated 891
revenues from the tax levied by this division for the remainder of 892
the calendar year that includes the close of the fiscal year, are 893
sufficient to complete the reclamation of such lands, the purposes 894
for which the tax under this division is levied shall be deemed 895
accomplished at the end of that calendar year. The chief, within 896
thirty days after the close of the fiscal year, shall certify 897
those findings to the tax commissioner, and the tax shall cease to 898
be imposed after the last day of that calendar year. 899

~~(E) On the day fixed for the payment of the severance taxes 900
required to be paid by this section, the taxes with any penalties 901
or interest on them shall become a lien on all property of the 902
taxpayer in this state whether the property is employed by the 903
taxpayer in the prosecution of its business or is in the hands of 904
an assignee, trustee, or receiver for the benefit of creditors or 905
stockholders. The lien shall continue until the taxes and any 906
penalties or interest thereon are paid. 907~~

~~Upon failure of the taxpayer to pay a tax on the day fixed 908
for payment, the tax commissioner may file, for which no filing 909
fee shall be charged, in the office of the county recorder in each 910
county in this state in which the taxpayer owns or has a 911
beneficial interest in real estate, notice of the lien containing 912
a brief description of the real estate. The lien shall not be 913
valid as against any mortgagee, purchaser, or judgment creditor 914
whose rights have attached prior to the time the notice is filed 915
in the county in which the real estate that is the subject of the 916~~

~~mortgage, purchase, or judgment lien is located. The notice shall~~ 917
~~be recorded in a book kept by the recorder called the "severance~~ 918
~~tax lien record" and indexed under the name of the taxpayer~~ 919
~~charged with the tax. When the tax has been paid, the tax~~ 920
~~commissioner shall furnish to the taxpayer an acknowledgement of~~ 921
~~payment, which the taxpayer may record with the recorder of each~~ 922
~~county in which notice of the lien has been filed.~~ 923

Sec. 5751.061. (A) The total amount of any penalty imposed 924
under this chapter in connection with the failure to timely report 925
and pay tax in the amount of one thousand dollars or less shall 926
not exceed fifteen per cent of the tax that was required to be 927
reported and paid but that was not timely reported and paid. In 928
computing the amount of tax not timely reported and paid for the 929
purpose of this division, the amount not timely reported and paid 930
with each report shall be considered separately. 931

(B) The total amount of penalty imposed under this chapter in 932
connection with the failure to timely pay an assessment issued 933
under this chapter in the amount of one thousand dollars or less 934
shall not exceed fifteen per cent of the tax that was required to 935
be paid but that was not timely paid under the assessment. In 936
computing the amount of tax not timely paid for the purpose of 937
this division, the amount not timely paid under each assessment 938
shall be considered separately. 939

Section 2. That existing sections 109.082, 131.02, 2329.07, 940
5735.03, 5747.08, and 5749.02 and section 5733.18 of the Revised 941
Code are hereby repealed. 942

Section 3. The amendment or enactment by this act of sections 943
109.082, 131.02, 5703.06, and 5703.58 of the Revised Code apply to 944
assessments made, or if no assessment was made, to liabilities 945
arising, before, on, or after the effective date of this act. 946

However, the limitations to collection in section 131.02 of the Revised Code, as amended by this act, and to assessment in section 5703.58 of the Revised Code, as enacted by this act, expire not earlier than one year after the effective date of this act, notwithstanding any provisions in such sections to the contrary.

Section 4. Division (B) of section 5747.082 of the Revised Code, as enacted by this act, applies to individuals for whom relief was granted under section 6015 of the Internal Revenue Code within four years before the effective date of this act or thereafter.