



H.B. 390

126th General Assembly
(As Introduced)

Reps. Taylor, Brinkman, Brown, Gibbs, Gilb, Hood, Kilbane, Trakas

BILL SUMMARY

- Establishes a ten-year statute of limitations on the collection of unpaid personal income, corporation franchise, sales and use, commercial activity, and pass-through entity withholding taxes.

CONTENT AND OPERATION

Current law

(R.C. 5733.11(A), 5739.16, 5741.16, 5747.13(A), and 5751.09(F))

Under current law, the state is given limited time to issue an assessment for unpaid liabilities for corporation franchise tax, sales and use tax, commercial activity tax, personal income tax, and the pass-through entity withholding taxes. An assessment is the formal notification to a taxpayer of an alleged past due or unpaid tax liability; the issuance of an assessment marks the beginning of a taxpayer's initial appeal opportunities and sets in motion certain formal administrative and legal proceedings aimed at resolving the alleged liability.

The time limit on assessments for the personal income, commercial activity, sales and use, and pass-through entity withholding taxes is four years from the date the tax return was due or, if a return is filed late, the date the return was filed. The time limit for assessments for the corporation franchise tax is three years (but the time limit for the corresponding pass-through entity withholding tax for corporations is four years).

The time limits on assessments do not apply if a taxpayer has not filed a tax return or has filed a fraudulent return. The time limit also does not apply in cases when a person acts as a collection agent who collects the tax from others but does not remit the tax to the state, such as an employer that withholds income taxes from employees or a vendor that collects sales or use tax from customers.

Taxpayers may waive the time limit on assessments by written agreement with the Tax Commissioner.

Once an assessment is issued, there currently is no statutory limit on the time in which the alleged tax liability may be collected.

Proposed time limit on collection

(R.C. 5733.112, 5739.161, 5741.161, 5747.133, and 5751.091)

The bill establishes a ten-year time limit on the collection, through a court proceeding, of alleged unpaid liabilities arising from the corporation franchise tax, sales or use tax, personal income tax, or commercial activity tax. In the case of the personal income tax, if a taxpayer who served active duty as a National Guard member or Armed Forces reservist has entered into an installment payment contract under existing law, the time limit is 90 days after the expiration date on collection agreed to by the taxpayer in the contract, in lieu of the ten-year post-assessment period.

If an assessment was issued within the three-year or four-year time limit for issuing an assessment, the ten-year period begins when the assessment is issued. If an assessment was not issued within that time, the ten-year period begins when the tax liability first arose. If a court proceeding begins within the ten-year period (or within 90-day period for active duty military personnel), the period for collecting the tax continues until the unpaid liability or a court judgment arising from the liability is satisfied, or until it becomes unenforceable because execution on the judgment is not issued within ten years after the judgment or because a certificate of judgment was not issued within ten years after the judgment. (See R.C. 2329.07, second paragraph.)

The bill's ten-year time limit on tax collection proceedings is similar to, and modeled on, the ten-year time limit on court proceedings or levies for the collection and enforcement of federal taxes. (See Internal Revenue Code § 6502, 26 U.S.C. § 6502.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-19-05	p. 1738

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