



Ohio Revised Code

Section 5747.451 Requirements of qualifying entity upon retirement from business, voluntary dissolution or transfer to successor.

Effective: October 3, 2023

Legislation: House Bill 33

(A) The mere retirement from business or voluntary dissolution of a domestic or foreign qualifying entity or electing pass-through entity does not exempt it from the requirements to make reports as required under sections 5747.42 to 5747.44 or to pay the taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code. If any qualifying entity or electing pass-through entity subject to the taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code sells its business or stock of merchandise or quits its business, the taxes required to be paid prior to that time, together with any interest or penalty thereon, become due and payable immediately, and the entity shall make a final return within fifteen days after the date of selling or quitting business. The successor of the qualifying entity or electing pass-through entity shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the entity produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid, or a certificate indicating that no taxes are due. If the purchaser of the business or stock of goods fails to withhold purchase money, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the entity. If the amount of those taxes, interest, and penalty unpaid at the time of the purchase exceeds the total purchase money, the tax commissioner may adjust the entity's liability for those taxes, interest, and penalty, or adjust the responsibility of the purchaser to pay that liability, in a manner calculated to maximize the collection of those liabilities.

(B) Annually, on the last day of each qualifying taxable year of a qualifying entity or taxable year of an electing pass-through entity, the taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code, together with any penalties subsequently accruing thereon, become a lien on all property in this state of the entity, whether such property is employed by the entity in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the entity's creditors and investors. The lien shall continue until those taxes, together with any penalties subsequently accruing, are paid.



Upon failure of such a qualifying entity or an electing pass-through entity to pay those taxes on the day fixed for payment, the tax commissioner may file, in the office of the county recorder in each county in this state in which the entity owns or has a beneficial interest in real estate, notice of the lien containing a brief description of such real estate. No fee shall be charged for such a filing. The lien is not valid as against any mortgagee, purchaser, or judgment creditor whose rights have attached prior to the time the notice is so filed in the county in which the real estate which is the subject of such mortgage, purchase, or judgment lien is located. The notice shall be recorded in the official records kept by the county recorder and indexed under the name of the entity charged with the tax. When the tax, together with any penalties subsequently accruing thereon, have been paid, the tax commissioner shall furnish to the entity an acknowledgment of such payment that the entity may record with the county recorder of each county in which notice of such lien has been filed, for which recording the county recorder shall charge and receive a fee of two dollars.

(C) In addition to all other remedies for the collection of any taxes or penalties due under law, whenever any taxes, interest, or penalties due from any qualifying entity or electing pass-through entity under section 5733.41 of the Revised Code or this chapter have remained unpaid for a period of ninety days, or whenever any qualifying entity or electing pass-through entity has failed for a period of ninety days to make any report or return required by law, or to pay any penalty for failure to make or file such report or return, the attorney general, upon the request of the tax commissioner, shall file a petition in the court of common pleas in the county of the state in which such entity has its principal place of business for a judgment for the amount of the taxes, interest, or penalties appearing to be due, the enforcement of any lien in favor of the state, and an injunction to restrain such entity and its officers, directors, and managing agents from the transaction of any business within this state, other than such acts as are incidental to liquidation or winding up, until the payment of such taxes, interest, and penalties, and the costs of the proceeding fixed by the court, or the making and filing of such report or return.

The petition shall be in the name of the state. Any of the qualifying entities or electing pass-through entities having its principal places of business in the county may be joined in one suit. On the motion of the attorney general, the court of common pleas shall enter an order requiring all defendants to answer by a day certain, and may appoint a special master commissioner to take testimony, with such other power and authority as the court confers, and permitting process to be served by registered mail and by publication in a newspaper of general circulation in the county, which



publication need not be made more than once, setting forth the name of each delinquent entity, the matter in which the entity is delinquent, the names of its officers, directors, and managing agents, if set forth in the petition, and the amount of any taxes, fees, or penalties claimed to be owing by the entity.

All or any of the trustees or other fiduciaries, officers, directors, investors, beneficiaries, or managing agents of any qualifying entity or electing pass-through entity may be joined as defendants with such entity.

If it appears to the court upon hearing that any qualifying entity or electing pass-through entity that is a party to the proceeding is indebted to the state for taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code, or interest or penalties thereon, judgment shall be entered therefor with interest; and if it appears that any qualifying entity or electing pass-through entity has failed to make or file any report or return, a mandatory injunction may be issued against the entity, its trustees or other fiduciaries, officers, directors, and managing agents, enjoining them from the transaction of any business within this state, other than acts incidental to liquidation or winding up, until the making and filing of all proper reports or returns and until the payment in full of all taxes, interest, and penalties.

If the trustees or other fiduciaries, officers, directors, investors, beneficiaries, or managing agents of a qualifying entity or an electing pass-through entity are not made parties in the first instance, and a judgment or an injunction is rendered or issued against the entity, those officers, directors, investors, or managing agents may be made parties to such proceedings upon the motion of the attorney general, and, upon notice to them of the form and terms of such injunction, they shall be bound thereby as fully as if they had been made parties in the first instance.

In any action authorized by this division, a statement of the tax commissioner, or the secretary of state, when duly certified, shall be prima-facie evidence of the amount of taxes, interest, or penalties due from any qualifying entity or electing pass-through entity, or of the failure of any such entity to file with the commissioner or the secretary of state any report required by law, and any such certificate of the commissioner or the secretary of state may be required in evidence in any such proceeding.



On the application of any defendant and for good cause shown, the court may order a separate hearing of the issues as to any defendant.

The costs of the proceeding shall be apportioned among the parties as the court deems proper.

The court in such proceeding may make, enter, and enforce such other judgments and orders and grant such other relief as is necessary or incidental to the enforcement of the claims and lien of the state.

In the performance of the duties enjoined upon the attorney general by this division, the attorney general may direct any prosecuting attorney to bring an action, as authorized by this division, in the name of the state with respect to any delinquent qualifying entities or delinquent electing pass-through entities within the prosecuting attorney's county, and like proceedings and orders shall be had as if such action were instituted by the attorney general.

(D) If any qualifying entity or electing pass-through entity fails to make and file the reports or returns required under this chapter, or to pay the penalties provided by law for failure to make and file such reports or returns for a period of ninety days after the time prescribed by this chapter, the attorney general, on the request of the tax commissioner, shall commence an action in quo warranto in the court of appeals of the county in which that entity has its principal place of business to forfeit and annul its privileges and franchises. If the court is satisfied that any such entity is in default, it shall render judgment ousting such entity from the exercise of its privileges and franchises within this state, and shall otherwise proceed as provided in sections 2733.02 to 2733.39 of the Revised Code.