



**Sub. H.B. 160**

127th General Assembly  
(As Passed by the General Assembly)

**Reps. Bubb, Latta, Seitz, Book, Adams, Batchelder, Blessing, Brown, Budish, Chandler, Coley, Combs, Daniels, DeBose, Domenick, Fende, Gibbs, Harwood, Hite, Huffman, Hughes, Letson, Luckie, Otterman, Raussen, Schindel, Schneider, Stebelton, Wagoner, Zehringer**

**Sens. Goodman, Seitz, Kearney, Harris, Schaffer, Spada**

**Effective date: June 20, 2008**

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**ACT SUMMARY**

- Permits a guardian of the estate of a minor or an incompetent or the personal representative of a deceased person, whether or not authorized by the instrument to disclaim, with the consent of the probate court to disclaim the succession to any property or interest in property that the ward, if an adult and competent, or the deceased, if living, might have disclaimed.
- Requires a disclaimant to deliver, file, or record the disclaimer prior to accepting any benefits of the disclaimed interest and at any time (the act eliminates the reference to the nine-month period) after the latest of three specifically described dates, including the date on which the disclaimant attains 18 (instead of 21) years of age or is no longer an incompetent (existing law), and states that by eliminating the reference to the nine-month period the General Assembly intends to create the possibility that some disclaimers governed by the law of Ohio will be qualified under section 2518 of the Internal Revenue Code and some will not be qualified under that section.
- Provides that if a donative instrument expressly provides for the distribution of property or a part of or interest in property if there is a disclaimer, the property, part, or interest disclaimed must be distributed or disposed of, and accelerated or not accelerated, in accordance with the donative instrument.

- With respect to the prior provision that a disclaimant's right to disclaim is barred if the disclaimant does any of specified actions, eliminates the condition that the action be done before the expiration of the period within which the disclaimant may disclaim the interest.
- Specifies that a beneficiary's application for appointment as a personal representative or fiduciary does not waive or bar the disclaimant's right to disclaim a right, power, privilege, or immunity as a personal representative or fiduciary or the beneficiary's right to disclaim property.
- Provides that the disclaimer statute may be applied separately to different interests or powers created in the disclaimant by the same instrument.
- States that the act's amendments to the disclaimer statute are intended to clarify and be declaratory of the law as it existed prior to the enactment of this act and are to be construed accordingly.
- Specifies that a limited liability company may be formed for any profit or nonprofit purpose.
- Sets forth specified circumstances when, for the purposes of Ohio Taxation Law and in order to determine a limited liability company's nonprofit status, an entity is considered to be operating with a nonprofit purpose.
- Provides that a single member limited liability company that operates with a nonprofit purpose must be treated as part of the same legal entity as its nonprofit member and that all assets and liabilities of that single member limited liability company must be considered to be that of the nonprofit member.
- Provides that the provisions described in the prior two dot points apply to limited liability companies that existed prior to the act's effective date and that assert to be nonprofit limited liability companies.
- Prohibits property from being struck from the exempt property list solely because the property has been conveyed to a single member limited liability company with a nonprofit purpose from its nonprofit member or because the property has been conveyed by a single member limited liability company with a nonprofit purpose to its nonprofit member.

- Removes the requirement that an application for exemption of property from taxation include in the certificate executed by the county treasurer that is attached to the application all assessments levied or charged against the property that is the subject of the application.
- Provides that if the treasurer's certificate indicating full payment of all taxes or a valid delinquent tax contract with the county treasurer is not included with the application for exemption from all taxes or if that certificate reflects unpaid taxes, penalties, and interest that may not be remitted, the Tax Commissioner must notify the property owner of that fact, and the applicant must be given 60 days from the date that notification was mailed in which to provide the Tax Commissioner with a corrected treasurer's certificate and provides that if a corrected treasurer's certificate is not received within the time permitted, the Tax Commissioner does not have the authority to consider the tax exemption application.
- Provides that a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than 30 years of any property may file an application with the Tax Commissioner requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted and provides that when an owner of property files such an application under existing law the owner may request that all interest on taxes also be remitted.
- Provides that when the board of education of any school district requests the Tax Commissioner to provide it with notification of applications for exemption from taxation for property located within that district, the Tax Commissioner must send to the board, on a monthly basis, reports that contain sufficient information to enable the board to, among other things, identify each property that is the subject of an exemption application and requires the Tax Commissioner to mail the reports by the 15th day of the month following the end of the month in which the application is received.
- Provides that the provisions of the act discussed in the prior five dot points are remedial in nature and apply to the tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the

Supreme Court on the effective date of the act and to that property that is the subject of any application.

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## CONTENT AND OPERATION

### **Background**

The Ohio Trust Code (Sub. H.B. 416 of the 126th General Assembly) renumbered the former section governing the disclaimer of succession to property from R.C. 1339.68 to R.C. 5815.36 and made no changes to its provisions. The disclaimer law permits a disclaimer as follows: (1) a "disclaimant" (see "**Definitions**," below), other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided by law, or (2) a "disclaimant" who is a fiduciary under an instrument, may disclaim, in whole or in part, any right, power, privilege, or immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided by law.

The written instrument of disclaimer must be signed and acknowledged by the disclaimant and contain all of the following: (1) a reference to the donative instrument, (2) a description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed, and (3) a declaration of the disclaimer and its extent. (R.C. 5815.36(B)(1), (2), and (3).)

**Disclaimer by guardian of minor's or incompetent's estate or personal representative of a deceased**

Under prior law, the guardian of the estate of a minor or an incompetent, or the personal representative (not a defined term) of a deceased person, with the consent of the court of common pleas' probate division, could disclaim, in whole or in part, the succession to any property or interest in property that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person could file an application with the probate division of the court of common pleas that had jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward or estate.

The act modifies prior law by providing that the guardian or the "personal representative" (see "Definitions," below) as described in the preceding paragraph, *whether or not authorized by the instrument to disclaim*, with the consent of the court of common pleas' probate division, may disclaim, in whole or in part, the succession to any property or interest in property that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward or estate, *or deceased person*. (R.C. 5815.36(B)(4).)

**Delivery, filing, or recording of disclaimer**

Prior law required the disclaimant to deliver, file, or record the disclaimer, or cause the same to be done, not later than nine months after the latest of the following dates: (1) the effective date of the donative instrument if both the taker and the taker's interest in the property were finally ascertained on that date, (2) the date of the occurrence of the event upon which both the taker and the taker's interest in the property became finally ascertainable, or (3) the date on which the disclaimant attained 21 years of age or was no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under 21 years of age or an incompetent, and even if a guardian of a minor or incompetent

had filed an application for a disclaimer and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

The act requires the disclaimant to deliver, file, or record the disclaimer, or cause the same to be done, *prior to accepting any benefits of the disclaimed interest and at any time* (the act eliminates the reference to the nine-month period) after the latest of the dates described in clauses (1), (2), or (3) (as modified by the act) in the preceding paragraph. The date under clause (3) is the date on which the disclaimant attains 18 (instead of 21) years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under 18 (instead of 21) years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application for a disclaimer and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer. (R.C. 5815.36(D).)

The act states that the General Assembly recognizes that section 2518 of the Internal Revenue Code defines a qualified disclaimer, in part, as a written refusal by a person to accept an interest in property that is received by the transferor of the interest within nine months after the later of the date on which the transfer creating the interest is made and the date on which the person attains 21 years of age. By amending R.C. 5815.36(D) as described in the preceding paragraph to eliminate a reference to the nine-month period, the General Assembly intends to create the possibility that some disclaimers governed by the law of Ohio will be qualified under section 2518 of the Internal Revenue Code and some will not be qualified under that section. (Section 4.)

#### **Distribution of disclaimed property; acceleration of remainder**

Under prior law, unless the donative instrument expressly provided that, if there was a disclaimer, there could not be any acceleration of remainders or other interests, the property, part of property, or interest in property disclaimed, and any future interest that was to take effect in possession or enjoyment at or after the termination of the interest disclaimed, had to descend, be distributed, or otherwise be disposed of, and had to be accelerated, in the following manner: (1) if intestate or testate succession was disclaimed, as if the disclaimant had predeceased the decedent, (2) if the disclaimant was one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power, (3) if the donative instrument was a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument, or (4) if the disclaimer was of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.

The act modifies prior law by providing that *if a donative instrument expressly provides for the distribution of property, part of property, or interest in property if there is a disclaimer, the property, part of property, or interest disclaimed must be distributed or disposed of, and accelerated or not accelerated, in accordance with the donative instrument. In the absence of express provisions to the contrary in the donative instrument, the property, part of property, or interest in property disclaimed, and any future interest that is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, must descend, be distributed, or otherwise be disposed of, and must be accelerated, in the manner described in (1) to (4) in the preceding paragraph. (R.C. 5815.36(G).)*

### **Limitations on right to disclaim**

Under prior law, the disclaimant's right to disclaim was barred if, *before the expiration of the period within which the disclaimant could disclaim the interest*, the disclaimant did any of the following: (1) assigned, conveyed, encumbered, pledged, or transferred, or contracted to assign, convey, encumber, pledge, or transfer, the property or any interest in it, (2) waived in writing the disclaimant's right to disclaim and executed and delivered, filed, or recorded the waiver in the manner provided by law for a disclaimer instrument, (3) accepted the property or an interest in it, or (4) permitted or suffered a sale or other disposition of the property pursuant to judicial action against the disclaimant.

The act provides that the disclaimant's right to disclaim is barred if the disclaimant does any of the actions described in clauses (1) to (4) in the preceding paragraph. The act eliminates the condition for doing any of the actions *before the expiration of the period within which the disclaimant may disclaim the interest.* (R.C. 5815.36(J).)

### **Effect of beneficiary's application for appointment as fiduciary or personal representative**

Prior law provided that a fiduciary's application for appointment or assumption of duties as a fiduciary did not waive or bar the disclaimant's right to disclaim a right, power, privilege, or immunity. The act modifies this provision by providing that *neither a fiduciary's application for appointment or assumption of duties as a fiduciary nor a beneficiary's application for appointment as a personal representative or fiduciary waives or bars the disclaimant's right to disclaim a right, power, privilege, or immunity as a personal representative or fiduciary or the beneficiary's right to disclaim property.* (R.C. 5815.36(K).)

**Effect of disclaimer statute on preexisting rights; application of disclaimer statute to other interests**

Prior law provided that the right to disclaim and the procedures for disclaimer established by law (R.C. 5815.36) were in addition to, and did not exclude or abridge, any other rights or procedures existing under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property. The act provides that the right to disclaim and the procedures for disclaimer established by law (R.C. 5815.36) are in addition to, and do not exclude or abridge, any other rights or procedures *that exist or formerly existed* under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property. (R.C. 5815.36(N).)

The act further provides that R.C. 5815.36 may be applied separately to different interests or powers created in the disclaimant by the same testamentary or nontestamentary instrument (R.C. 5815.36(Q)).

**Definitions**

The act defines "disclaimant" as any person, any guardian or personal representative of a person or estate of a person, or any attorney-in-fact or agent of a person having a general or specific authority to act granted in a written instrument, who is any of the following (R.C. 5815.36(A)(1)):

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

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

(3) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This provision does not authorize a fiduciary *who disclaims fiduciary rights, privileges, powers, and immunities to cause the rights of any beneficiary to be disclaimed* (instead of to *disclaim the rights of beneficiaries*) unless the instrument creating the fiduciary



relationship authorizes *the fiduciary to make* such a disclaimer (provisions added by the act are in italics).

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

The act defines "personal representative" as including any fiduciary as defined in R.C. 2109.01 and any executor, trustee, guardian, or other person or entity having a fiduciary relationship with regard to any interest in property passing to the fiduciary, executor, trustee, guardian, or other person or entity by reason of a disclaimant's death (R.C. 5815.36(A)(2)).

### **Intent to clarify**

The act states that its amendments to the disclaimer statute as described in this analysis are intended to clarify and be declaratory of the law as it existed prior to the enactment of the act as an act and are to be construed accordingly (Section 3).

### **Limited liability companies**

Prior law provided that a limited liability company could be formed for any purpose or purposes for which individuals lawfully might associate themselves, except that, if the Revised Code contained special provisions for the formation of any designated type of corporation other than a professional association, a limited liability company could not be formed for the purpose or purposes for which that type of corporation might be formed. The act retains this provision and specifically provides that, subject to the exception, a limited liability company may be formed for any profit or nonprofit purpose. (R.C. 1705.02.)

### **Limited liability companies operating with a nonprofit purpose**

The act provides that, for purposes of R.C. Title LVII (Ohio Taxation Law), in order to determine a limited liability company's nonprofit status, an entity is operating with a nonprofit purpose if that entity is organized other than for the pecuniary gain or profit of, and its net earnings or any part of its net earnings are not distributable to, its members, its directors, its officers, or other private persons, except that the payment of reasonable compensation for services rendered, payments and distributions in furtherance of its nonprofit purpose, and the distribution of assets on dissolution permitted by R.C. 1702.49 are not pecuniary gain or profit or distribution of net earnings. In no event can payments and distributions in furtherance of an entity's nonprofit purpose deprive the entity of its nonprofit status as long as all of the members of that entity are operating with a nonprofit purpose. (R.C. 5701.14(A).)

Under the act, a single member limited liability company that operates with a nonprofit purpose must be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company must be considered to be that of the nonprofit member. Filings or applications for exemptions or other tax purposes may be made either by the single member limited liability company or its nonprofit member. (R.C. 5701.14(B).)

### **Application of limited liability company provisions**

The act provides that the above limited liability company provisions apply to limited liability companies that were in existence prior to the effective date of the act and that assert to be nonprofit limited liability companies (Section 6).

### **County auditor's list of exempted property**

Under prior law, the county auditor was required to make a list of all real and personal property in the auditor's county, including money, credits, and investments in bonds, stocks, or otherwise, that was exempted from taxation. The act removes the inclusive reference to money, credits, and investments in bonds, stocks, or otherwise. Prior law also required that the list show the name of the owner, the value of the property exempted, and a statement in brief of the ground on which such exemption had been granted. The list had to be corrected annually by adding to it the items of property that had been exempted during the year and by striking from the list the items that in the opinion of the auditor had lost their right of exemption and that had been reentered on the taxable list. The act provides that no property can be struck from the exempt property list solely because the property has been conveyed to a single member limited liability company with a nonprofit purpose from its nonprofit member or because the property has been conveyed by a single member limited liability company with a nonprofit purpose to its nonprofit member. (R.C. 5713.08(A).)

Prior law provided that when any personal property or endowment fund of an institution had once been held by the Tax Commissioner to be properly exempt from taxation, it was not necessary to obtain the Commissioner's consent to the exemption of additional property or investments of the same kind belonging to the same institution, but such property had to appear on the abstract filed annually with the Commissioner. The act removes this provision. (R.C. 5713.08(A).)

Prior law prohibited the Tax Commissioner from considering an application for exemption of property unless the application had attached to it a certificate executed by the county treasurer certifying one of the following (R.C. 5713.08(A)):

(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted had been paid in full to the date upon which the application for exemption was filed, except for such taxes, interest, and penalties that might be remitted;

(2) That the applicant had entered into a valid delinquent tax contract with the county treasurer to pay all of the delinquent taxes, assessments, interest, and penalties charged against the property, except for such taxes, interest, and penalties that might be remitted. If the auditor received notice that such a written delinquent tax contract had become void, the auditor had to strike such property from the list of exempted property and reenter such property on the taxable list. If property was removed from the exempt list because a written delinquent tax contract had become void, current taxes first had to be extended against that property on the general tax list and duplicate of real and public utility property for the tax year in which the auditor received the notice that the delinquent tax contract had become void or, if that notice was not timely made, for the tax year in which fell the latest date by which the treasurer was required to give such notice. A county auditor could not remove from any tax list and duplicate the amount of any unpaid delinquent taxes, assessments, interest, or penalties owed on property that was placed on the exempt property list.

(3) That a tax certificate had been issued under R.C. 5721.32 or 5721.33 with respect to the property that was the subject of the application, and the tax certificate was outstanding.

The act provides that *an* application for exemption of property *must include* a certificate executed by the county treasurer, removes the reference to "assessments" in (1) above and "delinquent assessments" in (2) above, and provides that the certificate executed by the county treasurer that certifies that all taxes, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full *for all of the tax years preceding the tax year* for which the application for exemption is filed (R.C. 5713.08(A)).

The act provides that if the treasurer's certificate is not included with the application or the certificate reflects unpaid taxes, penalties, and interest that may not be remitted, the Tax Commissioner must notify the property owner of that fact, and the applicant must be given 60 days from the date that notification was mailed in which to provide the Tax Commissioner with a corrected treasurer's certificate. If a corrected treasurer's certificate is not received within the time permitted, the Tax Commissioner does not have authority to consider the tax exemption application. (R.C. 5713.08(B).)

### Application for exemption-rights of Board of Education

Prior law provided that generally the owner of any property could file an application with the Tax Commissioner, on forms prescribed by the Commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted. The act allows a vendee in possession under a purchase agreement or land contract, the beneficiary of a trust, or a lessee for an initial term of not less than 30 years to file an application as well, and allows the owner, vendee, beneficiary, or lessee to request that interest be remitted as well. (R.C. 5715.27(A).)

Continuing law allows the board of education of any school district to request the Tax Commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so required, under prior law the Commissioner had to send to the board for the quarters ending on the last day of March, June, September, and December of each year reports that contained sufficient information to enable the board to identify each property that was the subject of an exemption application. Prior law required that the Commissioner mail the reports on or about the 15th day of the month following the end of the quarter. The act requires that the Commissioner send those reports to the board on a monthly basis and that the Commissioner mail the reports by the 15th day of the month following the month in which the Commissioner receives the application for exemption. (R.C. 5715.27(B).)

Under continuing law, a board of education that has requested notification may, with respect to any application for exemption of property located in the district and included in the Commissioner's most recent report, file a statement with the Commissioner and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements must be filed prior to the first day of the third month following the end of the *quarter* in which that application was docketed by the Commissioner. The act requires that the statements be filed prior to the first day of the third *month* following the end of the month in which that application was docketed by the Commissioner. (R.C. 5715.27(C).)

Continuing law provides that the Commissioner cannot hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification until the end of the period within which the board may submit a statement with respect to that application. Under prior law, the Commissioner could act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or in the case of exemptions authorized by R.C. 725.02 (improvements), 1728.10 (improvements), 5709.41 (improvements that constitute a public purpose), 5709.62 (enterprise zones), or 5709.63 (enterprise zones), upon request of the

property owner. The act adds to the list of exemptions on which the Commissioner must act upon request of the property owner exemptions authorized by R.C. 5709.40 (improvements that constitute public purpose-blighted areas), 5709.411 (detached areas), 5709.632 (enterprise zones), 5709.73 (public infrastructure improvements), 5709.78 (increase in property value due to county public infrastructure improvements), 5709.84 (local railroad operations), or 5709.88 (tax incentives to promote employment and improve economic climate). (R.C. 5715.27(D).)

**Application**

The act provides that the above provisions dealing with the county auditor's list of exempt property and an application for exemption are remedial in nature and apply to the tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, the Board of Tax Appeals, the Court of Appeals, or the Supreme Court on the effective date of the act and to that property that is the subject of any application (Section 3).

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**HISTORY**

| ACTION                                      | DATE     |
|---|----------|
| Introduced                                  | 04-17-07 |
| Reported, H. Civil & Commercial Law         | 05-24-07 |
| Passed House (98-0)                         | 06-13-07 |
| Reported, S. Judiciary - Civil Justice      | 01-23-08 |
| Passed Senate (32-0)                        | 01-30-08 |
| House concurred in Senate amendments (94-0) | 03-11-08 |

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