

As Introduced

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H. B. No. 375

Representative Huffman

**Cosponsors: Speaker Batchelder Representatives Hall, Grossman, Conditt,
Sears, Hayes, Boose, Beck, Stebelton, Hill, Wachtmann, Amstutz, Landis,
Scherer, Baker, Buchy, Retherford, Rosenberger**

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A B I L L

To amend sections 1509.02, 1509.071, 1509.34, 1
1513.08, 1513.182, 1514.11, 5703.052, 5747.98, 2
5749.01, 5749.02, 5749.03, 5749.06, 5749.07, 3
5749.08, 5749.10, 5749.11, 5749.12, 5749.13, 4
5749.14, 5749.15, and 5751.01, to enact section 5
5747.63, and to repeal section 1509.50 of the 6
Revised Code to levy a severance tax on well 7
owners of oil and gas severed from horizontal 8
wells, to create a nonrefundable income tax credit 9
for the amount of horizontal well severance tax 10
paid, to repeal a cost recovery assessment imposed 11
on oil and gas well owners, to reduce the 12
severance tax rate on natural gas extracted from 13
nonhorizontal wells, to exclude from the tax base 14
of the commercial activity tax gross receipts from 15
the sale of oil or natural gas severed through use 16
of a horizontal well, and to make an 17
appropriation. 18

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

Section 1. That sections 1509.02, 1509.071, 1509.34, 1513.08, 19
1513.182, 1514.11, 5703.052, 5747.98, 5749.01, 5749.02, 5749.03, 20
5749.06, 5749.07, 5749.08, 5749.10, 5749.11, 5749.12, 5749.13, 21
5749.14, 5749.15, and 5751.01 be amended and section 5747.63 of 22
the Revised Code be enacted to read as follows: 23

Sec. 1509.02. (A) There is hereby created in the department 24
of natural resources the division of oil and gas resources 25
management, which shall be administered by the chief of the 26
division of oil and gas resources management. The division has 27
sole and exclusive authority to regulate the permitting, location, 28
and spacing of oil and gas wells and production operations within 29
the state, excepting only those activities regulated under federal 30
laws for which oversight has been delegated to the environmental 31
protection agency and activities regulated under sections 6111.02 32
to 6111.028 of the Revised Code. The regulation of oil and gas 33
activities is a matter of general statewide interest that requires 34
uniform statewide regulation, and this chapter and rules adopted 35
under it constitute a comprehensive plan with respect to all 36
aspects of the locating, drilling, well stimulation, completing, 37
and operating of oil and gas wells within this state, including 38
site construction and restoration, permitting related to those 39
activities, and the disposal of wastes from those wells. In order 40
to assist the division in the furtherance of its sole and 41
exclusive authority as established in this section, the chief may 42
enter into cooperative agreements with other state agencies for 43
advice and consultation, including visitations at the surface 44
location of a well on behalf of the division. Such cooperative 45
agreements do not confer on other state agencies any authority to 46
administer or enforce this chapter and rules adopted under it. In 47
addition, such cooperative agreements shall not be construed to 48
dilute or diminish the division's sole and exclusive authority as 49

established in this section. Nothing in this section affects the 50
authority granted to the director of transportation and local 51
authorities in section 723.01 or 4513.34 of the Revised Code, 52
provided that the authority granted under those sections shall not 53
be exercised in a manner that discriminates against, unfairly 54
impedes, or obstructs oil and gas activities and operations 55
regulated under this chapter. 56

The chief shall not hold any other public office, nor shall 57
the chief be engaged in any occupation or business that might 58
interfere with or be inconsistent with the duties as chief. 59

All moneys collected by the chief pursuant to sections 60
1509.06, 1509.061, 1509.062, 1509.071, 1509.13, 1509.22, 1509.222, 61
1509.28, and 1509.34, ~~and 1509.50~~ of the Revised Code, ninety per 62
cent of moneys received by the treasurer of state from the tax 63
levied in divisions ~~(A)~~(B)(5) and (6) of section 5749.02 of the 64
Revised Code, all civil penalties paid under section 1509.33 of 65
the Revised Code, and, notwithstanding any section of the Revised 66
Code relating to the distribution or crediting of fines for 67
violations of the Revised Code, all fines imposed under divisions 68
(A) and (B) of section 1509.99 of the Revised Code and fines 69
imposed under divisions (C) and (D) of section 1509.99 of the 70
Revised Code for all violations prosecuted by the attorney general 71
and for violations prosecuted by prosecuting attorneys that do not 72
involve the transportation of brine by vehicle shall be deposited 73
into the state treasury to the credit of the oil and gas well 74
fund, which is hereby created. Fines imposed under divisions (C) 75
and (D) of section 1509.99 of the Revised Code for violations 76
prosecuted by prosecuting attorneys that involve the 77
transportation of brine by vehicle and penalties associated with a 78
compliance agreement entered into pursuant to this chapter shall 79
be paid to the county treasury of the county where the violation 80
occurred. 81

The fund shall be used solely and exclusively for the 82
purposes enumerated in division (B) of section 1509.071 of the 83
Revised Code, for the expenses of the division associated with the 84
administration of this chapter and Chapter 1571. of the Revised 85
Code and rules adopted under them, and for expenses that are 86
critical and necessary for the protection of human health and 87
safety and the environment related to oil and gas production in 88
this state. The expenses of the division in excess of the moneys 89
available in the fund shall be paid from general revenue fund 90
appropriations to the department. 91

(B) For any fiscal year, not less than fifty per cent of any 92
money credited to the oil and gas well fund in excess of the 93
amount appropriated for that fiscal year in the most recent 94
biennial budget shall be used by the division of oil and gas 95
resources management during the succeeding fiscal year for the 96
purposes described in division (B)(1) or (2) of section 1509.071 97
of the Revised Code. 98

Sec. 1509.071. (A) When the chief of the division of oil and 99
gas resources management finds that an owner has failed to comply 100
with a final nonappealable order issued or compliance agreement 101
entered into under section 1509.04, the restoration requirements 102
of section 1509.072, plugging requirements of section 1509.12, or 103
permit provisions of section 1509.13 of the Revised Code, or rules 104
and orders relating thereto, the chief shall make a finding of 105
that fact and declare any surety bond filed to ensure compliance 106
with those sections and rules forfeited in the amount set by rule 107
of the chief. The chief thereupon shall certify the total 108
forfeiture to the attorney general, who shall proceed to collect 109
the amount of the forfeiture. In addition, the chief may require 110
an owner, operator, producer, or other person who forfeited a 111
surety bond to post a new surety bond in the amount of fifteen 112
thousand dollars for a single well, thirty thousand dollars for 113

two wells, or fifty thousand dollars for three or more wells. 114

In lieu of total forfeiture, the surety or owner, at the 115
surety's or owner's option, may cause the well to be properly 116
plugged and abandoned and the area properly restored or pay to the 117
treasurer of state the cost of plugging and abandonment. 118

(B) All moneys collected because of forfeitures of bonds as 119
provided in this section shall be deposited in the state treasury 120
to the credit of the oil and gas well fund created in section 121
1509.02 of the Revised Code. 122

The chief annually shall spend not less than fourteen per 123
cent of the revenue credited to the fund during the previous 124
fiscal year, and not less than fifty per cent of the excess money 125
described in section 1509.02 of the Revised Code that was credited 126
to the fund during the previous fiscal year, for the following 127
purposes: 128

(1) In accordance with division (D) of this section, to plug 129
idle and orphaned wells or to restore the land surface properly as 130
required in section 1509.072 of the Revised Code; 131

(2) In accordance with division (E) of this section, to 132
correct conditions that the chief reasonably has determined are 133
causing imminent health or safety risks at an idle and orphaned 134
well or a well for which the owner cannot be contacted in order to 135
initiate a corrective action within a reasonable period of time as 136
determined by the chief. 137

Expenditures from the fund shall be made only for lawful 138
purposes. In addition, expenditures from the fund shall not be 139
made to purchase real property or to remove a dwelling in order to 140
access a well. 141

(C)(1) Upon determining that the owner of a well has failed 142
to properly plug and abandon it or to properly restore the land 143
surface at the well site in compliance with the applicable 144

requirements of this chapter and applicable rules adopted and 145
orders issued under it or that a well is an abandoned well for 146
which no funds are available to plug the well in accordance with 147
this chapter, the chief shall do all of the following: 148

(a) Determine from the records in the office of the county 149
recorder of the county in which the well is located the identity 150
of the owner of the land on which the well is located, the 151
identity of the owner of the oil or gas lease under which the well 152
was drilled or the identity of each person owning an interest in 153
the lease, and the identities of the persons having legal title 154
to, or a lien upon, any of the equipment appurtenant to the well; 155

(b) Mail notice to the owner of the land on which the well is 156
located informing the landowner that the well is to be plugged. If 157
the owner of the oil or gas lease under which the well was drilled 158
is different from the owner of the well or if any persons other 159
than the owner of the well own interests in the lease, the chief 160
also shall mail notice that the well is to be plugged to the owner 161
of the lease or to each person owning an interest in the lease, as 162
appropriate. 163

(c) Mail notice to each person having legal title to, or a 164
lien upon, any equipment appurtenant to the well, informing the 165
person that the well is to be plugged and offering the person the 166
opportunity to plug the well and restore the land surface at the 167
well site at the person's own expense in order to avoid forfeiture 168
of the equipment to this state. 169

(2) If none of the persons described in division (C)(1)(c) of 170
this section plugs the well within sixty days after the mailing of 171
the notice required by that division, all equipment appurtenant to 172
the well is hereby declared to be forfeited to this state without 173
compensation and without the necessity for any action by the state 174
for use to defray the cost of plugging and abandoning the well and 175
restoring the land surface at the well site. 176

(D) Expenditures from the fund for the purpose of division 177
(B)(1) of this section shall be made in accordance with either of 178
the following: 179

(1) The expenditures may be made pursuant to contracts 180
entered into by the chief with persons who agree to furnish all of 181
the materials, equipment, work, and labor as specified and 182
provided in such a contract for activities associated with the 183
restoration or plugging of a well as determined by the chief. The 184
activities may include excavation to uncover a well, geophysical 185
methods to locate a buried well when clear evidence of leakage 186
from the well exists, cleanout of wellbores to remove material 187
from a failed plugging of a well, plugging operations, 188
installation of vault and vent systems, including associated 189
engineering certifications and permits, restoration of property, 190
and repair of damage to property that is caused by such 191
activities. Expenditures shall not be used for salaries, 192
maintenance, equipment, or other administrative purposes, except 193
for costs directly attributed to the plugging of an idle and 194
orphaned well. Agents or employees of persons contracting with the 195
chief for a restoration or plugging project may enter upon any 196
land, public or private, on which the well is located for the 197
purpose of performing the work. Prior to such entry, the chief 198
shall give to the following persons written notice of the 199
existence of a contract for a project to restore or plug a well, 200
the names of the persons with whom the contract is made, and the 201
date that the project will commence: the owner of the well, the 202
owner of the land upon which the well is located, the owner or 203
agents of adjoining land, and, if the well is located in the same 204
township as or in a township adjacent to the excavations and 205
workings of a mine and the owner or lessee of that mine has 206
provided written notice identifying those townships to the chief 207
at any time during the immediately preceding three years, the 208
owner or lessee of the mine. 209

(2)(a) The owner of the land on which a well is located who 210
has received notice under division (C)(1)(b) of this section may 211
plug the well and be reimbursed by the division of oil and gas 212
resources management for the reasonable cost of plugging the well. 213
In order to plug the well, the landowner shall submit an 214
application to the chief on a form prescribed by the chief and 215
approved by the technical advisory council on oil and gas created 216
in section 1509.38 of the Revised Code. The application, at a 217
minimum, shall require the landowner to provide the same 218
information as is required to be included in the application for a 219
permit to plug and abandon under section 1509.13 of the Revised 220
Code. The application shall be accompanied by a copy of a proposed 221
contract to plug the well prepared by a contractor regularly 222
engaged in the business of plugging oil and gas wells. The 223
proposed contract shall require the contractor to furnish all of 224
the materials, equipment, work, and labor necessary to plug the 225
well properly and shall specify the price for doing the work, 226
including a credit for the equipment appurtenant to the well that 227
was forfeited to the state through the operation of division 228
(C)(2) of this section. Expenditures under division (D)(2)(a) of 229
this section shall be consistent with the expenditures for 230
activities described in division (D)(1) of this section. The 231
application also shall be accompanied by the permit fee required 232
by section 1509.13 of the Revised Code unless the chief, in the 233
chief's discretion, waives payment of the permit fee. The 234
application constitutes an application for a permit to plug and 235
abandon the well for the purposes of section 1509.13 of the 236
Revised Code. 237

(b) Within thirty days after receiving an application and 238
accompanying proposed contract under division (D)(2)(a) of this 239
section, the chief shall determine whether the plugging would 240
comply with the applicable requirements of this chapter and 241
applicable rules adopted and orders issued under it and whether 242

the cost of the plugging under the proposed contract is 243
reasonable. If the chief determines that the proposed plugging 244
would comply with those requirements and that the proposed cost of 245
the plugging is reasonable, the chief shall notify the landowner 246
of that determination and issue to the landowner a permit to plug 247
and abandon the well under section 1509.13 of the Revised Code. 248
Upon approval of the application and proposed contract, the chief 249
shall transfer ownership of the equipment appurtenant to the well 250
to the landowner. The chief may disapprove an application 251
submitted under division (D)(2)(a) of this section if the chief 252
determines that the proposed plugging would not comply with the 253
applicable requirements of this chapter and applicable rules 254
adopted and orders issued under it, that the cost of the plugging 255
under the proposed contract is unreasonable, or that the proposed 256
contract is not a bona fide, arm's length contract. 257

(c) After receiving the chief's notice of the approval of the 258
application and permit to plug and abandon a well under division 259
(D)(2)(b) of this section, the landowner shall enter into the 260
proposed contract to plug the well. 261

(d) Upon determining that the plugging has been completed in 262
compliance with the applicable requirements of this chapter and 263
applicable rules adopted and orders issued under it, the chief 264
shall reimburse the landowner for the cost of the plugging as set 265
forth in the proposed contract approved by the chief. The 266
reimbursement shall be paid from the oil and gas well fund. If the 267
chief determines that the plugging was not completed in accordance 268
with the applicable requirements, the chief shall not reimburse 269
the landowner for the cost of the plugging, and the landowner or 270
the contractor, as applicable, promptly shall transfer back to 271
this state title to and possession of the equipment appurtenant to 272
the well that previously was transferred to the landowner under 273
division (D)(2)(b) of this section. If any such equipment was 274

removed from the well during the plugging and sold, the landowner 275
shall pay to the chief the proceeds from the sale of the 276
equipment, and the chief promptly shall pay the moneys so received 277
to the treasurer of state for deposit into the oil and gas well 278
fund. 279

The chief may establish an annual limit on the number of 280
wells that may be plugged under division (D)(2) of this section or 281
an annual limit on the expenditures to be made under that 282
division. 283

As used in division (D)(2) of this section, "plug" and 284
"plugging" include the plugging of the well and the restoration of 285
the land surface disturbed by the plugging. 286

(E) Expenditures from the oil and gas well fund for the 287
purpose of division (B)(2) of this section may be made pursuant to 288
contracts entered into by the chief with persons who agree to 289
furnish all of the materials, equipment, work, and labor as 290
specified and provided in such a contract. The competitive bidding 291
requirements of Chapter 153. of the Revised Code do not apply if 292
the chief reasonably determines that an emergency situation exists 293
requiring immediate action for the correction of the applicable 294
health or safety risk. A contract or purchase of materials for 295
purposes of addressing the emergency situation is not subject to 296
division (B) of section 127.16 of the Revised Code. The chief, 297
designated representatives of the chief, and agents or employees 298
of persons contracting with the chief under this division may 299
enter upon any land, public or private, for the purpose of 300
performing the work. 301

(F) Contracts entered into by the chief under this section 302
are not subject to any of the following: 303

(1) Chapter 4115. of the Revised Code; 304

(2) Section 153.54 of the Revised Code, except that the 305

contractor shall obtain and provide to the chief as a bid guaranty 306
a surety bond or letter of credit in an amount equal to ten per 307
cent of the amount of the contract; 308

(3) Section 4733.17 of the Revised Code. 309

(G) The owner of land on which a well is located who has 310
received notice under division (C)(1)(b) of this section, in lieu 311
of plugging the well in accordance with division (D)(2) of this 312
section, may cause ownership of the well to be transferred to an 313
owner who is lawfully doing business in this state and who has met 314
the financial responsibility requirements established under 315
section 1509.07 of the Revised Code, subject to the approval of 316
the chief. The transfer of ownership also shall be subject to the 317
landowner's filing the appropriate forms required under section 318
1509.31 of the Revised Code and providing to the chief sufficient 319
information to demonstrate the landowner's or owner's right to 320
produce a formation or formations. That information may include a 321
deed, a lease, or other documentation of ownership or property 322
rights. 323

The chief shall approve or disapprove the transfer of 324
ownership of the well. If the chief approves the transfer, the 325
owner is responsible for operating the well in accordance with 326
this chapter and rules adopted under it, including, without 327
limitation, all of the following: 328

(1) Filing an application with the chief under section 329
1509.06 of the Revised Code if the owner intends to drill deeper 330
or produce a formation that is not listed in the records of the 331
division for that well; 332

(2) Taking title to and possession of the equipment 333
appurtenant to the well that has been identified by the chief as 334
having been abandoned by the former owner; 335

(3) Complying with all applicable requirements that are 336

necessary to drill deeper, plug the well, or plug back the well. 337

(H) The chief shall issue an order that requires the owner of 338
a well to pay the actual documented costs of a corrective action 339
that is described in division (B)(2) of this section concerning 340
the well. The chief shall transmit the money so recovered to the 341
treasurer of state who shall deposit the money in the state 342
treasury to the credit of the oil and gas well fund. 343

(I) The chief may engage in cooperative projects under this 344
section with any agency of this state, another state, or the 345
United States; any other governmental agencies; or any state 346
university or college as defined in section 3345.27 of the Revised 347
Code. A contract entered into for purposes of a cooperative 348
project is not subject to division (B) of section 127.16 of the 349
Revised Code. 350

Sec. 1509.34. (A)(1) If an owner fails to pay the fees 351
imposed by this chapter, or if the chief of the division of oil 352
and gas resources management incurs costs under division (E) of 353
section 1509.071 of the Revised Code to correct conditions 354
associated with the owner's well that the chief reasonably has 355
determined are causing imminent health or safety risks, the 356
division of oil and gas resources management shall have a priority 357
lien against that owner's interest in the applicable well in front 358
of all other creditors for the amount of any such unpaid fees and 359
costs incurred. The chief shall file a statement in the office of 360
the county recorder of the county in which the applicable well is 361
located of the amount of the unpaid fees and costs incurred as 362
described in this division. The statement shall constitute a lien 363
on the owner's interest in the well as of the date of the filing. 364
The lien shall remain in force so long as any portion of the lien 365
remains unpaid or until the chief issues a certificate of release 366
of the lien. If the chief issues a certificate of release of the 367

lien, the chief shall file the certificate of release in the 368
office of the applicable county recorder. 369

(2) A lien imposed under division (A)(1) of this section 370
shall be in addition to any lien imposed by the attorney general 371
for failure to pay ~~the assessment imposed by section 1509.50 of~~ 372
~~the Revised Code or~~ the tax levied under division ~~(A)~~(B)(5) or (6) 373
or (C) of section 5749.02 of the Revised Code, as applicable. 374

(3) If the attorney general cannot collect from a severer or 375
an owner for an outstanding balance of ~~amounts due under section~~ 376
~~1509.50 of the Revised Code or~~ of unpaid taxes levied under 377
division ~~(A)~~(B)(5) or (6) or (C) of section 5749.02 of the Revised 378
Code, as applicable, the tax commissioner may request the chief to 379
impose a priority lien against the owner's interest in the 380
applicable well. Such a lien has priority in front of all other 381
creditors. 382

(B) The chief promptly shall issue a certificate of release 383
of a lien under either of the following circumstances: 384

(1) Upon the repayment in full of the amount of unpaid fees 385
imposed by this chapter or costs incurred by the chief under 386
division (E) of section 1509.071 of the Revised Code to correct 387
conditions associated with the owner's well that the chief 388
reasonably has determined are causing imminent health or safety 389
risks; 390

(2) Any other circumstance that the chief determines to be in 391
the best interests of the state. 392

(C) The chief may modify the amount of a lien under this 393
section. If the chief modifies a lien, the chief shall file a 394
statement in the office of the county recorder of the applicable 395
county of the new amount of the lien. 396

(D) An owner regarding which the division has recorded a lien 397

against the owner's interest in a well in accordance with this 398
section shall not transfer a well, lease, or mineral rights to 399
another owner or person until the chief issues a certificate of 400
release for each lien against the owner's interest in the well. 401

(E) All money from the collection of liens under this section 402
shall be deposited in the state treasury to the credit of the oil 403
and gas well fund created in section 1509.02 of the Revised Code. 404

Sec. 1513.08. (A) After a coal mining and reclamation permit 405
application has been approved, the applicant shall file with the 406
chief of the division of mineral resources management, on a form 407
prescribed and furnished by the chief, the performance security 408
required under this section that shall be payable to the state and 409
conditioned on the faithful performance of all the requirements of 410
this chapter and rules adopted under it and the terms and 411
conditions of the permit. 412

(B) Using the information contained in the permit 413
application; the requirements contained in the approved permit and 414
reclamation plan; and, after considering the topography, geology, 415
hydrology, and revegetation potential of the area of the approved 416
permit, the probable difficulty of reclamation; the chief shall 417
determine the estimated cost of reclamation under the initial term 418
of the permit if the reclamation has to be performed by the 419
division of mineral resources management in the event of 420
forfeiture of the performance security by the applicant. The chief 421
shall send written notice of the amount of the estimated cost of 422
reclamation by certified mail to the applicant. The applicant 423
shall send written notice to the chief indicating the method by 424
which the applicant will provide the performance security pursuant 425
to division (C) of this section. 426

(C) The applicant shall provide the performance security in 427
an amount using one of the following: 428

(1) If the applicant elects to provide performance security 429
without reliance on the reclamation forfeiture fund created in 430
section 1513.18 of the Revised Code, the amount of the estimated 431
cost of reclamation as determined by the chief under division (B) 432
of this section for the increments of land on which the operator 433
will conduct a coal mining and reclamation operation under the 434
initial term of the permit as indicated in the application; 435

(2) If the applicant elects to provide performance security 436
together with reliance on the reclamation forfeiture fund through 437
payment of the additional tax on the severance of coal that is 438
levied under division ~~(A)~~(B)(8) of section 5749.02 of the Revised 439
Code, an amount of twenty-five hundred dollars per acre of land on 440
which the operator will conduct coal mining and reclamation under 441
the initial term of the permit as indicated in the application. 442
However, in order for an applicant to be eligible to provide 443
performance security in accordance with division (C)(2) of this 444
section, the applicant, an owner and controller of the applicant, 445
or an affiliate of the applicant shall have held a permit issued 446
under this chapter for any coal mining and reclamation operation 447
for a period of not less than five years. In the event of 448
forfeiture of performance security that was provided in accordance 449
with division (C)(2) of this section, the difference between the 450
amount of that performance security and the estimated cost of 451
reclamation as determined by the chief under division (B) of this 452
section shall be obtained from money in the reclamation forfeiture 453
fund as needed to complete the reclamation. 454

The performance security provided under division (C) of this 455
section for the entire area to be mined under one permit issued 456
under this chapter shall not be less than ten thousand dollars. 457

The performance security shall cover areas of land affected 458
by mining within or immediately adjacent to the permitted area, so 459
long as the total number of acres does not exceed the number of 460

acres for which the performance security is provided. However, the 461
authority for the performance security to cover areas of land 462
immediately adjacent to the permitted area does not authorize a 463
permittee to mine areas outside an approved permit area. As 464
succeeding increments of coal mining and reclamation operations 465
are to be initiated and conducted within the permit area, the 466
permittee shall file with the chief additional performance 467
security to cover the increments in accordance with this section. 468
If a permittee intends to mine areas outside the approved permit 469
area, the permittee shall provide additional performance security 470
in accordance with this section to cover the areas to be mined. 471

If an applicant or permittee has not held a permit issued 472
under this chapter for any coal mining and reclamation operation 473
for a period of five years or more, the applicant or permittee 474
shall provide performance security in accordance with division 475
(C)(1) of this section in the full amount of the estimated cost of 476
reclamation as determined by the chief for a permitted coal 477
preparation plant or coal refuse disposal area that is not located 478
within a permitted area of a mine. If an applicant for a permit 479
for a coal preparation plant or coal refuse disposal area or a 480
permittee of a permitted coal preparation plant or coal refuse 481
disposal area that is not located within a permitted area of a 482
mine has held a permit issued under this chapter for any coal 483
mining and reclamation operation for a period of five years or 484
more, the applicant or permittee may provide performance security 485
for the coal preparation plant or coal refuse disposal area either 486
in accordance with division (C)(1) of this section in the full 487
amount of the estimated cost of reclamation as determined by the 488
chief or in accordance with division (C)(2) of this section in an 489
amount of twenty-five hundred dollars per acre of land with 490
reliance on the reclamation forfeiture fund. If a permittee has 491
previously provided performance security under division (C)(1) of 492
this section for a coal preparation plant or coal refuse disposal 493

area that is not located within a permitted area of a mine and 494
elects to provide performance security in accordance with division 495
(C)(2) of this section, the permittee shall submit written notice 496
to the chief indicating that the permittee elects to provide 497
performance security in accordance with division (C)(2) of this 498
section. Upon receipt of such a written notice, the chief shall 499
release to the permittee the amount of the performance security 500
previously provided under division (C)(1) of this section that 501
exceeds the amount of performance security that is required to be 502
provided under division (C)(2) of this section. 503

(D) A permittee's liability under the performance security 504
shall be limited to the obligations established under the permit, 505
which include completion of the reclamation plan in order to make 506
the land capable of supporting the postmining land use that was 507
approved in the permit. The period of liability under the 508
performance security shall be for the duration of the coal mining 509
and reclamation operation and for a period coincident with the 510
operator's responsibility for revegetation requirements under 511
section 1513.16 of the Revised Code. 512

(E) The amount of the estimated cost of reclamation 513
determined under division (B) of this section and the amount of a 514
permittee's performance security provided in accordance with 515
division (C)(1) of this section shall be adjusted by the chief as 516
the land that is affected by mining increases or decreases or if 517
the cost of reclamation increases or decreases. If the performance 518
security was provided in accordance with division (C)(2) of this 519
section and the chief has issued a cessation order under division 520
(D)(2) of section 1513.02 of the Revised Code for failure to abate 521
a violation of the contemporaneous reclamation requirement under 522
division (A)(15) of section 1513.16 of the Revised Code, the chief 523
may require the permittee to increase the amount of performance 524
security from twenty-five hundred dollars per acre of land to five 525

thousand dollars per acre of land. 526

The chief shall notify the permittee, each surety, and any 527
person who has a property interest in the performance security and 528
who has requested to be notified of any proposed adjustment to the 529
performance security. The permittee may request an informal 530
conference with the chief concerning the proposed adjustment, and 531
the chief shall provide such an informal conference. 532

If the chief increases the amount of performance security 533
under this division, the permittee shall provide additional 534
performance security in an amount determined by the chief. If the 535
chief decreases the amount of performance security under this 536
division, the chief shall determine the amount of the reduction of 537
the performance security and send written notice of the amount of 538
reduction to the permittee. The permittee may reduce the amount of 539
the performance security in the amount determined by the chief. 540

(F) A permittee may request a reduction in the amount of the 541
performance security by submitting to the chief documentation 542
proving that the amount of the performance security provided by 543
the permittee exceeds the estimated cost of reclamation if the 544
reclamation would have to be performed by the division in the 545
event of forfeiture of the performance security. The chief shall 546
examine the documentation and determine whether the permittee's 547
performance security exceeds the estimated cost of reclamation. If 548
the chief determines that the performance security exceeds that 549
estimated cost, the chief shall determine the amount of the 550
reduction of the performance security and send written notice of 551
the amount to the permittee. The permittee may reduce the amount 552
of the performance security in the amount determined by the chief. 553
Adjustments in the amount of performance security under this 554
division shall not be considered release of performance security 555
and are not subject to section 1513.16 of the Revised Code. 556

(G) If the performance security is a bond, it shall be 557

executed by the operator and a corporate surety licensed to do 558
business in this state. If the performance security is a cash 559
deposit or negotiable certificates of deposit of a bank or savings 560
and loan association, the bank or savings and loan association 561
shall be licensed and operating in this state. The cash deposit or 562
market value of the securities shall be equal to or greater than 563
the amount of the performance security required under this 564
section. The chief shall review any documents pertaining to the 565
performance security and approve or disapprove the documents. The 566
chief shall notify the applicant of the chief's determination. 567

(H) If the performance security is a bond, the chief may 568
accept the bond of the applicant itself without separate surety 569
when the applicant demonstrates to the satisfaction of the chief 570
the existence of a suitable agent to receive service of process 571
and a history of financial solvency and continuous operation 572
sufficient for authorization to self-insure or bond the amount. 573

(I) Performance security provided under this section may be 574
held in trust, provided that the state is the primary beneficiary 575
of the trust and the custodian of the performance security held in 576
trust is a bank, trust company, or other financial institution 577
that is licensed and operating in this state. The chief shall 578
review the trust document and approve or disapprove the document. 579
The chief shall notify the applicant of the chief's determination. 580

(J) If a surety, bank, savings and loan association, trust 581
company, or other financial institution that holds the performance 582
security required under this section becomes insolvent, the 583
permittee shall notify the chief of the insolvency, and the chief 584
shall order the permittee to submit a plan for replacement 585
performance security within thirty days after receipt of notice 586
from the chief. If the permittee provided performance security in 587
accordance with division (C)(1) of this section, the permittee 588
shall provide the replacement performance security within ninety 589

days after receipt of notice from the chief. If the permittee 590
provided performance security in accordance with division (C)(2) 591
of this section, the permittee shall provide the replacement 592
performance security within one year after receipt of notice from 593
the chief, and, for a period of one year after the permittee's 594
receipt of notice from the chief or until the permittee provides 595
the replacement performance security, whichever occurs first, 596
money in the reclamation forfeiture fund shall be the permittee's 597
replacement performance security in an amount not to exceed the 598
estimated cost of reclamation as determined by the chief. 599

(K) If a permittee provided performance security in 600
accordance with division (C)(1) of this section, the permittee's 601
responsibility for repairing material damage and replacement of 602
water supply resulting from subsidence shall be satisfied by 603
either of the following: 604

(1) The purchase prior to mining of a noncancelable 605
premium-prepaid liability insurance policy in lieu of the 606
permittee's performance security for subsidence damage. The 607
insurance policy shall contain terms and conditions that 608
specifically provide coverage for repairing material damage and 609
replacement of water supply resulting from subsidence. 610

(2) The provision of additional performance security in the 611
amount of the estimated cost to the division of mineral resources 612
management to repair material damage and replace water supplies 613
resulting from subsidence until the repair or replacement is 614
completed. However, if such repair or replacement is completed, or 615
compensation for structures that have been damaged by subsidence 616
is provided, by the permittee within ninety days of the occurrence 617
of the subsidence, additional performance security is not 618
required. In addition, the chief may extend the ninety-day period 619
for a period not to exceed one year if the chief determines that 620
the permittee has demonstrated in writing that subsidence is not 621

complete and that probable subsidence-related damage likely will 622
occur and, as a result, the completion of repairs of 623
subsidence-related material damage to lands or protected 624
structures or the replacement of water supply within ninety days 625
of the occurrence of the subsidence would be unreasonable. 626

(L) If the performance security provided in accordance with 627
this section exceeds the estimated cost of reclamation, the chief 628
may authorize the amount of the performance security that exceeds 629
the estimated cost of reclamation together with any interest or 630
other earnings on the performance security to be paid to the 631
permittee. 632

(M) A permittee that held a valid coal mining and reclamation 633
permit immediately prior to April 6, 2007, shall provide, not 634
later than a date established by the chief, performance security 635
in accordance with division (C)(1) or (2) of this section, rather 636
than in accordance with the law as it existed prior to that date, 637
by filing it with the chief on a form that the chief prescribes 638
and furnishes. Accordingly, for purposes of this section, 639
"applicant" is deemed to include such a permittee. 640

(N) As used in this section: 641

(1) "Affiliate of the applicant" means an entity that has a 642
parent entity in common with the applicant. 643

(2) "Owner and controller of the applicant" means a person 644
that has any relationship with the applicant that gives the person 645
authority to determine directly or indirectly the manner in which 646
the applicant conducts coal mining operations. 647

Sec. 1513.182. (A) There is hereby created the reclamation 648
forfeiture fund advisory board consisting of the director of 649
natural resources, the director of insurance, and seven members 650
appointed by the governor with the advice and consent of the 651

senate. Of the governor's appointments, one shall be a certified 652
public accountant, one shall be a registered professional engineer 653
with experience in reclamation of mined land, two shall represent 654
agriculture, agronomy, or forestry, one shall be a representative 655
of operators of coal mining operations that have valid permits 656
issued under this chapter and that have provided performance 657
security under division (C)(1) of section 1513.08 of the Revised 658
Code, one shall be a representative of operators of coal mining 659
operations that have valid permits issued under this chapter and 660
that have provided performance security under division (C)(2) of 661
section 1513.08 of the Revised Code, and one shall be a 662
representative of the public. 663

Of the original members appointed by the governor, two shall 664
serve an initial term of two years, three an initial term of three 665
years, and two an initial term of four years. Thereafter, terms of 666
appointed members shall be for four years, with each term ending 667
on the same date as the original date of appointment. An appointed 668
member shall hold office from the date of appointment until the 669
end of the term for which the member was appointed. Vacancies 670
shall be filled in the same manner as original appointments. A 671
member appointed to fill a vacancy occurring prior to the 672
expiration of the term for which the member's predecessor was 673
appointed shall hold office for the remainder of that term. A 674
member shall continue in office subsequent to the expiration date 675
of the member's term until the member's successor takes office or 676
until a period of sixty days has elapsed, whichever occurs first. 677
The governor may remove an appointed member of the board for 678
misfeasance, nonfeasance, or malfeasance. 679

The directors of natural resources and insurance shall not 680
receive compensation for serving on the board, but shall be 681
reimbursed for the actual and necessary expenses incurred in the 682
performance of their duties as members of the board. The members 683

appointed by the governor shall receive per diem compensation 684
fixed pursuant to division (J) of section 124.15 of the Revised 685
Code and reimbursement for the actual and necessary expenses 686
incurred in the performance of their duties. 687

(B) The board annually shall elect from among its members a 688
chairperson, a vice-chairperson, and a secretary to record the 689
board's meetings. 690

(C) The board shall hold meetings as often as necessary as 691
the chairperson or a majority of the members determines. 692

(D) The board shall establish procedures for conducting 693
meetings and for the election of its chairperson, 694
vice-chairperson, and secretary. 695

(E) The board shall do all of the following: 696

(1) Review the deposits into and expenditures from the 697
reclamation forfeiture fund created in section 1513.18 of the 698
Revised Code; 699

(2) Retain periodically a qualified actuary to perform an 700
actuarial study of the reclamation forfeiture fund; 701

(3) Based on an actuarial study and as determined necessary 702
by the board, adopt rules in accordance with Chapter 119. of the 703
Revised Code to adjust the rate of the tax levied under division 704
~~(A)~~(B)(8) of section 5749.02 of the Revised Code and the balance 705
of the reclamation forfeiture fund that pertains to that rate; 706

(4) Evaluate any rules, procedures, and methods for 707
estimating the cost of reclamation for purposes of determining the 708
amount of performance security that is required under section 709
1513.08 of the Revised Code; the collection of forfeited 710
performance security; payments to the reclamation forfeiture fund; 711
reclamation of sites for which operators have forfeited the 712
performance security; and the compliance of operators with their 713

reclamation plans; 714

(5) Provide a forum for discussion of issues related to the 715
reclamation forfeiture fund and the performance security that is 716
required under section 1513.08 of the Revised Code; 717

(6) Submit a report biennially to the governor that describes 718
the financial status of the reclamation forfeiture fund and the 719
adequacy of the amount of money in the fund to accomplish the 720
purposes of the fund and that may discuss any matter related to 721
the performance security that is required under section 1513.08 of 722
the Revised Code; 723

(7) Make recommendations to the governor, if necessary, of 724
alternative methods of providing money for or using money in the 725
reclamation forfeiture fund and issues related to the reclamation 726
of land or water resources that have been adversely affected by 727
past coal mining for which the performance security was forfeited; 728

(8) Adopt rules in accordance with Chapter 119. of the 729
Revised Code that are necessary to administer this section. 730

Sec. 1514.11. In addition to the purposes authorized in 731
section 1514.06 of the Revised Code, the chief of the division of 732
mineral resources management may use moneys in the surface mining 733
fund created under that section for the administration and 734
enforcement of this chapter, for the reclamation of land affected 735
by surface or in-stream mining under a permit issued under this 736
chapter that the operator failed to reclaim and for which the 737
performance bond filed by the operator is insufficient to complete 738
the reclamation, and for the reclamation of land affected by 739
surface or in-stream mining that was abandoned and left 740
unreclaimed and for which no permit was issued or bond filed under 741
this chapter. Also, the chief may use the portion of the surface 742
mining fund that consists of moneys collected from the severance 743
taxes levied under section 5749.02 of the Revised Code for mine 744

safety and first aid training. For purposes of this section, the 745
chief shall expend moneys in the fund in accordance with the 746
procedures and requirements established in section 1514.06 of the 747
Revised Code and may enter into contracts and perform work in 748
accordance with that section. 749

Fees collected under sections 1514.02 and 1514.03 of the 750
Revised Code, one-half of the moneys collected from the severance 751
taxes levied under divisions ~~(A)~~(B)(3) and (4) of section 5749.02 752
of the Revised Code, and all of the moneys collected from the 753
severance tax levied under division ~~(A)~~(B)(7) of section 5749.02 754
of the Revised Code shall be credited to the fund in accordance 755
with those sections. Notwithstanding any section of the Revised 756
Code relating to the distribution or crediting of fines for 757
violations of the Revised Code, all fines imposed under section 758
1514.99 of the Revised Code shall be credited to the fund. 759

Sec. 5703.052. (A) There is hereby created in the state 760
treasury the tax refund fund, from which refunds shall be paid for 761
taxes illegally or erroneously assessed or collected, or for any 762
other reason overpaid, that are levied by Chapter 4301., 4305., 763
5726., 5728., 5729., 5731., 5733., 5735., 5736., 5739., 5741., 764
5743., 5747., 5748., 5749., 5751., or 5753. and sections 3737.71, 765
3905.35, 3905.36, 4303.33, 5707.03, 5725.18, 5727.28, 5727.38, 766
5727.81, and 5727.811 of the Revised Code. Refunds for fees or 767
wireless 9-1-1 charges illegally or erroneously assessed or 768
collected, or for any other reason overpaid, that are levied by 769
sections 128.42 or 3734.90 to 3734.9014 of the Revised Code also 770
shall be paid from the fund. ~~Refunds for amounts illegally or~~ 771
~~erroneously assessed or collected by the tax commissioner, or for~~ 772
~~any other reason overpaid, that are due under section 1509.50 of~~ 773
~~the Revised Code shall be paid from the fund.~~ However, refunds for 774
taxes levied under section 5739.101 of the Revised Code shall not 775
be paid from the tax refund fund, but shall be paid as provided in 776

section 5739.104 of the Revised Code. 777

(B)(1) Upon certification by the tax commissioner to the 778
treasurer of state of a tax refund or a wireless 9-1-1 charge 779
~~refund, or another amount refunded,~~ or by the superintendent of 780
insurance of a domestic or foreign insurance tax refund, the 781
treasurer of state shall place the amount certified to the credit 782
of the fund. The certified amount transferred shall be derived 783
from the receipts of the same tax, fee, or wireless 9-1-1 charge, 784
~~or other amount~~ from which the refund arose. 785

(2) When a refund is for a tax, fee, or wireless 9-1-1 786
charge, ~~or other amount~~ that is not levied by the state or that 787
was illegally or erroneously distributed to a taxing jurisdiction, 788
the tax commissioner shall recover the amount of that refund from 789
the next distribution of that tax, fee, or wireless 9-1-1 charge, 790
~~or other amount~~ that otherwise would be made to the taxing 791
jurisdiction. If the amount to be recovered would exceed 792
twenty-five per cent of the next distribution of that tax, fee, or 793
wireless 9-1-1 charge, ~~or other amount~~, the commissioner may 794
spread the recovery over more than one future distribution, taking 795
into account the amount to be recovered and the amount of the 796
anticipated future distributions. In no event may the commissioner 797
spread the recovery over a period to exceed twenty-four months. 798

Sec. 5747.63. (A) As used in this section: 799

(1) "Horizontal well severance tax" means the tax imposed 800
under division (C)(1) of section 5749.02 of the Revised Code. 801

(2) "Horizontal well" has the same meaning as in section 802
1509.01 of the Revised Code. 803

(3) "Designated taxpayer" means a taxpayer that is designated 804
by another taxpayer under division (C) of this section and that 805
has a working interest or royalty interest in the designating 806

taxpayer's horizontal well. 807

(B)(1) For taxable years beginning on or after January 1, 808
2014, a taxpayer may claim a nonrefundable credit against the tax 809
imposed by section 5747.02 of the Revised Code. The amount of the 810
credit equals the horizontal severance tax paid by the taxpayer 811
for calendar quarter periods ending in the taxpayer's taxable 812
year. 813

(2) A taxpayer that is an owner that has designated a severer 814
to pay horizontal well severance tax on behalf of the owner under 815
division (C)(2) of section 5749.02 of the Revised Code may not 816
claim the credit under this section on the basis of that tax 817
unless that owner is a designated taxpayer or that severer is a 818
pass-through entity in which the owner is a direct or indirect 819
investor. Instead, the severer so designated shall claim the 820
credit and is the taxpayer for the purposes of division (B)(1) of 821
this section. 822

(3) The credit shall be claimed in the order required under 823
section 5747.98 of the Revised Code. If the credit exceeds the 824
amount of tax otherwise due for the taxable year, the excess may 825
be carried forward and applied against the tax due for not more 826
than seven succeeding taxable years, provided that the amount 827
applied to the tax due for any taxable year shall be subtracted 828
from the amount available to carry forward to succeeding years. 829

A taxpayer that is a direct or indirect investor in a 830
pass-through entity that paid horizontal well severance tax may 831
claim the taxpayer's distributive or proportionate share of the 832
credit. 833

(C) A taxpayer authorized to claim the credit under this 834
section may designate a designated taxpayer to claim the credit 835
authorized under this section on the basis of all or a portion of 836
horizontal severance tax paid by the designating taxpayer. Before 837

making that designation, the designating taxpayer shall consider 838
any contractual arrangement with one or more holders of a working 839
interest or royalty interest in the taxpayer's horizontal well 840
that provides for an allocation of liability for any tax levied 841
under Chapter 5749. of the Revised Code with respect to that 842
horizontal well. Any designation made by a designating taxpayer 843
under this division shall be in writing and be included with each 844
quarterly severance tax return filed by that taxpayer under 845
section 5749.06 of the Revised Code, and the designated taxpayer 846
may claim the credit only on the basis of horizontal well 847
severance tax paid by the designating taxpayer for a calendar 848
quarter for which the designating taxpayer makes that designation. 849
The designated taxpayer may claim the credit under this section on 850
the basis of the portion of horizontal well severance tax the 851
taxpayer allocates to the designated taxpayer. 852

Sec. 5747.98. (A) To provide a uniform procedure for 853
calculating the amount of tax due under section 5747.02 of the 854
Revised Code, a taxpayer shall claim any credits to which the 855
taxpayer is entitled in the following order: 856

(1) The retirement income credit under division (B) of 857
section 5747.055 of the Revised Code; 858

(2) The senior citizen credit under division (C) of section 859
5747.05 of the Revised Code; 860

(3) The lump sum distribution credit under division (D) of 861
section 5747.05 of the Revised Code; 862

(4) The dependent care credit under section 5747.054 of the 863
Revised Code; 864

(5) The lump sum retirement income credit under division (C) 865
of section 5747.055 of the Revised Code; 866

(6) The lump sum retirement income credit under division (D) 867

of section 5747.055 of the Revised Code;	868
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	869 870
(8) The low-income credit under section 5747.056 of the Revised Code;	871 872
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	873 874
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	875 876
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	877 878
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	879 880
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	881 882
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	883 884
(15) The earned income credit under section 5747.71 of the Revised Code;	885 886
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	887 888
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	889 890
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	891 892
(19) The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;	893 894
(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	895 896

(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	897 898 899
(22) The job training credit under section 5747.39 of the Revised Code;	900 901
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	902 903
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	904 905
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	906 907
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	908 909
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	910 911
(28) The small business investment credit under section 5747.81 of the Revised Code;	912 913
(29) <u>The credit for paid horizontal well severance tax under section 5747.63 of the Revised Code;</u>	914 915
<u>(30)</u> The enterprise zone credits under section 5709.65 of the Revised Code;	916 917
(30) <u>(31)</u> The research and development credit under section 5747.331 of the Revised Code;	918 919
(31) <u>(32)</u> The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	920 921
(32) <u>(33)</u> The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	922 923
(33) <u>(34)</u> The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;	924 925

(34) (35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	926 927
(35) (36) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	928 929 930
(36) (37) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;	931 932 933
(37) (38) The refundable motion picture production credit under section 5747.66 of the Revised Code— i	934 935
(38) (39) The refundable credit for financial institution taxes paid by a pass-through entity granted under section 5747.65 of the Revised Code.	936 937 938
(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	939 940 941 942 943 944 945 946 947 948
Sec. 5749.01. As used in this chapter:	949
(A) "Ton" shall mean two thousand pounds as measured at the point and time of severance, after the removal of any impurities, under such rules and regulations as the tax commissioner may prescribe.	950 951 952 953
(B) "Taxpayer" means any person required to pay the tax levied by Chapter 5749. of the Revised Code.	954 955

(C) "Natural resource" means all forms of coal, salt, limestone, dolomite, sand, gravel, natural gas, and oil.

(D) "Owner" ~~has~~ and "horizontal well" have the same ~~meaning~~ meanings as in section 1509.01 of the Revised Code.

(E) "Person" means any individual, firm, partnership, association, joint stock company, corporation, or estate, or combination thereof.

(F) "Return" means any report or statement required to be filed pursuant to Chapter 5749. of the Revised Code used to determine the tax due.

(G) "Severance" means the extraction or other removal of a natural resource from the soil or water of this state.

(H) "Severed" means the point at which the natural resource has been separated from the soil or water in this state.

(I) "Severer" means any person who actually removes the natural resources from the soil or water in this state.

(J) "First day of production" means the date on which oil or natural gas is first severed through the use of a horizontal well.
"First day of production" does not include days on which natural gas is flared from a horizontal well exclusively for testing and oil is not produced when the natural gas is flared.

(K) "Net proceeds" means gross receipts from the severance of oil and natural gas less any post-production costs related to the sale of the oil or natural gas.

(L) "Post-production costs" includes costs related to gathering, processing, transporting, fractionation of, and delivery for sale of oil or natural gas, and any related adjustment accounting for shrinkage.

Sec. 5749.02. (A) For the purpose of providing revenue to

administer the state's coal mining and reclamation regulatory 985
program and oil and gas regulatory program, to meet the 986
environmental and resource management needs of this state, and to 987
reclaim land affected by mining, an excise tax is hereby levied on 988
the privilege of engaging in the severance of natural resources 989
from the soil or water of this state under divisions (B) and (C) 990
of this section. The tax 991

(B) There shall be a tax imposed upon the severer at the 992
rates prescribed by divisions ~~(A)~~(B)(1) to (9) of this section: 993

(1) Ten cents per ton of coal; 994

(2) Four cents per ton of salt; 995

(3) Two cents per ton of limestone or dolomite; 996

(4) Two cents per ton of sand and gravel; 997

(5) Ten cents per barrel of oil severed through use of a well 998
that is not a horizontal well; 999

(6) ~~Two~~ One and one-half cents per thousand cubic feet of 1000
natural gas severed through use of a well that is not a horizontal 1001
well; 1002

(7) One cent per ton of clay, sandstone or conglomerate, 1003
shale, gypsum, or quartzite; 1004

(8) Except as otherwise provided in this division or in rules 1005
adopted by the reclamation forfeiture fund advisory board under 1006
section 1513.182 of the Revised Code, an additional fourteen cents 1007
per ton of coal produced from an area under a coal mining and 1008
reclamation permit issued under Chapter 1513. of the Revised Code 1009
for which the performance security is provided under division 1010
(C)(2) of section 1513.08 of the Revised Code. Beginning July 1, 1011
2007, if at the end of a fiscal biennium the balance of the 1012
reclamation forfeiture fund created in section 1513.18 of the 1013
Revised Code is equal to or greater than ten million dollars, the 1014

rate levied shall be twelve cents per ton. Beginning July 1, 2007, 1015
if at the end of a fiscal biennium the balance of the fund is at 1016
least five million dollars, but less than ten million dollars, the 1017
rate levied shall be fourteen cents per ton. Beginning July 1, 1018
2007, if at the end of a fiscal biennium the balance of the fund 1019
is less than five million dollars, the rate levied shall be 1020
sixteen cents per ton. Beginning July 1, 2009, not later than 1021
thirty days after the close of a fiscal biennium, the chief of the 1022
division of mineral resources management shall certify to the tax 1023
commissioner the amount of the balance of the reclamation 1024
forfeiture fund as of the close of the fiscal biennium. Any 1025
necessary adjustment of the rate levied shall take effect on the 1026
first day of the following January and shall remain in effect 1027
during the calendar biennium that begins on that date. 1028

(9) An additional one and two-tenths cents per ton of coal 1029
mined by surface mining methods. 1030

~~(B)~~(C) For oil and natural gas severed through use of a 1031
horizontal well on or after April 1, 2014, there shall be a tax 1032
imposed upon the well's owner, except as provided in division 1033
(C)(2) of this section, at the rates prescribed in division 1034
(C)(1)(a), (b), (c), or (d) of this section: 1035

(1)(a) Beginning on the first day of production and 1036
continuing until the last day of the twentieth calendar quarter 1037
that begins after the calendar quarter that includes the first day 1038
or production, one per cent of the owner's net proceeds related to 1039
oil and natural gas severed by the owner's horizontal well; 1040

(b) Except as provided in division (C)(1)(c) or (d) of this 1041
section, beginning on the first day of the twenty-first calendar 1042
quarter that begins after the calendar quarter that includes the 1043
first day of production and continuing thereafter, two per cent of 1044
the owner's net proceeds related to oil and natural gas severed by 1045
the owner's horizontal well; 1046

(c) For natural gas severed through use of a horizontal well that produces an average of less than one hundred thousand cubic feet of natural gas per day in a calendar quarter, one per cent of the owner's net proceeds related to natural gas severed by that well for that calendar quarter; 1047
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(d) For oil severed through use of a horizontal well that produces an average of less than seventeen barrels of oil per day in a calendar quarter, one per cent of the owner's net proceeds related to oil severed by that well for that calendar quarter. 1052
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(2) An owner shall pay the tax imposed under division (C) of this section in the same manner as a severer that is required to file a return under section 5749.06 of the Revised Code. An owner may designate a severer to pay the owner's tax and file the owner's return on behalf of the owner. The severer shall report this designation on each return filed by the severer. If a designated severer pays an owner's tax, the severer may recoup from the owner the amount of the tax so paid, but only to the extent that the severer does not recoup the amount by claiming the credit authorized under section 5747.63 of the Revised Code. A severer designated under division (C)(2) of this section shall pay the designating owner's tax due under division (C)(1) of this section for each calendar quarter for which the owner has designated that severer. 1056
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(3) The owner or the severer designated under division (C)(2) of this section shall report the owner's net proceeds on the return the owner or severer is required to file under section 5749.06 of the Revised Code. 1070
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(D) After the director of budget and management transfers money from the severance tax receipts fund as required in division (H) of section 5749.06 of the Revised Code, money remaining in the severance tax receipts fund, ~~except for money in the fund from the amounts due under section 1509.50 of the Revised Code,~~ shall be 1074
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credited as follows: 1079

(1) Of the moneys in the fund from the tax levied in division 1080
~~(A)~~(B)(1) of this section, four and seventy-six-hundredths per 1081
cent shall be credited to the geological mapping fund created in 1082
section 1505.09 of the Revised Code, eighty and 1083
ninety-five-hundredths per cent shall be credited to the coal 1084
mining administration and reclamation reserve fund created in 1085
section 1513.181 of the Revised Code, and fourteen and 1086
twenty-nine-hundredths per cent shall be credited to the 1087
unreclaimed lands fund created in section 1513.30 of the Revised 1088
Code. 1089

(2) The money in the fund from the tax levied in division 1090
~~(A)~~(B)(2) of this section shall be credited to the geological 1091
mapping fund. 1092

(3) Of the moneys in the fund from the tax levied in 1093
divisions ~~(A)~~(B)(3) and (4) of this section, seven and five-tenths 1094
per cent shall be credited to the geological mapping fund, 1095
forty-two and five-tenths per cent shall be credited to the 1096
unreclaimed lands fund, and the remainder shall be credited to the 1097
surface mining fund created in section 1514.06 of the Revised 1098
Code. 1099

(4) Of the moneys in the fund from the tax levied in 1100
divisions ~~(A)~~(B)(5) and (6) of this section, ninety per cent shall 1101
be credited to the oil and gas well fund created in section 1102
1509.02 of the Revised Code and ten per cent shall be credited to 1103
the geological mapping fund. All of the moneys in the fund from 1104
the tax levied in division ~~(A)~~(B)(7) of this section shall be 1105
credited to the surface mining fund. 1106

(5) All of the moneys in the fund from the tax levied in 1107
division ~~(A)~~(B)(8) of this section shall be credited to the 1108
reclamation forfeiture fund. 1109

(6) All of the moneys in the fund from the tax levied in 1110
division ~~(A)~~(B)(9) of this section shall be credited to the 1111
unreclaimed lands fund. 1112

(7) All of the money received by the treasurer of state from 1113
the tax levied in division (C) of this section shall be credited 1114
to the horizontal well tax fund, which is hereby created in the 1115
state treasury. Not later than the fifteenth day of September of 1116
each year, the tax commissioner shall calculate and certify to the 1117
director of budget and management the total amount that would have 1118
been collected from severances during the preceding fiscal year 1119
through use of a horizontal well if such severances had been taxed 1120
under divisions (A)(5) and (6) of this section, as those divisions 1121
existed on December 31, 2013, and not under division (C) of this 1122
section. The director of budget and management shall transfer, on 1123
or before the twenty-fifth day of September, ninety per cent of 1124
the amount so certified from the horizontal well tax fund to the 1125
oil and gas well fund and ten per cent of the amount so certified 1126
to the geological mapping fund. Not later than the succeeding 1127
thirtieth day of September, the director of budget and management 1128
shall transfer any money remaining in the horizontal well tax fund 1129
from tax collected during the preceding fiscal year to the income 1130
tax reduction fund. 1131

~~(C)~~(E) When, at the close of any fiscal year, the chief finds 1132
that the balance of the reclamation forfeiture fund, plus 1133
estimated transfers to it from the coal mining administration and 1134
reclamation reserve fund under section 1513.181 of the Revised 1135
Code, plus the estimated revenues from the tax levied by division 1136
~~(A)~~(B)(8) of this section for the remainder of the calendar year 1137
that includes the close of the fiscal year, are sufficient to 1138
complete the reclamation of all lands for which the performance 1139
security has been provided under division (C)(2) of section 1140
1513.08 of the Revised Code, the purposes for which the tax under 1141

division ~~(A)~~(B)(8) of this section is levied shall be deemed 1142
accomplished at the end of that calendar year. The chief, within 1143
thirty days after the close of the fiscal year, shall certify 1144
those findings to the tax commissioner, and the tax levied under 1145
division ~~(A)~~(B)(8) of this section shall cease to be imposed for 1146
the subsequent calendar year after the last day of that calendar 1147
year on coal produced under a coal mining and reclamation permit 1148
issued under Chapter 1513. of the Revised Code if the permittee 1149
has made tax payments under division ~~(A)~~(B)(8) of this section 1150
during each of the preceding five full calendar years. Not later 1151
than thirty days after the close of a fiscal year, the chief shall 1152
certify to the tax commissioner the identity of any permittees who 1153
accordingly no longer are required to pay the tax levied under 1154
division ~~(A)~~(B)(8) of this section for the subsequent calendar 1155
year. 1156

Sec. 5749.03. The following shall be exempt from the tax 1157
imposed by section 5749.02 of the Revised Code ~~and the amount due~~ 1158
~~under section 1509.50 of the Revised Code:~~ 1159

The severance of natural resources from land or water in this 1160
state owned legally or beneficially by the severer, which natural 1161
resources will be used on the land from which they are taken by 1162
the severer as part of the improvement of or use in the severer's 1163
homestead and which have a yearly cumulative market value of not 1164
greater than one thousand dollars. When severed natural resources 1165
so used exceed a cumulative market value of one thousand dollars 1166
during any year, the further severance of natural resources shall 1167
be subject to the tax imposed by section 5749.02 of the Revised 1168
Code. 1169

Sec. 5749.06. (A)(1) Each severer or owner liable for the tax 1170
imposed by section 5749.02 of the Revised Code ~~and each severer or~~ 1171
~~owner liable for the amounts due under section 1509.50 of the~~ 1172

~~Revised Code shall make and file returns with the tax commissioner 1173
in the prescribed form and as of the prescribed times, computing 1174
and reflecting therein the tax as required by this chapter ~~and~~ 1175
~~amounts due under section 1509.50 of the Revised Code.~~ 1176~~

1177

(2) The returns shall be filed for every quarterly period, 1178
which periods shall end on the thirty-first day of March, the 1179
thirtieth day of June, the thirtieth day of September, and the 1180
thirty-first day of December of each year, as required by this 1181
section, unless a different return period is prescribed for a 1182
taxpayer by the commissioner. 1183

(B)(1) A separate return shall be filed for each calendar 1184
quarterly period, or other period, or any part thereof, during 1185
which the severer holds a license as provided by section 5749.04 1186
of the Revised Code, or is required to hold the license, or during 1187
which an owner is required to file a return. The return shall be 1188
filed within forty-five days after the last day of each such 1189
calendar month, or other period, or any part thereof, for which 1190
the return is required. The tax due is payable along with the 1191
return. All such returns shall contain such information as the 1192
commissioner may require to fairly administer the tax. 1193

(2) All returns shall be signed by the severer or owner, as 1194
applicable, shall contain the full and complete information 1195
requested, and shall be made under penalty of perjury. 1196

(C) If the commissioner believes that quarterly payments of 1197
tax would result in a delay that might jeopardize the collection 1198
of such tax payments, the commissioner may order that such 1199
payments be made weekly, or more frequently if necessary, such 1200
payments to be made not later than seven days following the close 1201
of the period for which the jeopardy payment is required. Such an 1202
order shall be delivered to the taxpayer personally or by 1203
certified mail and shall remain in effect until the commissioner 1204

notifies the taxpayer to the contrary. 1205

(D) Upon good cause the commissioner may extend for thirty 1206
days the period for filing any notice or return required to be 1207
filed under this section, and may remit all or a part of penalties 1208
that may become due under this chapter. 1209

(E) Any tax ~~and any amount due under section 1509.50 of the~~ 1210
~~Revised Code~~ not paid by the day the tax ~~or amount~~ is due shall 1211
bear interest computed at the rate per annum prescribed by section 1212
5703.47 of the Revised Code on that amount due from the day that 1213
the amount was originally required to be paid to the day of actual 1214
payment or to the day an assessment was issued under section 1215
5749.07 or 5749.10 of the Revised Code, whichever occurs first. 1216

(F) A severer or owner, as applicable, that fails to file a 1217
complete return or pay the full amount due under this chapter 1218
within the time prescribed, including any extensions of time 1219
granted by the commissioner, shall be subject to a penalty not to 1220
exceed the greater of fifty dollars or ten per cent of the amount 1221
due for the period. 1222

(G)(1) A severer or owner, as applicable, shall remit 1223
payments electronically and, if required by the commissioner, file 1224
each return electronically. The commissioner may require that the 1225
severer or owner use the Ohiobusiness gateway, as defined in 1226
section 718.051 of the Revised Code, or another electronic means 1227
to file returns and remit payments electronically. 1228

(2) A severer or owner that is required to remit payments 1229
electronically under this section may apply to the commissioner, 1230
in the manner prescribed by the commissioner, to be excused from 1231
that requirement. The commissioner may excuse a severer or owner 1232
from the requirements of division (G) of this section for good 1233
cause. 1234

(3) If a severer or owner that is required to remit payments 1235

or file returns electronically under this section fails to do so, 1236
the commissioner may impose a penalty on the severer or owner not 1237
to exceed the following: 1238

(a) For the first or second payment or return the severer or 1239
owner fails to remit or file electronically, the greater of five 1240
per cent of the amount of the payment that was required to be 1241
remitted or twenty-five dollars; 1242

(b) For every payment or return after the second that the 1243
severer or owner fails to remit or file electronically, the 1244
greater of ten per cent of the amount of the payment that was 1245
required to be remitted or fifty dollars. 1246

(H)(1) All amounts that the commissioner receives under this 1247
section shall be deemed to be revenue from taxes imposed under 1248
this chapter ~~or from the amount due under section 1509.50 of the~~ 1249
~~Revised Code, as applicable,~~ and shall be deposited in the 1250
severance tax receipts fund, which is hereby created in the state 1251
treasury. 1252

(2) The director of budget and management shall transfer from 1253
the severance tax receipts fund to the tax refund fund amounts 1254
equal to the refunds certified by the commissioner under section 1255
5749.08 of the Revised Code. Any amount transferred under division 1256
(H)(2) of this section shall be derived from receipts of the same 1257
tax ~~or other amount~~ from which the refund arose. 1258

(3) After the director of budget and management makes any 1259
transfer required by division (H)(2) of this section, but not 1260
later than the fifteenth day of the month following the end of 1261
each calendar quarter, the commissioner shall certify to the 1262
director the total amount remaining in the severance tax receipts 1263
fund organized according to the amount attributable to each 1264
natural resource and according to the amount attributable to a tax 1265
imposed by this chapter ~~and the amounts due under section 1509.50~~ 1266

~~of the Revised Code.~~ 1267

(I) Penalties imposed under this section are in addition to 1268
any other penalty imposed under this chapter and shall be 1269
considered as revenue arising from the tax levied under this 1270
chapter ~~or the amount due under section 1509.50 of the Revised~~ 1271
~~Code, as applicable.~~ The commissioner may collect any penalty or 1272
interest imposed under this section in the same manner as provided 1273
for the making of an assessment in section 5749.07 of the Revised 1274
Code. The commissioner may abate all or a portion of such interest 1275
or penalties and may adopt rules governing such abatements. 1276

Sec. 5749.07. (A) If any severer or owner required by this 1277
chapter to make and file returns and pay the tax levied by section 1278
5749.02 of the Revised Code, ~~or any severer or owner liable for~~ 1279
~~the amounts due under section 1509.50 of the Revised Code,~~ fails 1280
to make such return or pay such tax or amounts, the tax 1281
commissioner may make an assessment against the severer or owner 1282
based upon any information in the commissioner's possession. 1283

No assessment shall be made or issued against any severer or 1284
owner for any tax imposed by section 5749.02 of the Revised Code 1285
~~or against any severer or owner for any amount due under section~~ 1286
~~1509.50 of the Revised Code~~ more than four years after the return 1287
was due or was filed, whichever is later. This section does not 1288
bar an assessment against a severer or owner who fails to file a 1289
return as required by this chapter, or who files a fraudulent 1290
return. 1291

The commissioner shall give the party assessed written notice 1292
of such assessment in the manner provided in section 5703.37 of 1293
the Revised Code. With the notice, the commissioner shall provide 1294
instructions on how to petition for reassessment and request a 1295
hearing on the petition. 1296

(B) Unless the party assessed files with the commissioner 1297

within sixty days after service of the notice of assessment, 1298
either personally or by certified mail, a written petition for 1299
reassessment signed by the party assessed or that party's 1300
authorized agent having knowledge of the facts, the assessment 1301
becomes final and the amount of the assessment is due and payable 1302
from the party assessed to the treasurer of state. The petition 1303
shall indicate the objections of the party assessed, but 1304
additional objections may be raised in writing if received by the 1305
commissioner prior to the date shown on the final determination. 1306
If the petition has been properly filed, the commissioner shall 1307
proceed under section 5703.60 of the Revised Code. 1308

(C) After an assessment becomes final, if any portion of the 1309
assessment remains unpaid, including accrued interest, a certified 1310
copy of the commissioner's entry making the assessment final may 1311
be filed in the office of the clerk of the court of common pleas 1312
in the county in which the party assessed resides or in which the 1313
party's business is conducted. If the party assessed maintains no 1314
place of business in this state and is not a resident of this 1315
state, the certified copy of the entry may be filed in the office 1316
of the clerk of the court of common pleas of Franklin county. 1317

Immediately upon the filing of such entry, the clerk shall 1318
enter a judgment for the state against the party assessed in the 1319
amount shown on the entry. The judgment may be filed by the clerk 1320
in a loose-leaf book entitled "special judgments for state 1321
severance tax," and shall have the same effect as other judgments. 1322
Execution shall issue upon the judgment upon the request of the 1323
commissioner, and all laws applicable to sales on execution shall 1324
apply to sales made under the judgment. 1325

If the assessment is not paid in its entirety within sixty 1326
days after the day the assessment is issued, the portion of the 1327
assessment consisting of tax due ~~or amounts due under section~~ 1328
~~1509.50 of the Revised Code~~ shall bear interest at the rate per 1329

annum prescribed by section 5703.47 of the Revised Code from the 1330
day the commissioner issues the assessment until it is paid or 1331
until it is certified to the attorney general for collection under 1332
section 131.02 of the Revised Code, whichever comes first. If the 1333
unpaid portion of the assessment is certified to the attorney 1334
general for collection, the entire unpaid portion of the 1335
assessment shall bear interest at the rate per annum prescribed by 1336
section 5703.47 of the Revised Code from the date of certification 1337
until the date it is paid in its entirety. Interest shall be paid 1338
in the same manner as the tax and may be collected by the issuance 1339
of an assessment under this section. 1340

(D) All money collected by the commissioner under this 1341
section shall be paid to the treasurer of state, and when paid 1342
shall be considered as revenue arising from the tax imposed by 1343
section 5749.02 of the Revised Code ~~and the amount due under~~ 1344
~~section 1509.50 of the Revised Code, as applicable.~~ 1345

Sec. 5749.08. The tax commissioner shall refund to taxpayers 1346
the amount of taxes levied by section 5749.02 of the Revised Code 1347
~~and amounts due under section 1509.50 of the Revised Code that~~ 1348
were paid illegally or erroneously or paid on an illegal or 1349
erroneous assessment. Applications for refund shall be filed with 1350
the commissioner, on the form prescribed by the commissioner, 1351
within four years from the date of the illegal or erroneous 1352
payment. On the filing of the application, the commissioner shall 1353
determine the amount of refund to which the applicant is entitled, 1354
plus interest computed in accordance with section 5703.47 of the 1355
Revised Code from the date of the payment of an erroneous or 1356
illegal assessment until the date the refund is paid. If the 1357
amount is not less than that claimed, the commissioner shall 1358
certify the amount to the director of budget and management and 1359
treasurer of state for payment from the tax refund fund created by 1360
section 5703.052 of the Revised Code. If the amount is less than 1361

that claimed, the commissioner shall proceed in accordance with 1362
section 5703.70 of the Revised Code. 1363

Sec. 5749.10. If the tax commissioner finds that a taxpayer, 1364
liable for tax under this chapter ~~or for any amount due under~~ 1365
~~section 1509.50 of the Revised Code~~ is about to depart from the 1366
state, or remove the taxpayer's property therefrom, or conceal the 1367
taxpayer's person or property, or do any other act tending to 1368
prejudice or to render wholly or partly ineffectual proceedings to 1369
collect such tax or other amount due unless such proceedings are 1370
brought without delay, or if the commissioner believes that the 1371
collection of the tax ~~or amount~~ due from any taxpayer will be 1372
jeopardized by delay, the commissioner shall give notice of such 1373
findings to such taxpayer together with the demand for an 1374
immediate return and immediate payment of such tax ~~or other amount~~ 1375
due, with penalty as provided in section 5749.15 of the Revised 1376
Code, whereupon such tax or other amount due shall become 1377
immediately due and payable. In such cases the commissioner may 1378
immediately file an entry with the clerk of the court of common 1379
pleas in the same manner and with the same effect as provided in 1380
section 5749.07 of the Revised Code, provided that if such 1381
taxpayer, within five days from notice of the assessment, 1382
furnishes evidence satisfactory to the commissioner, under the 1383
regulations prescribed by the commissioner, that the taxpayer is 1384
not in default in making returns or paying any tax prescribed by 1385
this chapter ~~or amount due under section 1509.50 of the Revised~~ 1386
~~Code~~, or that the taxpayer will duly return and pay, or post bond 1387
satisfactory to the commissioner conditioned upon payment of the 1388
tax or other amount finally determined to be due, then such tax ~~or~~ 1389
~~other amount~~ due shall not be payable prior to the time and manner 1390
otherwise fixed for payment under section 5749.07 of the Revised 1391
Code, and the person assessed shall be restored the rights granted 1392
under such section. Upon satisfaction of the assessment the 1393

commissioner shall order the bond cancelled, securities released, 1394
and judgment vacated. 1395

Any assessment issued under this section shall bear interest 1396
as prescribed under section 5749.07 of the Revised Code. 1397

Sec. 5749.11. (A) There is hereby allowed a nonrefundable 1398
credit against the taxes imposed under division ~~(A)~~(B)(8) of 1399
section 5749.02 of the Revised Code for any severer to which a 1400
reclamation tax credit certificate is issued under section 1401
1513.171 of the Revised Code. The credit shall be claimed in the 1402
amount shown on the certificate. The credit shall be claimed by 1403
deducting the amount of the credit from the amount of the first 1404
tax payment due under section 5749.06 of the Revised Code after 1405
the certificate is issued. 1406

If the amount of the credit shown on a certificate exceeds 1407
the amount of the tax otherwise due with that first payment, the 1408
excess shall be claimed against the amount of tax otherwise due on 1409
succeeding payment dates until the entire credit amount has been 1410
deducted. The total amount of credit claimed against payments 1411
shall not exceed the total amount of credit shown on the 1412
certificate. 1413

(B) A severer claiming a credit under this section shall 1414
retain a reclamation tax credit certificate for not less than four 1415
years following the date of the last tax payment against which the 1416
credit allowed under that certificate was applied. Severers shall 1417
make tax credit certificates available for inspection by the tax 1418
commissioner upon the tax commissioner's request. 1419

Sec. 5749.12. Any nonresident of this state who accepts the 1420
privilege extended by the laws of this state to nonresidents 1421
severing natural resources in this state, and any resident of this 1422
state who subsequently becomes a nonresident or conceals the 1423

resident's whereabouts, makes the secretary of state of Ohio the 1424
person's agent for the service of process or notice in any 1425
assessment, action, or proceedings instituted in this state 1426
against such person under this chapter ~~or for purposes of amounts~~ 1427
~~due under section 1509.50 of the Revised Code.~~ 1428

Such process or notice shall be served as provided under 1429
section 5703.37 of the Revised Code. 1430

Sec. 5749.13. The tax commissioner may prescribe requirements 1431
as to the keeping of records and other pertinent documents and the 1432
filing of copies of federal income tax returns and determinations. 1433
The commissioner may require any person, by rule or by notice 1434
served on that person, to keep such records as the commissioner 1435
considers necessary to show whether that person is liable, and the 1436
extent of liability, for the tax imposed under this chapter ~~and~~ 1437
~~the amount due under section 1509.50 of the Revised Code.~~ Such 1438
records and other documents shall be open during business hours to 1439
the inspection of the commissioner, and shall be preserved for a 1440
period of four years after the date the return was required to be 1441
filed or actually was filed, whichever is later, unless the 1442
commissioner, in writing, consents to their destruction within 1443
that period, or by order requires that they be kept longer. 1444

1445

Sec. 5749.14. The tax commissioner shall enforce and 1446
administer this chapter ~~and applicable provisions of section~~ 1447
~~1509.50 of the Revised Code.~~ In addition to any other powers 1448
conferred upon the commissioner by law, the commissioner may: 1449

(A) Prescribe all forms required to be filed pursuant to this 1450
chapter; 1451

(B) ~~Promulgate~~ Adopt such rules as the commissioner finds 1452
necessary to carry out this chapter ~~and applicable provisions of~~ 1453

~~section 1509.50 of the Revised Code;~~ 1454

(C) Appoint and employ such personnel as may be necessary to 1455
carry out the duties imposed upon the commissioner by this 1456
chapter. 1457

Sec. 5749.15. Any person who fails to file a return or pay 1458
the tax as required under this chapter ~~or other amount due under~~ 1459
~~section 1509.50 of the Revised Code~~ who is assessed such taxes ~~or~~ 1460
~~other amount~~ due pursuant to section 5749.07 or 5749.10 of the 1461
Revised Code may be liable for a penalty of up to twenty-five per 1462
cent of the amount assessed. The tax commissioner may adopt rules 1463
relating to the imposition and remission of penalties imposed 1464
under this section. 1465

Sec. 5751.01. As used in this chapter: 1466

(A) "Person" means, but is not limited to, individuals, 1467
combinations of individuals of any form, receivers, assignees, 1468
trustees in bankruptcy, firms, companies, joint-stock companies, 1469
business trusts, estates, partnerships, limited liability 1470
partnerships, limited liability companies, associations, joint 1471
ventures, clubs, societies, for-profit corporations, S 1472
corporations, qualified subchapter S subsidiaries, qualified 1473
subchapter S trusts, trusts, entities that are disregarded for 1474
federal income tax purposes, and any other entities. 1475

(B) "Consolidated elected taxpayer" means a group of two or 1476
more persons treated as a single taxpayer for purposes of this 1477
chapter as the result of an election made under section 5751.011 1478
of the Revised Code. 1479

(C) "Combined taxpayer" means a group of two or more persons 1480
treated as a single taxpayer for purposes of this chapter under 1481
section 5751.012 of the Revised Code. 1482

(D) "Taxpayer" means any person, or any group of persons in 1483

the case of a consolidated elected taxpayer or combined taxpayer 1484
treated as one taxpayer, required to register or pay tax under 1485
this chapter. "Taxpayer" does not include excluded persons. 1486

(E) "Excluded person" means any of the following: 1487

(1) Any person with not more than one hundred fifty thousand 1488
dollars of taxable gross receipts during the calendar year. 1489

Division (E)(1) of this section does not apply to a person that is 1490
a member of a consolidated elected taxpayer; 1491

(2) A public utility that paid the excise tax imposed by 1492
section 5727.24 or 5727.30 of the Revised Code based on one or 1493
more measurement periods that include the entire tax period under 1494
this chapter, except that a public utility that is a combined 1495
company is a taxpayer with regard to the following gross receipts: 1496

(a) Taxable gross receipts directly attributed to a public 1497
utility activity, but not directly attributed to an activity that 1498
is subject to the excise tax imposed by section 5727.24 or 5727.30 1499
of the Revised Code; 1500

(b) Taxable gross receipts that cannot be directly attributed 1501
to any activity, multiplied by a fraction whose numerator is the 1502
taxable gross receipts described in division (E)(2)(a) of this 1503
section and whose denominator is the total taxable gross receipts 1504
that can be directly attributed to any activity; 1505

(c) Except for any differences resulting from the use of an 1506
accrual basis method of accounting for purposes of determining 1507
gross receipts under this chapter and the use of the cash basis 1508
method of accounting for purposes of determining gross receipts 1509
under section 5727.24 of the Revised Code, the gross receipts 1510
directly attributed to the activity of a natural gas company shall 1511
be determined in a manner consistent with division (D) of section 1512
5727.03 of the Revised Code. 1513

As used in division (E)(2) of this section, "combined 1514

company" and "public utility" have the same meanings as in section 1515
5727.01 of the Revised Code. 1516

(3) A financial institution, as defined in section 5726.01 of 1517
the Revised Code, that paid the tax imposed by section 5726.02 of 1518
the Revised Code based on one or more taxable years that include 1519
the entire tax period under this chapter; 1520

(4) A person directly or indirectly owned by one or more 1521
financial institutions, as defined in section 5726.01 of the 1522
Revised Code, that paid the tax imposed by section 5726.02 of the 1523
Revised Code based on one or more taxable years that include the 1524
entire tax period under this chapter. 1525

For the purposes of division (E)(4) of this section, a person 1526
owns another person under the following circumstances: 1527

(a) In the case of corporations issuing capital stock, one 1528
corporation owns another corporation if it owns fifty per cent or 1529
more of the other corporation's capital stock with current voting 1530
rights; 1531

(b) In the case of a limited liability company, one person 1532
owns the company if that person's membership interest, as defined 1533
in section 1705.01 of the Revised Code, is fifty per cent or more 1534
of the combined membership interests of all persons owning such 1535
interests in the company; 1536

(c) In the case of a partnership, trust, or other 1537
unincorporated business organization other than a limited 1538
liability company, one person owns the organization if, under the 1539
articles of organization or other instrument governing the affairs 1540
of the organization, that person has a beneficial interest in the 1541
organization's profits, surpluses, losses, or distributions of 1542
fifty per cent or more of the combined beneficial interests of all 1543
persons having such an interest in the organization. 1544

(5) A domestic insurance company or foreign insurance 1545

company, as defined in section 5725.01 of the Revised Code, that 1546
paid the insurance company premiums tax imposed by section 5725.18 1547
or Chapter 5729. of the Revised Code, or an unauthorized insurance 1548
company whose gross premiums are subject to tax under section 1549
3905.36 of the Revised Code based on one or more measurement 1550
periods that include the entire tax period under this chapter; 1551

(6) A person that solely facilitates or services one or more 1552
securitizations of phase-in-recovery property pursuant to a final 1553
financing order as those terms are defined in section 4928.23 of 1554
the Revised Code. For purposes of this division, "securitization" 1555
means transferring one or more assets to one or more persons and 1556
then issuing securities backed by the right to receive payment 1557
from the asset or assets so transferred. 1558

(7) Except as otherwise provided in this division, a 1559
pre-income tax trust as defined in division (FF)(4) of section 1560
5747.01 of the Revised Code and any pass-through entity of which 1561
such pre-income tax trust owns or controls, directly, indirectly, 1562
or constructively through related interests, more than five per 1563
cent of the ownership or equity interests. If the pre-income tax 1564
trust has made a qualifying pre-income tax trust election under 1565
division (FF)(3) of section 5747.01 of the Revised Code, then the 1566
trust and the pass-through entities of which it owns or controls, 1567
directly, indirectly, or constructively through related interests, 1568
more than five per cent of the ownership or equity interests, 1569
shall not be excluded persons for purposes of the tax imposed 1570
under section 5751.02 of the Revised Code. 1571

(8) Nonprofit organizations or the state and its agencies, 1572
instrumentalities, or political subdivisions. 1573

(F) Except as otherwise provided in divisions (F)(2), (3), 1574
and (4) of this section, "gross receipts" means the total amount 1575
realized by a person, without deduction for the cost of goods sold 1576
or other expenses incurred, that contributes to the production of 1577

gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.	1578 1579 1580
(1) The following are examples of gross receipts:	1581
(a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;	1582 1583
(b) Amounts realized from the taxpayer's performance of services for another;	1584 1585
(c) Amounts realized from another's use or possession of the taxpayer's property or capital;	1586 1587
(d) Any combination of the foregoing amounts.	1588
(2) "Gross receipts" excludes the following amounts:	1589
(a) Interest income except interest on credit sales;	1590
(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;	1591 1592 1593 1594
(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded	1595 1596 1597 1598 1599 1600 1601 1602 1603 1604 1605 1606 1607

hedge accounting treatment under statement of financial accounting 1608
standards number 133 of the financial accounting standards board. 1609
For the purposes of division (F)(2)(c) of this section, the actual 1610
transfer of title of real or tangible personal property to another 1611
entity is not a hedging transaction. 1612

(d) Proceeds received attributable to the repayment, 1613
maturity, or redemption of the principal of a loan, bond, mutual 1614
fund, certificate of deposit, or marketable instrument; 1615

(e) The principal amount received under a repurchase 1616
agreement or on account of any transaction properly characterized 1617
as a loan to the person; 1618

(f) Contributions received by a trust, plan, or other 1619
arrangement, any of which is described in section 501(a) of the 1620
Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1621
1, Subchapter (D) of the Internal Revenue Code applies; 1622

(g) Compensation, whether current or deferred, and whether in 1623
cash or in kind, received or to be received by an employee, former 1624
employee, or the employee's legal successor for services rendered 1625
to or for an employer, including reimbursements received by or for 1626
an individual for medical or education expenses, health insurance 1627
premiums, or employee expenses, or on account of a dependent care 1628
spending account, legal services plan, any cafeteria plan 1629
described in section 125 of the Internal Revenue Code, or any 1630
similar employee reimbursement; 1631

(h) Proceeds received from the issuance of the taxpayer's own 1632
stock, options, warrants, puts, or calls, or from the sale of the 1633
taxpayer's treasury stock; 1634

(i) Proceeds received on the account of payments from 1635
insurance policies, except those proceeds received for the loss of 1636
business revenue; 1637

(j) Gifts or charitable contributions received; membership 1638

dues received by trade, professional, homeowners', or condominium 1639
associations; and payments received for educational courses, 1640
meetings, meals, or similar payments to a trade, professional, or 1641
other similar association; and fundraising receipts received by 1642
any person when any excess receipts are donated or used 1643
exclusively for charitable purposes; 1644

(k) Damages received as the result of litigation in excess of 1645
amounts that, if received without litigation, would be gross 1646
receipts; 1647

(l) Property, money, and other amounts received or acquired 1648
by an agent on behalf of another in excess of the agent's 1649
commission, fee, or other remuneration; 1650

(m) Tax refunds, other tax benefit recoveries, and 1651
reimbursements for the tax imposed under this chapter made by 1652
entities that are part of the same combined taxpayer or 1653
consolidated elected taxpayer group, and reimbursements made by 1654
entities that are not members of a combined taxpayer or 1655
consolidated elected taxpayer group that are required to be made 1656
for economic parity among multiple owners of an entity whose tax 1657
obligation under this chapter is required to be reported and paid 1658
entirely by one owner, pursuant to the requirements of sections 1659
5751.011 and 5751.012 of the Revised Code; 1660

(n) Pension reversions; 1661

(o) Contributions to capital; 1662

(p) Sales or use taxes collected as a vendor or an 1663
out-of-state seller on behalf of the taxing jurisdiction from a 1664
consumer or other taxes the taxpayer is required by law to collect 1665
directly from a purchaser and remit to a local, state, or federal 1666
tax authority; 1667

(q) In the case of receipts from the sale of cigarettes or 1668
tobacco products by a wholesale dealer, retail dealer, 1669

distributor, manufacturer, or seller, all as defined in section 1670
5743.01 of the Revised Code, an amount equal to the federal and 1671
state excise taxes paid by any person on or for such cigarettes or 1672
tobacco products under subtitle E of the Internal Revenue Code or 1673
Chapter 5743. of the Revised Code; 1674

(r) Receipts from the sale, transfer, exchange, or other 1675
disposition of motor fuel as "motor fuel" is defined in section 1676
5736.01 of the Revised Code; 1677

(s) In the case of receipts from the sale of beer or 1678
intoxicating liquor, as defined in section 4301.01 of the Revised 1679
Code, by a person holding a permit issued under Chapter 4301. or 1680
4303. of the Revised Code, an amount equal to federal and state 1681
excise taxes paid by any person on or for such beer or 1682
intoxicating liquor under subtitle E of the Internal Revenue Code 1683
or Chapter 4301. or 4305. of the Revised Code; 1684

(t) Receipts realized by a new motor vehicle dealer or used 1685
motor vehicle dealer, as defined in section 4517.01 of the Revised 1686
Code, from the sale or other transfer of a motor vehicle, as 1687
defined in that section, to another motor vehicle dealer for the 1688
purpose of resale by the transferee motor vehicle dealer, but only 1689
if the sale or other transfer was based upon the transferee's need 1690
to meet a specific customer's preference for a motor vehicle; 1691

(u) Receipts from a financial institution described in 1692
division (E)(3) of this section for services provided to the 1693
financial institution in connection with the issuance, processing, 1694
servicing, and management of loans or credit accounts, if such 1695
financial institution and the recipient of such receipts have at 1696
least fifty per cent of their ownership interests owned or 1697
controlled, directly or constructively through related interests, 1698
by common owners; 1699

(v) Receipts realized from administering anti-neoplastic 1700

drugs and other cancer chemotherapy, biologicals, therapeutic 1701
agents, and supportive drugs in a physician's office to patients 1702
with cancer; 1703

(w) Funds received or used by a mortgage broker that is not a 1704
dealer in intangibles, other than fees or other consideration, 1705
pursuant to a table-funding mortgage loan or warehouse-lending 1706
mortgage loan. Terms used in division (F)(2)(w) of this section 1707
have the same meanings as in section 1322.01 of the Revised Code, 1708
except "mortgage broker" means a person assisting a buyer in 1709
obtaining a mortgage loan for a fee or other consideration paid by 1710
the buyer or a lender, or a person engaged in table-funding or 1711
warehouse-lending mortgage loans that are first lien mortgage 1712
loans. 1713

(x) Property, money, and other amounts received by a 1714
professional employer organization, as defined in section 4125.01 1715
of the Revised Code, from a client employer, as defined in that 1716
section, in excess of the administrative fee charged by the 1717
professional employer organization to the client employer; 1718

(y) In the case of amounts retained as commissions by a 1719
permit holder under Chapter 3769. of the Revised Code, an amount 1720
equal to the amounts specified under that chapter that must be 1721
paid to or collected by the tax commissioner as a tax and the 1722
amounts specified under that chapter to be used as purse money; 1723

(z) Qualifying distribution center receipts. 1724

(i) For purposes of division (F)(2)(z) of this section: 1725

(I) "Qualifying distribution center receipts" means receipts 1726
of a supplier from qualified property that is delivered to a 1727
qualified distribution center, multiplied by a quantity that 1728
equals one minus the Ohio delivery percentage. If the qualified 1729
distribution center is a refining facility, "supplier" includes 1730
all dealers, brokers, processors, sellers, vendors, cosigners, and 1731

distributors of qualified property. 1732

(II) "Qualified property" means tangible personal property 1733
delivered to a qualified distribution center that is shipped to 1734
that qualified distribution center solely for further shipping by 1735
the qualified distribution center to another location in this 1736
state or elsewhere or, in the case of gold, silver, platinum, or 1737
palladium delivered to a refining facility solely for refining to 1738
a grade and fineness acceptable for delivery to a registered 1739
commodities exchange. "Further shipping" includes storing and 1740
repackaging property into smaller or larger bundles, so long as 1741
the property is not subject to further manufacturing or 1742
processing. "Refining" is limited to extracting impurities from 1743
gold, silver, platinum, or palladium through smelting or some 1744
other process at a refining facility. 1745

(III) "Qualified distribution center" means a warehouse, a 1746
facility similar to a warehouse, or a refining facility in this 1747
state that, for the qualifying year, is operated by a person that 1748
is not part of a combined taxpayer group and that has a qualifying 1749
certificate. All warehouses or facilities similar to warehouses 1750
that are operated by persons in the same taxpayer group and that 1751
are located within one mile of each other shall be treated as one 1752
qualified distribution center. All refining facilities that are 1753
operated by persons in the same taxpayer group and that are 1754
located in the same or adjacent counties may be treated as one 1755
qualified distribution center. 1756

(IV) "Qualifying year" means the calendar year to which the 1757
qualifying certificate applies. 1758

(V) "Qualifying period" means the period of the first day of 1759
July of the second year preceding the qualifying year through the 1760
thirtieth day of June of the year preceding the qualifying year. 1761

(VI) "Qualifying certificate" means the certificate issued by 1762

the tax commissioner after the operator of a distribution center 1763
files an annual application with the commissioner. The application 1764
and annual fee shall be filed and paid for each qualified 1765
distribution center on or before the first day of September before 1766
the qualifying year or within forty-five days after the 1767
distribution center opens, whichever is later. 1768

The applicant must substantiate to the commissioner's 1769
satisfaction that, for the qualifying period, all persons 1770
operating the distribution center have more than fifty per cent of 1771
the cost of the qualified property shipped to a location such that 1772
it would be situated outside this state under the provisions of 1773
division (E) of section 5751.033 of the Revised Code. The 1774
applicant must also substantiate that the distribution center 1775
cumulatively had costs from its suppliers equal to or exceeding 1776
five hundred million dollars during the qualifying period. (For 1777
purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" 1778
excludes any person that is part of the consolidated elected 1779
taxpayer group, if applicable, of the operator of the qualified 1780
distribution center.) The commissioner may require the applicant 1781
to have an independent certified public accountant certify that 1782
the calculation of the minimum thresholds required for a qualified 1783
distribution center by the operator of a distribution center has 1784
been made in accordance with generally accepted accounting 1785
principles. The commissioner shall issue or deny the issuance of a 1786
certificate within sixty days after the receipt of the 1787
application. A denial is subject to appeal under section 5717.02 1788
of the Revised Code. If the operator files a timely appeal under 1789
section 5717.02 of the Revised Code, the operator shall be granted 1790
a qualifying certificate effective for the remainder of the 1791
qualifying year or until the appeal is finalized, whichever is 1792
earlier. If the operator does not prevail in the appeal, the 1793
operator shall pay the ineligible operator's supplier tax 1794
liability. 1795

(VII) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period.

(VIII) "Refining facility" means one or more buildings located in a county in the Appalachian region of this state as defined by section 107.21 of the Revised Code and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fineness acceptable for delivery to a registered commodities exchange.

(IX) "Registered commodities exchange" means a board of trade, such as New York mercantile exchange, inc. or commodity exchange, inc., designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended.

(X) "Ineligible operator's supplier tax liability" means an amount equal to the tax liability of all suppliers of a distribution center had the distribution center not been issued a qualifying certificate for the qualifying year. Ineligible operator's supplier tax liability shall not include interest or penalties. The tax commissioner shall determine an ineligible operator's supplier tax liability based on information that the commissioner may request from the operator of the distribution center. An operator shall provide a list of all suppliers of the distribution center and the corresponding costs of qualified property for the qualifying year at issue within sixty days of a request by the commissioner under this division.

(ii)(I) If the distribution center is new and was not open for the entire qualifying period, the operator of the distribution center may request that the commissioner grant a qualifying certificate. If the certificate is granted and it is later

determined that more than fifty per cent of the qualified property 1828
during that year was not shipped to a location such that it would 1829
be sitused outside of this state under the provisions of division 1830
(E) of section 5751.033 of the Revised Code or if it is later 1831
determined that the person that operates the distribution center 1832
had average monthly costs from its suppliers of less than forty 1833
million dollars during that year, then the operator of the 1834
distribution center shall pay the ineligible operator's supplier 1835
tax liability. (For purposes of division (F)(2)(z)(ii) of this 1836
section, "supplier" excludes any person that is part of the 1837
consolidated elected taxpayer group, if applicable, of the 1838
operator of the qualified distribution center.) 1839

(II) The commissioner may grant a qualifying certificate to a 1840
distribution center that does not qualify as a qualified 1841
distribution center for an entire qualifying period if the 1842
operator of the distribution center demonstrates that the business 1843
operations of the distribution center have changed or will change 1844
such that the distribution center will qualify as a qualified 1845
distribution center within thirty-six months after the date the 1846
operator first applies for a certificate. If, at the end of that 1847
thirty-six-month period, the business operations of the 1848
distribution center have not changed such that the distribution 1849
center qualifies as a qualified distribution center, the operator 1850
of the distribution center shall pay the ineligible operator's 1851
supplier tax liability for each year that the distribution center 1852
received a certificate but did not qualify as a qualified 1853
distribution center. For each year the distribution center 1854
receives a certificate under division (F)(2)(z)(ii)(II) of this 1855
section, the distribution center shall pay all applicable fees 1856
required under division (F)(2)(z) of this section and shall submit 1857
an updated business plan showing the progress the distribution 1858
center made toward qualifying as a qualified distribution center 1859
during the preceding year. 1860

(III) An operator may appeal a determination under division 1861
(F)(2)(z)(ii)(I) or (II) of this section that the ineligible 1862
operator is liable for the operator's supplier tax liability as a 1863
result of not qualifying as a qualified distribution center, as 1864
provided in section 5717.02 of the Revised Code. 1865

(iii) When filing an application for a qualifying certificate 1866
under division (F)(2)(z)(i)(VI) of this section, the operator of a 1867
qualified distribution center also shall provide documentation, as 1868
the commissioner requires, for the commissioner to ascertain the 1869
Ohio delivery percentage. The commissioner, upon issuing the 1870
qualifying certificate, also shall certify the Ohio delivery 1871
percentage. The operator of the qualified distribution center may 1872
appeal the commissioner's certification of the Ohio delivery 1873
percentage in the same manner as an appeal is taken from the 1874
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 1875
of this section. 1876

(iv)(I) In the case where the distribution center is new and 1877
not open for the entire qualifying period, the operator shall make 1878
a good faith estimate of an Ohio delivery percentage for use by 1879
suppliers in their reports of taxable gross receipts for the 1880
remainder of the qualifying period. The operator of the facility 1881
shall disclose to the suppliers that such Ohio delivery percentage 1882
is an estimate and is subject to recalculation. By the due date of 1883
the next application for a qualifying certificate, the operator 1884
shall determine the actual Ohio delivery percentage for the 1885
estimated qualifying period and proceed as provided in division 1886
(F)(2)(z)(iii) of this section with respect to the calculation and 1887
recalculation of the Ohio delivery percentage. The supplier is 1888
required to file, within sixty days after receiving notice from 1889
the operator of the qualified distribution center, amended reports 1890
for the impacted calendar quarter or quarters or calendar year, 1891
whichever the case may be. Any additional tax liability or tax 1892

overpayment shall be subject to interest but shall not be subject 1893
to the imposition of any penalty so long as the amended returns 1894
are timely filed. 1895

(II) The operator of a distribution center that receives a 1896
qualifying certificate under division (F)(2)(z)(ii)(II) of this 1897
section shall make a good faith estimate of the Ohio delivery 1898
percentage that the operator estimates will apply to the 1899
distribution center at the end of the thirty-six-month period 1900
after the operator first applied for a qualifying certificate 1901
under that division. The result of the estimate shall be 1902
multiplied by a factor of one and seventy-five one-hundredths. The 1903
product of that calculation shall be the Ohio delivery percentage 1904
used by suppliers in their reports of taxable gross receipts for 1905
each qualifying year that the distribution center receives a 1906
qualifying certificate under division (F)(2)(z)(ii)(II) of this 1907
section, except that, if the product is less than five per cent, 1908
the Ohio delivery percentage used shall be five per cent and that, 1909
if the product exceeds forty-nine per cent, the Ohio delivery 1910
percentage used shall be forty-nine per cent. 1911

(v) Qualifying certificates and Ohio delivery percentages 1912
issued by the commissioner shall be open to public inspection and 1913
shall be timely published by the commissioner. A supplier relying 1914
in good faith on a certificate issued under this division shall 1915
not be subject to tax on the qualifying distribution center 1916
receipts under division (F)(2)(z) of this section. An operator 1917
receiving a qualifying certificate is liable for the ineligible 1918
operator's supplier tax liability for each year the operator 1919
received a certificate but did not qualify as a qualified 1920
distribution center. 1921

(vi) The annual fee for a qualifying certificate shall be one 1922
hundred thousand dollars for each qualified distribution center. 1923
If a qualifying certificate is not issued, the annual fee is 1924

subject to refund after the exhaustion of all appeals provided for 1925
in division (F)(2)(z)(i)(VI) of this section. The first one 1926
hundred thousand dollars of the annual application fees collected 1927
each calendar year shall be credited to the revenue enhancement 1928
fund. The remainder of the annual application fees collected shall 1929
be distributed in the same manner required under section 5751.20 1930
of the Revised Code. 1931

(vii) The tax commissioner may require that adequate security 1932
be posted by the operator of the distribution center on appeal 1933
when the commissioner disagrees that the applicant has met the 1934
minimum thresholds for a qualified distribution center as set 1935
forth in division (F)(2)(z) of this section. 1936

(aa) Receipts of an employer from payroll deductions relating 1937
to the reimbursement of the employer for advancing moneys to an 1938
unrelated third party on an employee's behalf; 1939

(bb) Cash discounts allowed and taken; 1940

(cc) Returns and allowances; 1941

(dd) Bad debts from receipts on the basis of which the tax 1942
imposed by this chapter was paid in a prior quarterly tax payment 1943
period. For the purpose of this division, "bad debts" means any 1944
debts that have become worthless or uncollectible between the 1945
preceding and current quarterly tax payment periods, have been 1946
uncollected for at least six months, and that may be claimed as a 1947
deduction under section 166 of the Internal Revenue Code and the 1948
regulations adopted under that section, or that could be claimed 1949
as such if the taxpayer kept its accounts on the accrual basis. 1950
"Bad debts" does not include repossessed property, uncollectible 1951
amounts on property that remains in the possession of the taxpayer 1952
until the full purchase price is paid, or expenses in attempting 1953
to collect any account receivable or for any portion of the debt 1954
recovered; 1955

(ee) Any amount realized from the sale of an account 1956
receivable to the extent the receipts from the underlying 1957
transaction giving rise to the account receivable were included in 1958
the gross receipts of the taxpayer; 1959

(ff) Any receipts directly attributed to a transfer agreement 1960
or to the enterprise transferred under that agreement under 1961
section 4313.02 of the Revised Code. 1962

(gg)(i) As used in this division: 1963

(I) "Qualified uranium receipts" means receipts from the 1964
sale, exchange, lease, loan, production, processing, or other 1965
disposition of uranium within a uranium enrichment zone certified 1966
by the tax commissioner under division (F)(2)(gg)(ii) of this 1967
section. "Qualified uranium receipts" does not include any 1968
receipts with a situs in this state outside a uranium enrichment 1969
zone certified by the tax commissioner under division 1970
(F)(2)(gg)(ii) of this section. 1971

(II) "Uranium enrichment zone" means all real property that 1972
is part of a uranium enrichment facility licensed by the United 1973
States nuclear regulatory commission and that was or is owned or 1974
controlled by the United States department of energy or its 1975
successor. 1976

(ii) Any person that owns, leases, or operates real or 1977
tangible personal property constituting or located within a 1978
uranium enrichment zone may apply to the tax commissioner to have 1979
the uranium enrichment zone certified for the purpose of excluding 1980
qualified uranium receipts under division (F)(2)(gg) of this 1981
section. The application shall include such information that the 1982
tax commissioner prescribes. Within sixty days after receiving the 1983
application, the tax commissioner shall certify the zone for that 1984
purpose if the commissioner determines that the property qualifies 1985
as a uranium enrichment zone as defined in division (F)(2)(gg) of 1986

this section, or, if the tax commissioner determines that the property does not qualify, the commissioner shall deny the application or request additional information from the applicant. If the tax commissioner denies an application, the commissioner shall state the reasons for the denial. The applicant may appeal the denial of an application to the board of tax appeals pursuant to section 5717.02 of the Revised Code. If the applicant files a timely appeal, the tax commissioner shall conditionally certify the applicant's property. The conditional certification shall expire when all of the applicant's appeals are exhausted. Until final resolution of the appeal, the applicant shall retain the applicant's records in accordance with section 5751.12 of the Revised Code, notwithstanding any time limit on the preservation of records under that section.

(hh) In the case of amounts collected by a licensed casino operator from casino gaming, amounts in excess of the casino operator's gross casino revenue. In this division, "casino operator" and "casino gaming" have the meanings defined in section 3772.01 of the Revised Code, and "gross casino revenue" has the meaning defined in section 5753.01 of the Revised Code.

(ii) Receipts realized from the sale of agricultural commodities by an agricultural commodity handler, both as defined in section 926.01 of the Revised Code, that is licensed by the director of agriculture to handle agricultural commodities in this state.

(jj) Receipts realized from the sale of oil or natural gas by a severer or owner that paid the tax imposed under division (C) of section 5749.02 of the Revised Code on the basis of that oil or natural gas.

(kk) Any receipts for which the tax imposed by this chapter is prohibited by the constitution or laws of the United States or the constitution of this state.

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts situated to this state under section 5751.033 of the Revised Code.

(H) A person has "substantial nexus with this state" if any of the following applies. The person:

(1) Owns or uses a part or all of its capital in this state;

(2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;

(3) Has bright-line presence in this state;

(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

(1) Has at any time during the calendar year property in this

state with an aggregate value of at least fifty thousand dollars. 2049
For the purpose of division (I)(1) of this section, owned property 2050
is valued at original cost and rented property is valued at eight 2051
times the net annual rental charge. 2052

(2) Has during the calendar year payroll in this state of at 2053
least fifty thousand dollars. Payroll in this state includes all 2054
of the following: 2055

(a) Any amount subject to withholding by the person under 2056
section 5747.06 of the Revised Code; 2057

(b) Any other amount the person pays as compensation to an 2058
individual under the supervision or control of the person for work 2059
done in this state; and 2060

(c) Any amount the person pays for services performed in this 2061
state on its behalf by another. 2062

(3) Has during the calendar year taxable gross receipts of at 2063
least five hundred thousand dollars. 2064

(4) Has at any time during the calendar year within this 2065
state at least twenty-five per cent of the person's total 2066
property, total payroll, or total gross receipts. 2067

(5) Is domiciled in this state as an individual or for 2068
corporate, commercial, or other business purposes. 2069

(J) "Tangible personal property" has the same meaning as in 2070
section 5739.01 of the Revised Code. 2071

(K) "Internal Revenue Code" means the Internal Revenue Code 2072
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in 2073
this chapter that is not otherwise defined has the same meaning as 2074
when used in a comparable context in the laws of the United States 2075
relating to federal income taxes unless a different meaning is 2076
clearly required. Any reference in this chapter to the Internal 2077
Revenue Code includes other laws of the United States relating to 2078

federal income taxes.	2079
(L) "Calendar quarter" means a three-month period ending on	2080
the thirty-first day of March, the thirtieth day of June, the	2081
thirtieth day of September, or the thirty-first day of December.	2082
(M) "Tax period" means the calendar quarter or calendar year	2083
on the basis of which a taxpayer is required to pay the tax	2084
imposed under this chapter.	2085
(N) "Calendar year taxpayer" means a taxpayer for which the	2086
tax period is a calendar year.	2087
(O) "Calendar quarter taxpayer" means a taxpayer for which	2088
the tax period is a calendar quarter.	2089
(P) "Agent" means a person authorized by another person to	2090
act on its behalf to undertake a transaction for the other,	2091
including any of the following:	2092
(1) A person receiving a fee to sell financial instruments;	2093
(2) A person retaining only a commission from a transaction	2094
with the other proceeds from the transaction being remitted to	2095
another person;	2096
(3) A person issuing licenses and permits under section	2097
1533.13 of the Revised Code;	2098
(4) A lottery sales agent holding a valid license issued	2099
under section 3770.05 of the Revised Code;	2100
(5) A person acting as an agent of the division of liquor	2101
control under section 4301.17 of the Revised Code.	2102
(Q) "Received" includes amounts accrued under the accrual	2103
method of accounting.	2104
(R) "Reporting person" means a person in a consolidated	2105
elected taxpayer or combined taxpayer group that is designated by	2106
that group to legally bind the group for all filings and tax	2107

liabilities and to receive all legal notices with respect to 2108
matters under this chapter, or, for the purposes of section 2109
5751.04 of the Revised Code, a separate taxpayer that is not a 2110
member of such a group. 2111

Section 2. That existing sections 1509.02, 1509.071, 1509.34, 2112
1513.08, 1513.182, 1514.11, 5703.052, 5747.98, 5749.01, 5749.02, 2113
5749.03, 5749.06, 5749.07, 5749.08, 5749.10, 5749.11, 5749.12, 2114
5749.13, 5749.14, 5749.15, and 5751.01, and section 1509.50 of the 2115
Revised Code are hereby repealed. 2116

Section 3. This act takes effect April 1, 2014. 2117

Section 4. Section 5751.01 of the Revised Code is amended by 2118
this act and also by H.B. 59 of the 130th General Assembly, 2119
pursuant to which the amendments, except those amendments to 2120
divisions (F)(2)(z) and (jj) of that section, are effective July 2121
1, 2014. The amendments of H.B. 59 are included in this act to 2122
confirm the intention to retain them, but, except for divisions 2123
(F)(2)(z) and (jj) of that section, are not intended to be 2124
effective until July 1, 2014. 2125

Section 5. The amendments by this act of division (B) of 2126
section 1509.02 and of section 1509.071 of the Revised Code are 2127
exempt from the referendum under Ohio Constitution, Article II, 2128
Section 1d and section 1.471 of the Revised Code. 2129