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Am. S. B. No. 101

Senator Blessing

**Cosponsors: Senators Antonio, Blackshear, Cirino, Craig, DeMora, Gavarone,
Hicks-Hudson, Huffman, Ingram, Manning, Patton, Reineke, Schaffer, Smith,
Timken, Wilkin**

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 or from a trust shall be considered to be a 194
conveyance to or from 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 of record~~ when any interest in real 215
property is conveyed by or to the trustee of a disclosed trust, 216
and in circumstances other than the conveyance of real property 217
may be presented, in the office of the county recorder of any 218
county in which real property that is subject to the trust is 219
located: 220

(1) The ~~memorandum~~ instrument shall be executed by the 221
trustee of the trust and acknowledged by the trustee of the 222
trust in accordance with section 5301.01 of the Revised Code. 223

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

following: 225

(a) The name and address of the trustee of the trust; 226

(b) The date of execution of the trust; 227

(c) The powers specified in the trust relative to the 228
acquisition, sale, or encumbering of real property by the 229
trustee or the conveyance of real property by the trustee, and 230
any restrictions upon those powers. 231

(B) ~~A memorandum of trust~~ An instrument that satisfies 232
divisions (A) (1) and (2) of this section also may set forth the 233
substance or actual text of provisions of the trust that are not 234
described in those divisions. 235

(C) ~~A memorandum of trust~~ An instrument that satisfies 236
divisions (A) (1) and (2) of this section shall constitute notice 237
only of the information contained in it. 238

(D) Upon the presentation for recordation of ~~a memorandum~~ 239
~~of trust~~ an instrument that satisfies divisions (A) (1) and (2) 240
of this section and the payment of the requisite fee prescribed 241
in section 317.32 of the Revised Code, a county recorder shall 242
~~record either:~~ 243

(1) Record the ~~memorandum of trust~~ instrument in the 244
official records described in division (A) (17) of section 317.08 245
of the Revised Code, if the ~~memorandum of trust~~ instrument 246
describes specific real property, ~~or;~~ 247

(2) Record the instrument in the official records 248
described in division (A) (23) of ~~that~~ section 317.08 of the 249
Revised Code, if the ~~memorandum of trust~~ instrument does not 250
describe specific real property. 251

Sec. 5719.04. (A) Immediately after each settlement 252

required by division (D) of section 321.24 of the Revised Code, 253
the county auditor shall make a tax list and duplicates thereof 254
of all general personal and classified property taxes remaining 255
unpaid, as shown by the county treasurer's books and the list of 256
taxes returned as delinquent by the treasurer to the auditor at 257
such settlement. The county auditor shall also include in such 258
list all taxes assessed by the tax commissioner pursuant to law 259
which were not charged upon the tax lists and duplicates on 260
which such settlements were made nor previously charged upon a 261
delinquent tax list and duplicates pursuant to this section, but 262
the auditor shall not include taxes specifically excepted from 263
collection pursuant to section 5711.32 of the Revised Code. Such 264
tax list and duplicates shall contain the name of the person 265
charged, the last known address of the person charged, and the 266
amount of such taxes, and the penalty, due and unpaid, and shall 267
set forth separately the amount charged or chargeable on the 268
general and on the classified list and duplicate. The auditor 269
shall deliver one such duplicate to the treasurer on the first 270
day of December, annually. Upon receipt of the duplicate the 271
treasurer may prepare and mail tax bills to all persons charged 272
with such delinquent taxes. Each bill shall include a notice 273
that the interest charge prescribed by section 5719.041 of the 274
Revised Code has begun to accrue. 275

The auditor shall cause a copy of the delinquent personal 276
and classified property tax list and duplicate provided for in 277
this division to be published twice within sixty days after 278
delivery of such duplicate to the treasurer in a newspaper of 279
general circulation in the county. The newspaper shall meet the 280
requirements of section 7.12 of the Revised Code. The auditor 281
may publish the tax list on a preprinted insert in the 282
newspaper. The cost of the second publication of the list shall 283

not exceed three-fourths of the cost of the first publication of 284
the list. 285

Before such publication, the auditor shall cause a display 286
notice of the forthcoming publication of such delinquent 287
personal and classified property tax list to be inserted once a 288
week for two consecutive weeks in a newspaper of general 289
circulation in the county. Copy for such display notice shall be 290
furnished by the auditor to the newspaper selected to publish 291
such delinquent tax lists simultaneously with the delivery of 292
the duplicate to the treasurer. Publication of the delinquent 293
lists may be made by a newspaper in installments, provided that 294
complete publication thereof is made twice during said sixty-day 295
period. 296

The office of the county treasurer shall be kept open to 297
receive the payment of delinquent general and classified 298
property taxes from the day of delivery of the duplicate thereof 299
until the final publication of the delinquent tax list. The name 300
of any taxpayer who, prior to seven days before either the first 301
or second publication of said list, pays such taxes in full or 302
enters into a delinquent tax contract to pay such taxes in 303
installments pursuant to section 5719.05 of the Revised Code 304
shall be stricken from such list, and the taxpayer's name shall 305
not be included in the list for that publication. 306

The other such duplicate, from which shall first be 307
eliminated the names of persons whose total liability for taxes 308
and penalty is less than one hundred dollars, shall be filed by 309
the auditor on the first day of December, annually, in the 310
office of the county recorder, and the same shall constitute a 311
notice of lien and operate as of the date of delivery as a lien 312
on the lands and tenements, vested legal interests therein, and 313

permanent leasehold estates of each person named therein having 314
such real estate in such county. Such notice of lien and such 315
lien shall not be valid as against any mortgagee, pledgee, 316
purchaser, or judgment creditor whose rights have attached prior 317
to the date of such delivery. Such duplicate shall be kept by 318
the county recorder in the official records, and indexed under 319
the name of the person charged with such tax. No fee shall be 320
charged by the county recorder for the services required under 321
this section. 322

The auditor shall add to the tax list made pursuant to 323
this section all such taxes omitted in a previous year when 324
assessed by the auditor or finally assessed by the tax 325
commissioner pursuant to law, and by proper certificates cause 326
the same to be added to the treasurer's delinquent tax duplicate 327
provided for in this section, and, in proper cases, file notice 328
of the lien with the recorder, as provided in this section. 329

If the authority making any assessment believes that the 330
collection of such taxes will be jeopardized by delay, such 331
assessing authority shall so certify on the assessment 332
certificate thereof, and the auditor shall include a certificate 333
of such jeopardy in the certificate given by the auditor to the 334
treasurer. In such event, the treasurer shall proceed 335
immediately to collect such taxes, and to enforce the collection 336
thereof by any means provided by law, and the treasurer may not 337
accept a tender of any part of such taxes; but the person or the 338
representatives of the person against whom such assessment is 339
made may, in the event of an appeal to the tax commissioner 340
therefrom, obtain a stay of collection of the whole or any part 341
of the amount of such assessment by filing with the treasurer a 342
bond in an amount not exceeding double the amount as to which 343
the stay is desired, with such surety as the treasurer deems 344

necessary, conditioned upon the payment of the amount determined 345
to be due by the decision of the commissioner which has become 346
final, and further conditioned that if an appeal is not filed 347
within the period provided by law, the amount of collection 348
which is stayed by the bond will be paid on notice and demand of 349
the treasurer at any time after the expiration of such period. 350
The taxpayer may waive such stay as to the whole or any part of 351
the amount covered by the bond, and if as the result of such 352
waiver any part of the amount covered by the bond is paid, then 353
the bond shall be proportionately reduced on the request of the 354
taxpayer. 355

(B) Immediately after each settlement required by division 356
(D) of section 321.24 of the Revised Code, the auditor shall 357
make a separate list and duplicate, prepared as prescribed in 358
division (A) of this section, of all general personal and 359
classified property taxes that remain unpaid but are excepted 360
from collection pursuant to section 5711.32 of the Revised Code. 361
The duplicate of such list shall be delivered to the treasurer 362
at the time of delivery of the delinquent personal and 363
classified property tax duplicate. 364

Sec. 5739.13. (A) If any vendor collects the tax imposed 365
by or pursuant to section 5739.02, 5739.021, 5739.023, or 366
5739.026 of the Revised Code, and fails to remit the tax to the 367
state as prescribed, or on the sale of a motor vehicle, 368
watercraft, or outboard motor required to be titled, fails to 369
remit payment to a clerk of a court of common pleas as provided 370
in section 1548.06 or 4505.06 of the Revised Code, the vendor 371
shall be personally liable for any tax collected and not 372
remitted. The tax commissioner may make an assessment against 373
such vendor based upon any information in the commissioner's 374
possession. 375

If any vendor fails to collect the tax or any consumer 376
fails to pay the tax imposed by or pursuant to section 5739.02,
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
383

An assessment against a vendor when the tax imposed by or 384
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 385
the Revised Code has not been collected or paid, shall not 386
discharge the purchaser's or consumer's liability to reimburse 387
the vendor for the tax applicable to such transaction. 388

An assessment issued against either, pursuant to this 389
section, shall not be considered an election of remedies, nor a 390
bar to an assessment against the other for the tax applicable to 391
the same transaction, provided that no assessment shall be 392
issued against any person for the tax due on a particular 393
transaction if the tax on that transaction actually has been 394
paid by another. 395

The commissioner may make an assessment against any vendor 396
who fails to file a return or remit the proper amount of tax 397
required by this chapter, or against any consumer who fails to 398
pay the proper amount of tax required by this chapter. When 399
information in the possession of the commissioner indicates that 400
the amount required to be collected or paid under this chapter 401
is greater than the amount remitted by the vendor or paid by the 402
consumer, the commissioner may audit a sample of the vendor's 403
sales or the consumer's purchases for a representative period, 404
to ascertain the per cent of exempt or taxable transactions or 405

the effective tax rate and may issue an assessment based on the 406
audit. The commissioner shall make a good faith effort to reach 407
agreement with the vendor or consumer in selecting a 408
representative sample. 409

The commissioner may make an assessment, based on any 410
information in the commissioner's possession, against any person 411
who fails to file a return or remit the proper amount of tax 412
required by section 5739.102 of the Revised Code. 413

The commissioner may issue an assessment on any 414
transaction for which any tax imposed under this chapter or 415
Chapter 5741. of the Revised Code was due and unpaid on the date 416
the vendor or consumer was informed by an agent of the tax 417
commissioner of an investigation or audit. If the vendor or 418
consumer remits any payment of the tax for the period covered by 419
the assessment after the vendor or consumer was informed of the 420
investigation or audit, the payment shall be credited against 421
the amount of the assessment. 422

The commissioner shall give the party assessed written 423
notice of the assessment in the manner provided in section 424
5703.37 of the Revised Code. With the notice, the commissioner 425
shall provide instructions on how to petition for reassessment 426
and request a hearing on the petition. 427

(B) Unless the party assessed files with the commissioner 428
within sixty days after service of the notice of assessment, 429
either personally or by certified mail, a written petition for 430
reassessment, signed by the party assessed or that party's 431
authorized agent having knowledge of the facts, the assessment 432
becomes final and the amount of the assessment is due from the 433
party assessed and payable to the treasurer of state and 434
remitted to the tax commissioner. The petition shall indicate 435

the objections of the party assessed, but additional objections 436
may be raised in writing if received by the commissioner prior 437
to the date shown on the final determination. If the petition 438
has been properly filed, the commissioner shall proceed under 439
section 5703.60 of the Revised Code. 440

(C) After an assessment becomes final, if any portion of 441
the assessment remains unpaid, including accrued interest, a 442
certified copy of the commissioner's entry making the assessment 443
final may be filed in the office of the clerk of the court of 444
common pleas in the county in which the place of business of the 445
party assessed is located or the county in which the party 446
assessed resides. Such filing shall include the party's name and 447
last known address. If the party assessed maintains no place of 448
business in this state and is not a resident of this state, the 449
certified copy of the entry may be filed in the office of the 450
clerk of the court of common pleas of Franklin county. 451

Immediately upon the filing of the entry, the clerk shall 452
enter a judgment for the state against the party assessed in the 453
amount shown on the entry. The judgment may be filed by the 454
clerk in a loose-leaf book entitled "special judgments for 455
state, county, and transit authority retail sales tax" or, if 456
appropriate, "special judgments for resort area excise tax," and 457
shall have the same effect as other judgments. Execution shall 458
issue upon the judgment upon the request of the tax 459
commissioner, and all laws applicable to sales on execution 460
shall apply to sales made under the judgment except as otherwise 461
provided in this chapter. 462

If the assessment is not paid in its entirety within sixty 463
days after the date the assessment was issued, the portion of 464
the assessment consisting of tax due shall bear interest at the 465

rate per annum prescribed by section 5703.47 of the Revised Code 466
from the day the tax commissioner issues the assessment until 467
the assessment is paid or until it is certified to the attorney 468
general for collection under section 131.02 of the Revised Code, 469
whichever comes first. If the unpaid portion of the assessment 470
is certified to the attorney general for collection, the entire 471
unpaid portion of the assessment shall bear interest at the rate 472
per annum prescribed by section 5703.47 of the Revised Code from 473
the date of certification until the date it is paid in its 474
entirety. Interest shall be paid in the same manner as the tax 475
and may be collected by issuing an assessment under this 476
section. 477

(D) All money collected by the tax commissioner under this 478
section shall be paid to the treasurer of state, and when paid 479
shall be considered as revenue arising from the taxes imposed by 480
or pursuant to sections 5739.01 to 5739.31 of the Revised Code. 481

Sec. 5747.13. (A) If any employer collects the tax imposed 482
by section 5747.02 or under Chapter 5748. of the Revised Code 483
and fails to remit the tax as required by law, or fails to 484
collect the tax, the employer is personally liable for any 485
amount collected that the employer fails to remit, or any amount 486
that the employer fails to collect. If any taxpayer fails to 487
file a return or fails to pay the tax imposed by section 5747.02 488
or under Chapter 5748. of the Revised Code, the taxpayer is 489
personally liable for the amount of the tax. 490

If any employer, taxpayer, qualifying entity, or electing 491
pass-through entity required to file a return under this chapter 492
fails to file the return within the time prescribed, files an 493
incorrect return, fails to remit the full amount of the taxes 494
due for the period covered by the return, or fails to remit any 495

additional tax due as a result of a reduction in the amount of 496
the credit allowed under division (B) of section 5747.05 of the 497
Revised Code together with interest on the additional tax within 498
the time prescribed by that division, the tax commissioner may 499
make an assessment against any person liable for any deficiency 500
for the period for which the return is or taxes are due, based 501
upon any information in the commissioner's possession. 502

An assessment issued against either the employer or the 503
taxpayer pursuant to this section shall not be considered an 504
election of remedies or a bar to an assessment against the other 505
for failure to report or pay the same tax. No assessment shall 506
be issued against any person if the tax actually has been paid 507
by another. 508

No assessment shall be made or issued against an employer, 509
a taxpayer, a qualifying entity, or an electing pass-through 510
entity more than four years after the final date the return 511
subject to assessment was required to be filed or the date the 512
return was filed, whichever is later. However, the commissioner 513
may assess any balance due as the result of a reduction in the 514
credit allowed under division (B) of section 5747.05 of the 515
Revised Code, including applicable penalty and interest, within 516
four years of the date on which the taxpayer reports a change in 517
either the portion of the taxpayer's adjusted gross income 518
subjected to an income tax or tax measured by income in another 519
state or the District of Columbia, or the amount of liability 520
for an income tax or tax measured by income to another state or 521
the District of Columbia, as required by division (B)(4) of 522
section 5747.05 of the Revised Code. Such time limits may be 523
extended if both the employer, taxpayer, qualifying entity, or 524
electing pass-through entity and the commissioner consent in 525
writing to the extension or if an agreement waiving or extending 526

the time limits has been entered into pursuant to section 527
122.171 of the Revised Code. Any such extension shall extend the 528
four-year time limit in division (B) of section 5747.11 of the 529
Revised Code for the same period of time. There shall be no bar 530
or limit to an assessment against an employer for taxes withheld 531
from employees and not remitted to the state, against an 532
employer, a taxpayer, a qualifying entity, or an electing pass- 533
through entity that fails to file a return subject to assessment 534
as required by this chapter, or against an employer, a taxpayer, 535
a qualifying entity, or an electing pass-through entity that 536
files a fraudulent return. 537

The commissioner shall give the party assessed written 538
notice of the assessment in the manner provided in section 539
5703.37 of the Revised Code. With the notice, the commissioner 540
shall provide instructions on how to petition for reassessment 541
and request a hearing on the petition. 542

(B) Unless the party assessed files with the tax 543
commissioner within sixty days after service of the notice of 544
assessment, either personally or by certified mail, a written 545
petition for reassessment, signed by the party assessed or that 546
party's authorized agent having knowledge of the facts, the 547
assessment becomes final, and the amount of the assessment is 548
due and payable from the party assessed to the commissioner with 549
remittance made payable to the treasurer of state. The petition 550
shall indicate the objections of the party assessed, but 551
additional objections may be raised in writing if received by 552
the commissioner prior to the date shown on the final 553
determination. If the petition has been properly filed, the 554
commissioner shall proceed under section 5703.60 of the Revised 555
Code. 556

(C) After an assessment becomes final, if any portion of 557
the assessment remains unpaid, including accrued interest, a 558
certified copy of the tax commissioner's entry making the 559
assessment final may be filed in the office of the clerk of the 560
court of common pleas in the county in which the employer's, 561
taxpayer's, qualifying entity's, or electing pass-through 562
entity's place of business is located or the county in which the 563
party assessed resides. Such filing shall include the party's 564
name and last known address. If the party assessed is not a 565
resident of this state, the certified copy of the entry may be 566
filed in the office of the clerk of the court of common pleas of 567
Franklin county. 568

Immediately upon the filing of the entry, the clerk shall 569
enter a judgment against the party assessed in the amount shown 570
on the entry. The judgment shall be filed by the clerk in one of 571
two loose-leaf books, one entitled "special judgments for state 572
and school district income taxes," and the other entitled 573
"special judgments for qualifying entity and electing pass- 574
through entity taxes." The judgment shall have the same effect 575
as other judgments. Execution shall issue upon the judgment upon 576
the request of the tax commissioner, and all laws applicable to 577
sales on execution shall apply to sales made under the judgment. 578

If the assessment is not paid in its entirety within sixty 579
days after the assessment was issued, the portion of the 580
assessment consisting of tax due shall bear interest at the rate 581
per annum prescribed by section 5703.47 of the Revised Code from 582
the day the tax commissioner issues the assessment until it is 583
paid or until it is certified to the attorney general for 584
collection under section 131.02 of the Revised Code, whichever 585
comes first. If the unpaid portion of the assessment is 586
certified to the attorney general for collection, the entire 587

unpaid portion of the assessment shall bear interest at the rate 588
per annum prescribed by section 5703.47 of the Revised Code from 589
the date of certification until the date it is paid in its 590
entirety. Interest shall be paid in the same manner as the tax 591
and may be collected by the issuance of an assessment under this 592
section. 593

(D) All money collected under this section shall be 594
considered as revenue arising from the taxes imposed by this 595
chapter or Chapter 5733. or 5748. of the Revised Code, as 596
appropriate. 597

(E) If the party assessed files a petition for 598
reassessment under division (B) of this section, the person, on 599
or before the last day the petition may be filed, shall pay the 600
assessed amount, including assessed interest and assessed 601
penalties, if any of the following conditions exists: 602

(1) The person files a tax return reporting Ohio adjusted 603
gross income, less the exemptions allowed by section 5747.025 of 604
the Revised Code, in an amount less than one cent, and the 605
reported amount is not based on the computations required under 606
division (A) of section 5747.01 or section 5747.025 of the 607
Revised Code. 608

(2) The person files a tax return that the tax 609
commissioner determines to be incomplete, false, fraudulent, or 610
frivolous. 611

(3) The person fails to file a tax return, and the basis 612
for this failure is not either of the following: 613

(a) An assertion that the person has no nexus with this 614
state; 615

(b) The computations required under division (A) of 616

section 5747.01 of the Revised Code or the application of 617
credits allowed under this chapter has the result that the 618
person's tax liability is less than one dollar and one cent. 619

(F) Notwithstanding the fact that a petition for 620
reassessment is pending, the petitioner may pay all or a portion 621
of the assessment that is the subject of the petition. The 622
acceptance of a payment by the treasurer of state does not 623
prejudice any claim for refund upon final determination of the 624
petition. 625

If upon final determination of the petition an error in 626
the assessment is corrected by the tax commissioner, upon 627
petition so filed or pursuant to a decision of the board of tax 628
appeals or any court to which the determination or decision has 629
been appealed, so that the amount due from the party assessed 630
under the corrected assessment is less than the portion paid, 631
there shall be issued to the petitioner or to the petitioner's 632
assigns or legal representative a refund in the amount of the 633
overpayment as provided by section 5747.11 of the Revised Code, 634
with interest on that amount as provided by such section, 635
subject to section 5747.12 of the Revised Code. 636

Sec. 5749.07. (A) If any severer required by this chapter 637
to make and file returns and pay the tax levied by section 638
5749.02 of the Revised Code, or any severer or owner liable for 639
the amounts due under section 1509.50 of the Revised Code, fails 640
to make such return or pay such tax or amounts, the tax 641
commissioner may make an assessment against the severer or owner 642
based upon any information in the commissioner's possession. 643

No assessment shall be made or issued against any severer 644
for any tax imposed by section 5749.02 of the Revised Code or 645
against any severer or owner for any amount due under section 646

1509.50 of the Revised Code more than four years after the 647
return was due or was filed, whichever is later. This section 648
does not bar an assessment against a severer or owner who fails 649
to file a return as required by this chapter, or who files a 650
fraudulent return. 651

The commissioner shall give the party assessed written 652
notice of such assessment in the manner provided in section 653
5703.37 of the Revised Code. With the notice, the commissioner 654
shall provide instructions on how to petition for reassessment 655
and request a hearing on the petition. 656

(B) Unless the party assessed files with the commissioner 657
within sixty days after service of the notice of assessment, 658
either personally or by certified mail, a written petition for 659
reassessment signed by the party assessed or that party's 660
authorized agent having knowledge of the facts, the assessment 661
becomes final and the amount of the assessment is due and 662
payable from the party assessed to the treasurer of state. The 663
petition shall indicate the objections of the party assessed, 664
but additional objections may be raised in writing if received 665
by the commissioner prior to the date shown on the final 666
determination. If the petition has been properly filed, the 667
commissioner shall proceed under section 5703.60 of the Revised 668
Code. 669

(C) After an assessment becomes final, if any portion of 670
the assessment remains unpaid, including accrued interest, a 671
certified copy of the commissioner's entry making the assessment 672
final may be filed in the office of the clerk of the court of 673
common pleas in the county in which the party assessed resides 674
or in which the party's business is conducted. Such filing shall 675
include the debtor's name and last known address. If the party 676

assessed maintains no place of business in this state and is not 677
a resident of this state, the certified copy of the entry may be 678
filed in the office of the clerk of the court of common pleas of 679
Franklin county. 680

Immediately upon the filing of such entry, the clerk shall 681
enter a judgment for the state against the party assessed in the 682
amount shown on the entry. The judgment may be filed by the 683
clerk in a loose-leaf book entitled "special judgments for state 684
severance tax," and shall have the same effect as other 685
judgments. Execution shall issue upon the judgment upon the 686
request of the commissioner, and all laws applicable to sales on 687
execution shall apply to sales made under the judgment. 688

If the assessment is not paid in its entirety within sixty 689
days after the day the assessment is issued, the portion of the 690
assessment consisting of tax due or amounts due under section 691
1509.50 of the Revised Code shall bear interest at the rate per 692
annum prescribed by section 5703.47 of the Revised Code from the 693
day the commissioner issues the assessment until it is paid or 694
until it is certified to the attorney general for collection 695
under section 131.02 of the Revised Code, whichever comes first. 696
If the unpaid portion of the assessment is certified to the 697
attorney general for collection, the entire unpaid portion of 698
the assessment shall bear interest at the rate per annum 699
prescribed by section 5703.47 of the Revised Code from the date 700
of certification until the date it is paid in its entirety. 701
Interest shall be paid in the same manner as the tax and may be 702
collected by the issuance of an assessment under this section. 703

(D) All money collected by the commissioner under this 704
section shall be paid to the treasurer of state, and when paid 705
shall be considered as revenue arising from the tax imposed by 706

section 5749.02 of the Revised Code and the amount due under 707
section 1509.50 of the Revised Code, as applicable. 708

Section 2. That existing sections 3123.67, 4123.78, 709
4141.23, 5301.071, 5301.255, 5719.04, 5739.13, 5747.13, and 710
5749.07 of the Revised Code are hereby repealed. 711