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Representative Bubp

**Cosponsors: Representatives Latta, Seitz, Book, Adams, Batchelder,
Blessing, Brown, Budish, Chandler, Coley, Combs, Daniels, DeBose,
Domenick, Fende, Gibbs, Harwood, Hite, Huffman, Hughes, Letson, Luckie,
Otterman, Raussen, Schindel, Schneider, Stebelton, Wagoner, Zehringer
Senators Goodman, Seitz, Kearney, Harris, Schaffer, Spada**

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A B I L L

To amend sections 319.20, 1705.02, 5713.08, 5715.27, 1
and 5815.36 and to enact section 5701.14 of the 2
Revised Code to clarify and modify the law 3
relating to disclaimers under the Ohio Trust Code, 4
to provide that a limited liability company may be 5
a nonprofit entity, and to make changes regarding 6
certain tax exemptions. 7

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

Section 1. That sections 319.20, 1705.02, 5713.08, 5715.27, 8
and 5815.36 be amended and section 5701.14 of the Revised Code be 9
enacted to read as follows: 10

Sec. 319.20. After complying with sections 319.202, 315.251, 11
and 319.203 of the Revised Code, and on application and 12
presentation of title, with the affidavits required by law, or the 13
proper order of a court, bearing the last known address of the 14
grantee, or of any one of the grantees named in the title, and a 15

reference to the volume and page of the recording of the next 16
preceding recorded instrument by or through which the grantor 17
claims title, the county auditor shall transfer any land or town 18
lot or part thereof, minerals therein, or mineral rights thereto, 19
charged with taxes on the tax list, from the name in which it 20
stands into the name of the owner, when rendered necessary by a 21
conveyance, partition, devise, descent, or otherwise. If by reason 22
of the conveyance or otherwise, a part only of a tract or lot, 23
minerals therein, or mineral rights thereto, as charged in the tax 24
list, is to be transferred, the auditor shall determine the tax 25
value of the part of a tract or lot of real estate, minerals 26
therein, or mineral rights thereto, so transferred, and the value 27
of the remaining part compared with the value of the whole. 28

Whenever a part only of a tract or lot of real estate has 29
been transferred by the auditor and the tract or lot bears unpaid 30
taxes, penalties, interest, or special assessments, the unpaid 31
taxes, penalties, interest, or special assessments shall 32
immediately be apportioned, upon demand or request by the 33
transferee or remaining owner, in the following manner: 34

(A) The auditor shall allocate to the part so transferred, 35
and to the remaining part, amounts of any current or delinquent 36
taxes, interest, or penalties that have accrued against the parcel 37
as a whole, proportionate to their respective values. 38

(B) The lien of taxes, penalties, interest, and special 39
assessments, as levied against the original tract, shall extend to 40
the part so transferred and the part remaining only to the extent 41
of the amounts so allocated to the respective parts. 42

This section does not change the total amount of taxes, 43
special assessments, or other charges as originally levied, or the 44
total amount of the balance due. The auditor shall certify such 45
apportionments to the county treasurer. 46

Whenever the state acquires an entire parcel or a part only 47
of a parcel of real property in fee simple, the county auditor, 48
upon application of the grantor or property owner or the state, 49
which application shall contain a description of the property as 50
it appears on the tax list and the date of transfer of ownership, 51
shall prepare an estimate of the taxes that are a lien on the 52
property, but have not been determined, assessed, and levied for 53
the year in which the property was acquired. The county auditor 54
shall thereupon apportion the estimated taxes proportionately 55
between the grantor and the state for the period of the lien year 56
that each had or shall have had ownership or possession of the 57
property, whichever is earlier. The county treasurer shall accept 58
payment from the state for estimated taxes at the time that the 59
real property is acquired. If the state has paid in full in the 60
year in which the property is acquired that proportion of the 61
estimated taxes that the tax commissioner determines are not 62
subject to remission by the county auditor for such year under 63
division ~~(C)~~(D) of section 5713.08 of the Revised Code, the 64
estimated taxes paid shall be considered the tax liability on the 65
exempted property for that year. 66

Section 319.42 of the Revised Code applies to the 67
apportionment of special assessments. 68

Complaint against such values as determined by the auditor or 69
the allocation of assessments by the certifying authority may be 70
filed by the transferee or the remaining owner, and if filed, 71
proceedings including appeals shall be had in the manner and 72
within the time provided by sections 5717.01 to 5717.06 and 73
5715.19 to 5715.22 of the Revised Code, for complaints against 74
valuation or assessment of real property. 75

The auditor shall endorse on the deed or other evidences of 76
title presented to the auditor that the proper transfer of the 77
real estate described in the deed has been made in the auditor's 78

office or that it is not entered for taxation, and sign the 79
auditor's name to the deed. The address of the grantee, or any one 80
of the grantees, set forth in the deed or other evidences of title 81
shall be entered by the auditor on the transfer sheets and on the 82
general tax list of real property prepared pursuant to section 83
319.28 of the Revised Code. 84

Sec. 1705.02. A limited liability company may be formed for 85
any purpose or purposes for which individuals lawfully may 86
associate themselves, including for any profit or nonprofit 87
purpose, except that, if the Revised Code contains special 88
provisions for the formation of any designated type of corporation 89
other than a professional association, a limited liability company 90
shall not be formed for the purpose or purposes for which that 91
type of corporation may be formed. At the request or direction of 92
the government of the United States or any agency of that 93
government, a limited liability company may transact any lawful 94
business in aid of the national defense or in the prosecution of 95
any war in which the United States is engaged. 96

Sec. 5701.14. For purposes of Title LVII of the Revised Code: 97
98

(A) In order to determine a limited liability company's 99
nonprofit status, an entity is operating with a nonprofit purpose 100
under section 1705.02 of the Revised Code if that entity is 101
organized other than for the pecuniary gain or profit of, and its 102
net earnings or any part of its net earnings are not distributable 103
to, its members, its directors, its officers, or other private 104
persons, except that the payment of reasonable compensation for 105
services rendered, payments and distributions in furtherance of 106
its nonprofit purpose, and the distribution of assets on 107
dissolution permitted by section 1702.49 of the Revised Code are 108
not pecuniary gain or profit or distribution of net earnings. In 109

no event shall payments and distributions in furtherance of an 110
entity's nonprofit purpose deprive the entity of its nonprofit 111
status as long as all of the members of that entity are operating 112
with a nonprofit purpose. 113

(B) A single member limited liability company that operates 114
with a nonprofit purpose, as described in division (A) of this 115
section, shall be treated as part of the same legal entity as its 116
nonprofit member, and all assets and liabilities of that single 117
member limited liability company shall be considered to be that of 118
the nonprofit member. Filings or applications for exemptions or 119
other tax purposes may be made either by the single member limited 120
liability company or its nonprofit member. 121

Sec. 5713.08. (A) The county auditor shall make a list of all 122
real and personal property in the auditor's county, ~~including~~ 123
~~money, credits, and investments in bonds, stocks, or otherwise,~~ 124
~~which that~~ is exempted from taxation. Such list shall show the 125
name of the owner, the value of the property exempted, and a 126
statement in brief form of the ground on which such exemption has 127
been granted. It shall be corrected annually by adding thereto the 128
items of property which have been exempted during the year, and by 129
striking therefrom the items which in the opinion of the auditor 130
have lost their right of exemption and which have been reentered 131
on the taxable list, but no property shall be struck from the 132
exempt property list solely because the property has been conveyed 133
to a single member limited liability company with a nonprofit 134
purpose from its nonprofit member or because the property has been 135
conveyed by a single member limited liability company with a 136
nonprofit purpose to its nonprofit member. No additions shall be 137
made to such exempt lists and no additional items of property 138
shall be exempted from taxation without the consent of the tax 139
commissioner as is provided for in section 5715.27 of the Revised 140
Code or without the consent of the housing officer under section 141

3735.67 of the Revised Code. ~~When any personal property or~~ 142
~~endowment fund of an institution has once been held by the~~ 143
~~commissioner to be properly exempt from taxation, it is not~~ 144
~~necessary to obtain the commissioner's consent to the exemption of~~ 145
~~additional property or investments of the same kind belonging to~~ 146
~~the same institution, but such property shall appear on the~~ 147
~~abstract filed annually with the commissioner.~~ The commissioner 148
may revise at any time the list in every county so that no 149
property is improperly or illegally exempted from taxation. The 150
auditor shall follow the orders of the commissioner given under 151
this section. An abstract of such list shall be filed annually 152
with the commissioner, on a form approved by the commissioner, and 153
a copy thereof shall be kept on file in the office of each auditor 154
for public inspection. 155

~~The commissioner shall not consider an~~ An application for 156
exemption of property ~~unless the application has attached thereto~~ 157
shall include a certificate executed by the county treasurer 158
certifying one of the following: 159

(1) That all taxes, ~~assessments,~~ interest, and penalties 160
levied and assessed against the property sought to be exempted 161
have been paid in full ~~to~~ for all of the tax years preceding the 162
~~date upon~~ tax year for which the application for exemption is 163
filed, except for such taxes, interest, and penalties that may be 164
remitted under division ~~(B)~~(C) of this section; 165

(2) That the applicant has entered into a valid delinquent 166
tax contract with the county treasurer pursuant to division (A) of 167
section 323.31 of the Revised Code to pay all of the delinquent 168
taxes, ~~assessments,~~ interest, and penalties charged against the 169
property, except for such taxes, interest, and penalties that may 170
be remitted under division ~~(B)~~(C) of this section. If the auditor 171
receives notice under section 323.31 of the Revised Code that such 172
a written delinquent tax contract has become void, the auditor 173

shall strike such property from the list of exempted property and 174
reenter such property on the taxable list. If property is removed 175
from the exempt list because a written delinquent tax contract has 176
become void, current taxes shall first be extended against that 177
property on the general tax list and duplicate of real and public 178
utility property for the tax year in which the auditor receives 179
the notice required by division (A) of section 323.31 of the 180
Revised Code that the delinquent tax contract has become void or, 181
if that notice is not timely made, for the tax year in which falls 182
the latest date by which the treasurer is required by such section 183
to give such notice. A county auditor shall not remove from any 184
tax list and duplicate the amount of any unpaid delinquent taxes, 185
assessments, interest, or penalties owed on property that is 186
placed on the exempt list pursuant to this division. 187

(3) That a tax certificate has been issued under section 188
5721.32 or 5721.33 of the Revised Code with respect to the 189
property that is the subject of the application, and the tax 190
certificate is outstanding. 191

(B) If the treasurer's certificate is not included with the 192
application or the certificate reflects unpaid taxes, penalties, 193
and interest that may not be remitted, the tax commissioner shall 194
notify the property owner of that fact, and the applicant shall be 195
given sixty days from the date that notification was mailed in 196
which to provide the tax commissioner with a corrected treasurer's 197
certificate. If a corrected treasurer's certificate is not 198
received within the time permitted, the tax commissioner does not 199
have authority to consider the tax exemption application. 200

(C) Any taxes, interest, and penalties which have become a 202
lien after the property was first used for the exempt purpose, but 203
in no case prior to the date of acquisition of the title to the 204
property by the applicant, may be remitted by the commissioner, 205

except as is provided in division (A) of section 5713.081 of the Revised Code.

~~(C)~~(D) Real property acquired by the state in fee simple is exempt from taxation from the date of acquisition of title or date of possession, whichever is the earlier date, provided that all taxes, interest, and penalties as provided in the apportionment provisions of section 319.20 of the Revised Code have been paid to the date of acquisition of title or date of possession by the state, whichever is earlier. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the year in which the property is acquired, shall be remitted by the county auditor for the balance of the year from date of acquisition of title or date of possession, whichever is earlier. This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, interest, and penalties thereon until all private use has terminated.

Sec. 5715.27. (A) Except as provided in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division ~~(B)~~(C) of section 5713.08 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner shall send to the board ~~for the quarters ending on the last day of March, June, September, and December of each year,~~ on a monthly basis

reports that contain sufficient information to enable the board to 237
identify each property that is the subject of an exemption 238
application, including, but not limited to, the name of the 239
property owner or applicant, the address of the property, and the 240
auditor's parcel number. The commissioner shall mail the reports 241
~~on or about~~ by the fifteenth day of the month following the end of 242
the ~~quarter~~ month in which the commissioner receives the 243
applications for exemption. 244

(C) A board of education that has requested notification 245
under division (B) of this section may, with respect to any 246
application for exemption of property located in the district and 247
included in the commissioner's most recent report provided under 248
that division, file a statement with the commissioner and with the 249
applicant indicating its intent to submit evidence and participate 250
in any hearing on the application. The statements shall be filed 251
prior to the first day of the third month following the end of the 252
~~quarter~~ month in which that application was docketed by the 253
commissioner. A statement filed in compliance with this division 254
entitles the district to submit evidence and to participate in any 255
hearing on the property and makes the district a party for 256
purposes of sections 5717.02 to 5717.04 of the Revised Code in any 257
appeal of the commissioner's decision to the board of tax appeals. 258

(D) The commissioner shall not hold a hearing on or grant or 259
deny an application for exemption of property in a school district 260
whose board of education has requested notification under division 261
(B) of this section until the end of the period within which the 262
board may submit a statement with respect to that application 263
under division (C) of this section. The commissioner may act upon 264
an application at any time prior to that date upon receipt of a 265
written waiver from each such board of education, or, in the case 266
of exemptions authorized by section 725.02, 1728.10, 5709.40, 267
5709.41, 5709.411, 5709.62, ~~or~~ 5709.63, 5709.632, 5709.73, 268

5709.78, 5709.84, or 5709.88 of the Revised Code, upon the request 269
of the property owner. Failure of a board of education to receive 270
the report required in division (B) of this section shall not void 271
an action of the commissioner with respect to any application. The 272
commissioner may extend the time for filing a statement under 273
division (C) of this section. 274

(E) A complaint may also be filed with the commissioner by 275
any person, board, or officer authorized by section 5715.19 of the 276
Revised Code to file complaints with the county board of revision 277
against the continued exemption of any property granted exemption 278
by the commissioner under this section. 279

(F) An application for exemption and a complaint against 280
exemption shall be filed prior to the thirty-first day of December 281
of the tax year for which exemption is requested or for which the 282
liability of the property to taxation in that year is requested. 283
The commissioner shall consider such application or complaint in 284
accordance with procedures established by the commissioner, 285
determine whether the property is subject to taxation or exempt 286
therefrom, and certify the commissioner's findings to the auditor, 287
who shall correct the tax list and duplicate accordingly. If a tax 288
certificate has been sold under section 5721.32 or 5721.33 of the 289
Revised Code with respect to property for which an exemption has 290
been requested, the tax commissioner shall also certify the 291
findings to the county treasurer of the county in which the 292
property is located. 293

(G) Applications and complaints, and documents of any kind 294
related to applications and complaints, filed with the tax 295
commissioner under this section, are public records within the 296
meaning of section 149.43 of the Revised Code. 297

(H) If the commissioner determines that the use of property 298
or other facts relevant to the taxability of property that is the 299
subject of an application for exemption or a complaint under this 300

section has changed while the application or complaint was 301
pending, the commissioner may make the determination under 302
division (F) of this section separately for each tax year 303
beginning with the year in which the application or complaint was 304
filed or the year for which remission of taxes under division 305
(~~B~~)(C) of section 5713.08 of the Revised Code was requested, and 306
including each subsequent tax year during which the application or 307
complaint is pending before the commissioner. 308

Sec. 5815.36. (A) As used in this section: 309

(1) "Disclaimant" means any person, any guardian or personal 310
representative of a person or estate of a person, or any 311
attorney-in-fact or agent of a person having a general or specific 312
authority to act granted in a written instrument, who is any of 313
the following: 314

(a) With respect to testamentary instruments and intestate 315
succession, an heir, next of kin, devisee, legatee, donee, person 316
succeeding to a disclaimed interest, surviving joint tenant, 317
surviving tenant by the entirety, surviving tenant of a tenancy 318
with a right of survivorship, beneficiary under a testamentary 319
instrument, or person designated to take pursuant to a power of 320
appointment exercised by a testamentary instrument; 321

(b) With respect to nontestamentary instruments, a grantee, 322
donee, person succeeding to a disclaimed interest, surviving joint 323
tenant, surviving tenant by the entirety, surviving tenant of a 324
tenancy with a right of survivorship, beneficiary under a 325
nontestamentary instrument, or person designated to take pursuant 326
to a power of appointment exercised by a nontestamentary 327
instrument; 328

(c) With respect to fiduciary rights, privileges, powers, and 329
immunities, a fiduciary under a testamentary or nontestamentary 330
instrument. ~~This~~ Division (A)(1)(c) of this section does not 331

authorize a fiduciary who disclaims fiduciary rights, privileges, 332
powers, and immunities to disclaim cause the rights of 333
beneficiaries any beneficiary to be disclaimed unless the 334
instrument creating the fiduciary relationship authorizes the 335
fiduciary to make such a disclaimer. 336

(d) Any person entitled to take an interest in property upon 337
the death of a person or upon the occurrence of any other event. 338

(2) "Personal representative" includes any fiduciary as 339
defined in section 2109.01 of the Revised Code and any executor, 340
trustee, guardian, or other person or entity having a fiduciary 341
relationship with regard to any interest in property passing to 342
the fiduciary, executor, trustee, guardian, or other person or 343
entity by reason of a disclaimant's death. 344

(3) "Property" means all forms of property, real and 345
personal, tangible and intangible. 346

(B)(1) A disclaimant, other than a fiduciary under an 347
instrument who is not authorized by the instrument to disclaim the 348
interest of a beneficiary, may disclaim, in whole or in part, the 349
succession to any property by executing and by delivering, filing, 350
or recording a written disclaimer instrument in the manner 351
provided in this section. 352

(2) A disclaimant who is a fiduciary under an instrument may 353
disclaim, in whole or in part, any right, power, privilege, or 354
immunity, by executing and by delivering, filing, or recording a 355
written disclaimer instrument in the manner provided in this 356
section. 357

(3) The written instrument of disclaimer shall be signed and 358
acknowledged by the disclaimant and shall contain all of the 359
following: 360

(a) A reference to the donative instrument; 361

(b) A description of the property, part of property, or 362
interest disclaimed, and of any fiduciary right, power, privilege, 363
or immunity disclaimed; 364

(c) A declaration of the disclaimer and its extent. 365

(4) The guardian of the estate of a minor or an incompetent, 366
or the personal representative of a deceased person, whether or 367
not authorized by the instrument to disclaim, with the consent of 368
the probate division of the court of common pleas, may disclaim, 369
in whole or in part, the succession to any property, or interest 370
in property, that the ward, if an adult and competent, or the 371
deceased, if living, might have disclaimed. The guardian or 372
personal representative, or any interested person may file an 373
application with the probate division of the court of common pleas 374
that has jurisdiction of the estate, asking that the court order 375
the guardian or personal representative to execute and deliver, 376
file, or record the disclaimer on behalf of the ward ~~or~~ estate, 377
or deceased person. The court shall order the guardian or personal 378
representative to execute and deliver, file, or record the 379
disclaimer if the court finds, upon hearing after notice to 380
interested parties and such other persons as the court shall 381
direct, that: 382

(a) It is in the best interests of those interested in the 383
estate of the person and of those who will take the disclaimed 384
interest; 385

(b) It would not materially, adversely affect the minor or 386
incompetent, or the beneficiaries of the estate of the decedent, 387
taking into consideration other available resources and the age, 388
probable life expectancy, physical and mental condition, and 389
present and reasonably anticipated future needs of the minor or 390
incompetent or the beneficiaries of the estate of the decedent. 391

A written instrument of disclaimer ordered by the court under 392

this division shall be executed and be delivered, filed, or 393
recorded within the time and in the manner in which the person 394
could have disclaimed if the person were living, an adult, and 395
competent. 396

(C) A partial disclaimer of property that is subject to a 397
burdensome interest created by the donative instrument is not 398
effective unless the disclaimed property constitutes a gift that 399
is separate and distinct from undisclaimed gifts. 400

(D) The disclaimant shall deliver, file, or record the 401
disclaimer, or cause the same to be done, ~~not later than nine~~ 402
~~months~~ prior to accepting any benefits of the disclaimed interest 403
and at any time after the latest of the following dates: 404

(1) The effective date of the donative instrument if both the 405
taker and the taker's interest in the property are finally 406
ascertained on that date; 407

(2) The date of the occurrence of the event upon which both 408
the taker and the taker's interest in the property become finally 409
ascertainable; 410

(3) The date on which the disclaimant attains ~~twenty-one~~ 411
eighteen years of age or is no longer an incompetent, without 412
tendering or repaying any benefit received while the disclaimant 413
was under ~~twenty-one~~ eighteen years of age or an incompetent, and 414
even if a guardian of a minor or incompetent had filed an 415
application pursuant to division (B)(4) of this section and the 416
probate division of the court of common pleas involved did not 417
consent to the guardian executing a disclaimer. 418

(E) No disclaimer instrument is effective under this section 419
if either of the following applies under the terms of the 420
disclaimer instrument: 421

(1) The disclaimant has power to revoke the disclaimer. 422

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to section 5302.22 of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the

administration of the decedent's estate, they shall be filed 455
under, or consolidated with, the case number assigned to the 456
disclaimer instrument. 457

(4) If an interest in real estate is disclaimed, an executed 458
copy of the disclaimer instrument also shall be recorded in the 459
office of the recorder of the county in which the real estate is 460
located. The disclaimer instrument shall include a description of 461
the real estate with sufficient certainty to identify it, and 462
shall contain a reference to the record of the instrument that 463
created the interest disclaimed. If title to the real estate is 464
registered under Chapters 5309. and 5310. of the Revised Code, the 465
disclaimer interest shall be entered as a memorial on the last 466
certificate of title. A spouse of a disclaimant has no dower or 467
other interest in the real estate disclaimed. 468

(G) ~~Unless the~~ If a donative instrument expressly provides 469
~~that, if there is~~ for the distribution of property, part of 470
~~property, or interest in property if there is~~ a disclaimer, there 471
~~shall not be any acceleration of remainders or other interests,~~ 472
~~the property, part of property, or interest disclaimed shall be~~ 473
~~distributed or disposed of, and accelerated or not accelerated, in~~ 474
~~accordance with the donative instrument. In the absence of express~~ 475
~~provisions to the contrary in the donative instrument,~~ the 476
property, part of property, or interest in property disclaimed, 477
and any future interest that is to take effect in possession or 478
enjoyment at or after the termination of the interest disclaimed, 479
shall descend, be distributed, or otherwise be disposed of, and 480
shall be accelerated, in the following manner: 481

(1) If intestate or testate succession is disclaimed, as if 482
the disclaimant had predeceased the decedent; 483

(2) If the disclaimant is one designated to take pursuant to 484
a power of appointment exercised by a testamentary instrument, as 485
if the disclaimant had predeceased the donee of the power; 486

(3) If the donative instrument is a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument;

(4) If the disclaimer is of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.

(H) A disclaimer pursuant to this section is effective as of, and relates back for all purposes to, the date upon which the taker and the taker's interest have been finally ascertained.

(I) A disclaimant who has a present and future interest in property, and disclaims the disclaimant's present interest in whole or in part, is considered to have disclaimed the disclaimant's future interest to the same extent, unless a contrary intention appears in the disclaimer instrument or the donative instrument. A disclaimant is not precluded from receiving, as an alternative taker, a beneficial interest in the property disclaimed, unless a contrary intention appears in the disclaimer instrument or in the donative instrument.

(J) The disclaimant's right to disclaim under this section is barred if, ~~before the expiration of the period within which the disclaimant may disclaim the interest,~~ the disclaimant does any of the following:

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;

(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;

(3) Accepts the property or an interest in it;

(4) Permits or suffers a sale or other disposition of the

property pursuant to judicial action against the disclaimant. 517

(K) A Neither a fiduciary's application for appointment or 518
assumption of duties as a fiduciary ~~does not waive~~ nor a 519
beneficiary's application for appointment as a personal 520
representative or fiduciary waives or ~~bar~~ bars the disclaimant's 521
right to disclaim a right, power, privilege, or immunity as a 522
personal representative or fiduciary or the beneficiary's right to 523
disclaim property. 524

(L) The right to disclaim under this section exists 525
irrespective of any limitation on the interest of the disclaimant 526
in the nature of a spendthrift provision or similar restriction. 527

(M) A disclaimer instrument or written waiver of the right to 528
disclaim that has been executed and delivered, filed, or recorded 529
as required by this section is final and binding upon all persons. 530

(N) The right to disclaim and the procedures for disclaimer 531
established by this section are in addition to, and do not exclude 532
or abridge, any other rights or procedures ~~existing~~ that exist or 533
formerly existed under any other section of the Revised Code or at 534
common law to assign, convey, release, refuse to accept, renounce, 535
waive, or disclaim property. 536

(O)(1) No person is liable for distributing or disposing of 537
property in a manner inconsistent with the terms of a valid 538
disclaimer if the distribution or disposition is otherwise proper 539
and the person has no actual knowledge of the disclaimer. 540

(2) No person is liable for distributing or disposing of 541
property in reliance upon the terms of a disclaimer that is 542
invalid because the right of disclaimer has been waived or barred 543
if the distribution or disposition is otherwise proper and the 544
person has no actual knowledge of the facts that constitute a 545
waiver or bar to the right to disclaim. 546

(P)(1) A disclaimant may disclaim pursuant to this section 547

any interest in property that is in existence on September 27, 548
1976, if either the interest in the property or the taker of the 549
interest in the property is not finally ascertained on that date. 550

(2) No disclaimer executed pursuant to this section destroys 551
or diminishes an interest in property that exists on September 27, 552
1976, in any person other than the disclaimant. 553

(Q) This section may be applied separately to different 554
interests or powers created in the disclaimant by the same 555
testamentary or nontestamentary instrument. 556

Section 2. That existing sections 319.20, 1705.02, 5713.08, 557
5715.27, and 5815.36 of the Revised Code are hereby repealed. 558

Section 3. Sections 319.20, 5713.08, and 5715.27 of the 559
Revised Code, as amended by this act, are remedial in nature and 560
apply to the tax years at issue in any application for exemption 561
from taxation pending before the Tax Commissioner, the Board of 562
Tax Appeals, the Court of Appeals, or the Supreme Court on the 563
effective date of this act and to that property that is the 564
subject of any application. 565

Section 4. The amendments to divisions (A), (B), (G), (K), 566
(N), and (Q) of section 5815.36 of the Revised Code contained in 567
Section 1 of this act are intended to clarify and be declaratory 568
of the law as it existed prior to the enactment of this act and 569
shall be construed accordingly. 570

Section 5. The General Assembly recognizes that section 2518 571
of the Internal Revenue Code defines a qualified disclaimer, in 572
part, as a written refusal by a person to accept an interest in 573
property that is received by the transferor of the interest within 574
nine months after the later of the date on which the transfer 575
creating the interest is made and the date on which the person 576

attains twenty-one years of age. By amending division (D) of 577
section 5815.36 of the Revised Code to eliminate a reference to 578
the nine-month period, the General Assembly intends to create the 579
possibility that some disclaimers governed by the law of this 580
state will be qualified under section 2518 of the Internal Revenue 581
Code and some will not be qualified under that section. 582

Section 6. Section 1705.02 of the Revised Code, as amended by 583
this act, and section 5701.14 of the Revised Code, as enacted by 584
this act, apply to limited liability companies that were in 585
existence prior to the effective date of this act and that assert 586
to be nonprofit limited liability companies. 587