

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 331

Senator Blessing

A BILL

To amend sections 3123.67, 4123.78, 4141.23, 1
5301.071, 5301.255, 5719.04, 5739.13, 5747.13, 2
and 5749.07 of the Revised Code to require 3
certain liens filed with the county recorder to 4
set forth the last known address of the lien 5
debtor and to require a memorandum of trust or 6
other qualifying instrument concerning real 7
property to be recorded. 8

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

Section 1. That sections 3123.67, 4123.78, 4141.23, 9
5301.071, 5301.255, 5719.04, 5739.13, 5747.13, and 5749.07 of 10
the Revised Code be amended to read as follows: 11

Sec. 3123.67. The amount of the arrearage due under the 12
support order determined to be in default pursuant to sections 13
3123.01 to 3123.07 of the Revised Code, and any amounts due for 14
current support that become an arrearage after the date the 15
default determination was made, shall be a lien against all 16
personal property, including after-acquired property, of the 17
obligor that is situated in this state. The lien may be filed 18
with the county recorder in each county of the state in which 19

the personal property is located. The amount of the arrearage 20
due under the support order determined to be in default and any 21
amounts due for current support that become an arrearage after 22
the date the default determination was made, shall be a lien 23
against real property, including after-acquired property, of the 24
obligor after the lien is filed with a county recorder of this 25
state in which the real property is located. A lien may be filed 26
with the county recorder in each county of the state in which 27
real property of the obligor is located. Any lien filed under 28
this section shall include the last known address of the 29
obligor, without further inquiry or investigation, that is not a 30
post office box. In recording the lien, if registered land is 31
involved, the county recorder shall take all necessary action 32
required by Chapter 5309. of the Revised Code. The county 33
recorder may be compensated for liens filed under this section 34
pursuant to the development of unit costs that are reimbursed 35
under the provider contract entered into pursuant to Title IV-D 36
of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 37
651, as amended. 38

Sec. 4123.78. If any employer fails to comply with section 39
4123.35 of the Revised Code in accordance with the rules of the 40
administrator of workers' compensation, the administrator shall 41
file with the county recorder of any counties in which the 42
employer's property is located, ~~its~~ a certificate of containing 43
the employer's name, last known address, and the amount of 44
premium due from the employer, and that amount shall be a lien 45
from the date of filing against the real property and personal 46
property of the employer within the county in which the 47
certificate is filed. The county recorder shall record and index 48
the certificate in the official record. The county recorder 49
shall make no charge for the services provided by this section 50

to be performed by the county recorder. 51

Sec. 4141.23. (A) Contributions shall accrue and become 52
payable by each employer for each calendar year or other period 53
as prescribed by this chapter. Such contributions become due and 54
shall be paid by each employer to the director of job and family 55
services for the unemployment compensation fund in accordance 56
with such regulations as the director prescribes, and shall not 57
be deducted, in whole or in part, from the remuneration of 58
individuals in the employer's employ. 59

In the payment of any contributions, a fractional part of 60
a dollar may be disregarded unless it amounts to fifty cents or 61
more, in which case it may be increased to the next higher 62
dollar. 63

(B) (1) Any contribution or payment in lieu of 64
contribution, due from an employer on or before December 31, 65
1992, shall, if not paid when due, bear interest at the rate of 66
ten per cent per annum. In such computation any fraction of a 67
month shall be considered as a full month. 68

(2) Any contribution, payment in lieu of contribution, 69
interest, forfeiture, or fine due from an employer on or after 70
January 1, 1993, shall, if not paid when due, bear interest at 71
the annual rate of fourteen per cent compounded monthly on the 72
aggregate receivable balance due. In such computation any 73
fraction of a month shall be considered as a full month. 74

(C) The director may waive the interest assessed under 75
division (B) (2) of this section if the employer meets all of the 76
following conditions within thirty days after the date the 77
director mails or delivers the notice of assessment of interest: 78

(1) Provides to the director a written request for a 79

waiver of interest clearly demonstrating that the employer's 80
failure to timely pay contributions, payments in lieu of 81
contributions, interest, forfeiture, and fines was a result of 82
circumstances beyond the control of the employer or the 83
employer's agent, except that negligence on the part of the 84
employer or the employer's agent shall not be considered beyond 85
the control of the employer or the employer's agent; 86

(2) Furnishes to the director all quarterly reports 87
required under section 4141.20 of the Revised Code; 88

(3) Pays in full all contributions, payments in lieu of 89
contributions, interest, forfeiture, and fines for each quarter 90
for which such payments are due. 91

The director shall deny an employer's request for a waiver 92
of interest after finding that the employer's failure to timely 93
furnish reports or make payments as required under this chapter 94
was due to an attempt to evade payment. 95

(D) Any contribution, interest, forfeiture, or fine 96
required to be paid under this chapter by any employer shall, if 97
not paid when due, become a lien upon the real and personal 98
property of such employer. Upon failure of such employer to pay 99
the contributions, interest, forfeiture, or fine required to be 100
paid under this chapter, the director shall file notice of such 101
lien, containing the employer's name and last known address, for 102
which there shall be no charge, in the office of the county 103
recorder of the county in which it is ascertained that such 104
employer owns real estate or personal property. The director 105
shall notify the employer by mail of the lien. The absence of 106
proof that the notice was sent does not affect the validity of 107
the lien. Such lien shall not be valid as against the claim of 108
any mortgagee, pledgee, purchaser, judgment creditor, or other 109

lienholder of record at the time such notice is filed. 110

If the employer acquires real or personal property after 111
notice of lien is filed, such lien shall not be valid as against 112
the claim of any mortgagee, pledgee, subsequent bona fide 113
purchaser for value, judgment creditor, or other lienholder of 114
record to such after-acquired property, unless the notice of 115
lien is refiled after such property was acquired by the employer 116
and before the competing lien attached to such after-acquired 117
property or before the conveyance to such subsequent bona fide 118
purchaser for value. 119

Such a notice shall be recorded in the county recorder's 120
official records and indexed in the direct and reverse indexes 121
under the name of the employer. When such unpaid contributions, 122
interest, forfeiture, or fines have been paid, the employer may 123
record with the county recorder of the county in which such 124
notice of lien has been filed and recorded, notice of such 125
payment, and the notice of payment shall be recorded in the 126
county recorder's official records and indexed in the direct and 127
reverse indexes. For recording the notice of payment, the county 128
recorder shall charge and receive from the employer a base fee 129
of two dollars for services and a housing trust fund fee of two 130
dollars pursuant to section 317.36 of the Revised Code. 131

(E) Notwithstanding other provisions in this section, the 132
director may reduce, in whole or in part, the amount of 133
interest, forfeiture, or fines required to be paid under this 134
chapter if the director determines that the reduction is in the 135
best interest of the unemployment compensation fund. 136

(F) Assessment of contributions shall not be made after 137
four years from the date on which such contributions became 138
payable, and no action in court for the collection of 139

contributions without assessment of such contributions shall be 140
begun after the expiration of five years from the date such 141
contributions became payable. In case of a false or fraudulent 142
report or of a willful attempt in any manner to evade 143
contributions, such contributions may be assessed or a 144
proceeding in court for the collection of such contributions may 145
be begun without assessment at any time. When the assessment of 146
contributions has been made within such four-year period 147
provided, action in court to collect such contributions may be 148
begun within, but not later than, six years after such 149
assessment. 150

(G) In the event of a distribution of an employer's 151
assets, pursuant to an order of any court under the law of this 152
state, including any receivership, assignment for benefit of 153
creditors, adjudicated insolvency, or similar proceedings, 154
contributions, interest, forfeiture, or fine then or thereafter 155
due have the same priority as provided by law for the payment of 156
taxes due the state and shall be paid out of the trust fund in 157
the same manner as provided for other claims for unpaid taxes 158
due the state. 159

(H) If the attorney general finds after investigation that 160
any claim for delinquent contributions, interest, forfeitures, 161
or fines owing to the director is uncollectible, in whole or in 162
part, the attorney general shall recommend to the director the 163
cancellation of such claim or any part thereof. The director may 164
thereupon effect such cancellation. 165

Sec. 5301.071. No instrument conveying real property, or 166
any interest in real property, and of record in the office of 167
the county recorder of the county within this state in which 168
that real property is situated shall be considered defective nor 169

shall the validity of that conveyance be affected because of any	170
of the following:	171
(A) The dower interest of the spouse of any grantor was	172
not specifically released, but that spouse executed the	173
instrument in the manner provided in section 5301.01 of the	174
Revised Code.	175
(B) The officer taking the acknowledgment of the	176
instrument having an official seal did not affix that seal to	177
the certificate of acknowledgment.	178
(C) The certificate of acknowledgment is not on the same	179
sheet of paper as the instrument.	180
(D) The executor, administrator, guardian, assignee,	181
attorney in fact, or trustee making the instrument signed or	182
acknowledged the same individually instead of in a	183
representative or official capacity.	184
(E) (1) The grantor or grantee of the instrument is a trust	185
rather than the trustee or trustees of the trust if the trust	186
named as grantor or grantee has been duly created under the laws	187
of the state of its existence at the time of the conveyance and	188
a memorandum of trust that complies with section 5301.255 of the	189
Revised Code and contains a description of the real property	190
conveyed by that instrument is recorded in the office of the	191
county recorder in which the instrument of conveyance is	192
recorded. Upon compliance with division (E) (1) of this section,	193
a conveyance to <u>or from</u> a trust shall be considered to be a	194
conveyance to <u>or from</u> the trustee or trustees of the trust in	195
furtherance of the manifest intention of the parties.	196
(2) Except as otherwise provided in division (E) (2) of	197
this section, division (E) (1) of this section shall be given	198

retroactive effect to the fullest extent permitted under section 199
28 of Article II, Ohio Constitution. Division (E) of this 200
section shall not be given retroactive or curative effect if to 201
do so would invalidate or supersede any instrument that conveys 202
real property, or any interest in the real property, recorded in 203
the office of the county recorder in which that real property is 204
situated prior to the date of recording of a curative memorandum 205
of trust or March 22, 2012, whichever event occurs later. 206

(F) A memorandum of understanding or other instrument 207
complying with division (A) of section 5301.255 of the Revised 208
Code is not recorded as required by that section, so long as the 209
instrument from a trustee or trust as grantor, conveying or 210
encumbering any interest in the real property has been of record 211
for more than four years. 212

Sec. 5301.255. (A) A memorandum of trust or other 213
instrument that satisfies both of the following ~~may~~ shall be 214
presented for recordation when title to real property is held by 215
the trustee of a disclosed trust, and in circumstances other 216
than the conveyance of real property may be presented, in the 217
office of the county recorder of any county in which real 218
property that is subject to the trust is located: 219

(1) The ~~memorandum~~ instrument shall be executed by the 220
trustee of the trust and acknowledged by the trustee of the 221
trust in accordance with section 5301.01 of the Revised Code. 222

(2) The ~~memorandum~~ instrument shall state all of the 223
following: 224

(a) The name and address of the trustee of the trust; 225

(b) The date of execution of the trust; 226

(c) The powers specified in the trust relative to the 227

acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

(B) ~~A memorandum of trust~~ An instrument that satisfies divisions (A) (1) and (2) of this section also may set forth the substance or actual text of provisions of the trust that are not described in those divisions.

(C) ~~A memorandum of trust~~ An instrument that satisfies divisions (A) (1) and (2) of this section shall constitute notice only of the information contained in it.

(D) Upon the presentation for recordation of ~~a memorandum of trust~~ an instrument that satisfies divisions (A) (1) and (2) of this section and the payment of the requisite fee prescribed in section 317.32 of the Revised Code, a county recorder shall record either:

(1) Record the ~~memorandum of trust instrument~~ in the official records described in division (A) (17) of section 317.08 of the Revised Code, if the ~~memorandum of trust instrument~~ describes specific real property, ~~or;~~

(2) Record the instrument in the official records described in division (A) (23) of ~~that~~ section 317.08 of the Revised Code, if the ~~memorandum of trust instrument~~ does not describe specific real property.

Sec. 5719.04. (A) Immediately after each settlement required by division (D) of section 321.24 of the Revised Code, the county auditor shall make a tax list and duplicates thereof of all general personal and classified property taxes remaining unpaid, as shown by the county treasurer's books and the list of taxes returned as delinquent by the treasurer to the auditor at

such settlement. The county auditor shall also include in such 257
list all taxes assessed by the tax commissioner pursuant to law 258
which were not charged upon the tax lists and duplicates on 259
which such settlements were made nor previously charged upon a 260
delinquent tax list and duplicates pursuant to this section, but 261
the auditor shall not include taxes specifically excepted from 262
collection pursuant to section 5711.32 of the Revised Code. Such 263
tax list and duplicates shall contain the name of the person 264
charged, the last known address of the person charged, and the 265
amount of such taxes, and the penalty, due and unpaid, and shall 266
set forth separately the amount charged or chargeable on the 267
general and on the classified list and duplicate. The auditor 268
shall deliver one such duplicate to the treasurer on the first 269
day of December, annually. Upon receipt of the duplicate the 270
treasurer may prepare and mail tax bills to all persons charged 271
with such delinquent taxes. Each bill shall include a notice 272
that the interest charge prescribed by section 5719.041 of the 273
Revised Code has begun to accrue. 274

The auditor shall cause a copy of the delinquent personal 275
and classified property tax list and duplicate provided for in 276
this division to be published twice within sixty days after 277
delivery of such duplicate to the treasurer in a newspaper of 278
general circulation in the county. The newspaper shall meet the 279
requirements of section 7.12 of the Revised Code. The auditor 280
may publish the tax list on a preprinted insert in the 281
newspaper. The cost of the second publication of the list shall 282
not exceed three-fourths of the cost of the first publication of 283
the list. 284

Before such publication, the auditor shall cause a display 285
notice of the forthcoming publication of such delinquent 286
personal and classified property tax list to be inserted once a 287

week for two consecutive weeks in a newspaper of general 288
circulation in the county. Copy for such display notice shall be 289
furnished by the auditor to the newspaper selected to publish 290
such delinquent tax lists simultaneously with the delivery of 291
the duplicate to the treasurer. Publication of the delinquent 292
lists may be made by a newspaper in installments, provided that 293
complete publication thereof is made twice during said sixty-day 294
period. 295

The office of the county treasurer shall be kept open to 296
receive the payment of delinquent general and classified 297
property taxes from the day of delivery of the duplicate thereof 298
until the final publication of the delinquent tax list. The name 299
of any taxpayer who, prior to seven days before either the first 300
or second publication of said list, pays such taxes in full or 301
enters into a delinquent tax contract to pay such taxes in 302
installments pursuant to section 5719.05 of the Revised Code 303
shall be stricken from such list, and the taxpayer's name shall 304
not be included in the list for that publication. 305

The other such duplicate, from which shall first be 306
eliminated the names of persons whose total liability for taxes 307
and penalty is less than one hundred dollars, shall be filed by 308
the auditor on the first day of December, annually, in the 309
office of the county recorder, and the same shall constitute a 310
notice of lien and operate as of the date of delivery as a lien 311
on the lands and tenements, vested legal interests therein, and 312
permanent leasehold estates of each person named therein having 313
such real estate in such county. Such notice of lien and such 314
lien shall not be valid as against any mortgagee, pledgee, 315
purchaser, or judgment creditor whose rights have attached prior 316
to the date of such delivery. Such duplicate shall be kept by 317
the county recorder in the official records, and indexed under 318

the name of the person charged with such tax. No fee shall be 319
charged by the county recorder for the services required under 320
this section. 321

The auditor shall add to the tax list made pursuant to 322
this section all such taxes omitted in a previous year when 323
assessed by the auditor or finally assessed by the tax 324
commissioner pursuant to law, and by proper certificates cause 325
the same to be added to the treasurer's delinquent tax duplicate 326
provided for in this section, and, in proper cases, file notice 327
of the lien with the recorder, as provided in this section. 328

If the authority making any assessment believes that the 329
collection of such taxes will be jeopardized by delay, such 330
assessing authority shall so certify on the assessment 331
certificate thereof, and the auditor shall include a certificate 332
of such jeopardy in the certificate given by the auditor to the 333
treasurer. In such event, the treasurer shall proceed 334
immediately to collect such taxes, and to enforce the collection 335
thereof by any means provided by law, and the treasurer may not 336
accept a tender of any part of such taxes; but the person or the 337
representatives of the person against whom such assessment is 338
made may, in the event of an appeal to the tax commissioner 339
therefrom, obtain a stay of collection of the whole or any part 340
of the amount of such assessment by filing with the treasurer a 341
bond in an amount not exceeding double the amount as to which 342
the stay is desired, with such surety as the treasurer deems 343
necessary, conditioned upon the payment of the amount determined 344
to be due by the decision of the commissioner which has become 345
final, and further conditioned that if an appeal is not filed 346
within the period provided by law, the amount of collection 347
which is stayed by the bond will be paid on notice and demand of 348
the treasurer at any time after the expiration of such period. 349

The taxpayer may waive such stay as to the whole or any part of 350
the amount covered by the bond, and if as the result of such 351
waiver any part of the amount covered by the bond is paid, then 352
the bond shall be proportionately reduced on the request of the 353
taxpayer. 354

(B) Immediately after each settlement required by division 355
(D) of section 321.24 of the Revised Code, the auditor shall 356
make a separate list and duplicate, prepared as prescribed in 357
division (A) of this section, of all general personal and 358
classified property taxes that remain unpaid but are excepted 359
from collection pursuant to section 5711.32 of the Revised Code. 360
The duplicate of such list shall be delivered to the treasurer 361
at the time of delivery of the delinquent personal and 362
classified property tax duplicate. 363

Sec. 5739.13. (A) If any vendor collects the tax imposed 364
by or pursuant to section 5739.02, 5739.021, 5739.023, or 365
5739.026 of the Revised Code, and fails to remit the tax to the 366
state as prescribed, or on the sale of a motor vehicle, 367
watercraft, or outboard motor required to be titled, fails to 368
remit payment to a clerk of a court of common pleas as provided 369
in section 1548.06 or 4505.06 of the Revised Code, the vendor 370
shall be personally liable for any tax collected and not 371
remitted. The tax commissioner may make an assessment against 372
such vendor based upon any information in the commissioner's 373
possession. 374

If any vendor fails to collect the tax or any consumer 375
fails to pay the tax imposed by or pursuant to section 5739.02, 376
5739.021, 5739.023, or 5739.026 of the Revised Code, on any 377
transaction subject to the tax, the vendor or consumer shall be 378
personally liable for the amount of the tax applicable to the 379

transaction. The commissioner may make an assessment against 380
either the vendor or consumer, as the facts may require, based 381
upon any information in the commissioner's possession. 382

An assessment against a vendor when the tax imposed by or 383
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 384
the Revised Code has not been collected or paid, shall not 385
discharge the purchaser's or consumer's liability to reimburse 386
the vendor for the tax applicable to such transaction. 387

An assessment issued against either, pursuant to this 388
section, shall not be considered an election of remedies, nor a 389
bar to an assessment against the other for the tax applicable to 390
the same transaction, provided that no assessment shall be 391
issued against any person for the tax due on a particular 392
transaction if the tax on that transaction actually has been 393
paid by another. 394

The commissioner may make an assessment against any vendor 395
who fails to file a return or remit the proper amount of tax 396
required by this chapter, or against any consumer who fails to 397
pay the proper amount of tax required by this chapter. When 398
information in the possession of the commissioner indicates that 399
the amount required to be collected or paid under this chapter 400
is greater than the amount remitted by the vendor or paid by the 401
consumer, the commissioner may audit a sample of the vendor's 402
sales or the consumer's purchases for a representative period, 403
to ascertain the per cent of exempt or taxable transactions or 404
the effective tax rate and may issue an assessment based on the 405
audit. The commissioner shall make a good faith effort to reach 406
agreement with the vendor or consumer in selecting a 407
representative sample. 408

The commissioner may make an assessment, based on any 409

information in the commissioner's possession, against any person 410
who fails to file a return or remit the proper amount of tax 411
required by section 5739.102 of the Revised Code. 412

The commissioner may issue an assessment on any 413
transaction for which any tax imposed under this chapter or 414
Chapter 5741. of the Revised Code was due and unpaid on the date 415
the vendor or consumer was informed by an agent of the tax 416
commissioner of an investigation or audit. If the vendor or 417
consumer remits any payment of the tax for the period covered by 418
the assessment after the vendor or consumer was informed of the 419
investigation or audit, the payment shall be credited against 420
the amount of the assessment. 421

The commissioner shall give the party assessed written 422
notice of the assessment in the manner provided in section 423
5703.37 of the Revised Code. With the notice, the commissioner 424
shall provide instructions on how to petition for reassessment 425
and request a hearing on the petition. 426

(B) Unless the party assessed files with the commissioner 427
within sixty days after service of the notice of assessment, 428
either personally or by certified mail, a written petition for 429
reassessment, signed by the party assessed or that party's 430
authorized agent having knowledge of the facts, the assessment 431
becomes final and the amount of the assessment is due from the 432
party assessed and payable to the treasurer of state and 433
remitted to the tax commissioner. The petition shall indicate 434
the objections of the party assessed, but additional objections 435
may be raised in writing if received by the commissioner prior 436
to the date shown on the final determination. If the petition 437
has been properly filed, the commissioner shall proceed under 438
section 5703.60 of the Revised Code. 439

(C) After an assessment becomes final, if any portion of 440
the assessment remains unpaid, including accrued interest, a 441
certified copy of the commissioner's entry making the assessment 442
final may be filed in the office of the clerk of the court of 443
common pleas in the county in which the place of business of the 444
party assessed is located or the county in which the party 445
assessed resides. Such filing shall include the party's name and 446
last known address. If the party assessed maintains no place of 447
business in this state and is not a resident of this state, the 448
certified copy of the entry may be filed in the office of the 449
clerk of the court of common pleas of Franklin county. 450

Immediately upon the filing of the entry, the clerk shall 451
enter a judgment for the state against the party assessed in the 452
amount shown on the entry. The judgment may be filed by the 453
clerk in a loose-leaf book entitled "special judgments for 454
state, county, and transit authority retail sales tax" or, if 455
appropriate, "special judgments for resort area excise tax," and 456
shall have the same effect as other judgments. Execution shall 457
issue upon the judgment upon the request of the tax 458
commissioner, and all laws applicable to sales on execution 459
shall apply to sales made under the judgment except as otherwise 460
provided in this chapter. 461

If the assessment is not paid in its entirety within sixty 462
days after the date the assessment was issued, the portion of 463
the assessment consisting of tax due shall bear interest at the 464
rate per annum prescribed by section 5703.47 of the Revised Code 465
from the day the tax commissioner issues the assessment until 466
the assessment is paid or until it is certified to the attorney 467
general for collection under section 131.02 of the Revised Code, 468
whichever comes first. If the unpaid portion of the assessment 469
is certified to the attorney general for collection, the entire 470

unpaid portion of the assessment shall bear interest at the rate 471
per annum prescribed by section 5703.47 of the Revised Code from 472
the date of certification until the date it is paid in its 473
entirety. Interest shall be paid in the same manner as the tax 474
and may be collected by issuing an assessment under this 475
section. 476

(D) All money collected by the tax commissioner under this 477
section shall be paid to the treasurer of state, and when paid 478
shall be considered as revenue arising from the taxes imposed by 479
or pursuant to sections 5739.01 to 5739.31 of the Revised Code. 480

Sec. 5747.13. (A) If any employer collects the tax imposed 481
by section 5747.02 or under Chapter 5748. of the Revised Code 482
and fails to remit the tax as required by law, or fails to 483
collect the tax, the employer is personally liable for any 484
amount collected that the employer fails to remit, or any amount 485
that the employer fails to collect. If any taxpayer fails to 486
file a return or fails to pay the tax imposed by section 5747.02 487
or under Chapter 5748. of the Revised Code, the taxpayer is 488
personally liable for the amount of the tax. 489

If any employer, taxpayer, qualifying entity, or electing 490
pass-through entity required to file a return under this chapter 491
fails to file the return within the time prescribed, files an 492
incorrect return, fails to remit the full amount of the taxes 493
due for the period covered by the return, or fails to remit any 494
additional tax due as a result of a reduction in the amount of 495
the credit allowed under division (B) of section 5747.05 of the 496
Revised Code together with interest on the additional tax within 497
the time prescribed by that division, the tax commissioner may 498
make an assessment against any person liable for any deficiency 499
for the period for which the return is or taxes are due, based 500

upon any information in the commissioner's possession. 501

An assessment issued against either the employer or the 502
taxpayer pursuant to this section shall not be considered an 503
election of remedies or a bar to an assessment against the other 504
for failure to report or pay the same tax. No assessment shall 505
be issued against any person if the tax actually has been paid 506
by another. 507

No assessment shall be made or issued against an employer, 508
a taxpayer, a qualifying entity, or an electing pass-through 509
entity more than four years after the final date the return 510
subject to assessment was required to be filed or the date the 511
return was filed, whichever is later. However, the commissioner 512
may assess any balance due as the result of a reduction in the 513
credit allowed under division (B) of section 5747.05 of the 514
Revised Code, including applicable penalty and interest, within 515
four years of the date on which the taxpayer reports a change in 516
either the portion of the taxpayer's adjusted gross income 517
subjected to an income tax or tax measured by income in another 518
state or the District of Columbia, or the amount of liability 519
for an income tax or tax measured by income to another state or 520
the District of Columbia, as required by division (B) (4) of 521
section 5747.05 of the Revised Code. Such time limits may be 522
extended if both the employer, taxpayer, qualifying entity, or 523
electing pass-through entity and the commissioner consent in 524
writing to the extension or if an agreement waiving or extending 525
the time limits has been entered into pursuant to section 526
122.171 of the Revised Code. Any such extension shall extend the 527
four-year time limit in division (B) of section 5747.11 of the 528
Revised Code for the same period of time. There shall be no bar 529
or limit to an assessment against an employer for taxes withheld 530
from employees and not remitted to the state, against an 531

employer, a taxpayer, a qualifying entity, or an electing pass- 532
through entity that fails to file a return subject to assessment 533
as required by this chapter, or against an employer, a taxpayer, 534
a qualifying entity, or an electing pass-through entity that 535
files a fraudulent return. 536

The commissioner shall give the party assessed written 537
notice of the assessment in the manner provided in section 538
5703.37 of the Revised Code. With the notice, the commissioner 539
shall provide instructions on how to petition for reassessment 540
and request a hearing on the petition. 541

(B) Unless the party assessed files with the tax 542
commissioner within sixty days after service of the notice of 543
assessment, either personally or by certified mail, a written 544
petition for reassessment, signed by the party assessed or that 545
party's authorized agent having knowledge of the facts, the 546
assessment becomes final, and the amount of the assessment is 547
due and payable from the party assessed to the commissioner with 548
remittance made payable to the treasurer of state. The petition 549
shall indicate the objections of the party assessed, but 550
additional objections may be raised in writing if received by 551
the commissioner prior to the date shown on the final 552
determination. If the petition has been properly filed, the 553
commissioner shall proceed under section 5703.60 of the Revised 554
Code. 555

(C) After an assessment becomes final, if any portion of 556
the assessment remains unpaid, including accrued interest, a 557
certified copy of the tax commissioner's entry making the 558
assessment final may be filed in the office of the clerk of the 559
court of common pleas in the county in which the employer's, 560
taxpayer's, qualifying entity's, or electing pass-through 561

entity's place of business is located or the county in which the 562
party assessed resides. Such filing shall include the party's 563
name and last known address. If the party assessed is not a 564
resident of this state, the certified copy of the entry may be 565
filed in the office of the clerk of the court of common pleas of 566
Franklin county. 567

Immediately upon the filing of the entry, the clerk shall 568
enter a judgment against the party assessed in the amount shown 569
on the entry. The judgment shall be filed by the clerk in one of 570
two loose-leaf books, one entitled "special judgments for state 571
and school district income taxes," and the other entitled 572
"special judgments for qualifying entity and electing pass- 573
through entity taxes." The judgment shall have the same effect 574
as other judgments. Execution shall issue upon the judgment upon 575
the request of the tax commissioner, and all laws applicable to 576
sales on execution shall apply to sales made under the judgment. 577

If the assessment is not paid in its entirety within sixty 578
days after the assessment was issued, the portion of the 579
assessment consisting of tax due shall bear interest at the rate 580
per annum prescribed by section 5703.47 of the Revised Code from 581
the day the tax commissioner issues the assessment until it is 582
paid or until it is certified to the attorney general for 583
collection under section 131.02 of the Revised Code, whichever 584
comes first. If the unpaid portion of the assessment is 585
certified to the attorney general for collection, the entire 586
unpaid portion of the assessment shall bear interest at the rate 587
per annum prescribed by section 5703.47 of the Revised Code from 588
the date of certification until the date it is paid in its 589
entirety. Interest shall be paid in the same manner as the tax 590
and may be collected by the issuance of an assessment under this 591
section. 592

(D) All money collected under this section shall be 593
considered as revenue arising from the taxes imposed by this 594
chapter or Chapter 5733. or 5748. of the Revised Code, as 595
appropriate. 596

(E) If the party assessed files a petition for 597
reassessment under division (B) of this section, the person, on 598
or before the last day the petition may be filed, shall pay the 599
assessed amount, including assessed interest and assessed 600
penalties, if any of the following conditions exists: 601

(1) The person files a tax return reporting Ohio adjusted 602
gross income, less the exemptions allowed by section 5747.025 of 603
the Revised Code, in an amount less than one cent, and the 604
reported amount is not based on the computations required under 605
division (A) of section 5747.01 or section 5747.025 of the 606
Revised Code. 607

(2) The person files a tax return that the tax 608
commissioner determines to be incomplete, false, fraudulent, or 609
frivolous. 610

(3) The person fails to file a tax return, and the basis 611
for this failure is not either of the following: 612

(a) An assertion that the person has no nexus with this 613
state; 614

(b) The computations required under division (A) of 615
section 5747.01 of the Revised Code or the application of 616
credits allowed under this chapter has the result that the 617
person's tax liability is less than one dollar and one cent. 618

(F) Notwithstanding the fact that a petition for 619
reassessment is pending, the petitioner may pay all or a portion 620
of the assessment that is the subject of the petition. The 621

acceptance of a payment by the treasurer of state does not 622
prejudice any claim for refund upon final determination of the 623
petition. 624

If upon final determination of the petition an error in 625
the assessment is corrected by the tax commissioner, upon 626
petition so filed or pursuant to a decision of the board of tax 627
appeals or any court to which the determination or decision has 628
been appealed, so that the amount due from the party assessed 629
under the corrected assessment is less than the portion paid, 630
there shall be issued to the petitioner or to the petitioner's 631
assigns or legal representative a refund in the amount of the 632
overpayment as provided by section 5747.11 of the Revised Code, 633
with interest on that amount as provided by such section, 634
subject to section 5747.12 of the Revised Code. 635

Sec. 5749.07. (A) If any severer required by this chapter 636
to make and file returns and pay the tax levied by section 637
5749.02 of the Revised Code, or any severer or owner liable for 638
the amounts due under section 1509.50 of the Revised Code, fails 639
to make such return or pay such tax or amounts, the tax 640
commissioner may make an assessment against the severer or owner 641
based upon any information in the commissioner's possession. 642

No assessment shall be made or issued against any severer 643
for any tax imposed by section 5749.02 of the Revised Code or 644
against any severer or owner for any amount due under section 645
1509.50 of the Revised Code more than four years after the 646
return was due or was filed, whichever is later. This section 647
does not bar an assessment against a severer or owner who fails 648
to file a return as required by this chapter, or who files a 649
fraudulent return. 650

The commissioner shall give the party assessed written 651

notice of such assessment in the manner provided in section 652
5703.37 of the Revised Code. With the notice, the commissioner 653
shall provide instructions on how to petition for reassessment 654
and request a hearing on the petition. 655

(B) Unless the party assessed files with the commissioner 656
within sixty days after service of the notice of assessment, 657
either personally or by certified mail, a written petition for 658
reassessment signed by the party assessed or that party's 659
authorized agent having knowledge of the facts, the assessment 660
becomes final and the amount of the assessment is due and 661
payable from the party assessed to the treasurer of state. The 662
petition shall indicate the objections of the party assessed, 663
but additional objections may be raised in writing if received 664
by the commissioner prior to the date shown on the final 665
determination. If the petition has been properly filed, the 666
commissioner shall proceed under section 5703.60 of the Revised 667
Code. 668

(C) After an assessment becomes final, if any portion of 669
the assessment remains unpaid, including accrued interest, a 670
certified copy of the commissioner's entry making the assessment 671
final may be filed in the office of the clerk of the court of 672
common pleas in the county in which the party assessed resides 673
or in which the party's business is conducted. Such filing shall 674
include the debtor's name and last known address. If the party 675
assessed maintains no place of business in this state and is not 676
a resident of this state, the certified copy of the entry may be 677
filed in the office of the clerk of the court of common pleas of 678
Franklin county. 679

Immediately upon the filing of such entry, the clerk shall 680
enter a judgment for the state against the party assessed in the 681

amount shown on the entry. The judgment may be filed by the 682
clerk in a loose-leaf book entitled "special judgments for state 683
severance tax," and shall have the same effect as other 684
judgments. Execution shall issue upon the judgment upon the 685
request of the commissioner, and all laws applicable to sales on 686
execution shall apply to sales made under the judgment. 687

If the assessment is not paid in its entirety within sixty 688
days after the day the assessment is issued, the portion of the 689
assessment consisting of tax due or amounts due under section 690
1509.50 of the Revised Code shall bear interest at the rate per 691
annum prescribed by section 5703.47 of the Revised Code from the 692
day the commissioner issues the assessment until it is paid or 693
until it is certified to the attorney general for collection 694
under section 131.02 of the Revised Code, whichever comes first. 695
If the unpaid portion of the assessment is certified to the 696
attorney general for collection, the entire unpaid portion of 697
the assessment shall bear interest at the rate per annum 698
prescribed by section 5703.47 of the Revised Code from the date 699
of certification until the date it is paid in its entirety. 700
Interest shall be paid in the same manner as the tax and may be 701
collected by the issuance of an assessment under this section. 702

(D) All money collected by the commissioner under this 703
section shall be paid to the treasurer of state, and when paid 704
shall be considered as revenue arising from the tax imposed by 705
section 5749.02 of the Revised Code and the amount due under 706
section 1509.50 of the Revised Code, as applicable. 707

Section 2. That existing sections 3123.67, 4123.78, 708
4141.23, 5301.071, 5301.255, 5719.04, 5739.13, 5747.13, and 709
5749.07 of the Revised Code are hereby repealed. 710