



Sub. H.B. 390

126th General Assembly
(As Reported by H. Ways and Means)

Reps. Taylor, Brinkman, Brown, Gibbs, Gilb, Hood, Kilbane, Trakas, Hagan, Blessing, Schaffer, Latta

BILL SUMMARY

- Establishes a ten-year statute of limitations within which the state must begin judicial proceedings to collect most unpaid state tax debts once they have become final.
- Establishes a ten-year statute of limitations on formally assessing unpaid tax except when a shorter time limit applies, in cases of fraud, or where the tax is collected on the state's behalf but not remitted to the state.
- Limits the penalty that may be charged for late or unpaid taxes to 15% of the late or unpaid tax if the amount at issue is \$1,000 or less.
- Requires the Attorney General to appoint a problem resolution officer with regard to collection of the commercial activity tax.
- Restores a prior ten-year time limit on the state taking action to enforce judgments for debts due the state, and increases the time limit to 12 years.
- 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.
- Expressly provides for relief from joint and several liability for income tax for "innocent spouses" under prescribed circumstances.

CONTENT AND OPERATION

Time limit on collecting outstanding state tax debts

(R.C. 131.02)

Current law

Under current law, the state is given limited time to issue a formal assessment for most allegedly unpaid state taxes, but does not place a time limit 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 does 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).

Current law allows an unpaid tax or assessment to be canceled if it is deemed to be uncollectible, and requires all unpaid amounts to be canceled if they are not collected within four years after the debt is certified to the Attorney General for collection. Otherwise, current law places no time limit on when efforts to collect outstanding tax debts must begin.

Proposed time limit

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

The bill 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 ten years after an assessment is issued, or within one year 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 ten-year post-assessment time limit, court proceedings must begin within one year 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 bill, a court proceeding is deemed to begin when any court action is initiated after the final tax assessment is filed in the appropriate clerk of court'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.

The time limitation applies prospectively and retrospectively to assessments made before, on, or after the bill's effective date; if no assessment was issued, the bill applies to tax liabilities arising before, on, or after the effective date. However, if the ten-year time limit for collecting an assessment or liability would end before one year after the bill's effective date, the time limitation is extended one year past the bill'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 tax
Motor fuel tax	School income tax
Public utility excise tax	Cigarette and tobacco tax
Municipal electric company tax	Beer, wine, and mixed beverage tax
Kilowatt-hour tax	Natural gas distribution tax
Horse racing tax	Severance taxes
Pass-through entity taxes	

Proposed time limit on assessments

(R.C. 5703.58)

The bill 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. The time limit begins on the final payment and reporting date, 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 current law that continues in effect, there are time limits within which assessments 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 taxes, the sales and use taxes, commercial activity tax, pass-through entity withholding taxes, motor fuel tax, kilowatt-hour tax, natural gas distribution tax, and severance taxes. The time limit is three years for the corporation franchise tax, 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.

Limitation on tax penalties

(R.C. 5733.262, 5739.134, 5747.134, and 5751.061)

The bill places a limit on the total amount of penalty that may be imposed for the failure to pay and report a tax on time if the amount due is \$1,000 or less. The maximum penalty is 15% of the amount due but not paid and reported on time. The amount due is determined with regard to each report (e.g., monthly or quarterly returns). The 15% limit also applies to any penalty imposed for failing to pay an assessment of \$1,000 or less on time.

The limitation on penalties applies to the sales and use taxes, income taxes, corporation franchise tax, commercial activity tax, and the pass-through entity withholding taxes.

Appointment of problem resolution officer for CAT

(R.C. 109.082)

Current 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 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 bill requires the Attorney General to appoint a problem resolution officer also with regard to the collection of the commercial activity tax.

Time limit on enforcing judgment liens in state's favor

(R.C. 2329.07)

The bill 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 the lien from becoming inoperative. But, unlike the prior requirement that refiling occur every ten years, the bill provides for refiling every 12 years.

The bill'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 requirement had not been repealed in 2003.

Time limit on enforcing statutory liens

(R.C. 2305.26)

The bill 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 for certain unpaid debts owed to the state. Under the bill, an action must begin to collect the tax within 12 years after the lien was first filed with the county recorder, or a notice of continuation 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 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, payments due under motor vehicle financial responsibility bonds, and money due under criminal appearance and recognizance bonds. The pre-September 2003 time limit also applied to unpaid corporation franchise, motor fuel, severance tax, and other excise and franchise taxes payable by corporations, but the bill's restored time limit does not apply to liens for those taxes.

The 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.

Elimination of specific statutory tax liens

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

As indicated above, the bill does not restore the statute of limitations with regard to enforcing statutory liens for the corporation franchise tax, severance tax, other excise and franchise taxes due from corporations, and bonds securing payment of the motor fuel tax. The bill eliminates the statutory liens for those taxes. Under current 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 attaches 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.

"Innocent spouse" relief

(R.C. 5747.08(E) and 5747.082; Section 4)

The bill waives the joint and several liability for Ohio income tax for a spouse who receives federal "innocent spouse" relief or who satisfies criteria similar to the federal criteria for relief. The waiver of liability is modeled on the "innocent spouse" relief (and similar forms of spousal relief) provided under federal income tax law for understatements of tax due with a joint return. Under current law, joint and several liability currently 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. This means 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 relief provided under

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

the bill applies to a spouse who filed a joint return for a taxable year even if the spouses filing the return are no longer married when relief is sought.

The bill's innocent spouse relief may be obtained in two ways: for spouses who have obtained federal innocent spouse relief, and for spouses who have not obtained federal relief but who the Tax Commissioner finds eligible for relief under criteria similar to federal criteria. Both forms of relief may not be sought for the same tax liability.

Spouses obtaining federal relief

(R.C. 5747.082(B))

Relief from Ohio liability must be provided for any spouse who has received one of the three forms of federal innocent spouse relief (the forms of federal relief are explained below). The Tax Commissioner has no discretion over whether to provide this relief: if a spouse has received the relief from liability for federal income tax, the spouse is entitled by law to relief from liability for Ohio income tax (including any penalty or interest) for the same income item for which federal liability was waived. For this purpose, an income item is an item of income, gain, loss, credit, deduction, or other "erroneous item" of income included in the computation of the spouse's Ohio tax or that otherwise affects the computation of the spouse's Ohio tax. An erroneous item is an unreported item of reportable income or an improper deduction, credit, or basis computation.

The bill provides a four-year look-back for spouses who have obtained federal innocent spouse relief within the four years preceding the bill's effective date. (Section 4(A).)

Spouses not obtaining federal relief

(R.C. 5747.082(C))

The bill also authorizes the Tax Commissioner independently to provide relief to a spouse who has not received federal innocent spouse relief but who qualifies for relief under criteria, specified in the bill, that are similar to the criteria for federal innocent spouse relief. The bill's criteria are three-fold, and a spouse must satisfy all three conditions:

(1) The spouse, when signing the joint return, did not know, and had no reason to know, of the understatement of tax;

(2) It would be unfair to hold the spouse liable for the tax when all the circumstances are considered;



(3) The spouses did not transfer assets among themselves as part of a fraudulent scheme to avoid reporting or paying Ohio income tax.

If the Tax Commissioner finds that a spouse satisfies all these criteria, relief from liability for the understatement of tax must be provided.

"Allocable share" of joint liability. If relief from liability for Ohio tax is granted to a spouse who did not receive relief from federal liability for the same understatement of tax, the Ohio relief applies to the spouse's "allocable share" of the total joint liability of both spouses. Generally, the spouse's allocable share is the portion of the total joint liability attributable only to the spouse who is granted relief. This is computed by determining the share of the total tax that would be due if the spouses had filed separate returns instead of a joint return, and by determining the percentage of that total tax that would be due from the spouse seeking relief if that spouse had filed a separate return. Relief is granted for that percentage of the joint liability.

Each spouse's separate tax is computed before deducting credits the spouse would be entitled to individually and before crediting tax withholding or estimated tax payments toward the spouse's separate liability. Any exemption claimed for a child or other dependent (excluding either spouse, if claimed as a dependent) is divided equally among the spouses' separate liabilities unless the claim for the exemption contributes to the tax understatement for which relief is sought. Similarly, if a deduction or addition is attributable specifically to a child or other dependent (excluding either spouse) and affects the computation of taxable income, each spouse must deduct or add one-half of that amount in computing their respective separate liabilities unless the addition or deduction contributed to the understatement of tax for which relief is sought. Examples of deductions that might be attributable solely to a dependent are the medical expense deduction and the higher education expense deduction.

Applying for relief

(R.C. 5747.082(D))

Regardless of whether a spouse received federal innocent spouse relief, a spouse seeking relief from Ohio liability must apply within two years after collection activity begins. Although the bill does not specify what constitutes collection activity, the same term is used for the purposes of the federal innocent spouse relief, and it includes, for federal purposes, garnishment of wages and applying a refund to a prior year's tax liability.

Application must be made in a manner and form to be prescribed by the Tax Commissioner. However, the bill authorizes the Tax Commissioner to apply

the innocent spouse relief to any person who qualifies, even if the person does not apply for the relief.

The Tax Commissioner must notify, in writing, each person applying for relief of the Tax Commissioner's decision regarding the relief granted or denied and of the person's right to appeal the Commissioner's decision.

Appeal if relief is denied

(R.C. 5747.082(D))

If the Tax Commissioner denies the relief sought, the spouse seeking the relief may seek an administrative redetermination by filing a petition with the Tax Commissioner. The manner of petitioning is the same as that for filing for redeterminations of other income tax matters. The petition must be filed within 60 days after the Tax Commissioner's notice of denial is sent. The petition, if filed properly and before the deadline, entitles the spouse to an administrative hearing before the Department of Taxation. A spouse may appeal the administrative redetermination in the same manner as any other income tax-related redetermination--i.e., by filing an appeal with the Ohio Board of Tax Appeals.

Federal innocent spouse relief

(26 U.S.C. 6015; 26 C.F.R. 1.6015-1 et seq.; I.R.S. Publication 971)

Relief from joint and several liability for federal income tax for spouses filing joint federal tax returns is authorized in three forms: "innocent spouse" relief, relief by separation of liability, and equitable relief. Eligibility for relief and the kind and extent of relief differs somewhat under each of the forms. Eligibility criteria and the relief available are summarized below. For a more detailed description, including examples, consult the Code of Federal Regulations sections and IRS publication cited above.

(1) "Innocent spouse" relief:

- Applies to a spouse who filed a joint return on which there was an understatement of tax attributable to erroneous items of the other spouse, and the spouse seeking relief, when signing the return, did not know, and had no reason to know, of the understatement, and it would be inequitable to hold the spouse liable for the tax due.
- Relieves the "innocent" spouse of liability for the tax due on the unpaid tax or for the part of the tax attributable to erroneous

items the spouse had no knowledge of and had no reason to know of.

(2) Relief by separation of liability:

- Applies only to divorced, separated, or widowed spouses or to spouses living apart.
- Unpaid tax is allocated among the spouses, and the spouse requesting relief is liable only for the unpaid liability not allocated to the other spouse; refunds may not be issued if the tax was paid or collected.
- The spouse requesting relief must not have known of the erroneous items on the joint return for which relief is sought.

(3) Equitable relief:

- Applies only if innocent spouse relief or relief by separation of liability is not granted; there was no fraudulent intent; an unpaid liability is outstanding; there was no transfer of assets to avoid tax or as part of a fraudulent scheme; the unpaid tax for which relief is sought is attributable to the other spouse; and it would be unfair, considering all the circumstances, to hold the spouse seeking relief responsible for the unpaid tax.
- Relieves the spouse of liability for the unpaid tax, at the discretion of the IRS; refunds may not be issued if the tax was paid or collected.

HISTORY

ACTION	DATE
Introduced	10-19-05
Reported, H. Ways & Means	02-14-06

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