



Stephen Estelle

Final Analysis
Legislative Service Commission

Sub. H.B. 390

126th General Assembly
(As Passed by the General Assembly)

Reps. Taylor, Brinkman, Brown, Gibbs, Gilb, Hood, Kilbane, Trakas, Hagan, Blessing, Schaffer, Latta, Aslanides, Bulp, Carano, Cassell, Collier, Core, Domenick, Evans, C., Faber, Garrison, Hartnett, Key, Raussen, Reidelbach, Reinhard, Schneider, Seitz, Uecker, Widowfield, Willamowski, Yuko

Sens. Spada, Zurz, Fingerhut, Dann, Amstutz, Austria, Armbruster, Carey, Clancy, Coughlin, Grendell, Mumper, Niehaus, Padgett, Schuler, Schuring, Wachtmann, Miller, R., Miller, D., Roberts

Effective date: *

ACT SUMMARY

- Establishes a seven-year statute of limitations within which the state must begin judicial proceedings to collect most unpaid state tax debts after an assessment has been issued.
- Establishes a four-year statute of limitations within which the state must begin judicial proceedings to collect most unpaid state tax debts after an assessment has become final.
- Establishes a ten-year statute of limitations on formally assessing an unpaid tax, except when a shorter time limit applies under continuing law, in cases of fraud, or where the tax is collected on the state's behalf but not remitted to the state.
- Restores a prior time limit on the state and its political subdivisions taking action to enforce judgments for debts due the state, and increases the time limit to 12 years.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Restores a prior time limit on the state taking action to enforce certain statutory liens for debts due the state, and increases the time limit to 12 years.
- Eliminates express provisions for statutory liens securing payment of certain taxes.
- Requires the Attorney General to appoint a problem resolution officer with regard to collection of the commercial activity tax.
- Requires the Attorney General to make an annual report on tax collection efforts.
- Provides for relieving "innocent spouses" from joint and several liability for income taxes under a compromise of claim or payment-over-time agreement.

CONTENT AND OPERATION

Time limit on collecting outstanding state tax debts

(R.C. 131.02)

Time limits before the act

The state was given limited time to issue a formal assessment for most allegedly unpaid state taxes, but no time limit was placed on when court proceedings must begin to collect unpaid tax debts. (An assessment is the formal notification to a taxpayer of an alleged unpaid tax liability; the issuance of an assessment marks the beginning of a taxpayer's initial administrative appeal opportunities and sets in motion certain formal administrative and court proceedings aimed at finalizing the alleged liability.) The time limitation on assessments did not apply in cases where a person does not file a return or files a fraudulent return, or in cases where tax is collected on behalf of the state but is not remitted to the state (e.g., sales tax collected by a retailer or income tax withheld by an employer from employees).

Prior law allowed an unpaid tax or assessment to be canceled if it was deemed to be uncollectible, and required all unpaid amounts to be canceled if they were not collected within 40 years after the debt was certified to the Attorney General for collection. Otherwise, prior law placed no time limit on when efforts to collect outstanding tax debts must begin.

Time limit to commence tax collection court proceedings

(R.C. 131.02(F)(3))

The act places a time limit within which the state must begin court proceedings to collect any tax administered by the Tax Commissioner (listed below). Court proceedings must be started within seven years after an assessment is issued, or within four years after an assessment becomes final, whichever is later. Thus, if an assessment is issued and the taxpayer contests it, and the contest proceedings continue beyond the seven-year post-assessment time limit, court proceedings to collect the tax assessed must begin within four years after the contested assessment becomes final. For this purpose, an assessment becomes final when the taxpayer's initial right to file an administrative appeal ("petition for reassessment") expires; when the deadline for filing any appeal from the Tax Commissioner, the Board of Tax Appeals, or a court expires; or when the United States Supreme Court issues a decision, whichever is later.

The time limit on beginning court collection proceedings is extended for the period of any stay issued against collection (e.g., in a bankruptcy proceeding). And, the time limit may be extended for a period determined by mutual agreement between the taxpayer and the Tax Commissioner.

For the purposes of the act, a court proceeding is deemed to begin when any court action is initiated after the final tax assessment is filed in the appropriate common pleas court clerk's office (including an action in aid of execution). If an assessment has not been issued and there is no time limitation on issuing an assessment, a court proceeding is deemed to begin when a court action to collect the tax is filed with a court of this state to collect the liability.

The time limitation applies prospectively and retrospectively to assessments made before, on, or after the act's effective date; if no assessment was issued, the act applies to tax liabilities arising before, on, or after the act's effective date. But if the seven-year time limit for collecting an assessment or liability would end before three years after the act's effective date, the time limitation is extended three years past the act's effective date. (Section 3.)

The time limitation applies to all taxes payable to the state and administered by the Tax Commissioner, which include the following:

Income tax	Commercial activity tax
Corporation franchise tax	Sales and use taxes
Motor fuel tax	School income tax
Public utility excise tax	Cigarette and tobacco taxes
Municipal electric company tax	Alcoholic beverage taxes
Kilowatt-hour tax	Natural gas distribution tax
Horse racing tax	Severance tax
Pass-through entity withholding tax	

Time limit on assessments

(R.C. 5703.58)

The act places a ten-year time limit within which the Tax Commissioner must issue an assessment for any alleged unpaid tax liability when no shorter time limit applies under continuing law. The time limit begins on the date the tax return or report was due when the liability was not reported and paid, including any filing extensions allowed. The ten-year period is extended for the duration of any lawful stay of the assessment.

The ten-year time limit on assessments does not apply in cases where a person fraudulently attempts to avoid the tax, where sales or use tax is collected by a vendor or seller but not remitted to the state, or where income tax is withheld by an employer from employees but not remitted to the state.

The time limit on assessments applies to all taxes payable to the state and administered by the Tax Commissioner (listed above).

Under continuing law, there are shorter time limits within which assessments for most taxes must be issued, except in cases where a return has not been filed, a return is fraudulent, or the tax has been collected but not remitted to the state. The time limit is four years for the income tax, the sales and use taxes, the commercial activity tax, the pass-through entity withholding tax, the motor fuel tax, the kilowatt-hour tax, the natural gas distribution tax, and the severance tax. The time limit is three years for the corporation franchise tax, the municipal electric company tax, alcoholic beverage taxes, and cigarette and tobacco taxes. The time limits begin to run when the tax return is due or when it is filed, whichever is later. These time limits are not affected by the act.

Time limit on enforcing judgment liens in state's favor

(R.C. 2329.07)

The act restores a requirement, which was in effect until September 25, 2003, that the state must periodically refile for execution on, or certification of, a court judgment the state has against a debtor in order to keep a lien against the estate of a judgment debtor from becoming inoperative. But, unlike the prior requirement that refiling occur every ten years, the act provides for refiling every 12 years.

The act's 12-year refiling requirement applies retrospectively to judgments for which action would have been required at some time since September 25, 2003, so long as the action is taken within three years after the date by which the action would have to have been taken if the prior ten-year requirement had not been repealed in 2003.

Time limit on enforcing statutory liens on real or personal property

(R.C. 2305.26)

The act restores a requirement, which was in effect until September 25, 2003, that the state and its political subdivisions must begin an action within a specified time to enforce statutory liens on real or personal property for certain unpaid debts owed to the state. Under the act, an action to collect the debt must be brought within 12 years after the lien was first filed with the county recorder, or, beginning February 1, 2007, a notice of continuation of lien must be filed within six months before the end of that 12-year period and every succeeding 12-year period. (Under the law in effect until September 25, 2003, the time limit was six years.)

The 12-year time limit applies to unpaid business tangible personal property taxes, workers' and unemployment compensation contributions, payments due under supersedeas bonds (which delay payment of a judgment until an appeal is over), payments due under motor vehicle financial responsibility bonds, and money due under criminal appearance and recognizance bonds.

The pre-September 25, 2003, time limit also applied to unpaid corporation franchise, motor fuel, and severance taxes, and other excise and franchise taxes payable by corporations, but the act's restored time limit does not apply to liens for those taxes.

The 12-year time limit applies retrospectively to liens for which action would have been required at some time since September 25, 2003, so long as the action is taken within three years after the date by which the action would have to

have been taken if the prior requirement had not been repealed in 2003. The six-month time limit also applies retrospectively to notices of continuation of liens, but the notices must be filed six months before the expiration of three years after the six-year period within which notice was required to have been filed under the prior requirement had it not been repealed, or by February 1, 2007, whichever is later.

The act, in restoring the statutory lien requirements, also restores provisions regarding notices of continuation of liens.

Elimination of specific statutory tax liens

(R.C. 5733.18 (repealed), 5735.03, and 5749.02)

As indicated above, the act does not restore the statute of limitations with regard to enforcing statutory liens for the corporation franchise tax, the severance tax, other excise and franchise taxes due from corporations, and bonds securing payment of the motor fuel tax. The act eliminates the statutory liens for those taxes. Under prior law, a lien attaches to any property in Ohio of a corporation for any unpaid "excise or franchise" taxes required to be paid by the corporation. A statutory lien also attached to the property of a surety that guarantees payment of motor fuel excise taxes by fuel dealers, and to the property of a person subject to the severance tax. The elimination of these statutory liens presumably means any lien for these unpaid taxes will attach when a judgment is entered for the amount due under the provisions of general law.

Appointment of problem resolution officer for CAT

(R.C. 109.082)

Continuing law requires the Attorney General to appoint one or more problem resolution officers from among the Attorney General's employees with regard to the collection of corporate franchise taxes, sales and use taxes, and income taxes. Problem resolution officers receive and review inquiries and complaints concerning collection of these taxes when the taxpayer has been unable to obtain satisfactory information after making several attempts to communicate with the persons handling the collection. The act requires the Attorney General to appoint a problem resolution officer also with regard to the collection of the commercial activity tax.

Report of tax collection efforts

(R.C. 131.022)

The act requires that not later than April 30, 2007, and not later than that date every other year thereafter, the Attorney General must prepare and file a report with the Clerk of the House of Representatives, the Clerk of the Senate, and the chairpersons of the respective standing committees of the Senate and House of Representatives that are primarily responsible for considering tax assessment and collection matters. The report must address the tax collection efforts of the Attorney General's Office for the previous two calendar years. In particular, the report must specify what types of debts have been collected, what types of debts are outstanding, and, generally, what actions have been taken on the outstanding debts owed to Ohio.

"Innocent spouse" relief

(R.C. 5703.06)

Under continuing income tax law, joint and several liability is imposed on spouses filing joint tax returns.¹ If spouses file a joint return, they are jointly and individually liable for the tax due, including any penalties or interest. In other words, each spouse is liable for the entire tax due from both spouses, even for the tax due for income actually earned or received by only one of the spouses.

The act authorizes the Tax Commissioner and Attorney General to offer "innocent spouse" relief. Under continuing law, the Tax Commissioner and Attorney General must consider a list of standards when deciding whether it is in the best interests of the state to compromise or enter into a payment-over-time agreement with respect to a claim for an amount payable to Ohio that has been certified to the Attorney General for collection. The act provides that the Tax Commissioner and Attorney General also may consider whether a compromise or payment-over-time agreement should be given to an "innocent spouse." The standard to be considered is that there must be a joint assessment of spouses, one of whom is an innocent spouse, and relief only affects the claim as to the innocent spouse. A spouse granted federal "innocent spouse" relief with regard to any income item is rebuttably presumed to be an innocent spouse with regard to that income item to the extent the income item is included in or otherwise affects the computation of Ohio income taxes or any penalty or interest on those taxes.

¹ *Spouses filing joint federal returns are required by Ohio law to file joint Ohio returns.*

Federal law, Internal Revenue Code § 6015,² grants relief to "innocent spouses" in three forms:

(1) "Innocent spouse" relief is granted to a spouse who filed a joint return on which there was an understatement of tax attributable to erroneous items reported by the other spouse, the spouse neither knew nor had reason to know of the erroneous items, and holding the spouse liable for the tax due would be inequitable.

(2) "Relief by separation of liability" is relief granted to a divorced, separated, or widowed spouse, or to a spouse who is living apart from the other spouse, who did not know of erroneous items on the joint return for which relief is sought.

(3) "Equitable relief" is relief granted if "innocent spouse" or "relief by separation of liability" is not granted, an unpaid tax liability is outstanding, there was no fraudulent intent, there has been no transfer of assets to avoid tax or as part of a fraudulent scheme, the unpaid tax is attributable to the other spouse, and it would be unfair, considering all the circumstances, to hold the spouse liable for the unpaid tax.

HISTORY

ACTION	DATE
Introduced	10-19-05
Reported, H. Ways & Means	02-14-06
Passed House (80-13)	02-22-06
Reported, S. Ways & Means & Economic Development	03-29-06
Passed Senate (30-1)	03-29-06
House concurred in Senate amendments (86-9)	05-10-06

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² Also consult 26 C.F.R. 1.6015-1 et seq and Internal Revenue Service Publication 971.