



Ohio Revised Code

Section 5726.20 Assessments.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

(A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any person that fails to file a return or report or pay any tax as required by this chapter. The reporting person for a taxpayer shall file the annual report required under section 5726.02 of the Revised Code and remit the tax imposed by this chapter. Each person included in the annual report of the taxpayer is jointly and severally liable for the tax imposed by this chapter and any penalties and interest thereon. If the reporting person fails, for any reason, to file and remit any tax, the amount due may be collected by assessment against the reporting person and against any or all other persons required to be included in the annual report of the taxpayer as provided in section 5703.90 of the Revised Code. The commissioner shall make the assessment in the manner provided in this section. The commissioner shall give the person assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on the manner in which to petition for reassessment and request a hearing with respect to the petition.

(B) No assessment shall be made or issued against a person under this section more than four years after the later of the final date the report subject to assessment was required to be filed or the date such report was filed. Such time limit may be extended if both the person and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limit has been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the four-year time limit prescribed in division (A) of section 5726.30 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a person that fails to file a report subject to assessment as required by this chapter, or that files a fraudulent report.

(C) Unless the person assessed, within sixty days after service of the notice of assessment, files with the tax commissioner, either in person or by certified mail, a written petition for reassessment signed by the person or the person's authorized agent having knowledge of the facts, the assessment shall become final, and the amount of the assessment is due and payable from the person assessed to the treasurer of state. A petition shall indicate the objections of the person assessed, but additional



objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If a petition for reassessment has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(D)(1) After an assessment becomes final, if any portion of the assessment, including any accrued interest, remains unpaid, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the person resides or has its principal place of business in this state, or in the office of the clerk of court of common pleas of Franklin county.

(2) Immediately upon the filing of the entry, the clerk shall enter judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled, "special judgments for the financial institution tax" and shall have the same effect as other judgments. Execution shall issue upon the judgment at the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

(3) If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date the tax commissioner issues the assessment until the date the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(E) If the tax commissioner believes that collection of the tax imposed by this chapter will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (D) of this section. Notice of the jeopardy assessment shall be served on the person assessed or the person's authorized agent in the



manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed shall be immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (C) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the petition for reassessment.

(F) The tax commissioner shall immediately forward to the treasurer of state all amounts the commissioner receives under this section. Such amounts shall be considered as revenue arising from the tax imposed by this chapter.

(G) If the tax commissioner possesses information indicating that the amount of tax a taxpayer is required to pay under this chapter exceeds the amount the reporting person for the taxpayer paid, the tax commissioner may audit a sample of the taxpayer's gross receipts over a representative period of time to ascertain the amount of tax due, and may issue an assessment based on the audit. The tax commissioner shall make a good faith effort to reach agreement with the taxpayer in selecting a representative sample. The tax commissioner may apply a sampling method only if the commissioner has prescribed the method by rule.

(H) If the whereabouts of a person subject to this chapter is not known to the tax commissioner, the secretary of state is hereby deemed to be that person's agent for purposes of service of process or notice of any assessment, action, or proceedings instituted in this state against the person under this chapter. Such process or notice shall be served on such person by the commissioner or by an agent of the commissioner by leaving a true and attested copy of the process or notice at the office of the secretary of state at least fifteen days before the return day of such process or notice, and by sending a copy of the process or notice to such person by ordinary mail, with an endorsement thereon of the service upon the secretary of state, addressed to such person at the person's last known address.