



**Am. Sub. H.B. 390\***

126th General Assembly

(As Reported by S. Ways and Means and Economic Development)

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

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**BILL 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.
- Requires the Attorney General to appoint a problem resolution officer with regard to collection of the commercial activity tax.
- 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.

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\* *This analysis was prepared before the report of the Senate Ways and Means and Economic Development Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- 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.
- Provides a method for relief from joint and several liability for income taxes for "innocent spouses" under a compromise of claim or payment-over-time agreement.

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## 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 40 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 to commence tax collection court proceedings*

(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 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 bill, 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 bill's effective date; if no assessment was issued, the bill applies to tax liabilities arising before, on, or after the bill's effective date. But if the seven-year time limit for collecting an assessment or liability would end before three years after the bill's effective date, the time limitation is extended three years 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 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	



### **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 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, commercial activity tax, pass-through entity withholding tax, motor fuel tax, kilowatt-hour tax, natural gas distribution tax, and severance tax. 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. These time limits are not affected by the bill.

### **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 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 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 a lien against the estate of a judgment debtor 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 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 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 on real or personal property for certain unpaid debts owed to the state. Under the bill, 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 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 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 bill'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 within six years before the expiration of three years after the date by which the notices were required to have been filed if the prior requirement had not been repealed, or by February 1, 2007, whichever is later.

The bill, 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 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.

**Report of tax collection efforts**

(R.C. 131.022)

The bill 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 current income tax law, joint and several liability is imposed on spouses filing joint tax returns.<sup>1</sup> If spouses file a joint return, they are jointly and

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<sup>1</sup> Spouses filing joint federal returns are required by Ohio law to file joint Ohio returns.

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 bill authorizes the Tax Commissioner and Attorney General to offer "innocent spouse" relief to a spouse granted relief under the federal law. 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 bill provides that the Tax Commissioner and Attorney General 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 (below) 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.

### **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 taxes 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 holding the spouse liable for the tax due would be inequitable.
- 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.

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## 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	---

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