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**123rd General Assembly
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H. B. No. 612

**Representatives Jolivette, Mottley, Schuring, Amstutz, Hartnett, Perry,
Mettler, Hollister, Grendell, Tiberi, Olman, Terwilleger, Harris, Peterson,
Goodman, Austria, Cates, Metelsky, Buehrer, Barrett, Hoops, Evans,
Widener, Winkler, Verich, Stevens, J. Beatty, Damschroder, Myers, Schuler,
O'Brien, Britton, Salerno**

A B I L L

To amend sections 3734.904, 3734.907, 3769.088, 1
4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 2
5703.11, 5703.37, 5705.37, 5711.04, 5711.18, 3
5711.25, 5711.28, 5711.31, 5717.01, 5717.02, 4
5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5
5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 6
5728.09, 5728.10, 5733.11, 5733.28, 5735.01, 7
5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 8
5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 9
5739.01, 5739.02, 5739.03, 5739.032, 5739.033, 10
5739.12, 5739.122, 5739.13, 5739.133, 5739.15, 11
5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 12
5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 13
5747.07, 5747.09, 5747.13, 5747.15, 5749.07, 14
5749.08, and 5749.15, to enact sections 5703.054, 15
5703.055, 5703.056, and 5735.012, and to repeal 16
sections 5703.141, 5735.17, 5735.32, 5739.161, and 17
5747.082 of the Revised Code to authorize the 18
electronic filing of certain documents with the 19
tax commissioner and treasurer of state, extend 20

the time for filing petitions for reassessments, 21
make various charges and penalties discretionary 22
rather than mandatory, change the method of 23
service of notices by the tax commissioner, 24
authorize the use of delivery services instead of 25
the postal service for delivery of certain 26
documents to the tax commissioner, board of tax 27
appeals, and treasurer of state, redefine and 28
specify certain vehicles for purposes of the 29
highway use and motor fuel taxes, establish 30
procedures for claiming exemptions from the use 31
tax, and make other changes related to the 32
administration of the tax laws by the department 33
of taxation, and to amend the version of section 34
5741.02 of the Revised Code that is scheduled to 35
take effect July 1, 2001, to continue the 36
provisions of this act on and after that date. 37

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

Section 1. That sections 3734.904, 3734.907, 3769.088, 38
4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 5703.37, 39
5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 5717.01, 40
5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5728.02, 41
5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 5733.11, 42
5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 43
5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 5739.02, 44
5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 5739.133, 45
5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 5743.03, 46
5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 5747.13, 47
5747.15, 5749.07, 5749.08, and 5749.15 be amended and sections 48
5703.054, 5703.055, 5703.056, and 5735.012 of the Revised Code be 49

enacted to read as follows: 50

Sec. 3734.904. (A) By the twentieth day of each month, each 51
person required to pay the fee imposed by section 3734.901 of the 52
Revised Code shall file with the treasurer of state a return as 53
prescribed by the tax commissioner and shall make payment of the 54
full amount of the fee due for the preceding month after deduction 55
of any discount provided for under division (E) of this section. 56
The return shall be signed by the person required to file it, or 57
an authorized employee, officer, or agent. The treasurer shall 58
mark on the return the date it was received and indicate payment 59
or nonpayment of the fee shown to be due on the return. The 60
treasurer immediately shall transmit all returns to the tax 61
commissioner. The return shall be deemed filed when received by 62
the treasurer of state. 63

(B) Any person required by this section to file a return who 64
fails to file such a return within the period prescribed ~~shall~~ may 65
be required to pay an additional charge of fifty dollars or ten 66
per cent of the fee required to be paid for the reporting period, 67
whichever is greater. The commissioner may collect the additional 68
charge by assessment pursuant to section 3734.907 of the Revised 69
Code. The commissioner may remit all or a portion of the 70
additional charge and may adopt rules relating thereto. 71

(C) If any fee due is not paid timely in accordance with this 72
section, the person liable for the fee shall pay interest, 73
calculated at the rate per annum as prescribed by section 5703.47 74
of the Revised Code, from the date the fee payment was due to the 75
date of payment or to the date an assessment is issued, whichever 76
occurs first. Interest shall be paid in the same manner as the 77
fee, and the commissioner may collect the interest by assessment 78
pursuant to section 3734.907 of the Revised Code. 79

(D) If, in the estimation of the tax commissioner, the average liability of the person liable for the fee is such as not to merit monthly filing, the commissioner may authorize the person to file and pay at less frequent intervals. Returns are due by the twentieth day of the month following the close of the applicable reporting period authorized under this division.

(E) If a return is filed and the amount of the fee shown to be due on the return is paid on or before the date that the return is required to be filed under division (A) of this section or pursuant to division (D) of this section, whichever is applicable, the person liable for the fee is entitled to a discount of four per cent of the amount shown to be due on the return.

Sec. 3734.907. (A) Any person required to pay the fee imposed by section 3734.901 of the Revised Code is personally liable for the fee. The tax commissioner may make an assessment, based upon any information in the commissioner's possession, against any person who fails to file a return or pay any fee, interest, or additional charge as required by sections 3734.90 to 3734.9014 of the Revised Code. The commissioner shall give the person assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) When the information in the possession of the tax commissioner indicates that a person liable for the fee imposed by section 3734.901 of the Revised Code has not paid the full amount of fee due, the commissioner may audit a representative sample of the person's business and may issue an assessment based on the audit.

(C) A penalty of up to fifteen per cent ~~shall~~ may be added to all amounts assessed under this section. The commissioner may adopt rules providing for the imposition and remission of the

penalties. 111

(D) Unless the person assessed files with the tax 112
commissioner within ~~thirty~~ sixty days after service of the notice 113
of assessment, either personally or by certified mail as provided 114
in section 5703.056 of the Revised Code, a petition for 115
reassessment in writing by the person assessed or the person's 116
authorized agent having knowledge of the facts, the assessment 117
becomes final and the amount of the assessment is due and payable 118
from the person assessed to the treasurer of state. A petition 119
shall indicate the objections to the assessment of the person 120
assessed, but additional objections may be raised in writing prior 121
to the date shown on the final determination of the person 122
assessed, but additional objections may be raised in writing prior 123
to the date shown on the final determination of the tax 124
commissioner. The commissioner shall grant the petitioner a 125
hearing on the petition, unless waived by the petitioner. 126

The commissioner may make any correction to the assessment 127
that the commissioner finds proper and shall issue a final 128
determination thereon. The commissioner shall serve a copy of the 129
final determination on the petitioner either by personal service 130
or by certified mail, and the commissioner's decision in the 131
matter is final, subject to appeal under section 5717.02 of the 132
Revised Code. 133

(E) After an assessment becomes final, if any portion of the 134
assessment, including accrued interest, remains unpaid, a 135
certified copy of the commissioner's entry making the assessment 136
final may be filed in the office of the clerk of the court of 137
common pleas in the county in which the person assessed resides or 138
in which the person's business is conducted. If the person 139
assessed maintains no place of business in this state and is not a 140
resident of this state, the certified copy of the entry may be 141
filed in the office of the clerk of the court of common pleas of 142

Franklin county.

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The clerk, immediately upon the filing of the entry, shall enter a judgment for the state against the person assessed in the amount shown to be due. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state tire fee," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

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The portion of the assessment not paid within ~~thirty~~ sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the day the assessment is paid. Interest shall be paid in the same manner as the fee and may be collected by the issuance of an assessment under this section.

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(F) If the commissioner believes that collection of the fee will be jeopardized unless proceedings to collect or secure collection of the fee are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the fee. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (E) of this section. Notice of the jeopardy assessment shall be served on the person assessed or the person's legal representative, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (D) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial

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payment of the assessment does not prejudice the commissioner's 175
consideration of the petition for reassessment. 176

(G) All money collected by the commissioner under this 177
section shall be paid to the treasurer of state as revenue arising 178
from the fee imposed by section 3734.901 of the Revised Code. 179

Sec. 3769.088. (A) If any permit holder required by this 180
chapter to pay the taxes levied by sections 3769.08, 3769.087, 181
3769.26, and 3769.28 of the Revised Code fails to pay the taxes, 182
the tax commissioner may make an assessment against the permit 183
holder based upon any information in the commissioner's 184
possession. 185

A penalty of up to fifteen per cent ~~shall~~ may be added to the 186
amount of every assessment made under this section. The 187
commissioner may adopt rules providing for the imposition and 188
remission of penalties added to assessments made under this 189
section. 190

The commissioner shall give the party assessed written notice 191
of the assessment ~~by personal service or certified mail as~~ 192
provided in section 5703.37 of the Revised Code. 193

(B) Unless the party to whom the notice of assessment is 194
directed files with the commissioner within ~~thirty~~ sixty days 195
after service of the notice of assessment, either personally or by 196
certified mail, a petition for reassessment in writing, signed by 197
the party assessed, or by the party's authorized agent having 198
knowledge of the facts, the assessment shall become final and the 199
amount of the assessment shall be due and payable from the party 200
assessed to the tax commissioner. The petition shall indicate the 201
objections of the party assessed, but additional objections may be 202
raised in writing if received prior to the date shown on the final 203
determination by the commissioner. 204

Unless the petitioner waives a hearing, the commissioner 205
shall assign a time and place for the hearing on the petition and 206
notify the petitioner of the time and place of the hearing by 207
personal service or certified mail, but the commissioner may 208
continue the hearing from time to time if necessary. 209

The commissioner may make such correction to the assessment 210
as the commissioner finds proper. The commissioner shall serve a 211
copy of the commissioner's final determination on the petitioner 212
by personal service or certified mail, and the commissioner's 213
decision in the matter shall be final, subject to appeal as 214
provided in section 5717.02 of the Revised Code. Only objections 215
decided on the merits by the board of tax appeals or a court shall 216
be given collateral estoppel or res judicata effect in considering 217
an application for refund of amounts paid pursuant to the 218
assessment. 219

(C) After an assessment becomes final, if any portion of the 220
assessment remains unpaid, including accrued interest, a certified 221
copy of the commissioner's entry making the assessment final may 222
be filed in the office of the clerk of the court of common pleas 223
in the county in which the place, track, or enclosure for which 224
the permit was issued is located or the county in which the party 225
assessed resides or has its principal place of business. If the 226
party assessed maintains no place of business in this state and is 227
not a resident of this state, the certified copy of the entry may 228
be filed in the office of the clerk of the court of common pleas 229
of Franklin county. 230

The clerk, immediately upon the filing of such entry, shall 231
enter a judgment for the state against the party assessed in the 232
amount shown on the entry. The judgment may be filed by the clerk 233
in a loose-leaf book entitled "special judgments for state horse 234
racing tax," and shall have the same effect as other judgments. 235
Execution shall issue upon the judgment upon the request of the 236

tax commissioner, and all laws applicable to sales on execution 237
shall apply to sales made under the judgment. 238

The portion of the assessment not paid within ~~thirty~~ sixty 239
days after the day the assessment was issued shall bear interest 240
at the rate per annum prescribed by section 5703.47 of the Revised 241
Code from the day the tax commissioner issues the assessment until 242
the day the assessment is paid. Interest shall be paid in the same 243
manner as the tax and may be collected by the issuance of an 244
assessment under this section. 245

(D) All money collected by the commissioner under this 246
section shall be treated as revenue arising from the taxes imposed 247
by sections 3769.08, 3769.087, 3769.26, and 3769.28 of the Revised 248
Code. 249

Sec. 4301.422. (A) Any person who makes sales of beer, cider, 250
wine, or mixed beverages to persons for resale at retail in a 251
county in which a tax has been enacted pursuant to section 252
4301.421 or 4301.424 of the Revised Code, and any manufacturer, 253
bottler, importer, or other person who makes sales at retail in 254
the a county upon which the tax has not been paid, is liable for 255
the tax. Each person liable for the tax shall register with the 256
tax commissioner on a form prescribed by the commissioner and 257
provide whatever information the commissioner considers necessary. 258

(B) Each person liable for the tax shall file a return and 259
pay the tax to the treasurer of state by the last day of the month 260
following the month in which the sale occurred. The return is 261
considered to be filed when received by the treasurer of state. 262
The return shall be prescribed by the commissioner, and no person 263
filing such a return shall fail to provide the information 264
specified on the return. If the return is filed and the amount of 265
tax shown on the return to be due is paid on or before the date 266
the return is required to be filed, the person required to file 267

the return shall receive an administrative fee of two and one-half 268
per cent of that person's total tax liability under section 269
4301.421 of the Revised Code for the purpose of offsetting 270
additional costs incurred in collecting and remitting the tax. Any 271
person required to file a return who fails to file timely ~~shall~~ 272
may be required to forfeit and pay into the state treasury an 273
amount not exceeding fifty dollars or ten per cent of the tax due, 274
whichever is greater, as revenue arising from the tax. That amount 275
may be collected by assessment in the manner specified in sections 276
4305.13 and 4305.131 of the Revised Code. 277

(C) A tax levied pursuant to section 4301.421 or 4301.424 of 278
the Revised Code shall be administered by the tax commissioner. 279
The commissioner shall have all powers and authority incident to 280
such administration, including examination of records, audit, 281
refund, assessment, and seizure and forfeiture of untaxed 282
beverages. The procedures, rights, privileges, limitations, 283
prohibitions, responsibilities, and duties specified in sections 284
4301.48 to 4301.52, 4305.13, 4305.131, and 4307.01 to 4307.12 of 285
the Revised Code apply in the administration of the tax. 286

(D) Each person required to pay the tax levied pursuant to 287
section 4301.421 or 4301.424 of the Revised Code who sells beer, 288
cider, wine, or mixed beverages for resale at retail within a 289
county in which the tax is levied shall clearly mark on all 290
invoices, billings, and similar documents the amount of tax and 291
the name of the county in which the tax is levied. 292

(E) Each person required to pay the tax levied by section 293
4301.421 or 4301.424 of the Revised Code shall maintain complete 294
records of all sales for at least three years. The records shall 295
be open to inspection by the tax commissioner. 296

Sec. 4303.33. (A) Every A-1 permit holder in this state, 297
every bottler, importer, wholesale dealer, broker, producer, or 298

manufacturer of beer outside this state and within the United 299
States, and every B-1 permit holder and importer importing beer 300
from any manufacturer, bottler, person, or group of persons 301
however organized outside the United States for sale or 302
distribution for sale in this state, on or before the eighteenth 303
day of each month, shall make and file with the treasurer of state 304
upon a form prescribed by the tax commissioner an advance tax 305
payment in an amount estimated to equal the taxpayer's tax 306
liability for the month in which the advance tax payment is made. 307
If the advance tax payment credits claimed on the report are for 308
advance tax payments received by the treasurer of state on or 309
before the eighteenth day of the month covered by the report, the 310
taxpayer is entitled to an additional credit of three per cent of 311
the advance tax payment and a discount of three per cent shall be 312
allowed the taxpayer at the time of filing the report if filed as 313
provided in division (B) of this section on any amount by which 314
the tax liability reflected in the report exceeds the advance tax 315
payment estimate by not more than ten per cent. The additional 316
three per cent credit and three per cent discount shall be in 317
consideration for advancing the payment of the tax and other 318
services performed by the permit holder and other taxpayers in the 319
collection of the tax. The treasurer of state shall stamp or 320
otherwise mark thereon the date the advance tax payment was 321
received by the treasurer and the amount of the advance tax 322
payment, and shall transmit that information to the tax 323
commissioner. 324

"Advance tax payment credit" means credit for payments made 325
by an A-1 or B-1 permit holder and any other persons during the 326
period covered by a report which was made in anticipation of the 327
tax liability required to be reported on that report. 328

"Tax liability" as used in division (A) of this section means 329
the total gross tax liability of an A-1 or B-1 permit holder and 330

any other persons for the period covered by a report before any 331
allowance for credits and discount. 332

(B) Every A-1 permit holder in this state, every bottler, 333
importer, wholesale dealer, broker, producer, or manufacturer of 334
beer outside this state and within the United States, and every 335
B-1 permit holder importing beer from any manufacturer, bottler, 336
person, or group of persons however organized outside the United 337
States, on or before the tenth day of each month, shall make and 338
file a report for the preceding month upon a form prescribed by 339
the tax commissioner which report shall show the amount of beer 340
produced, sold, and distributed for sale in this state by the A-1 341
permit holder, sold and distributed for sale in this state by each 342
manufacturer, bottler, importer, wholesale dealer, or broker 343
outside this state and within the United States, and the amount of 344
beer imported into this state from outside the United States and 345
sold and distributed for sale in this state by the B-1 permit 346
holder or importer. 347

The report shall be filed by mailing it to the treasurer of 348
state, together with payment of the tax levied by sections 4301.42 349
and 4305.01 of the Revised Code shown to be due on the report 350
after deduction of advance payment credits and any additional 351
credits or discounts provided for under this section. The 352
treasurer of state shall stamp or otherwise mark on each report 353
the date it was received by the treasurer, the amount of the tax 354
payment accompanying the report, and shall transmit the report to 355
the tax commissioner. 356

(C) Every A-2 and A-4, B-2, B-3, B-4, and B-5 permit holder 357
in this state, on or before the eighteenth day of each month, 358
shall make and file a report with the treasurer of state upon a 359
form prescribed by the tax commissioner which report shall show, 360
on the report of each A-2 and A-4 permit holder the amount of 361
wine, cider, and mixed beverages produced and sold, or sold in 362

this state by each such A-2 and A-4 permit holder for the next
preceding calendar month and such other information as the tax
commissioner requires, and on the report of each such B-2, B-3,
B-4, and B-5 permit holder the amount of wine, cider, and mixed
beverages purchased from an importer, broker, wholesale dealer,
producer, or manufacturer located outside this state and sold and
distributed in this state by such B-2, B-3, B-4, and B-5 permit
holder, for the next preceding calendar month and such other
information as the tax commissioner requires.

Every such A-2, A-4, B-2, B-3, B-4, and B-5 permit holder in
this state shall remit with the report the tax levied by sections
4301.43 and, if applicable, 4301.432 of the Revised Code less a
discount thereon of three per cent of the total tax so levied and
paid, provided the return is filed together with remittance of the
amount of tax shown to be due thereon, within the time prescribed.
The treasurer of state shall stamp or otherwise mark on all
reports the date it was received by the treasurer and the amount
of tax payment accompanying all reports and shall transmit the
return to the commissioner. Any permit holder or other persons who
fail to file a report under this section, for each day the person
so fails, ~~shall~~ may be required to forfeit and pay into the state
treasury the sum of one dollar as revenue arising from the tax
imposed by sections 4301.42, 4301.43, 4301.432, and 4305.01 of the
Revised Code, and that sum may be collected by assessment in the
manner provided in section 4305.13 of the Revised Code.

(D) Every B-1 permit holder and importer in this state
importing beer from any manufacturer, bottler, person, or group of
persons however organized, outside the United States, if required
by the tax commissioner shall post a bond payable to the state in
such form and amount as the commissioner prescribes with surety to
the satisfaction of the tax commissioner, conditioned upon the
payment to the treasurer of state of taxes levied by sections

4301.42 and 4305.01 of the Revised Code. 395

(E) No such wine, beer, cider, or mixed beverages sold or 396
distributed in this state shall be taxed more than once under 397
sections 4301.42, 4301.43, and 4305.01 of the Revised Code. 398

(F) As used in this section: 399

(1) "Cider" has the same meaning as in section 4301.01 of the 400
Revised Code. 401

(2) "Wine" has the same meaning as in section 4301.01 of the 402
Revised Code, except that "wine" does not include cider. 403

Sec. 4305.13. (A) If the tax commissioner finds that any 404
permit holder, liable for tax under Chapter 4301., 4305., or 4307. 405
of the Revised Code, is about to depart from the state, remove the 406
permit holder's property from the state, conceal the permit 407
holder's self or property, or do any other act tending to 408
prejudice, obstruct, or render wholly or partially ineffectual 409
proceedings to collect the tax, unless the proceedings are 410
commenced without delay, or if the commissioner believes that the 411
collection of the amount due from any permit holder will be 412
jeopardized by delay, the commissioner may issue a jeopardy 413
assessment against the permit holder for the amount of the tax, 414
plus a penalty of up to thirty per cent. Upon issuance of a 415
jeopardy assessment under this division, the total amount assessed 416
shall immediately be due and payable unless security is provided 417
pursuant to division (C) of this section. Any assessment issued 418
under this section shall bear interest as prescribed by section 419
4305.131 of the Revised Code. 420

(B) The commissioner immediately shall file an entry with the 421
clerk of the court of common pleas in the same manner and with the 422
same effect as provided in section 4305.131 of the Revised Code. 423
Notice of the jeopardy assessment shall be served on the permit 424

holder assessed or the permit holder's legal representative, as 425
provided in section 5703.37 of the Revised Code, within five days 426
of the filing of the entry. The permit holder assessed may 427
petition for reassessment within ~~thirty~~ sixty days of receipt of 428
the notice of jeopardy assessment in the same manner as provided 429
in section 4305.131 of the Revised Code. Full or partial payment 430
of the assessment shall not prejudice the commissioner's 431
consideration of the merits of the assessment as contested by the 432
petition for reassessment. Upon notification of the existence of 433
the judgment filed pursuant to this division, any public official 434
having control or custody of any funds or property of the person 435
assessed immediately shall pay or deliver the funds or property to 436
the commissioner as full or partial satisfaction of the jeopardy 437
assessment. However, funds or property needed as evidence in 438
criminal proceedings or that is expected to be forfeited pursuant 439
to section 2923.35, 2933.41, or 2933.43 of the Revised Code need 440
not be relinquished by the public official. Upon disposition of 441
criminal and forfeiture proceedings, funds and property not needed 442
as evidence and not forfeited shall be delivered to the 443
commissioner. 444

(C) If the permit holder subject to a jeopardy assessment 445
files a petition for reassessment and posts security satisfactory 446
to the commissioner in an amount sufficient to satisfy the unpaid 447
balance of the assessment, execution on the judgment shall be 448
stayed pending disposition of the petition for reassessment and 449
all appeals resulting from the petition. If the security is 450
sufficient to satisfy the full amount of the assessment, the 451
commissioner shall return any funds or property of the permit 452
holder previously seized. Upon satisfaction of the assessment the 453
commissioner shall order the security released and the judgment 454
vacated. 455

(D) The commissioner may adopt rules providing for the 456

imposition and remission of penalties added to assessments under 457
this section. 458

Sec. 4305.131. (A) If any permit holder fails to pay the 459
taxes levied in section 4301.42, 4301.43, 4301.432, or 4305.01 of 460
the Revised Code in the manner prescribed by section 4303.33 of 461
the Revised Code, or in section 4301.421 or 4301.424 of the 462
Revised Code in the manner prescribed in section 4301.422 of the 463
Revised Code, and by the rules of the tax commissioner, the 464
commissioner may make an assessment against the permit holder 465
based upon any information in the commissioner's possession. 466

No assessment shall be made against any permit holder for any 467
taxes imposed by section 4301.42, 4301.421, 4301.424, 4301.43, 468
4301.432, or 4305.01 of the Revised Code more than three years 469
after the last day of the calendar month in which the sale was 470
made or more than three years after the return for that period is 471
filed, whichever is later. This section does not bar an assessment 472
against any permit holder or registrant as provided in section 473
4303.331 of the Revised Code who fails to file a return as 474
required by section 4301.422 or 4303.33 of the Revised Code, or 475
who files a fraudulent return. 476

A penalty of up to thirty per cent ~~shall~~ may be added to the 477
amount of every assessment made under this section. The 478
commissioner may adopt rules providing for the imposition and 479
remission of penalties added to assessments made under this 480
section. 481

The commissioner shall give the party assessed written notice 482
of the assessment ~~by personal service or certified mail~~ as 483
provided in section 5703.37 of the Revised Code. 484

(B) Unless the party to whom the notice of assessment is 485
directed files with the commissioner within ~~thirty~~ sixty days 486
after service of the notice of assessment, either personally or by 487

certified mail as provided in section 5703.056 of the Revised 488
Code, a petition for reassessment in writing, signed by the party 489
assessed, or by that party's authorized agent having knowledge of 490
the facts, the assessment shall become final and the amount of the 491
assessment shall be due and payable from the party assessed to the 492
treasurer of state. The petition shall indicate the objections of 493
the party assessed, but additional objections may be raised in 494
writing if received prior to the date shown on the final 495
determination by the commissioner. 496

Unless the petitioner waives a hearing, the commissioner 497
shall assign a time and place for the hearing on the petition and 498
notify the petitioner of the time and place of the hearing by 499
personal service or certified mail, but the commissioner may 500
continue the hearing from time to time if necessary. 501

The commissioner may make such correction to the assessment 502
as the commissioner finds proper. The commissioner shall serve a 503
copy of the final determination on the petitioner by personal 504
service or certified mail, and the commissioner's decision in the 505
matter shall be final, subject to appeal as provided in section 506
5717.02 of the Revised Code. Only objections decided on the merits 507
by the board of tax appeals or a court shall be given collateral 508
estoppel or res judicata effect in considering an application for 509
refund of amounts paid pursuant to the assessment. 510

(C) After an assessment becomes final, if any portion of the 511
assessment remains unpaid, including accrued interest, a certified 512
copy of the commissioner's entry making the assessment final may 513
be filed in the office of the clerk of the court of common pleas 514
in the county in which the permit holder's place of business is 515
located or the county in which the party assessed resides. If the 516
party assessed maintains no place of business in this state and is 517
not a resident of this state, the certified copy of the entry may 518
be filed in the office of the clerk of the court of common pleas 519

of Franklin county. 520

The clerk, immediately upon the filing of the entry, shall 521
enter a judgment for the state against the party assessed in the 522
amount shown on the entry. The judgment may be filed by the clerk 523
in a loose-leaf book entitled "special judgments for state beer 524
and liquor sales taxes," and shall have the same effect as other 525
judgments. Execution shall issue upon the judgment upon the 526
request of the tax commissioner, and all laws applicable to sales 527
on execution shall apply to sales made under the judgment except 528
as otherwise provided in this chapter and Chapters 4301. and 4307. 529
of the Revised Code. 530

The portion of the assessment not paid within ~~thirty~~ sixty 531
days after the day the assessment was issued shall bear interest 532
at the rate per annum prescribed by section 5703.47 of the Revised 533
Code from the day the tax commissioner issues the assessment until 534
it is paid. Interest shall be paid in the same manner as the tax 535
and may be collected by the issuance of an assessment under this 536
section. 537

(D) All money collected under this section shall be 538
considered as revenue arising from the taxes imposed by sections 539
4301.42, 4301.421, 4301.424, 4301.43, 4301.432, and 4305.01 of the 540
Revised Code. 541

Sec. 5703.05. All powers, duties, and functions of the 542
department of taxation are vested in and shall be performed by the 543
tax commissioner, which powers, duties, and functions shall 544
include, but shall not be limited to, the following: 545

(A) Prescribing all blank forms which the department is 546
authorized to prescribe, and to provide such forms and distribute 547
the same as required by law and the rules of the department. The 548
tax commissioner shall include a mail-in registration form 549

prescribed in section 3503.14 of the Revised Code within the 550
return and instructions for the tax levied in odd-numbered years 551
under section 5747.02 of the Revised Code, beginning with the tax 552
levied for 1995. The secretary of state shall bear all costs for 553
the inclusion of the mail-in registration form. That form shall be 554
addressed for return to the office of the secretary of state. 555

(B) Exercising the authority provided by law, including 556
orders from bankruptcy courts, relative to remitting or refunding 557
taxes or assessments, including penalties and interest thereon, 558
illegally or erroneously assessed or collected, or for any other 559
reason overpaid, and in addition, the commissioner may on written 560
application of any person, firm, or corporation claiming to have 561
overpaid to the treasurer of state at any time within five years 562
prior to the making of such application any tax payable under any 563
law which the department of taxation is required to administer 564
which does not contain any provision for refund, or on the 565
commissioner's own motion investigate the facts and make in 566
triplicate a written statement of the commissioner's findings, 567
and, if the commissioner finds that there has been an overpayment, 568
issue in triplicate a certificate of abatement payable to the 569
taxpayer, the taxpayer's assigns, or legal representative which 570
shows the amount of the overpayment and the kind of tax overpaid. 571
One copy of such statement shall be entered on the journal of the 572
commissioner, one shall be certified to the attorney general, and 573
one certified copy shall be delivered to the taxpayer. All copies 574
of the certificate of abatement shall be transmitted to the 575
attorney general, and if the attorney general finds it to be 576
correct the attorney general shall so certify on each copy, and 577
deliver one copy to the taxpayer, one copy to the commissioner, 578
and the third copy to the treasurer of state. Except as provided 579
in sections 5725.08 and 5725.16 of the Revised Code the taxpayer's 580
copy of any certificates of abatement may be tendered by the payee 581

or transferee thereof to the treasurer of state as payment, to the 582
extent of the amount thereof, of any tax payable to the treasurer 583
of state. 584

(C) Exercising the authority provided by law relative to 585
consenting to the compromise and settlement of tax claims; 586

(D) Exercising the authority provided by law relative to the 587
use of alternative tax bases by taxpayers in the making of 588
personal property tax returns; 589

(E) Exercising the authority provided by law relative to 590
authorizing the prepayment of taxes on retail sales of tangible 591
personal property or on the storage, use, or consumption of 592
personal property, and waiving the collection of such taxes from 593
the consumers; 594

(F) Exercising the authority provided by law to revoke 595
licenses; 596

(G) Maintaining a continuous study of the practical operation 597
of all taxation and revenue laws of the state, the manner in which 598
and extent to which such laws provide revenues for the support of 599
the state and its political subdivisions, the probable effect upon 600
such revenue of possible changes in existing laws, and the 601
possible enactment of measures providing for other forms of 602
taxation. For this purpose the commissioner may establish and 603
maintain a division of research and statistics, and may appoint 604
necessary employees who shall be in the unclassified civil 605
service; the results of such study shall be available to the 606
members of the general assembly and the public. 607

(H) Making all tax assessments, valuations, findings, 608
determinations, computations, and orders the department of 609
taxation is by law authorized and required to make and, pursuant 610
to time limitations provided by law, on the commissioner's own 611
motion, reviewing, redetermining, or correcting any tax 612

assessments, valuations, findings, determinations, computations, 613
or orders the commissioner has made, but the commissioner shall 614
not review, redetermine, or correct any tax assessment, valuation, 615
finding, determination, computation, or order which the 616
commissioner has made as to which an appeal or application for 617
rehearing, review, redetermination, or correction has been filed 618
with the board of tax appeals, unless such appeal or application 619
is withdrawn by the appellant or applicant or dismissed; 620

(I) Appointing not more than five deputy tax commissioners, 621
who, under such regulations as the rules of the department of 622
taxation prescribe, may act for the commissioner in the 623
performance of such duties as the commissioner prescribes in the 624
administration of the laws which the commissioner is authorized 625
and required to administer, and who shall serve in the 626
unclassified civil service at the pleasure of the commissioner, 627
but if a person who holds a position in the classified service is 628
appointed, it shall not affect the civil service status of such 629
person~~†~~. The commissioner may designate not more than two of the 630
deputy commissioners to act as commissioner in case of the 631
absence, disability, or recusal of the commissioner or vacancy in 632
the office of commissioner. The commissioner may adopt rules 633
relating to the order of precedence of such designated deputy 634
commissioners and to their assumption and administration of the 635
office of commissioner. 636

(J) Appointing and prescribing the duties of all other 637
employees of the department of taxation necessary in the 638
performance of the work of the department which the tax 639
commissioner is by law authorized and required to perform, and 640
creating such divisions or sections of employees as, in the 641
commissioner's judgment, is proper; 642

(K) Organizing the work of the department, which the 643
commissioner is by law authorized and required to perform, so 644

that, in the commissioner's judgment, an efficient and economical
administration of the laws will result;

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(L) Maintaining a journal, which is open to public
inspection, in which the commissioner shall keep a record of all
actions taken by the commissioner relating to assessments and the
reasons therefor;

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(M) Adopting and promulgating, in the manner provided by
section 5703.14 of the Revised Code, all rules of the department,
including rules for the administration of sections 3517.16,
3517.17, and 5747.081 of the Revised Code;

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(N) Destroying any or all returns or assessment certificates
in the manner authorized by law;

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(O) Adopting rules, in accordance with division (B) of
section 325.31 of the Revised Code, governing the expenditure of
moneys from the real estate assessment fund under that division.

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Sec. 5703.054. The tax commissioner shall prescribe the form
that the signature and declaration, if any, shall take on any
document required to be filed with the commissioner and on any
document required under Chapter 3734., 3769., 4303., or 4305. or
Title LVII of the Revised Code to be filed with the treasurer of
state. The commissioner may authorize an electronic or other
alternative form of filing of any document required to be filed
with the commissioner or the treasurer of state under Chapter
3734., 3769., 4303., or 4305. or Title LVII of the Revised Code.

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Sec. 5703.055. A person may, and if required by the tax
commissioner shall, round to the nearest whole dollar all amounts
the person is required to enter on any return, report, voucher, or
other document. Any fractional part of a dollar that equals or
exceeds fifty cents shall be rounded to the next whole dollar, and
any fractional part of a dollar that is less than fifty cents

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shall be dropped. If a person chooses or is required to round 675
amounts entered on the document, the person shall round all 676
amounts entered. 677

Sec. 5703.056. (A) As used in any section of the Revised Code 678
that requires or permits a payment to be made or document to be 679
submitted to the tax commissioner or the board of tax appeals by 680
mail and As used in any section of Chapter 3734., 3769., 4303., or 681
4305. or Title lvii of the Revised Code that requires or permits a 682
payment to be made or document to be submitted to the treasurer of 683
state by mail: 684

(1) "Certified mail," "express mail," "United States mail," 685
"United States Postal Service," and similar terms include any 686
delivery service authorized pursuant to division (B) of this 687
section. 688

(2) "Postmark date," "date of postmark," and similar terms 689
include the date recorded and marked in the manner described in 690
division (B)(3) of this section. 691

(B) The tax commissioner may authorize the use of a delivery 692
service for the delivery of any payment or document described in 693
division (A) of this section if the commissioner finds that the 694
delivery service: 695

(1) Is available to the general public; 696

(2) is at least as timely and reliable on a regular basis as 697
the United States postal service; 698

(3) Records electronically to a database kept in the regular 699
course of its business, and marks on the cover in which the 700
payment or document is enclosed, the date on which the payment or 701
document was given to the delivery service for delivery; 702

(4) Records electronically to a database kept in the regular 703

course of its business the date on which the payment or document 704
was given by the delivery service to the person who signed the 705
receipt of delivery and the name of the person who signed the 706
receipt; and 707

(5) meets any other criteria that the tax commissioner may by 708
rule prescribe. 709

Sec. 5703.11. The department of taxation shall be ~~in~~ 710
~~continuous session and~~ open for the transaction of business during 711
the business hours of every day, except Saturdays, Sundays, and 712
legal holidays. ~~All sessions shall be open to the public, and~~ 713
~~sessions of the department shall stand and be adjourned without~~ 714
~~further notice thereof on its records.~~ 715

~~All of the proceedings of the department shall be shown on~~ 716
~~its record of proceedings, which shall be a public record, and all~~ 717
~~voting shall be by calling each member's name by the secretary,~~ 718
~~and each member's vote shall be recorded on the record of~~ 719
~~proceedings as cast.~~ 720

Sec. 5703.37. ~~Every~~ Except as otherwise provided by section 721
5711.28, 5711.31, 5727.47, or 5731.27 of the Revised Code, a 722
certified copy of every order or notice, service of which is 723
required, shall be served upon the person ~~or corporation~~ affected 724
thereby either by personal delivery ~~of a certified copy~~ or by 725
~~mailing a certified copy by registered mail to the person affected~~ 726
~~thereby, or in case of a corporation, to any officer or agent upon~~ 727
~~whom a summons may be served.~~ Within the time specified in the 728
order of the department of taxation every person ~~or corporation~~ 729
upon whom it is served, if required by the order, shall notify the 730
department, in like manner, whether the terms of the order are 731
accepted and will be obeyed. 732

Sec. 5705.37. The taxing authority of any subdivision that is 733
dissatisfied with any action of the county budget commission may, 734
through its fiscal officer, appeal to the board of tax appeals 735
within thirty days after the receipt by the subdivision of the 736
official certificate or notice of the commission's action. In like 737
manner, but through its clerk, the board of trustees of any public 738
library, nonprofit corporation, or library association maintaining 739
a free public library that has adopted and certified rules under 740
section 5705.28 of the Revised Code, or any park district may 741
appeal to the board of tax appeals. An appeal under this section 742
shall be taken by the filing of a notice of appeal, either in 743
person or by certified mail, express mail, or authorized delivery 744
service as provided in section 5703.056 of the Revised Code, with 745
the board and with the commission. If notice of appeal is filed by 746
certified mail, express mail, or authorized delivery service, date 747
of the United States postmark placed on the sender's receipt by 748
the postal ~~employee to whom the notice of appeal is presented~~ 749
service or the date of receipt recorded by the authorized delivery 750
service shall be treated as the date of filing. Upon receipt of 751
the notice of appeal, the commission, by certified mail, shall 752
notify all persons who were parties to the proceeding before the 753
commission of the filing of the notice of appeal and shall file 754
proof of notice with the board of tax appeals. The secretary of 755
the commission shall forthwith certify to the board a transcript 756
of the full and accurate record of all proceedings before the 757
commission, together with all evidence presented in the 758
proceedings or considered by the commission, pertaining to the 759
action from which the appeal is taken. The secretary of the 760
commission also shall certify to the board any additional 761
information that the board may request. 762

The board of tax appeals, in a de novo proceeding, shall 763
forthwith consider the matter presented to the commission, and may 764

modify any action of the commission with reference to the budget, 765
the estimate of revenues and balances, the allocation of the 766
library and local government support fund, or the fixing of tax 767
rates. The finding of the board of tax appeals shall be 768
substituted for the findings of the commission, and shall be 769
certified to the tax commissioner, the county auditor, and the 770
taxing authority of the subdivision affected, or to the board of 771
public library trustees affected, as the action of the commission 772
under sections 5705.01 to 5705.47 of the Revised Code. 773

This section does not give the board of tax appeals any 774
authority to place any tax levy authorized by law within the 775
ten-mill limitation outside of that limitation, or to reduce any 776
levy below any minimum fixed by law. 777

Sec. 5711.04. ~~Returns~~ (A) Except as otherwise provided in 778
division (B) of the section, returns shall be made, annually, 779
between the fifteenth day of February and the thirtieth day of 780
April; ~~but when a person or taxpayer engages in business in this~~ 781
~~state after the first day of January in any year he shall make a~~ 782
~~return within ninety days of commencing such business~~ Upon 783
verified application of any taxpayer, and for good cause shown, 784
the county auditor may extend the time within which such taxpayer 785
may make ~~his~~ a return ~~for a further specified period, not~~ 786
~~exceeding forty five days~~ to the fifteenth day of June If the 787
county auditor fails to allow, in whole, a timely application of 788
the taxpayer for an extension of time for filing ~~his~~ a return, the 789
taxpayer, upon payment on or before the thirtieth day of April of 790
an amount equal to one-half of ~~his~~ the taxpayer's tax for the next 791
preceding year, shall make ~~his~~ a return on or before the fifteenth 792
day of June. ~~The~~ 793

(B) When a taxpayer first engages in business in this state 794
after the first day of January in any year, the taxpayer shall 795

make a return within ninety days of commencing such business. Upon 796
verified application of the taxpayer, and for good cause shown, 797
the county auditor may extend the time within which the taxpayer 798
may make the return for a further specified period not exceeding 799
forty-five days. 800

(C) The county auditor shall certify any extension of time 801
acquired by the taxpayer to the tax commissioner, and the 802
commissioner shall have the same power as to a taxpayer who is 803
required to make return to ~~him~~ the commissioner. 804

Sec. 5711.18. In the case of accounts receivable, the book 805
value thereof less book reserves shall be listed and shall be 806
taken as the true value thereof unless the assessor finds that 807
such net book value is greater or less than the then true value of 808
such accounts receivable in money. In the case of personal 809
property used in business, the book value thereof less book 810
depreciation at such time shall be listed, and such depreciated 811
book value shall be taken as the true value of such property, 812
unless the assessor finds that such depreciated book value is 813
greater or less than the then true value of such property in 814
money. Claim for any deduction from net book value of accounts 815
receivable or depreciated book value of personal property must be 816
made in writing by the taxpayer at the time of making ~~his~~ the 817
taxpayer's return; and when such return is made to the county 818
auditor who is required by sections 5711.01 to 5711.36, inclusive, 819
of the Revised Code, to transmit it to the tax commissioner for 820
assessment, the auditor shall, as deputy of the commissioner, 821
investigate such claim and shall enter thereon, or attach thereto, 822
in such form as the commissioner prescribes, ~~his~~ the auditor's 823
findings and recommendations with respect thereto; when such 824
return is made to the commissioner, such claim for deduction from 825
depreciated book value of personal property shall be referred to 826
the auditor, as such deputy, of each county in which the property 827

affected thereby is listed for investigation and report. 828

Any change in the method of determining true value, as 829
prescribed by the tax commissioner on a prospective basis, shall 830
not be admissible in any judicial or administrative action or 831
proceeding as evidence of value with regard to prior years' taxes. 832
Information about the business, property, or transactions of any 833
taxpayer obtained by the commissioner for the purpose of adopting 834
or modifying any such method shall not be subject to discovery or 835
disclosure. 836

Sec. 5711.25. On or before the second Monday of August, 837
annually, the tax commissioner shall transmit to the county 838
auditor of each county the preliminary assessment certificates 839
pertaining to ~~his~~ the auditor's county of taxpayers having taxable 840
property in more than one county. The commissioner shall transmit 841
to the auditor any amended assessment certificate issued by ~~him~~ 842
the commissioner, and the auditor shall transmit to the 843
commissioner copies of all amended assessment certificates made 844
and issued by ~~him~~ the auditor. Each preliminary assessment 845
certificate, and if amended such preliminary assessment 846
certificate as last amended, shall become final on the second 847
Monday of August of the second year after the filing of a return 848
with the county auditor or after the certification of the 849
preliminary assessment certificate, or ~~thirty~~ sixty days after the 850
certification of an amended assessment certificate which has been 851
issued less than ~~thirty~~ sixty days prior to such second Monday of 852
August; unless prior to the expiration of said period or extended 853
period one of the following occurred: 854

(A) A final assessment certificate as to the taxpayer 855
represented thereby has been issued pursuant to section 5711.26 of 856
the Revised Code; 857

(B) Such taxpayer in writing has waived such time limitation 858
and consented to the issuance of ~~his~~ the taxpayer's assessment 859
certificate after the expiration of such time limitation, in which 860
case the assessment certificate issued after the expiration of 861
such time limitation, if an amended preliminary assessment 862
certificate, shall become final ~~thirty~~ sixty days after the 863
mailing of the notice of such assessment if no petition for 864
reassessment of the assessment has been filed pursuant to section 865
5711.31 of the Revised Code; 866

(C) A petition for reassessment of the assessment represented 867
thereby has been filed pursuant to section 5711.31 of the Revised 868
Code, in which event the filing of such petition shall waive such 869
time limitation and be a consent to the issuance of the 870
petitioner's final assessment certificate at the time, under the 871
circumstances, and by the authority provided by any law relating 872
to further administrative or judicial review of the assessment 873
represented thereby; provided that in the event of the dismissal 874
of such petition by the petitioner, the assessment shall become 875
final as provided in this section as though no petition for 876
reassessment had been filed. This section does not deprive any 877
taxpayer who has not received the notice prescribed by section 878
5711.31 of the Revised Code at least ~~thirty~~ sixty days prior to 879
the expiration of such period of limitation of the right to file 880
such petition for reassessment. This section shall apply to all 881
assessments made and certified under sections 5711.01 to 5711.36, 882
5725.08, and 5725.16 of the Revised Code. 883

The assessment certificates and copies thereof mentioned in 884
this section shall not be open to public inspection. 885

Sec. 5711.28. Whenever the assessor imposes a penalty 886
prescribed by section 5711.27 of the Revised Code, ~~he~~ the assessor 887
shall send notice of such penalty assessment to the taxpayer by 888

mail. If the notice also reflects the assessment of any property 889
not listed in or omitted from a return, or the assessment of any 890
item or class of taxable property listed in a return by the 891
taxpayer in excess of the value or amount thereof as so listed, or 892
without allowing a claim duly made for deduction from the net book 893
value of accounts receivable, or depreciated book value of 894
personal property used in business, so listed, and the taxpayer 895
objects to one or more of such corrections in addition to the 896
penalty, ~~he~~ the taxpayer shall proceed as prescribed by section 897
5711.31 of the Revised Code, but if no such correction is 898
reflected in the notice, or if the taxpayer does not object to any 899
such correction made, he shall proceed as prescribed herein. 900

Within ~~thirty~~ sixty days after the mailing of the notice of a 901
penalty assessment prescribed by this section, the taxpayer may 902
file with the tax commissioner, in person or by certified mail, a 903
petition for abatement of such penalty assessment. If the petition 904
is filed by certified mail, the date of the United States postmark 905
placed on the sender's receipt by the postal employee to whom the 906
petition is presented shall be treated as the date of filing. The 907
petition shall have attached thereto and incorporated therein by 908
reference a true copy of the notice of assessment complained of, 909
BUT THE FAILURE TO ATTACH A copy of such notice and incorporate it 910
by reference does not invalidate the petition. The petition shall 911
also indicate that the taxpayer's only objection is to the 912
assessed penalty and the reason for such objection. 913

Upon the filing of a petition for abatement of penalty, the 914
commissioner shall notify the treasurer of state or the auditor 915
and treasurer of each county having any part of the penalty 916
assessment entered on the tax list or duplicate. The commissioner 917
shall review the petition without the need for hearing. If it 918
appears that the failure of the taxpayer to timely return or list 919
was due to reasonable cause and not willful neglect, the 920

commissioner may abate in whole or in part the penalty assessment. 921
The commissioner shall transmit a certificate of ~~his~~ the 922
commissioner's determination to the taxpayer, and if no appeal is 923
taken therefrom as provided by law, or upon the final 924
determination of an appeal which may be taken, ~~he~~ the commissioner 925
shall notify the treasurer of state or the proper county auditor 926
of such final determination. If the final determination orders 927
abatement of the penalty assessment, the notification may be in 928
the form of an amended assessment certificate. Upon receipt of the 929
notification, the treasurer of state or county auditor shall make 930
any corrections to ~~his~~ the treasurer's or auditor's records and 931
tax lists and duplicates required in accordance therewith and 932
proceed as prescribed by section 5711.32 or 5725.22 of the Revised 933
Code. 934

The decision of the commissioner shall be final with respect 935
to the percentage of penalty, if any, ~~he~~ the commissioner finds 936
appropriate for the failure to return timely or list the property, 937
but neither ~~his~~ the commissioner's decision nor a final judgment 938
of the board of tax appeals or any court to which such final 939
determination may be appealed shall finalize the assessment of 940
such property. 941

Sec. 5711.31. Whenever the assessor assesses any property not 942
listed in or omitted from a return, or whenever the assessor 943
assesses any item or class of taxable property listed in a return 944
by the taxpayer in excess of the value or amount thereof as so 945
listed, or without allowing a claim duly made for deduction from 946
the net book value of accounts receivable, or depreciated book 947
value of personal property used in business, so listed, the 948
assessor shall give notice of such assessment to the taxpayer by 949
mail. The mailing of such notice of assessment shall be 950
prima-facie evidence of the receipt of the same by the person to 951

whom such notice is addressed. 952

Within ~~thirty~~ sixty days after the mailing of the notice of 953
assessment prescribed in this section, the party assessed may file 954
with the tax commissioner, in person or by certified mail, a 955
petition for reassessment in writing, signed by the party 956
assessed, or by ~~his~~ the party's authorized agent having knowledge 957
of the facts. If the petition is filed by certified mail, the date 958
of the United States postmark placed on the sender's receipt by 959
the postal employee to whom the petition is presented shall be 960
treated as the date of filing. The petition shall have attached 961
thereto and incorporated therein by reference a true copy of the 962
notice of assessment complained of, but the failure to attach a 963
copy of such notice and incorporate it by reference does not 964
invalidate the petition. The petition also shall indicate the 965
objections of the party assessed, but additional objections may be 966
raised in writing if received prior to the date shown on the final 967
determination by the commissioner. 968

Upon receipt of a properly filed petition, the commissioner 969
shall notify the treasurer of state or the auditor and treasurer 970
of each county having any part of the assessment entered on the 971
tax list or duplicate. 972

Unless the petitioner waives a hearing, the commissioner 973
shall assign a time and place for the hearing on the petition and 974
notify the petitioner of the time and place of the hearing by 975
personal service or certified mail, but the commissioner may 976
continue the hearing from time to time if necessary. 977

The commissioner may make such correction to the assessment, 978
as ~~he~~ the commissioner finds proper. The commissioner shall serve 979
a copy of ~~his~~ the commissioner's final determination on the 980
petitioner by personal service or by certified mail, and ~~his~~ the 981
commissioner's decision in the matter shall be final, subject to 982

appeal as provided in section 5717.02 of the Revised Code. The 983
commissioner also shall transmit a copy of ~~his~~ the commissioner's 984
final determination to the treasurer of state or applicable county 985
auditor. In the absence of any further appeal, or when a decision 986
of the board of tax appeals or of any court to which the decision 987
has been appealed becomes final, the commissioner shall notify the 988
treasurer of state or the proper county auditor of such final 989
determination. If the final determination orders correction of the 990
assessment, the notification may be in the form of a corrected 991
assessment certificate. Upon receipt of the notification, the 992
treasurer of state or the proper county auditor shall make any 993
corrections to ~~his~~ the treasurer's or auditor's records and tax 994
lists and duplicates required in accordance therewith and proceed 995
as prescribed by section 5711.32 or 5725.22 of the Revised Code. 996

The decision of the commissioner upon such petition for 997
reassessment shall be final with respect to the assessment of all 998
taxable property listed in the return of the taxpayer and shall 999
constitute to that extent the final determination of the 1000
commissioner with respect to such assessment. Neither this section 1001
nor a final judgment of the board of tax appeals or any court to 1002
which such final determination may be appealed shall preclude the 1003
subsequent assessment in the manner authorized by law of any 1004
taxable property which such taxpayer failed to list in such 1005
return, or which the assessor has not theretofore assessed. 1006

As used in this section, "taxpayer" includes financial 1007
institutions, dealers in intangibles, and domestic insurance 1008
companies as defined in section 5725.01 of the Revised Code. 1009

Sec. 5717.01. An appeal from a decision of a county board of 1010
revision may be taken to the board of tax appeals within thirty 1011
days after notice of the decision of the county board of revision 1012
is mailed as provided in section 5715.20 of the Revised Code. Such 1013

an appeal may be taken by the county auditor, the tax 1014
commissioner, or any board, legislative authority, public 1015
official, or taxpayer authorized by section 5715.19 of the Revised 1016
Code to file complaints against valuations or assessments with the 1017
auditor. Such appeal shall be taken by the filing of a notice of 1018
appeal, ~~either~~ in person or by certified mail, express mail, or 1019
authorized delivery service, with the board of tax appeals and 1020
with the county board of revision. If notice of appeal is filed by 1021
certified mail, express mail, or authorized delivery service as 1022
provided in section 5703.056 of the Revised Code, the date of the 1023
United States postmark placed on the sender's receipt by the 1024
postal ~~employee to whom the notice of appeal is presented~~ service 1025
or the date of receipt recorded by the authorized delivery service 1026
shall be treated as the date of filing. Upon receipt of such 1027
notice of appeal such county board of revision shall by certified 1028
mail notify all persons thereof who were parties to the proceeding 1029
before such county board of revision, and shall file proof of such 1030
notice with the board of tax appeals. The county board of revision 1031
shall thereupon certify to the board of tax appeals a transcript 1032
of the record of the proceedings of the county board of revision 1033
pertaining to the original complaint, and all evidence offered in 1034
connection therewith. Such appeal may be heard by the board of tax 1035
appeals at its offices in Columbus or in the county where the 1036
property is listed for taxation, or the board of tax appeals may 1037
cause its examiners to conduct such hearing and to report to it 1038
their findings for affirmation or rejection. 1039

The board of tax appeals may order the appeal to be heard on 1040
the record and the evidence certified to it by the county board of 1041
revision, or it may order the hearing of additional evidence, and 1042
it may make such investigation concerning the appeal as it deems 1043
proper. 1044

Sec. 5717.02. Except as otherwise provided by law, appeals 1045
from final determinations by the tax commissioner of any 1046
preliminary, amended, or final tax assessments, reassessments, 1047
valuations, determinations, findings, computations, or orders made 1048
by the commissioner may be taken to the board of tax appeals by 1049
the taxpayer, by the person to whom notice of the tax assessment, 1050
reassessment, valuation, determination, finding, computation, or 1051
order by the commissioner is required by law to be given, by the 1052
director of budget and management if the revenues affected by such 1053
decision would accrue primarily to the state treasury, or by the 1054
county auditors of the counties to the undivided general tax funds 1055
of which the revenues affected by such decision would primarily 1056
accrue. Appeals from the redetermination by the director of 1057
development under division (B) of section 5709.64 or division (A) 1058
of section 5709.66 of the Revised Code may be taken to the board 1059
of tax appeals by the enterprise to which notice of the 1060
redetermination is required by law to be given. Appeals from a 1061
decision of the tax commissioner concerning an application for a 1062
property tax exemption may be taken to the board of tax appeals by 1063
a school district that filed a statement concerning such 1064
application under division (C) of section 5715.27 of the Revised 1065
Code. 1066

Such appeals shall be taken by the filing of a notice of 1067
appeal with the board, and with the tax commissioner if ~~his~~ the 1068
tax commissioner's action is the subject of the appeal or with the 1069
director of development if ~~his~~ the director's action is the 1070
subject of the appeal, within ~~thirty~~ sixty days after service of 1071
the notice of the tax assessment, reassessment, valuation, 1072
determination, finding, computation, or order by the commissioner 1073
or redetermination by the director has been given ~~or otherwise~~ 1074
~~evidenced as required by law~~ as provided in section 5703.37 of the 1075
Revised Code. The notice of such appeal may be filed in person or 1076

by certified mail, express mail, or authorized delivery service. 1077
If the notice of such appeal is filed by certified mail, express 1078
mail, or authorized delivery service as provided in section 1079
5703.056 of the Revised Code, the date of the United States 1080
postmark placed on the sender's receipt by the postal ~~employee to~~ 1081
~~whom the notice of appeal is presented~~ service of the date of 1082
receipt recorded by the authorized delivery service shall be 1083
treated as the date of filing. The notice of appeal shall have 1084
attached thereto and incorporated therein by reference a true copy 1085
of the notice sent by the commissioner or director to the taxpayer 1086
or enterprise of the final determination or redetermination 1087
complained of, and shall also specify the errors therein 1088
complained of, but failure to attach a copy of such notice and 1089
incorporate it by reference in the notice of appeal does not 1090
invalidate the appeal. 1091

Upon the filing of a notice of appeal, the tax commissioner 1092
or the director, as appropriate, shall certify to the board a 1093
transcript of the record of the proceedings before ~~him~~ the 1094
commissioner or director, together with all evidence considered by 1095
~~him~~ the commissioner or director in connection therewith. Such 1096
appeals or applications may be heard by the board at its office in 1097
Columbus or in the county where the appellant resides, or it may 1098
cause its examiners to conduct such hearings and to report to it 1099
their findings for affirmation or rejection. The board may order 1100
the appeal to be heard upon the record and the evidence certified 1101
to it by the commissioner or director, but upon the application of 1102
any interested party the board shall order the hearing of 1103
additional evidence, and it may make such investigation concerning 1104
the appeal as it considers proper. 1105

Sec. 5727.11. (A) Except as otherwise provided in this 1106
section, the true value of all taxable property required by 1107
division (A)(2) or (3) of section 5727.06 of the Revised Code to 1108

be assessed by the tax commissioner shall be determined by a 1109
method of valuation using cost as capitalized on the public 1110
utility's books and records less composite annual allowances as 1111
prescribed by the commissioner. If the commissioner finds that 1112
application of this method will not result in the determination of 1113
true value of the public utility's taxable property, the 1114
commissioner may use another method of valuation. 1115

(B) The true value of current gas stored underground is the 1116
cost of that gas shown on the books and records of the public 1117
utility on the thirty-first day of December of the preceding year. 1118

(C) The true value of noncurrent gas stored underground is 1119
thirty-five per cent of the cost of that gas shown on the books 1120
and records of the public utility on the thirty-first day of 1121
December of the preceding year. 1122

(D)(1) Except as provided in division (D)(2) of this section, 1123
the true value of the production equipment of an electric company 1124
and the true value of all taxable property of a rural electric 1125
company is the equipment's or property's cost as capitalized on 1126
the company's books and records less fifty per cent of that cost 1127
as an allowance for depreciation and obsolescence. 1128

(2) The true value of the production equipment of an electric 1129
company or rural electric company purchased, transferred, or 1130
placed into service after the effective date of this amendment is 1131
the purchase price of the equipment as capitalized on the 1132
company's books and records less composite annual allowances as 1133
prescribed by the tax commissioner. 1134

(E) The true value of taxable property described in division 1135
(A)(2) or (3) of section 5727.06 of the Revised Code shall not 1136
include the allowance for funds used during construction or 1137
interest during construction that has been capitalized on the 1138
public utility's books and records as part of the total cost of 1139

the taxable property. This division shall not apply to the taxable
property of an electric company or a rural electric company,
excluding transmission and distribution property, first placed
into service after December 31, 2000, or to the taxable property a
person purchases, which includes transfers, if that property was
used in business by the seller prior to the purchase.

(F) The true value of watercraft owned or operated by a water
transportation company shall be determined by multiplying the true
value of the watercraft as determined under division (A) of this
section by a fraction, the numerator of which is the number of
revenue-earning miles traveled by the watercraft in the waters of
this state and the denominator of which is the number of
revenue-earning miles traveled by the watercraft in all waters.

(G) The cost of property subject to a sale and leaseback
transaction is the cost of the property as capitalized on the
books and records of the public utility owning the property
immediately prior to the sale and leaseback transaction.

(H) The cost as capitalized on the books and records of a
public utility includes amounts capitalized that represent
regulatory assets, if such amounts previously were included on the
company's books and records as capitalized costs of taxable
personal property.

(I) Any change in the composite annual allowances as
prescribed by the commissioner on a prospective basis shall not be
admissible in any judicial or administrative action or proceeding
as evidence of value with regard to prior years' taxes.
Information about the business, property, or transactions of any
taxpayer obtained by the commissioner for the purpose of adopting
or modifying the composite annual allowances shall not be subject
to discovery or disclosure.

Sec. 5727.26. (A) The tax commissioner may make an 1170
assessment, based on any information in the commissioner's 1171
possession, against any natural gas company or combined electric 1172
and gas company that fails to file a return or pay any tax, 1173
interest, or additional charge as required by sections 5727.24 to 1174
5727.29 of the Revised Code. The commissioner shall give the 1175
company assessed written notice of the assessment ~~by personal~~ 1176
~~service or certified mail~~ as provided in section 5703.37 of the 1177
Revised Code. A penalty of up to fifteen per cent may be added to 1178
all amounts assessed under this section. The tax commissioner may 1179
adopt rules providing for the imposition and remission of the 1180
penalty. 1181

(B) If a party to whom the notice of assessment is directed 1182
objects to the assessment, the party may file a petition for 1183
reassessment with the tax commissioner. The petition must be made 1184
in writing, signed by the party or the party's authorized agent 1185
having knowledge of the facts, and filed with the commissioner, 1186
either personally or by certified mail, within ~~thirty~~ sixty days 1187
after service of the notice of assessment. The petition shall 1188
indicate the objections of the company assessed, but additional 1189
objections may be raised in writing if received prior to the date 1190
shown on the final determination of the commissioner. Upon receipt 1191
of a properly filed petition, the commissioner shall notify the 1192
treasurer of state. 1193

Unless the petitioner waives a hearing, the commissioner 1194
shall grant the petitioner a hearing on the petition, assign a 1195
time and place for the hearing, and notify the petitioner of the 1196
time and place of the hearing, ~~by personal service or certified~~ 1197
~~mail~~ as provided in section 5703.37 of the Revised Code. The 1198
commissioner may continue the hearing from time to time, if 1199
necessary. 1200

If the party to whom the notice of assessment is directed 1201
does not file a petition for reassessment, the assessment is final 1202
and the amount of the assessment is due and payable from the 1203
company assessed to the treasurer of state. 1204

(C) The tax commissioner may make any correction to the 1205
assessment that the commissioner finds proper and shall issue a 1206
final determination thereon. The commissioner shall serve a copy 1207
of the final determination on the petitioner ~~either by personal~~ 1208
~~service or certified mail as provided in section 5703.37 of the~~ 1209
Revised Code, and the commissioner's decision in the matter is 1210
final, subject to appeal under section 5717.02 of the Revised 1211
Code. The commissioner also shall transmit a copy of the final 1212
determination to the treasurer of state. Only objections decided 1213
on the merits by the board of tax appeals or a court shall be 1214
given collateral estoppel or res judicata effect in considering an 1215
application for refund of an amount paid pursuant to the 1216
assessment. 1217

(D) After an assessment becomes final, if any portion of the 1218
assessment, including accrued interest, remains unpaid, a 1219
certified copy of the tax commissioner's entry making the 1220
assessment final may be filed in the office of the clerk of the 1221
court of common pleas in the county in which the natural gas 1222
company's or combined electric and gas company's principal place 1223
of business is located, or in the office of the clerk of court of 1224
common pleas of Franklin county. 1225

The clerk, immediately on the filing of the entry, must enter 1226
judgment for the state against the company assessed in the amount 1227
shown on the entry. The judgment may be filed by the clerk in a 1228
loose-leaf book entitled, "special judgments for the public 1229
utility excise tax on natural gas and combined electric and gas 1230
companies," and shall have the same effect as other judgments. 1231
Execution shall issue upon the judgment at the request of the tax 1232

commissioner, and all laws applicable to sales on execution shall 1233
apply to sales made under the judgment. 1234

The portion of the assessment not paid within ~~thirty~~ sixty 1235
days after the day the assessment was issued shall bear interest 1236
at the rate per annum prescribed by section 5703.47 of the Revised 1237
Code from the day the tax commissioner issues the assessment until 1238
it is paid. Interest shall be paid in the same manner as the tax 1239
and may be collected by the issuance of an assessment under this 1240
section. 1241

(E) If the tax commissioner believes that collection of the 1242
tax will be jeopardized unless proceedings to collect or secure 1243
collection of the tax are instituted without delay, the 1244
commissioner may issue a jeopardy assessment against the person 1245
liable for the tax. On issuance of the jeopardy assessment, the 1246
commissioner immediately shall file an entry with the clerk of the 1247
court of common pleas in the manner prescribed by division (D) of 1248
this section. Notice of the jeopardy assessment shall be served on 1249
the party assessed or the party's legal representative as provided 1250
in section 5703.37 of the Revised Code within five days of the 1251
filing of the entry with the clerk. The total amount assessed is 1252
immediately due and payable, unless the person assessed files a 1253
petition for reassessment in accordance with division (B) of this 1254
section and provides security in a form satisfactory to the 1255
commissioner and in an amount sufficient to satisfy the unpaid 1256
balance of the assessment. Full or partial payment of the 1257
assessment does not prejudice the commissioner's consideration of 1258
the petition for reassessment. 1259

(F) All interest collected by the tax commissioner under this 1260
section shall be paid to the treasurer of state, and when paid 1261
shall be considered revenue arising from the tax imposed by 1262
section 5727.24 of the Revised Code. 1263

(G) No assessment shall be made or issued against a natural 1264

gas company or combined electric and gas company for the tax 1265
imposed by section 5727.24 of the Revised Code more than four 1266
years after the return date for the period in which the tax was 1267
reported, or more than four years after the return for the period 1268
was filed, whichever is later. 1269

Sec. 5727.47. A copy of each assessment certified pursuant to 1270
section 5727.23 or 5727.38 of the Revised Code shall be mailed to 1271
the public utility, and its mailing shall be prima-facie evidence 1272
of its receipt by the public utility to which it is addressed. If 1273
a public utility objects to any assessment certified to it 1274
pursuant to such sections, it may file a petition for reassessment 1275
with the tax commissioner. The petition must be made in writing, 1276
signed by the authorized agent of the utility having knowledge of 1277
the facts, and filed with the commissioner, in person or by 1278
certified mail, within ~~thirty~~ sixty days from the date that the 1279
assessment was mailed. If the petition is filed by certified mail, 1280
the date of the United States postmark placed on the sender's 1281
receipt by the postal employee to whom the petition is presented 1282
shall be treated as the date of filing. A true copy of the 1283
assessment objected to shall be attached to the petition and shall 1284
be incorporated by reference into the petition, but the failure to 1285
attach a copy of the assessment and incorporate it by reference 1286
does not invalidate the petition. The petition also shall indicate 1287
the utility's objections, but additional objections may be raised 1288
in writing if received prior to the date shown on the final 1289
determination by the commissioner. 1290

Notwithstanding the fact that a petition has been filed, the 1291
tax with respect to the assessment objected to shall be paid as 1292
required by law. The acceptance of the tax payment by the 1293
treasurer of state or any county treasurer shall not prejudice any 1294
claim for taxes on final determination by the commissioner or 1295

final decision by the board of tax appeals or any court. 1296

Upon receipt of a properly filed petition, the commissioner 1297
shall notify the treasurer of state or the auditor of each county 1298
to which the assessment objected to has been certified. 1299

Unless the petitioner waives a hearing, the commissioner 1300
shall assign a time and place for the hearing on the petition and 1301
notify the petitioner of the time and place of the hearing by 1302
personal service or certified mail, but the commissioner may 1303
continue the hearing from time to time if necessary. 1304

The commissioner may make such correction to the assessment 1305
as the commissioner finds proper. The commissioner shall serve a 1306
copy of the commissioner's final determination on the petitioner 1307
by personal service or certified mail, and the commissioner's 1308
decision in the matter shall be final, subject to appeal as 1309
provided in section 5717.02 of the Revised Code. The commissioner 1310
also shall transmit a copy of the final determination to the 1311
treasurer of state or applicable county auditor. In the absence of 1312
any further appeal, or when a decision of the board of tax appeals 1313
or of any court to which the decision has been appealed becomes 1314
final, the commissioner shall notify the public utility and, as 1315
appropriate, the treasurer of state who shall proceed under 1316
section 5727.42 of the Revised Code, or the applicable county 1317
auditor who shall proceed under section 5727.471 of the Revised 1318
Code. The notification is not subject to further appeal. 1319

Sec. 5727.89. (A) The tax commissioner may make an 1320
assessment, based on any information in the commissioner's 1321
possession, against any electric distribution company, 1322
self-assessing purchaser, or qualified end user that fails to file 1323
a return or pay any tax, interest, or additional charge as 1324
required by sections 5727.80 to 5727.95 of the Revised Code. 1325

When information in the possession of the tax commissioner 1326
indicates that a person liable for the tax imposed by section 1327
5727.81 of the Revised Code has not paid the full amount of tax 1328
due, the commissioner may audit a representative sample of the 1329
person's business and may issue an assessment based on the audit. 1330
The commissioner shall give the person assessed written notice of 1331
the assessment by personal service or certified mail. 1332

The tax commissioner may issue an assessment for which the 1333
tax imposed by section 5727.81 of the Revised Code was due and 1334
unpaid on the date the person was informed by an agent of the tax 1335
commissioner of an investigation or audit of the person. Any 1336
payment of the tax for the period covered by the assessment, after 1337
the person is so informed, shall be credited against the 1338
assessment. 1339

A penalty of fifteen per cent ~~shall~~ may be added to all 1340
amounts assessed under this section. The commissioner may adopt 1341
rules providing for the imposition and remission of penalties. 1342

(B) Unless the party assessed files with the tax commissioner 1343
within ~~thirty~~ sixty days after service of the notice of 1344
assessment, either personally or by certified mail, a written 1345
petition for reassessment signed by the party assessed or the 1346
party's authorized agent having knowledge of the facts, the 1347
assessment is final and the amount of the assessment is due and 1348
payable from the party assessed to the treasurer of state. The 1349
petition shall indicate the objections of the party assessed, but 1350
additional objections may be raised in writing prior to the date 1351
shown on the final determination of the tax commissioner. The 1352
commissioner shall grant the petitioner a hearing on the petition, 1353
unless waived by the petitioner. 1354

(C) The commissioner may make any correction to the 1355
assessment that the commissioner finds proper and shall issue a 1356

final determination thereon. The commissioner shall serve a copy
of the final determination on the petitioner either by personal
service or by certified mail as provided in section 5703.37 of the
Revised Code, and the commissioner's decision in the matter is
final, subject to appeal under section 5717.02 of the Revised
Code.

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

The clerk, immediately upon the filing of the entry, shall
enter a judgment for the state against the person assessed in the
amount shown on the entry. The judgment may be filed by the clerk
in a loose-leaf book entitled "special judgments for the
kilowatt-hour tax," and shall have the same effect as other
judgments. Execution shall issue upon the judgment at the request
of the tax commissioner, and all laws applicable to sales on
execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty
days after the day the assessment was issued shall bear interest
at the rate per annum prescribed by section 5703.47 of the Revised
Code from the day the tax commissioner issues the assessment until
the day the assessment is paid. Interest shall be paid in the same
manner as the tax and may be collected by the issuance of an
assessment under this section.

(E) If the tax commissioner believes that collection of the tax imposed by section 5727.81 of the Revised Code will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the electric distribution company, self-assessing purchaser, or qualified end user liable for the tax. Upon issuance of the jeopardy assessment, the commissioner immediately shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (D) of this section. Notice of the jeopardy assessment shall be served on the party assessed or the party's legal representative within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the party assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by section 5727.81 of the Revised Code.

Sec. 5728.01. As used in sections 5728.02 to 5728.14~~7~~
~~inclusive~~, of the Revised Code:

(A) "Motor vehicle" means everything on wheels ~~which~~ that is self-propelled, other than by muscular power or power collected from electric trolley wires and other than vehicles or machinery not designed for or employed in general highway transportation, used to transport or propel property over a public highway.

(B) "Commercial car" means any motor vehicle used for

transporting property, wholly on its own structure on a public highway. 1419
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(C) "Commercial tractor" means any motor vehicle designed and used to propel or draw a trailer or semi-trailer or both on a public highway without having any provision for carrying loads independently of such trailer or semi-trailer. 1421
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(D) "Trailer" means everything on wheels ~~which~~ that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation ~~and except vehicles whose total weight excluding load is less than three thousand pounds~~, used for carrying property wholly on its own structure and for being drawn by a motor vehicle on a public highway, including any such vehicle when formed by or operated as a combination of a semi-trailer and a vehicle of the dolly type such as that commonly known as a trailer dolly. "Trailer" does not include manufactured homes as defined in division (C)(4) of section 3781.06 of the Revised Code or mobile homes as defined in division (O) of section 4501.01 of the Revised Code. 1425
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(E) "Semi-trailer" means everything on wheels ~~which~~ that is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation ~~and except vehicles whose total weight excluding load is less than three thousand pounds~~, designed and used for carrying property on a public highway when being propelled or drawn by a commercial tractor when part of its own weight or the weight of its load, or both, rest upon and is carried by a commercial tractor. 1437
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(F) "Commercial tandem" means any commercial car and trailer or any commercial tractor, semi-trailer, and trailer when fastened together and used as one unit. 1445
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(G) "Commercial tractor combination" means any commercial tractor and semi-trailer when fastened together and used as one 1448
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unit. 1450

(H) "Axle" means two or more load carrying wheels mounted in 1451
a single transverse vertical plane. 1452

(I) "Public highway" means any highway, road, or street 1453
dedicated to public use except a highway under the control and 1454
jurisdiction of the Ohio turnpike commission created by the 1455
provisions of section 5537.02 of the Revised Code. 1456

Sec. 5728.02. (A) Except as provided in section 5728.03 of 1457
the Revised Code, every person who is liable for the tax imposed 1458
by section 5728.06 of the Revised Code on the operation of a 1459
commercial car with three or more axles when operated alone or as 1460
part of a commercial tandem, a commercial car with two axles that 1461
is to be operated as part of a commercial tandem with a gross 1462
vehicle weight or a registered gross vehicle weight exceeding 1463
twenty-six thousand pounds, or a commercial tractor that is, or is 1464
to be, operated or driven upon a public highway shall cause to be 1465
filed annually with the tax commissioner a written application for 1466
a highway use permit on blank forms to be furnished by the 1467
commissioner for that purpose. 1468

Each application for a highway use permit for a commercial 1469
car or a commercial tractor shall contain any information the tax 1470
commissioner prescribes. 1471

~~The application shall be accompanied by a fee of two dollars.~~ 1472

(B) Upon receipt of the application ~~and fee~~, the commissioner 1473
shall issue to the person making the application a highway use 1474
permit and any identification device that ~~he~~ the commissioner 1475
considers necessary for the proper administration of this chapter. 1476
The permit and the identification device shall be of a design and 1477
contain any information the commissioner considers necessary. The 1478
identification device shall be displayed on the commercial car or 1479

commercial tractor for which it was issued at all times in the 1480
manner the commissioner prescribes. The highway use permits and 1481
the identification device shall not be transferable. In case of 1482
the loss of a highway use permit or identification device, the 1483
commissioner shall issue a duplicate of the permit or device ~~upon~~ 1484
~~payment of a fee of one dollar.~~ 1485

The highway use permit shall be valid until it expires or is 1486
suspended or surrendered. ~~All moneys collected pursuant to the~~ 1487
~~provisions of this section shall be deposited in the state~~ 1488
~~treasury in accordance with the provisions of section 5728.08 of~~ 1489
~~the Revised Code.~~ 1490

Sec. 5728.03. (A) In lieu of filing an application for a AN 1491
annual highway use permit under section 5728.02 of the Revised 1492
Code and in lieu of filing returns under section 5728.08 of the 1493
Revised Code, a person who is the owner of a commercial car with 1494
three or more axles when operated alone or as part of a commercial 1495
tandem, a commercial car with two axles that is to be operated as 1496
part of a commercial tandem with a gross vehicle weight or a 1497
registered gross vehicle weight exceeding twenty-six thousand 1498
pounds, or a commercial tractor that is, or is to be, operated or 1499
driven upon a public highway, may file an application with the tax 1500
commissioner for a single-trip highway use permit. The application 1501
shall be ~~accompanied by a fee of two dollars and,~~ based on rules 1502
adopted by the tax commissioner, and shall include an amount 1503
estimated to be substantially equivalent to the highway use and 1504
motor vehicle fuel use tax liability that the applicant will incur 1505
by driving on the highways of this state during the period covered 1506
by the single-trip permit. The amount so estimated shall be 1507
considered to be the highway use tax and motor vehicle fuel use 1508
tax liability so incurred. 1509

The commissioner may authorize independent permit services or 1510

other persons to issue single-trip highway use permits. 1511

(B) The commissioner shall adopt rules establishing all of 1512
the following: 1513

(1) Procedures for the issuance of single-trip permits; 1514

(2) The length of time the permits are effective; 1515

(3) Requirements that independent permit services or other 1516
persons must meet to be authorized to issue single-trip highway 1517
use permits and procedures for obtaining that authorization; 1518

(4) Estimates of the amount substantially equivalent to the 1519
highway use and motor vehicle fuel use tax liability that an 1520
applicant will incur by driving on the highways of this state 1521
during the period covered by the permit. 1522

(C) No person whose highway use permit issued under section 1523
5728.02 of the Revised Code is currently under suspension in 1524
accordance with section 5728.11 of the Revised Code shall be 1525
issued a single-trip highway use permit under this section. 1526

(D) All moneys collected pursuant to this section shall be 1527
deposited in the state treasury in accordance with section 5728.08 1528
of the Revised Code. 1529

Sec. 5728.04. It shall be unlawful, on and after September 1530
30, 1955, for any person to operate a commercial car with three or 1531
more axles when operated alone or as part of a commercial tandem, 1532
a commercial car with two axles that is to be operated as part of 1533
a commercial tandem with a gross vehicle weight or a registered 1534
gross vehicle weight exceeding twenty-six thousand pounds, or a 1535
commercial tractor when operated alone or as part of a commercial 1536
tractor combination or commercial tandem on a public highway 1537
without a valid highway use permit for such commercial car or 1538
commercial tractor. 1539

The judge or magistrate of any court finding any person 1540
guilty of unlawfully operating a commercial car or commercial 1541
tractor as provided for in this section shall immediately notify 1542
the tax commissioner of such violation and shall transmit to the 1543
commissioner the name and the permanent address of the owner of 1544
the commercial car or commercial tractor operated in violation of 1545
this section, the registration number, the state of registration, 1546
and the certificate of title number of the commercial car or 1547
commercial tractor. 1548

Sec. 5728.06. For the purpose of providing revenues to pay 1549
the cost of administering and enforcing the laws pertaining to the 1550
levy and collection of the tax imposed by this section, to provide 1551
funds to pay the state's share of the cost of constructing or 1552
reconstructing highways and eliminating railway grade crossings on 1553
the major thoroughfares of the state highway system and urban 1554
extensions thereof, and to pay the interest, principal, and 1555
charges on highway obligations issued pursuant to Section 2i of 1556
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 1557
of the Revised Code, there is hereby levied a highway use tax upon 1558
each commercial car with three or more axles when operated alone 1559
or as part of a commercial tandem, each commercial car with two 1560
axles used as a part of a commercial tandem with a gross vehicle 1561
weight or a registered gross vehicle weight exceeding twenty-six 1562
thousand pounds, and each commercial tractor operated alone or 1563
used as part of a commercial tractor combination or commercial 1564
tandem. Except as provided in section 5728.05 of the Revised Code, 1565
the rates shall be as follows: 1566

(A) One-half cent for each mile traveled on a public highway 1567
in Ohio by each commercial car with three or more axles; 1568

(B) One cent for each mile traveled on a public highway in 1569
Ohio by a commercial tandem with three axles or a commercial 1570

tractor operated alone or as part of a commercial tractor 1571
combination with three axles; 1572

(C) One and one-half cents for each mile traveled on a public 1573
highway in Ohio by a commercial tractor operated as a part of a 1574
commercial tractor combination with four axles; 1575

(D) Two cents for each mile traveled on a public highway in 1576
Ohio by a commercial tractor operated as part of a commercial 1577
tractor combination with a total of five or more axles; 1578

(E) Two and one-half cents for each mile traveled on a public 1579
highway in Ohio by each commercial car or commercial tractor 1580
operated as part of a commercial tandem with four or more axles. 1581
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The owner of each commercial car and commercial tractor 1583
subject to sections 5728.01 to 5728.14 of the Revised Code shall 1584
be liable for the payment of the full amount of the taxes levied 1585
herein. 1586

An owner who is a person regularly engaged, for compensation, 1587
in the business of leasing or renting motor vehicles without 1588
furnishing drivers may designate that the lessee of a motor 1589
vehicle leased for a period of thirty days or more shall report 1590
and pay the tax incurred during the duration of the lease. An 1591
owner who is an independent contractor that furnishes both the 1592
driver and motor vehicle, may designate that the person so 1593
furnished with the driver and motor vehicle for a period of thirty 1594
days or more shall report and pay the tax incurred during that 1595
period. An independent contractor that is not an owner, but that 1596
furnishes both the driver and motor vehicle and that has been 1597
designated by the owner of the motor vehicle to report and pay the 1598
tax, may designate that the person so furnished with driver and 1599
motor vehicle for a period of thirty days or more shall report and 1600
pay the tax incurred during that period. 1601

Sec. 5728.08. Except as provided in section 5728.03 of the Revised Code and except as otherwise provided in this section, whoever is liable for the payment of the tax levied by section 5728.06 of the Revised Code, on or before the last day of each January, April, July, and October, shall file with the treasurer of state, on forms prescribed by the tax commissioner, a highway use tax return and make payment of the full amount of the tax due for the operation of each commercial car and commercial tractor for the next preceding three calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the trucks during the next preceding twelve calendar months was less than fifteen thousand gallons, the highway use tax return shall be filed and the full amount of tax due paid on or before the last day of each July for the next preceding twelve calendar months. If the commercial cars or commercial tractors are farm trucks and the amount of motor fuel used to operate the trucks during the next preceding twelve calendar months was fifteen thousand gallons or more, the highway use tax return shall be filed and the full amount of the tax due paid either on or before the last day of each July for the next preceding twelve calendar months, or on or before the last day of each January, April, July, and October for the next preceding three calendar months, at the option of the person liable for payment of the tax. If the commercial cars or commercial tractors are not farm trucks, and if, in the estimation of the tax commissioner, the amount of the tax due does not warrant quarterly filing, the commissioner may authorize the filing of the highway use tax return and payment of the full amount due on or before the last day of each July for the next preceding twelve months.

Immediately upon the receipt of a highway use tax return, the treasurer of state shall mark on the return the date it was received by the treasurer of state and the amount of tax payment

accompanying the return and shall transmit the return to the tax commissioner. 1634
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The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the taxes levied by section 5728.06 of the Revised Code, amounts equal to the refund certified by the tax commissioner pursuant to section 5728.061 of the Revised Code. Receipts from the tax shall be used by the tax commissioner to defray expenses incurred by the department of taxation in administering sections 5728.01 to 5728.14 of the Revised Code. 1636
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All moneys received in the state treasury from taxes levied by section 5728.06 of the Revised Code and fees assessed under sections 5728.02 and 5728.03 of the Revised Code which are not required to be placed to the credit of the tax refund fund as provided by this section shall, during each calendar year, be credited to the highway improvement bond retirement fund created by section 5528.12 of the Revised Code until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.17 of the Revised Code, that there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year and during the next succeeding calendar year. From the date of the receipt of the certification required by section 5528.17 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which the certification is made, all moneys received in the state treasury from taxes levied under section 5728.06 of the Revised Code and fees assessed under sections 5728.02 and 5728.03 of the Revised Code which are not required to be placed to the 1644
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credit of the tax refund fund as provided by this section shall be 1666
credited to the highway obligations bond retirement fund created 1667
by section 5528.32 of the Revised Code until the commissioners of 1668
the sinking fund certify to the treasurer of state, as required by 1669
section 5528.38 of the Revised Code, that there are sufficient 1670
moneys to the credit of the highway obligations bond retirement 1671
fund to meet in full all payments of interest, principal, and 1672
charges for the retirement of bonds and other obligations issued 1673
pursuant to Section 2i of Article VIII, Ohio Constitution, and 1674
sections 5528.30 and 5528.31 of the Revised Code due and payable 1675
during the current calendar year and during the next succeeding 1676
calendar year. From the date of the receipt of the certification 1677
required by section 5528.38 of the Revised Code by the treasurer 1678
of state until the thirty-first day of December of the calendar 1679
year in which the certification is made, all moneys received in 1680
the state treasury from taxes levied under section 5728.06 of the 1681
Revised Code and fees assessed under sections 5728.02 and 5728.03 1682
of the Revised Code which are not required to be placed to the 1683
credit of the tax refund fund as provided by this section shall be 1684
credited to the highway operating fund created by section 5735.291 1685
of the Revised Code, except as provided by the next succeeding 1686
paragraph of this section. 1687

From the date of the receipt by the treasurer of state of 1688
certifications from the commissioners of the sinking fund, as 1689
required by sections 5528.18 and 5528.39 of the Revised Code, 1690
certifying that the moneys to the credit of the highway 1691
improvement bond retirement fund are sufficient to meet in full 1692
all payments of interest, principal, and charges for the 1693
retirement of all bonds and other obligations which may be issued 1694
pursuant to Section 2g of Article VIII, Ohio Constitution, and 1695
sections 5528.10 and 5528.11 of the Revised Code, and to the 1696
credit of the highway obligations bond retirement fund are 1697

sufficient to meet in full all payments of interest, principal, and charges for the retirement of all obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, all moneys received in the state treasury from the taxes levied under section 5728.06 and fees assessed under sections 5728.02 and 5728.03 of the Revised Code, which are not required to be placed to the credit of the tax refund fund as provided by this section, shall be deposited to the credit of the highway operating fund.

As used in this section, "farm truck" means any commercial car or commercial tractor that is registered as a farm truck under Chapter 4503. of the Revised Code.

Sec. 5728.09. (A) Any person who fails to file timely the return required by section 5728.08 of the Revised Code ~~shall~~ may be required to pay an additional charge equal to the greater of fifty dollars or ten per cent of the tax due. The commissioner may adopt rules providing for the imposition and remission of the additional charges. Any additional charge imposed under this section may be collected through an assessment as provided in section 5728.10 of the Revised Code.

(B) If the tax imposed by this chapter or section 5735.31 of the Revised Code, or any portion of that tax, whether determined by the tax commissioner or the taxpayer, is not paid on or before the date prescribed in section 5728.08 of the Revised Code, interest shall be collected and paid in the same manner as the tax, upon that unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for payment of the tax until it is paid or until the day an assessment is issued under section 5728.10 of the Revised Code, whichever occurs first. Any interest imposed under this chapter may be collected through an assessment as provided in section 5728.10 of

the Revised Code.

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Sec. 5728.10. (A) If any person required to file a highway
use tax return by sections 5728.01 to 5728.14 of the Revised Code,
fails to file the return within the time prescribed by those
sections, files an incomplete return, files an incorrect return,
or fails to remit the full amount of the tax due for the period
covered by the return, the tax commissioner may make an assessment
against the person, based upon any information in the
commissioner's possession, for the period for which the tax was
due.

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No assessment shall be made against any person for any tax
imposed by this chapter more than four years after the last day of
the calendar year during which the tax was due. This section does
not bar an assessment against any person who fails to file a
highway use tax return as required by this chapter, or who files a
fraudulent highway use tax return.

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A penalty of up to fifteen per cent ~~shall~~ may be added to the
amount of every assessment made pursuant to this section. The
commissioner may adopt rules providing for the imposition and
remission of penalties added to assessments made under this
section.

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The commissioner shall give the party assessed written notice
of the assessment ~~by personal service or certified mail~~ as
provided in section 5703.37 of the Revised Code.

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(B) Unless the party to whom the notice of assessment is
directed files with the commissioner within ~~thirty~~ sixty days
after service of the notice of assessment, either personally or by
certified mail, a petition for reassessment in writing, signed by
the party assessed, or by the party's authorized agent having
knowledge of the facts, the assessment shall become final and the

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amount of the assessment shall be due and payable from the party 1759
assessed to the treasurer of state. The petition shall indicate 1760
the objections of the party assessed, but additional objections 1761
may be raised in writing if received prior to the date shown on 1762
the final determination by the commissioner. 1763

Unless the petitioner waives a hearing, the commissioner 1764
shall assign a time and place for the hearing on the petition and 1765
notify the petitioner of the time and place of the hearing by 1766
personal service or certified mail, but the commissioner may 1767
continue the hearing from time to time if necessary. 1768

The commissioner may make such correction to the assessment 1769
as the commissioner finds proper. The commissioner shall serve a 1770
copy of the commissioner's final determination on the petitioner 1771
by personal service or certified mail, and the commissioner's 1772
decision in the matter shall be final, subject to appeal as 1773
provided in section 5717.02 of the Revised Code. Only objections 1774
decided on the merits by the board of tax appeals or a court shall 1775
be given collateral estoppel or res judicata effect in considering 1776
an application for refund of amounts paid pursuant to the 1777
assessment. 1778

(C) After an assessment becomes final, if any portion of the 1779
assessment remains unpaid, including accrued interest, a certified 1780
copy of the commissioner's entry making the assessment final may 1781
be filed in the office of the clerk of the court of common pleas 1782
in the county in which the party's place of business is located or 1783
the county in which the party assessed resides. If the party 1784
maintains no office in this state and is not a resident of this 1785
state, the certified copy of the entry may be filed in the office 1786
of the clerk of the court of common pleas of Franklin county. 1787

The clerk, immediately upon the filing of the entry, shall 1788
enter a judgment for the state of Ohio against the party assessed 1789
in the amount shown on the entry. The judgment may be filed by the 1790

clerk in a loose-leaf book entitled "special judgments for state
highway use tax," and shall have the same effect as other
judgments. Execution shall issue upon the judgment upon the
request of the tax commissioner, and all laws applicable to sales
on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within ~~thirty~~ sixty
days after the day the assessment was issued shall bear interest
at the rate per annum prescribed by section 5703.47 of the Revised
Code from the day the tax commissioner issues the assessment until
it is paid. Interest shall be paid in the same manner as the tax
and may be collected by the issuance of an assessment under this
section.

(D) All money collected by the commissioner under this
section shall be paid into the state treasury in the same manner
as the revenues deriving from the taxes imposed by section 5728.06
of the Revised Code.

Sec. 5733.11. (A) If any corporation required to file a
report under this chapter fails to file the report within the time
prescribed, files an incorrect report, or fails to remit the full
amount of the tax due for the period covered by the report, the
tax commissioner may make an assessment against the corporation
for any deficiency for the period for which the report or tax is
due, based upon any information in the commissioner's possession.

No assessment shall be made or issued against a corporation
more than three years after the later of the final date the report
subject to assessment was required to be filed or the date the
report was filed. Such time limit may be extended if both the
corporation and the commissioner consent in writing to the
extension. Any such extension shall extend the three-year time
limit in division (B) of section 5733.12 of the Revised Code for
the same period of time. There shall be no bar or limit to an

assessment against a corporation that fails to file a report 1822
subject to assessment as required by this chapter, or that files a 1823
fraudulent report. 1824

The commissioner shall give the corporation assessed written 1825
notice of the assessment ~~by personal service or certified mail~~ as 1826
provided in section 5703.37 of the Revised Code. 1827

(B) Unless the corporation to which the notice of assessment 1828
is directed files with the commissioner within ~~thirty~~ sixty days 1829
after service thereof, either personally or by certified mail as 1830
provided in section 5703.056 of the Revised Code, a petition for 1831
reassessment in writing, signed by the authorized agent of the 1832
corporation assessed having knowledge of the facts, and makes 1833
payment of the portion of the assessment required by division (E) 1834
of this section, the assessment shall become final, and the amount 1835
of the assessment shall be due and payable from the corporation 1836
assessed to the treasurer of state. The petition shall indicate 1837
the corporation's objections, but additional objections may be 1838
raised in writing if received prior to the date shown on the final 1839
determination by the commissioner. 1840

Unless the petitioner waives a hearing, the commissioner 1841
shall assign a time and place for the hearing on the petition and 1842
notify the petitioner of the time and place of the hearing by 1843
personal service or certified mail, but the commissioner may 1844
continue the hearing from time to time if necessary. 1845

The commissioner may make such correction to the assessment 1846
as the commissioner finds proper. The commissioner shall serve a 1847
copy of the final determination on the petitioner by personal 1848
service or by certified mail, and the commissioner's decision in 1849
the matter shall be final, subject to appeal as provided in 1850
section 5717.02 of the Revised Code. Only objections decided on 1851
the merits by the board of tax appeals or a court shall be given 1852

collateral estoppel or res judicata effect in considering an 1853
application for refund of amounts paid pursuant to the assessment. 1854

(C) After an assessment becomes final, if any portion of the 1855
assessment remains unpaid, including accrued interest, a certified 1856
copy of the commissioner's entry making the assessment final may 1857
be filed in the office of the clerk of the court of common pleas 1858
in the county in which the corporation has an office or place of 1859
business in this state, the county in which the corporation's 1860
statutory agent is located, or Franklin county. 1861

Immediately upon the filing of the entry, the clerk shall 1862
enter a judgment against the corporation assessed in the amount 1863
shown on the entry. The judgment may be filed by the clerk in a 1864
loose-leaf book entitled "special judgments for state corporate 1865
franchise and litter taxes," and shall have the same effect as 1866
other judgments. Execution shall issue upon the judgment upon the 1867
request of the tax commissioner, and all laws applicable to sales 1868
on execution shall apply to sales made under the judgment. 1869

The portion of an assessment not paid within ~~thirty~~ sixty 1870
days after the day the assessment was issued shall bear interest 1871
at the rate per annum prescribed by section 5703.47 of the Revised 1872
Code from the day the tax commissioner issues the assessment until 1873
the assessment is paid. Interest shall be paid in the same manner 1874
as the tax and may be collected by issuing an assessment under 1875
this section. 1876

(D) All money collected under this section shall be 1877
considered as revenue arising from the taxes imposed by this 1878
chapter. 1879

(E) The portion of an assessment which must be paid upon the 1880
filing of a petition for reassessment shall be as follows: 1881

(1) If the sole item objected to is the assessed penalty or 1882
interest, ~~full~~ payment of the assessment, including interest but 1883

not penalty and interest, is required; 1884

(2) If the corporation assessed failed to file, prior to the 1885
date of issuance of the assessment, the annual report required by 1886
section 5733.02 of the Revised Code, any amended report required 1887
by division (C) of section 5733.031 of the Revised Code for the 1888
tax year at issue, or any amended report required by division (D) 1889
of section 5733.067 of the Revised Code to indicate a reduction in 1890
the amount of the credit provided under that section, ~~full~~ payment 1891
of the assessment, including interest but not penalty and 1892
~~interest~~, is required; 1893

(3) If the corporation assessed filed, prior to the date of 1894
issuance of the assessment, the annual report required by section 1895
5733.02 of the Revised Code, all amended reports required by 1896
division (C) of section 5733.031 of the Revised Code for the tax 1897
year at issue, and all amended reports required by division (D) of 1898
section 5733.067 of the Revised Code to indicate a reduction in 1899
the amount of the credit provided under that section, and a 1900
balance of the taxes shown due on the reports as computed on the 1901
reports remains unpaid, payment of only that portion of the 1902
assessment representing the unpaid balance of tax and interest is 1903
required; 1904

(4) If the corporation assessed does not dispute that it is a 1905
taxpayer but claims the protections of section 101 of Public Law 1906
86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, payment of only 1907
that portion of the assessment representing any balance of taxes 1908
shown due on the corporation's annual report required by section 1909
5733.02 of the Revised Code, as computed on the report, that 1910
remains unpaid, and that represents taxes imposed by division (C) 1911
of section 5733.06, division (C)(2) of section 5733.065, and 1912
division (C) of section 5733.066 of the Revised Code, together 1913
with all related interest, is required; 1914

(5) If none of the conditions specified in divisions (E)(1) 1915

to (4) of this section apply, or if the corporation assessed 1916
disputes that it is a taxpayer, no payment is required. 1917

(F) Notwithstanding the fact that a petition for reassessment 1918
is pending, the corporation may pay all or a portion of the 1919
assessment that is the subject of the petition. The acceptance of 1920
a payment by the treasurer of state does not prejudice any claim 1921
for refund upon final determination of the petition. 1922
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If upon final determination of the petition an error in the 1924
assessment is corrected by the commissioner, upon petition so 1925
filed or pursuant to a decision of the board of tax appeals or any 1926
court to which the determination or decision has been appealed, so 1927
that the amount due from the corporation under the corrected 1928
assessment is less than the portion paid, there shall be issued to 1929
the corporation, its assigns, or legal representative a refund in 1930
the amount of the overpayment as provided by section 5733.12 of 1931
the Revised Code, with interest on that amount as provided by 1932
section 5733.26 of the Revised Code, subject to section 5733.121 1933
of the Revised Code. 1934

Sec. 5733.28. (A) In addition to any other penalty imposed by 1935
this chapter or Chapter 5703. of the Revised Code, the following 1936
penalties shall apply: 1937

(1) If a taxpayer required to file any report, including an 1938
informational notice or report, under this chapter fails to make 1939
and file the report within the time prescribed, including any 1940
extensions of time granted by the tax commissioner, a penalty 1941
~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of fifty 1942
dollars per month or fraction of a month, not to exceed five 1943
hundred dollars, or five per cent per month or fraction of a 1944
month, not to exceed fifty per cent, of the tax required to be 1945
shown on the report, for each month or fraction of a month 1946

elapsing between the due date, including extensions of the due 1947
date, and the date on which filed. 1948

(2) If a taxpayer fails to pay any amount of tax required to 1949
be paid under this chapter, except estimated tax under section 1950
5733.021 of the Revised Code, by the dates prescribed for payment, 1951
a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding twice the 1952
interest charged under division (A) of section 5733.26 of the 1953
Revised Code for the delinquent payment. 1954

(3) If a taxpayer fails to pay any amount of estimated tax 1955
required to be paid under section 5733.021 of the Revised Code by 1956
the dates prescribed for payment, a penalty ~~shall~~ may be imposed 1957
~~equal to~~ not exceeding twice the interest charged under division 1958
(A) of section 5733.29 of the Revised Code for the delinquent 1959
payment. 1960

(4) If a taxpayer files what purports to be a report required 1961
by this chapter that does not contain information upon which the 1962
substantial correctness of the report may be judged or contains 1963
information that on its face indicates that the report is 1964
substantially incorrect, and the filing of the report in that 1965
manner is due to a position that is frivolous or a desire that is 1966
apparent from the report to delay or impede the administration of 1967
the tax levied by this chapter, a penalty of up to five hundred 1968
dollars ~~shall~~ may be imposed. 1969

(5) If a taxpayer makes a fraudulent attempt to evade the 1970
reporting or payment of the tax required to be shown on any report 1971
required under this chapter, a penalty ~~shall~~ may be imposed ~~equal~~ 1972
~~to~~ not exceeding the greater of one thousand dollars or one 1973
hundred per cent of the tax required to be shown on the report. 1974

(6) If any person makes a false or fraudulent claim for a 1975
refund under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ 1976
not exceeding the greater of one thousand dollars or one hundred 1977

per cent of the claim. The penalty imposed under division (A)(6) 1978
of this section, any refund issued on the claim, and interest on 1979
any refund from the date of the refund, may be assessed under 1980
section 5733.11 of the Revised Code as tax, penalty, or interest 1981
imposed under this chapter without regard to whether the person 1982
making the claim is otherwise subject to the provisions of this 1983
chapter, and without regard to any time limitation for the 1984
assessment imposed by division (A) of section 5733.11 of the 1985
Revised Code. 1986

(B) For purposes of this section, the tax required to be 1987
shown on the report shall be reduced by the amount of any part of 1988
the tax paid on or before the date, including extensions of the 1989
date, prescribed for filing the report. 1990

(C) Each penalty imposed under this section shall be in 1991
addition to any other penalty provided in this section. All or 1992
part of any penalty imposed under this section shall be abated by 1993
the commissioner if the taxpayer shows that the failure to comply 1994
with the provisions of this chapter is due to reasonable cause and 1995
not willful neglect. 1996

Sec. 5735.01. As used in this chapter: 1997

(A) "Motor vehicles" includes all vehicles, vessels, 1998
watercraft, engines, machines, or mechanical contrivances which 1999
are powered by internal combustion engines or motors. 2000

(B) "Motor fuel" means gasoline, diesel fuel, K-1 ~~(water~~ 2001
~~clear)~~ kerosene, or any other liquid motor fuel, including, but 2002
not limited to, liquid petroleum gas or liquid natural gas, but 2003
excluding substances prepackaged and sold in containers of five 2004
gallons or less. 2005

(C) "K-1 Kerosene ~~(waterclear)~~" means fuel that conforms to 2006
the chemical and physical standards for kerosene no. 1-K as set 2007

forth in the american society for testing and materials (ASTM) 2008
designated D-3699 "standard for specification for kerosene," as 2009
that standard may be modified from time to time. For purposes of 2010
inspection and testing, laboratory analysis shall be conducted 2011
using methods recognized by the ASTM designation D-3699. 2012

(D) "Diesel fuel" means any liquid fuel capable of use in 2013
discrete form or as a blend component in the operation of engines 2014
of the diesel type, including transmix when mixed with diesel 2015
fuel. 2016

(E) "Gasoline" means any of the following: 2017

(1) All products, commonly or commercially known or sold as 2018
gasoline; 2019

(2) Any blend stocks or additives, ~~other than~~ including 2020
alcohol, that are sold for blending with gasoline, other than 2021
products typically sold in containers of five gallons or less; 2022

(3) Transmix when mixed with gasoline, unless certified, as 2023
required by the tax commissioner, for withdrawal from terminals 2024
for reprocessing at refineries; 2025

(4) Alcohol that is offered for sale or sold for use as, or 2026
commonly and commercially used as, a fuel for internal combustion 2027
engines. 2028

Gasoline does not include diesel fuel, commercial or 2029
industrial naphthas or solvents manufactured, imported, received, 2030
stored, distributed, sold, or used exclusively for purposes other 2031
than as a motor fuel for a motor vehicle or vessel. The blending 2032
of any of the products listed in the preceding sentence, 2033
regardless of name or characteristics, is conclusively presumed to 2034
have been done to produce gasoline, unless the product obtained by 2035
the blending is entirely incapable for use as fuel to operate a 2036
motor vehicle. An additive, blend stock, or alcohol is presumed to 2037
be sold for blending unless a certification is obtained as 2038

required by the tax commissioner. 2039

(F) "Public highways" means lands and lots over which the 2040
public, either as user or owner, generally has a right to pass, 2041
even though the same are closed temporarily by the authorities for 2042
the purpose of construction, reconstruction, maintenance, or 2043
repair. 2044

(G) "Waters within the boundaries of this state" means all 2045
streams, lakes, ponds, marshes, water courses, and all other 2046
bodies of surface water, natural or artificial, which are situated 2047
wholly or partially within this state or within its jurisdiction, 2048
except private impounded bodies of water. 2049

(H) "Person" includes individuals, partnerships, firms, 2050
associations, corporations, receivers, trustees in bankruptcy, 2051
estates, joint-stock companies, joint ventures, the state and its 2052
political subdivisions, and any combination of persons of any 2053
form. 2054

(I)(1) "Motor fuel dealer" means any person who satisfies any 2055
of the following: 2056

(a) The person imports from another state or foreign country 2057
or acquires motor fuel by any means into a terminal in this state; 2058

(b) The person imports motor fuel from another state or 2059
foreign country in bulk lot vehicles for subsequent sale and 2060
distribution in this state from bulk lot vehicles; 2061

(c) The person refines motor fuel in this state; 2062

(d) The person acquires motor fuel from a motor fuel dealer 2063
for subsequent sale and distribution by that person in this state 2064
from bulk lot vehicles; 2065

(e) The person possesses an unrevoked permissive motor fuel 2066
dealer's license. 2067

(2) Any person who obtains dyed diesel fuel for use other 2068

than the operation of motor vehicles upon the public highways or
upon waters within the boundaries of this state, but later uses
that motor fuel for the operation of motor vehicles upon the
public highways or upon waters within the boundaries of this
state, is deemed a motor fuel dealer as regards any unpaid motor
fuel taxes levied on the motor fuel so used.

(J) As used in sections 5735.05, 5735.25, 5735.29, and
5735.30 of the Revised Code only:

(1) With respect to gasoline, "received" or "receipt" shall
be construed as follows:

(a) Gasoline produced at a refinery in this state or
delivered to a terminal in this state is deemed received when it
is disbursed through a loading rack at that refinery or terminal;

(b) Except as provided in division (J)(1)(a) of this section,
gasoline imported into this state or purchased or otherwise
acquired in this state by any person is deemed received within
this state by that person when the gasoline is withdrawn from the
container in which it was transported;

(c) Gasoline delivered or disbursed by any means from a
terminal directly to another terminal is not deemed received.

(2) With respect to motor fuel other than gasoline,
"received" or "receipt" means distributed or sold for use or used
to generate power for the operation of motor vehicles upon the
public highways or upon waters within the boundaries of this
state. All diesel fuel that is not dyed diesel fuel, regardless of
its use, shall be considered as used to generate power for the
operation of motor vehicles upon the public highways or upon
waters within the boundaries of this state when the fuel is sold
or distributed to a person other than a licensed motor fuel dealer
or to a person licensed under section 5735.026 of the Revised
Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Cents per gallon rate" means the amount computed by the tax commissioner under section 5735.011 of the Revised Code that is used to determine that portion of the tax levied by section 5735.05 of the Revised Code that is computed in the manner prescribed by division (B)(2) of section 5735.06 of the Revised Code and that is applicable for the period that begins on the first day of July following the date on which the commissioner makes the computation.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle having a seating capacity of more than ten persons which is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the Revised Code, or a regional transit

commission pursuant to sections 306.80 to 306.90 of the Revised Code. Public transit or paratransit service may include fixed route, demand-responsive, or subscription bus service transportation, but does not include shared-ride taxi service, carpools, vanpools, jitney service, school bus transportation, or charter or sightseeing services.

(R) "Export" means motor fuel delivered outside this state. Motor fuel delivered outside this state by or for the seller constitutes an export by the seller. Motor fuel delivered outside this state by or for the purchaser constitutes an export by the purchaser.

(S) "Import" means motor fuel delivered into this state from outside this state. Motor fuel delivered into this state from outside this state by or for the seller constitutes an import by the seller. Motor fuel delivered into this state from outside this state by or for the purchaser constitutes an import by the purchaser.

(T) "Terminal" means a motor fuel storage or distribution facility that is supplied by pipeline or marine vessel.

(U) "Consumer" means a buyer of motor fuel for purposes other than resale in any form.

(V) "Bulk lot vehicle" means railroad tank cars, transport tank trucks and tank wagons with a capacity of at least 1,400 gallons.

(W) "Licensed permissive motor fuel dealer" means any person possessing an unrevoked permissive motor fuel dealer's license issued by the tax commissioner under section 5735.021 of the Revised Code.

(X) "Licensed terminal operator" means any person possessing an unrevoked terminal operator's license issued by the tax

commissioner under section 5735.026 of the Revised Code. 2161

(Y) "Licensed exporter" means any person possessing an 2162
unrevoked exporter's license issued by the tax commissioner under 2163
section 5735.026 of the Revised Code. 2164

(Z) "Dyed diesel fuel" means any diesel fuel dyed pursuant to 2165
regulations issued by the internal revenue service or a rule 2166
promulgated by the tax commissioner. 2167

(AA) "Gross gallons" means U.S. gallons without temperature 2168
or barometric adjustments. 2169

(BB) "Net gallons" means U.S. gallons with a temperature 2170
adjustment to sixty degrees fahrenheit. 2171

Sec. 5735.012. Amounts of motor fuel reported under this 2172
chapter shall be measured in gross gallons, except that amounts 2173
reported for terminal to terminal transactions shall be measured 2174
in net gallons and amounts reported for terminal to Ohio licensed 2175
dealer transactions shall be measured in both net gallons and 2176
gross gallons. 2177

Sec. 5735.023. (A) No person operating a retail service 2178
station shall store, sell, or attempt to sell or distribute any 2179
untaxed motor fuel, except K-1 ~~(water-clear)~~ kerosene, at a retail 2180
service station. 2181

(B) A licensed motor fuel dealer that operates a bulk storage 2182
plant and also maintains at the same location a retail pump that 2183
is connected to a bulk storage tank is not subject to division (A) 2184
of this section, except that the licensed motor fuel dealer shall 2185
pay the tax on all motor fuel dispensed through the retail pump. 2186
2187

(C) Each day, or part thereof, that a person is in violation 2188
of division (A) or (B) of this section constitutes a separate 2189

offense for purposes of section 5735.99 of the Revised Code. 2190

Sec. 5735.05. (A) To provide revenue for maintaining the 2191
state highway system; to widen existing surfaces on such highways; 2192
to resurface such highways; to pay that portion of the 2193
construction cost of a highway project which a county, township, 2194
or municipal corporation normally would be required to pay, but 2195
which the director of transportation, pursuant to division (B) of 2196
section 5531.08 of the Revised Code, determines instead will be 2197
paid from moneys in the highway operating fund; to enable the 2198
counties of the state properly to plan, maintain, and repair their 2199
roads and to pay principal, interest, and charges on bonds and 2200
other obligations issued pursuant to Chapter 133. of the Revised 2201
Code for highway improvements; to enable the municipal 2202
corporations to plan, construct, reconstruct, repave, widen, 2203
maintain, repair, clear, and clean public highways, roads, and 2204
streets, and to pay the principal, interest, and charges on bonds 2205
and other obligations issued pursuant to Chapter 133. of the 2206
Revised Code for highway improvements; to enable the Ohio turnpike 2207
commission to construct, reconstruct, maintain, and repair 2208
turnpike projects; to maintain and repair bridges and viaducts; to 2209
purchase, erect, and maintain street and traffic signs and 2210
markers; to purchase, erect, and maintain traffic lights and 2211
signals; to pay the costs apportioned to the public under sections 2212
4907.47 and 4907.471 of the Revised Code and to supplement revenue 2213
already available for such purposes; to pay the costs incurred by 2214
the public utilities commission in administering sections 4907.47 2215
to 4907.476 of the Revised Code; to distribute equitably among 2216
those persons using the privilege of driving motor vehicles upon 2217
such highways and streets the cost of maintaining and repairing 2218
them; to pay the interest, principal, and charges on highway 2219
capital improvements bonds and other obligations issued pursuant 2220
to Section 2m of Article VIII, Ohio Constitution, and sections 2221

5528.51 to 5528.56 of the Revised Code; to pay the interest, 2222
principal, and charges on highway obligations issued pursuant to 2223
Section 2i of Article VIII, Ohio Constitution, and sections 2224
5528.30 and 5528.31 of the Revised Code; and to provide revenue 2225
for the purposes of sections 1547.71 to 1547.78 of the Revised 2226
Code, a motor fuel excise tax is hereby imposed on all motor fuel 2227
dealers upon receipt of motor fuel within this state at the rate 2228
of two cents plus the cents per gallon rate on each gallon so 2229
received, to be computed in the manner set forth in section 2230
5735.06 of the Revised Code; provided that no tax is hereby 2231
imposed upon the following transactions: 2232

(1) The sale of dyed diesel fuel by a licensed motor fuel 2233
dealer from a location other than a retail service station 2234
provided the licensed motor fuel dealer places on the face of the 2235
delivery document or invoice, or both if both are used, a 2236
conspicuous notice stating that the fuel is dyed and is not for 2237
taxable use, and that taxable use of that fuel is subject to a 2238
penalty. The tax commissioner, by rule, may provide that any 2239
notice conforming to rules or regulations issued by the United 2240
States department of the treasury or the Internal Revenue Service 2241
is sufficient notice for the purposes of division (A)(1) of this 2242
section. 2243

(2) The sale of K-1 ~~(water-clear)~~ kerosene to a retail 2244
service station, except when placed directly in the fuel supply 2245
tank of a motor vehicle. Such sale shall be rebuttably presumed to 2246
not be distributed or sold for use or used to generate power for 2247
the operation of motor vehicles upon the public highways or upon 2248
the waters within the boundaries of this state. 2249

(3) The sale of motor fuel by a licensed motor fuel dealer to 2250
another licensed motor fuel dealer; 2251

(4) The exportation of motor fuel by a licensed motor fuel 2252

dealer from this state to any other state or foreign country;	2253
(5) The sale of motor fuel to the United States government or any of its agencies, except such tax as is permitted by it, where such sale is evidenced by an exemption certificate, in form approved by the tax commissioner, executed by the United States government or an agency thereof certifying that the motor fuel therein identified has been purchased for the exclusive use of the United States government or its agency;	2254 2255 2256 2257 2258 2259 2260
(6) The sale of motor fuel which is in the process of transportation in foreign or interstate commerce, except in so far as it may be taxable under the Constitution and statutes of the United States, and except as may be agreed upon in writing by the dealer and the commissioner;	2261 2262 2263 2264 2265
(7) The sale of motor fuel when sold exclusively for use in the operation of aircraft, where such sale is evidenced by an exemption certificate prescribed by the commissioner and executed by the purchaser certifying that the motor fuel purchased has been purchased for exclusive use in the operation of aircraft;	2266 2267 2268 2269 2270
(8) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type A;	2271 2272
(9) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type B, provided that the destination state motor fuel tax has been paid or will be accrued and paid by the licensed motor fuel dealer.	2273 2274 2275 2276
<u>(10) The sale to a consumer of diesel fuel, by a motor fuel dealer for delivery from a bulk lot vehicle, for consumption in operating a vessel when the use of such fuel in a vessel would otherwise qualify for a refund under section 5735.14 of the Revised Code.</u>	2277 2278 2279 2280 2281
Division (A)(1) of this section does not apply to the sale or	2282

distribution of dyed diesel fuel used to operate a motor vehicle 2283
on the public highways or upon water within the boundaries of this 2284
state by persons permitted under regulations of the United States 2285
department of the treasury or of the Internal Revenue Service to 2286
so use dyed diesel fuel. 2287

(B) The two cent motor fuel tax levied by this section is 2288
also for the purpose of paying the expenses of administering and 2289
enforcing the state law relating to the registration and operation 2290
of motor vehicles. 2291

After the tax provided for by this section on the receipt of 2292
any motor fuel has been paid by the motor fuel dealer, the motor 2293
fuel may thereafter be used, sold, or resold by any person having 2294
lawful title to it, without incurring liability for such tax. 2295

If a licensed motor fuel dealer sells motor fuel received by 2296
the licensed motor fuel dealer to another licensed motor fuel 2297
dealer, the seller may deduct on the report required by section 2298
5735.06 of the Revised Code the number of gallons so sold for the 2299
month within which the motor fuel was sold or delivered. In this 2300
event the number of gallons is deemed to have been received by the 2301
purchaser, who shall report and pay the tax imposed thereon. 2302

Sec. 5735.12. (A) Any motor fuel dealer ~~or qualified~~ 2303
~~interstate bus operator~~ required by this chapter to file reports 2304
and pay the tax levied by this chapter who fails to file the 2305
report within the time prescribed, ~~shall~~ may be liable for an 2306
additional charge ~~equal to~~ not exceeding the greater of ten per 2307
cent of the motor fuel dealer's ~~or qualified interstate bus~~ 2308
~~operator's~~ tax liability for that month or fifty dollars. The tax 2309
commissioner may remit all or a portion of the additional charge 2310
and may adopt rules relating to the remission of all or a portion 2311
of the charge. 2312

If any person required by this chapter to file reports and pay the taxes, interest, or additional charge levied by this chapter fails to file the report, files an incomplete or incorrect report, or fails to remit the full amount of the tax, interest, or additional charge due for the period covered by the report, the commissioner may make an assessment against the person based upon any information in the commissioner's possession.

No assessment shall be made against any motor fuel dealer ~~or interstate bus operator~~ for taxes imposed by this chapter more than four years after the date on which the report on which the assessment was based was due or was filed, whichever is later. This section does not bar an assessment against any motor fuel dealer ~~or qualified interstate bus operator~~ who fails to file a report required by ~~either~~ section 5735.06 ~~or 5735.32~~ of the Revised Code, or who files a fraudulent motor fuel tax report.

A penalty of up to fifteen per cent ~~shall~~ may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment ~~by personal service or certified mail~~ as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within ~~thirty~~ sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the authorized agent of the party assessed having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state. The

petition shall indicate the objections of the party assessed, but 2344
additional objections may be raised in writing if received prior 2345
to the date shown on the final determination by the commissioner. 2346

Unless the petitioner waives a hearing, the commissioner 2347
shall assign a time and place for the hearing on the petition and 2348
notify the petitioner of the time and place of the hearing by 2349
personal service or certified mail, but the commissioner may 2350
continue the hearing from time to time if necessary. 2351

The commissioner may make such correction to the 2352
commissioner's assessment as the commissioner finds proper. The 2353
commissioner shall serve a copy of the commissioner's final 2354
determination on the petitioner by personal service or certified 2355
mail, and the commissioner's decision in the matter shall be 2356
final, subject to appeal as provided in section 5717.02 of the 2357
Revised Code. 2358

(C) After an assessment becomes final, if any portion of the 2359
assessment remains unpaid, including accrued interest, a certified 2360
copy of the commissioner's entry making the assessment final may 2361
be filed in the office of the clerk of the court of common pleas 2362
in the county in which the party assessed resides or in which the 2363
business of the party assessed is conducted. If the party assessed 2364
maintains no place of business in this state and is not a resident 2365
of this state, the certified copy of the entry may be filed in the 2366
office of the clerk of the court of common pleas of Franklin 2367
county. 2368

The clerk, immediately upon the filing of the entry, shall 2369
enter a judgment for the state against the party assessed in the 2370
amount shown on the entry. The judgment may be filed by the clerk 2371
in a loose-leaf book entitled "special judgments for state motor 2372
fuel tax," and shall have the same effect as other judgments. 2373
Execution shall issue upon the judgment upon the request of the 2374
tax commissioner, and all laws applicable to sales on execution 2375

shall apply to sales made under the judgment. 2376

The portion of the assessment not paid within ~~thirty~~ sixty 2377
days after the day the assessment was issued shall bear interest 2378
at the rate per annum prescribed by section 5703.47 of the Revised 2379
Code from the day the tax commissioner issues the assessment until 2380
it is paid. Interest shall be paid in the same manner as the tax 2381
and may be collected by the issuance of an assessment under this 2382
section. 2383

(D) All money collected by the commissioner under this 2384
section shall be paid to the treasurer of state, and when paid 2385
shall be considered as revenue arising from the tax imposed by 2386
this chapter. 2387

(E) If the tax commissioner determines that the commissioner 2388
has erroneously refunded motor fuel tax to any person, the 2389
commissioner may make an assessment against the person for 2390
recovery of the erroneously refunded tax. 2391

Sec. 5735.121. (A) If the tax commissioner finds that any 2392
person liable for tax under this chapter is about to depart from 2393
the state, remove property from the state, conceal self, or 2394
conceal the person's property, or do any other act tending to 2395
prejudice, obstruct, or render wholly or partly ineffectual 2396
proceedings to collect the tax, unless proceedings are commenced 2397
without delay, or if the commissioner believes that the collection 2398
of the amount due from any person will be jeopardized by delay, 2399
the commissioner may issue a jeopardy assessment against the 2400
person for the amount of the tax, plus a penalty of up to fifteen 2401
per cent. Upon issuance of a jeopardy assessment under this 2402
division, the total amount assessed shall immediately be due and 2403
payable unless security is provided pursuant to division (C) of 2404
this section. Any assessment issued under this section shall bear 2405
interest in the manner prescribed in section 5735.12 of the 2406

Revised Code. 2407

(B) The commissioner immediately shall file an entry with the 2408
clerk of the court of common pleas in the same manner and with the 2409
same effect as provided in section 5735.12 of the Revised Code. 2410
Notice of the jeopardy assessment shall be served on the person 2411
assessed or the legal representative of the person assessed, as 2412
provided in section 5703.37 of the Revised Code, within five days 2413
of the filing of the entry. The person assessed may petition for 2414
reassessment within ~~thirty~~ sixty days of receipt of the notice of 2415
jeopardy assessment in the same manner as provided in section 2416
5735.12 of the Revised Code. Full or partial payment of the 2417
assessment shall not prejudice the commissioner's consideration of 2418
the merits of the assessment as contested by the petition for 2419
reassessment. Upon notification of the existence of the judgment 2420
filed pursuant to this division, any public official having 2421
control or custody of any funds or property of the person assessed 2422
immediately shall pay or deliver the funds or property to the 2423
commissioner as full or partial satisfaction of the jeopardy 2424
assessment. However, funds or property needed as evidence in 2425
criminal proceedings or that is expected to be forfeited pursuant 2426
to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need 2427
not be relinquished by the public official. Upon disposition of 2428
criminal and forfeiture proceedings, funds and property not needed 2429
as evidence and not forfeited shall be delivered to the 2430
commissioner. 2431

(C) If the person subject to a jeopardy assessment files a 2432
petition for reassessment and posts security satisfactory to the 2433
commissioner in an amount sufficient to satisfy the unpaid balance 2434
of the assessment, execution on the judgment shall be stayed 2435
pending disposition of the petition for reassessment and all 2436
appeals resulting from the petition. If the security is sufficient 2437
to satisfy the full amount of the assessment, the commissioner 2438

shall return any funds or property of the person that previously
were seized. Upon satisfaction of the assessment, the commissioner
shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the
imposition and remission of penalties added to assessments made
under this section.

Sec. 5735.14. Any person who uses any motor fuel, on which
the tax imposed by this chapter has been paid, for the purpose of
operating stationary gas engines, tractors not used on public
highways, unlicensed motor vehicles used exclusively in intraplant
operations, vessels when used in trade, including vessels when
used in connection with an activity which constitutes a person's
chief business or means of livelihood or any other vessel used
entirely for commercial purposes, vessels used for commercial
fishing, vessels used by the sea scout department of the boy
scouts of America chiefly for training scouts in seamanship,
vessels used or owned by any railroad company, railroad car ferry
company, the United States, this state, or any political
subdivision of this state, or aircraft, or who uses any such fuel
upon which such tax has been paid, for cleaning or for dyeing, or
any purpose other than the operation of motor vehicles upon
highways or upon waters within the boundaries of this state, shall
be reimbursed in the amount of the tax so paid on such motor fuel
as provided in this section; provided, that any person purchasing
motor fuel in this state on which taxes levied under Title LVII of
the Revised Code have been paid shall be reimbursed for such taxes
paid in this state on such fuel used by that person in another
state on which a tax is paid for such usage, except such tax used
as a credit against the tax levied by section 5728.06 of the
Revised Code. A person shall not be reimbursed for taxes paid on
fuel that is used while a motor vehicle is idling or used to

provide comfort or safety in the operation of a motor vehicle. 2471

Such person shall file with the tax commissioner an 2472
application for refund within one ~~hundred eighty days~~ year from 2473
the date of purchase, stating the quantity of fuel used for 2474
purposes other than the operation of motor vehicles, except that 2475
no person shall file a claim for the tax on fewer than one hundred 2476
gallons of motor fuel. Such application shall be accompanied by 2477
the statement described in section 5735.15 of the Revised Code 2478
showing such purchase, together with evidence of payment thereof. 2479
After consideration of such application and statement, the 2480
commissioner shall determine the amount of refund due and certify 2481
such amount to the director of budget and management and treasurer 2482
of state for payment from the tax refund fund created by section 2483
5703.052 of the Revised Code. No refund shall be authorized or 2484
paid under this section on a single claim for tax on fewer than 2485
one hundred gallons of motor fuel. The commissioner may require 2486
that the application be supported by the affidavit of the 2487
claimant. The refund authorized by this section shall be reduced 2488
by the cents per gallon amount of any qualified fuel credit 2489
received under section 5735.145 of the Revised Code, as determined 2490
by the commissioner, for each gallon of qualified fuel included in 2491
the total gallonage of motor fuel upon which the refund is 2492
computed. 2493

The right to receive any refund under this section is not 2494
assignable. The payment of this refund shall not be made to any 2495
person other than the person originally entitled thereto who used 2496
the motor fuel upon which the claim for refund is based, except 2497
that such refunds when allowed and certified as provided in this 2498
section may be paid to the executor, the administrator, the 2499
receiver, the trustee in bankruptcy, or the assignee in insolvency 2500
proceedings of such person. 2501

Sec. 5735.141. Any retail dealer of motor fuel shall receive 2502
a refund for Ohio motor fuel taxes paid on fuel lost by a retail 2503
dealer through shrinkage and evaporation. This refund shall be one 2504
per cent of the Ohio motor fuel taxes paid on fuel purchased 2505
during any semiannual period ending the thirtieth day of June or 2506
the thirty-first day of December. 2507

In order to receive a refund the retail dealer shall file 2508
with the tax commissioner, within ~~sixty~~ one hundred twenty days 2509
after the thirtieth day of June and the thirty-first day of 2510
December of each year, an application for a refund stating the 2511
quantity of motor fuel which was purchased for resale by the 2512
applicant during the preceding semiannual period ending the 2513
thirtieth day of June or the thirty-first day of December and upon 2514
which the motor fuel tax has been paid. No person shall file a 2515
claim for the tax on fewer than one hundred gallons of motor fuel. 2516
The form and contents of the application shall be prescribed by 2517
the tax commissioner, and the application shall be signed in 2518
accordance with section 5703.25 of the Revised Code. The tax 2519
commissioner shall certify the amount of the refund to the 2520
director of budget and management and treasurer of state for 2521
payment from the tax refund fund provided for by section 5703.052 2522
of the Revised Code. No refund shall be authorized or ordered 2523
under this section for any single claim for the tax on fewer than 2524
one hundred gallons of motor fuel. The refund authorized by this 2525
section shall be reduced by the cents per gallon amount of any 2526
qualified fuel credit received under section 5735.145 of the 2527
Revised Code, as determined by the commissioner, for each gallon 2528
of qualified fuel included in the total gallonage of motor fuel 2529
upon which the refund is computed. 2530

The right to receive any refund under this section is not 2531
assignable. The payment of the refund shall not be made to any 2532

person other than the retail dealer originally entitled thereto, 2533
except that the refund may be paid to the executor, administrator, 2534
receiver, trustee in bankruptcy, or assignee in insolvency 2535
proceedings of such retailer. 2536

A motor fuel dealer shall be deemed to be a retail dealer 2537
when acting in a retail capacity. 2538

Sec. 5735.142. Any person who uses any motor fuel, on which 2539
the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the 2540
Revised Code has been paid, for the purpose of operating a transit 2541
bus shall be reimbursed in the amount of the tax paid on motor 2542
fuel used by public transportation systems providing transit or 2543
paratransit service on a regular and continuing basis within the 2544
state. 2545

Such person shall file with the tax commissioner an 2546
application for refund within one ~~hundred eighty days~~ year from 2547
the date of purchase, stating the quantity of fuel used for 2548
operating transit buses used by local transit systems in 2549
furnishing scheduled common carrier, public passenger land 2550
transportation service along regular routes primarily in one or 2551
more municipal corporations, except that no person shall file a 2552
claim for the tax on fewer than one hundred gallons of motor fuel. 2553
The application shall be accompanied by the statement described in 2554
section 5735.15 of the Revised Code showing the purchase, together 2555
with evidence of payment thereof. After consideration of the 2556
application and statement, the commissioner shall determine the 2557
amount of refund due and shall certify such amount to the director 2558
of budget and management and treasurer of state for payment from 2559
the tax refund fund provided for in section 5703.052 of the 2560
Revised Code. The commissioner may require that the application be 2561
supported by the affidavit of the claimant. No refund shall be 2562
authorized or ordered for any single claim for the tax on fewer 2563

than one hundred gallons of motor fuel. The refund authorized by 2564
this section shall be reduced by the cents per gallon amount of 2565
any qualified fuel credit received under section 5735.145 of the 2566
Revised Code, as determined by the commissioner, for each gallon 2567
of qualified fuel included in the total gallonage of motor fuel 2568
upon which the refund is computed. 2569

The right to receive any refund under this section is not 2570
assignable. The payment of this refund shall not be made to any 2571
person other than the person originally entitled thereto who used 2572
the motor fuel upon which the claim for refund is based, except 2573
that the refund when allowed and certified, as provided in this 2574
section, may be paid to the executor, the administrator, the 2575
receiver, the trustee in bankruptcy, or the assignee in insolvency 2576
proceedings of the person. 2577

Sec. 5735.145. (A) As used in this section and sections 2578
5735.13, 5735.14, 5735.141, and 5735.142, ~~and 5735.17~~ of the 2579
Revised Code: 2580

(1) "Qualified fuel" means ethanol that is to be combined 2581
with gasoline to create a blend of not more than ten per cent by 2582
volume of ethanol and that when so blended is used, sold, or 2583
distributed as a motor fuel. 2584

(2) "Ethanol" means: 2585

(a) Ethanol produced in a manufacturing facility with an 2586
annual production capacity of less than two million gallons from 2587
wood or the grain of a cereal grass and denatured in accordance 2588
with United States bureau of alcohol and tax regulations; or 2589

(b) Ethanol produced through a coal-fired process from wood 2590
or the grain of a cereal grass and denatured in accordance with 2591
United States bureau of alcohol and tax regulations. 2592

(B) Any motor fuel dealer shall receive a qualified fuel 2593

credit on each gallon of qualified fuel used, sold, or distributed 2594
by the dealer and on which the dealer is liable for the taxes 2595
imposed by this chapter of the Revised Code. To receive a credit, 2596
the dealer shall certify on the monthly report required by section 2597
5735.06 of the Revised Code the number of gallons of qualified 2598
fuel used, sold, or distributed during the month to which the 2599
report applies and upon which such taxes are imposed. After 2600
computation of the amount of the tax in accordance with division 2601
(B) of section 5735.06 of the Revised Code, the number of gallons 2602
of qualified fuel used, sold, or distributed during the month to 2603
which the report applies and included in the gallons of motor fuel 2604
upon which the tax is imposed shall be multiplied by ten cents per 2605
gallon. The resulting product shall be subtracted from the tax 2606
computed under division (B) of section 5735.06 of the Revised Code 2607
and shall constitute the qualified fuel credit provided by this 2608
section. 2609

(C) The aggregate amount of credits permitted under this 2610
section shall be subject to the limitations prescribed in this 2611
division. 2612

(1) Beginning July 1, 1993, and ending June 30, 1997, for 2613
each fiscal year, the credit shall not exceed a total of fifteen 2614
million dollars, and for each month of each such year shall not 2615
exceed the amount specified for that month as follows: 2616

July	\$1,390,125	January	\$1,133,625	2617
August	1,312,125	February	1,106,625	2618
September	1,229,625	March	1,211,625	2619
October	1,268,625	April	1,192,125	2620
November	1,235,625	May	1,270,125	2621
December	1,280,625	June	1,369,125	2622

(2) If in any month the credit is less than the limit set 2623
forth for that month, the unused portion shall be carried forward 2624
and added to the succeeding month's limit until the end of the 2625

fiscal year. 2626

(3) If in any month the credit, including any amount carried 2627
forward from a preceding month, exceeds the limit for that month 2628
by less than five per cent, the tax commissioner shall either 2629
reduce the limit for the succeeding month by the amount of the 2630
excess, or collect the excess from each motor fuel dealer, 2631
apportioning the amount collected among motor fuel dealers in 2632
proportion to the amount of credit claimed by each motor fuel 2633
dealer for that month. 2634

If in any month the credit, including any amount carried 2635
forward from a preceding month, exceeds the limit for that month 2636
by five per cent or more, the tax commissioner shall collect the 2637
excess from each motor fuel dealer, apportioning the amount 2638
collected among motor fuel dealers in proportion to the amount of 2639
credit claimed by each motor fuel dealer for that month. 2640

(4) Any credit in excess of the amounts prescribed in this 2641
section and subject to collection by the tax commissioner pursuant 2642
to division (C)(2) or (3) of this section shall be paid to the 2643
treasurer of state as revenue arising from taxes imposed under 2644
this chapter and is subject to assessment as provided in sections 2645
5735.12 and 5735.121 of the Revised Code. 2646

Sec. 5735.18. Any person other than a motor fuel dealer who 2647
purchases motor fuel upon which the tax has been paid to this 2648
state and who sells the same outside this state for use outside 2649
this state or who uses the same on highways or waters outside this 2650
state and pays a tax on such use or sells the same to the United 2651
States government or any of its agencies may be reimbursed in the 2652
amount of such tax as provided in this chapter. All claims for 2653
refund of the tax paid on motor fuel sold for export from the 2654
state or sold to the United States or any of its agencies shall be 2655
made in such form and shall set forth such information as the tax 2656

commissioner prescribes, and the claimant shall satisfy the 2657
commissioner that the motor fuel has been sold as stated and that 2658
the tax thereon has been paid. Claims for refund of the tax paid 2659
on motor fuel sold to the United States government or any of its 2660
agencies shall be supported by an affidavit of the claimant and by 2661
a tax exemption certificate executed by the vendee in such form as 2662
is prescribed by the commissioner. Such claims for refund filed 2663
under this section shall be certified and paid in the same manner 2664
as provided in section 5735.14 of the Revised Code. The person 2665
shall file with the tax commissioner an application for refund 2666
within one ~~hundred eighty days~~ year from the date of sale. The 2667
refund authorized by this section shall be reduced by the cents 2668
per gallon amount of any qualified fuel credit received under 2669
section 5735.145 of the Revised Code, as determined by the 2670
commissioner, for each gallon of qualified fuel included in the 2671
total gallonage of motor fuel upon which the refund is computed. 2672

Sec. 5735.23. (A) Out of receipts from the tax levied by 2673
section 5735.05 of the Revised Code, the treasurer of state shall 2674
place to the credit of the tax refund fund established by section 2675
5703.052 of the Revised Code amounts equal to the refunds 2676
certified by the tax commissioner pursuant to sections 5735.13, 2677
5735.14, 5735.141, 5735.142, and 5735.16, ~~and 5735.17~~ of the 2678
Revised Code. The treasurer of state shall then transfer the 2679
amount required by section 5735.051 of the Revised Code to the 2680
waterways safety fund and the amount required by section 4907.472 2681
of the Revised Code to the grade crossing protection fund. 2682

(B) Except as provided in division (D) of this section, each 2683
month the balance of the receipts from the tax levied by section 2684
5735.05 of the Revised Code shall be credited, after receipt by 2685
the treasurer of state of certification from the commissioners of 2686
the sinking fund, as required by section 5528.35 of the Revised 2687

Code, that there are sufficient moneys to the credit of the 2688
highway obligations bond retirement fund to meet in full all 2689
payments of interest, principal, and charges for the retirement of 2690
highway obligations issued pursuant to Section 2i of Article VIII, 2691
Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised 2692
Code due and payable during the current calendar year, as follows: 2693

(1) To the state and local government highway distribution 2694
fund, which is hereby created in the state treasury, an amount 2695
that is the same percentage of the balance to be credited as that 2696
portion of the tax per gallon determined under division (B)(2)(a) 2697
of section 5735.06 of the Revised Code is of the total tax per 2698
gallon determined under divisions (B)(2)(a) and (b) of that 2699
section. 2700

(2) After making the distribution to the state and local 2701
government highway distribution fund, the remainder shall be 2702
credited as follows: 2703

(a) Thirty per cent to the gasoline excise tax fund for 2704
distribution pursuant to division (A)(1) of section 5735.27 of the 2705
Revised Code; 2706

(b) Twenty-five per cent to the gasoline excise tax fund for 2707
distribution pursuant to division (A)(3) of section 5735.27 of the 2708
Revised Code; 2709

(c) Except as provided in division (D) of this section, 2710
forty-five per cent to the highway operating fund for distribution 2711
pursuant to division (B)(1) of section 5735.27 of the Revised 2712
Code. 2713

(C) From the balance in the state and local government 2714
highway distribution fund on the last day of each month there 2715
shall be paid the following amounts: 2716

(1) To the local transportation improvement program fund 2717

created by section 164.14 of the Revised Code, an amount equal to 2718
a fraction of the balance in the state and local government 2719
highway distribution fund, the numerator of which fraction is one 2720
and the denominator of which fraction is that portion of the tax 2721
per gallon determined under division (B)(2)(a) of section 5735.06 2722
of the Revised Code; 2723

(2) An amount equal to five cents multiplied by the number of 2724
gallons of motor fuel sold at stations operated by the Ohio 2725
turnpike commission, such gallonage to be certified by the 2726
commission to the treasurer of state not later than the last day 2727
of the month following. The funds paid to the commission pursuant 2728
to this section shall be expended for the construction, 2729
reconstruction, maintenance, and repair of turnpike projects, 2730
except that the funds may not be expended for the construction of 2731
new interchanges. The funds also may be expended for the 2732
construction, reconstruction, maintenance, and repair of those 2733
portions of connecting public roads that serve existing 2734
interchanges and are determined by the commission and the director 2735
of transportation to be necessary for the safe merging of traffic 2736
between the turnpike and those public roads. 2737

The remainder of the balance shall be distributed as follows 2738
on the fifteenth day of the following month: 2739

(a) Ten and seven-tenths per cent shall be paid to municipal 2740
corporations for distribution pursuant to division (A)(1) of 2741
section 5735.27 of the Revised Code and may be used for any 2742
purpose for which payments received under that division may be 2743
used. 2744

(b) Five per cent shall be paid to townships for distribution 2745
pursuant to division (A)(5) of section 5735.27 of the Revised Code 2746
and may be used for any purpose for which payments received under 2747
that division may be used. 2748

(c) Nine and three-tenths per cent shall be paid to counties 2749
for distribution pursuant to division (A)(3) of section 5735.27 of 2750
the Revised Code and may be used for any purpose for which 2751
payments received under that division may be used. 2752

(d) Except as provided in division (D) of this section, the 2753
balance shall be transferred to the highway operating fund and 2754
used for the purposes set forth in division (B)(1) of section 2755
5735.27 of the Revised Code. 2756

(D) Beginning on the first day of September each year and 2757
continuing until such time as the office of budget and management 2758
receives certification from the commissioners of the sinking fund 2759
pursuant to division (B) of section 5528.56 of the Revised Code, 2760
any amounts required to be credited or transferred to the highway 2761
operating fund pursuant to division (B)(2)(c) or (C)(2)(d) of this 2762
section shall be credited or transferred to the highway capital 2763
improvements bond service fund created in section 5528.55 of the 2764
Revised Code. 2765

Sec. 5739.01. As used in this chapter: 2766

(A) "Person" includes individuals, receivers, assignees, 2767
trustees in bankruptcy, estates, firms, partnerships, 2768
associations, joint-stock companies, joint ventures, clubs, 2769
societies, corporations, the state and its political subdivisions, 2770
and combinations of individuals of any form. 2771

(B) "Sale" and "selling" include all of the following 2772
transactions for a consideration in any manner, whether absolutely 2773
or conditionally, whether for a price or rental, in money or by 2774
exchange, and by any means whatsoever: 2775

(1) All transactions by which title or possession, or both, 2776
of tangible personal property, is or is to be transferred, or a 2777
license to use or consume tangible personal property is or is to 2778

be granted;	2779
(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;	2780 2781
(3) All transactions by which:	2782
(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code;	2783 2784 2785
(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;	2786 2787 2788 2789 2790 2791
(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;	2792 2793
(d) Industrial laundry cleaning services are or are to be provided;	2794 2795
(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation	2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

owns or controls another if it owns more than fifty per cent of	2809
the other corporation's common stock with voting rights.	2810
(f) Telecommunications service is provided that originates or	2811
terminates in this state and is charged in the records of the	2812
telecommunications service vendor to the consumer's telephone	2813
number or account in this state, or that both originates and	2814
terminates in this state; but does not include transactions by	2815
which telecommunications service is paid for by using a prepaid	2816
authorization number or prepaid telephone calling card;	2817
(g) Landscaping and lawn care service is or is to be	2818
provided;	2819
(h) Private investigation and security service is or is to be	2820
provided;	2821
(i) Information services or tangible personal property is	2822
provided or ordered by means of a nine hundred telephone call;	2823
(j) Building maintenance and janitorial service is or is to	2824
be provided;	2825
(k) Employment service is or is to be provided;	2826
(l) Employment placement service is or is to be provided;	2827
(m) Exterminating service is or is to be provided;	2828
(n) Physical fitness facility service is or is to be	2829
provided;	2830
(o) Recreation and sports club service is or is to be	2831
provided.	2832
(4) All transactions by which printed, imprinted,	2833
overprinted, lithographic, multilithic, blueprinted, photostatic,	2834
or other productions or reproductions of written or graphic matter	2835
are or are to be furnished or transferred;	2836
(5) The production or fabrication of tangible personal	2837

property for a consideration for consumers who furnish either 2838
directly or indirectly the materials used in the production of 2839
fabrication work; and include the furnishing, preparing, or 2840
serving for a consideration of any tangible personal property 2841
consumed on the premises of the person furnishing, preparing, or 2842
serving such tangible personal property. Except as provided in 2843
section 5739.03 of the Revised Code, a construction contract 2844
pursuant to which tangible personal property is or is to be 2845
incorporated into a structure or improvement on and becoming a 2846
part of real property is not a sale of such tangible personal 2847
property. The construction contractor is the consumer of such 2848
tangible personal property, provided that the sale and 2849
installation of carpeting, the sale and installation of 2850
agricultural land tile, the sale and erection or installation of 2851
portable grain bins, or the provision of landscaping and lawn care 2852
service and the transfer of property as part of such service is 2853
never a construction contract. The transfer of copyrighted motion 2854
picture films for exhibition purposes is not a sale, except such 2855
films as are used solely for advertising purposes. Other than as 2856
provided in this section, "sale" and "selling" do not include 2857
professional, insurance, or personal service transactions which 2858
involve the transfer of tangible personal property as an 2859
inconsequential element, for which no separate charges are made. 2860

As used in division (B)(5) of this section: 2861

(a) "Agricultural land tile" means fired clay or concrete 2862
tile, or flexible or rigid perforated plastic pipe or tubing, 2863
incorporated or to be incorporated into a subsurface drainage 2864
system appurtenant to land used or to be used directly in 2865
production by farming, agriculture, horticulture, or floriculture. 2866
The term does not include such materials when they are or are to 2867
be incorporated into a drainage system appurtenant to a building 2868
or structure even if the building or structure is used or to be 2869

used in such production. 2870

(b) "Portable grain bin" means a structure that is used or to 2871
be used by a person engaged in farming or agriculture to shelter 2872
the person's grain and that is designed to be disassembled without 2873
significant damage to its component parts. 2874

(6) All transactions in which all of the shares of stock of a 2875
closely held corporation are transferred, if the corporation is 2876
not engaging in business and its entire assets consist of boats, 2877
planes, motor vehicles, or other tangible personal property 2878
operated primarily for the use and enjoyment of the shareholders; 2879

(7) All transactions in which a warranty, maintenance or 2880
service contract, or similar agreement by which the vendor of the 2881
warranty, contract, or agreement agrees to repair or maintain the 2882
tangible personal property of the consumer is or is to be 2883
provided; 2884

(8) All transactions by which a prepaid authorization number 2885
or a prepaid telephone calling card is or is to be transferred. 2886

(C) "Vendor" means the person providing the service or by 2887
whom the transfer effected or license given by a sale is or is to 2888
be made or given and, for sales described in division (B)(3)(i) of 2889
this section, the telecommunications service vendor that provides 2890
the nine hundred telephone service; if two or more persons are 2891
engaged in business at the same place of business under a single 2892
trade name in which all collections on account of sales by each 2893
are made, such persons shall constitute a single vendor. 2894

Physicians, dentists, hospitals, and veterinarians who are 2895
engaged in selling tangible personal property as received from 2896
others, such as eyeglasses, mouthwashes, dentifrices, or similar 2897
articles, are vendors. Veterinarians who are engaged in 2898
transferring to others for a consideration drugs, the dispensing 2899
of which does not require an order of a licensed veterinarian or 2900

physician under federal law, are vendors.

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(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

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(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

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(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

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(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

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(b) In the case of a person who produces, rather than 2932
purchases, printed matter for the purpose of distributing it or 2933
having it distributed to the public or to a designated segment of 2934
the public, free of charge, that person is the consumer of all 2935
tangible personal property and services purchased for use or 2936
consumption in the production of that printed matter. That person 2937
is not entitled to claim exception under division (E)(8) of this 2938
section for any material incorporated into the printed matter or 2939
any equipment, supplies, or services primarily used to produce the 2940
printed matter. 2941

(c) The distribution of printed matter to the public or to a 2942
designated segment of the public, free of charge, is not a sale to 2943
the members of the public to whom the printed matter is 2944
distributed or to any persons who purchase space in the printed 2945
matter for advertising or other purposes. 2946

(5) A person who makes sales of any of the services listed in 2947
division (B)(3) of this section is the consumer of any tangible 2948
personal property used in performing the service. The purchase of 2949
that property is not subject to the resale exception under 2950
division (E)(1) of this section. 2951

(E) "Retail sale" and "sales at retail" include all sales 2952
except those in which the purpose of the consumer is: 2953

(1) To resell the thing transferred or benefit of the service 2954
provided, by a person engaging in business, in the form in which 2955
the same is, or is to be, received by the person; 2956

(2) To incorporate the thing transferred as a material or a 2957
part, into tangible personal property to be produced for sale by 2958
manufacturing, assembling, processing, or refining, or to use or 2959
consume the thing transferred directly in producing a product for 2960
sale by mining, including without limitation the extraction from 2961
the earth of all substances which are classed geologically as 2962

minerals, production of crude oil and natural gas, farming, 2963
agriculture, horticulture, or floriculture, and persons engaged in 2964
rendering farming, agricultural, horticultural, or floricultural 2965
services, and services in the exploration for, and production of, 2966
crude oil and natural gas, for others are deemed engaged directly 2967
in farming, agriculture, horticulture, and floriculture, or 2968
exploration for, and production of, crude oil and natural gas; 2969
directly in the rendition of a public utility service, except that 2970
the sales tax levied by section 5739.02 of the Revised Code shall 2971
be collected upon all meals, drinks, and food for human 2972
consumption sold upon Pullman and railroad coaches. This paragraph 2973
does not exempt or except from "retail sale" or "sales at retail" 2974
the sale of tangible personal property that is to be incorporated 2975
into a structure or improvement to real property. 2976

(3) To hold the thing transferred as security for the 2977
performance of an obligation of the vendor; 2978

(4) To use or consume the thing transferred in the process of 2979
reclamation as required by Chapters 1513. and 1514. of the Revised 2980
Code; 2981

(5) To resell, hold, use, or consume the thing transferred as 2982
evidence of a contract of insurance; 2983

(6) To use or consume the thing directly in commercial 2984
fishing; 2985

(7) To incorporate the thing transferred as a material or a 2986
part into, or to use or consume the thing transferred directly in 2987
the production of, magazines distributed as controlled circulation 2988
publications; 2989

(8) To use or consume the thing transferred in the production 2990
and preparation in suitable condition for market and sale of 2991
printed, imprinted, overprinted, lithographic, multilithic, 2992
blueprinted, photostatic, or other productions or reproductions of 2993

written or graphic matter;	2994
(9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	2995 2996 2997
(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;	2998 2999 3000 3001 3002 3003
(11) To use the thing transferred as qualified research and development equipment;	3004 3005
(12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. Division (E)(12) of this section does not apply to motor vehicles registered for operation on the public highways. As used in division (E)(12) of this section, "affiliated group" has the same meaning as in division (B)(3)(e) of this section and "direct marketing" has the same meaning as in division (B)(37) of section 5739.02 of the Revised Code.	3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018
(13) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of this section;	3019 3020 3021 3022 3023 3024

(14) To use or consume the thing transferred in the 3025
production of a newspaper for distribution to the public; 3026

(15) To use tangible personal property to perform a service 3027
listed in division (B)(3) of this section, if the property is or 3028
is to be permanently transferred to the consumer of the service as 3029
an integral part of the performance of the service. 3030

As used in division (E) of this section, "thing" includes all 3031
transactions included in divisions (B)(3)(a), (b), and (e) of this 3032
section. 3033

Sales conducted through a coin-operated device that activates 3034
vacuum equipment or equipment that dispenses water, whether or not 3035
in combination with soap or other cleaning agents or wax, to the 3036
consumer for the consumer's use on the premises in washing, 3037
cleaning, or waxing a motor vehicle, provided no other personal 3038
property or personal service is provided as part of the 3039
transaction, are not retail sales or sales at retail. 3040

(F) "Business" includes any activity engaged in by any person 3041
with the object of gain, benefit, or advantage, either direct or 3042
indirect. "Business" does not include the activity of a person in 3043
managing and investing the person's own funds. 3044

(G) "Engaging in business" means commencing, conducting, or 3045
continuing in business, and liquidating a business when the 3046
liquidator thereof holds self out to the public as conducting such 3047
business. Making a casual sale is not engaging in business. 3048

(H)(1) "Price," except as provided in divisions (H)(2) and 3049
(3) of this section, means the aggregate value in money of 3050
anything paid or delivered, or promised to be paid or delivered, 3051
in the complete performance of a retail sale, without any 3052
deduction on account of the cost of the property sold, cost of 3053
materials used, labor or service cost, interest, discount paid or 3054
allowed after the sale is consummated, or any other expense. If 3055

the retail sale consists of the rental or lease of tangible 3056
personal property, "price" means the aggregate value in money of 3057
anything paid or delivered, or promised to be paid or delivered, 3058
in the complete performance of the rental or lease, without any 3059
deduction for tax, interest, labor or service charge, damage 3060
liability waiver, termination or damage charge, discount paid or 3061
allowed after the lease is consummated, or any other expense. The 3062
sales tax shall be calculated and collected by the lessor on each 3063
payment made by the lessee. Price does not include the 3064
consideration received as a deposit refundable to the consumer 3065
upon return of a beverage container, the consideration received as 3066
a deposit on a carton or case that is used for such returnable 3067
containers, or the consideration received as a refundable security 3068
deposit for the use of tangible personal property to the extent 3069
that it actually is refunded, if the consideration for such 3070
refundable deposit is separately stated from the consideration 3071
received or to be received for the tangible personal property 3072
transferred in the retail sale. Such separation must appear in the 3073
sales agreement or on the initial invoice or initial billing 3074
rendered by the vendor to the consumer. Price is the amount 3075
received inclusive of the tax, provided the vendor establishes to 3076
the satisfaction of the tax commissioner that the tax was added to 3077
the price. When the price includes both a charge for tangible 3078
personal property and a charge for providing a service and the 3079
sale of the property and the charge for the service are separately 3080
taxable, or have a separately determinable tax status, the price 3081
shall be separately stated for each such charge so the tax can be 3082
correctly computed and charged. 3083

The tax collected by the vendor from the consumer under this 3084
chapter is not part of the price, but is a tax collection for the 3085
benefit of the state and of counties levying an additional sales 3086
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 3087

and of transit authorities levying an additional sales tax 3088
pursuant to section 5739.023 of the Revised Code. Except for the 3089
discount authorized in section 5739.12 of the Revised Code, no 3090
person other than the state or such a county or transit authority 3091
shall derive any benefit from the collection or payment of such 3092
tax. 3093

(2) In the case of a sale of any new motor vehicle by a new 3094
motor vehicle dealer, as defined in section 4517.01 of the Revised 3095
Code, in which another motor vehicle is accepted by the dealer as 3096
part of the consideration received, "price" has the same meaning 3097
as in division (H)(1) of this section, reduced by the credit 3098
afforded the consumer by the dealer for the motor vehicle received 3099
in trade. 3100

(3) In the case of a sale of any watercraft or outboard motor 3101
by a watercraft dealer licensed in accordance with section 3102
1547.543 of the Revised Code, in which another watercraft, 3103
watercraft and trailer, or outboard motor is accepted by the 3104
dealer as part of the consideration received, "price" has the same 3105
meaning as in division (H)(1) of this section, reduced by the 3106
credit afforded the consumer by the dealer for the watercraft, 3107
watercraft and trailer, or outboard motor received in trade. As 3108
used in division (H)(3) of this section, "watercraft" includes an 3109
outdrive unit attached to the watercraft. 3110

(I) "Receipts" means the total amount of the prices of the 3111
sales of vendors, provided that cash discounts allowed and taken 3112
on sales at the time they are consummated are not included, minus 3113
any amount deducted as a bad debt pursuant to section 5739.121 of 3114
the Revised Code. "Receipts" does not include the sale price of 3115
property returned or services rejected by consumers when the full 3116
sale price and tax are refunded either in cash or by credit. 3117

(J) "Place of business" means any location at which a person 3118

engages in business. 3119

(K) "Premises" includes any real property or portion thereof 3120
upon which any person engages in selling tangible personal 3121
property at retail or making retail sales and also includes any 3122
real property or portion thereof designated for, or devoted to, 3123
use in conjunction with the business engaged in by such person. 3124

(L) "Casual sale" means a sale of an item of tangible 3125
personal property which was obtained by the person making the 3126
sale, through purchase or otherwise, for the person's own use in 3127
this state and which was previously subject to ~~the~~ any state's 3128
taxing jurisdiction on its sale or use, and includes such items 3129
acquired for the seller's use which are sold by an auctioneer 3130
employed directly by the person for such purpose, provided the 3131
location of such sales is not the auctioneer's permanent place of 3132
business. As used in this division, "permanent place of business" 3133
includes any location where such auctioneer has conducted more 3134
than two auctions during the year. 3135

(M) "Hotel" means every establishment kept, used, maintained, 3136
advertised or held out to the public to be a place where sleeping 3137
accommodations are offered to guests, in which five or more rooms 3138
are used for the accommodation of such guests, whether such rooms 3139
are in one or several structures. 3140

(N) "Transient guests" means persons occupying a room or 3141
rooms for sleeping accommodations for less than thirty consecutive 3142
days. 3143

(O) "Making retail sales" means the effecting of transactions 3144
wherein one party is obligated to pay the price and the other 3145
party is obligated to provide a service or to transfer title to or 3146
possession of the item sold. "Making retail sales" does not 3147
include the preliminary acts of promoting or soliciting the retail 3148
sales, other than the distribution of printed matter which 3149

displays or describes and prices the item offered for sale, nor
does it include delivery of a predetermined quantity of tangible
personal property or transportation of property or personnel to or
from a place where a service is performed, regardless of whether
the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility
service" means that property which is to be incorporated into and
will become a part of the consumer's production, transmission,
transportation, or distribution system and which retains its
classification as tangible personal property after such
incorporation; fuel or power used in the production, transmission,
transportation, or distribution system; and tangible personal
property used in the repair and maintenance of the production,
transmission, transportation, or distribution system, including
only such motor vehicles as are specially designed and equipped
for such use. Tangible personal property and services used
primarily in providing highway transportation for hire are not
used in providing a public utility service as defined in this
division.

(Q) "Refining" means removing or separating a desirable
product from raw or contaminated materials by distillation or
physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting
together parts to form a product, but do not include packaging a
product.

(S) "Manufacturing operation" means a process in which
materials are changed, converted, or transformed into a different
state or form from which they previously existed and includes
refining materials, assembling parts, and preparing raw materials
and parts by mixing, measuring, blending, or otherwise committing
such materials or parts to the manufacturing process.

"Manufacturing operation" does not include packaging. 3181

(T) "Fiscal officer" means, with respect to a regional 3182
transit authority, the secretary-treasurer thereof, and with 3183
respect to a county which is a transit authority, the fiscal 3184
officer of the county transit board if one is appointed pursuant 3185
to section 306.03 of the Revised Code or the county auditor if the 3186
board of county commissioners operates the county transit system. 3187

(U) "Transit authority" means a regional transit authority 3188
created pursuant to section 306.31 of the Revised Code or a county 3189
in which a county transit system is created pursuant to section 3190
306.01 of the Revised Code. For the purposes of this chapter, a 3191
transit authority must extend to at least the entire area of a 3192
single county. A transit authority which includes territory in 3193
more than one county must include all the area of the most 3194
populous county which is a part of such transit authority. County 3195
population shall be measured by the most recent census taken by 3196
the United States census bureau. 3197

(V) "Legislative authority" means, with respect to a regional 3198
transit authority, the board of trustees thereof, and with respect 3199
to a county which is a transit authority, the board of county 3200
commissioners. 3201

(W) "Territory of the transit authority" means all of the 3202
area included within the territorial boundaries of a transit 3203
authority as they from time to time exist. Such territorial 3204
boundaries must at all times include all the area of a single 3205
county or all the area of the most populous county which is a part 3206
of such transit authority. County population shall be measured by 3207
the most recent census taken by the United States census bureau. 3208

(X) "Providing a service" means providing or furnishing 3209
anything described in division (B)(3) of this section for 3210
consideration. 3211

(Y)(1)(a) "Automatic data processing" means processing of 3212
others' data, including keypunching or similar data entry services 3213
together with verification thereof, or providing access to 3214
computer equipment for the purpose of processing data. 3215

(b) "Computer services" means providing services consisting 3216
of specifying computer hardware configurations and evaluating 3217
technical processing characteristics, computer programming, and 3218
training of computer programmers and operators, provided in 3219
conjunction with and to support the sale, lease, or operation of 3220
taxable computer equipment or systems. 3221

(c) "Electronic information services" means providing access 3222
to computer equipment by means of telecommunications equipment for 3223
the purpose of either of the following: 3224

(i) Examining or acquiring data stored in or accessible to 3225
the computer equipment; 3226

(ii) Placing data into the computer equipment to be retrieved 3227
by designated recipients with access to the computer equipment. 3228

3229

(d) "Automatic data processing, computer services, or 3230
electronic information services" shall not include personal or 3231
professional services. 3232

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 3233
section, "personal and professional services" means all services 3234
other than automatic data processing, computer services, or 3235
electronic information services, including but not limited to: 3236

(a) Accounting and legal services such as advice on tax 3237
matters, asset management, budgetary matters, quality control, 3238
information security, and auditing and any other situation where 3239
the service provider receives data or information and studies, 3240
alters, analyzes, interprets, or adjusts such material; 3241

(b) Analyzing business policies and procedures;	3242
(c) Identifying management information needs;	3243
(d) Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	3244 3245 3246
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled and reported so that it will be meaningful to management;	3247 3248 3249 3250
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	3251 3252 3253
(g) Testing of business procedures;	3254
(h) Training personnel in business procedure applications;	3255
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	3256 3257 3258 3259 3260 3261
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	3262 3263
The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.	3264 3265
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	3266 3267 3268
(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in	3269 3270

transportation of personal property belonging to others for	3271
consideration over or on highways, roadways, streets, or any	3272
similar public thoroughfare;	3273
(2) A person who engages in the transportation of personal	3274
property belonging to others for consideration over or on	3275
highways, roadways, streets, or any similar public thoroughfare	3276
but who could not have engaged in such transportation on December	3277
11, 1985, unless the person was the holder of a permit or	3278
certificate of the types described in division (Z)(1) of this	3279
section;	3280
(3) A person who leases a motor vehicle to and operates it	3281
for a person described by division (Z)(1) or (2) of this section.	3282
(AA) "Telecommunications service" means the transmission of	3283
any interactive, two-way electromagnetic communications, including	3284
voice, image, data, and information, through the use of any medium	3285
such as wires, cables, microwaves, cellular radio, radio waves,	3286
light waves, or any combination of those or similar media.	3287
"Telecommunications service" includes message toll service even	3288
though the vendor provides the message toll service by means of	3289
wide area transmission type service or private communications	3290
service purchased from another telecommunications service	3291
provider, but does not include any of the following:	3292
(1) Sales of incoming or outgoing wide area transmission	3293
service or wide area transmission type service, including eight	3294
hundred or eight-hundred-type service, to the person contracting	3295
for the receipt of that service;	3296
(2) Sales of private communications service to the person	3297
contracting for the receipt of that service that entitles the	3298
purchaser to exclusive or priority use of a communications channel	3299
or group of channels between exchanges;	3300
(3) Sales of telecommunications service by companies subject	3301

to the excise tax imposed by Chapter 5727. of the Revised Code; 3302

(4) Sales of telecommunications service to a provider of 3303
telecommunications service, including access services, for use in 3304
providing telecommunications service; 3305

(5) Value-added nonvoice services in which computer 3306
processing applications are used to act on the form, content, 3307
code, or protocol of the information to be transmitted; 3308

(6) Transmission of interactive video programming by a cable 3309
television system as defined in section 505.90 of the Revised 3310
Code. 3311

(BB) "Industrial laundry cleaning services" means removing 3312
soil or dirt from or supplying towels, linens, or articles of 3313
clothing that belong to others and are used in a trade or 3314
business. 3315

(CC) "Magazines distributed as controlled circulation 3316
publications" means magazines containing at least twenty-four 3317
pages, at least twenty-five per cent editorial content, issued at 3318
regular intervals four or more times a year, and circulated 3319
without charge to the recipient, provided that such magazines are 3320
not owned or controlled by individuals or business concerns which 3321
conduct such publications as an auxiliary to, and essentially for 3322
the advancement of the main business or calling of, those who own 3323
or control them. 3324

(DD) "Landscaping and lawn care service" means the services 3325
of planting, seeding, sodding, removing, cutting, trimming, 3326
pruning, mulching, aerating, applying chemicals, watering, 3327
fertilizing, and providing similar services to establish, promote, 3328
or control the growth of trees, shrubs, flowers, grass, ground 3329
cover, and other flora, or otherwise maintaining a lawn or 3330
landscape grown or maintained by the owner for ornamentation or 3331
other nonagricultural purpose. However, "landscaping and lawn care 3332

service" does not include the providing of such services by a 3333
person who has less than five thousand dollars in sales of such 3334
services during the calendar year. 3335

(EE) "Private investigation and security service" means the 3336
performance of any activity for which the provider of such service 3337
is required to be licensed pursuant to Chapter 4749. of the 3338
Revised Code, or would be required to be so licensed in performing 3339
such services in this state, and also includes the services of 3340
conducting polygraph examinations and of monitoring or overseeing 3341
the activities on or in, or the condition of, the consumer's home, 3342
business, or other facility by means of electronic or similar 3343
monitoring devices. "Private investigation and security service" 3344
does not include special duty services provided by off-duty police 3345
officers, deputy sheriffs, and other peace officers regularly 3346
employed by the state or a political subdivision. 3347

(FF) "Information services" means providing conversation, 3348
giving consultation or advice, playing or making a voice or other 3349
recording, making or keeping a record of the number of callers, 3350
and any other service provided to a consumer by means of a nine 3351
hundred telephone call, except when the nine hundred telephone 3352
call is the means by which the consumer makes a contribution to a 3353
recognized charity. 3354

(GG) "Research and development" means designing, creating, or 3355
formulating new or enhanced products, equipment, or manufacturing 3356
processes, and conducting scientific or technological inquiry and 3357
experimentation in the physical sciences with the goal of 3358
increasing scientific knowledge which may reveal the bases for new 3359
or enhanced products, equipment, or manufacturing processes. 3360
3361

(HH) "Qualified research and development equipment" means 3362
capitalized tangible personal property, and leased personal 3363

property that would be capitalized if purchased, used by a person 3364
primarily to perform research and development. Tangible personal 3365
property primarily used in testing, as defined in division (A)(4) 3366
of section 5739.011 of the Revised Code, or used for recording or 3367
storing test results, is not qualified research and development 3368
equipment unless such property is primarily used by the consumer 3369
in testing the product, equipment, or manufacturing process being 3370
created, designed, or formulated by the consumer in the research 3371
and development activity or in recording or storing such test 3372
results. 3373

(II) "Building maintenance and janitorial service" means 3374
cleaning the interior or exterior of a building and any tangible 3375
personal property located therein or thereon, including any 3376
services incidental to such cleaning for which no separate charge 3377
is made. However, "building maintenance and janitorial service" 3378
does not include the providing of such service by a person who has 3379
less than five thousand dollars in sales of such service during 3380
the calendar year. 3381

(JJ) "Employment service" means providing or supplying 3382
personnel, on a temporary or long-term basis, to perform work or 3383
labor under the supervision or control of another, when the 3384
personnel so supplied receive their wages, salary, or other 3385
compensation from the provider of the service. "Employment 3386
service" does not include: 3387

(1) Acting as a contractor or subcontractor, where the 3388
personnel performing the work are not under the direct control of 3389
the purchaser. 3390

(2) Medical and health care services. 3391

(3) Supplying personnel to a purchaser pursuant to a contract 3392
of at least one year between the service provider and the 3393
purchaser that specifies that each employee covered under the 3394

contract is assigned to the purchaser on a permanent basis. 3395

(4) Transactions between members of an affiliated group, as 3396
defined in division (B)(3)(e) of this section. 3397

(KK) "Employment placement service" means locating or finding 3398
employment for a person or finding or locating an employee to fill 3399
an available position. 3400

(LL) "Exterminating service" means eradicating or attempting 3401
to eradicate vermin infestations from a building or structure, or 3402
the area surrounding a building or structure, and includes 3403
activities to inspect, detect, or prevent vermin infestation of a 3404
building or structure. 3405

(MM) "Physical fitness facility service" means all 3406
transactions by which a membership is granted, maintained, or 3407
renewed, including initiation fees, membership dues, renewal fees, 3408
monthly minimum fees, and other similar fees and dues, by a 3409
physical fitness facility such as an athletic club, health spa, or 3410
gymnasium, which entitles the member to use the facility for 3411
physical exercise. 3412

(NN) "Recreation and sports club service" means all 3413
transactions by which a membership is granted, maintained, or 3414
renewed, including initiation fees, membership dues, renewal fees, 3415
monthly minimum fees, and other similar fees and dues, by a 3416
recreation and sports club, which entitles the member to use the 3417
facilities of the organization. "Recreation and sports club" means 3418
an organization that has ownership of, or controls or leases on a 3419
continuing, long-term basis, the facilities used by its members 3420
and includes an aviation club, gun or shooting club, yacht club, 3421
card club, swimming club, tennis club, golf club, country club, 3422
riding club, amateur sports club, or similar organization. 3423

(OO) "Livestock" means farm animals commonly raised for food 3424
or food production, and includes but is not limited to cattle, 3425

sheep, goats, swine, and poultry. "Livestock" does not include 3426
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 3427
animals for use in laboratories or for exhibition, or other 3428
animals not commonly raised for food or food production. 3429

(PP) "Livestock structure" means a building or structure used 3430
exclusively for the housing, raising, feeding, or sheltering of 3431
livestock, and includes feed storage or handling structures and 3432
structures for livestock waste handling. 3433

(QQ) "Horticulture" means the growing, cultivation, and 3434
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 3435
and nursery stock. As used in this division, "nursery stock" has 3436
the same meaning as in section 927.51 of the Revised Code. 3437

(RR) "Horticulture structure" means a building or structure 3438
used exclusively for the commercial growing, raising, or 3439
overwintering of horticultural products, and includes the area 3440
used for stocking, storing, and packing horticultural products 3441
when done in conjunction with the production of those products. 3442

(SS) "Newspaper" means an unbound publication bearing a title 3443
or name that is regularly published, at least as frequently as 3444
biweekly, and distributed from a fixed place of business to the 3445
public in a specific geographic area, and that contains a 3446
substantial amount of news matter of international, national, or 3447
local events of interest to the general public. 3448

(TT) "Professional racing team" means a person that employs 3449
at least twenty full-time employees for the purpose of conducting 3450
a motor vehicle racing business for profit. The person must 3451
conduct the business with the purpose of racing one or more motor 3452
racing vehicles in at least ten competitive professional racing 3453
events each year that comprise all or part of a motor racing 3454
series sanctioned by one or more motor racing sanctioning 3455
organizations. A "motor racing vehicle" means a vehicle for which 3456

the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(UU)(1) "Prepaid authorization number" means a numeric or alphanumeric combination that represents a prepaid account that can be used by the account holder solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(2) "Prepaid telephone calling card" means a tangible item that contains a prepaid authorization number that can be used solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the

expense of administering this chapter, an excise tax is hereby 3487
levied on each retail sale made in this state. 3488

(A) The tax shall be collected pursuant to the schedules in 3489
section 5739.025 of the Revised Code. 3490

The tax applies and is collectible when the sale is made, 3491
regardless of the time when the price is paid or delivered. 3492

In the case of a sale, the price of which consists in whole 3493
or in part of rentals for the use of the thing transferred, the 3494
tax, as regards such rentals, shall be measured by the 3495
installments thereof. 3496

In the case of a sale of a service defined under division 3497
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 3498
which consists in whole or in part of a membership for the receipt 3499
of the benefit of the service, the tax applicable to the sale 3500
shall be measured by the installments thereof. 3501

(B) The tax does not apply to the following: 3502

(1) Sales to the state or any of its political subdivisions, 3503
or to any other state or its political subdivisions if the laws of 3504
that state exempt from taxation sales made to this state and its 3505
political subdivisions; 3506

(2) Sales of food for human consumption off the premises 3507
where sold; 3508

(3) Sales of food sold to students only in a cafeteria, 3509
dormitory, fraternity, or sorority maintained in a private, 3510
public, or parochial school, college, or university; 3511

(4) Sales of newspapers, and of magazine subscriptions 3512
shipped by second class mail, and sales or transfers of magazines 3513
distributed as controlled circulation publications; 3514

(5) The furnishing, preparing, or serving of meals without 3515

charge by an employer to an employee provided the employer records 3516
the meals as part compensation for services performed or work 3517
done; 3518

(6) Sales of motor fuel upon receipt, use, distribution, or 3519
sale of which in this state a tax is imposed by the law of this 3520
state, but this exemption shall not apply to the sale of motor 3521
fuel on which a refund of the tax is allowable under section 3522
5735.14 of the Revised Code; and the tax commissioner may deduct 3523
the amount of tax levied by this section applicable to the price 3524
of motor fuel when granting a refund of motor fuel tax pursuant to 3525
section 5735.14 of the Revised Code and shall cause the amount 3526
deducted to be paid into the general revenue fund of this state; 3527

(7) Sales of natural gas by a natural gas company, of water 3528
by a water-works company, or of steam by a heating company, if in 3529
each case the thing sold is delivered to consumers through pipes 3530
or conduits, and all sales of communications services by a 3531
telephone or telegraph company, all terms as defined in section 3532
5727.01 of the Revised Code; 3533

(8) Casual sales by a person, or auctioneer employed directly 3534
by the person to conduct such sales, except as to such sales of 3535
motor vehicles, watercraft or outboard motors required to be 3536
titled under section 1548.06 of the Revised Code, watercraft 3537
documented with the United States coast guard, snowmobiles, and 3538
all-purpose vehicles as defined in section 4519.01 of the Revised 3539
Code; 3540

(9) Sales of services or tangible personal property, other 3541
than motor vehicles, mobile homes, and manufactured homes, by 3542
churches, organizations exempt from taxation under section 3543
501(c)(3) of the Internal Revenue Code of 1986, or ~~by~~ nonprofit 3544
organizations operated exclusively for charitable purposes as 3545
defined in division (B)(12) of this section, provided that the 3546

number of days on which such tangible personal property or 3547
services, other than items never subject to the tax, are sold does 3548
not exceed six in any calendar year. If the number of days on 3549
which such sales are made exceeds six in any calendar year, the 3550
church or organization shall be considered to be engaged in 3551
business and all subsequent sales by it shall be subject to the 3552
tax. In counting the number of days, all sales by groups within a 3553
church or within an organization shall be considered to be sales 3554
of that church or organization, except that sales made by separate 3555
student clubs and other groups of students of a primary or 3556
secondary school, and sales made by a parent-teacher association, 3557
booster group, or similar organization that raises money to 3558
support or fund curricular or extracurricular activities of a 3559
primary or secondary school, shall not be considered to be sales 3560
of such school, and sales by each such club, group, association, 3561
or organization shall be counted separately for purposes of the 3562
six-day limitation. This division does not apply to sales by a 3563
noncommercial educational radio or television broadcasting 3564
station. 3565

(10) Sales not within the taxing power of this state under 3566
the Constitution of the United States; 3567

(11) The transportation of persons or property, unless the 3568
transportation is by a private investigation and security service; 3569

(12) Sales of tangible personal property or services to 3570
churches, to organizations exempt from taxation under section 3571
501(c)(3) of the Internal Revenue Code of 1986, and to any other 3572
nonprofit organizations operated exclusively for charitable 3573
purposes in this state, no part of the net income of which inures 3574
to the benefit of any private shareholder or individual, and no 3575
substantial part of the activities of which consists of carrying 3576
on propaganda or otherwise attempting to influence legislation; 3577
sales to offices administering one or more homes for the aged or 3578

one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division

(A) of section 5709.12 of the Revised Code. 3611

(13) Building and construction materials and services sold to 3612
construction contractors for incorporation into a structure or 3613
improvement to real property under a construction contract with 3614
this state or a political subdivision thereof, or with the United 3615
States government or any of its agencies; building and 3616
construction materials and services sold to construction 3617
contractors for incorporation into a structure or improvement to 3618
real property that are accepted for ownership by this state or any 3619
of its political subdivisions, or by the United States government 3620
or any of its agencies at the time of completion of such 3621
structures or improvements; building and construction materials 3622
sold to construction contractors for incorporation into a 3623
horticulture structure or livestock structure for a person engaged 3624
in the business of horticulture or producing livestock; building 3625
materials and services sold to a construction contractor for 3626
incorporation into a house of public worship or religious 3627
education, or a building used exclusively for charitable purposes 3628
under a construction contract with an organization whose purpose 3629
is as described in division (B)(12) of this section; building 3630
materials and services sold to a construction contractor for 3631
incorporation into a building under a construction contract with 3632
an organization exempt from taxation under section 501(c)(3) of 3633
the Internal Revenue Code of 1986 when the building is to be used 3634
exclusively for the organization's exempt purposes; building and 3635
construction materials sold for incorporation into the original 3636
construction of a sports facility under section 307.696 of the 3637
Revised Code; and building and construction materials and services 3638
sold to a construction contractor for incorporation into real 3639
property outside this state if such materials and services, when 3640
sold to a construction contractor in the state in which the real 3641
property is located for incorporation into real property in that 3642

state, would be exempt from a tax on sales levied by that state; 3643

(14) Sales of ships or vessels or rail rolling stock used or 3644
to be used principally in interstate or foreign commerce, and 3645
repairs, alterations, fuel, and lubricants for such ships or 3646
vessels or rail rolling stock; 3647

(15) Sales to persons engaged in any of the activities 3648
mentioned in division (E)(2) or (9) of section 5739.01 of the 3649
Revised Code, to persons engaged in making retail sales, or to 3650
persons who purchase for sale from a manufacturer tangible 3651
personal property that was produced by the manufacturer in 3652
accordance with specific designs provided by the purchaser, of 3653
packages, including material and parts for packages, and of 3654
machinery, equipment, and material for use primarily in packaging 3655
tangible personal property produced for sale by or on the order of 3656
the person doing the packaging, or sold at retail. "Packages" 3657
includes bags, baskets, cartons, crates, boxes, cans, bottles, 3658
bindings, wrappings, and other similar devices and containers, and 3659
"packaging" means placing therein. 3660

(16) Sales of food to persons using food stamp coupons to 3661
purchase the food. As used in division (B)(16) of this section, 3662
"food" has the same meaning as in the "Food Stamp Act of 1977," 91 3663
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations 3664
adopted pursuant to that act. 3665

(17) Sales to persons engaged in farming, agriculture, 3666
horticulture, or floriculture, of tangible personal property for 3667
use or consumption directly in the production by farming, 3668
agriculture, horticulture, or floriculture of other tangible 3669
personal property for use or consumption directly in the 3670
production of tangible personal property for sale by farming, 3671
agriculture, horticulture, or floriculture; or material and parts 3672
for incorporation into any such tangible personal property for use 3673
or consumption in production; and of tangible personal property 3674

for such use or consumption in the conditioning or holding of 3675
products produced by and for such use, consumption, or sale by 3676
persons engaged in farming, agriculture, horticulture, or 3677
floriculture, except where such property is incorporated into real 3678
property; 3679

(18) Sales of drugs dispensed by a licensed pharmacist upon 3680
the order of a licensed health professional authorized to 3681
prescribe drugs to a human being, as the term "licensed health 3682
professional authorized to prescribe drugs" is defined in section 3683
4729.01 of the Revised Code; insulin as recognized in the official 3684
United States pharmacopoeia; urine and blood testing materials 3685
when used by diabetics or persons with hypoglycemia to test for 3686
glucose or acetone; hypodermic syringes and needles when used by 3687
diabetics for insulin injections; epoetin alfa when purchased for 3688
use in the treatment of persons with end-stage renal disease; 3689
hospital beds when purchased for use by persons with medical 3690
problems for medical purposes; and oxygen and oxygen-dispensing 3691
equipment when purchased for use by persons with medical problems 3692
for medical purposes; 3693

(19) Sales of artificial limbs or portion thereof, breast 3694
prostheses, and other prosthetic devices for humans; braces or 3695
other devices for supporting weakened or nonfunctioning parts of 3696
the human body; wheelchairs; devices used to lift wheelchairs into 3697
motor vehicles and parts and accessories to such devices; crutches 3698
or other devices to aid human perambulation; and items of tangible 3699
personal property used to supplement impaired functions of the 3700
human body such as respiration, hearing, or elimination. No 3701
exemption under this division shall be allowed for nonprescription 3702
drugs, medicines, or remedies; items or devices used to supplement 3703
vision; items or devices whose function is solely or primarily 3704
cosmetic; or physical fitness equipment. This division does not 3705
apply to sales to a physician or medical facility for use in the 3706

treatment of a patient.	3707
(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;	3708 3709 3710 3711
(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;	3712 3713 3714 3715 3716 3717 3718
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	3719 3720 3721 3722 3723
(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;	3724 3725 3726 3727 3728 3729 3730 3731
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in	3732 3733 3734 3735 3736 3737

packaging eggs for sale; and handling and transportation equipment 3738
and parts therefor, except motor vehicles licensed to operate on 3739
public highways, used in intraplant or interplant transfers or 3740
shipment of eggs in the process of preparation for sale, when the 3741
plant or plants within or between which such transfers or 3742
shipments occur are operated by the same person. "Packages" 3743
includes containers, cases, baskets, flats, fillers, filler flats, 3744
cartons, closure materials, labels, and labeling materials, and 3745
"packaging" means placing therein. 3746

(25)(a) Sales of water to a consumer for residential use, 3747
except the sale of bottled water, distilled water, mineral water, 3748
carbonated water, or ice; 3749

(b) Sales of water by a nonprofit corporation engaged 3750
exclusively in the treatment, distribution, and sale of water to 3751
consumers, if such water is delivered to consumers through pipes 3752
or tubing. 3753

(26) Fees charged for inspection or reinspection of motor 3754
vehicles under section 3704.14 of the Revised Code; 3755

~~(27) Sales of solar, wind, or hydrothermal energy systems 3756
that meet the guidelines established under division (B) of section 3757
1551.20 of the Revised Code, components of such systems that are 3758
identified under division (B) or (D) of that section, or charges 3759
for the installation of such systems or components, made during 3760
the period from August 14, 1979, through December 31, 1985; 3761~~

~~(28) Sales to persons licensed to conduct a food service 3762
operation pursuant to section 3717.43 of the Revised Code, of 3763
tangible personal property primarily used directly for the 3764
following: 3765~~

~~(a) To prepare food for human consumption for sale; 3766~~

~~(b) To preserve food that has been or will be prepared for 3767~~

human consumption for sale by the food service operator, not	3768
including tangible personal property used to display food for	3769
selection by the consumer;	3770
(c) To clean tangible personal property used to prepare or	3771
serve food for human consumption for sale.	3772
(29) <u>(28)</u> Sales of animals by nonprofit animal adoption	3773
services or county humane societies;	3774
(30) <u>(29)</u> Sales of services to a corporation described in	3775
division (A) of section 5709.72 of the Revised Code, and sales of	3776
tangible personal property that qualifies for exemption from	3777
taxation under section 5709.72 of the Revised Code;	3778
(31) <u>(30)</u> Sales and installation of agricultural land tile, as	3779
defined in division (B)(5)(a) of section 5739.01 of the Revised	3780
Code;	3781
(32) <u>(31)</u> Sales and erection or installation of portable grain	3782
bins, as defined in division (B)(5)(b) of section 5739.01 of the	3783
Revised Code;	3784
(33) <u>(32)</u> The sale, lease, repair, and maintenance of, parts	3785
for, or items attached to or incorporated in, motor vehicles that	3786
are primarily used for transporting tangible personal property by	3787
a person engaged in highway transportation for hire;	3788
(34) <u>(33)</u> Sales to the state headquarters of any veterans'	3789
organization in Ohio that is either incorporated and issued a	3790
charter by the congress of the United States or is recognized by	3791
the United States veterans administration, for use by the	3792
headquarters;	3793
(35) <u>(34)</u> Sales to a telecommunications service vendor of	3794
tangible personal property and services used directly and	3795
primarily in transmitting, receiving, switching, or recording any	3796
interactive, two-way electromagnetic communications, including	3797

voice, image, data, and information, through the use of any 3798
medium, including, but not limited to, poles, wires, cables, 3799
switching equipment, computers, and record storage devices and 3800
media, and component parts for the tangible personal property. The 3801
exemption provided in division (B)~~(35)~~(34) of this section shall 3802
be in lieu of all other exceptions under division (E)(2) of 3803
section 5739.01 of the Revised Code to which a telecommunications 3804
service vendor may otherwise be entitled based upon the use of the 3805
thing purchased in providing the telecommunications service. 3806

~~(36)~~(35) Sales of investment metal bullion and investment 3807
coins. "Investment metal bullion" means any elementary precious 3808
metal that has been put through a process of smelting or refining, 3809
including, but not limited to, gold, silver, platinum, and 3810
palladium, and which is in such state or condition that its value 3811
depends upon its content and not upon its form. "Investment metal 3812
bullion" does not include fabricated precious metal that has been 3813
processed or manufactured for one or more specific and customary 3814
industrial, professional, or artistic uses. "Investment coins" 3815
means numismatic coins or other forms of money and legal tender 3816
manufactured of gold, silver, platinum, palladium, or other metal 3817
under the laws of the United States or any foreign nation with a 3818
fair market value greater than any statutory or nominal value of 3819
such coins. 3820

~~(37)~~(36)(a) Sales where the purpose of the consumer is to use 3821
or consume the things transferred in making retail sales and 3822
consisting of newspaper inserts, catalogues, coupons, flyers, gift 3823
certificates, or other advertising material that prices and 3824
describes tangible personal property offered for retail sale. 3825

(b) Sales to direct marketing vendors of preliminary 3826
materials such as photographs, artwork, and typesetting that will 3827
be used in printing advertising material; of printed matter that 3828
offers free merchandise or chances to win sweepstake prizes and 3829

that is mailed to potential customers with advertising material 3830
described in division (B)~~(37)~~(36)(a) of this section; and of 3831
equipment such as telephones, computers, facsimile machines, and 3832
similar tangible personal property primarily used to accept orders 3833
for direct marketing retail sales. 3834

(c) Sales of automatic food vending machines that preserve 3835
food with a shelf life of forty-five days or less by refrigeration 3836
and dispense it to the consumer. 3837

For purposes of division (B)~~(37)~~(36) of this section, "direct 3838
marketing" means the method of selling where consumers order 3839
tangible personal property by United States mail, delivery 3840
service, or telecommunication and the vendor delivers or ships the 3841
tangible personal property sold to the consumer from a warehouse, 3842
catalogue distribution center, or similar fulfillment facility by 3843
means of the United States mail, delivery service, or common 3844
carrier. 3845

~~(38)~~(37) Sales to a person engaged in the business of 3846
horticulture or producing livestock of materials to be 3847
incorporated into a horticulture structure or livestock structure; 3848

~~(39)~~(38) The sale of a motor vehicle that is used exclusively 3849
for a vanpool ridesharing arrangement to persons participating in 3850
the vanpool ridesharing arrangement when the vendor is selling the 3851
vehicle pursuant to a contract between the vendor and the 3852
department of transportation; 3853

~~(40)~~(39) Sales of personal computers, computer monitors, 3854
computer keyboards, modems, and other peripheral computer 3855
equipment to an individual who is licensed or certified to teach 3856
in an elementary or a secondary school in this state for use by 3857
that individual in preparation for teaching elementary or 3858
secondary school students; 3859

~~(41)~~(40) Sales to a professional racing team of any of the 3860

following:	3861
(a) Motor racing vehicles;	3862
(b) Repair services for motor racing vehicles;	3863
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.	3864 3865 3866 3867 3868 3869 3870 3871
(42) (41) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	3872 3873 3874
(43) (42) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exceptions in division (E)(2) of section 5739.01 of the Revised Code to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing	3875 3876 3877 3878 3879 3880 3881 3882 3883 3884 3885 3886 3887 3888 3889 3890 3891

electricity. 3892

For the purpose of the proper administration of this chapter, 3893
and to prevent the evasion of the tax, it is presumed that all 3894
sales made in this state are subject to the tax until the contrary 3895
is established. 3896

As used in this section, except in division (B)(16) of this 3897
section, "food" includes cereals and cereal products, milk and 3898
milk products including ice cream, meat and meat products, fish 3899
and fish products, eggs and egg products, vegetables and vegetable 3900
products, fruits, fruit products, and pure fruit juices, 3901
condiments, sugar and sugar products, coffee and coffee 3902
substitutes, tea, and cocoa and cocoa products. It does not 3903
include: spirituous or malt liquors; soft drinks; sodas and 3904
beverages that are ordinarily dispensed at bars and soda fountains 3905
or in connection therewith, other than coffee, tea, and cocoa; 3906
root beer and root beer extracts; malt and malt extracts; mineral 3907
oils, cod liver oils, and halibut liver oil; medicines, including 3908
tonics, vitamin preparations, and other products sold primarily 3909
for their medicinal properties; and water, including mineral, 3910
bottled, and carbonated waters, and ice. 3911

(C) The levy of an excise tax on transactions by which 3912
lodging by a hotel is or is to be furnished to transient guests 3913
pursuant to this section and division (B) of section 5739.01 of 3914
the Revised Code does not prevent any of the following: 3915

(1) A municipal corporation or township from levying an 3916
excise tax for any lawful purpose not to exceed three per cent on 3917
transactions by which lodging by a hotel is or is to be furnished 3918
to transient guests in addition to the tax levied by this section. 3919
If a municipal corporation or township repeals a tax imposed under 3920
division (C)(1) of this section and a county in which the 3921
municipal corporation or township has territory has a tax imposed 3922
under division (C) of section 5739.024 of the Revised Code in 3923

effect, the municipal corporation or township may not reimpose its 3924
tax as long as that county tax remains in effect. A municipal 3925
corporation or township in which a tax is levied under division 3926
(B)(2) of section 351.021 of the Revised Code may not increase the 3927
rate of its tax levied under division (C)(1) of this section to 3928
any rate that would cause the total taxes levied under both of 3929
those divisions to exceed three per cent on any lodging 3930
transaction within the municipal corporation or township. 3931

(2) A municipal corporation or a township from levying an 3932
additional excise tax not to exceed three per cent on such 3933
transactions pursuant to division (B) of section 5739.024 of the 3934
Revised Code. Such tax is in addition to any tax imposed under 3935
division (C)(1) of this section. 3936

(3) A county from levying an excise tax pursuant to division 3937
(A) of section 5739.024 of the Revised Code. 3938

(4) A county from levying an excise tax not to exceed three 3939
per cent of such transactions pursuant to division (C) of section 3940
5739.024 of the Revised Code. Such a tax is in addition to any tax 3941
imposed under division (C)(3) of this section. 3942

(5) A convention facilities authority, as defined in division 3943
(A) of section 351.01 of the Revised Code, from levying the excise 3944
taxes provided for in division (B) of section 351.021 of the 3945
Revised Code. 3946

(6) A county from levying an excise tax not to exceed one and 3947
one-half per cent of such transactions pursuant to division (D) of 3948
section 5739.024 of the Revised Code. Such tax is in addition to 3949
any tax imposed under division (C)(3) or (4) of this section. 3950

(7) A county from levying an excise tax not to exceed one and 3951
one-half per cent of such transactions pursuant to division (E) of 3952
section 5739.024 of the Revised Code. Such a tax is in addition to 3953
3954

any tax imposed under division (C)(3), (4), or (6) of this 3955
section. 3956

(D) The levy of this tax on retail sales of recreation and 3957
sports club service shall not prevent a municipal corporation from 3958
levying any tax on recreation and sports club dues or on any 3959
income generated by recreation and sports club dues. 3960

Sec. 5739.03. Except as provided in section 5739.05 of the 3961
Revised Code, the tax imposed by or pursuant to section 5739.02, 3962
5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid 3963
by the consumer to the vendor, and each vendor shall collect from 3964
the consumer, as a trustee for the state of Ohio, the full and 3965
exact amount of the tax payable on each taxable sale, in the 3966
manner and at the times provided as follows: 3967

(A) If the price is, at or prior to the provision of the 3968
service or the delivery of possession of the thing sold to the 3969
consumer, paid in currency passed from hand to hand by the 3970
consumer or ~~his~~ the consumer's agent to the vendor or ~~his~~ the 3971
vendor's agent, the vendor or ~~his~~ the vendor's agent shall collect 3972
the tax with and at the same time as the price; 3973

(B) If the price is otherwise paid or to be paid, the vendor 3974
or ~~his~~ the vendor's agent shall, at or prior to the provision of 3975
the service or the delivery of possession of the thing sold to the 3976
consumer, charge the tax imposed by or pursuant to section 3977
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 3978
the account of the consumer, which amount shall be collected by 3979
the vendor from the consumer in addition to the price. Such sale 3980
shall be reported on and the amount of the tax applicable thereto 3981
shall be remitted with the return for the period in which the sale 3982
is made, and the amount of the tax shall become a legal charge in 3983
favor of the vendor and against the consumer. 3984

If any sale is claimed to be exempt under division (E) of 3985
section 5739.01 of the Revised Code or under section 5739.02 of 3986
the Revised Code, with the exception of divisions (B)(1) to (11) 3987
or ~~(29)~~(28) of section 5739.02 of the Revised Code, the consumer 3988
must furnish to the vendor, and the vendor must obtain from the 3989
consumer, a certificate specifying the reason that the sale is not 3990
legally subject to the tax. If the transaction is claimed to be 3991
exempt under division (B)(13) of section 5739.02 of the Revised 3992
Code, the exemption certificate shall be signed by both the 3993
contractor and ~~his~~ the contractee and such contractee shall be 3994
deemed to be the consumer of all items purchased under such claim 3995
of exemption in the event it is subsequently determined that the 3996
exemption is not properly claimed. The certificate shall be in 3997
such form as the tax commissioner by regulation prescribes. If no 3998
certificate is furnished or obtained within the period for filing 3999
the return for the period in which such sale is consummated, it 4000
shall be presumed that the tax applies. The failure to have so 4001
furnished, or to have so obtained, a certificate shall not prevent 4002
a vendor or consumer from establishing that the sale is not 4003
subject to the tax within ~~sixty~~ one hundred twenty days of the 4004
giving of notice by the commissioner of intention to levy an 4005
assessment, in which event the tax shall not apply. 4006

Certificates need not be obtained nor furnished where the 4007
identity of the consumer is such that the transaction is never 4008
subject to the tax imposed or where the item of tangible personal 4009
property sold or the service provided is never subject to the tax 4010
imposed, regardless of use, or when the sale is in interstate 4011
commerce. 4012

(C) As used in this division, "contractee" means a person who 4013
seeks to enter or enters into a contract or agreement with a 4014
contractor or vendor for the construction of real property or for 4015
the sale and installation onto real property of tangible personal 4016

property. 4017

Any contractor or vendor may request from any contractee a 4018
certification of what portion of the property to be transferred 4019
under such contract or agreement is to be incorporated into the 4020
realty and what portion will retain its status as tangible 4021
personal property after installation is completed. The contractor 4022
or vendor shall request the certification by certified mail 4023
delivered to the contractee, return receipt requested. Upon 4024
receipt of such request and prior to entering into the contract or 4025
agreement, the contractee shall furnish to the contractor or 4026
vendor a certification sufficiently detailed to enable the 4027
contractor or vendor to ascertain the resulting classification of 4028
all materials purchased or fabricated by the contractor or vendor 4029
and transferred to the contractee. This requirement applies to a 4030
contractee regardless of whether the contractee holds a direct 4031
payment permit under section 5739.031 of the Revised Code or 4032
furnishes to the contractor or vendor an exemption certificate as 4033
provided under this section. 4034

For the purposes of the taxes levied by this chapter and 4035
Chapter 5741. of the Revised Code, the contractor or vendor may in 4036
good faith rely on the contractee's certification. Notwithstanding 4037
division (B) of section 5739.01 of the Revised Code, if the tax 4038
commissioner determines that certain property certified by the 4039
contractee as tangible personal property pursuant to this division 4040
is, in fact, real property, the contractee shall be considered to 4041
be the consumer of all materials so incorporated into that real 4042
property and shall be liable for the applicable tax, and the 4043
contractor or vendor shall be excused from any liability on those 4044
materials. 4045

If a contractee fails to provide such certification upon the 4046
request of the contractor or vendor, the contractor or vendor 4047
shall comply with the provisions of this chapter and Chapter 5741. 4048

of the Revised Code without the certification. If the tax 4049
commissioner determines that such compliance has been performed in 4050
good faith and that certain property treated as tangible personal 4051
property by the contractor or vendor is, in fact, real property, 4052
the contractee shall be considered to be the consumer of all 4053
materials so incorporated into that real property and shall be 4054
liable for the applicable tax and the construction contractor or 4055
vendor shall be excused from any liability on those materials. 4056

This division does not apply to any contract or agreement 4057
where the tax commissioner determines as a fact that a 4058
certification under this division was made solely on the decision 4059
or advice of the contractor or vendor. 4060

(D) Notwithstanding division (B) of section 5739.01 of the 4061
Revised Code, whenever the total rate of tax imposed under this 4062
chapter is increased after the date after a construction contract 4063
is entered into, the contractee shall reimburse the construction 4064
contractor for any additional tax paid on tangible property 4065
consumed or services received pursuant to the contract. 4066

(E) A vendor who files a petition for reassessment ~~contesting~~ 4067
CONTESTING the assessment of tax on sales for which the vendor 4068
obtained no valid exemption certificates and for which the vendor 4069
failed to establish that the sales were properly not subject to 4070
the tax during the ~~sixty-day~~ one-hundred-twenty-day period allowed 4071
under division (B) of this section, may present to the tax 4072
commissioner additional evidence to prove that the sales were 4073
properly subject to a claim of exception or exemption. The vendor 4074
shall file such evidence within ninety days of the receipt by the 4075
vendor of the notice of assessment, except that, upon application 4076
and for reasonable cause, the period for submitting such evidence 4077
shall be extended thirty days. 4078

The commissioner shall consider such additional evidence in 4079

reaching the final determination on the assessment and petition 4080
for reassessment. 4081

(F) Whenever a vendor refunds to the consumer the full price 4082
of an item of tangible personal property on which the tax imposed 4083
under this chapter has been paid, ~~he~~ the vendor shall also refund 4084
the full amount of the tax paid. 4085

Sec. 5739.032. (A) If the total amount of tax required to be 4086
paid by a permit holder under section 5739.031 of the Revised Code 4087
for any calendar year indicated in the following schedule equals 4088
or exceeds the amounts prescribed for that year in the schedule, 4089
the permit holder shall remit each monthly tax payment in the 4090
second ensuing and each succeeding year by electronic funds 4091
transfer as prescribed by division (B) of this section. 4092

Year	1992	1993 and thereafter	<u>2000</u>	
		<u>through 1999</u>	<u>and thereafter</u>	
Tax payment	\$1,200,000	\$600,000	<u>\$60,000</u>	4093 4094 4095

If a permit holder's tax payment for each of two consecutive 4096
years beginning with ~~1993~~ 2000 is less than ~~six hundred sixty~~ 4097
thousand dollars, the permit holder is relieved of the requirement 4098
to remit taxes by electronic funds transfer for the year that next 4099
follows the second of the consecutive years in which the tax 4100
payment is less than ~~six hundred sixty~~ thousand dollars, and is 4101
relieved of that requirement for each succeeding year unless the 4102
tax payment in a subsequent year equals or exceeds ~~six hundred~~ 4103
sixty thousand dollars. 4104

The tax commissioner shall notify each permit holder required 4105
to remit taxes by electronic funds transfer of the permit holder's 4106
obligation to do so, shall maintain an updated list of those 4107
permit holders, and shall timely certify the list and any 4108
additions thereto or deletions therefrom to the treasurer of 4109
state. Failure by the tax commissioner to notify a permit holder 4110

subject to this section to remit taxes by electronic funds 4111
transfer does not relieve the permit holder of its obligation to 4112
remit taxes by electronic funds transfer. 4113

(B) Permit holders required by division (A) of this section 4114
to remit payments by electronic funds transfer shall remit such 4115
payments to the treasurer of state in the manner prescribed by 4116
rules adopted by the treasurer under section 113.061 of the 4117
Revised Code and on or before the dates specified under section 4118
5739.031 of the Revised Code. The payment of taxes by electronic 4119
funds transfer does not affect a permit holder's obligation to 4120
file the monthly return as required under section 5739.031 of the 4121
Revised Code. 4122

A permit holder required by this section to remit taxes by 4123
electronic funds transfer may apply to the treasurer of state in 4124
the manner prescribed by the treasurer to be excused from that 4125
requirement. The treasurer of state may excuse the permit holder 4126
from remittance by electronic funds transfer for good cause shown 4127
for the period of time requested by the permit holder or for a 4128
portion of that period. The treasurer shall notify the tax 4129
commissioner and the permit holder of the treasurer's decision as 4130
soon as is practicable. 4131

(C) If a permit holder required by this section to remit 4132
taxes by electronic funds transfer remits those taxes by some 4133
means other than by electronic funds transfer as prescribed by 4134
this section and the rules adopted by the treasurer of state, and 4135
the treasurer determines that such failure was not due to 4136
reasonable cause or was due to willful neglect, the treasurer 4137
shall notify the tax commissioner of the failure to remit by 4138
electronic funds transfer and shall provide the commissioner with 4139
any information used in making that determination. The tax 4140
commissioner may collect an additional charge by assessment in the 4141
manner prescribed by section 5739.13 of the Revised Code. The 4142

additional charge shall equal five per cent of the amount of the 4143
taxes required to be paid by electronic funds transfer, but shall 4144
not exceed five thousand dollars. Any additional charge assessed 4145
under this section is in addition to any other penalty or charge 4146
imposed under this chapter, and shall be considered as revenue 4147
arising from taxes imposed under this chapter. The tax 4148
commissioner may remit all or a portion of such a charge and may 4149
adopt rules governing such remission. 4150

No additional charge shall be assessed under this division 4151
against a permit holder that has been notified of its obligation 4152
to remit taxes under this section and that remits its first two 4153
tax payments after such notification by some means other than 4154
electronic funds transfer. The additional charge may be assessed 4155
upon the remittance of any subsequent tax payment that the permit 4156
holder remits by some means other than electronic funds transfer. 4157

Sec. 5739.033. The amount of tax due pursuant to sections 4158
5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is 4159
the sum of the taxes imposed pursuant to those sections at the 4160
situs of the consummation of the sale as determined under this 4161
section. 4162

(A) Except as otherwise provided in this section and division 4163
(C) of section 5739.031 of the Revised Code, all sales are 4164
conclusively determined to be consummated at the vendor's place of 4165
business. 4166

(1) If the consumer or the consumer's agent takes possession 4167
of the tangible personal property at a place of business of the 4168
vendor where the purchase contract or agreement was made, the sale 4169
is consummated at that place of business. 4170

(2) If the consumer or the consumer's agent takes possession 4171
of the tangible personal property other than at a place of 4172

business of the vendor, or takes possession at a warehouse or 4173
similar facility of the vendor, the sale is consummated at the 4174
vendor's place of business where the purchase contract or 4175
agreement was made or the purchase order was received. 4176

(3) If the vendor provides a service specified in division 4177
(B)(3)(a), (b), (c), (d), (n), or (o) of section 5739.01 of the 4178
Revised Code, the sale is consummated at the vendor's place of 4179
business where the service is performed or the contract or 4180
agreement for the service was made or the purchase order was 4181
received. 4182

(B) If the vendor is a transient vendor as specified in 4183
division (B) of section 5739.17 of the Revised Code, the sale is 4184
conclusively determined to be consummated at the vendor's 4185
temporary place of business or, if the transient vendor is the 4186
lessor of titled motor vehicles, titled watercraft, or titled 4187
outboard motors, at the location where the lessee keeps the leased 4188
property. 4189

~~(C) If the vendor is a limited vendor as specified in 4190
division (B) of section 5739.17 of the Revised Code, the sale is 4191
conclusively determined to be consummated at the temporary event 4192
at which the vendor is making sales. 4193~~

~~(D)~~ If the vendor makes sales of tangible personal property 4194
from a stock of goods carried in a motor vehicle, from which the 4195
purchaser makes selection and takes possession, or from which the 4196
vendor sells tangible personal property the quantity of which has 4197
not been determined prior to the time the purchaser takes 4198
possession, the sale is conclusively determined to be consummated 4199
at the location of the motor vehicle when the sale is made. 4200

~~(E)~~(D) If the vendor is a delivery vendor as specified in 4201
division (D) of section 5739.17 of the Revised Code, the sale is 4202
conclusively determined to be consummated at the place where the 4203

tangible personal property is delivered, where the leased property 4204
is used, or where the service is performed or received. 4205

~~(F)~~(E) If the vendor provides a service specified in division 4206
(B)(3)(e), (g), (h), (j), (k), (l), or (m) of section 5739.01 of 4207
the Revised Code, the sale is conclusively determined to be 4208
consummated at the location of the consumer where the service is 4209
performed or received. 4210

~~(G)~~(F) Except as provided in division ~~(J)~~(I) of this section, 4211
if the vendor provides a service specified in division (B)(3)(f) 4212
or (i) of section 5739.01 of the Revised Code, the sale is 4213
conclusively determined to be consummated at the location of the 4214
telephone number or account as reflected in the records of the 4215
vendor. If, in the case of a telecommunications service, the 4216
telephone number or account is located outside this state, the 4217
sale is conclusively determined to be consummated at the location 4218
in this state from which the service originated. 4219

~~(H)~~(G) If the vendor provides lodging to transient guests as 4220
specified in division (B)(2) of section 5739.01 of the Revised 4221
Code, the sale is conclusively determined to be consummated at the 4222
location where the lodging is located. 4223

~~(I)~~(H) If the vendor sells a warranty, maintenance or service 4224
contract, or similar agreement as specified in division (B)(7) of 4225
section 5739.01 of the Revised Code and the vendor is a delivery 4226
vendor, the sale is conclusively determined to be consummated at 4227
the location of the consumer. If the vendor is not a delivery 4228
vendor, the sale is conclusively determined to be consummated at 4229
the vendor's place of business where the contract or agreement was 4230
made, unless the warranty or contract is a component of the sale 4231
of a titled motor vehicle, titled watercraft, or titled outboard 4232
motor, in which case the sale is conclusively determined to be 4233
consummated in the county of titling. 4234

4235

~~(J)~~(I) Except as otherwise provided in this division, if the vendor sells a prepaid authorization number or a prepaid telephone calling card, the sale is conclusively determined to be consummated at the vendor's place of business and shall be taxed at the time of sale. If the vendor sells a prepaid authorization number or prepaid telephone calling card through a telephone call, electronic commerce, or any other form of remote commerce, the sale is conclusively determined to be made at the consumer's shipping address, or, if there is no item shipped, at the consumer's billing address.

Sec. 5739.12. Each person who has or is required to have a vendor's license, on or before the twenty-third day of each month, shall make and file a return for the preceding month, on forms prescribed by the tax commissioner, and shall pay the tax shown on the return to be due. The return shall show the amount of tax due from the vendor to the state for the period covered by the return and such other information as the commissioner deems necessary for the proper administration of this chapter. The commissioner may extend the time for making and filing returns and paying the tax, and may require that the return for the last month of any annual or semiannual period, as determined by the commissioner, be a reconciliation return detailing the vendor's sales activity for the preceding annual or semiannual period. The reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period. The commissioner may remit all or any part of amounts or penalties which may become due under this chapter and may adopt rules relating thereto. Such return shall be filed by mailing the same to the treasurer of state, together with payment of the amount of tax shown to be due thereon after deduction of any discount provided for under this section. The return shall be considered filed when received by the treasurer of state, and the payment shall be considered made when

received by the treasurer of state or when credited to an account 4268
designated by the treasurer of state. If the return is filed and 4269
the amount of tax shown thereon to be due is paid on or before the 4270
date such return is required to be filed, the vendor shall be 4271
entitled to a discount of three-fourths of one per cent of the 4272
amount shown to be due on the return. Amounts paid to the clerk of 4273
courts pursuant to section 4505.06 of the Revised Code shall be 4274
subject to the three-fourths of one per cent discount. The 4275
discount shall be in consideration for prompt payment to the clerk 4276
of courts and for other services performed by the vendor in the 4277
collection of the tax. 4278

Upon application to the commissioner, a vendor who is 4279
required to file monthly returns may be relieved of the 4280
requirement to report and pay the actual tax due, provided that 4281
the vendor agrees to remit to the treasurer of state payment of 4282
not less than an amount determined by the commissioner to be the 4283
average monthly tax liability of the vendor, based upon a review 4284
of the returns or other information pertaining to such vendor for 4285
a period of not less than six months nor more than two years 4286
immediately preceding the filing of the application. Vendors who 4287
agree to the above conditions shall make and file an annual or 4288
semiannual reconciliation return, as prescribed by the 4289
commissioner. The reconciliation return shall be filed by mailing 4290
or delivering the same to the treasurer of state, together with 4291
payment of the amount of tax shown to be due thereon after 4292
deduction of any discount provided in this section. Failure of a 4293
vendor to comply with any of the above conditions may result in 4294
immediate reinstatement of the requirement of reporting and paying 4295
the actual tax liability on each monthly return, and the 4296
commissioner may at ~~his~~ the commissioner's discretion deny the 4297
vendor the right to report and pay based upon the average monthly 4298
liability for a period not to exceed two years. The amount 4299

determined by the commissioner to be the average monthly tax liability of a vendor may be adjusted, based upon a review of the returns or other information pertaining to the vendor for a period of not less than six months nor more than two years preceding such adjustment.

The commissioner may authorize vendors whose tax liability is not such as to merit monthly returns, as determined by the commissioner upon the basis of administrative costs to the state, to make and file returns at less frequent intervals. When returns are filed at less frequent intervals in accordance with such a determination, the vendor shall be allowed the discount of three-fourths of one per cent in consideration for prompt payment with the return, provided the return is filed together with payment of the amount of tax shown to be due thereon, at the time specified by the commissioner.

The treasurer of state shall stamp or otherwise mark on all returns the date received by ~~him~~ the treasurer of state and shall also show thereon by stamp or otherwise the amount of payment received for the period for which the return is filed. Thereafter, the treasurer of state shall immediately transmit all returns filed under this section to the commissioner. Any vendor who fails to file a return or pay the full amount of the tax shown on the return to be due under this section and the rules of the commissioner ~~shall~~ may, for each such return ~~he~~ the vendor fails to file or each such tax ~~he~~ the vendor fails to pay in full as shown on the return within the period prescribed by this section and the rules of the commissioner, be required to forfeit and pay into the state treasury an additional charge ~~of~~ not exceeding fifty dollars or ten per cent of the tax required to be paid for the reporting period, whichever is greater, as revenue arising from the tax imposed by this chapter, and such sum may be collected by assessment in the manner provided in section 5739.13

of the Revised Code. The commissioner may remit all or a portion 4332
of the additional charge and may adopt rules relating ~~thereto~~ to 4333
the imposition and remission of the additional charge. 4334

If the amount required to be collected by a vendor from 4335
consumers is in excess of five per cent of ~~his~~ the vendor's 4336
receipts from sales which are taxable under section 5739.02 of the 4337
Revised Code, or in the case of sales subject to a tax levied 4338
pursuant to section 5739.021, 5739.023, or 5739.026 of the Revised 4339
Code, in excess of the percentage equal to the aggregate rate of 4340
such taxes and the tax levied by section 5739.02 of the Revised 4341
Code, such excess shall be remitted along with the remittance of 4342
the amount of tax due under section 5739.10 of the Revised Code. 4343

The commissioner, if ~~he~~ the commissioner deems it necessary 4344
in order to insure the payment of the tax imposed by this chapter, 4345
may require returns and payments to be made for other than monthly 4346
periods. The returns shall be signed by the vendor or ~~his~~ the 4347
vendor's authorized agent. 4348

Any vendor required to file a return and pay the tax under 4349
this section whose total payment in any year indicated in division 4350
(A) of section 5739.122 of the Revised Code equals or exceeds the 4351
amount shown in that division shall make each payment required by 4352
this section in the second ensuing and each succeeding year by 4353
electronic funds transfer as prescribed by section 5739.122 of the 4354
Revised Code, except as otherwise prescribed by that section. 4355

Sec. 5739.122. (A) If the total amount of tax required to be 4356
paid by a vendor under section 5739.12 of the Revised Code for any 4357
calendar year indicated in the following schedule equals or 4358
exceeds the amounts prescribed for that year in the schedule, the 4359
vendor shall remit each monthly tax payment in the second ensuing 4360
and each succeeding tax year by electronic funds transfer as 4361
prescribed by divisions (B) and (C) of this section. 4362

Year	1992	1993 and thereafter	<u>2000</u>	4363
		<u>through 1999</u>	<u>and thereafter</u>	4364
Tax payment	\$1,200,000	\$600,000	<u>\$60,000</u>	4365

If a vendor's tax payment for each of two consecutive years beginning with ~~1993~~ 2000 is less than ~~six hundred sixty~~ sixty thousand dollars, the vendor is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the tax payment is less than ~~six hundred sixty~~ sixty thousand dollars, and is relieved of that requirement for each succeeding year unless the tax payment in a subsequent year equals or exceeds ~~six hundred sixty~~ sixty thousand dollars.

The tax commissioner shall notify each vendor required to remit taxes by electronic funds transfer of the vendor's obligation to do so, shall maintain an updated list of those vendors, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a vendor subject to this section to remit taxes by electronic funds transfer does not relieve the vendor of its obligation to remit taxes by electronic funds transfer.

(B) Vendors required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates specified under section 5739.12 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a vendor's obligation to file the monthly return as required under section 5739.12 of the Revised Code.

~~(C) Any vendor who files returns under section 5739.12 of the Revised Code for two or more vendor's licenses shall remit tax~~

~~payments for those licenses by electronic funds transfer if the 4395~~
~~sum of those payments exceeds the amount specified in division (A) 4396~~
~~of this section. 4397~~

A vendor required by this section to remit taxes by 4398
electronic funds transfer may apply to the treasurer of state in 4399
the manner prescribed by the treasurer to be excused from that 4400
requirement. The treasurer of state may excuse the vendor from 4401
remittance by electronic funds transfer for good cause shown for 4402
the period of time requested by the vendor or for a portion of 4403
that period. The treasurer shall notify the tax commissioner and 4404
the vendor of the treasurer's decision as soon as is practicable. 4405

(D) If a vendor required by this section to remit taxes by 4406
electronic funds transfer remits those taxes by some means other 4407
than by electronic funds transfer as prescribed by this section 4408
and the rules adopted by the treasurer of state, and the treasurer 4409
determines that such failure was not due to reasonable cause or 4410
was due to willful neglect, the treasurer shall notify the tax 4411
commissioner of the failure to remit by electronic funds transfer 4412
and shall provide the commissioner with any information used in 4413
making that determination. The tax commissioner may collect an 4414
additional charge by assessment in the manner prescribed by 4415
section 5739.13 of the Revised Code. The additional charge shall 4416
equal five per cent of the amount of the taxes required to be paid 4417
by electronic funds transfer, but shall not exceed five thousand 4418
dollars. Any additional charge assessed under this section is in 4419
addition to any other penalty or charge imposed under this 4420
chapter, and shall be considered as revenue arising from taxes 4421
imposed under this chapter. The tax commissioner may remit all or 4422
a portion of such a charge and may adopt rules governing such 4423
remission. 4424

No additional charge shall be assessed under this division 4425
against a vendor that has been notified of its obligation to remit 4426

taxes under this section and that remits its first two tax 4427
payments after such notification by some means other than 4428
electronic funds transfer. The additional charge may be assessed 4429
upon the remittance of any subsequent tax payment that the vendor 4430
remits by some means other than electronic funds transfer. 4431

Sec. 5739.13. (A) If any vendor collects the tax imposed by 4432
or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 4433
the Revised Code, and fails to remit the tax to the state as 4434
prescribed, or on the sale of a motor vehicle, watercraft, or 4435
outboard motor required to be titled, fails to remit payment to a 4436
clerk of a court of common pleas as provided in section 1548.06 or 4437
4505.06 of the Revised Code, the vendor shall be personally liable 4438
for any tax collected and not remitted. The tax commissioner may 4439
make an assessment against such vendor based upon any information 4440
in the commissioner's possession. 4441

If any vendor fails to collect the tax or any consumer fails 4442
to pay the tax imposed by or pursuant to section 5739.02, 4443
5739.021, 5739.023, or 5739.026 of the Revised Code, on any 4444
transaction subject to the tax, the vendor or consumer shall be 4445
personally liable for the amount of the tax applicable to the 4446
transaction. ~~If any vendor fails to pay the annual license renewal 4447
fee required by division (E) of section 5739.17 of the Revised 4448
Code, the vendor shall be personally liable for the unpaid fee. 4449~~
The commissioner may make an assessment against either the vendor 4450
or consumer, as the facts may require, based upon any information 4451
in the commissioner's possession. 4452

An assessment against a vendor when the tax imposed by or 4453
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 4454
the Revised Code has not been collected or paid, shall not 4455
discharge the purchaser's or consumer's liability to reimburse the 4456
vendor for the tax applicable to such transaction. 4457

An assessment issued against either, pursuant to this 4458
section, shall not be considered an election of remedies, nor a 4459
bar to an assessment against the other for the tax applicable to 4460
the same transaction, provided that no assessment shall be issued 4461
against any person for the tax due on a particular transaction if 4462
the tax on that transaction actually has been paid by another. 4463

The commissioner may make an assessment against any vendor 4464
who fails to file a return or remit the proper amount of tax 4465
required by this chapter, or against any consumer who fails to pay 4466
the proper amount of tax required by this chapter. When 4467
information in the possession of the commissioner indicates that 4468
the amount required to be collected or paid under this chapter is 4469
greater than the amount remitted by the vendor or paid by the 4470
consumer, the commissioner may audit a sample of the vendor's 4471
sales or the consumer's purchases for a representative period, to 4472
ascertain the per cent of exempt or taxable transactions or the 4473
effective tax rate and may issue an assessment based on the audit. 4474
The commissioner shall make a good faith effort to reach agreement 4475
with the vendor or consumer in selecting a representative sample 4476
period. 4477

The tax commissioner may make an assessment, based on any 4478
information in his possession, against any person who fails to 4479
file a return or remit the proper amount of tax required by 4480
section 5739.102 of the Revised Code. 4481

The tax commissioner may issue an assessment on any 4482
transaction for which any tax imposed under this chapter or 4483
Chapter 5741. of the Revised Code was due and unpaid on the date 4484
the vendor or consumer was informed by an agent of the tax 4485
commissioner of an investigation or audit. If the vendor or 4486
consumer remits any payment of the tax for the period covered by 4487
the assessment after the vendor or consumer was informed of the 4488
investigation or audit, the payment shall be credited against the 4489

amount of the assessment. 4490

The commissioner shall give the party assessed written notice 4491
of the assessment ~~by personal service or certified mail~~ as 4492
provided in section 5703.37 of the Revised Code. 4493

(B) Unless the party to whom the notice of assessment is 4494
directed files with the commissioner within ~~thirty~~ sixty days 4495
after service of the notice of assessment, either personally or by 4496
certified mail, a petition for reassessment in writing, signed by 4497
the party assessed, or by the party's authorized agent having 4498
knowledge of the facts, the assessment shall become final and the 4499
amount of the assessment shall be due and payable from the party 4500
assessed to the treasurer of state. The petition shall indicate 4501
the objections of the party assessed, but additional objections 4502
may be raised in writing if received prior to the date shown on 4503
the final determination by the commissioner. 4504

Unless the petitioner waives a hearing, the commissioner 4505
shall assign a time and place for the hearing on the petition and 4506
notify the petitioner of the time and place of the hearing by 4507
personal service or certified mail, but the commissioner may 4508
continue the hearing from time to time if necessary. 4509

The commissioner may make such correction to the assessment 4510
as the commissioner finds proper. The commissioner shall serve a 4511
copy of the commissioner's final determination on the petitioner 4512
by personal service or certified mail, and the commissioner's 4513
decision in the matter shall be final, subject to appeal as 4514
provided in section 5717.02 of the Revised Code. Only objections 4515
decided on the merits by the board of tax appeals or a court shall 4516
be given collateral estoppel or res judicata effect in considering 4517
an application for refund of amounts paid pursuant to the 4518
assessment. 4519

(C) After an assessment becomes final, if any portion of the 4520

assessment remains unpaid, including accrued interest, a certified 4521
copy of the commissioner's entry making the assessment final may 4522
be filed in the office of the clerk of the court of common pleas 4523
in the county in which the place of business of the party assessed 4524
is located or the county in which the party assessed resides. If 4525
the party assessed maintains no place of business in this state 4526
and is not a resident of this state, the certified copy of the 4527
entry may be filed in the office of the clerk of the court of 4528
common pleas of Franklin county. 4529

The clerk, immediately upon the filing of such entry, shall 4530
enter a judgment for the state against the party assessed in the 4531
amount shown on the entry. The judgment may be filed by the clerk 4532
in a loose-leaf book entitled "special judgments for state, 4533
county, and transit authority retail sales tax" or, if 4534
appropriate, "special judgments for resort area excise tax," and 4535
shall have the same effect as other judgments. Execution shall 4536
issue upon the judgment upon the request of the tax commissioner, 4537
and all laws applicable to sales on execution shall apply to sales 4538
made under the judgment except as otherwise provided in this 4539
chapter. 4540

The portion of the assessment not paid within ~~thirty~~ sixty 4541
days after the date the assessment was issued shall bear interest 4542
at the rate per annum prescribed by section 5703.47 of the Revised 4543
Code from the day the tax commissioner issues the assessment until 4544
the assessment is paid. Interest shall be paid in the same manner 4545
as the tax and may be collected by issuing an assessment under 4546
this section. 4547

(D) All money collected by the commissioner under this 4548
section shall be paid to the treasurer of state, and when paid 4549
shall be considered as revenue arising from the taxes imposed by 4550
or pursuant to sections 5739.01 to 5739.31 of the Revised Code. 4551

Sec. 5739.133. (A) A penalty ~~shall~~ may be added to every 4552
amount assessed under section 5739.13 or 5739.15 of the Revised 4553
Code as follows: 4554

(1) In the case of an assessment against a person who fails 4555
to ~~file a return collect and remit the tax~~ required by this 4556
chapter or Chapter 5741. of the Revised Code, up to fifty per cent 4557
of the amount assessed; 4558

(2) In the case of a person whom the tax commissioner 4559
believes has collected the tax but failed to remit it to the state 4560
as required by this chapter or Chapter 5741. of the Revised Code, 4561
up to fifty per cent of the amount assessed; 4562

(3) In the case of all other assessments, up to fifteen per 4563
cent of the amount assessed. 4564

No amount assessed under section 5739.13 or 5739.15 of the 4565
Revised Code shall be subject to a penalty under this ~~division~~ 4566
section in excess of fifty per cent of the amount assessed. 4567

(B) All assessments issued under section 5739.13 and 5739.15 4568
of the Revised Code shall include preassessment interest computed 4569
at the rate per annum prescribed by section 5703.47 of the Revised 4570
Code. Beginning January 1, 1988, preassessment interest shall 4571
begin to accrue on the first day of January of the year following 4572
the date on which the person assessed was required to report and 4573
pay the tax under this chapter or Chapter 5741. of the Revised 4574
Code, and shall run until the date of the notice of assessment. If 4575
an assessment is issued within the first twelve months after the 4576
interest begins to accrue, no preassessment interest shall be 4577
assessed. With respect to taxes required to be paid under this 4578
chapter or Chapter 5741. of the Revised Code on or after January 4579
1, 1998, interest shall accrue as prescribed in division (A) of 4580
section 5739.132 of the Revised Code. 4581

(C) The commissioner may adopt rules providing for the 4582
imposition and remission of any penalty provided for under this 4583
section. 4584

Sec. 5739.15. (A) If the tax commissioner finds that a 4585
vendor, consumer, or officer, employee, or trustee of a 4586
corporation or business trust who is liable for any tax or charge 4587
levied by this chapter or Chapter 5741. of the Revised Code is 4588
about to depart from the state, remove the person's property from 4589
the state, conceal the person's self or property, or do any other 4590
act tending to prejudice, obstruct, or render wholly or partly 4591
ineffectual proceedings to collect the tax unless the proceedings 4592
are commenced without delay, or if the commissioner believes that 4593
the collection of the amount due from any vendor, consumer, or 4594
officer, employee, or trustee of a corporation or business trust 4595
will be jeopardized by delay, the commissioner may issue a 4596
jeopardy assessment against the person for the amount of the tax 4597
or charge plus a penalty as provided by section 5739.133 of the 4598
Revised Code. Upon issuance of a jeopardy assessment under this 4599
division, the total amount assessed shall immediately be due and 4600
payable unless security is provided pursuant to division (C) of 4601
this section. Any assessment issued under this section shall bear 4602
interest as prescribed by section 5739.13 of the Revised Code. 4603

(B) The commissioner immediately shall file an entry with the 4604
clerk of the court of common pleas in the same manner and with the 4605
same effect as provided in section 5739.13 of the Revised Code. 4606
Notice of the jeopardy assessment shall be served on the person 4607
assessed or the person's legal representative, as provided in 4608
section 5703.37 of the Revised Code, within five days of the 4609
filing of the entry. The person assessed may petition for 4610
reassessment within ~~thirty~~ sixty days of receipt of the notice of 4611
jeopardy assessment in the same manner as provided in section 4612

5739.13 of the Revised Code. Full or partial payment of the 4613
assessment shall not prejudice the commissioner's consideration of 4614
the merits of the assessment as contested by the petition for 4615
reassessment. Upon notification of the existence of the judgment 4616
filed pursuant to this division, any public official having 4617
control or custody of any funds or property of the person assessed 4618
immediately shall pay or deliver the funds or property to the 4619
commissioner as full or partial satisfaction of the jeopardy 4620
assessment. However, funds or property needed as evidence in 4621
criminal proceedings or that is expected to be forfeited pursuant 4622
to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need 4623
not be relinquished by the public official. Upon disposition of 4624
criminal and forfeiture proceedings, funds and property not needed 4625
as evidence and not forfeited shall be delivered to the 4626
commissioner. 4627

(C) If the person subject to a jeopardy assessment files a 4628
petition for reassessment and posts security satisfactory to the 4629
commissioner in an amount sufficient to satisfy the unpaid balance 4630
of the assessment, execution on the judgment shall be stayed 4631
pending disposition of the petition for reassessment and all 4632
appeals resulting from the petition. If the security is sufficient 4633
to satisfy the full amount of the assessment, the commissioner 4634
shall return any funds or property of the person previously 4635
seized. Upon satisfaction of the assessment, the commissioner 4636
shall order the security released and the judgment vacated. 4637
4638

Sec. 5739.17. (A) No person shall engage in making retail 4639
sales subject to a tax imposed by or pursuant to section 5739.02, 4640
5739.021, 5739.023, or 5739.026 of the Revised Code as a business 4641
without having a license therefor, except as otherwise provided in 4642
divisions (A)(1), (2), and (3) of this section. 4643

(1) In the dissolution of a partnership by death, the 4644
surviving partner may operate under the license of the partnership 4645
for a period of sixty days. 4646

(2) The heirs or legal representatives of deceased persons, 4647
and receivers and trustees in bankruptcy, appointed by any 4648
competent authority, may operate under the license of the person 4649
so succeeded in possession. 4650

(3) Two or more persons who are not partners may operate a 4651
single place of business under one license. In such case neither 4652
the retirement of any such person from business at that place of 4653
business, nor the entrance of any person, under an existing 4654
arrangement, shall affect the license or require the issuance of a 4655
new license, unless the person retiring from the business is the 4656
individual named on the vendor's license. 4657

Except as otherwise provided in this section, each applicant 4658
for a license shall make out and deliver to the county auditor of 4659
each county in which the applicant desires to engage in business, 4660
upon a blank to be furnished by such auditor for that purpose, a 4661
statement showing the name of the applicant, each place of 4662
business in the county where the applicant will make retail sales, 4663
the nature of the business, and any other information the tax 4664
commissioner reasonably prescribes in the form of a statement 4665
prescribed by the commissioner. 4666

At the time of making the application, the applicant shall 4667
pay into the county treasury a license fee in the sum of 4668
twenty-five dollars for each fixed place of business in the county 4669
where retail sales will be consummated. Upon receipt of the 4670
application and exhibition of the county treasurer's receipt, 4671
showing the payment of the license fee, the county auditor shall 4672
issue to the applicant a license for each fixed place of business 4673
designated in the application, authorizing the applicant to engage 4674

in business at that location. If a vendor's identity ~~or the~~ 4675
~~location of the vendor's place of business~~ changes, the vendor 4676
shall apply for a new license. If a vendor wishes to move an 4677
existing fixed place of business to a new location within the same 4678
county, the vendor shall obtain a new vendor's license or submit a 4679
request to the tax commissioner to transfer the existing vendor's 4680
license to the new location. When the new location has been 4681
verified as being within the same county, the tax commissioner 4682
shall authorize the transfer and notify the county auditor of the 4683
change of location. If a vendor wishes to move an existing fixed 4684
place of business to another county, the vendor's license shall 4685
not transfer and the vendor shall obtain a new vendor's license 4686
from the county in which the business is to be located. The form 4687
of the license shall be prescribed by the commissioner. The fees 4688
collected shall be credited to the general fund of the county. 4689

A vendor that makes retail sales subject to tax under Chapter 4690
5739. of the Revised Code pursuant to a permit issued by the 4691
division of liquor control shall obtain a vendor's license in the 4692
identical name and for the identical address as shown on the 4693
permit. 4694

Except as otherwise provided in this section, if a vendor has 4695
no fixed place of business and sells from a vehicle, each vehicle 4696
intended to be used within a county constitutes a place of 4697
business for the purpose of this section. 4698

(B) As used in this division, "transient vendor" means any 4699
person who leases titled motor vehicles, titled watercraft, or 4700
titled outboard motors or, in the usual course of the person's 4701
business, transports inventory, stock of goods, or similar 4702
tangible personal property to a temporary place of business in a 4703
county in which the person has no fixed place of business, for the 4704
purpose of making retail sales of such property. A "temporary 4705
place of business" means any public or quasi-public place 4706

including, but not limited to, a hotel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of making retail sales of goods to the public. A place of business is not temporary if the same person conducted business at the place continuously for more than six months or occupied the premises as the person's permanent residence for more than six months, or if the person intends it to be a fixed place of business.

~~As used in this division, "limited vendor" means any person who, in order to participate in a temporary exhibition, show, fair, flea market, or similar event, transports inventory, stock of goods, or similar property to a temporary place of business located at a temporary exhibition, show, fair, flea market, or similar event held in a county in which the person has no fixed place of business for which the person holds a vendor's license for the purpose of making retail sales of such property.~~

Any transient vendor, in lieu of obtaining a vendor's license under division (A) of this section for counties in which the transient vendor has no fixed place of business, may apply to the tax commissioner, on a form prescribed by the commissioner, for a transient vendor's license. The transient vendor's license authorizes the transient vendor to make retail sales in any county in which the transient vendor does not maintain a fixed place of business. Any holder of a transient vendor's license shall not be required to obtain a separate vendor's license from the county auditor in that county. Upon the tax commissioner's determination that an applicant is a transient vendor, the applicant shall pay a license fee in the amount of ~~one hundred~~ twenty-five dollars, at which time the tax commissioner shall issue the license. The tax commissioner may require a vendor to be licensed as a transient vendor if, in the opinion of the commissioner, such licensing is

necessary for the efficient administration of the tax. 4739

~~Any limited vendor, in lieu of obtaining a vendor's license 4740
under division (A) of this section for a county in which the 4741
limited vendor has no fixed place of business for which the 4742
limited vendor holds a vendor's license may apply to the tax 4743
commissioner or the county auditor of that county, on a form 4744
prescribed by the commissioner, for a limited vendor's license. 4745
The limited vendor's license authorizes the limited vendor to make 4746
retail sales at a temporary exhibition, show, fair, flea market, 4747
or similar event held in that county for the duration of the event 4748
or twenty days, whichever period is shorter. Any holder of a 4749
limited vendor's license shall not be required to obtain a 4750
separate vendor's license pursuant to division (A) of this section 4751
from the county auditor in that county or transient vendor's 4752
license from the tax commissioner in order to participate in the 4753
event. The applicant shall pay a license fee in the amount of five 4754
dollars, at which time the tax commissioner or county auditor 4755
shall issue a license for making retail sales at the event 4756
designated in the application. Fees collected for licenses issued 4757
by a county auditor shall be credited to the general fund of the 4758
county. Fees collected for licenses issued by the tax commissioner 4759
shall be credited to the state general revenue fund. 4760~~

~~A limited vendor who makes retail sales at an event and who 4761
is not the holder of a transient vendor's license or a vendor's 4762
license for the county in which the event is held, shall file a 4763
tax return for and remit the tax on any sales made at the event 4764
according and subject to the requirements of section 5739.12 of 4765
the Revised Code; except that the return and the remittance shall 4766
be made within fifteen days of the close of the event. 4767~~

Any holder of a valid transient vendor's license may make 4768
retail sales as a limited vendor at a temporary exhibition, show, 4769
fair, flea market, or similar event, held anywhere in the state 4770

~~without obtaining a limited vendor's license and~~ without complying 4771
with any provision of section 311.37 of the Revised Code. Any 4772
holder of a valid vendor's license may make retail sales as a 4773
~~limited~~ transient vendor at a temporary exhibition, show, fair, 4774
flea market, or similar event held in any county in which the 4775
vendor maintains a fixed place of business for which the vendor 4776
holds a vendor's license without obtaining a ~~limited~~ transient 4777
vendor's license. 4778

(C) As used in this division, "service vendor" means any 4779
person who, in the usual course of the person's business, sells 4780
services described in division (B)(3)(e), (f), (g), (h), (i), (j), 4781
(k), (l), or (m) of section 5739.01 of the Revised Code. 4782

Every service vendor shall make application to the tax 4783
commissioner for a service vendor's license. Each applicant shall 4784
pay a license fee in the amount of twenty-five dollars. Upon the 4785
commissioner's determination that an applicant is a service vendor 4786
and payment of the fee, the commissioner shall issue the applicant 4787
a service vendor's license. 4788

Only sales described in division (B)(3)(e), (f), (g), (h), 4789
(i), (j), (k), (l), or (m) of section 5739.01 of the Revised Code 4790
may be made under authority of a service vendor's license, and 4791
that license authorizes sales to be made at any place in this 4792
state. Any service vendor who makes sales of other services or 4793
tangible personal property subject to the sales tax also shall be 4794
licensed under division (A), (B), or (D) of this section. 4795

(D) As used in this division, "delivery vendor" means any 4796
vendor who engages in one or more of the activities described in 4797
divisions (D)(1) to (4) of this section, and who maintains no 4798
store, showroom, or similar fixed place of business or other 4799
location where merchandise regularly is offered for sale or 4800
displayed or shown in catalogs for selection or pick-up by 4801
consumers, or where consumers bring goods for repair or other 4802

service. 4803

(1) The vendor makes retail sales of tangible personal 4804
property; 4805

(2) The vendor rents or leases, at retail, tangible personal 4806
property, except titled motor vehicles, titled watercraft, or 4807
titled outboard motors; 4808

(3) The vendor provides a service, at retail, described in 4809
division (B)(3)(a), (b), (c), or (d) of section 5739.01 of the 4810
Revised Code; or 4811

(4) The vendor makes retail sales of warranty, maintenance or 4812
service contracts, or similar agreements as described in division 4813
(B)(7) of section 5739.01 of the Revised Code. 4814

A transient ~~or limited~~ vendor or a seller registered pursuant 4815
to section 5741.17 of the Revised Code is not a delivery vendor. 4816

Delivery vendors shall apply to the tax commissioner, on a 4817
form prescribed by the commissioner, for a delivery vendor's 4818
license. Each applicant shall pay a license fee of twenty-five 4819
dollars for each delivery vendor's license, to be credited to the 4820
general revenue fund. Upon the commissioner's determination that 4821
the applicant is a delivery vendor, the commissioner shall issue 4822
the license. A delivery vendor's license authorizes retail sales 4823
to be made throughout the state. All sales of the vendor must be 4824
reported under the delivery license. The commissioner may require 4825
a vendor to be licensed as a delivery vendor if, in the opinion of 4826
the commissioner, such licensing is necessary for the efficient 4827
administration of the tax. The commissioner shall not issue a 4828
delivery vendor license to a vendor who holds a license issued 4829
under division (A) of this section. 4830

(E) ~~On or before the first day of February of each year, each~~ 4831
~~vendor, except limited vendors, shall renew each vendor's license~~ 4832

~~in the manner prescribed by the commissioner. The vendor shall pay 4833
a renewal fee of ten dollars for each license other than a 4834
transient vendor's license, and forty dollars for a transient 4835
vendor's license. Failure to pay the renewal fee timely shall be 4836
cause for the commissioner to revoke the license pursuant to 4837
section 5739.19 of the Revised Code or to suspend the license 4838
pursuant to section 5739.30 of the Revised Code. All renewal fees 4839
shall be credited to the general revenue fund. 4840~~

~~(F) Any transient vendor or limited vendor who is issued a 4841
license pursuant to this section shall display the license or a 4842
copy of it prominently, in plain view, at every place of business 4843
of the transient or limited vendor. Every owner, organizer, or 4844
promoter who operates a fair, flea market, show, exhibition, 4845
convention, or similar event at which transient or limited vendors 4846
are present shall keep a comprehensive record of all such vendors, 4847
listing the vendor's name, permanent address, vendor's license 4848
number, and the type of goods sold. Such records shall be kept for 4849
four years and shall be open to inspection by the tax 4850
commissioner. 4851~~

Sec. 5739.19. The tax commissioner may revoke any retail 4852
vendor's license ~~if he determines~~ upon ascertaining that ~~the~~ 4853
~~vendor has failed to comply with the requirements of this chapter~~ 4854
~~and that~~ the vendor has no need for the license because ~~he~~ the 4855
vendor is not engaged in making taxable retail sales. Notice of 4856
the revocation shall be delivered to the vendor personally or by 4857
certified mail, return receipt requested. The revocation shall be 4858
effective on the first day of the month following the expiration 4859
of fifteen days after the vendor received the notice of the 4860
revocation. 4861

The revocation of the vendor's license shall be stayed if, 4862
within fifteen days after receiving notice of the revocation, the 4863

vendor objects, in writing, to the revocation and pays all 4864
outstanding tax and penalties resulting from his failure to comply 4865
with the provisions of this chapter, or provides evidence that the 4866
tax and any penalties have been paid. The commissioner shall 4867
consider the written objections of the vendor and issue a final 4868
determination on the revocation of the vendor's license. The 4869
commissioner's final determination may be appealed to the board of 4870
tax appeals pursuant to section 5717.02 of the Revised Code. The 4871
revocation shall be effective on the first day of the month 4872
following the expiration of all time limits for appeal. 4873

Sec. 5739.30. (A) No person, including any officer, employee, 4874
or trustee of a corporation or business trust, shall fail to file 4875
any return or report required to be filed by this chapter, or file 4876
or cause to be filed any incomplete, false or ~~fraudulent~~ fraudulent 4877
return, report, or statement, or aid or abet another in the filing 4878
of any false or fraudulent return, report, or statement. 4879

(B) If any vendor required to file monthly returns under 4881
section 5739.12 of the Revised Code fails, on two consecutive 4882
months or on three or more months within a twelve-month period, to 4883
file such returns when due or to pay the tax thereon, or if any 4884
vendor authorized by the tax commissioner to file semiannual 4885
returns, fails on two or more occasions within a twenty-four month 4886
period, to file such returns when due or to pay the tax due 4887
thereon, ~~or if any vendor fails to pay the annual license renewal~~ 4888
~~fee required by division (E) of section 5739.17 of the Revised~~ 4889
~~Code,~~ the commissioner may do any of the following: 4890

(1) Require the vendor to furnish security in an amount equal 4891
to the average tax liability of the vendor for a period of one 4892
year, as determined by the commissioner from a review of returns 4893
or other information pertaining to the vendor, which amount shall 4894

in no event be less than one thousand dollars. The security may be
in the form of a corporate surety bond, satisfactory to the
commissioner, conditioned upon payment of the tax due with the
returns from the vendor. The security shall be filed within ten
days following the vendor's receipt of the notice from the
commissioner of its requirements.

(2) Suspend the license issued to the vendor pursuant to
section 5739.17 of the Revised Code. The suspension shall be
effective ten days after service of written notice to the vendor
of the commissioner's intention to do so. The notice shall be
served upon the vendor personally or by certified mail. On the
first day of the suspension, the commissioner shall cause to be
posted, at every public entrance of the vendor's premises, a
notice identifying the vendor and the location and informing the
public that the vendor's license is under suspension and that no
retail sales may be transacted at that location. No person, other
than the commissioner or ~~his~~ the commissioner's agent or employee,
shall remove, cover, or deface the posted notice. No license which
has been suspended under this section shall be reinstated, and no
posted notice shall be removed, until the vendor has filed
complete and correct returns for all periods in which no return
had been filed and paid the full amount of the tax, penalties, and
other charges due on those returns.

A corporate surety bond filed under this section shall be
returned to the vendor if, for a period of twelve consecutive
months following the date the bond was filed, the vendor has filed
all returns and remitted payment with them within the time
prescribed in section 5739.12 of the Revised Code.

Sec. 5741.02. (A) For the use of the general revenue fund of
the state, an excise tax is hereby levied on the storage, use, or
other consumption in this state of tangible personal property or

the benefit realized in this state of any service provided. The 4926
tax shall be collected pursuant to the schedules in section 4927
5739.025 of the Revised Code. 4928

(B) Each consumer, storing, using, or otherwise consuming in 4929
this state tangible personal property or realizing in this state 4930
the benefit of any service provided, shall be liable for the tax, 4931
and such liability shall not be extinguished until the tax has 4932
been paid to this state; provided, that the consumer shall be 4933
relieved from further liability for the tax if the tax has been 4934
paid to a seller in accordance with section 5741.04 of the Revised 4935
Code or prepaid by the seller in accordance with section 5741.06 4936
of the Revised Code. 4937

(C) The tax does not apply to the storage, use, or 4938
consumption in this state of the following described tangible 4939
personal property or services, nor to the storage, use, or 4940
consumption or benefit in this state of tangible personal property 4941
or services purchased under the following described circumstances: 4942

(1) When the sale of property or service in this state is 4943
subject to the excise tax imposed by sections 5739.01 to 5739.31 4944
of the Revised Code, provided said tax has been paid; 4945

(2) Except as provided in division (D) of this section, 4946
tangible personal property or services, the acquisition of which, 4947
if made in Ohio, would be a sale not subject to the tax imposed by 4948
sections 5739.01 to 5739.31 of the Revised Code; 4949

(3) Property or services, the storage, use, or other 4950
consumption of or benefit from which this state is prohibited from 4951
taxing by the Constitution of the United States, laws of the 4952
United States, or the Constitution of this state. This exemption 4953
shall not exempt from the application of the tax imposed by this 4954
section the storage, use, or consumption of tangible personal 4955
property that was purchased in interstate commerce, but that has 4956

come to rest in this state, provided that fuel to be used or 4957
transported in carrying on interstate commerce that is stopped 4958
within this state pending transfer from one conveyance to another 4959
is exempt from the excise tax imposed by this section and section 4960
5739.02 of the Revised Code; 4961

(4) Transient use of tangible personal property in this state 4962
by a nonresident tourist or vacationer, or a non-business use 4963
within this state by a nonresident of this state, if the property 4964
so used was purchased outside this state for use outside this 4965
state and is not required to be registered or licensed under the 4966
laws of this state; 4967

(5) Tangible personal property or services rendered upon 4968
which taxes have been paid to another jurisdiction to the extent 4969
of the amount of the tax paid to such other jurisdiction. Where 4970
the amount of the tax imposed by this section and imposed pursuant 4971
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 4972
exceeds the amount paid to another jurisdiction, the difference 4973
shall be allocated between the tax imposed by this section and any 4974
tax imposed by a county or a transit authority pursuant to section 4975
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 4976
to the respective rates of such taxes. 4977

As used in this subdivision, "taxes paid to another 4978
jurisdiction" means the total amount of retail sales or use tax or 4979
similar tax based upon the sale, purchase, or use of tangible 4980
personal property or services rendered legally, levied by and paid 4981
to another state or political subdivision thereof, or to the 4982
District of Columbia, where the payment of such tax does not 4983
entitle the taxpayer to any refund or credit for such payment. 4984

(6) The transfer of a used manufactured home or used mobile 4985
home, as defined by section 5739.0210 of the Revised Code, made on 4986
or after January 1, 2000. 4987

(D) The tax applies to the storage, use, or other consumption 4988
in this state of tangible personal property or services, the 4989
acquisition of which at the time of sale was excepted under 4990
division (E)(1) of section 5739.01 of the Revised Code from the 4991
tax imposed by section 5739.02 of the Revised Code, but which has 4992
subsequently been temporarily or permanently stored, used, or 4993
otherwise consumed in a taxable manner. 4994

(E) If any transaction is claimed to be exempt under division 4995
(E) of section 5739.01 of the Revised Code or under section 4996
5739.02 of the Revised Code, with the exception of divisions 4997
(B)(1) to (11) or (29) of section 5739.02 of the Revised Code, the 4998
consumer shall furnish to the seller, and the seller shall obtain 4999
from the consumer, a certificate specifying the reason that the 5000
transaction is not subject to the tax. If the transaction is 5001
claimed to be exempt under division (B)(13) of section 5739.02 of 5002
the Revised Code, the exemption certificate shall be signed by 5003
both the contractor and contractee, and the contractee shall be 5004
deemed to be the consumer of all items purchased under the claim 5005
of exemption if it is subsequently determined that the exemption 5006
is not properly claimed. The certificate shall be in such form as 5007
the tax commissioner by rule prescribes. If no certificate is 5008
furnished or obtained within the period for filing the return for 5009
the period in which the transaction is consummated, it shall be 5010
presumed that the tax applies. The failure to have so furnished or 5011
obtained a certificate shall not preclude a seller or consumer 5012
from establishing, within one hundred twenty days of the giving of 5013
notice by the commissioner of intention to levy an assessment, 5014
that the transaction is not subject to the tax. 5015

(F) A seller who files a petition for reassessment contesting 5017
the assessment of tax on transactions for which the seller 5018
obtained no valid exemption certificates and for which the seller 5019

failed to establish that the transactions were not subject to the 5020
tax during the one-hundred-twenty-day period allowed under 5021
division (E) of this section may present to the tax commissioner 5022
additional evidence to prove that the transactions were exempt. 5023
The seller shall file such evidence within ninety days of the 5024
receipt by the seller of the notice of assessment, except that, 5025
upon application and for reasonable cause, the tax commissioner 5026
may extend the period for submitting such evidence thirty days. 5027

(G) For the purpose of the proper administration of sections 5028
5741.01 to 5741.22 of the Revised Code, and to prevent the evasion 5029
of the tax hereby levied, it shall be presumed that any use, 5030
storage, or other consumption of tangible personal property in 5031
this state is subject to the tax until the contrary is 5032
established. 5033

Sec. 5741.121. (A) If the total amount of tax required to be 5034
paid by a consumer under section 5741.12 of the Revised Code for 5035
any year indicated in the following schedule equals or exceeds the 5036
amount prescribed for that year in the schedule, the consumer 5037
shall remit each monthly tax payment in the second ensuing and 5038
each succeeding year by electronic funds transfer as prescribed by 5039
division (B) of this section. 5040

Year	1992	1993 and thereafter	2000	
		<u>through 1999</u>	<u>and thereafter</u>	
Tax payment	\$1,200,000	\$600,000	<u>\$60,000</u>	5043

If a consumer's tax payment for each of two consecutive years 5044
beginning with ~~1993~~ 2000 is less than ~~six hundred~~ sixty thousand 5045
dollars, the consumer is relieved of the requirement to remit 5046
taxes by electronic funds transfer for the year that next follows 5047
the second of the consecutive years in which the tax payment is 5048
less than ~~six hundred~~ sixty thousand dollars, and is relieved of 5049
that requirement for each succeeding year unless the tax payment 5050

in a subsequent year equals or exceeds ~~six hundred~~ sixty thousand 5051
dollars. 5052

The tax commissioner shall notify each consumer required to 5053
remit taxes by electronic funds transfer of the consumer's 5054
obligation to do so, shall maintain an updated list of those 5055
consumers, and shall timely certify the list and any additions 5056
thereto or deletions therefrom to the treasurer of state. Failure 5057
by the tax commissioner to notify a consumer subject to this 5058
section to remit taxes by electronic funds transfer does not 5059
relieve the consumer of ~~its~~ the consumer's obligation to remit 5060
taxes by electronic funds transfer. 5061

(B) Consumers required by division (A) of this section to 5062
remit payments by electronic funds transfer shall remit such 5063
payments to the treasurer of state in the manner prescribed by 5064
rules adopted by the treasurer under section 113.061 of the 5065
Revised Code and on or before the dates specified under section 5066
5741.12 of the Revised Code. The payment of taxes by electronic 5067
funds transfer does not affect a consumer's obligation to file the 5068
monthly return as required under section 5741.12 of the Revised 5069
Code. 5070

A consumer required by this section to remit taxes by 5071
electronic funds transfer may apply to the treasurer of state in 5072
the manner prescribed by the treasurer to be excused from that 5073
requirement. The treasurer of state may excuse the consumer from 5074
remittance by electronic funds transfer for good cause shown for 5075
the period of time requested by the consumer or for a portion of 5076
that period. The treasurer shall notify the tax commissioner and 5077
the consumer of the treasurer's decision as soon as is 5078
practicable. 5079

(C) If a consumer required by this section to remit taxes by 5080
electronic funds transfer remits those taxes by some means other 5081
than by electronic funds transfer as prescribed by the rules 5082

adopted by the treasurer of state, and the treasurer determines
that such failure was not due to reasonable cause or was due to
willful neglect, the treasurer shall notify the tax commissioner
of the failure to remit by electronic funds transfer and shall
provide the commissioner with any information used in making that
determination. The tax commissioner may collect an additional
charge by assessment in the manner prescribed by section 5741.13
of the Revised Code. The additional charge shall equal five per
cent of the amount of the taxes required to be paid by electronic
funds transfer, but shall not exceed five thousand dollars. Any
additional charge assessed under this section is in addition to
any other penalty or charge imposed under this chapter, and shall
be considered as revenue arising from taxes imposed under this
chapter. The tax commissioner may remit all or a portion of such a
charge and may adopt rules governing such remission.

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No additional charge shall be assessed under this division
against a consumer that has been notified of ~~its~~ the consumer's
obligation to remit taxes under this section and that remits its
first two tax payments after such notification by some means other
than electronic funds transfer. The additional charge may be
assessed upon the remittance of any subsequent tax payment that
the consumer remits by some means other than electronic funds
transfer.

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Sec. 5743.03. Except as provided in section 5743.04 of the
Revised Code, the taxes imposed under sections 5743.02, 5743.023,
5743.024, and 5743.026 of the Revised Code shall be paid by the
purchase of stamps. A stamp shall be affixed to each package of an
aggregate denomination not less than the amount of the tax upon
the contents thereof. The stamp, so affixed, shall be prima-facie
evidence of payment of the tax. Except as is provided in the rules
prescribed by the tax commissioner under authority of sections

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5743.01 to 5743.20 of the Revised Code, and unless such stamps 5114
have been previously affixed, they shall be so affixed by each 5115
wholesale dealer, and canceled by writing or stamping across the 5116
face thereof the number assigned to such wholesale dealer by the 5117
tax commissioner for that purpose, prior to the delivery of any 5118
cigarettes to any person in this state, or in the case of a tax 5119
levied pursuant to section 5743.024 or 5743.026 of the Revised 5120
Code, prior to the delivery of cigarettes to any person in the 5121
county in which the tax is levied. 5122

Except as provided in the rules prescribed by the 5123
commissioner under authority of sections 5743.01 to 5743.20 of the 5124
Revised Code, and unless such stamps have been previously affixed, 5125
each retail dealer shall within twenty-four hours after the 5126
receipt of any cigarettes at the retail dealer's place of business 5127
and prior to the delivery thereof to any person in this state, or 5128
in the case of a tax levied pursuant to section 5743.024 or 5129
5743.026 of the Revised Code prior to the delivery thereof to any 5130
person in the county in which the tax is levied, so affix such 5131
stamps and cancel same by writing or stamping across the face 5132
thereof the number assigned to such retail dealer by the 5133
commissioner for that purpose. 5134

Whenever any cigarettes are found in the place of business of 5135
any retail dealer without proper tax stamps affixed thereto and 5136
canceled, it is presumed that such cigarettes are kept therein in 5137
violation of sections 5743.01 to 5743.20 of the Revised Code. 5138

Each wholesale dealer and each retail dealer who purchases 5139
cigarettes without proper tax stamps affixed thereto shall, on or 5140
before the thirty-first day of the month following the close of 5141
each semiannual period, which period shall end on the thirtieth 5142
day of June and the thirty-first day of December of each year, 5143
make and file a return of the preceding semiannual period, on such 5144

form as is prescribed by the tax commissioner, showing ~~his~~ the 5145
dealer's entire purchases and sales of cigarettes and stamps or 5146
impressions for such semiannual period and accurate inventories as 5147
of the beginning and end of each semiannual period of cigarettes, 5148
stamped or unstamped; cigarette tax stamps affixed or unaffixed 5149
and unused meter impressions; and such other information as the 5150
commissioner finds necessary to the proper administration of 5151
sections 5743.01 to 5743.20 of the Revised Code. The commissioner 5152
may extend the time for making and filing returns and may remit 5153
all or any part of amounts of penalties which may become due under 5154
sections 5743.01 to 5743.20 of the Revised Code. The wholesale or 5155
retail dealer shall deliver the return together with a remittance 5156
of the tax deficiency reported thereon to the treasurer of state. 5157
The treasurer of state shall stamp or otherwise mark on the return 5158
the date it was received and shall also show thereon by stamp or 5159
otherwise a payment or nonpayment of the deficiency shown by the 5160
return. Thereafter, the treasurer of state shall immediately 5161
transmit all returns filed under this section to the commissioner. 5162
Any wholesale or retail dealer who fails to file a return under 5163
this section and the rules of the commissioner ~~shall~~ may be 5164
required, for each day the dealer so fails, to forfeit and pay 5165
into the state treasury the sum of one dollar as revenue arising 5166
from the tax imposed by sections 5743.01 to 5743.20 of the Revised 5167
Code and such sum may be collected by assessment in the manner 5168
provided in section 5743.081 of the Revised Code. If the 5169
commissioner finds it necessary in order to insure the payment of 5170
the tax imposed by sections 5743.01 to 5743.20 of the Revised 5171
Code, the commissioner may require returns and payments to be made 5172
other than semiannually. The returns shall be signed by the 5173
wholesale or retail dealer or ~~his~~ an authorized agent thereof. 5174

Sec. 5743.081. (A) If any wholesale dealer or retail dealer 5175
fails to pay the tax levied under sections 5743.02, 5743.023, 5176

5743.024, or 5743.026 of the Revised Code as required by sections 5177
5743.01 to 5743.20 of the Revised Code, and by the rules of the 5178
tax commissioner, or fails to collect the tax from the purchaser 5179
or consumer, the commissioner may make an assessment against the 5180
wholesale or retail dealer based upon any information in the 5181
commissioner's possession. 5182

The commissioner may make an assessment against any wholesale 5183
or retail dealer who fails to file a return required by section 5184
5743.03 or 5743.025 of the Revised Code. 5185

No assessment shall be made against any wholesale or retail 5186
dealer for any taxes imposed under sections 5743.02, 5743.023, 5187
5743.024, or 5743.026 of the Revised Code more than three years 5188
after the last day of the calendar month which immediately follows 5189
the semiannual period prescribed in section 5743.03 of the Revised 5190
Code in which the sale was made, or more than three years after 5191
the semiannual return for such period is filed, whichever is 5192
later. This section does not bar an assessment against any 5193
wholesale or retail dealer who fails to file a return as required 5194
by section 5743.03 or 5743.025 of the Revised Code, or who files a 5195
fraudulent return. 5196

A penalty of up to thirty per cent ~~shall~~ may be added to the 5197
amount of every assessment made under this section. The 5198
commissioner may adopt rules providing for the imposition and 5199
remission of penalties added to assessments made under this 5200
section. 5201

The commissioner shall give the party assessed written notice 5202
of the assessment ~~by personal service or certified mail~~ as 5203
provided in section 5703.37 of the Revised Code. The notice shall 5204
specify separately any portion of the assessment that represents a 5205
county tax. 5206

(B) Unless the party to whom the notice of assessment is 5207

directed files with the commissioner within ~~thirty~~ sixty days 5208
after service of the notice of assessment, either personally or by 5209
certified mail, a petition for reassessment in writing, signed by 5210
the party assessed, or by the party's authorized agent having 5211
knowledge of the facts, the assessment shall become final and the 5212
amount of the assessment shall be due and payable from the party 5213
assessed to the treasurer of state. The petition shall indicate 5214
the objections of the party assessed, but additional objections 5215
may be raised in writing if received prior to the date shown on 5216
the final determination by the commissioner. 5217

Unless the petitioner waives a hearing, the commissioner 5218
shall assign a time and place for the hearing on the petition and 5219
notify the petitioner of the time and place of the hearing by 5220
personal service or certified mail, but the commissioner may 5221
continue the hearing from time to time if necessary. 5222

The commissioner may make such correction to an assessment as 5223
the commissioner finds proper. The commissioner shall serve a copy 5224
of the final determination on the petitioner by personal service 5225
or certified mail, and the commissioner's decision in the matter 5226
shall be final, subject to appeal as provided in section 5717.02 5227
of the Revised Code. Only objections decided on the merits by the 5228
board of tax appeals or a court shall be given collateral estoppel 5229
or res judicata effect in considering an application for refund of 5230
amounts paid pursuant to the assessment. 5231

(C) After an assessment becomes final, if any portion of the 5232
assessment remains unpaid, including accrued interest, a certified 5233
copy of the commissioner's entry making the assessment final may 5234
be filed in the office of the clerk of the court of common pleas 5235
in the county in which the wholesale or retail dealer's place of 5236
business is located or the county in which the party assessed 5237
resides. If the party assessed maintains no place of business in 5238
this state and is not a resident of this state, the certified copy 5239

of the entry may be filed in the office of the clerk of the court 5240
of common pleas of Franklin county. 5241

The clerk, immediately upon the filing of the commissioner's 5242
entry, shall enter a judgment for the state against the party 5243
assessed in the amount shown on the entry. The judgment may be 5244
filed by the clerk in a loose-leaf book entitled "special 5245
judgments for state cigarette sales tax," and shall have the same 5246
effect as other judgments. Execution shall issue upon the judgment 5247
upon the request of the tax commissioner, and all laws applicable 5248
to sales on execution shall apply to sales made under the judgment 5249
except as otherwise provided in sections 5743.01 to 5743.20 of the 5250
Revised Code. 5251

The portion of the assessment not paid within ~~thirty~~ sixty 5252
days after the assessment was issued shall bear interest at the 5253
rate per annum prescribed by section 5703.47 of the Revised Code 5254
from the day the tax commissioner issues the assessment until it 5255
is paid. Interest shall be paid in the same manner as the tax and 5256
may be collected by the issuance of an assessment under this 5257
section. 5258

(D) All money collected by the commissioner under this 5259
section shall be paid to the treasurer of state, and when paid 5260
shall be considered as revenue arising from the taxes imposed by 5261
sections 5743.01 to 5743.20 of the Revised Code. 5262

Sec. 5743.082. (A) If the tax commissioner finds that a 5263
wholesale dealer or retail dealer, liable for tax under sections 5264
5743.01 to 5743.20 of the Revised Code, is about to depart from 5265
the state, remove the wholesale or retail dealer's property from 5266
the state, conceal the wholesale or retail dealer's person or 5267
property, or do any other act tending to prejudice, obstruct, or 5268
render wholly or partly ineffectual proceedings to collect the 5269
tax, unless the proceedings are commenced without delay, or if the 5270

commissioner believes that the collection of the amount due from 5271
any wholesale dealer or retail dealer will be jeopardized by 5272
delay, the commissioner may issue a jeopardy assessment against 5273
the wholesale or retail dealer for the amount of the tax, plus a 5274
penalty of up to thirty per cent. Upon issuance of a jeopardy 5275
assessment under this division, the total amount assessed shall 5276
immediately be due and payable unless security is provided 5277
pursuant to division (C) of this section. Any assessment issued 5278
under this section shall bear interest as prescribed by section 5279
5743.081 of the Revised Code. 5280

(B) The commissioner immediately shall file an entry with the 5281
clerk of the court of common pleas in the same manner and with the 5282
same effect as provided in section 5743.081 of the Revised Code. 5283
Notice of the jeopardy assessment shall be served on the dealer 5284
assessed or the dealer's legal representative, as provided in 5285
section 5703.37 of the Revised Code, within five days of the 5286
filing of the entry. The dealer assessed may petition for 5287
reassessment within ~~thirty~~ sixty days of receipt of the notice of 5288
jeopardy assessment in the same manner as provided in section 5289
5743.081 of the Revised Code. Full or partial payment of the 5290
assessment shall not prejudice the commissioner's consideration of 5291
the merits of the assessment as contested by the petition for 5292
reassessment. Upon notification of the existence of the judgment 5293
filed pursuant to this division, any public official having 5294
control or custody of any funds or property of the person assessed 5295
immediately shall pay or deliver the funds or property to the 5296
commissioner as full or partial satisfaction of the jeopardy 5297
assessment. However, funds or property needed as evidence in 5298
criminal proceedings or that is expected to be forfeited pursuant 5299
to section 2923.35, 2933.41, or 2933.43 of the Revised Code, need 5300
not be relinquished by the public official. Upon disposition of 5301
criminal and forfeiture proceedings, funds and property not needed 5302

as evidence and not forfeited shall be delivered to the 5303
commissioner. 5304

(C) If the dealer subject to a jeopardy assessment files a 5305
petition for reassessment and posts security satisfactory to the 5306
commissioner in an amount sufficient to satisfy the unpaid balance 5307
of the assessment, execution on the judgment shall be stayed 5308
pending disposition of the petition for reassessment and all 5309
appeals resulting from the petition. If the security is sufficient 5310
to satisfy the full amount of the assessment, the commissioner 5311
shall return any funds or property of the dealer that previously 5312
were seized. Upon satisfaction of the assessment the commissioner 5313
shall order the security released and the judgment vacated. 5314

(D) The commissioner may adopt rules providing for the 5316
imposition and remission of penalties imposed under this section. 5317

Sec. 5743.52. (A) Each distributor of tobacco products 5318
subject to the tax levied by section 5743.51 of the Revised Code, 5319
on or before the last day of each month, shall file with the 5320
treasurer of state a return for the preceding month showing any 5321
information the tax commissioner finds necessary for the proper 5322
administration of sections 5743.51 to 5743.66 of the Revised Code, 5323
together with remittance of the tax due. The treasurer of state 5324
shall stamp or otherwise mark on the return the date it was 5325
received and shall also show thereon by stamp or otherwise the 5326
amount of payment received with the return. Thereafter, the 5327
treasurer of state shall immediately transmit all returns filed 5328
under this section to the tax commissioner. The return and payment 5329
of the tax required by this section shall be filed in such a 5330
manner that it is received by the treasurer of state on or before 5331
the last day of the month following the reporting period. If the 5332
return is filed and the amount of tax shown on the return to be 5333

due is paid on or before the date the return is required to be 5334
filed, the distributor is entitled to a discount equal to two and 5335
five-tenths per cent of the amount shown on the return to be due. 5336

5337

(B) Any person who fails to timely file the return and make 5338
payment of taxes as required under this section, section 5743.62, 5339
or section 5743.63 of the Revised Code ~~shall~~ may be required to 5340
pay an additional charge ~~equal to~~ not exceeding the greater of 5341
fifty dollars or ten per cent of the tax due. Any additional 5342
charge imposed under this section may be collected by assessment 5343
as provided in section 5743.56 of the Revised Code. 5344

(C) If any tax due is not paid timely in accordance with 5345
sections 5743.52, 5743.62, or 5743.63 of the Revised Code, the 5346
person liable for the tax shall pay interest, calculated at the 5347
rate per annum as prescribed by section 5703.47 of the Revised 5348
Code, from the date the tax payment was due to the date of payment 5349
or to the date an assessment is issued under section 5743.56 of 5350
the Revised Code, whichever occurs first. The commissioner may 5351
collect such interest by assessment pursuant to section 5743.56 of 5352
the Revised Code. 5353

(D) The commissioner may authorize the filing of returns and 5354
the payment of the tax required by this section, section 5743.62, 5355
or section 5743.63 of the Revised Code for periods longer than a 5356
calendar month. 5357

(E) The commissioner may order any taxpayer to file with the 5358
commissioner security to the satisfaction of the commissioner 5359
conditioned upon filing the return and paying the taxes required 5360
under this section, section 5743.62, or section 5743.63 of the 5361
Revised Code if the commissioner believes that the collection of 5362
the tax may be in jeopardy. 5363

Sec. 5743.56. (A) Any person required to pay the tax imposed 5364
by section 5743.51, 5743.62, or 5743.63 of the Revised Code is 5365
personally liable for the tax. The tax commissioner may make an 5366
assessment, based upon any information in the commissioner's 5367
possession, against any person who fails to file a return or pay 5368
any tax, interest, or additional charge as required by this 5369
chapter. The commissioner shall give the person assessed written 5370
notice of such assessment ~~by personal service or certified mail~~ as 5371
provided in section 5703.37 of the Revised Code. 5372

(B) When the information in the possession of the tax 5373
commissioner indicates that a person liable for the tax imposed by 5374
section 5743.51, 5743.62, or 5743.63 of the Revised Code has not 5375
paid the full amount of tax due, the commissioner may audit a 5376
representative sample of the person's business and may issue an 5377
assessment based on such audit. 5378

(C) A penalty of up to fifteen per cent ~~shall~~ may be added to 5379
all amounts assessed under this section. The commissioner may 5380
adopt rules providing for the imposition and remission of such 5381
penalties. 5382

(D) Unless the person assessed files with the tax 5383
commissioner within ~~thirty~~ sixty days after service of the notice 5384
of assessment, either personally or by certified mail, a petition 5385
for reassessment in writing by the person assessed or the 5386
authorized agent of the person assessed having knowledge of the 5387
facts, the assessment becomes final and the amount of the 5388
assessment is due and payable from the person assessed to the 5389
treasurer of state. A petition shall indicate the objections to 5390
the assessment of the person assessed, but additional objections 5391
may be raised in writing prior to the date shown on the final 5392
determination of the tax commissioner. The commissioner shall 5393
grant the petitioner a hearing on the petition, unless waived by 5394

the petitioner. 5395

The commissioner may make such correction to the assessment 5396
as the commissioner finds proper and shall issue a final 5397
determination thereon. The commissioner shall serve a copy of the 5398
final determination on the petitioner either by personal service 5399
or by certified mail, and the commissioner's decision in the 5400
matter is final, subject to appeal under section 5717.02 of the 5401
Revised Code. 5402

(E) After an assessment becomes final, if any portion of the 5403
assessment, including accrued interest, remains unpaid, a 5404
certified copy of the commissioner's entry making the assessment 5405
final may be filed in the office of the clerk of the court of 5406
common pleas in the county in which the person assessed resides or 5407
in which the person assessed conducts business. If the person 5408
assessed maintains no place of business in this state and is not a 5409
resident of this state, the certified copy of the entry may be 5410
filed in the office of the clerk of the court of common pleas of 5411
Franklin county. 5412

The clerk, immediately upon the filing of the entry, shall 5413
enter a judgment for the state against the person assessed in the 5414
amount shown to be due. The judgment may be filed by the clerk in 5415
a loose-leaf book entitled "special judgments for state tobacco 5416
products tax," and shall have the same effect as other judgments. 5417
Execution shall issue upon the judgment upon the request of the 5418
tax commissioner, and all laws applicable to sales on execution 5419
shall apply to sales made under the judgment. 5420

The portion of the assessment not paid within ~~thirty~~ sixty 5421
days after the day the assessment is issued shall bear interest at 5422
the rate per annum prescribed by section 5703.47 of the Revised 5423
Code from the day the tax commissioner issues the assessment until 5424
the assessment is paid. Interest shall be paid in the same manner 5425
as the tax and may be collected by issuing an assessment under 5426

this section. 5427

(F) If the commissioner believes that collection of the tax 5428
will be jeopardized unless proceedings to collect or secure 5429
collection of the tax are instituted without delay, the 5430
commissioner may issue a jeopardy assessment against the person 5431
liable for the tax. Upon issuance of the jeopardy assessment, the 5432
commissioner immediately shall file an entry with the clerk of the 5433
court of common pleas in the manner prescribed by division (E) of 5434
this section. Notice of the jeopardy assessment shall be served on 5435
the person assessed or the legal representative of the person 5436
assessed, as provided in section 5703.37 of the Revised Code, 5437
within five days of the filing of the entry with the clerk. The 5438
total amount assessed is immediately due and payable, unless the 5439
person assessed files a petition for reassessment in accordance 5440
with division (D) of this section and provides security in a form 5441
satisfactory to the commissioner and in an amount sufficient to 5442
satisfy the unpaid balance of the assessment. Full or partial 5443
payment of the assessment does not prejudice the commissioner's 5444
consideration of the petition for reassessment. 5445

(G) All money collected by the commissioner under this 5446
section shall be paid to the treasurer of state as revenue arising 5447
from the tax imposed by sections 5743.51, 5743.62, and 5743.63 of 5448
the Revised Code. 5449

Sec. 5747.07. (A) As used in this section: 5450

(1) "Partial weekly withholding period" means a period during 5451
which an employer directly, indirectly, or constructively pays 5452
compensation to, or credits compensation to the benefit of, an 5453
employee, and that consists of a consecutive Saturday, Sunday, 5454
Monday, and Tuesday or a consecutive Wednesday, Thursday, and 5455
Friday. There are two partial weekly withholding periods each 5456
week, except that a partial weekly withholding period cannot 5457

extend from one calendar year into the next calendar year; if the
first day of January falls on a day other than Saturday or
Wednesday, the partial weekly withholding period ends on the
thirty-first day of December and there are three partial weekly
withholding periods during that week.

(2) "Undeposited taxes" means the taxes an employer is
required to deduct and withhold from an employee's compensation
pursuant to section 5747.06 of the Revised Code that have not been
remitted to the tax commissioner pursuant to this section or to
the treasurer of state pursuant to section 5747.072 of the Revised
Code.

(3) A "week" begins on Saturday and concludes at the end of
the following Friday.

(B) Except as provided in divisions (C) and (D) of this
section and in division (A) of section 5747.072 of the Revised
Code, every employer required to deduct and withhold any amount
under section 5747.06 of the Revised Code shall file a return and
shall pay the amount required by law as follows:

(1) An employer who accumulates or is required to accumulate
undeposited taxes of one hundred thousand dollars or more during a
partial weekly withholding period shall make the payment of the
undeposited taxes by the close of the first banking day after the
day on which the accumulation reaches one hundred thousand
dollars. If required under division (I) of this section, the
payment shall be made by electronic funds transfer under section
5747.072 of the Revised Code.

(2)(a) Except as required by division (B)(1) of this section,
an employer described in division (B)(2)(b) of this section shall
make the payment of undeposited taxes within three banking days
after the close of a partial weekly withholding period during
which the employer was required to deduct and withhold any amount

under this chapter. If required under division (I) of this 5489
section, the payment shall be made by electronic funds transfer 5490
under section 5747.072 of the Revised Code. 5491
5492

(b) For amounts required to be deducted and withheld during 5493
1994, an employer described in division (B)(2)(b) of this section 5494
is one whose actual or required payments under this section 5495
exceeded one hundred eighty thousand dollars during the 5496
twelve-month period ending June 30, 1993. For amounts required to 5497
be deducted and withheld during 1995 and each year thereafter, an 5498
employer described in division (B)(2)(b) of this section is one 5499
whose actual or required payments under this section were at least 5500
eighty-four thousand dollars during the twelve-month period ending 5501
on the thirtieth day of June of the preceding calendar year. 5502

(3) Except as required by divisions (B)(1) and (2) of this 5503
section, if an employer's actual or required payments were more 5504
than two thousand dollars during the twelve-month period ending on 5505
the thirtieth day of June of the preceding calendar year, the 5506
employer shall make the payment of undeposited taxes for each 5507
month during which they were required to be withheld no later than 5508
fifteen days following the last day of that month. The employer 5509
shall file the return prescribed by the tax commissioner with the 5510
payment. 5511

(4) Except as required by divisions (B)(1), (2), and (3) of 5512
this section, an employer shall make the payment of undeposited 5513
taxes for each calendar quarter during which they were required to 5514
be withheld no later than the last day of the month following the 5515
last day of March, June, September, and December each year. The 5516
employer shall file the return prescribed by the tax commissioner 5517
with the payment. 5518

(C) The return and payment schedules prescribed by divisions 5519
(B)(1) and (2) of this section do not apply to the return and 5520

payment of undeposited school district income taxes arising from 5521
taxes levied pursuant to Chapter 5748. of the Revised Code. 5522
Undeposited school district income taxes shall be returned and 5523
paid pursuant to divisions (B)(3) and (4) of this section, as 5524
applicable. 5525

(D)(1) The requirements of division (B) of this section are 5526
met if the amount paid is not less than ninety-five per cent of 5527
the actual tax withheld or required to be withheld for the prior 5528
quarterly, monthly, or partial weekly withholding period, and the 5529
underpayment is not due to willful neglect. Any underpayment of 5530
withheld tax shall be paid within thirty days of the date on which 5531
the withheld tax was due without regard to division (D)(1) of this 5532
section. An employer described in division (B)(1) or (2) of this 5533
section shall make the payment by electronic funds transfer under 5534
section 5747.072 of the Revised Code. 5535

(2) If the tax commissioner believes that quarterly or 5536
monthly payments would result in a delay that might jeopardize the 5537
remittance of withholding payments, the commissioner may order 5538
that the payments be made weekly, or more frequently if necessary, 5539
and the payments shall be made no later than three banking days 5540
following the close of the period for which the jeopardy order is 5541
made. An order requiring weekly or more frequent payments shall be 5542
delivered to the employer personally or by certified mail and 5543
remains in effect until the commissioner notifies the employer to 5544
the contrary. 5545

(3) If compelling circumstances exist concerning the 5546
remittance of undeposited taxes, the commissioner may order the 5547
employer to make payments under any of the payment schedules under 5548
division (B) of this section. The order shall be delivered to the 5549
employer personally or by certified mail and shall remain in 5550
effect until the commissioner notifies the employer to the 5551
contrary. For purposes of division (D)(3) of this section, 5552

"compelling circumstances" exist if either or both of the 5553
following are true: 5554

(a) Based upon annualization of payments made or required to 5555
be made during the preceding calendar year and during the current 5556
calendar year, the employer would be required for the next 5557
calendar year to make payments under division (B)(2) of this 5558
section. 5559

(b) Based upon annualization of payments made or required to 5560
be made during the current calendar year, the employer would be 5561
required for the next calendar year to make payments under 5562
division (B)(2) of this section. 5563

(E)(1) An employer described in division (B)(1) or (2) of 5564
this section shall file, not later than the last day of the month 5565
following the end of each calendar quarter, a return covering, but 5566
not limited to, both the actual amount deducted and withheld and 5567
the amount required to be deducted and withheld for the tax 5568
imposed under section 5747.02 of the Revised Code during each 5569
partial weekly withholding period or portion of a partial weekly 5570
withholding period during that quarter. The employer shall file 5571
the quarterly return even if the aggregate amount required to be 5572
deducted and withheld for the quarter is zero dollars. At the time 5573
of filing the return, the employer shall pay any amounts of 5574
undeposited taxes for the quarter, whether actually deducted and 5575
withheld or required to be deducted and withheld, that have not 5576
been previously paid. If required under division (I) of this 5577
section, the payment shall be made by electronic funds transfer. 5578
The tax commissioner shall prescribe the form and other 5579
requirements of the quarterly return. 5580

(2) In addition to other returns required to be filed and 5581
payments required to be made under this section, every employer 5582
required to deduct and withhold taxes shall file, not later than 5583

the thirty-first day of January of each year, an annual return 5584
covering, but not limited to, both the aggregate amount deducted 5585
and withheld and the aggregate amount required to be deducted and 5586
withheld during the entire preceding year for the tax imposed 5587
under section 5747.02 of the Revised Code and for each tax imposed 5588
under Chapter 5748. of the Revised Code. At the time of filing 5589
that return, the employer shall pay over any amounts of 5590
undeposited taxes for the preceding year, whether actually 5591
deducted and withheld or required to be deducted and withheld, 5592
that have not been previously paid. The employer shall make the 5593
annual report, to each employee and to the tax commissioner, of 5594
the compensation paid and each tax withheld, as the commissioner 5595
by rule may prescribe. 5596

Each employer required to deduct and withhold any tax is 5597
liable for the payment of that amount required to be deducted and 5598
withheld, whether or not the tax has in fact been withheld, unless 5599
the failure to withhold was based upon the employer's good faith 5600
in reliance upon the statement of the employee as to liability, 5601
and the amount shall be deemed to be a special fund in trust for 5602
the general revenue fund. 5603

(F) Each employer shall file with the employer's annual 5604
return the following items of information on employees for whom 5605
withholding is required under section 5747.06 of the Revised Code: 5606

(1) The full name of each employee, the employee's address, 5607
the employee's school district of residence, and in the case of a 5608
nonresident employee, the employee's principal county of 5609
employment; 5610

(2) The social security number of each employee; 5611

(3) The total amount of compensation paid before any 5612
deductions to each employee for the period for which the annual 5613
return is made; 5614

(4) The amount of the tax imposed by section 5747.02 of the Revised Code and the amount of each tax imposed under Chapter 5748. of the Revised Code withheld from the compensation of the employee for the period for which the annual return is made. The commissioner may extend upon good cause the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions of time. If the extension results in an extension of time for the payment of the amounts withheld with respect to which the return is filed, the employer shall pay, at the time the amount withheld is paid, an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that amount withheld, from the day that amount was originally required to be paid to the day of actual payment or to the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(5) In addition to all other interest charges and penalties imposed, all amounts of taxes withheld or required to be withheld and remaining unpaid after the day the amounts are required to be paid shall bear interest from the date prescribed for payment at the rate per annum prescribed by section 5703.47 of the Revised Code on the amount unpaid, in addition to the amount withheld, until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(G) An employee of a corporation, limited liability company, or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer, member, manager, or trustee of a corporation, limited liability company, or business trust who is responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or

bankruptcy of a corporation, limited liability company, or 5647
business trust does not discharge a responsible officer's, 5648
member's, manager's, employee's, or trustee's liability for a 5649
failure of the corporation, limited liability company, or business 5650
trust to file returns or pay tax due. 5651

(H) If an employer required to deduct and withhold income tax 5652
from compensation and to pay that tax to the state under sections 5653
5747.06 and 5747.07 of the Revised Code sells the employer's 5654
business or stock of merchandise or quits the employer's business, 5655
the taxes required to be deducted and withheld and paid to the 5656
state pursuant to those sections prior to that time, together with 5657
any interest and penalties imposed on those taxes, become due and 5658
payable immediately, and that person shall make a final return 5659
within fifteen days after the date of selling or quitting 5660
business. The employer's successor shall withhold a sufficient 5661
amount of the purchase money to cover the amount of the taxes, 5662
interest, and penalties due and unpaid, until the former owner 5663
produces a receipt from the tax commissioner showing that the 5664
taxes, interest, and penalties have been paid or a certificate 5665
indicating that no such taxes are due. If the purchaser of the 5666
business or stock of merchandise fails to withhold purchase money, 5667
the purchaser shall be personally liable for the payment of the 5668
taxes, interest, and penalties accrued and unpaid during the 5669
operation of the business by the former owner. If the amount of 5670
taxes, interest, and penalties outstanding at the time of the 5671
purchase exceeds the total purchase money, the tax commissioner in 5672
the commissioner's discretion may adjust the liability of the 5673
seller or the responsibility of the purchaser to pay that 5674
liability to maximize the collection of withholding tax revenue. 5675

(I)(1) An employer described in division (I)(2) of this 5677
section shall make all payments required by this section for the 5678

year by electronic funds transfer under section 5747.072 of the Revised Code. 5679
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(2)(a) For 1994, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1993. 5681
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(b) For 1995, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1994. 5685
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(c) For 1996, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded three hundred thousand dollars during the twelve-month period ending June 30, 1995. 5689
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(d) For 1997 ~~and thereafter~~ through 2000, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year. 5693
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(e) For 2001 and thereafter, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year. 5698
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Sec. 5747.09. (A) As used in this section: 5703

(1) "Estimated taxes" means the amount that the taxpayer estimates to be ~~his~~ the taxpayer's combined tax liability under this chapter and ~~Chapter~~ Chapter 5748. of the Revised Code for the current taxable year. 5704
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(2) "Tax liability" means the total taxes due for the taxable 5708

year, after allowing any credit to which the taxpayer is entitled, 5709
but prior to applying any estimated tax payment, withholding 5710
payment, or refund from another tax year. 5711

(3) "Taxes paid" include payments of estimated taxes made 5712
under division (C) of this section, taxes withheld from the 5713
taxpayer's compensation, and tax refunds applied by the taxpayer 5714
in payment of estimated taxes. 5715

(B) Every taxpayer shall make declaration of estimated taxes 5716
for the current taxable year, in the form that the tax 5717
commissioner shall prescribe, if the amount payable as estimated 5718
taxes, less the amount to be withheld from the taxpayer's 5719
compensation, is more than ~~three~~ five hundred dollars. For 5720
purposes of this section, taxes withheld from compensation shall 5721
be considered as paid in equal amounts on each payment date unless 5722
the taxpayer establishes the dates on which all amounts were 5723
actually withheld, in which case the amounts withheld shall be 5724
considered as paid on the dates on which the amounts were actually 5725
withheld. Taxpayers filing joint returns pursuant to section 5726
5747.08 of the Revised Code shall file joint declarations of 5727
estimated taxes. A taxpayer may amend a declaration under rules 5728
prescribed by the commissioner. A taxpayer having a taxable year 5729
of less than twelve months shall make a declaration under rules 5730
prescribed by the commissioner. The declaration of estimated taxes 5731
for an individual under a disability shall be made and filed by 5732
the person who is required to file the income tax return. 5733

The declaration of estimated taxes shall be filed on or 5734
before the fifteenth day of April of each year or on or before the 5735
fifteenth day of the fourth month after the taxpayer becomes 5736
subject to tax for the first time. 5737

Taxpayers reporting on a fiscal year basis shall file a 5738
declaration on or before the fifteenth day of the fourth month 5739

after the beginning of each fiscal year or period. 5740

The declaration shall be filed upon a form prescribed by the 5741
commissioner and furnished by or obtainable from the commissioner. 5742

The original declaration or any subsequent amendment may be 5743
increased or decreased on or before any subsequent quarterly 5744
payment day as provided in this section. 5745

(C) The required portion of the tax liability for the taxable 5746
year that shall be paid through estimated taxes made payable to 5747
the treasurer of state, including the application of tax refunds 5748
to estimated taxes, and withholding on or before the applicable 5749
payment date shall be as follows: 5750

(1) On or before the fifteenth day of the fourth month after 5751
the beginning of the taxable year, twenty-two and one-half per 5752
cent of the tax liability for the taxable year; 5753

(2) On or before the fifteenth day of the sixth month after 5754
the beginning of the taxable year, forty-five per cent of the tax 5755
liability for the taxable year; 5756

(3) On or before the fifteenth day of the ninth month after 5757
the beginning of the taxable year, sixty-seven and one-half per 5758
cent of the tax liability for the taxable year; 5759

(4) On or before the fifteenth day of the first month of the 5760
following taxable year, ninety per cent of the tax liability for 5761
the taxable year. 5762

When an amended return has been filed, the unpaid balance 5763
shown due on the amended return shall be paid in equal 5764
installments on or before the remaining payment dates. 5765

On or before the fifteenth day of the fourth month of the 5766
year following that for which the declaration or amended 5767
declaration was filed, an annual return shall be filed and any 5768
balance which may be due shall be paid with the return in 5769

accordance with section 5747.08 of the Revised Code. 5770

(D) In the case of any underpayment of estimated taxes, an 5771
interest penalty shall be added to the taxes for the tax year at 5772
the rate per annum prescribed by section 5703.47 of the Revised 5773
Code upon the amount of underpayment for the period of 5774
underpayment, unless the underpayment is due to reasonable cause 5775
as described in division (E) of this section. The amount of the 5776
underpayment shall be determined as follows: 5777

(1) For the first payment of estimated taxes each year, 5778
twenty-two and one-half per cent of the tax liability, less the 5779
amount of taxes paid by the date prescribed for that payment; 5780

(2) For the second payment of estimated taxes each year, 5781
forty-five per cent of the tax liability, less the amount of taxes 5782
paid by the date prescribed for that payment; 5783

(3) For the third payment of estimated taxes each year, 5784
sixty-seven and one-half per cent of the tax liability, less the 5785
amount of taxes paid by the date prescribed for that payment; 5786

(4) For the fourth payment of estimated taxes each year, 5787
ninety per cent of the tax liability, less the amount of taxes 5788
paid by the date prescribed for that payment. 5789

The period of the underpayment shall run from the day the 5790
estimated payment was required to be made to the date on which the 5791
payment is made. For purposes of this section, a payment of 5792
estimated taxes on or before any payment date shall be considered 5793
a payment of any previous underpayment only to the extent the 5794
payment of estimated taxes exceeds the amount of the payment 5795
presently required to be paid to avoid any penalty. 5796

The interest penalty imposed under division (D) of this 5797
section shall be in lieu of any other interest charge or penalty 5798
imposed for failure to file an estimated return and make estimated 5799

payments as required by this section. 5800

(E) An underpayment of estimated taxes determined under 5801
division (D) of this section shall be due to reasonable cause and 5802
the interest penalty imposed by this section shall not be added to 5803
the taxes for the tax year if either of the following apply: 5804

(1) The amount of tax that was paid equals at least ninety 5805
per cent of the tax liability for the current taxable year, 5806
determined by annualizing the income received during the year up 5807
to the end of the month immediately preceding the month in which 5808
the payment is due; 5809

(2) The amount of tax that was paid equals at least one 5810
hundred per cent of the tax liability shown on the return of the 5811
taxpayer for the preceding taxable year, provided that the 5812
immediately preceding taxable year reflected a period of twelve 5813
months and the taxpayer filed a return under section 5747.08 of 5814
the Revised Code for that year. 5815

The tax commissioner may waive the requirement for filing a 5816
declaration of estimated taxes for any class of taxpayers ~~if he~~ 5817
~~finds~~ after finding that the waiver is reasonable and proper in 5818
view of administrative costs and other factors. 5819

Sec. 5747.13. (A) If any employer collects the tax imposed by 5820
section 5747.02 or under Chapter 5748. of the Revised Code and 5821
fails to remit the tax as required by law, or fails to collect the 5822
tax, the employer is personally liable for any amount collected 5823
which the employer fails to remit, or any amount which the 5824
employer fails to collect. If any taxpayer fails to file a return 5825
or fails to pay the tax imposed by section 5747.02 or under 5826
Chapter 5748. of the Revised Code, the taxpayer is personally 5827
liable for the amount of the tax. 5828

If any employer, taxpayer, or qualifying entity required to 5829

file a return under this chapter fails to file the return within 5830
the time prescribed, files an incorrect return, fails to remit the 5831
full amount of the taxes due for the period covered by the return, 5832
or fails to remit any additional tax due as a result of a 5833
reduction in the amount of the credit allowed under division (B) 5834
of section 5747.05 of the Revised Code together with interest on 5835
the additional tax within the time prescribed by that division, 5836
the tax commissioner may make an assessment against any person 5837
liable for any deficiency for the period for which the return is 5838
or taxes are due, based upon any information in the commissioner's 5839
possession. 5840

An assessment issued against either the employer or the 5841
taxpayer pursuant to this section shall not be considered an 5842
election of remedies or a bar to an assessment against the other 5843
for failure to report or pay the same tax. No assessment shall be 5844
issued against any person if the tax actually has been paid by 5845
another. 5846

No assessment shall be made or issued against an employer, 5847
taxpayer, or qualifying entity more than four years after the 5848
final date the return subject to assessment was required to be 5849
filed or the date the return was filed, whichever is later. 5850
However, the commissioner may assess any balance due as the result 5851
of a reduction in the credit allowed under division (B) of section 5852
5747.05 of the Revised Code, including applicable penalty and 5853
interest, within four years of the date on which the taxpayer 5854
reports a change in either the portion of the taxpayer's adjusted 5855
gross income subjected to an income tax or tax measured by income 5856
in another state or the District of Columbia or the amount of 5857
liability for an income tax or tax measured by income to another 5858
state or the District of Columbia, as required by division (B)(3) 5859
of section 5747.05 of the Revised Code. Such time limits may be 5860
extended if both the employer, taxpayer, or qualifying entity and 5861

the commissioner consent in writing to the extension. Any such 5862
extension shall extend the four-year time limit in division (B) of 5863
section 5747.11 of the Revised Code for the same period of time. 5864
There shall be no bar or limit to an assessment against an 5865
employer for taxes withheld from employees and not remitted to the 5866
state, against an employer, taxpayer, or qualifying entity that 5867
fails to file a return subject to assessment as required by this 5868
chapter, or against an employer, taxpayer, or qualifying entity 5869
that files a fraudulent return. 5870

The commissioner shall give the party assessed written notice 5871
of the assessment ~~by personal service or certified mail~~ as 5872
provided in section 5703.37 of the Revised Code. 5873

(B) Unless the party to whom the notice of assessment is 5874
directed files with the commissioner within ~~thirty~~ sixty days 5875
after service of the notice of assessment, either personally or by 5876
certified mail, a petition for reassessment in writing, signed by 5877
the party assessed, or by the party's authorized agent having 5878
knowledge of the facts and makes payment of the portion of the 5879
assessment required by division (E) of this section, the 5880
assessment shall become final, and the amount of the assessment 5881
shall be due and payable from the party assessed to the 5882
commissioner with remittance made payable to the treasurer of 5883
state. The petition shall indicate the objections of the party 5884
assessed, but additional objections may be raised in writing if 5885
received prior to the date shown on the final determination by the 5886
commissioner. 5887

Unless the petitioner waives a hearing, the commissioner 5888
shall assign a time and place for the hearing on the petition and 5889
notify the petitioner of the time and place of the hearing by 5890
personal service or certified mail, but the commissioner may 5891
continue the hearing from time to time if necessary. 5892

The commissioner may make such correction to an assessment as 5893
the commissioner finds proper. The commissioner shall serve a copy 5894
of a final determination on the petitioner by personal service or 5895
certified mail, and the commissioner's decision in the matter 5896
shall be final, subject to appeal as provided in section 5717.02 5897
of the Revised Code. Only objections decided on the merits by the 5898
board of tax appeals or a court shall be given collateral estoppel 5899
or res judicata effect in considering an application for refund of 5900
amounts paid pursuant to the assessment. 5901

(C) After an assessment becomes final, if any portion of the 5902
assessment remains unpaid, including accrued interest, a certified 5903
copy of the commissioner's entry making the assessment final may 5904
be filed in the office of the clerk of the court of common pleas 5905
in the county in which the employer's, taxpayer's, or qualifying 5906
entity's place of business is located or the county in which the 5907
party assessed resides. If the party assessed is not a resident of 5908
this state, the certified copy of the entry may be filed in the 5909
office of the clerk of the court of common pleas of Franklin 5910
county. 5911

Immediately upon the filing of the entry, the clerk shall 5912
enter a judgment against the party assessed in the amount shown on 5913
the entry. The judgment shall be filed by the clerk in one of two 5914
loose-leaf books, one entitled "special judgments for state and 5915
school district income taxes," and the other entitled "special 5916
judgments for qualifying entity taxes." The judgment shall have 5917
the same effect as other judgments. Execution shall issue upon the 5918
judgment upon the request of the tax commissioner, and all laws 5919
applicable to sales on execution shall apply to sales made under 5920
the judgment. 5921

The portion of the assessment not paid within ~~thirty~~ sixty 5922
days after the assessment was issued shall bear interest at the 5923
rate per annum prescribed by section 5703.47 of the Revised Code 5924

from the day the tax commissioner issues the assessment until it 5925
is paid. Interest shall be paid in the same manner as the tax and 5926
may be collected by the issuance of an assessment under this 5927
section. 5928

(D) All money collected under this section shall be 5929
considered as revenue arising from the taxes imposed by this 5930
chapter or Chapter 5733. or 5748. of the Revised Code, as 5931
appropriate. 5932

(E) The portion of an assessment which must be paid upon the 5933
filing of a petition for reassessment shall be as follows: 5934

(1) If the sole item objected to is the assessed penalty or 5935
interest, ~~full~~ payment of the assessment, including interest but 5936
not penalty and interest, is required; 5937

(2) If the taxpayer or qualifying entity that is assessed 5938
failed to file, prior to the date of issuance of the assessment, 5939
the annual return or report required by section 5747.08 or 5747.42 5940
of the Revised Code, any amended return or amended report required 5941
by section 5747.10 or 5747.45 of the Revised Code for the taxable 5942
year at issue, or any report required by division (B) of section 5943
5747.05 of the Revised Code to indicate a reduction in the amount 5944
of the credit provided under that division, ~~full~~ payment of the 5945
assessment, including interest but not penalty and interest, is 5946
required, except as otherwise provided under division (E)(6) or 5947
(7) of this section; 5948

(3) If the employer assessed had not filed, prior to the date 5949
of issuance of the assessment, the annual return required by 5950
division (E)(2) of section 5747.07 of the Revised Code covering 5951
the period at issue, ~~full~~ payment of the assessment, including 5952
interest but not penalty and interest, is required; 5953

(4) If the taxpayer or qualifying entity that is assessed 5954
filed, prior to the date of issuance of the assessment, the annual 5955

return or report required by section 5747.08 or 5747.42 of the
Revised Code, all amended returns or reports required by section
5747.10 or 5747.45 of the Revised Code for the taxable year at
issue, and all reports required by division (B) of section 5747.05
of the Revised Code to indicate a reduction in the amount of the
credit provided under that division, and a balance of the taxes
shown due on the returns or reports as computed on the returns or
reports remains unpaid, payment of only that portion of the
assessment representing the unpaid balance of tax and interest is
required;

(5) If the employer assessed filed, prior to the date of
issuance of the assessment, the annual return required by division
(E)(2) of section 5747.07 of the Revised Code covering the period
at issue, and a balance of the taxes shown due on the return as
computed on the return remains unpaid, payment of only that
portion of the assessment representing the unpaid balance of tax
and interest is required;

(6) In the case of a party assessed as a qualifying entity
subject to the tax levied under section 5733.41 or 5747.41 of the
Revised Code, if the party does not dispute that it is a
qualifying entity subject to that tax but claims the protections
of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A.
381, as amended, no payment is required;

(7) In the case of a party assessed as a qualifying entity
subject to the tax levied under section 5733.41 or 5747.41 of the
Revised Code, if the party does dispute that it is a qualifying
entity subject to that tax, no payment is required;

(8) If none of the conditions specified in divisions (E)(1)
to (7) of this section apply, no payment is required.

(F) Notwithstanding the fact that a petition for reassessment
is pending, the petitioner may pay all or a portion of the

assessment that is the subject of the petition. The acceptance of 5987
a payment by the treasurer of state does not prejudice any claim 5988
for refund upon final determination of the petition. 5989
5990

If upon final determination of the petition an error in the 5991
assessment is corrected by the commissioner, upon petition so 5992
filed or pursuant to a decision of the board of tax appeals or any 5993
court to which the determination or decision has been appealed, so 5994
that the amount due from the party assessed under the corrected 5995
assessment is less than the portion paid, there shall be issued to 5996
the petitioner or to the petitioner's assigns or legal 5997
representative a refund in the amount of the overpayment as 5998
provided by section 5747.11 of the Revised Code, with interest on 5999
that amount as provided by such section, subject to section 6000
5747.12 of the Revised Code. 6001

Sec. 5747.15. (A) In addition to any other penalty imposed by 6002
this chapter or Chapter 5703. of the Revised Code, the following 6003
penalties shall apply: 6004

(1) If a taxpayer, qualifying entity, or employer required to 6005
file any report or return, including an informational notice, 6006
report, or return, under this chapter fails to make and file the 6007
report or return within the time prescribed, including any 6008
extensions of time granted by the tax commissioner, a penalty 6009
~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of fifty 6010
dollars per month or fraction of a month, not to exceed five 6011
hundred dollars, or five per cent per month or fraction of a 6012
month, not to exceed fifty per cent, of the sum of the taxes 6013
required to be shown on the report or return, for each month or 6014
fraction of a month elapsing between the due date, including 6015
extensions of the due date, and the date on which filed. 6016

(2) If a taxpayer fails to pay any amount of tax required to 6017

be paid under section 5733.41 or 5747.41 or Chapter 5748. of the
Revised Code, except estimated tax under section 5747.09 or
5747.43 of the Revised Code, by the dates prescribed for payment,
a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding twice the
applicable interest charged under division (G) of section 5747.08
of the Revised Code for the delinquent payment.

(3)(a) If an employer fails to pay any amount of tax imposed
by section 5747.02 of the Revised Code and required to be paid
under this chapter by the dates prescribed for payment, a penalty
~~shall~~ may be imposed ~~equal to~~ not exceeding the sum of ten per
cent of the delinquent payment plus twice the interest charged
under division (F)(5) of section 5747.07 of the Revised Code for
the delinquent payment.

(b) If a qualifying entity fails to pay any amount of tax
imposed by section 5733.41 or 5747.41 of the Revised Code and
required to be paid under this chapter by the dates prescribed for
payment, a penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding the
sum of ten per cent of the delinquent payment plus twice the
applicable interest charged under division (G) of section 5747.08
of the Revised Code for the delinquent payment.

(4)(a) If an employer withholds from employees the tax
imposed by section 5747.02 of the Revised Code and fails to remit
the tax withheld to the state as required by this chapter on or
before the dates prescribed for payment, a penalty ~~shall~~ may be
imposed ~~equal to~~ not exceeding fifty per cent of the delinquent
payment.

(b) If a qualifying entity withholds any amount of tax
imposed under section 5747.41 of the Revised Code from an
individual's qualifying amount and fails to remit that amount to
the state as required by sections 5747.42 to 5747.453 of the
Revised Code on or before the dates prescribed for payment, a

penalty ~~shall~~ may be imposed ~~equal to~~ not exceeding fifty per cent 6049
of the delinquent payment. 6050

(5) If a taxpayer, qualifying entity, or employer files what 6051
purports to be a return required by this chapter that does not 6052
contain information upon which the substantial correctness of the 6053
return may be judged or contains information that on its face 6054
indicates that the return is substantially incorrect, and the 6055
filing of the return in that manner is due to a position that is 6056
frivolous or a desire that is apparent from the return to delay or 6057
impede the administration of the tax levied by section 5733.41, 6058
5747.02, or 5747.41, or Chapter 5748. of the Revised Code, a 6059
penalty of up to five hundred dollars ~~shall~~ may be imposed. 6060

(6) If a taxpayer or qualifying entity makes a fraudulent 6061
attempt to evade the reporting or payment of the tax required to 6062
be shown on any return required under this chapter, a penalty 6063
~~shall~~ may be imposed ~~equal to~~ not exceeding the greater of one 6064
thousand dollars or one hundred per cent of the tax required to be 6065
shown on the return. 6066

(7) If any person makes a false or fraudulent claim for a 6067
refund under this chapter, a penalty ~~shall~~ may be imposed ~~equal to~~ 6068
not exceeding the greater of one thousand dollars or one hundred 6069
per cent of the claim. The penalty imposed under division (A)(7) 6070
of this section, any refund issued on the claim, and interest on 6071
any refund from the date of the refund, may be assessed under 6072
section 5747.13 of the Revised Code as tax, penalty, or interest 6073
imposed under section 5733.41, 5747.02, or 5747.41 of the Revised 6074
Code, without regard to whether the person making the claim is 6075
otherwise subject to the provisions of this chapter or Chapter 6076
5733. of the Revised Code, and without regard to any time 6077
limitation for the assessment imposed by division (A) of section 6078
5747.13 of the Revised Code. 6079

(B) For purposes of this section, the taxes required to be 6080
shown on the return shall be reduced by the amount of any part of 6081
the taxes paid on or before the date, including any extensions of 6082
the date, prescribed for filing the return. 6083

(C) Any penalty imposed under this section shall be in 6084
addition to all other penalties imposed under this section. All or 6085
part of any penalty imposed under this section may be abated by 6086
the commissioner. All or part of any penalty imposed under this 6087
section may be abated by the commissioner if the taxpayer, 6088
qualifying entity, or employer shows that the failure to comply 6089
with the provisions of this chapter is due to reasonable cause and 6090
not willful neglect. 6091

Sec. 5749.07. (A) If any severer required by this chapter to 6092
make and file returns and pay the tax levied by section 5749.02 of 6093
the Revised Code, fails to make such return or pay such tax, the 6094
tax commissioner may make an assessment against the severer based 6095
upon any information in the commissioner's possession. 6096

No assessment shall be made or issued against any severer for 6097
any tax imposed by section 5749.02 of the Revised Code more than 6098
four years after the return was due or was filed, whichever is 6099
later. This section does not bar an assessment against a severer 6100
who fails to file a return as required by this chapter, or who 6101
files a fraudulent return. 6102

The commissioner shall give the party assessed written notice 6103
of such assessment ~~by personal service or certified mail as~~ 6104
provided in section 5703.37 of the Revised Code. 6105

(B) Unless the party to whom such notice of assessment is 6106
directed files with the commissioner within ~~thirty~~ sixty days 6107
after service of the notice assessment, either personally or by 6108
certified mail, a petition for reassessment in writing, signed by 6109

the party assessed, or by an authorized agent of the party 6110
assessed having knowledge of the facts, the assessment shall 6111
become final and the amount of the assessment shall be due and 6112
payable from the party assessed to the treasurer of state. The 6113
petition shall indicate the objections of the party assessed, but 6114
additional objections may be raised in writing if received prior 6115
to the date shown on the final determination by the commissioner. 6116

Unless the petitioner waives a hearing, the commissioner 6117
shall assign a time and place for the hearing on the petition and 6118
notify the petitioner of the time and place of the hearing by 6119
personal service or certified mail, but the commissioner may 6120
continue the hearing from time to time if necessary. 6121

The commissioner may make such correction to the assessment 6122
as the commissioner finds proper. The commissioner shall serve a 6123
copy of the final determination on the petitioner by personal 6124
service or by certified mail, and the commissioner's decision in 6125
the matter shall be final, subject to appeal as provided in 6126
section 5717.02 of the Revised Code. Only objections decided on 6127
the merits by the board of tax appeals or a court shall be given 6128
collateral estoppel or res judicata effect in considering an 6129
application for refund of amounts paid pursuant to the assessment. 6130

(C) After an assessment becomes final, if any portion of the 6131
assessment remains unpaid, including accrued interest, a certified 6132
copy of the commissioner's entry making the assessment final may 6133
be filed in the office of the clerk of the court of common pleas 6134
in the county in which the party assessed resides or in which the 6135
party's business is conducted. If the party assessed maintains no 6136
place of business in this state and is not a resident of this 6137
state, the certified copy of the entry may be filed in the office 6138
of the clerk of the court of common pleas of Franklin county. 6139

The clerk, immediately upon the filing of such entry, shall 6140
enter a judgment for the state against the party assessed in the 6141

amount shown on the entry. The judgment may be filed by the clerk 6142
in a loose-leaf book entitled "special judgments for state 6143
severance tax," and shall have the same effect as other judgments. 6144
Execution shall issue upon the judgment upon the request of the 6145
tax commissioner, and all laws applicable to sales on execution 6146
shall apply to sales made under the judgment. 6147

The portion of the assessment not paid within ~~thirty~~ sixty 6148
days after the day the assessment is issued shall bear interest at 6149
the rate per annum prescribed by section 5703.47 of the Revised 6150
Code from the day the tax commissioner issues the assessment until 6151
it is paid. Interest shall be paid in the same manner as the tax 6152
and may be collected by the issuance of an assessment under this 6153
section. 6154

(D) All money collected by the commissioner under this 6155
section shall be paid to the treasurer of state, and when paid 6156
shall be considered as revenue arising from the tax imposed by 6157
section 5749.02 of the Revised Code. 6158

Sec. 5749.08. The tax commissioner shall refund to taxpayers 6159
the amount of taxes paid illegally or erroneously or paid on an 6160
illegal or erroneous assessment. Applications for refund shall be 6161
filed with the tax commissioner, on the form prescribed by ~~him~~ the 6162
commissioner, within four years from the date of the illegal or 6163
erroneous payment of the tax. On the filing of such application 6164
the commissioner shall determine the amount of refund due plus 6165
interest computed in accordance with section 5703.47 of the 6166
Revised Code from the date of the payment of an erroneous or 6167
illegal assessment until the date the refund is paid and certify 6168
such amount to the director of budget and management and treasurer 6169
of state payment from the tax refund created by section 5703.052 6170
of the Revised Code. 6171

Sec. 5749.15. Any person who fails to file a return or pay 6172
the tax as required who is assessed such taxes pursuant to section 6173
5749.07 or 5749.10 of the Revised Code ~~is~~ may be liable for a 6174
penalty of ~~five per cent per month or portion of a month on the~~ 6175
~~amount of the unpaid taxes due, not to exceed a maximum penalty of~~ 6176
up to twenty-five per cent of the amount assessed. The tax 6177
commissioner may ~~remit all or a portion of the penalty, and may~~ 6178
adopt rules relating to the imposition and remission of penalties 6179
imposed under this section. 6180

Section 2. That existing sections 3734.904, 3734.907, 6181
3769.088, 4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 6182
5703.37, 5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 6183
5717.01, 5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 6184
5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 6185
5733.11, 5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 6186
5735.14, 5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 6187
5739.02, 5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 6188
5739.133, 5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 6189
5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 6190
5747.13, 5747.15, 5749.07, 5749.08, and 5749.15 and sections 6191
5703.141, 5735.17, 5735.32, 5739.161, and 5747.082 of the Revised 6192
Code are hereby repealed. 6193

Section 3. That the version of section 5741.02 of the Revised 6194
Code that is to take effect July 1, 2001, be amended to read as 6195
follows: 6196

Sec. 5741.02. (A) For the use of the general revenue fund of 6197
the state, an excise tax is hereby levied on the storage, use, or 6198
other consumption in this state of tangible personal property or 6199
the benefit realized in this state of any service provided. The 6200

tax shall be collected pursuant to the schedules in section 6201
5739.025 of the Revised Code. 6202

(B) Each consumer, storing, using, or otherwise consuming in 6203
this state tangible personal property or realizing in this state 6204
the benefit of any service provided, shall be liable for the tax, 6205
and such liability shall not be extinguished until the tax has 6206
been paid to this state; provided, that the consumer shall be 6207
relieved from further liability for the tax if the tax has been 6208
paid to a seller in accordance with section 5741.04 of the Revised 6209
Code or prepaid by the seller in accordance with section 5741.06 6210
of the Revised Code. 6211

(C) The tax does not apply to the storage, use, or 6212
consumption in this state of the following described tangible 6213
personal property or services, nor to the storage, use, or 6214
consumption or benefit in this state of tangible personal property 6215
or services purchased under the following described circumstances: 6216

(1) When the sale of property or service in this state is 6217
subject to the excise tax imposed by sections 5739.01 to 5739.31 6218
of the Revised Code, provided said tax has been paid; 6219

(2) Except as provided in division (D) of this section, 6220
tangible personal property or services, the acquisition of which, 6221
if made in Ohio, would be a sale not subject to the tax imposed by 6222
sections 5739.01 to 5739.31 of the Revised Code; 6223

(3) Property or services, the storage, use, or other 6224
consumption of or benefit from which this state is prohibited from 6225
taxing by the Constitution of the United States, laws of the 6226
United States, or the Constitution of this state. This exemption 6227
shall not exempt from the application of the tax imposed by this 6228
section the storage, use, or consumption of tangible personal 6229
property that was purchased in interstate commerce, but that has 6230
come to rest in this state, provided that fuel to be used or 6231

transported in carrying on interstate commerce that is stopped 6232
within this state pending transfer from one conveyance to another 6233
is exempt from the excise tax imposed by this section and section 6234
5739.02 of the Revised Code; 6235

(4) Transient use of tangible personal property in this state 6236
by a nonresident tourist or vacationer, or a non-business use 6237
within this state by a nonresident of this state, if the property 6238
so used was purchased outside this state for use outside this 6239
state and is not required to be registered or licensed under the 6240
laws of this state; 6241

(5) Tangible personal property or services rendered upon 6242
which taxes have been paid to another jurisdiction to the extent 6243
of the amount of the tax paid to such other jurisdiction. Where 6244
the amount of the tax imposed by this section and imposed pursuant 6245
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 6246
exceeds the amount paid to another jurisdiction, the difference 6247
shall be allocated between the tax imposed by this section and any 6248
tax imposed by a county or a transit authority pursuant to section 6249
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 6250
to the respective rates of such taxes. 6251

As used in this subdivision, "taxes paid to another 6252
jurisdiction" means the total amount of retail sales or use tax or 6253
similar tax based upon the sale, purchase, or use of tangible 6254
personal property or services rendered legally, levied by and paid 6255
to another state or political subdivision thereof, or to the 6256
District of Columbia, where the payment of such tax does not 6257
entitle the taxpayer to any refund or credit for such payment. 6258

(6) The transfer of a used manufactured home or used mobile 6259
home, as defined by section 5739.0210 of the Revised Code, made on 6260
or after January 1, 2000; 6261

(7) Drugs that are or are intended to be distributed free of 6262

charge to a practitioner licensed to prescribe, dispense, and 6263
administer drugs to a human being in the course of a professional 6264
practice and that by law may be dispensed only by or upon the 6265
order of such a practitioner. 6266

(D) The tax applies to the storage, use, or other consumption 6267
in this state of tangible personal property or services, the 6268
acquisition of which at the time of sale was excepted under 6269
division (E)(1) of section 5739.01 of the Revised Code from the 6270
tax imposed by section 5739.02 of the Revised Code, but which has 6271
subsequently been temporarily or permanently stored, used, or 6272
otherwise consumed in a taxable manner. 6273

(E) If any transaction is claimed to be exempt under division 6274
(E) of section 5739.01 of the Revised Code or under section 6275
5739.02 of the Revised Code, with the exception of divisions 6276
(B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the 6277
consumer shall furnish to the seller, and the seller shall obtain 6278
from the consumer, a certificate specifying the reason that the 6279
transaction is not subject to the tax. If the transaction is 6280
claimed to be exempt under division (B)(13) of section 5739.02 of 6281
the Revised Code, the exemption certificate shall be signed by 6282
both the contractor and contractee, and the contractee shall be 6283
deemed to be the consumer of all items purchased under the claim 6284
of exemption if it is subsequently determined that the exemption 6285
is not properly claimed. The certificate shall be in such form as 6286
the tax commissioner by rule prescribes. If no certificate is 6287
furnished or obtained within the period for filing the return for 6288
the period in which the transaction is consummated, it shall be 6289
presumed that the tax applies. The failure to have so furnished or 6290
obtained a certificate shall not preclude a seller or consumer 6291
from establishing, within one hundred twenty days of the giving of 6292
notice by the commissioner of intention to levy an assessment, 6293
that the transaction is not subject to the tax. 6294

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(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

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(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

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Section 4. That the existing version of section 5741.02 of the Revised Code that is to take effect July 1, 2001, is hereby repealed.

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Section 5. Section 4301.422 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 239 and Am. Sub. S.B. 188 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 223 and Am. Sub. S.B. 3 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized

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where not substantively irreconcilable and constitutes a	6326
legislative finding that such is the resulting version in effect	6327
prior to the effective date of this act.	6328