

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 496**

**Representative Jordan**

**Cosponsors: Representatives Adams, J., Boose, Combs**

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**A B I L L**

To enact sections 131.70 and 131.71 of the Revised 1  
Code to assert the state's claim of sovereignty 2  
pursuant to the Tenth Amendment to the United 3  
States Constitution, to require Ohio residents to 4  
remit federal taxes to the Treasurer of State, to 5  
require that those taxes be retained by the state 6  
for its own use to the extent the General Assembly 7  
finds that the federal government penalized the 8  
state for failing to comply with a federal mandate 9  
determined by the General Assembly to be 10  
unconstitutional or to the extent directed by a 11  
statewide ballot initiative, and to declare an 12  
emergency. 13

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

**Section 1.** That sections 131.70 and 131.71 of the Revised 14  
Code be enacted to read as follows: 15

**Sec. 131.70.** (A) The general assembly finds and declares as 16  
follows: 17

(1) The Tenth Amendment to the United States Constitution 18  
states as follows: "The powers not delegated to the United States 19

by the Constitution, nor prohibited by it to the States, are 20  
reserved to the States respectively, or to the people." The 21  
general assembly finds that the Tenth Amendment to the United 22  
States Constitution defines the total scope of the federal 23  
government's power as being that specifically stated in the United 24  
States Constitution and no more. 25

(2) The congress of the United States has the power to lay 26  
and collect taxes pursuant only to Clause 1 of Section 8 of 27  
Article I of the United States Constitution; Clause 4 of Section 9 28  
of Article I of the United States Constitution; and the Sixteenth 29  
Amendment to the United States Constitution. 30

(3) The federal government does not have the power to 31  
withhold from the states the benefits of those taxes by use of 32  
federal mandates that are outside the scope of the powers 33  
enumerated in the United States Constitution. 34

(B) In light of the continuing unconstitutional federal 35  
mandates that withhold the benefits of those taxes, the state of 36  
Ohio hereby reasserts its claim of sovereignty pursuant to the 37  
Tenth Amendment to the United States Constitution. 38

**Sec. 131.71.** (A) As used in this section: 39

(1) "Person" has the same meaning as in section 5701.01 of 40  
the Revised Code. 41

(2) "Ohio resident" means all of the following: 42

(a) A resident, as defined in section 5747.01 of the Revised 43  
Code; 44

(b) An employer located in Ohio required to withhold federal 45  
income tax under Subtitle C of Title 26, United States Code; 46

(c) A person whose primary place of business is located in 47  
Ohio and that is required to pay a tax imposed by Title 26, United 48  
States Code; 49

(d) Any other person located in Ohio required under Title 26, United States Code, to withhold or collect a tax and remit it to the internal revenue service. 50  
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(B) An Ohio resident that is liable for a tax imposed under Title 26, United States Code, shall remit the tax to the treasurer of state on or before the last day on which payment may be made without penalty under federal law and shall include with the payment the person's federal taxpayer identification number. An Ohio resident who fails to comply with this section may be subject to applicable penalties assessed pursuant to federal or state law. Upon receipt of a payment made pursuant to this section, the treasurer of state shall deposit the payment to the credit of the federal tax fund, which is hereby created in the state treasury, and shall report to the internal revenue service the name and tax identification number of the person from whom the payment was received and the payment amount. The treasurer of state shall prescribe the manner in which such remittances shall be made. 53  
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(C) Except as otherwise provided in this division, on the last day of each quarter of each fiscal year, the director of budget and management shall disburse to the internal revenue service the amount in the federal tax fund. Before disbursement, the director shall make the following transfers, as appropriate: 67  
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(1) From the federal tax fund to the general revenue fund for use for any purpose for which general revenue fund money may be used, the amount of interest earned on money in the federal tax fund; 72  
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(2) From the federal tax fund to the general revenue fund for use for any purpose for which general revenue fund money may be used, the amount stated in a concurrent resolution, adopted during the fiscal quarter, in which the general assembly makes both of the following determinations: 76  
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(a) The federal government has imposed a financial penalty on, withheld an amount from, or denied matching funds or grants to this state as a result of the state's failure to enact legislation or take any other action mandated by federal law; and

(b) The federal law mandating the legislation or other action exceeds the authority granted to the federal government by the United States Constitution.

(3) From the federal tax fund to the general revenue fund for use for any purpose for which general revenue fund money may be used, the amount certified to the director of budget and management pursuant to division (G) of this section;

(4) From the general revenue fund to the federal tax fund the amount stated in a concurrent resolution, adopted during the fiscal quarter, in which the general assembly finds that some or all of an amount stated in a resolution adopted under division (C)(2) of this section is no longer imposed, withheld, or denied;

(5) To be effective, a concurrent resolution adopted under division (C)(2) or (4) of this section shall be adopted by affirmative vote of three-fifths of the membership of each house, shall state the amount imposed, withheld, or denied, or the amount no longer imposed, withheld, or denied, and shall be spread upon the journal of each house. Upon adoption of the resolution, the clerk of the house in which the resolution was first introduced shall deliver a copy of the resolution to the director of budget and management. If a resolution is adopted under division (C)(2) of this section or an amount is certified to the director of budget and management under division (G) of this section and the amount required to be transferred or paid from the federal tax fund is greater than the amount in the federal tax fund, the deficiency shall be carried forward and applied against future credits to the fund until fully satisfied.

(D) If an event described in division (C)(2)(a) of this section occurs while the general assembly is not in regular session, the general assembly shall convene in special session pursuant to Section 8 of Article I, Ohio Constitution, to consider the constitutional issue. 112  
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(E) By the power of initiative reserved to them under Sections 1a and 1b of Article II, Ohio Constitution, qualified electors of this state, pursuant to Chapter 3519. of the Revised Code, may propose by initiative petition a law requiring the director of budget and management to transfer from the federal tax fund to the general revenue fund, in any fiscal year, an amount to be stated in the proposed law, or requiring the director of budget and management to transfer from the federal tax fund to the general revenue fund, in any fiscal year, an amount to be stated in the proposed law. If the law is enacted and the amount required to be transferred from the federal tax fund is greater than the amount in the fund, the deficiency shall be carried forward and applied against future credits to the fund until fully satisfied. 117  
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(F) The provisions of this section shall be implemented regardless of any sanctions, threats, court action, or other pressure brought to bear by federal authorities. 130  
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(G) The state shall defend all civil and criminal actions brought against an Ohio resident by the federal government for compliance with this section, shall indemnify the Ohio resident for any tax, civil or criminal penalty or restitution, or interest the Ohio resident is forced to pay, and shall compensate the Ohio resident for any economic damages caused by the action. Any cost incurred or amount paid by the state pursuant to this section shall be certified to the director of budget and management. 133  
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**Section 2.** This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public 141  
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peace, health, and safety. The reason for such necessity is that 143  
the federal government, by repeatedly acting outside its 144  
constitutional limitations, is causing irreparable damage to the 145  
peace, health, and safety of the people of the state of Ohio. 146  
Therefore, this act shall go into immediate effect. 147