

ORIGINAL

In the Supreme Court of Ohio

BEAVER EXCAVATING COMPANY,
ET AL.,

Plaintiffs-Appellants,

v.

RICHARD A. LEVIN
[JOSEPH W. TESTA],
TAX COMMISSIONER OF OHIO,

Defendant-Appellee.

Case No. 2011-1536

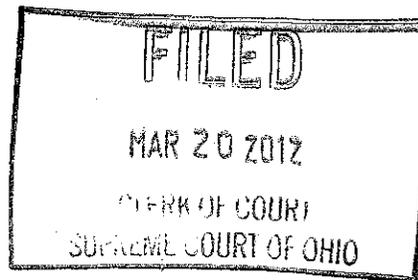
On Appeal from the
Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 10-AP-581

**APPENDIX TO MERIT BRIEF OF PLAINTIFFS-APPELLANTS
BEAVER EXCAVATING COMPANY, ET AL.**

VOLUME II

0182 - 0340



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58 Stat. 838	0335 - 0340

Chapter 5735: MOTOR FUEL TAX

5735.01 Motor fuel tax definitions.

As used in this chapter:

(A) "Motor vehicles" includes all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances which are powered by internal combustion engines or motors.

(B) "Motor fuel" means gasoline, diesel fuel, K-1 kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas, but excluding substances prepackaged and sold in containers of five gallons or less.

(C) "K-1 Kerosene" means fuel that conforms to the chemical and physical standards for kerosene no. 1-K as set forth in the American Society for Testing and Materials (ASTM) designated D-3699 "standard for specification for kerosene," as that standard may be modified from time to time. For purposes of inspection and testing, laboratory analysis shall be conducted using methods recognized by the ASTM designation D-3699.

(D) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel.

(E) "Gasoline" means any of the following:

(1) All products, commonly or commercially known or sold as gasoline;

(2) Any blend stocks or additives, including alcohol, that are sold for blending with gasoline, other than products typically sold in containers of five gallons or less;

(3) Transmix when mixed with gasoline, unless certified, as required by the tax commissioner, for withdrawal from terminals for reprocessing at refineries;

(4) Alcohol that is offered for sale or sold for use as, or commonly and commercially used as, a fuel for internal combustion engines.

Gasoline does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a motor fuel for a motor vehicle or vessel. The blending of any of the products listed in the preceding sentence, regardless of name or characteristics, is conclusively presumed to have been done to produce gasoline, unless the product obtained by the blending is entirely incapable of use as fuel to operate a motor vehicle.

An additive, blend stock, or alcohol is presumed to be sold for blending unless a certification is obtained as required by the tax commissioner.

(F) "Public highways" means lands and lots over which the public, either as user or owner, generally has a right to pass, even though the same are closed temporarily by the authorities for the purpose of construction, reconstruction, maintenance, or repair.

(G) "Waters within the boundaries of this state" means all streams, lakes, ponds, marshes, water courses, and all other bodies of surface water, natural or artificial, which are situated wholly or partially within this state or within its jurisdiction, except private impounded bodies of water.

(H) "Person" includes individuals, partnerships, firms, associations, corporations, receivers, trustees in bankruptcy, estates, joint-stock companies, joint ventures, the state and its political subdivisions, and any combination of persons of any form.

(I)(1) "Motor fuel dealer" means any person who satisfies any of the following:

(a) The person imports from another state or foreign country or acquires motor fuel by any means into a terminal in this state;

(b) The person imports motor fuel from another state or foreign country in bulk lot vehicles for subsequent sale and distribution in this state from bulk lot vehicles;

(c) The person refines motor fuel in this state;

(d) The person acquires motor fuel from a motor fuel dealer for subsequent sale and distribution by that person in this state from bulk lot vehicles;

(e) The person possesses an unrevoked permissive motor fuel dealer's license.

(2) Any person who obtains dyed diesel fuel for use other than the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, but later uses that motor fuel for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, is deemed a motor fuel dealer as regards any unpaid motor fuel taxes levied on the motor fuel so used.

(J) As used in sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code only:

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(1) With respect to gasoline, "received" or "receipt" shall be construed as follows:

(a) Gasoline produced at a refinery in this state or delivered to a terminal in this state is deemed received when it is disbursed through a loading rack at that refinery or terminal;

(b) Except as provided in division (J)(1)(a) of this section, gasoline imported into this state or purchased or otherwise acquired in this state by any person is deemed received within this state by that person when the gasoline is withdrawn from the container in which it was transported;

(c) Gasoline delivered or disbursed by any means from a terminal directly to another terminal is not deemed received.

(2) With respect to motor fuel other than gasoline, "received" or "receipt" means distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state. All diesel fuel that is not dyed diesel fuel, regardless of its use, shall be considered as used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state when the fuel is sold or distributed to a person other than a licensed motor fuel dealer or to a person licensed under section 5735.026 of the Revised Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Cents per gallon rate" means the amount computed by the tax commissioner under section 5735.011 of the Revised Code that is used to determine that portion of the tax levied by section 5735.05 of the Revised Code that is computed in the manner prescribed by division (B)(2) of section 5735.06 of the Revised Code and that is applicable for the period that begins on the first day of July following the date on which the commissioner makes the computation.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle that is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the Revised Code, or a regional transit commission pursuant to sections 306.80 to 306.90 of the Revised Code. Public transit or paratransit service may include fixed route, demand-responsive, or subscription bus service transportation, but does not include shared-ride taxi service, carpools, vanpools, jitney service, school bus transportation, or charter or sightseeing services.

(R) "Export" means motor fuel delivered outside this state. Motor fuel delivered outside this state by or for the seller constitutes an export by the seller. Motor fuel delivered outside this state by or for the purchaser constitutes an export by the purchaser.

(S) "Import" means motor fuel delivered into this state from outside this state. Motor fuel delivered into this state from outside this state by or for the seller constitutes an import by the seller. Motor fuel delivered into this state from outside this state by or for the purchaser constitutes an import by the purchaser.

(T) "Terminal" means a motor fuel storage or distribution facility that is supplied by pipeline or marine vessel.

(U) "Consumer" means a buyer of motor fuel for purposes other than resale in any form.

(V) "Bulk lot vehicle" means railroad tank cars, transport tank trucks and tank wagons with a capacity of at least 1,400 gallons.

(W) "Licensed permissive motor fuel dealer" means any person possessing an unrevoked permissive motor fuel dealer's license issued by the tax commissioner under section 5735.021 of the Revised Code.

(X) "Licensed terminal operator" means any person possessing an unrevoked terminal operator's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Y) "Licensed exporter" means any person possessing an unrevoked exporter's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Z) "Dyed diesel fuel" means any diesel fuel dyed pursuant to regulations issued by the internal revenue service or a rule promulgated by the tax commissioner.

(AA) "Gross gallons" means U.S. gallons without temperature or barometric adjustments.

(BB) "Net gallons" means U.S. gallons with a temperature adjustment to sixty degrees fahrenheit.

Effective Date: 03-11-2004

5735.011 Calculating cents per gallon rate.

By the tenth day of June 1993, the tax commissioner shall do all of the following and certify the results to the treasurer of state and shall notify all motor fuel dealers of said certification:

(A) Divide the calendar year average consumer price index for all urban consumers, as determined by the bureau of labor statistics of the United States department of labor, for the year prior to the year in which the calculation required by this section is made, by that same index for the year that is two years prior to the year in which the calculation is made;

(B) Divide the net number of gallons of motor fuel against which the tax levied by section 5735.05 of the Revised Code was imposed during the fiscal year that is two years prior to the year in which the calculation required by this section is made, by the number of gallons against which such tax was imposed during the fiscal year prior to the year during which the calculation is made;

(C) Multiply the quotient obtained in division (A) of this section by the quotient obtained in division (B) of this section;

(D) Multiply the product obtained in division (C) of this section by the greater of twenty-one cents or the total motor fuel tax rate levied and in effect under Chapter 5735. of the Revised Code at the time of the calculation required by this section;

(E) Subtract seven cents from the product obtained in division (D) of this section. The difference shall be the cents per gallon rate, rounded to the nearest full cent, for purposes of computing that portion of the tax levied by section 5735.05 of the Revised Code that is computed in the manner prescribed by division (B)(2) of section 5735.06 of the Revised Code for the period that begins on the first day of July of the current year, except that any increase in the cents per gallon rate over the rate in effect during the preceding year shall not exceed one cent.

Effective Date: 10-01-1996

5735.012 Measuring gross gallons and net gallons.

Amounts of motor fuel reported under this chapter shall be measured in gross gallons, except that amounts reported for terminal to terminal transactions shall be measured in net gallons and amounts reported for terminal to Ohio licensed dealer transactions shall be measured in both net gallons and gross gallons.

Effective Date: 09-29-2000

5735.02 Dealer's license - application - right to refuse license - fee.

A motor fuel dealer shall not receive, use, sell, or distribute any motor fuel or engage in business within this state unless the motor fuel dealer holds an unrevoked license issued by the tax commissioner to engage in such business. To procure such license every motor fuel dealer shall file with the commissioner an application verified under oath by the applicant and in such form as the commissioner prescribes, setting forth, in addition to such other information required by the commissioner, the following:

- (A) The name under which the motor fuel dealer will transact business within the state;
- (B) The location, including street number address, of its principal office or place of business within this state;
- (C) The name and address of the owner, or the names and addresses of the partners if such motor fuel dealer is a partnership, or the names and addresses of the principal officers if such motor fuel dealer is a corporation or an association;
- (D) If such motor fuel dealer is a corporation organized under the laws of another state, territory, or country, a certified copy of the certificate or license issued by the Ohio secretary of state showing that such corporation is authorized to transact business in this state;
- (E) An agreement that the motor fuel dealer will assume the liability and will pay the tax on any shipment of motor fuel made into the state from any other state or foreign country and sold or caused to be sold by such motor fuel dealer for delivery to a person in this state who is not the holder of an unrevoked motor fuel dealer's license.

An application for a license shall be accompanied by a bond, of the character stipulated and in the amount provided for in section 5735.03 of the Revised Code, which shall be filed with the commissioner.

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If any application for a license to transact business as a motor fuel dealer in the state is filed by any person who has had any license previously canceled for cause by the tax commissioner; if the commissioner believes that such application is not filed in good faith

or that such application is filed as a subterfuge by some person for the real person in interest who has previously had any license canceled for cause by the tax commissioner; or if the person has violated any provision of this chapter, then the tax commissioner, after a hearing, of which the applicant shall be given five days' notice in writing and at which said applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license to transact business as a motor fuel dealer in the state.

When the application in proper form has been accepted for filing, and the bond accepted and approved, the commissioner shall issue to such motor fuel dealer a license to transact business as a motor fuel dealer in the state, subject to cancellation of such license as provided by law.

(F) No person shall make a false or fraudulent statement on the application required by this section.

Effective Date: 10-01-1996

5735.021 Application for permissive motor fuel dealer's license.

(A) Each person who would qualify for a motor fuel dealer's license under any division in divisions (I)(1)(a) through (d) of section 5735.01 of the Revised Code if that person's business activity were conducted in this state, who makes a sale for export to this state to a person who is not a licensed motor fuel dealer, and who wishes to collect the tax imposed by this chapter on behalf of any person who is not a licensed motor fuel dealer may obtain a permissive motor fuel dealer's license. Application for and possession of a permissive motor fuel dealer's license shall not in itself subject the applicant or licensee to the jurisdiction of this state for any purpose other than administration and enforcement of this chapter. To obtain a permissive motor fuel dealer's license, a person shall file with the tax commissioner an application verified under oath by that person, and shall include the following in the application:

- (1) The name under which the permissive motor fuel dealer will transact business;
- (2) The location, including street number address of its principal place of business outside this state;
- (3) The names and addresses of the owner, or the names and addresses of the partners if the permissive motor fuel dealer is a partnership, or the names and addresses of the principal officers if the permissive motor fuel dealer is a corporation or an association;

(4) Any other information the commissioner deems necessary.

An application for a license shall be accompanied by a bond of the character stipulated and in the amount provided for in section 5735.03 of the Revised Code. The application for the license shall be filed with the commissioner.

(B)(1) After a hearing as provided in division (B)(2) of this section, the tax commissioner may refuse to issue a license to transact business as a permissive motor fuel dealer in the following circumstances:

(a) The applicant has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner;

(b) The tax commissioner believes that the application is not filed in good faith;

(c) The applicant has previously violated any provision of this chapter;

(d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner or who has violated any provision of this chapter.

(2) The tax commissioner shall conduct a hearing before refusing to issue a license to transact business as a permissive motor fuel dealer in the state in any of the circumstances described in division (B)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(C) When an application in proper form has been accepted for filing, and the bond accepted and approved, the commissioner shall issue to the applicant a license to transact business as a permissive motor fuel dealer, subject to cancellation of the permissive motor fuel dealer license as provided by law.

(D) No person shall make a false or fraudulent statement on the application required by this section.

Effective Date: 10-01-1996

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5735.022 Application for retail dealer's license.

(A) A retail dealer shall not receive, use, sell, or distribute any motor fuel or engage in business within this state unless the retail dealer holds an unrevoked license, for each retail location, issued by the tax commissioner to engage in such business. To obtain a retail dealer's license, a person shall file with the tax commissioner an application sworn to under oath by that person. The application shall include the following:

- (1) The name under which the retail dealer will transact business within the state;
- (2) The location, including street number address, of the retail dealer's business within this state;
- (3) The name, address, and social security number of the owner, or the names, addresses, and social security numbers of the partners if such retail dealer is a partnership, or the names, addresses, and social security numbers of the principal officers if such retail dealer is a corporation or association;
- (4) Any other information the tax commissioner shall require.

(B)(1) After a hearing as provided in division (B)(2) of this section, the tax commissioner may refuse to issue a license to transact business as a retail dealer in the state in the following circumstances:

- (a) The applicant has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner;
- (b) The tax commissioner believes that an application is not filed in good faith;
- (c) The applicant has previously violated any provision of this chapter;
- (d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner or who has violated any provision of this chapter.

(2) The tax commissioner shall conduct a hearing before refusing to issue a license to transact business as a retail dealer in the state in any of the circumstances described in division (B)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(C) When an application in proper form has been accepted for filing, the commissioner shall issue a license to transact business as a retail dealer in this state, subject to cancellation of such license as provided by law.

(D) No person shall make a false or fraudulent statement on the application required by this section.

Effective Date: 10-01-1996

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5735.023 Retail service station - prohibited acts.

(A) No person operating a retail service station shall store, sell, or attempt to sell or distribute any untaxed motor fuel, except K-1 kerosene, at a retail service station.

(B) A licensed motor fuel dealer that operates a bulk storage plant and also maintains at the same location a retail pump that is connected to a bulk storage tank is not subject to division (A) of this section, except that the licensed motor fuel dealer shall pay the tax on all motor fuel dispensed through the retail pump.

(C) Each day, or part thereof, that a person is in violation of division (A) or (B) of this section constitutes a separate offense for purposes of section 5735.99 of the Revised Code.

Effective Date: 09-29-2000

5735.024 Sale and distribution exceptions.

(A) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer.

(B) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of motor fuel by a licensed motor fuel dealer to an exporter licensed pursuant to section 5735.026 of the Revised Code.

(C) All motor fuel sold or distributed by a licensed motor fuel dealer directly to a consumer and pumped into a common storage tank that is used for both taxable and nontaxable uses is subject to the motor fuel taxes imposed under this chapter.

(D) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station if sold or distributed in compliance with the notice requirements prescribed by division (A)(1) of section 5735.05 of the Revised Code.

(E) Motor fuel dealers selling or distributing motor fuel to any person shall create, maintain, and compile a record of motor fuel sales that lists the taxing state and the amount of motor fuel tax included in all transactions.

Effective Date: 10-01-1996

5735.025 Prohibited acts generally.

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(A) No person shall recklessly import, sell, use, deliver, transport, distribute, or store motor fuel within this state upon which the taxes imposed by this chapter are owed but

have not first been paid to or reported by the holder of an unrevoked motor fuel dealer's license, or for which liability for those taxes has not accrued to the holder of an unrevoked motor fuel dealer's license.

(B) No person shall evade or attempt to evade in any manner a motor fuel tax imposed by this chapter. No person shall aid or abet any person to evade or attempt to evade in any manner a motor fuel tax imposed by this chapter. Each day, or part thereof, that a person evades or attempts to evade a motor fuel tax imposed by this chapter, or aids or abets any person to evade or attempt to evade a motor fuel tax imposed by this chapter, constitutes a separate offense for purposes of section 5735.99 of the Revised Code.

Effective Date: 10-01-1996

5735.026 Application for exporter type A or exporter type B license.

(A) The tax commissioner, for purposes of administering this chapter, shall issue two classes of export licenses: "exporter type A" licenses and "exporter type B" licenses. To qualify for an exporter type A license, a person must demonstrate to the tax commissioner's satisfaction that the person is licensed to collect and remit motor fuel taxes in the specified state of destination. To qualify for an exporter type B license, a person must demonstrate to the tax commissioner's satisfaction that the person is statutorily prohibited from obtaining a license to collect and remit motor fuel taxes in the specified state of destination, and that the person is licensed to sell or distribute tax-paid motor fuel in the specified state of destination.

(B) To obtain an exporter's license of either class, a person shall file, under oath, an application with the commissioner in such form as the commissioner prescribes. The application shall set forth the following information:

(1) The name under which the exporter will transact business within the state;

(2) The location, including street number address, of the exporter's principal office or place of business;

(3) The name and address of the owner, or the names and addresses of the partners if such exporter is a partnership, or the names and addresses of the principal officers if the exporter is a corporation or an association;

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(4) A certified copy of the certificate or license issued by the Secretary of State showing that the corporation is authorized to transact business in this state if the exporter is a corporation organized under the laws of another state, territory, or country;

(5) For an exporter type A license, a copy of the applicant's license or certificate to collect and remit motor fuel taxes or sell or distribute motor fuel in the specified destination state or states for which the license or certificate is to be issued;

(6) Any other information the commissioner may require.

(C)(1) After a hearing as provided in division (C)(2) of this section, the tax commissioner may refuse to issue a license to transact business as an exporter of motor fuel in the following circumstances:

(a) The applicant has previously had a license issued under this chapter canceled for cause by the tax commissioner;

(b) The tax commissioner believes that an application is not filed in good faith;

(c) The applicant has previously violated any provision of this chapter;

(d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued under this chapter canceled for cause by the tax commissioner or who has violated any provision of this chapter.

(2) The tax commissioner shall conduct a hearing before refusing to issue a license to transact business as an exporter in any of the circumstances described in division (C)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(D) When an application in proper form has been accepted for filing, the commissioner shall issue to such exporter a license to transact business as an exporter of motor fuel in this state, subject to cancellation of such license as provided by law.

(E) No person shall make a false or fraudulent statement on the application required by this section.

Effective Date: 10-01-1996

5735.027 Application for terminal operator's license.

(A) No person shall act in the capacity of a terminal operator within this state unless the person holds an unrevoked license issued by the tax commissioner to engage as a terminal operator. A person desiring to be a terminal operator shall file with the commissioner an application sworn to under oath. The application shall include the following:

- (1) The name under which the terminal operator will transact business in this state;
- (2) The location, including street number address, of the terminal operator's principal office or place of business within this state;
- (3) The location, including street number address, of each terminal operated in this state by the applicant;
- (4) The name and address of the owner, or the names and addresses of the partners if such terminal operator is a partnership, or the names and addresses of the principal officers if such terminal operator is a corporation or association;
- (5) If such terminal operator is a corporation organized under the laws of another state, territory, or country, a certified copy of the certificate or license issued by the Secretary of State showing that the corporation is authorized to transact business in this state;
- (6) Any other information the commissioner deems necessary.

(B) The tax commissioner may require a bond adequate to ensure compliance with this chapter as a condition of issuance of any license under this section. The commissioner shall prescribe the form and content of the bond.

(C)(1) After a hearing as provided in division (C)(2) of this section, the tax commissioner may refuse to issue a license to transact business as a terminal operator in the state in the following circumstances:

- (a) The applicant has previously had a license issued under this chapter canceled for cause by the tax commissioner;
- (b) The tax commissioner believes that the application is not filed in good faith;
- (c) The applicant has previously violated any provision of this chapter;
- (d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued under this chapter canceled for cause by the tax commissioner, or who has violated any provision of this chapter.

(2) The tax commissioner shall conduct a hearing before refusing to issue a license to transact business as a terminal operator in any of the circumstances described in division (C)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(D) When an application in proper form has been accepted for filing, and any required bond accepted and approved, the commissioner shall issue to such terminal operator a license to transact business as a terminal operator in the state, subject to cancellation of such license as provided by law.

(E) No person shall make a false or fraudulent statement on the application required by this section.

Effective Date: 10-01-1996

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5735.03 Dealer's surety bond - release - lien on property.

Every motor fuel dealer shall file with the tax commissioner a surety bond of not less than five thousand dollars, but may be required by the tax commissioner to submit a surety bond equal to three months' average tax liability, on a form approved by and with a surety satisfactory to the commissioner, upon which the motor fuel dealer shall be the principal obligor and the state shall be the obligee, conditioned upon the prompt filing of true reports and the payment by the motor fuel dealer to the treasurer of state of all motor fuel excise taxes levied by the state, provided that after notice is received from the state by the surety of the delinquency of any taxes, if the surety pays the taxes within thirty days after the receipt of the notice no penalties or interest shall be charged against the surety. If the surety does not pay the taxes within thirty days, but does pay within ninety days from the date of the receipt of notice from the state by the surety, no penalty shall be assessed against the surety but the surety shall pay interest at the rate of six per cent per annum on the unpaid taxes from the date the taxes are due and payable. If the surety does not pay within ninety days then the surety shall be liable for interest and penalties, and the tax commissioner may cancel all bonds issued by the surety.

The commissioner may increase or reduce the amount of the bond required to be filed by any licensed motor fuel dealer. If the commissioner finds that it is necessary to increase the bond to assure payment of the tax, the bond may be increased to an amount equal to three months/average liability or fifty thousand dollars, whichever is greater.

If liability upon the bond thus filed by the motor fuel dealer with the commissioner is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if, in the opinion of the commissioner any surety on the bond theretofore given has become unsatisfactory or unacceptable, the commissioner may require the motor fuel dealer to file a new bond with satisfactory sureties in the same amount, and if a new bond is not filed the commissioner shall forthwith cancel the license of the motor fuel dealer. If a new bond is furnished by the motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

A surety on a bond furnished by a motor fuel dealer shall be released from all liability to the state accruing on the bond after the expiration of sixty days from the date upon which the surety lodges with the commissioner a written request to be released. The request shall not operate to release the surety from any liability already accrued, or which accrues before the expiration of the sixty-day period. The commissioner shall promptly on receipt of notice of the request notify the motor fuel dealer who furnished the bond and, unless the motor fuel dealer on or before the expiration of the sixty-day period files with the commissioner a new bond with a surety satisfactory to the commissioner in the amount and form provided in this section, the commissioner shall forthwith cancel the license of the motor fuel dealer. If the new bond is furnished by said motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

The commissioner, in lieu of any surety bond required by this section, may accept a deposit by a motor fuel dealer of cash. Any cash thus accepted shall be deposited with the treasurer of state to be held by the treasurer of state, in the same manner as other cash required to be deposited with the treasurer of state under the laws of the state, for the account of such motor fuel dealer and subject to any lawful claim of the state for any excise tax upon motor fuel, and penalties and interest thereon levied by the laws of this state. The state shall have a lien upon cash thus deposited for the amount of any motor fuel excise taxes and penalty and interest due to the state from the motor fuel dealer in whose behalf they were deposited. The amount of cash to be thus accepted shall in all respects be determined in the same manner as provided in this section for the amount of surety bonds. Any cash deposited shall be subject to levy upon execution to satisfy any judgment secured in any action by the state to recover any motor fuel excise taxes, and penalties and interest found to be due to the state from such motor fuel dealer. The cash shall be released by the treasurer of state upon certificate of the commissioner that the license of the motor fuel dealer in whose behalf they have been deposited has been canceled or that other security has been accepted in lieu thereof, and that the state asserts no claim thereto.

Effective Date: 10-01-1996; 09-28-2006

5735.04 Revocation or cancellation of dealer's license - cancellation of bond.

0196

If a motor fuel dealer files a false monthly report of the information required under section 5735.06 of the Revised Code, fails to file a monthly report as required by that section, fails to pay the full amount of the tax as required by the motor fuel laws of the state or as may be agreed upon by the tax commissioner and the motor fuel dealer, or fails to file an inventory report as required by section 5735.061 of the Revised Code, the

commissioner may revoke the license of the motor fuel dealer, and notify the motor fuel dealer in writing of such revocation by certified mail sent to the last known address of the motor fuel dealer appearing on the files of the commissioner.

The commissioner may cancel any license issued to any motor fuel dealer, and the cancellation shall become effective at the time that may be determined by the commissioner. The commissioner also may cancel the license of any motor fuel dealer upon sixty days' notice mailed to the last known address of the motor fuel dealer if the commissioner, upon investigation, finds that the person to whom the license has been issued is no longer engaged in the receipt, use, or sale of motor fuel as a motor fuel dealer, and has not been so engaged for the period of six months prior to the cancellation. No license shall be canceled upon the request of any motor fuel dealer unless the motor fuel dealer, prior to the date of cancellation, has paid to the state all motor fuel taxes payable or assumed by the motor fuel dealer under the laws of the state, together with all penalties and fines accruing by reason of any failure of the motor fuel dealer to make accurate reports of receipts of motor fuel or to pay the taxes and penalties.

If the license of any motor fuel dealer is canceled by the commissioner as provided in this section, and if the motor fuel dealer has paid to the state all motor fuel taxes due and payable by the motor fuel dealer under the laws of the state, or assumed by the motor fuel dealer upon the receipt, sale, or use of motor fuel, together with all penalties accruing by reason of any failure on the part of the motor fuel dealer to make accurate reports or to pay the tax and penalties, then the commissioner shall cancel and surrender the bond theretofore filed by the motor fuel dealer.

Effective Date: 10-01-1996

5735.041 Revocation of license of retail dealer.

(A) The tax commissioner may revoke the license of a retail dealer in the following circumstances:

- (1) The retail dealer sells or attempts to sell any motor fuel upon which any motor fuel tax imposed by this chapter has not been paid;
- (2) The retail dealer attempts to evade any motor fuel tax imposed by this chapter;
- (3) The retail dealer violates any provision of this chapter.

(B) The commissioner shall notify the retail dealer in writing of the revocation by certified mail sent to the last known address of the retail dealer appearing on the files of the commissioner.

5735.042 Revocation of license of exporter.

(A) The tax commissioner may revoke an exporter's license in the following circumstances:

(1) An exporter licensed under section 5735.026 of the Revised Code purchases, for export, motor fuel in this state exclusive of the motor fuel tax, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any state other than the originally designated state;

(2) The exporter is no longer the holder of a valid license to purchase motor fuel tax free in the specified destination state or states for which the license is issued.

(B) The commissioner shall notify the exporter in writing of such revocation by certified mail sent to the last known address of the exporter appearing in the files of the commissioner.

Effective Date: 10-01-1996

5735.043 Revocation or cancellation of license of terminal operator.

If a terminal operator files a false monthly report of the information required under section 5735.063 of the Revised Code, or fails to file the monthly report required by section 5735.063 of the Revised Code, the tax commissioner may revoke the license of the terminal operator. The commissioner shall notify the terminal operator in writing of such revocation by certified mail sent to the last known address of the terminal operator appearing on the files of the commissioner.

The commissioner also may cancel the license of any terminal operator upon sixty days' notice mailed to the last known address of the terminal operator if the commissioner finds that the person to whom the license has been issued is no longer engaged as a terminal operator in this state, and has not been so engaged for at least six months prior to cancellation.

Effective Date: 10-01-1996

5735.044 Revocation or cancellation of license of permissive motor fuel dealer.

If a permissive motor fuel dealer files a false monthly report of the information required under section 5735.06 of the Revised Code, fails to file the monthly report as required by section 5735.06 of the Revised Code, or fails to pay the full amount of the tax as required by this chapter or as may be agreed upon by the tax commissioner and the permissive motor fuel dealer, the commissioner may revoke the license of the permissive motor fuel dealer. The commissioner shall notify the permissive motor fuel dealer in writing of the revocation by certified mail sent to the last known address of the permissive motor fuel dealer appearing on the files of the commissioner.

The commissioner may cancel any license issued to any permissive motor fuel dealer and the cancellation shall become effective at the time that the commissioner determines. No license shall be canceled upon the request of any permissive motor fuel dealer unless the permissive motor fuel dealer, prior to the date of cancellation, has paid to the state all motor fuel taxes payable or assumed by the dealer under the laws of the state, together with all penalties, fines, and interest accruing by reason of any failure of the permissive motor fuel dealer to make accurate reports of sales of motor fuel or to pay the taxes, penalties, and interest.

If the license of any permissive motor fuel dealer is canceled by the commissioner under this section, and the permissive motor fuel dealer has paid to the state all motor fuel taxes due and payable by the permissive motor fuel dealer under the laws of this state or assumed by the permissive motor fuel dealer upon the sale of motor fuel, together with all penalties and interest accruing by reason of any failure on the part of the permissive motor fuel dealer to make accurate reports or to pay the tax, penalties, and interest, then the commissioner shall cancel and surrender the bond previously filed by the permissive motor fuel dealer.

Effective Date: 10-01-1996

0199

5735.05 Levy of motor fuel excise tax - exceptions.

(A) To provide revenue for maintaining the state highway system; to widen existing surfaces on such highways; to resurface such highways; to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to enable the counties of the state properly to plan, maintain, and repair their roads and to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain,

repair, clear, and clean public highways, roads, and streets, and to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable the Ohio turnpike commission to construct, reconstruct, maintain, and repair turnpike projects; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under sections 4907.47 and 4907.471 of the Revised Code and to supplement revenue already available for such purposes; to pay the costs incurred by the public utilities commission in administering sections 4907.47 to 4907.476 of the Revised Code; to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing them; to pay the interest, principal, and charges on highway capital improvements bonds and other obligations issued pursuant to Section 2m of Article VIII, Ohio Constitution, and section 151.06 of the Revised Code; to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code; to pay the interest, principal, and charges on major new state infrastructure bonds and other obligations of the state issued pursuant to Section 13 of Article VIII, Ohio Constitution, and section 5531.10 of the Revised Code; to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code; and to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon receipt of motor fuel within this state at the rate of two cents plus the cents per gallon rate on each gallon so received, to be computed in the manner set forth in section 5735.06 of the Revised Code; provided that no tax is hereby imposed upon the following transactions:

(1) The sale of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station provided the licensed motor fuel dealer places on the face of the delivery document or invoice, or both if both are used, a conspicuous notice stating that the fuel is dyed and is not for taxable use, and that taxable use of that fuel is subject to a penalty. The tax commissioner, by rule, may provide that any notice conforming to rules or regulations issued by the United States department of the treasury or the Internal Revenue Service is sufficient notice for the purposes of division (A)(1) of this section.

(2) The sale of K-1 kerosene to a retail service station, except when placed directly in the fuel supply tank of a motor vehicle. Such sale shall be rebuttably presumed to not be distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon the waters within the boundaries of this state.

(3) The sale of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer;

- (4) The exportation of motor fuel by a licensed motor fuel dealer from this state to any other state or foreign country;
- (5) The sale of motor fuel to the United States government or any of its agencies, except such tax as is permitted by it, where such sale is evidenced by an exemption certificate, in a form approved by the tax commissioner, executed by the United States government or an agency thereof certifying that the motor fuel therein identified has been purchased for the exclusive use of the United States government or its agency;
- (6) The sale of motor fuel that is in the process of transportation in foreign or interstate commerce, except insofar as it may be taxable under the Constitution and statutes of the United States, and except as may be agreed upon in writing by the dealer and the commissioner;
- (7) The sale of motor fuel when sold exclusively for use in the operation of aircraft, where such sale is evidenced by an exemption certificate prescribed by the commissioner and executed by the purchaser certifying that the motor fuel purchased has been purchased for exclusive use in the operation of aircraft;
- (8) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type A;
- (9) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type B, provided that the destination state motor fuel tax has been paid or will be accrued and paid by the licensed motor fuel dealer.
- (10) The sale to a consumer of diesel fuel, by a motor fuel dealer for delivery from a bulk lot vehicle, for consumption in operating a vessel when the use of such fuel in a vessel would otherwise qualify for a refund under section 5735.14 of the Revised Code.

Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the Internal Revenue Service to so use dyed diesel fuel.

(B) The two cent motor fuel tax levied by this section is also for the purpose of paying the expenses of administering and enforcing the state law relating to the registration and operation of motor vehicles.

(C) After the tax provided for by this section on the receipt of any motor fuel has been paid by the motor fuel dealer, the motor fuel may thereafter be used, sold, or resold by any person having lawful title to it, without incurring liability for such tax.

If a licensed motor fuel dealer sells motor fuel received by the licensed motor fuel dealer to another licensed motor fuel dealer, the seller may deduct on the report required by section 5735.06 of the Revised Code the number of gallons so sold for the month within which the motor fuel was sold or delivered. In this event the number of gallons is deemed to have been received by the purchaser, who shall report and pay the tax imposed thereon.

Effective Date: 06-26-2003; 03-29-2005; 2007 HB67 07-03-2007

5735.051 Using revenues for waterways purposes.

The general assembly finds as a fact that, of the revenues that occur from excises imposed by sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code, one per cent is attributable to the operation of motor vehicles upon waters within the boundaries of this state. Of this amount, seven-eighths shall be credited to the waterways safety fund and shall be used for the purposes of sections 1547.71 to 1547.78 of the Revised Code, and one-eighth shall be credited to the wildlife boater angler fund and shall be used for the purposes specified in section 1531.35 of the Revised Code.

Effective Date: 06-29-2001

5735.052 Selling or distributing dyed diesel fuel.

(A) If any person sells or distributes any dyed diesel fuel without the notice required under division (A)(1) of section 5735.05 of the Revised Code, that person is subject to an additional penalty of one dollar per gallon or one hundred dollars, whichever is greater. The penalty may be assessed against the person under section 5735.12 or 5735.121 of the Revised Code.

(B) The tax commissioner may reduce or remit a penalty imposed under this section.

Effective Date: 10-01-1996

5735.053 Motor fuel tax administration fund.

There is hereby created in the state treasury the motor fuel tax administration fund for the purpose of paying the expenses of the department of taxation incident to the administration of the motor fuel laws. After the treasurer of state credits the tax refund fund out of tax receipts as required by sections 5735.23, 5735.26, 5735.291, and 5735.30 of the Revised Code, the treasurer of state shall transfer to the motor fuel tax administration fund two hundred seventy-five one-thousandths per cent of the receipts

from the taxes levied by sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code.

Effective Date: 06-26-2003

5735.06 Motor fuel dealer to file monthly report - contents of report.

(A) On or before the last day of each month, each motor fuel dealer shall file with the tax commissioner a report for the preceding calendar month, on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following information:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such motor fuel dealer, which has been produced, refined, prepared, distilled, manufactured, blended, or compounded by such motor fuel dealer in the state;

(2) An itemized statement of the number of gallons of all motor fuel received by such motor fuel dealer in the state from any source during the preceding calendar month, other than motor fuel included in division (A)(1) of this section, together with a statement showing the date of receipt of such motor fuel; the name of the person from whom purchased or received; the date of receipt of each shipment of motor fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of gallons contained in each car if shipped by rail; the point of origin, destination, and shipper if shipped by pipe line; or the name and owner of the boat, barge, or vessel if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel which such motor fuel dealer has during the preceding calendar month:

(a) For motor fuel other than gasoline sold for use other than for operating motor vehicles on the public highways or on waters within the boundaries of this state;

(b) Exported from this state to any other state or foreign country as provided in division (A)(4) of section 5735.05 of the Revised Code;

(c) Sold to the United States government or any of its agencies;

(d) Sold for delivery to motor fuel dealers;

(e) Sold exclusively for use in the operation of aircraft;

(4) Such other information incidental to the enforcement of the motor fuel laws of the state as the commissioner requires.

(B) The report shall show the tax due, computed as follows:

(1) The following deductions shall be made from the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month:

(a) The total number of gallons of motor fuel received by the motor fuel dealer within the state and sold or otherwise disposed of during the preceding calendar month as set forth in section 5735.05 of the Revised Code;

(b) The total number of gallons received during the preceding calendar month and sold or otherwise disposed of to another licensed motor fuel dealer pursuant to section 5735.05 of the Revised Code;

(c) To cover the costs of the motor fuel dealer in compiling the report, and evaporation, shrinkage, or other unaccounted-for losses:

(i) If the report is timely filed and the tax is timely paid, three per cent of the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month less the total number of gallons deducted under divisions (B)(1)(a) and (b) of this section, less one per cent of the total number of gallons of motor fuel that were sold to a retail dealer during the preceding calendar month;

(ii) If the report required by division (A) of this section is not timely filed and the tax is not timely paid, no deduction shall be allowed;

(iii) If the report is incomplete, no deduction shall be allowed for any fuel on which the tax is not timely reported and paid;

(2) The number of gallons remaining after the deductions have been made shall be multiplied separately by each of the following amounts:

(a) The cents per gallon rate;

(b) Two cents.

The sum of the products obtained in divisions (B)(2)(a) and (b) of this section shall be the amount of motor fuel tax for the preceding calendar month.

0204

(C) The report shall be filed together with payment of the tax shown on the report to be due, unless the motor fuel dealer is required by section 5735.062 of the Revised Code to pay the tax by electronic funds transfer, in which case the dealer shall file the report

pursuant to this section and pay the tax pursuant to section 5735.062 of the Revised Code. The commissioner may extend the time for filing reports and may remit all or part of penalties which may become due under sections 5735.01 to 5735.99 of the Revised Code. For purposes of this section and sections 5735.062 and 5735.12 of the Revised Code, a report required to be filed under this section is considered filed when it is received by the tax commissioner, and remittance of the tax due is considered to be made when the remittance is received by the tax commissioner or when credited to an account designated by the treasurer of state and the tax commissioner for the receipt of tax remittances. The tax commissioner shall immediately forward to the treasurer of state all amounts received under this section.

(D) The tax commissioner may require a motor fuel dealer to file a report for a period other than one month. Such a report, together with payment of the tax, shall be filed not later than thirty days after the last day of the prescribed reporting period.

(E) No person required by this section to file a tax report shall file a false or fraudulent tax report or supporting schedule.

Effective Date: 01-01-2003

See 129th General Assembly File No. 7, HB 114, §755.30.

5735.061 Commissioner certifying rates to dealers.

(A) By the fifteenth day of June of 1988, 1989, 1990, 1991, 1992, and 1993, the tax commissioner shall certify to each dealer the following:

(1) The cents per gallon rate computed for the period that begins on the first day of July of the current year pursuant to section 5735.011 of the Revised Code;

(2) The difference between the cents per gallon rate presently in effect and the cents per gallon rate referred to in division (A)(1) of this section.

(B) By the thirty-first day of July of each year each motor fuel dealer shall file with the tax commissioner, on forms prescribed by the commissioner, a report signed by the motor fuel dealer showing the total number of gallons of all motor fuel that is held in the inventory of such motor fuel dealer as of the beginning of business on the first day of July of such year and on which the motor fuel tax has been paid.

0205

(C) If the cents per gallon rate referred to in division (A)(1) of this section is greater than the cents per gallon rate it replaced, each motor fuel dealer shall pay to the tax commissioner, upon the filing of the report under division (B) of this section, an amount equal to the product obtained by multiplying the gallonage referred to in division (B) of

this section by the cents per gallon rate difference referred to in division (A)(2) of this section. The tax commissioner shall immediately forward to the treasurer of state all money collected under this section, and such money shall be treated as revenue arising from the tax levied pursuant to section 5735.05 of the Revised Code.

(D) If the cents per gallon rate referred to in division (A)(1) of this section is lower than the cents per gallon rate it replaced, each motor fuel dealer shall be entitled to a refund in an amount equal to the product obtained by multiplying the gallonage referred to in division (B) of this section by the cents per gallon rate difference referred to in division (A)(2) of this section. Within forty-five days from the date the motor fuel dealer files a report pursuant to division (B) of this section, the tax commissioner shall certify the amount of the refund to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code.

Effective Date: 01-01-2003

5735.062 Tax payments by electronic funds transfer.

(A) If the total amount of tax required to be paid under section 5735.06 of the Revised Code for any calendar year indicated in the following schedule exceeds the amounts prescribed for that year in the schedule, the dealer shall remit each monthly tax payment in the second ensuing and each succeeding year by electronic funds transfer as prescribed by division (B) of this section.

Year 1992 1993 and thereafter

Total tax payment \$1,200,000 \$600,000

If a dealer's total tax payment for each of two consecutive years beginning with 1993 is six hundred thousand dollars or less, the dealer is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the total tax payment is six hundred thousand dollars or less, and is relieved of that requirement for each succeeding year unless the total tax payment in a subsequent year exceeds six hundred thousand dollars.

The tax commissioner shall notify each dealer required to remit taxes by electronic funds transfer of the dealer's obligation to do so, shall maintain an updated list of those dealers, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a dealer subject to this section to remit taxes by electronic funds transfer does not relieve the dealer of its obligation to remit taxes by electronic funds transfer.

(B) Dealers required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates specified under section 5735.06 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a dealer's obligation to file the monthly report as required under section 5735.06 of the Revised Code.

A dealer required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the dealer from remittance by electronic funds transfer for good cause shown for the period of time requested by the dealer or for a portion of that period. The treasurer shall notify the tax commissioner and the dealer of the treasurer's decision as soon as is practicable.

(C) If a dealer required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5735.12 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this division against a dealer that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the dealer remits by some means other than electronic funds transfer.

Effective Date: 03-19-1993

5735.063 Terminal operator to file monthly report - contents of report.

(A) On or before the last day of each month, each terminal operator shall file with the tax commissioner a report for the preceding calendar month on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following information:

(1) The physical inventory of all motor fuel on hand in each terminal in this state on the first and last day of the preceding calendar month;

(2) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such terminal operator into each terminal in this state;

(3) An itemized statement of the number of gallons of all motor fuel dispensed during the preceding calendar month by such terminal operator from each terminal in this state;

(4) Any other information the commissioner considers necessary.

(B) No person required by this section to file a report shall file a false or fraudulent report or supporting schedule.

Effective Date: 10-01-1996

5735.064 Exporter's report.

(A) On or before the last day of each month, each exporter of motor fuel, licensed under section 5735.026 of the Revised Code, shall file with the tax commissioner a report for the preceding calendar month on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month for export by the licensed exporter;

(2) An itemized statement of the number of gallons of all motor fuel exported from the state;

(3) Any other information the commissioner deems necessary.

(B) No person required by this section to file a report shall file a false or fraudulent report or supporting schedule.

(C) Any person who obtains untaxed motor fuel for export from this state, but later diverts or causes to be diverted motor fuel to a destination in this state, is deemed a motor fuel dealer as regards any unpaid motor fuel taxes levied thereon. Taxes levied against such person may be collected by assessment as provided in section 5735.12 or 5735.121 of the Revised Code.

Effective Date: 10-01-1996

5735.07 List of dealers that have filed report.

Each month the tax commissioner shall make a list of all motor fuel dealers that have filed a report pursuant to section 5735.06 of the Revised Code. The list shall contain the names of all dealers and the number of gallons of motor fuel upon which those dealers were required to pay the tax as reported on the return or as determined by investigation of the commissioner. The list shall be open to public inspection in the office of the commissioner.

Effective Date: 10-01-1996

5735.08 [Repealed].

Effective Date: 10-01-1996

5735.09 Reports of persons transporting motor fuel.

(A) Every railroad company, every street, suburban, or interurban railroad company, every pipe line company, and every water transportation company, which transports motor fuel, either in interstate or in intrastate commerce, to points within this state, and every person who transports motor fuel by any manner to a point in this state, shall report all deliveries of motor fuel made to points within this state to the tax commissioner on forms prescribed by the tax commissioner.

Such reports shall cover monthly periods, shall be submitted within thirty days after the close of the month covered by the report, shall show the name and address of the person to whom the deliveries of motor fuel were actually made, the name and address of the person that assumes ownership of the motor fuel, the point of origin, the point of delivery, the date of delivery, and the number and initials of each car if shipped by rail, the quantity of each shipment and delivery in gallons, the date delivered, the name of the person to whom delivered, the point of shipment, the point of delivery, the name of the boat or barge if delivered by water, and if delivered by other means, the manner in which such delivery is made.

(B) No person required by this section to file a report shall file a false or fraudulent report or supporting schedule.

Effective Date: 10-01-1996

5735.10 Dealers to retain records - inspection by tax commissioner.

(A) Each motor fuel dealer and each retail dealer shall maintain complete and accurate records of purchases and sales of motor fuel and shall procure and retain all invoices, bills of lading, and other documents relating thereto, except that no retail dealer shall be required to issue or maintain invoices relating to that retail dealer's sales of motor fuel.

(B) Every retail dealer shall take meter readings or totalizer readings and tank stick readings at a retail service station daily.

(C) Every retail dealer shall maintain accurate records each time a retail pump meter or totalizer is serviced, repaired, or replaced. The repair and replacement records must indicate, at a minimum, the date of the repair or replacement, the meter or pump number, and all ascending and descending numbers.

(D) Such records and documents shall be open during business hours to the inspection of the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept for a longer period.

No person shall refuse to provide such records and documents to the tax commissioner or any person employed by the commissioner for the purpose of inspecting such records and documents.

(E) No person required by this section to maintain accurate records shall maintain or provide false or fraudulent records.

Effective Date: 10-01-1996

5735.101 Prior permission for sale of untaxed fuel by non-dealer.

No person, other than a motor fuel dealer, shall sell or dispose of any untaxed motor fuel without the prior written permission of the tax commissioner. Upon investigation, the commissioner shall determine whether any tax shall be imposed on the transaction. Full and complete documentation shall be submitted by the seller to the commissioner upon the commissioner's request.

Failure to obtain prior approval from the commissioner regarding the sale or disposal may subject the person to all motor fuel taxes levied by this chapter.

5735.102 Seizure and sale of fuel and transporting vehicle when taxes not paid.

Whenever the tax commissioner discovers any motor fuel subject to the taxes levied under Chapter 5735. of the Revised Code and upon which the taxes have not been paid, the commissioner may seize and take possession of the motor fuel. The motor fuel shall be forfeited to the state, and the commissioner, within a reasonable time thereafter, may sell the forfeited motor fuel. The commissioner shall collect the taxes due on the forfeited motor fuel from the proceeds of the sale. Proceeds of the sale shall be paid into the state treasury pursuant to this chapter. The seizure and sale shall not relieve any person from fine or imprisonment resulting from a violation of section 5735.022 or 5735.20 of the Revised Code. The sale shall be made in the county in which it is most convenient and economical.

Any motor vehicle used to transport motor fuel seized pursuant to this section also is subject to seizure by the tax commissioner. The tax commissioner may dispose of the seized vehicle in the manner prescribed by this section for disposing of seized motor fuel.

Effective Date: 10-01-1996

5735.103 Padlocking pumps of retail service station.

Whenever the tax commissioner discovers any motor fuel at a retail service station subject to the taxes levied under this chapter and upon which the taxes have not been paid, the commissioner may padlock the pumps of the retail service station until the taxes are paid.

Effective Date: 10-01-1996

0211

5735.11 Interest on late payment of tax or refund.

(A) If the tax or any portion of the tax imposed by this chapter, whether determined by the tax commissioner or the motor fuel dealer, is not paid on or before the date prescribed in section 5735.06 of the Revised Code, interest shall be collected and paid in the same manner as the tax upon the unpaid amount, computed at the rate per annum prescribed by section 5703.47 of the Revised Code, from the date prescribed for payment of the tax to the date of payment or to the date an assessment is issued under section 5735.12 or 5735.121 of the Revised Code, whichever occurs first. Interest may be collected by assessment in the manner provided in section 5735.12 or 5735.121 of the

Revised Code. All interest shall be paid in the same manner as the tax and shall be considered as revenue arising from the tax imposed by section 5735.05 of the Revised Code.

(B) Interest shall be allowed and paid upon any refund granted in respect to the payment of an illegal or erroneous assessment for any tax imposed under this chapter from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

Effective Date: 09-06-2002

5735.12 Liability for additional charge or assessment for noncompliance.

(A) Any motor fuel dealer required by this chapter to file reports and pay the tax levied by this chapter who fails to file the report within the time prescribed, may be liable for an additional charge not exceeding the greater of ten per cent of the motor fuel dealer's tax liability for that month or fifty dollars. The tax commissioner may remit all or a portion of the additional charge and may adopt rules relating to the remission of all or a portion of the charge.

If any person required by this chapter to file reports and pay the taxes, interest, or additional charge levied by this chapter fails to file the report, files an incomplete or incorrect report, or fails to remit the full amount of the tax, interest, or additional charge due for the period covered by the report, the commissioner may make an assessment against the person based upon any information in the commissioner's possession.

No assessment shall be made against any motor fuel dealer for taxes imposed by this chapter more than four years after the date on which the report on which the assessment was based was due or was filed, whichever is later. This section does not bar an assessment against any motor fuel dealer who fails to file a report required by section 5735.06 of the Revised Code, or who files a fraudulent motor fuel tax report.

A penalty of up to fifteen per cent may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment in writing, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, 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 party assessed resides or in which the business of the party assessed is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the party 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 state motor fuel tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by this chapter.

(E) If the tax commissioner determines that the commissioner has erroneously refunded motor fuel tax to any person, the commissioner may make an assessment against the person for recovery of the erroneously refunded tax.

Effective Date: 09-06-2002

5735.121 Jeopardy assessment.

(A) If the tax commissioner finds that any person liable for tax under this chapter is about to depart from the state, remove property from the state, conceal self, or conceal the person's property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax, unless proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any person will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the person for the amount of the tax, plus a penalty of up to fifteen per cent. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest in the manner prescribed in section 5735.12 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 5735.12 of the Revised Code. Notice of the jeopardy assessment shall be served on the person assessed or the legal representative of the person assessed, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The person assessed may petition for reassessment within sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 5735.12 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to Chapter 2981. of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the person subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the person that previously were seized. Upon satisfaction of the assessment, the commissioner shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

Effective Date: 09-29-2000; 07-01-2007

5735.122 Applying for refund of illegal or erroneous payment.

The tax commissioner shall refund to dealers or to any person assessed motor fuel tax the amount of taxes paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for refund shall be filed with the tax commissioner, on the form prescribed by the commissioner, within four years from the date of the illegal or erroneous payment. No person shall file a claim for the tax on fewer than one hundred gallons of motor fuel.

On the filing of the application, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code, except that no refund shall be authorized or paid on a claim for the tax on fewer than one hundred gallons of motor fuel. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

Effective Date: 09-06-2002

5735.123 Assessment where tax not paid or liability accrued to dealer.

If any person imports, sells, uses, delivers, or stores, within this state, motor fuel upon which the tax imposed by this chapter has not first been paid or liability for the tax imposed by this chapter on the motor fuel has not accrued to the holder of an unrevoked motor fuel dealer's license, the commissioner may make an assessment against the person under section 5735.12 or 5735.121 of the Revised Code for the motor fuel taxes

imposed by this chapter. The assessment may be based upon any information in the commissioner's possession.

Effective Date: 10-01-1996

5735.124 Selling or distributing dyed diesel fuel.

(A)(1) Any person that sells or distributes dyed diesel fuel when that person knows or has reason to know that the dyed diesel fuel will be used in the operation of a motor vehicle on the public highways or upon waters within the boundaries of this state is subject to a penalty of one thousand dollars or ten dollars per gallon of dyed diesel fuel so sold or distributed, whichever is greater. Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the internal revenue service to so use dyed diesel fuel.

(2) Any person that consumes dyed diesel fuel in the operation of a motor vehicle on the public highways or waters within the boundaries of this state is subject to a penalty of one thousand dollars or ten dollars per gallon of the vehicle's fuel supply tank capacity, whichever is greater. Division (A)(2) of this section does not apply to consumption by persons permitted under regulations of the United States department of the treasury or of the internal revenue service to consume dyed diesel fuel in operating a motor vehicle on the public highways or waters within the boundaries of this state.

(B) Any penalty imposed under this section may be assessed under section 5735.12 or 5735.121 of the Revised Code.

(C) If a prior penalty has been issued against a person under this section, the amount of the penalty shall be multiplied by the number of prior penalties imposed on such person under this section, and the resulting amount shall be the total penalty assessed.

(D) The tax commissioner may reduce or remit a penalty assessed under this section.

Effective Date: 10-01-1996

0216

5735.13 Refund of tax when motor fuel lost or destroyed.

A refund shall be made to any person for the motor fuel tax paid on any motor fuel that is lost or destroyed through leakage, fire, explosion, lightning, flood, tornado, windstorm, or any other cause, except theft, evaporation, shrinkage, and unaccounted-for losses. No refund shall be authorized or ordered under this section for any single loss of less than one hundred gallons, nor except upon notice to the tax commissioner within thirty days

from the date of such loss or destruction or the discovery thereof, and upon filing with the tax commissioner within sixty days thereafter an application in the form of an affidavit sworn to by the claimant setting forth in full the circumstances of the loss, and upon presentation of supporting evidence satisfactory to the commissioner.

On the filing of the application, the commissioner shall determine the amount of the refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

Effective Date: 09-06-2002

0217

5735.14 Reimbursement when fuel not used for in-state operation of motor vehicle on highway or waters.

(A) Any person who uses any motor fuel, on which the tax imposed by this chapter has been paid, for the purpose of operating stationary gas engines, tractors not used on public highways, unlicensed motor vehicles used exclusively in intraplant operations, vessels when used in trade, including vessels when used in connection with an activity that constitutes a person's chief business or means of livelihood or any other vessel used entirely for commercial purposes, vessels used for commercial fishing, vessels used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship, vessels used or owned by any railroad company, railroad car ferry company, the United States, this state, or any political subdivision of this state, or aircraft, or who uses any such fuel upon which such tax has been paid, for cleaning or for dyeing, or any purpose other than the operation of motor vehicles upon highways or upon waters within the boundaries of this state, shall be reimbursed in the amount of the tax so paid on such motor fuel as provided in this section; provided, that any person purchasing motor fuel in this state on which taxes levied under Title LVII of the Revised Code have been paid shall be reimbursed for such taxes paid in this state on such fuel used by that person in another state on which a tax is paid for such usage, except such tax used as a credit against the tax levied by section 5728.06 of the Revised Code. A person shall not be reimbursed for taxes paid on fuel that is used while a motor vehicle is idling or used to

provide comfort or safety in the operation of a motor vehicle. Sales of motor fuel, on which the tax imposed by this chapter has been paid, from one person to another do not constitute use of the fuel and are not subject to a refund under this section.

(B) Any person who uses in this state any motor fuel with water intentionally added to the fuel, on which the taxes imposed by this chapter or Chapter 5728. of the Revised Code have been paid, shall be reimbursed in the amount of the taxes so paid on ninety-five per cent of the water. This division applies only to motor fuel that contains at least nine per cent water, by volume.

(C) A person claiming reimbursement under this section shall file with the tax commissioner an application for refund within one year from the date of purchase, stating the quantity of fuel used for the refundable purposes in division (A) or (B) of this section, except that no person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. An application for refund filed for the purpose of division (B) of this section also shall state the quantity of water intentionally added to the motor fuel. No person shall claim reimbursement under that division on fewer than one hundred gallons of water. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing such purchase, together with evidence of payment thereof.

(D) After consideration of the application and statement, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

No refund shall be authorized or paid under this section on a single claim for tax on fewer than one hundred gallons of motor fuel. And, when water has been intentionally added to fuel, no refund shall be authorized or paid under this section on a single claim for tax on fewer than one hundred gallons of water. The commissioner may require that the application be supported by the affidavit of the claimant.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

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(E) The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of this refund shall not be made to any person other

than the person originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that such refunds, when allowed and certified as provided in this section, may be paid to the executor, administrator, receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such person.

Effective Date: 09-26-2003

5735.141 Refunds for shrinkage and evaporation.

Any retail dealer of motor fuel shall receive a refund for Ohio motor fuel taxes paid on fuel lost by a retail dealer through shrinkage and evaporation. This refund shall be one per cent of the Ohio motor fuel taxes paid on fuel purchased during any semiannual period ending the thirtieth day of June or the thirty-first day of December.

In order to receive a refund the retail dealer shall file with the tax commissioner, within one hundred twenty days after the thirtieth day of June and the thirty-first day of December of each year, an application for a refund stating the quantity of motor fuel that was purchased for resale by the applicant during the preceding semiannual period ending the thirtieth day of June or the thirty-first day of December and upon which the motor fuel tax has been paid. No person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. The form and contents of the application shall be prescribed by the commissioner, and the application shall be signed in accordance with section 5703.25 of the Revised Code. On the filing of the application, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

No refund shall be authorized or ordered under this section for any single claim for the tax on fewer than one hundred gallons of motor fuel.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of the refund shall not be made to any person other than the retail dealer originally entitled thereto, except that the refund may be paid to the

executor, administrator, receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such retailer.

A motor fuel dealer shall be deemed to be a retail dealer when acting in a retail capacity.

Effective Date: 09-06-2002

5735.142 Refunds for local transit system operation and school districts.

(A)(1) Any person who uses any motor fuel, on which the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code has been paid, for the purpose of operating a transit bus shall be reimbursed in the amount of such tax paid on motor fuel used by public transportation systems providing transit or paratransit service on a regular and continuing basis within the state;

(2) A city, exempted village, joint vocational, or local school district or educational service center that purchases any motor fuel for school district or service center operations, on which any tax imposed by section 5735.29 of the Revised Code that became effective on or after July 1, 2003, has been paid, may, if an application is filed under this section, be reimbursed in the amount of all but two cents per gallon of the total tax imposed by such section and paid on motor fuel.

(3) A county board of developmental disabilities that, on or after July 1, 2005, purchases any motor fuel for county board operations, on which any tax imposed by section 5735.29 of the Revised Code has been paid may, if an application is filed under this section, be reimbursed in the amount of all but two cents per gallon of the total tax imposed by such section and paid on motor fuel purchased on or after July 1, 2005.

(B) Such person, school district, educational service center, or county board shall file with the tax commissioner an application for refund within one year from the date of purchase, stating the quantity of fuel used for operating transit buses used by local transit systems in furnishing scheduled common carrier, public passenger land transportation service along regular routes primarily in one or more municipal corporations or for operating vehicles used for school district, service center, or county board operations. However, no claim shall be made for the tax on fewer than one hundred gallons of motor fuel. A school district, educational service center, or county board shall not apply for a refund for any tax paid on motor fuel that is sold by the district, service center, or county board. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing the purchase, together with evidence of payment thereof.

(C) After consideration of the application and statement, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The commissioner may require that the application be supported by the affidavit of the claimant. No refund shall be authorized or ordered for any single claim for the tax on fewer than one hundred gallons of motor fuel. No refund shall be authorized or ordered on motor fuel that is sold by a school district, educational service center, or county board.

(D) The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

(E) The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of this refund shall not be made to any person or entity other than the person or entity originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that the refund when allowed and certified, as provided in this section, may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of the person.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 06-30-2003; 03-29-2006

0221

5735.143 Applying refund in satisfaction of debt to state.

If a person entitled to a refund under this chapter is indebted to the state for any tax or fee administered by the tax commissioner that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code, or any charge, penalty, or interest arising from such a tax or fee, the amount refundable may be applied in satisfaction of the debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded. If the person has more than one such debt, any debt subject to section 5739.33 or division (G) of

section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

Effective Date: 09-29-1997

5735.145 Calculating qualified fuel credit.

(A) As used in this section and sections 5735.13, 5735.14, 5735.141, and 5735.142 of the Revised Code:

(1) "Qualified fuel" means ethanol that is to be combined with gasoline to create a blend of not more than ten per cent by volume of ethanol and that when so blended is used, sold, or distributed as a motor fuel.

(2) "Ethanol" means:

(a) Ethanol produced in a manufacturing facility with an annual production capacity of less than two million gallons from wood or the grain of a cereal grass and denatured in accordance with United States bureau of alcohol and tax regulations; or

(b) Ethanol produced through a coal-fired process from wood or the grain of a cereal grass and denatured in accordance with United States bureau of alcohol and tax regulations.

(B) Any motor fuel dealer shall receive a qualified fuel credit on each gallon of qualified fuel used, sold, or distributed by the dealer and on which the dealer is liable for the taxes imposed by this chapter of the Revised Code. To receive a credit, the dealer shall certify on the monthly report required by section 5735.06 of the Revised Code the number of gallons of qualified fuel used, sold, or distributed during the month to which the report applies and upon which such taxes are imposed. After computation of the amount of the tax in accordance with division (B) of section 5735.06 of the Revised Code, the number of gallons of qualified fuel used, sold, or distributed during the month to which the report applies and included in the gallons of motor fuel upon which the tax is imposed shall be multiplied by ten cents per gallon. The resulting product shall be subtracted from the tax computed under division (B) of section 5735.06 of the Revised Code and shall constitute the qualified fuel credit provided by this section.

(C) The aggregate amount of credits permitted under this section shall be subject to the limitations prescribed in this division.

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(1) Beginning July 1, 1993, and ending June 30, 1997, for each fiscal year, the credit shall not exceed a total of fifteen million dollars, and for each month of each such year shall not exceed the amount specified for that month as follows:

July \$1,390,125 January \$1,133,625

August 1,312,125 February 1,106,625

September 1,229,625 March 1,211,625

October 1,268,625 April 1,192,125

November 1,235,625 May 1,270,125

December 1,280,625 June 1,369,125

(2) If in any month the credit is less than the limit set forth for that month, the unused portion shall be carried forward and added to the succeeding month's limit until the end of the fiscal year.

(3) If in any month the credit, including any amount carried forward from a preceding month, exceeds the limit for that month by less than five per cent, the tax commissioner shall either reduce the limit for the succeeding month by the amount of the excess, or collect the excess from each motor fuel dealer, apportioning the amount collected among motor fuel dealers in proportion to the amount of credit claimed by each motor fuel dealer for that month.

If in any month the credit, including any amount carried forward from a preceding month, exceeds the limit for that month by five per cent or more, the tax commissioner shall collect the excess from each motor fuel dealer, apportioning the amount collected among motor fuel dealers in proportion to the amount of credit claimed by each motor fuel dealer for that month.

(4) Any credit in excess of the amounts prescribed in this section and subject to collection by the tax commissioner pursuant to division (C)(2) or (3) of this section shall be paid to the treasurer of state as revenue arising from taxes imposed under this chapter and is subject to assessment as provided in sections 5735.12 and 5735.121 of the Revised Code.

Effective Date: 09-29-2000

5735.146 [Repealed].

Effective Date: 06-30-1997

5735.15 Seller's statement required when purchaser claims right to refund.

When motor fuel is sold to a person who claims to be entitled to a refund under section 5735.14 or 5735.142 of the Revised Code, the seller of such motor fuel shall provide to the person documentation that indicates that the liability to the state for the excise tax imposed under the motor fuel laws of this state on such motor fuel has been assumed by the seller, and that said excise tax has already been paid or will be paid by the seller when the same becomes payable. The documentation also shall set forth the name and address of the purchaser, the number of gallons of motor fuel sold, the price paid for or the price per gallon of the motor fuel sold, the proposed use for which such motor fuel is purchased, and such other information as the commissioner requires. When motor fuel is sold to a person who claims to be entitled to reimbursement under division (B) of section 5735.14 of the Revised Code, the documentation also shall state the number of gallons of water intentionally added to the motor fuel. The documentation shall be given to the purchaser, and a copy shall be retained by the seller.

Effective Date: 09-26-2003

5735.16 Vendee's refund permit - revocation.

No person shall secure a refund of tax under section 5735.14, 5735.141, or 5735.142 of the Revised Code unless such person is the holder of an unrevoked vendee's refund permit issued by the tax commissioner. To procure such permit every such person shall file with the commissioner an application under oath and in such form as the commissioner prescribes, setting forth such information incidental to the refunding of the tax paid on motor fuel as the commissioner requires.

The vendee's refund permit authorized by this section may be revoked by the commissioner if it is found that the holder thereof has made a false or fraudulent application for refund of tax, or when the permittee fails to furnish information as required by law. No permit so revoked shall be reinstated within one year from the date of such revocation.

Effective Date: 10-01-1996

5735.17 [Repealed].

Effective Date: 09-29-2000

5735.18 Reimbursement for non-dealer sales for export outside state or to United States.

Any person other than a motor fuel dealer who purchases motor fuel upon which the tax has been paid to this state and who sells the same outside this state for use outside this state or who uses the same on highways or waters outside this state and pays a tax on such use or sells the same to the United States government or any of its agencies may be reimbursed in the amount of such tax as provided in this chapter. All applications for refund of the tax paid on motor fuel sold for export from the state or sold to the United States government or any of its agencies shall be made in such form and shall set forth such information as the tax commissioner prescribes, and the applicant shall satisfy the commissioner that the motor fuel has been sold as stated and that the tax thereon has been paid. Applications for refund of the tax paid on motor fuel sold to the United States government or any of its agencies shall be supported by an affidavit of the claimant and by a tax exemption certificate executed by the vendee in such form as is prescribed by the commissioner. If the United States government or any of its agencies purchases motor fuel upon which the tax has been paid to this state, the United States government or agency may be reimbursed in the amount of such tax as provided in this chapter, provided that the seller of the motor fuel has not applied for a refund on behalf of the United States government or agency. Applications filed by the United States government or any of its agencies for refund of the tax paid on motor fuel purchases shall be supported by an invoice or similar fuel purchase document issued by the seller of the fuel.

On the filing of an application under this section, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify and pay that amount in the same manner as provided in section 5735.14 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The person shall file with the tax commissioner an application for refund within one year from the date of sale or purchase. The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

Effective Date: 09-06-2002

5735.19 Records open to inspection by tax commissioner **- investigations - forms.**

0225

(A) The tax commissioner may examine, during the usual business hours of the day, the records, books, invoices, storage tanks, and any other equipment of any motor fuel dealer, retail dealer, exporter, terminal operator, purchaser, or common carrier pertaining

to motor fuel received, sold, shipped, or delivered, to determine whether the taxes imposed by this chapter have been paid and to verify the truth and accuracy of any statement, report, or return.

(B) The tax commissioner may, in the enforcement of the motor fuel laws of this state, hold hearings, take the testimony of any person, issue subpoenas and compel the attendance of witnesses, and conduct such investigations as the commissioner deems necessary. Such information or evidence is not privileged when used by the state or any officer thereof in any proceeding for the collection of the tax, or any prosecution for violation of the motor fuel laws.

(C) The commissioner may prescribe all forms upon which reports shall be made to the commissioner, forms for claims for refund presented to the commissioner, or forms of records to be used by motor fuel dealers.

(D)(1) As used in this division, "designated inspection site" means any state highway inspection station, weigh station, mobile station, or other similar location designated by the tax commissioner to be used as a fuel inspection site.

(2) An employee of the department of taxation that is so authorized by the tax commissioner may physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine tax liability under this chapter. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any designated inspection site.

(3) An employee of the department of taxation who is a duly authorized enforcement agent may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment shall be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

(4) Any employee described in division (D)(2) or (3) of this section who has been properly trained may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel.

(5) No person shall refuse to allow an inspection under division (D) of this section. Any person who refuses to allow an inspection shall be subject to revocation or cancellation of any license or permit issued under Chapter 5728. or 5735. of the Revised Code.

5735.20 Prohibited acts regarding refunds or engaging in business without license.

(A) No person shall do any of the following:

(1) Knowingly collect or attempt to collect or cause to be repaid to the taxpayer or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same;

(2) Engage in business in the state as a motor fuel dealer without holding an unrevoked license to engage in such business;

(3) Engage in business in the state as a retail dealer without holding an unrevoked license to engage in such business;

(4) Engage in business in the state as a permissive motor fuel dealer without holding an unrevoked license to engage in such business;

(5) Engage in business in the state as an exporter without holding an unrevoked license to engage in such business;

(6) Engage in business as a terminal operator without holding an unrevoked license to engage in such business.

(B) Each day, or part thereof, during which any person engages in business as a motor fuel dealer, retail dealer, permissive motor fuel dealer, exporter, or terminal operator without being the holder of an unrevoked license constitutes a separate offense.

Effective Date: 10-01-1996

5735.21 Shipping document requirements.

(A) No person shall transport motor fuel in a bulk lot vehicle from or to a destination in this state unless the person possesses a shipping document created by a terminal or a bulk plant where the bulk lot vehicle received the fuel. The terminal or bulk plant shall provide the shipping document to the operator of the bulk lot vehicle and the document must contain all of the following:

(1) The name and address of the terminal or bulk plant from which the motor fuel was received;

(2) The name of the carrier:

(3) The date the motor fuel was loaded;

(4) The type of motor fuel and the number of gallons;

(5)(a) If delivery is to only one state, the destination state of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered.

(b) If delivery is to more than one state, the split loads delivered to each state from the bulk lot vehicle shall be documented by the terminal or bulk plant by issuing shipping documents that list the destination state of each portion of the motor fuel.

(6) Any other information that, in the opinion of the tax commissioner, is necessary for the proper administration of this chapter.

(B) A terminal or bulk plant, the carrier, and the person that received the motor fuel shall retain a copy of the shipping document for a period of four years after the date of receipt of the fuel and shall provide a copy of the document to the tax commissioner upon request.

(C) While transporting motor fuel in this state, each operator of a bulk lot vehicle shall have in its possession the shipping document issued by the terminal or bulk plant. The operator shall show the document to the tax commissioner upon request. The tax commissioner may delegate authority to inspect the document to other governmental agencies. The operator shall provide a copy of the shipping document to the person that receives the fuel when it is delivered.

(D) The operator of the bulk lot vehicle shall deliver the motor fuel only to the destination state as indicated on the shipping document. If the operator has a legitimate need to deliver the motor fuel to a state other than the destination state as listed on the shipping document, the operator may do so only after doing all of the following:

(1) Notifying the tax commissioner prior to delivering the motor fuel into a state other than the designated state;

(2) Receiving a diversion number authorizing the diversion to another state;

(3) Writing on the shipping document the diversion number authorizing the diversion and the new state of destination.

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(E) Except as otherwise provided in division (L) of this section, no person located in this state shall accept a shipment of motor fuel from a bulk lot vehicle unless a properly executed shipping document listing this state as the destination state is received from the operator of the bulk lot vehicle. A shipping document listing another state may be

accepted if a diversion number is written upon it and the state of destination is corrected. The person receiving the motor fuel shall confirm the diversion by calling a telephone number provided by the tax commissioner. The person receiving the motor fuel shall retain the shipping document for thirty days at the delivery location, and retain the shipping document for four years thereafter at any location normally used to store records by the person receiving the fuel.

(F) Each terminal or bulk plant shall post a notice describing the duties of operators of bulk lot vehicles under this section. The notice shall be posted in a conspicuous location proximate to the point of receipt of shipping papers by operators of bulk lot vehicles. The tax commissioner may prescribe the language, type, style, and format of the notice.

(G)(1) Any operator of a bulk lot vehicle that violates any requirement of this section is subject to a penalty of one thousand dollars for each violation.

(2) Any person receiving motor fuel who accepts a shipping document that does not conform with division (E) of this section is subject to a penalty of one thousand dollars or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(3) Any person operating a terminal or bulk plant who issues a shipping document that does not conform with division (A) of this section is subject to a penalty of one thousand dollars for each occurrence.

(4) Any person operating a terminal or bulk plant who does not post notice as required under division (F) of this section is subject to a penalty of one hundred dollars for each day the notice is not posted as required by that division.

(H) The tax commissioner may impose the penalties prescribed under division (G) of this section by assessment under section 5735.12 or 5735.121 of the Revised Code.

(I) The tax commissioner may reduce or remit a penalty prescribed under division (G) of this section.

(J) No person shall provide false or fraudulent shipping documents.

No person shall alter a shipping document without first having obtained a diversion number as required by this section.

(K) For the purposes of this section only, "bulk lot vehicles" does not include railroad tank cars.

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(L) This section does not apply to the sale or distribution at bulk plants of dyed diesel fuel into straight trucks having designed motor fuel capacity of four thousand two hundred gallons or less.

Effective Date: 10-01-1996

5735.22 [Repealed].

Effective Date: 07-02-1981

5735.23 Crediting of receipts into funds.

(A) Out of receipts from the tax levied by section 5735.05 of the Revised Code, the treasurer of state shall place to the credit of the tax refund fund established by section 5703.052 of the Revised Code amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.13, 5735.14, 5735.141, 5735.142, and 5735.16 of the Revised Code. The treasurer of state shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund, the amount required by section 4907.472 of the Revised Code to the grade crossing protection fund, and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund.

(B) Except as provided in division (D) of this section, each month the balance of the receipts from the tax levied by section 5735.05 of the Revised Code shall be credited, after receipt by the treasurer of state of certification from the commissioners of the sinking fund, as required by section 5528.35 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year, as follows:

(1) To the state and local government highway distribution fund, which is hereby created in the state treasury, an amount that is the same percentage of the balance to be credited as that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code is of the total tax per gallon determined under divisions (B) (2)(a) and (b) of that section.

(2) After making the distribution to the state and local government highway distribution fund, the remainder shall be credited as follows:

(a) Thirty per cent to the gasoline excise tax fund for distribution pursuant to division (A) (1) of section 5735.27 of the Revised Code;

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(b) Twenty-five per cent to the gasoline excise tax fund for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code;

(c) Except as provided in division (D) of this section, forty-five per cent to the highway operating fund for distribution pursuant to division (B)(1) of section 5735.27 of the Revised Code.

(C) From the balance in the state and local government highway distribution fund on the last day of each month there shall be paid the following amounts:

(1) To the local transportation improvement program fund created by section 164.14 of the Revised Code, an amount equal to a fraction of the balance in the state and local government highway distribution fund, the numerator of which fraction is one and the denominator of which fraction is that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code;

(2) An amount equal to five cents multiplied by the number of gallons of motor fuel sold at stations operated by the Ohio turnpike commission, such gallonage to be certified by the commission to the treasurer of state not later than the last day of the month following. The funds paid to the commission pursuant to this section shall be expended for the construction, reconstruction, maintenance, and repair of turnpike projects, except that the funds may not be expended for the construction of new interchanges. The funds also may be expended for the construction, reconstruction, maintenance, and repair of those portions of connecting public roads that serve existing interchanges and are determined by the commission and the director of transportation to be necessary for the safe merging of traffic between the turnpike and those public roads.

The remainder of the balance shall be distributed as follows on the fifteenth day of the following month:

(a) Ten and seven-tenths per cent shall be paid to municipal corporations for distribution pursuant to division (A)(1) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Through July 15, 2005, the sum of two hundred forty-eight thousand six hundred twenty-five dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund. Beginning August 15, 2005, the sum of seven hundred forty-five thousand eight hundred seventy-five dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund.

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(b) Five per cent shall be paid to townships for distribution pursuant to division (A)(5) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Through July 15, 2005, the sum of eighty-seven thousand seven hundred fifty dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund. Beginning August 15,

2005, the sum of two hundred sixty-three thousand two hundred fifty dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund.

(c) Nine and three-tenths per cent shall be paid to counties for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Through July 15, 2005, the sum of two hundred forty-eight thousand six hundred twenty-five dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund. Beginning August 15, 2005, the sum of seven hundred forty-five thousand eight hundred seventy-five dollars shall be monthly subtracted from the amount so computed and credited to the highway operating fund.

(d) Except as provided in division (D) of this section, the balance shall be transferred to the highway operating fund and used for the purposes set forth in division (B)(1) of section 5735.27 of the Revised Code.

(D) Monthly from September to February of each fiscal year, an amount equal to one-sixth of the amount certified in July of that year by the treasurer of state pursuant to division (Q) of section 151.01 of the Revised Code shall, from amounts required to be credited or transferred to the highway operating fund pursuant to division (B)(2)(c) or (C)(2)(d) of this section , be credited or transferred to the highway capital improvement bond service fund created in section 151.06 of the Revised Code. If, in any of those months, the amount available to be credited or transferred to the bond service fund is less than one-sixth of the amount so certified, the shortfall shall be added to the amount due the next succeeding month. Any amount still due at the end of the six-month period shall be credited or transferred as the money becomes available, until such time as the office of budget and management receives certification from the treasurer of state or the treasurer of state's designee that sufficient money has been credited or transferred to the bond service fund to meet in full all payments of debt service and financing costs due during the fiscal year from that fund.

Effective Date: 06-26-2003; 03-29-2005

5735.24 [Repealed].

Effective Date: 12-13-1979

5735.25 Levy of additional motor fuel tax.

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To provide revenue for supplying the state's share of the cost of planning, constructing, widening, and reconstructing the state highways; for supplying the state's share of the

cost of eliminating railway grade crossings upon such highways; to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to enable the counties and townships of the state to properly plan, construct, widen, reconstruct, and maintain their public highways, roads, and streets; to enable counties to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; to enable municipal corporations to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under section 4907.47 of the Revised Code; to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code and to supplement revenue already available for such purposes; to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, to supplement revenue already available for such purposes, to pay the interest, principal, and charges on bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code; and to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon their receipt of motor fuel within this state, at the rate of two cents per gallon on each gallon so received. This tax is subject to the specific exemptions set forth in this chapter of the Revised Code. It shall be reported, computed, paid, collected, administered, enforced, and refunded, and the failure properly and correctly to report and pay the tax shall be penalized, in exactly the same manner as is provided in this chapter. Such sections relating to motor fuel excise taxes are reenacted and incorporated as if specifically set forth in this section. The tax levied by this section shall be in addition to the tax imposed under this chapter.

Effective Date: 10-01-1996; 03-29-2005

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5735.26 Crediting of receipts from additional tax.

The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by section 5735.25 of the Revised Code, amounts equal to the refunds certified by the tax commissioner

pursuant to sections 5735.142 and 5735.25 of the Revised Code, which shall be paid from such fund. The treasurer of state shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund.

The balance of taxes collected under section 5735.25 of the Revised Code shall be credited as follows, after the credits to the tax refund fund and the transfers to the waterways safety fund and motor fuel tax administration fund, and after receipt by the treasurer of state of certifications from the commissioners of the sinking fund certifying, as required by sections 5528.15 and 5528.35 of the Revised Code, there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year, and that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year:

- (A) Sixty-seven and one-half per cent to the highway operating fund for distribution pursuant to division (B)(2) of section 5735.27 of the Revised Code;
- (B) Seven and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(2) of such section;
- (C) Seven and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(4) of such section;
- (D) Seventeen and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(5) of such section.

Effective Date: 06-26-2003

5735.27 Distribution of amount credited to gasoline excise tax fund and highway operating fund.

(A) There is hereby created in the state treasury the gasoline excise tax fund, which shall be distributed in the following manner:

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(1) The amount credited pursuant to divisions (B)(2)(a) and (C)(2)(a) of section 5735.23 of the Revised Code shall be distributed among municipal corporations. The amount paid

to each municipal corporation shall be that proportion of the amount to be so distributed that the number of motor vehicles registered within the municipal corporation bears to the total number of motor vehicles registered within all the municipal corporations of this state during the preceding motor vehicle registration year. When a new village is incorporated, the registrar of motor vehicles shall determine from the applications on file in the bureau of motor vehicles the number of motor vehicles located within the territory comprising the village during the entire registration year in which the municipal corporation was incorporated. The registrar shall forthwith certify the number of motor vehicles so determined to the tax commissioner for use in distributing motor vehicle fuel tax funds to the village until the village is qualified to participate in the distribution of the funds pursuant to this division. The number of motor vehicle registrations shall be determined by the official records of the bureau of motor vehicles. The amount received by each municipal corporation shall be used to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to pay the costs apportioned to the municipal corporation under section 4907.47 of the Revised Code; to purchase, erect, and maintain traffic lights and signals; to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the municipal corporation may issue bonds; and to supplement revenue already available for these purposes.

(2) The amount credited pursuant to division (B) of section 5735.26 of the Revised Code shall be distributed among the municipal corporations within the state, in the proportion which the number of motor vehicles registered within each municipal corporation bears to the total number of motor vehicles registered within all the municipal corporations of the state during the preceding calendar year, as shown by the official records of the bureau of motor vehicles, and shall be expended by each municipal corporation to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads and streets; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay costs apportioned to the municipal corporation under section 4907.47 of the Revised Code; to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the municipal corporation may issue bonds; and to supplement revenue already available for these purposes.

(3) The amount credited pursuant to divisions (B)(2)(b) and (C)(2)(c) of section 5735.23 of the Revised Code shall be paid in equal proportions to the county treasurer of each county within the state and shall be used only for the purposes of planning, maintaining, and repairing the county system of public roads and highways within the county; the planning, construction, and repair of walks or paths along county roads in congested areas; the planning, construction, purchase, lease, and maintenance of suitable buildings for the housing and repair of county road machinery, housing of supplies, and housing of personnel associated with the machinery and supplies; the payment of costs apportioned to the county under section 4907.47 of the Revised Code; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under that chapter; and the purchase, installation, and maintenance of traffic signal lights.

(4) The amount credited pursuant to division (C) of section 5735.26 of the Revised Code shall be paid in equal proportions to the county treasurer of each county for the purposes of planning, maintaining, constructing, widening, and reconstructing the county system of public roads and highways; paying principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under that chapter; and paying costs apportioned to the county under section 4907.47 of the Revised Code.

(5)(a) The amount credited pursuant to division (D) of section 5735.26 and division (C)(2)(b) of section 5735.23 of the Revised Code shall be divided in equal proportions among the townships within the state.

(b) As used in division (A)(5)(b) of this section, the "formula amount" for any township is the amount that would be allocated to that township if fifty per cent of the amount credited to townships pursuant to section 5735.291 of the Revised Code were allocated among townships in the state proportionate to the number of centerline miles within the boundaries of the respective townships, as determined annually by the department of transportation, and the other fifty per cent of the amount credited pursuant to section 5735.291 of the Revised Code were allocated among townships in the state proportionate to the number of motor vehicles registered within the respective townships, as determined annually by the records of the bureau of motor vehicles. The number of centerline miles within the boundaries of a township shall not include any centerline miles

of township roads that have been placed on nonmaintained status by a board of township trustees pursuant to section 5571.20 of the Revised Code.

Beginning on August 15, 2003, the tax levied by section 5735.29 of the Revised Code shall be partially allocated to provide funding for townships. Each township shall receive the greater of the following two calculations:

(i) The total statewide amount credited to townships under division (A) of section 5735.291 of the Revised Code divided by the number of townships in the state at the time of the calculation;

(ii) Seventy per cent of the formula amount for that township.

(c) The total difference between the amount of money credited to townships under division (A) of section 5735.291 of the Revised Code and the total amount of money required to make all the payments specified in division (A)(5)(b) of this section shall be deducted, in accordance with division (B) of section 5735.291 of the Revised Code, from the revenues resulting from the tax levied pursuant to section 5735.29 of the Revised Code prior to crediting portions of such revenues to counties, municipal corporations, and the highway operating fund.

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(d) All amounts credited pursuant to divisions (A)(5)(a) and (b) of this section shall be paid to the county treasurer of each county for the total amount payable to the townships within each of the counties. The county treasurer shall pay to each township within the county its proportional share of the funds, which shall be expended by each township only for the purposes of planning, constructing, maintaining, widening, and reconstructing the public roads and highways within the township, paying principal, interest, and charges on obligations incurred pursuant to section 5531.09 of the Revised Code, and paying costs apportioned to the township under section 4907.47 of the Revised Code.

No part of the funds designated for road and highway purposes shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract, or to pay the cost of labor in planning, constructing, widening, and reconstructing such roads and highways, and the cost of materials forming a part of the improvement; provided that the funds may be used for the purchase of road machinery and equipment and for the planning, construction, and maintenance of suitable buildings for housing road machinery and equipment, and that all such improvement of roads shall be under supervision and direction of the county engineer as provided in section 5575.07 of the Revised Code. No obligation against the funds shall be incurred unless plans and specifications for the improvement, approved by the county engineer, are on file in the office of the township fiscal officer, and all contracts for material and for work done by contract shall be approved by the county engineer before being signed by the board of

township trustees. The board of township trustees of any township may pass a resolution permitting the board of county commissioners to expend the township's share of the funds, or any portion of it, for the improvement of the roads within the township as may be designated in the resolution.

All investment earnings of the fund shall be credited to the fund.

(B) Amounts credited to the highway operating fund pursuant to divisions (B)(2)(c) and (C)(2)(d) of section 5735.23 and division (A) of section 5735.26 of the Revised Code shall be expended in the following manner:

(1) The amount credited pursuant to divisions (B)(2)(c) and (C)(2)(d) of section 5735.23 of the Revised Code shall be apportioned to and expended by the department of transportation for the purposes of planning, maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state required by law to be maintained by the department; paying the costs apportioned to the state under section 4907.47 of the Revised Code; paying that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; and paying the costs of the department of public safety in administering and enforcing the state law relating to the registration and operation of motor vehicles.

(2) The amount credited pursuant to division (A) of section 5735.26 of the Revised Code shall be used for paying the state's share of the cost of planning, constructing, widening, maintaining, and reconstructing the state highways; paying that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways and costs apportioned to the state under section 4907.47 of the Revised Code. The director of transportation may expend portions of such amount upon extensions of state highways within municipal corporations or upon portions of state highways within municipal corporations, as is provided by law.

Effective Date: 03-31-2003; 03-29-2005; 12-20-2005; 06-30-2006; 2008 HB318 04-07-2009

5735.28 Funds for maintaining state highways within municipal corporations.

Wherever a municipal corporation is on the line of the state highway system as designated by the director of transportation as an extension or continuance of the state highway system, seven and one-half per cent of the amount paid to any municipal corporation pursuant to sections 4501.04, 5735.23, and 5735.27 of the Revised Code shall be used by it only to construct, reconstruct, repave, widen, maintain, and repair such highways, to purchase, erect, and maintain traffic lights and signals, and to erect and maintain street and traffic signs and markers on such highways, or to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for such purposes.

Effective Date: 09-28-1973; 03-29-2005

5735.29 Levy of additional tax.

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To provide revenue for supplying the state's share of the cost of constructing, widening, maintaining, and reconstructing the state highways; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the expense of administering and enforcing the state law relative to the registration and operation of motor vehicles; to make road improvements associated with retaining or attracting business for this state, to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code; and to supplement revenue already available for such purposes, to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, to supplement revenue already available for such purposes; and to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code; to enable the counties and townships of the state to properly plan, construct, widen, reconstruct, and maintain their public highways, roads, and streets; to enable counties to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; to enable municipal corporations to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; and to pay the costs apportioned to the public under section 4907.47 of the Revised Code, a motor

fuel excise tax is hereby imposed on all motor fuel dealers upon their receipt of motor fuel within the state at the rate of two cents on each gallon so received; provided, that effective July 1, 2003, the motor fuel excise tax imposed by this section shall be at the rate of four cents on each gallon so received; effective July 1, 2004, the motor fuel excise tax imposed by this section shall be at the rate of six cents on each gallon so received; and, subject to section 5735.292 of the Revised Code, effective July 1, 2005, the motor fuel excise tax imposed by this section shall be at the rate of eight cents on each gallon so received. This tax is subject to the specific exemptions set forth in this chapter of the Revised Code. It shall be reported, computed, paid, collected, administered, enforced, and refunded, and the failure properly and correctly to report and pay the tax shall be penalized, in exactly the same manner as is provided in this chapter. Such sections relating to motor fuel excise taxes are reenacted and incorporated as if specifically set forth in this section. The tax levied by this section is in addition to any other taxes imposed under this chapter.

No municipal corporation, county, or township shall expend any revenues received from the tax levied by this section for any purpose other than one of the specific highway-related purposes stated in this section. In addition, each municipal corporation, county, or township shall use at least ninety per cent of all revenues received from the tax levied by this section to supplement, rather than supplant, other local funds used for highway-related purposes.

Effective Date: 03-31-2003; 03-29-2005

5735.291 Gasoline excise tax fund - highway operating fund.

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(A) The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by section 5735.29 of the Revised Code, amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.142 and 5735.29 of the Revised Code. The refunds provided for by sections 5735.142 and 5735.29 of the Revised Code shall be paid from such fund. The treasurer of state shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund.

The specified portion of the balance of taxes collected under section 5735.29 of the Revised Code, after the credits to the tax refund fund and the transfers to the waterways safety fund and the motor fuel tax administration fund, shall be credited to the gasoline excise tax fund. Subject to division (B) of this section, forty-two and eighty-six hundredths per cent of the specified portion shall be distributed among the municipal

corporations within the state in accordance with division (A)(2) of section 5735.27 of the Revised Code, thirty-seven and fourteen hundredths per cent of the specified portion shall be distributed among the counties within the state in accordance with division (A)(3) of section 5735.27 of the Revised Code, and twenty per cent of the specified portion shall be combined with twenty per cent of any amounts transferred from the highway operating fund to the gasoline excise tax fund through biennial appropriations acts of the general assembly pursuant to the planned phase-in of a new source of funding for the state highway patrol, and shall be distributed among the townships within the state in accordance with division (A)(5)(b) of section 5735.27 of the Revised Code. Subject to division (B) of this section, the remainder of the tax levied by section 5735.29 of the Revised Code after receipt by the treasurer of state of certifications from the commissioners of the sinking fund certifying, as required by sections 5528.15 and 5528.35 of the Revised Code, that there are sufficient moneys to the credit of the highway improvement bond retirement fund created by section 5528.12 of the Revised Code to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year, and that there are sufficient moneys to the credit of the highway obligations bond retirement fund created by section 5528.32 of the Revised Code to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year, shall be credited to the highway operating fund, which is hereby created in the state treasury and shall be used solely for the purposes enumerated in section 5735.29 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B)(1) Effective August 15, 2003, prior to the distribution from the gasoline excise tax fund to municipal corporations of the forty-two and eighty-six hundredths per cent of the specified portion as provided in division (A) of this section, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(2) Effective August 15, 2003, prior to the distribution from the gasoline excise tax fund to counties of the thirty-seven and fourteen hundredths per cent of the specified portion as provided in division (A) of this section, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(3) Effective August 15, 2003, prior to crediting any revenue resulting from the tax levied by section 5735.29 of the Revised Code to the highway operating fund, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(C) As used in this section, "specified portion" means all of the following:

(1) Until August 15, 2003, none of the taxes collected under section 5735.29 of the Revised Code;

(2) Effective August 15, 2003, one-eighth of the balance of taxes collected under section 5735.29 of the Revised Code, after the credits to the tax refund fund and the transfers to the waterways safety fund and the motor fuel tax administration fund;

(3) Effective August 15, 2004, one-sixth of the balance of taxes described in division (C)(2) of this section;

(4) Effective August 15, 2005, three-sixteenths of the balance of taxes described in division (C)(2) of this section.

Effective Date: 06-26-2003

5735.292 Conditional tax rates effective 7-1-2005.

The rate of tax imposed under section 5735.29 of the Revised Code on and after July 1, 2005, shall be six cents per gallon, notwithstanding any provision of that section to the contrary, and the rate of the additional tax imposed under section 5728.06 of the Revised Code on and after July 1, 2005, shall be two cents, notwithstanding any provision of that section to the contrary if both of the following apply:

(A) The director of transportation determines that the amount of federal motor fuel excise taxes appropriated to this state and available for basic highway programs is equal to or greater than ninety-five per cent of the amount of federal motor fuel excise taxes paid in this state;

(B) The director of transportation determines that this state no longer receives a net loss of federal motor fuel excise tax returns caused by any federal tax reduction, tax rebate, or tax assistance on behalf of ethanol-based or alcohol-based motor fuels.

Effective Date: 03-31-2003

5735.30 Levy of additional tax.

(A) For the purpose of providing funds to pay the state's share of the cost of constructing and reconstructing highways and eliminating railway grade crossings on the major thoroughfares of the state highway system and urban extensions thereof, to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund, to pay the interest, principal, and charges on bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code, to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, to provide revenues for the purposes of sections 1547.71 to 1547.78 of the Revised Code, and to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon their receipt of motor fuel within the state, at the rate of one cent on each gallon so received, to be reported, computed, paid, collected, administered, enforced, refunded, and subject to the same exemptions and penalties as provided in this chapter of the Revised Code.

The tax imposed by this section shall be in addition to the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code.

(B) The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by this section, amounts equal to the refunds certified by the tax commissioner pursuant to this section. The refund provided for by division (A) of this section shall be paid from such fund. The treasurer shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund. The balance of taxes for which the liability has become fixed prior to July 1, 1955, under this section, after the credit to the tax refund fund, shall be credited to the highway operating fund.

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(C)(1) The moneys derived from the tax levied by this section, after the credit and transfers required by division (B) of this section, shall, during each calendar year, be credited to the highway improvement bond retirement fund created by section 5528.12 of the Revised Code, until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.17 of the Revised Code, that there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar

year and during the next succeeding calendar year. From the date of the receipt of the certification required by section 5528.17 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which such certification is made, all moneys received in the state treasury from the tax levied by this section, after the credit and transfers required by division (B) of this section, shall be credited to the highway obligations bond retirement fund created by section 5528.32 of the Revised Code, until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.38 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year and during the next succeeding calendar year.

(2) From the date of the receipt of the certification required by section 5528.38 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which such certification is made, all moneys received in the state treasury from the tax levied by this section, after the credit and transfers required by division (B) of this section, shall be credited to the highway operating fund, except as provided in division (C)(3) of this section.

(3) From the date of the receipt by the treasurer of state of certifications from the commissioners of the sinking fund, as required by sections 5528.18 and 5528.39 of the Revised Code, certifying that the moneys to the credit of the highway improvement bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all bonds and other obligations which may be issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code, and to the credit of the highway obligations bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, the moneys derived from the tax levied by this section, after the credit and transfers required by division (B) of this section, shall be credited to the highway operating fund.

Effective Date: 06-26-2003

5735.31 [Repealed].

Effective Date: 09-06-2002

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5735.311 Amended and Renumbered RC 5728.05.

5735.32 [Repealed].

Effective Date: 09-29-2000

5735.33 Delegation of investigation powers.

For purposes of enforcing this chapter, the tax commissioner, in accordance with section 5743.45 of the Revised Code, may delegate any investigation powers of the commissioner to any employee of the department of taxation who has been certified by the Ohio peace officer training commission and who is engaged in the enforcement of this chapter. Upon such a delegation in accordance with that section, the provisions of that section relative to the powers and authority of the employee and the suspension or revocation of the delegation apply. No employee of the department shall divulge any information acquired as a result of any investigation pursuant to this chapter, except as may be required by the commissioner or a court.

The department shall cooperate with the attorney general, local law enforcement officials, and the appropriate agencies of the federal government and other states in the investigation and prosecution of violations of this chapter.

Effective Date: 12-02-1996

5735.34 Sale or discontinuing business.

(A) If any motor fuel dealer sells that motor fuel dealer's entire business or discontinues operating that business, the taxes and any interest and penalties imposed under this chapter that arose prior to the date of sale or discontinuation become due and payable immediately. The motor fuel dealer shall make a final return within fifteen days after the date of the sale or discontinuation of the business. The purchaser of the business shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the seller produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid, or until the seller produces a certificate indicating that no taxes, interest, and penalties are due.

(B) If the purchaser of the business fails to withhold the purchase money required to be withheld under this section, the purchaser of the business is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the seller, but only to the extent of the consideration offered for the entire business.

(C) For purposes of this section, "entire business" means substantially all of the seller's assets determined without regard to any then existing mortgages, liens, security interests or other encumbrances attaching to those assets. A person is considered to have sold the entire business only if the person ceases to qualify as a motor fuel dealer and has relinquished or the tax commissioner has canceled the person's motor fuel dealer's license.

Effective Date: 10-01-1996

5735.35 Personal liability for unpaid taxes.

(A)(1) If any corporation or business trust required to file reports and to remit taxes imposed under this chapter fails for any reason to file such reports or pay such taxes, any employees of the corporation or business trust having control or supervision of, or charged with the responsibility of, filing reports and making payments, or any officers or trustees of the corporation or business trust responsible for the execution of the corporation's or business trust's fiscal responsibilities, are personally liable for the unpaid liability resulting from the failure to file such reports or pay such taxes.

(2) The dissolution, termination, or bankruptcy of a corporation or business trust shall not discharge a responsible officer's, shareholder's, employee's, or trustee's liability to file reports or remit taxes. The sum due for the liability may be collected by assessment in the manner provided in sections 5735.12 and 5735.121 of the Revised Code.

(B) If more than one person is personally liable under this section for the unpaid tax of a corporation or business trust, then the liability shall be joint and several.

Effective Date: 10-01-1996

5735.40 No tax to be imposed on alternative fuels - exceptions.

(A) As used in this section:

(1) "Alternative fuel" has the same meaning as in section 125.831 of the Revised Code.

(2) "Political subdivision" means a county, township, municipal corporation, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

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(B) Except as provided in division (B)(6) of section 5739.02 of the Revised Code when levying the tax imposed by that section in conjunction with sections 5739.021, 5739.023,

5739.026, 5741.021, 5741.022, and 5741.023 of the Revised Code, or as provided in section 5739.101 of the Revised Code, no political subdivision shall levy or collect any excise, license, privilege, or occupational tax on alternative fuel or on the buying, selling, handling, or consuming of alternative fuel.

Effective Date: 07-06-2006

5735.99 Penalty.

(A) Whoever violates division (F) of section 5735.02, division (D) of section 5735.021, division (B) of section 5735.063, division (B) of section 5735.064, or division (A)(2) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (E) of section 5735.06 of the Revised Code is guilty of a felony of the fourth degree.

(C) Whoever violates section 5735.025 or division (A)(1) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree, if the tax owed or the fraudulent refund received is not greater than five hundred dollars. If the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten thousand dollars, the offender is guilty of a felony of the fourth degree; for each subsequent offense when the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten thousand dollars, the offender is guilty of a felony of the third degree. If the tax owed or the fraudulent refund received is greater than ten thousand dollars, the offender is guilty of a felony of the second degree.

(D) Whoever violates a provision of this chapter for which a penalty is not otherwise prescribed under this section is guilty of a misdemeanor of the fourth degree.

(E) Whoever violates division (D)(5) of section 5735.19 of the Revised Code is guilty of a misdemeanor of the first degree.

Effective Date: 09-26-2003

Chapter 5751: COMMERCIAL ACTIVITY TAX

5751.01 Definitions.

As used in this chapter:

(A) "Person" means, but is not limited to, individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes, and any other entities.

(B) "Consolidated elected taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter as the result of an election made under section 5751.011 of the Revised Code.

(C) "Combined taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter under section 5751.012 of the Revised Code.

(D) "Taxpayer" means any person, or any group of persons in the case of a consolidated elected taxpayer or combined taxpayer treated as one taxpayer, required to register or pay tax under this chapter. "Taxpayer" does not include excluded persons.

(E) "Excluded person" means any of the following:

(1) Any person with not more than one hundred fifty thousand dollars of taxable gross receipts during the calendar year. Division (E)(1) of this section does not apply to a person that is a member of a consolidated elected taxpayer;

(2) A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts:

(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;

(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;

(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.

(3) A financial institution, as defined in section 5725.01 of the Revised Code, that paid the corporation franchise tax charged by division (D) of section 5733.06 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter;

(4) A dealer in intangibles, as defined in section 5725.01 of the Revised Code, that paid the dealer in intangibles tax levied by division (D) of section 5707.03 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(5) A financial holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(p);

(6) A bank holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(a);

(7) A savings and loan holding company as defined in the "Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging only in activities or investments permissible for a financial holding company under 12 U.S.C. 1843(k);

(8) A person directly or indirectly owned by one or more financial institutions, financial holding companies, bank holding companies, or savings and loan holding companies described in division (E)(3), (5), (6), or (7) of this section that is engaged in activities permissible for a financial holding company under 12 U.S.C. 1843(k), except that any such person held pursuant to merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 U.S.C. 1843(k)(4)(I) is not an excluded person, or a person directly or indirectly owned by one or more insurance companies described in division (E)(9) of this section that is authorized to do the business of insurance in this state.

For the purposes of division (E)(8) of this section, a person owns another person under the following circumstances:

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(a) In the case of corporations issuing capital stock, one corporation owns another corporation if it owns fifty per cent or more of the other corporation's capital stock with current voting rights;

(b) In the case of a limited liability company, one person owns the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is fifty per cent or more of the combined membership interests of all persons owning such interests in the company;

(c) In the case of a partnership, trust, or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per cent or more of the combined beneficial interests of all persons having such an interest in the organization;

(d) In the case of multiple ownership, the ownership interests of one person may be aggregated to meet the fifty per cent ownership tests in this division only when each such owner is described in division (E)(3), (5), (6), or (7) of this section and is engaged in activities permissible for a financial holding company under 12 U.S.C. 1843(k) or is a person directly or indirectly owned by one or more insurance companies described in division (E)(9) of this section that is authorized to do the business of insurance in this state.

(9) A domestic insurance company or foreign insurance company, as defined in section 5725.01 of the Revised Code, that paid the insurance company premiums tax imposed by section 5725.18 or Chapter 5729. of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(10) A person that solely facilitates or services one or more securitizations or similar transactions for any person described in division (E)(3), (5), (6), (7), (8), or (9) of this section. For purposes of this division, "securitization" means transferring one or more assets to one or more persons and then issuing securities backed by the right to receive payment from the asset or assets so transferred.

(11) Except as otherwise provided in this division, a pre-income tax trust as defined in division (FF)(4) of section 5747.01 of the Revised Code and any pass-through entity of which such pre-income tax trust owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests. If the pre-income tax trust has made a qualifying pre-income tax trust election under division (FF)(3) of section 5747.01 of the Revised Code, then the trust and the pass-through entities of which it owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests, shall not be excluded persons for purposes of the tax imposed under section 5751.02 of the Revised Code.

(12) Nonprofit organizations or the state and its agencies, instrumentalities, or political subdivisions.

(F) Except as otherwise provided in divisions (F)(2), (3), and (4) of this section, "gross receipts" means the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.

(1) The following are examples of gross receipts:

- (a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;
- (b) Amounts realized from the taxpayer's performance of services for another;
- (c) Amounts realized from another's use or possession of the taxpayer's property or capital;
- (d) Any combination of the foregoing amounts.

(2) "Gross receipts" excludes the following amounts:

- (a) Interest income except interest on credit sales;
- (b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;
- (c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.
- (d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;
- (e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;
- (f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;
- (g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;
- (h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;
- (i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;
- (j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;

- (k) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;
- (l) Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration;
- (m) Tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same combined taxpayer or consolidated elected taxpayer group, and reimbursements made by entities that are not members of a combined taxpayer or consolidated elected taxpayer group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under this chapter is required to be reported and paid entirely by one owner, pursuant to the requirements of sections 5751.011 and 5751.012 of the Revised Code;
- (n) Pension reversions;
- (o) Contributions to capital;
- (p) Sales or use taxes collected as a vendor or an out-of-state seller on behalf of the taxing jurisdiction from a consumer or other taxes the taxpayer is required by law to collect directly from a purchaser and remit to a local, state, or federal tax authority;
- (q) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, all as defined in section 5743.01 of the Revised Code, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or Chapter 5743. of the Revised Code;
- (r) In the case of receipts from the sale of motor fuel by a licensed motor fuel dealer, licensed retail dealer, or licensed permissive motor fuel dealer, all as defined in section 5735.01 of the Revised Code, an amount equal to federal and state excise taxes paid by any person on such motor fuel under section 4081 of the Internal Revenue Code or Chapter 5735. of the Revised Code;
- (s) In the case of receipts from the sale of beer or intoxicating liquor, as defined in section 4301.01 of the Revised Code, by a person holding a permit issued under Chapter 4301. or 4303. of the Revised Code, an amount equal to federal and state excise taxes paid by any person on or for such beer or intoxicating liquor under subtitle E of the Internal Revenue Code or Chapter 4301. or 4305. of the Revised Code;
- (t) Receipts realized by a new motor vehicle dealer or used motor vehicle dealer, as defined in section 4517.01 of the Revised Code, from the sale or other transfer of a motor vehicle, as defined in that section, to another motor vehicle dealer for the purpose of resale by the transferee motor vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;
- (u) Receipts from a financial institution described in division (E)(3) of this section for services provided to the financial institution in connection with the issuance, processing, servicing, and management of loans or credit accounts, if such financial institution and the recipient of such receipts have at least fifty per cent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;
- (v) Receipts realized from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer;
- (w) Funds received or used by a mortgage broker that is not a dealer in intangibles, other than fees or other consideration, pursuant to a table-funding mortgage loan or warehouse-lending mortgage loan. Terms used in division (F)(2)(w) of this section have the same meanings as in section 1322.01 of the Revised Code, except "mortgage broker" means a person assisting a buyer in obtaining a mortgage loan for a fee or other consideration paid by the buyer or a lender, or a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.
- (x) Property, money, and other amounts received by a professional employer organization, as defined in section 4125.01 of the Revised Code, from a client employer, as defined in that section, in excess of the administrative fee charged by the professional employer organization to the client employer;
- (y) In the case of amounts retained as commissions by a permit holder under Chapter 3769. of the Revised Code, an amount equal to the amounts specified under that chapter that must be paid to or collected by the tax commissioner as a tax and the amounts specified under that chapter to be used as purse money;
- (z) Qualifying distribution center receipts.
- (i) For purposes of division (F)(2)(z) of this section:
- (I) "Qualifying distribution center receipts" means receipts of a supplier from qualified property that is delivered to a qualified distribution center, multiplied by a quantity that equals one minus the Ohio delivery percentage.
- (II) "Qualified property" means tangible personal property delivered to a qualified distribution center that is shipped to that qualified distribution center solely for further shipping by the qualified distribution center to another location in this state or elsewhere. "Further shipping" includes storing and repackaging such property into smaller or larger bundles, so long as such property is not subject to further manufacturing or processing.
- (III) "Qualified distribution center" means a warehouse or other similar facility in this state that, for the qualifying year, is operated by a person that is not part of a combined taxpayer group and that has a qualifying certificate. However, all warehouses or other similar facilities that are operated by persons in the same taxpayer group and that are located within one mile of each other shall be treated as one qualified distribution center.
- (IV) "Qualifying year" means the calendar year to which the qualifying certificate applies.
- (V) "Qualifying period" means the period of the first day of July of the second year preceding the qualifying year through the thirtieth day of June of the year preceding the qualifying year.

(VI) "Qualifying certificate" means the certificate issued by the tax commissioner after the operator of a distribution center files an annual application with the commissioner. The application and annual fee shall be filed and paid for each qualified distribution center on or before the first day of September before the qualifying year or within forty-five days after the distribution center opens, whichever is later.

The applicant must substantiate to the commissioner's satisfaction that, for the qualifying period, all persons operating the distribution center have more than fifty per cent of the cost of the qualified property shipped to a location such that it would be situated outside this state under the provisions of division (E) of section 5751.033 of the Revised Code. The applicant must also substantiate that the distribution center cumulatively had costs from its suppliers equal to or exceeding five hundred million dollars during the qualifying period. (For purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.) The commissioner may require the applicant to have an independent certified public accountant certify that the calculation of the minimum thresholds required for a qualified distribution center by the operator of a distribution center has been made in accordance with generally accepted accounting principles. The commissioner shall issue or deny the issuance of a certificate within sixty days after the receipt of the application. A denial is subject to appeal under section 5717.02 of the Revised Code. If the operator files a timely appeal under section 5717.02 of the Revised Code, the operator shall be granted a qualifying certificate, provided that the operator is liable for any tax, interest, or penalty upon amounts claimed as qualifying distribution center receipts, other than those receipts exempt under division (C)(1) of section 5751.011 of the Revised Code, that would have otherwise not been owed by its suppliers if the qualifying certificate was valid.

(VII) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period.

(ii) If the distribution center is new and was not open for the entire qualifying period, the operator of the distribution center may request that the commissioner grant a qualifying certificate. If the certificate is granted and it is later determined that more than fifty per cent of the qualified property during that year was not shipped to a location such that it would be situated outside of this state under the provisions of division (E) of section 5751.033 of the Revised Code or if it is later determined that the person that operates the distribution center had average monthly costs from its suppliers of less than forty million dollars during that year, then the operator of the distribution center shall be liable for any tax, interest, or penalty upon amounts claimed as qualifying distribution center receipts, other than those receipts exempt under division (C)(1) of section 5751.011 of the Revised Code, that would have not otherwise been owed by its suppliers during the qualifying year if the qualifying certificate was valid. (For purposes of division (F)(2)(z)(ii) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.)

(iii) When filing an application for a qualifying certificate under division (F)(2)(z)(i)(VI) of this section, the operator of a qualified distribution center also shall provide documentation, as the commissioner requires, for the commissioner to ascertain the Ohio delivery percentage. The commissioner, upon issuing the qualifying certificate, also shall certify the Ohio delivery percentage. The operator of the qualified distribution center may appeal the commissioner's certification of the Ohio delivery percentage in the same manner as an appeal is taken from the denial of a qualifying certificate under division (F)(2)(z)(i)(VI) of this section.

Within thirty days after all appeals have been exhausted, the operator of the qualified distribution center shall notify the affected suppliers of qualified property that such suppliers are required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed. The supplier of tangible personal property delivered to the qualified distribution center shall include in its report of taxable gross receipts the receipts from the total sales of property delivered to the qualified distribution center for the calendar quarter or calendar year, whichever the case may be, multiplied by the Ohio delivery percentage for the qualifying year. Nothing in division (F)(2)(z)(iii) of this section shall be construed as imposing liability on the operator of a qualified distribution center for the tax imposed by this chapter arising from any change to the Ohio delivery percentage.

(iv) In the case where the distribution center is new and not open for the entire qualifying period, the operator shall make a good faith estimate of an Ohio delivery percentage for use by suppliers in their reports of taxable gross receipts for the remainder of the qualifying period. The operator of the facility shall disclose to the suppliers that such Ohio delivery percentage is an estimate and is subject to recalculation. By the due date of the next application for a qualifying certificate, the operator shall determine the actual Ohio delivery percentage for the estimated qualifying period and proceed as provided in division (F)(2)(z)(iii) of this section with respect to the calculation and recalculation of the Ohio delivery percentage. The supplier is required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed.

(v) Qualifying certificates and Ohio delivery percentages issued by the commissioner shall be open to public inspection and shall be timely published by the commissioner. A supplier relying in good faith on a certificate issued under this division shall not be subject to tax on the qualifying distribution center receipts under division (F)(2)(z) of this section. A person receiving a qualifying certificate is responsible for paying the tax, interest, and penalty upon amounts claimed as qualifying distribution center receipts that would not otherwise have been owed by the supplier if the qualifying certificate were available when it is later determined that the qualifying certificate should not have been issued because the statutory requirements were in fact not met.

(vi) The annual fee for a qualifying certificate shall be one hundred thousand dollars for each qualified distribution center. If a qualifying certificate is not issued, the annual fee is subject to refund after the exhaustion of all appeals provided for in division (F)(2)(z)(i)(VI) of this section. The fee imposed under this division may be assessed in the same manner as the tax imposed under this chapter. The first one hundred thousand dollars of the annual application fees collected each calendar year shall be credited to the commercial activity tax administrative fund. The remainder of the annual application fees collected shall be distributed in the same manner required under section 5751.20 of the Revised Code.

(vii) The tax commissioner may require that adequate security be posted by the operator of the distribution center on appeal when the commissioner disagrees that the applicant has met the minimum thresholds for a qualified distribution center as set forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this section.

(aa) Receipts of an employer from payroll deductions relating to the reimbursement of the employer for advancing moneys to an unrelated third party on an employee's behalf;

(bb) Cash discounts allowed and taken;

(cc) Returns and allowances;

(dd) Bad debts from receipts on the basis of which the tax imposed by this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;

(ee) Any amount realized from the sale of an account receivable to the extent the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer;

(ff) Any receipts for which the tax imposed by this chapter is prohibited by the Constitution or laws of the United States or the Constitution of Ohio.

(ff) **[As amended by 129th General Assembly File No. 28, HB 153]** Any receipts directly attributed to providing public services pursuant to sections 126.60 to 126.605 of the Revised Code, or any receipts directly attributed to a transfer agreement or to the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(gg) **[As amended by 129th General Assembly File No. 28, HB 153]** Any receipts for which the tax imposed by this chapter is prohibited by the Constitution or laws of the United States or the Constitution of Ohio.

(gg) **[As amended by 129th General Assembly File No. 44, HB 277]** Amounts realized by licensed motor fuel dealers or licensed permissive motor fuel dealers from the exchange of petroleum products, including motor fuel, between such dealers, provided that delivery of the petroleum products occurs at a refinery, terminal, pipeline, or marine vessel and that the exchanging dealers agree neither dealer shall require monetary compensation from the other for the value of the exchanged petroleum products other than such compensation for differences in product location or grade. Division (F)(2)(gg) of this section does not apply to amounts realized as a result of differences in location or grade of exchanged petroleum products or from handling, lubricity, dye, or other additive injections fees, pipeline security fees, or similar fees. As used in this division, "motor fuel," "licensed motor fuel dealer," "licensed permissive motor fuel dealer," and "terminal" have the same meanings as in section 5735.01 of the Revised Code.

(hh) **[As amended by 129th General Assembly File No. 28, HB 153]** (i) As used in this division:

(I) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified by the tax commissioner under division (F)(2)(hh)(ii) of this section. "Qualified uranium receipts" does not include any receipts with a situs in this state outside a uranium enrichment zone certified by the tax commissioner under division (F)(2)(hh)(ii) of this section.

(II) "Uranium enrichment zone" means all real property that is part of a uranium enrichment facility licensed by the United States nuclear regulatory commission and that was or is owned or controlled by the United States department of energy or its successor.

(ii) Any person that owns, leases, or operates real or tangible personal property constituting or located within a uranium enrichment zone may apply to the tax commissioner to have the uranium enrichment zone certified for the purpose of excluding qualified uranium receipts under division (F)(2)(hh) of this section. The application shall include such information that the tax commissioner prescribes. Within sixty days after receiving the application, the tax commissioner shall certify the zone for that purpose if the commissioner determines that the property qualifies as a uranium enrichment zone as defined in division (F)(2)(hh) of this section, or, if the tax commissioner determines that the property does not qualify, the commissioner shall deny the application or request additional information from the applicant. If the tax commissioner denies an application, the commissioner shall state the reasons for the denial. The applicant may appeal the denial of an application to the board of tax appeals pursuant to section 5717.02 of the Revised Code. If the applicant files a timely appeal, the tax commissioner shall conditionally certify the applicant's property. The conditional certification shall expire when all of the applicant's appeals are exhausted. Until final resolution of the appeal, the applicant shall retain the applicant's records in accordance with section 5751.12 of the Revised Code, notwithstanding any time limit on the preservation of records under that section.

(ii) Amounts realized by licensed motor fuel dealers or licensed permissive motor fuel dealers from the exchange of petroleum products, including motor fuel, between such dealers, provided that delivery of the petroleum products occurs at a refinery, terminal, pipeline, or marine vessel and that the exchanging dealers agree neither dealer shall require monetary compensation from the other for the value of the exchanged petroleum products other than such compensation for differences in product location or grade. Division (F)(2)(ii) of this section does not apply to amounts realized as a result of differences in location or grade of exchanged petroleum products or from handling, lubricity, dye, or other additive injections fees, pipeline security fees, or similar fees. As used in this division, "motor fuel," "licensed motor fuel dealer," "licensed permissive motor fuel dealer," and "terminal" have the same meanings as in section 5735.01 of the Revised Code.

(hh) **[As amended by 129th General Assembly File No. 44, HB 277]** In the case of amounts collected by a licensed casino operator from casino gaming, amounts in excess of the casino operator's gross casino revenue. In this division, "casino operator" and "casino gaming" have the meanings defined in section 3772.01 of the Revised Code, and "gross casino revenue" has the meaning defined in section 5753.01 of the Revised Code.

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts situated to this state under section 5751.033 of the Revised Code.

(H) A person has "substantial nexus with this state" if any of the following applies. The person:

(1) Owns or uses a part or all of its capital in this state;

(2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;

(3) Has bright-line presence in this state;

(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:

(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;

(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(c) Any amount the person pays for services performed in this state on its behalf by another.

(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.

(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.

(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.

(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.

(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.

(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.

(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter.

(P) "Agent" means a person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following:

(1) A person receiving a fee to sell financial instruments;

(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person;

(3) A person issuing licenses and permits under section 1533.13 of the Revised Code;

(4) A lottery sales agent holding a valid license issued under section 3770.05 of the Revised Code;

(5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code.

(Q) "Received" includes amounts accrued under the accrual method of accounting.

(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section 5751.04 of the Revised Code, a separate taxpayer that is not a member of such a group.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 129th General Assembly File No. 44, HB 277, § 1, eff. 10/17/2011.

Amended by 129th General Assembly File No. 7, HB 114, § 101.01, eff. 6/29/2011.

Effective Date: 06-30-2005; 03-30-2006; 2006 HB699 03-29-2007

This section is set out twice. See also §5751.011, effective until 10/17/2011.

5751.011 Consolidation of related taxpayers - election - requirements.

(A) A group of two or more persons may elect to be a consolidated elected taxpayer for the purposes of this chapter if the group satisfies all of the following requirements:

(1) The group elects to include all persons, including persons enumerated in divisions (E)(2) to (10) of section 5751.01 of the Revised Code, having at least eighty per cent, or having at least fifty per cent, of the value of their ownership interests owned or controlled, directly or constructively through related interests, by common owners during all or any portion of the tax period, together with the common owners.

A group making its initial election on the basis of the eighty per cent ownership test may change its election so that its consolidated elected taxpayer group is formed on the basis of the fifty per cent ownership test if all of the following are satisfied:

(a) When the initial election was made, the group did not have any persons satisfying the fifty per cent ownership test;

(b) One or more of the persons in the initial group subsequently acquires ownership interests in a person such that the fifty per cent ownership test is satisfied, the eighty per cent ownership test is not satisfied, and the acquired person would be required to be included in a combined taxpayer group under section 5751.012 of the Revised Code;

(c) The group requests the change in a written request to the tax commissioner on or before the due date for filing the first return due under section 5751.051 of the Revised Code after the date of the acquisition;

(d) The group has not previously changed its election.

At the election of the group, all entities that are not incorporated or formed under the laws of a state or of the United States and that meet the consolidated elected ownership test shall either be included in the group or all shall be excluded from the group. If, at the time of registration, the group does not include any such entities that meet the consolidated elected ownership test, the group shall elect to either include or exclude the newly acquired entities before the due date of the first return due after the date of the acquisition.

Each group shall notify the tax commissioner of the foregoing elections before the due date of the return for the period in which the election becomes binding. If fifty per cent of the value of a person's ownership interests is owned or controlled by each of two consolidated elected taxpayer groups formed under the fifty per cent ownership or control test, that person is a member of each group for the purposes of this section, and each group shall include in the group's taxable gross receipts fifty per cent of that person's taxable gross receipts. Otherwise, all of that person's taxable gross receipts shall be included in the taxable gross receipts of the consolidated elected taxpayer group of which the person is a member. In no event shall the ownership or control of fifty per cent of the value of a person's ownership interests by two otherwise unrelated groups form the basis for consolidating the groups into a single consolidated elected taxpayer group or permit any exclusion under division (C) of this section of taxable gross receipts between members of the two groups. Division (A)(3) of this section applies with respect to the elections described in this division.

(2) The group makes the election to be treated as a consolidated elected taxpayer in the manner prescribed under division (D) of this section.

(3) Subject to review and audit by the tax commissioner, the group agrees that all of the following apply:

(a) The group shall file reports as a single taxpayer for at least the next eight calendar quarters following the election so long as at least two or more of the members of the group meet the requirements of division (A)(1) of this section.

(b) Before the expiration of the eighth such calendar quarter, the group shall notify the commissioner if it elects to cancel its designation as a consolidated elected taxpayer. If the group does not so notify the tax commissioner, the election remains in effect for another eight calendar quarters.

(c) If, at any time during any of those eight calendar quarters following the election, a former member of the group no longer meets the requirements under division (A)(1) of this section, that member shall report and pay the tax imposed under this chapter separately, as a member of a combined taxpayer, or, if the former member satisfies such requirements with respect to another consolidated elected group, as a member of that consolidated elected group.

(d) The group agrees to the application of division (B) of this section.

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(B) A group of persons making the election under this section shall report and pay tax on all of the group's taxable gross receipts even if substantial nexus with this state does not exist for one or more persons in the group.

(C)(1)(a) Members of a consolidated elected taxpayer group shall exclude gross receipts among persons included in the consolidated elected taxpayer group.

(b) Subject to divisions (C)(1)(c) and (C)(2) of this section, nothing in this section shall have the effect of requiring a consolidated elected taxpayer group to include gross receipts received by a person enumerated in divisions (E)(2) to (10) of section 5751.01 of the Revised Code if that person is a member of the group pursuant to the elections made by the group under division (A)(1) of this section.

(c)(i) As used in division (C)(1)(c) of this section, "dealer transfer" means a transfer of property that satisfies both of the following: (I) the property is directly transferred by any means from one member of the group to another member of the group that is a dealer in intangibles but is not a qualifying dealer as defined in section 5707.031 of the Revised Code; and (II) the property is subsequently delivered by the dealer in intangibles to a person that is not a member of the group.

5751.02 Commercial activity tax levied on taxable gross receipts.

(A) For the purpose of funding the needs of this state and its local governments beginning with the tax period that commences July 1, 2005, and continuing for every tax period thereafter, there is hereby levied a commercial activity tax on each person with taxable gross receipts for the privilege of doing business in this state. For the purposes of this chapter, "doing business" means engaging in any activity, whether legal or illegal, that is conducted for, or results in, gain, profit, or income, at any time during the calendar year. Persons on which the commercial activity tax is levied include, but are not limited to, persons with substantial nexus with this state. The tax imposed under this section is not a transactional tax and is not subject to Public Law No. 86-272 , 73 Stat. 555. The tax imposed under this section is in addition to any other taxes or fees imposed under the Revised Code. The tax levied under this section is imposed on the person receiving the gross receipts and is not a tax imposed directly on a purchaser. The tax imposed by this section is an annual privilege tax for the calendar year that, in the case of calendar year taxpayers, is the annual tax period and, in the case of calendar quarter taxpayers, contains all quarterly tax periods in the calendar year. A taxpayer is subject to the annual privilege tax for doing business during any portion of such calendar year.

(B) The tax imposed by this section is a tax on the taxpayer and shall not be billed or invoiced to another person. Even if the tax or any portion thereof is billed or invoiced and separately stated, such amounts remain part of the price for purposes of the sales and use taxes levied under Chapters 5739. and 5741. of the Revised Code. Nothing in division (B) of this section prohibits :

(1) A person from including in the price charged for a good or service an amount sufficient to recover the tax imposed by this section; or

(2) A lessor from including an amount sufficient to recover the tax imposed by this section in a lease payment charged, or from including such an amount on a billing or invoice pursuant to the terms of a written lease agreement providing for the recovery of the lessor's tax costs. The recovery of such costs shall be based on an estimate of the total tax cost of the lessor during the tax period, as the tax liability of the lessor cannot be calculated until the end of that period.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-30-2005

See 128th General Assembly File No. 9, HB 1, §803.70.

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5751.20 School district tangible property tax replacement fund.

(A) As used in sections 5751.20 to 5751.22 of the Revised Code:

(1) "School district," "joint vocational school district," "local taxing unit," "recognized valuation," "fixed-rate levy," and "fixed-sum levy" have the same meanings as used in section 5727.84 of the Revised Code.

(2) "State education aid" for a school district means the following:

(a) For fiscal years prior to fiscal year 2010, the sum of state aid amounts computed for the district under the following provisions, as they existed for the applicable fiscal year: division (A) of section 3317.022 of the Revised Code, including the amounts calculated under sections 3317.029 and 3317.0217 of the Revised Code; divisions (C)(1), (C)(4), (D), (E), and (F) of section 3317.022; divisions (B), (C), and (D) of section 3317.023; divisions (L) and (N) of section 3317.024; section 3317.0216; and any unit payments for gifted student services paid under sections 3317.05, 3317.052, and 3317.053 of the Revised Code; except that, for fiscal years 2008 and 2009, the amount computed for the district under Section 269.20.80 of H.B. 119 of the 127th general assembly and as that section subsequently may be amended shall be substituted for the amount computed under division (D) of section 3317.022 of the Revised Code, and the amount computed under Section 269.30.80 of H.B. 119 of the 127th general assembly and as that section subsequently may be amended shall be included.

(b) For fiscal years 2010 and 2011, the sum of the amounts computed under former sections 3306.052, 3306.12, 3306.13, 3306.19, 3306.191, and 3306.192 of the Revised Code;

(c) For fiscal years 2012 and 2013, the amount paid in accordance with the section of H.B. 153 of the 129th general assembly entitled "FUNDING FOR CITY, EXEMPTED VILLAGE, AND LOCAL SCHOOL DISTRICTS."

(3) "State education aid" for a joint vocational school district means the following:

(a) For fiscal years prior to fiscal year 2010, the sum of the state aid computed for the district under division (N) of section 3317.024 and section 3317.16 of the Revised Code, except that, for fiscal years 2008 and 2009, the amount computed under Section 269.30.80 of H.B. 119 of the 127th general assembly and as that section subsequently may be amended shall be included.

(b) For fiscal years 2010 and 2011, the amount paid in accordance with the section of H.B. 1 of the 128th general assembly entitled "FUNDING FOR JOINT VOCATIONAL SCHOOL DISTRICTS."

(c) For fiscal years 2012 and 2013, the amount paid in accordance with the section of H.B. 153 of the 129th general assembly entitled "FUNDING FOR JOINT VOCATIONAL SCHOOL DISTRICTS."

(4) "State education aid offset" means the amount determined for each school district or joint vocational school district under division (A)(1) of section 5751.21 of the Revised Code.

(5) "Machinery and equipment property tax value loss" means the amount determined under division (C)(1) of this section.

(6) "Inventory property tax value loss" means the amount determined under division (C)(2) of this section.

(7) "Furniture and fixtures property tax value loss" means the amount determined under division (C)(3) of this section.

(8) "Machinery and equipment fixed-rate levy loss" means the amount determined under division (D)(1) of this section.

(9) "Inventory fixed-rate levy loss" means the amount determined under division (D)(2) of this section.

(10) "Furniture and fixtures fixed-rate levy loss" means the amount determined under division (D)(3) of this section.

(11) "Total fixed-rate levy loss" means the sum of the machinery and equipment fixed-rate levy loss, the inventory fixed-rate levy loss, the furniture and fixtures fixed-rate levy loss, and the telephone company fixed-rate levy loss.

(12) "Fixed-sum levy loss" means the amount determined under division (E) of this section.

(13) "Machinery and equipment" means personal property subject to the assessment rate specified in division (F) of section 5711.22 of the Revised Code.

(14) "Inventory" means personal property subject to the assessment rate specified in division (E) of section 5711.22 of the Revised Code.

(15) "Furniture and fixtures" means personal property subject to the assessment rate specified in division (G) of section 5711.22 of the Revised Code.

(16) "Qualifying levies" are levies in effect for tax year 2004 or applicable to tax year 2005 or approved at an election conducted before September 1, 2005. For the purpose of determining the rate of a qualifying levy authorized by section 5705.212 or 5705.213 of the Revised Code, the rate shall be the rate that would be in effect for tax year 2010.

(17) "Telephone property" means tangible personal property of a telephone, telegraph, or interexchange telecommunications company subject to an assessment rate specified in section 5727.111 of the Revised Code in tax year 2004.

(18) "Telephone property tax value loss" means the amount determined under division (C)(4) of this section.

(19) "Telephone property fixed-rate levy loss" means the amount determined under division (D)(4) of this section.

(20) "Taxes charged and payable" means taxes charged and payable after the reduction required by section 319.301 of the Revised Code but before the reductions required by sections 319.302 and 323.152 of the Revised Code.

(21) "Median estate tax collections" means, in the case of a municipal corporation to which revenue from the taxes levied in Chapter 5731. of the Revised Code was distributed in each of calendar years 2006, 2007, 2008, and 2009, the median of those distributions. In the case of a municipal corporation to which no distributions were made in one or more of those years, "median estate tax collections" means zero.

(22) "Total resources," in the case of a school district, means the sum of the amounts in divisions (A)(22)(a) to (h) of this section less any reduction required under division (A)(32) of this section.

(a) The state education aid for fiscal year 2010;

(b) The sum of the payments received by the school district in fiscal year 2010 for current expense levy losses pursuant to division (C)(2) of section 5727.85 and divisions (C)(8) and (9) of section 5751.21 of the Revised Code, excluding the portion of such payments attributable to levies for joint vocational school district purposes;

(c) The sum of fixed-sum levy loss payments received by the school district in fiscal year 2010 pursuant to division (E)(1) of section 5727.85 and division (E)(1) of section 5751.21 of the Revised Code for fixed-sum levies imposed for a purpose other than paying debt charges;

(d) Fifty per cent of the school district's taxes charged and payable against all property on the tax list of real and public utility property for current expense purposes for tax year 2008, including taxes charged and payable from emergency levies imposed under section 5709.194 of the Revised Code and excluding taxes levied for joint vocational school district purposes;

(e) Fifty per cent of the school district's taxes charged and payable against all property on the tax list of real and public utility property for current expenses for tax year 2009, including taxes charged and payable from emergency levies and excluding taxes levied for joint vocational school district purposes;

(f) The school district's taxes charged and payable against all property on the general tax list of personal property for current expenses for tax year 2009, including taxes charged and payable from emergency levies;

(g) The amount certified for fiscal year 2010 under division (A)(2) of section 3317.08 of the Revised Code;

(h) Distributions received during calendar year 2009 from taxes levied under section 718.09 of the Revised Code.

(23) "Total resources," in the case of a joint vocational school district, means the sum of amounts in divisions (A)(23)(a) to (g) of this section less any reduction required under division (A)(32) of this section.

(a) The state education aid for fiscal year 2010;

(b) The sum of the payments received by the joint vocational school district in fiscal year 2010 for current expense levy losses pursuant to division (C)(2) of section 5727.85 and divisions (C)(8) and (9) of section 5751.21 of the Revised Code;

(c) Fifty per cent of the joint vocational school district's taxes charged and payable against all property on the tax list of real and public utility property for current expense purposes for tax year 2008;

(d) Fifty per cent of the joint vocational school district's taxes charged and payable against all property on the tax list of real and public utility property for current expenses for tax year 2009;

(e) Fifty per cent of a city, local, or exempted village school district's taxes charged and payable against all property on the tax list of real and public utility property for current expenses of the joint vocational school district for tax year 2008;

(f) Fifty per cent of a city, local, or exempted village school district's taxes charged and payable against all property on the tax list of real and public utility property for current expenses of the joint vocational school district for tax year 2009;

(g) The joint vocational school district's taxes charged and payable against all property on the general tax list of personal property for current expenses for tax year 2009.

(24) "Total resources," in the case of county mental health and disability related functions, means the sum of the amounts in divisions (A)(24)(a) and (b) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the county for mental health and developmental disability related functions in calendar year 2010 under division (A)(1) of section 5727.86 and division (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for mental health and developmental disability related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2009.

(25) "Total resources," in the case of county senior services related functions, means the sum of the amounts in divisions (A)(25)(a) and (b) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the county for senior services related functions in calendar year 2010 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for senior services related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2009.

(26) "Total resources," in the case of county children's services related functions, means the sum of the amounts in divisions (A)(26)(a) and (b) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the county for children's services related functions in calendar year 2010 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for children's services related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2009.

(27) "Total resources," in the case of county public health related functions, means the sum of the amounts in divisions (A)(27)(a) and (b) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the county for public health related functions in calendar year 2010 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for public health related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2009.

(28) "Total resources," in the case of all county functions not included in divisions (A)(24) to (27) of this section, means the sum of the amounts in divisions (A)(28)(a) to (d) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the county for all other purposes in calendar year 2010 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) The county's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2010 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2010 from the county undivided local government fund;

(c) With respect to taxes levied by the county for all other purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2009, excluding taxes charged and payable for the purpose of paying debt charges;

(d) The sum of the amounts distributed to the county in calendar year 2010 for the taxes levied pursuant to sections 5739.021 and 5741.021 of the Revised Code.

(29) "Total resources," in the case of a municipal corporation, means the sum of the amounts in divisions (A)(29)(a) to (g) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the municipal corporation in calendar year 2010 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) The municipal corporation's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2010 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2010 from the county undivided local government fund;

(c) The sum of the amounts distributed to the municipal corporation in calendar year 2010 pursuant to section 5747.50 of the Revised Code;

(d) With respect to taxes levied by the municipal corporation, the taxes charged and payable against all property on the tax list of real and public utility property for current expenses, defined in division (A)(33) of this section, for tax year 2009;

(e) The amount of admissions tax collected by the municipal corporation in calendar year 2008, or if such information has not yet been reported to the tax commissioner, in the most recent year before 2008 for which the municipal corporation has reported data to the commissioner;

(f) The amount of income taxes collected by the municipal corporation in calendar year 2008, or if such information has not yet been reported to the tax commissioner, in the most recent year before 2008 for which the municipal corporation has reported data to the commissioner;

(g) The municipal corporation's median estate tax collections.

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(30) "Total resources," in the case of a township, means the sum of the amounts in divisions (A)(30)(a) to (c) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the township in calendar year 2010 pursuant to division (A)(1) of section 5727.86 of the Revised Code and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time, excluding payments received for debt purposes;

(b) The township's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2010 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2010 from the county undivided local government fund;

(c) With respect to taxes levied by the township, the taxes charged and payable against all property on the tax list of real and public utility property for tax year 2009 excluding taxes charged and payable for the purpose of paying debt charges.

(31) "Total resources," in the case of a local taxing unit that is not a county, municipal corporation, or township, means the sum of the amounts in divisions (A)(31)(a) to (e) of this section less any reduction required under division (A)(32) of this section.

(a) The sum of the payments received by the local taxing unit in calendar year 2010 pursuant to division (A)(1) of section 5727.86 of the Revised Code and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time;

(b) The local taxing unit's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2010 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2010 from the county undivided local government fund;

(c) With respect to taxes levied by the local taxing unit, the taxes charged and payable against all property on the tax list of real and public utility property for tax year 2009 excluding taxes charged and payable for the purpose of paying debt charges;

(d) The amount received from the tax commissioner during calendar year 2010 for sales or use taxes authorized under sections 5739.023 and 5741.022 of the Revised Code;

(e) For institutions of higher education receiving tax revenue from a local levy, as identified in section 3358.02 of the Revised Code, the final state share of instruction allocation for fiscal year 2010 as calculated by the board of regents and reported to the state controlling board.

(32) If a fixed-rate levy that is a qualifying levy is not imposed in any year after tax year 2010, "total resources" used to compute payments to be made under division (C)(12) of section 5751.21 or division (A)(1)(b) or (c) of section 5751.22 of the Revised Code in the tax years following the last year the levy is imposed shall be reduced by the amount of payments attributable to the fixed-rate levy loss of that levy as would be computed under division (C)(2) of section 5727.85, division (A)(1) of section 5727.85, divisions (C)(8) and (9) of section 5751.21, or division (A)(1) of section 5751.22 of the Revised Code.

(33) "Municipal current expense property tax levies" means all property tax levies of a municipality, except those with the following levy names: airport resurfacing; bond or any levy name including the word "bond"; capital improvement or any levy name including the word "capital"; debt or any levy name including the word "debt"; equipment or any levy name including the word "equipment," unless the levy is for combined operating and equipment; employee termination fund; fire pension or any levy containing the word "pension," including police pensions; fireman's fund or any practically similar name; sinking fund; road improvements or any levy containing the word "road"; fire truck or apparatus; flood or any levy containing the word "flood"; conservancy district; county health; note retirement; sewage, or any levy containing the words "sewage" or "sewer"; park improvement; parkland acquisition; storm drain; street or any levy name containing the word "street"; lighting, or any levy name containing the word "lighting"; and water.

(34) "Current expense TPP allocation" means, in the case of a school district or joint vocational school district, the sum of the payments received by the school district in fiscal year 2011 pursuant to divisions (C)(10) and (11) of section 5751.21 of the Revised Code to the extent paid for current expense levies. In the case of a municipal corporation, "current expense TPP allocation" means the sum of the payments received by the municipal corporation in calendar year 2010 pursuant to divisions (A)(1) and (2) of section 5751.22 of the Revised Code to the extent paid for municipal current expense property tax levies as defined in division (A)(33) of this section. If a fixed-rate levy that is a qualifying levy is not imposed in any year after tax year 2010, "current expense TPP allocation" used to compute payments to be made under division (C)(12) of section 5751.21 or division (A)(1)(b) or (c) of section 5751.22 of the Revised Code in the tax years following the last year the levy is imposed shall be reduced by the amount of payments attributable to the fixed-rate levy loss of that levy as would be computed under divisions (C)(10) and (11) of section 5751.21 or division (A)(1) of section 5751.22 of the Revised Code.

(35) "TPP allocation" means the sum of payments received by a local taxing unit in calendar year 2010 pursuant to divisions (A)(1) and (2) of section 5751.22 of the Revised Code. If a fixed-rate levy that is a qualifying levy is not imposed in any year after tax year 2010, "TPP allocation" used to compute payments to be made under division (A)(1)(b) or (c) of section 5751.22 of the Revised Code in the tax years following the last year the levy is imposed shall be reduced by the amount of payment attributable to the fixed-rate levy loss of that levy as would be computed under division (A)(1) of that section.

(36) "Total TPP allocation" means, in the case of a school district or joint vocational school district, the sum of the amounts received in fiscal year 2011 pursuant to divisions (C)(10) and (11) and (D) of section 5751.21 of the Revised Code. In the case of a local taxing unit, "total TPP allocation" means the sum of payments received by the unit in calendar year 2010 pursuant to divisions (A)(1), (2), and (3) of section 5751.22 of the Revised Code. If a fixed-rate levy that is a qualifying levy is not imposed in any year after tax year 2010, "total TPP allocation" used to compute payments to be made under division (C)(12) of section 5751.21 or division (A)(1)(b) or (c) of section 5751.22 of the Revised Code in the tax years following the last year the levy is imposed shall be reduced by the amount of payments attributable to the fixed-rate levy loss of that levy as would be computed under divisions (C)(10) and (11) of section 5751.21 or division (A)(1) of section 5751.22 of the Revised Code.

(37) "Non-current expense TPP allocation" means the difference of total TPP allocation minus the sum of current expense TPP allocation and the portion of total TPP allocation constituting reimbursement for debt levies, pursuant to division (D) of section 5751.21 of the Revised Code in the case of a school district or joint vocational school district and pursuant to division (A)(3) of section 5751.22 of the Revised Code in the case of a municipal corporation.

(38) "Threshold per cent" means, in the case of a school district or joint vocational school district, two per cent for fiscal year 2012 and four per cent for fiscal years 2013 and thereafter. In the case of a local taxing unit, "threshold per cent" means two per cent for tax year 2011, four per cent for tax year 2012, and six per cent for tax years 2013 and thereafter.

(B) The commercial activities tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed under this chapter. Eighty-five one-hundredths of one per cent of the money credited to that fund shall be credited to the tax reform system implementation fund, which is hereby created in the state treasury, and shall be used to defray the costs incurred by the department of taxation in administering the tax imposed by this chapter and in implementing tax reform measures. The remainder in the commercial activities tax receipts fund shall be credited for each fiscal year in the following percentages to the general revenue fund, to the school district tangible property tax replacement fund, which is hereby created in the state treasury for the purpose of making the payments described in section 5751.21 of the Revised Code, and to the local government tangible property tax replacement fund, which is hereby created in the state treasury for the purpose of making the payments described in section 5751.22 of the Revised Code, in the following percentages:

Fiscal year General Revenue Fund School District Tangible Property Tax Replacement Fund Local Government Tangible Prop

Fiscal year	General Revenue Fund	School District Tangible Property Tax Replacement Fund	Local Government Tangible Prop
2006	67.7%	22.6%	9.7%
2007	0%	70.0%	30.0%
2008	0%	70.0%	30.0%
2009	0%	70.0%	30.0%
2010	0%	70.0%	30.0%
2011	0%	70.0%	30.0%
2012	5.3 25.0%	70.0 52.5%	24.7 22.5%
2013 and thereafter	10.6 50.0%	70.0 35.0%	19.4 15.0%
2014	14.1%	70.0%	15.9%

2015	17.6%	70.0%%	12.4%
2016	21.1%	70.0%%	8.9%
2017	24.6%	70.0%%	5.4%
2018	28.1%	70.0%%	1.9%
2019 and thereafter	30%	70%%	0%

(C) Not later than September 15, 2005, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its machinery and equipment, inventory property, furniture and fixtures property, and telephone property tax value losses, which are the applicable amounts described in divisions (C)(1), (2), (3), and (4) of this section, except as provided in division (C)(5) of this section:

(1) Machinery and equipment property tax value loss is the taxable value of machinery and equipment property as reported by taxpayers for tax year 2004 multiplied by:

- (a) For tax year 2006, thirty-three and eight-tenths per cent;
- (b) For tax year 2007, sixty-one and three-tenths per cent;
- (c) For tax year 2008, eighty-three per cent;
- (d) For tax year 2009 and thereafter, one hundred per cent.

(2) Inventory property tax value loss is the taxable value of inventory property as reported by taxpayers for tax year 2004 multiplied by:

- (a) For tax year 2006, a fraction, the numerator of which is five and three-fourths and the denominator of which is twenty-three;
- (b) For tax year 2007, a fraction, the numerator of which is nine and one-half and the denominator of which is twenty-three;
- (c) For tax year 2008, a fraction, the numerator of which is thirteen and one-fourth and the denominator of which is twenty-three;
- (d) For tax year 2009 and thereafter a fraction, the numerator of which is seventeen and the denominator of which is twenty-three.

(3) Furniture and fixtures property tax value loss is the taxable value of furniture and fixture property as reported by taxpayers for tax year 2004 multiplied by:

- (a) For tax year 2006, twenty-five per cent;
- (b) For tax year 2007, fifty per cent;
- (c) For tax year 2008, seventy-five per cent;
- (d) For tax year 2009 and thereafter, one hundred per cent.

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The taxable value of property reported by taxpayers used in divisions (C)(1), (2), and (3) of this section shall be such values as determined to be final by the tax commissioner as of August 31, 2005. Such determinations shall be final except for any correction of a clerical error that was made prior to August 31, 2005, by the tax commissioner.

(4) Telephone property tax value loss is the taxable value of telephone property as taxpayers would have reported that property for tax year 2004 if the assessment rate for all telephone property for that year were twenty-five per cent, multiplied by:

- (a) For tax year 2006, zero per cent;
- (b) For tax year 2007, zero per cent;
- (c) For tax year 2008, zero per cent;
- (d) For tax year 2009, sixty per cent;
- (e) For tax year 2010, eighty per cent;
- (f) For tax year 2011 and thereafter, one hundred per cent.

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(5) Division (C)(5) of this section applies to any school district, joint vocational school district, or local taxing unit in a county in which is located a facility currently or formerly devoted to the enrichment or commercialization of uranium or uranium products, and for which the total taxable value of property listed on the general tax list of personal property for any tax year from tax year 2001 to tax year 2004 was fifty per cent or less of the taxable value of such property listed on the general tax list of personal property for the next preceding tax year.

In computing the fixed-rate levy losses under divisions (D)(1), (2), and (3) of this section for any school district, joint vocational school district, or local taxing unit to which division (C)(5) of this section applies, the taxable value of such property as listed on the general tax list of personal property for tax year 2000 shall be substituted for the taxable value of such property as reported by taxpayers for tax year 2004, in the taxing district containing the uranium facility, if the taxable value listed for tax year 2000 is greater than the taxable value reported by taxpayers for tax year 2004. For the purpose of making the computations under divisions (D)(1), (2), and (3) of this section, the tax year 2000 valuation is to be allocated to machinery and equipment, inventory, and furniture and fixtures property in the same proportions as the tax year 2004 values. For the purpose of the calculations in division (A) of section 5751.21 of the Revised Code, the tax year 2004 taxable values shall be used.

To facilitate the calculations required under division (C) of this section, the county auditor, upon request from the tax commissioner, shall provide by August 1, 2005, the values of machinery and equipment, inventory, and furniture and fixtures for all single-county personal property taxpayers for tax year 2004.

(D) Not later than September 15, 2005, the tax commissioner shall determine for each tax year from 2006 through 2009 for each school district, joint vocational school district, and local taxing unit its machinery and equipment, inventory, and furniture and fixtures fixed-rate levy losses, and for each tax year from 2006 through 2011 its telephone property fixed-rate levy loss. Except as provided in division (F) of this section, such losses are the applicable amounts described in divisions (D)(1), (2), (3), and (4) of this section:

- (1) The machinery and equipment fixed-rate levy loss is the machinery and equipment property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.
- (2) The inventory fixed-rate loss is the inventory property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.
- (3) The furniture and fixtures fixed-rate levy loss is the furniture and fixture property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.
- (4) The telephone property fixed-rate levy loss is the telephone property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.

(E) Not later than September 15, 2005, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its fixed-sum levy loss. The fixed-sum levy loss is the amount obtained by subtracting the amount described in division (E)(2) of this section from the amount described in division (E)(1) of this section:

- (1) The sum of the machinery and equipment property tax value loss, the inventory property tax value loss, and the furniture and fixtures property tax value loss, and, for 2008 through 2010, the telephone property tax value loss of the district or unit multiplied by the sum of the fixed-sum tax rates of qualifying levies. For 2006 through 2010, this computation shall include all qualifying levies remaining in effect for the current tax year and any school district levies imposed under section 5705.194 or 5705.213 of the Revised Code that are qualifying levies not remaining in effect for the current year. For 2011 through 2017 in the case of school district levies imposed under section 5705.194 or 5705.213 of the Revised Code and for all years after 2010 in the case of other fixed-sum levies, this computation shall include only qualifying levies remaining in effect for the current year. For purposes of this computation, a qualifying school district levy imposed under section 5705.194 or 5705.213 of the Revised Code remains in effect in a year after 2010 only if, for that year, the board of education levies a school district levy imposed under section 5705.194, 5705.199, 5705.213, or 5705.219 of the Revised Code for an annual sum at least equal to the annual sum levied by the board in tax year 2004 less the amount of the payment certified under this division for 2006.
- (2) The total taxable value in tax year 2004 less the sum of the machinery and equipment, inventory, furniture and fixtures, and telephone property tax value losses in each school district, joint vocational school district, and local taxing unit multiplied by one-half of one mill per dollar.
- (3) For the calculations in divisions (E)(1) and (2) of this section, the tax value losses are those that would be calculated for tax year 2009 under divisions (C)(1), (2), and (3) of this section and for tax year 2011 under division (C)(4) of this section.
- (4) To facilitate the calculation under divisions (D) and (E) of this section, not later than September 1, 2005, any school district, joint vocational school district, or local taxing unit that has a qualifying levy that was approved at an election conducted during 2005 before September 1, 2005, shall certify to the tax commissioner a copy of the county auditor's certificate of estimated property tax millage for such levy as required under division (B) of section 5705.03 of the Revised Code, which is the rate that shall be used in the calculations under such divisions.

If the amount determined under division (E) of this section for any school district, joint vocational school district, or local taxing unit is greater than zero, that amount shall equal the reimbursement to be paid pursuant to division (E) of section 5751.21 or division (A)(3) of section 5751.22 of the

Revised Code, and the one-half of one mill that is subtracted under division (E)(2) of this section shall be apportioned among all contributing fixed-sum levies in the proportion that each levy bears to the sum of all fixed-sum levies within each school district, joint vocational school district, or local taxing unit.

(F) If a school district levies a tax under section 5705.219 of the Revised Code, the fixed-rate levy loss for qualifying levies, to the extent repealed under that section, shall equal the sum of the following amounts in lieu of the amounts computed for such levies under division (D) of this section:

(1) The sum of the rates of qualifying levies to the extent so repealed multiplied by the sum of the machinery and equipment, inventory, and furniture and fixtures tax value losses for 2009 as determined under that division;

(2) The sum of the rates of qualifying levies to the extent so repealed multiplied by the telephone property tax value loss for 2011 as determined under that division.

The fixed-rate levy losses for qualifying levies to the extent not repealed under section 5705.219 of the Revised Code shall be as determined under division (D) of this section. The revised fixed-rate levy losses determined under this division and division (D) of this section first apply in the year following the first year the district levies the tax under section 5705.219 of the Revised Code.

(G) Not later than October 1, 2005, the tax commissioner shall certify to the department of education for every school district and joint vocational school district the machinery and equipment, inventory, furniture and fixtures, and telephone property tax value losses determined under division (C) of this section, the machinery and equipment, inventory, furniture and fixtures, and telephone fixed-rate levy losses determined under division (D) of this section, and the fixed-sum levy losses calculated under division (E) of this section. The calculations under divisions (D) and (E) of this section shall separately display the levy loss for each levy eligible for reimbursement.

(H) Not later than October 1, 2005, the tax commissioner shall certify the amount of the fixed-sum levy losses to the county auditor of each county in which a school district, joint vocational school district, or local taxing unit with a fixed-sum levy loss reimbursement has territory.

(I) Not later than the twenty-eighth day of February each year beginning in 2011 and ending in 2014, the tax commissioner shall certify to the department of education for each school district first levying a tax under section 5705.219 of the Revised Code in the preceding year the revised fixed-rate levy losses determined under divisions (D) and (F) of this section.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 6/30/2011.

Amended by 128th General Assembly File No. 9, HB 1, (Vetoed Provisions) §101.01, eff. 7/17/2009 and 10/16/2009.

Effective Date: 06-30-2005; 03-30-2006; 09-05-2006; 2007 HB119 09-29-2007; 2008 HB562 06-24-2008

See 128th General Assembly File No. 9, HB 1, §812.30.

5751.31 Direct appeal on constitutional issues to supreme court.

Notwithstanding any section of law to the contrary, the tax commissioner may issue one or more final determinations under section 5703.60 of the Revised Code for which any appeal must be made directly to the supreme court within thirty days after the date the commissioner issued the determination if the primary issue raised by the petitioner is the constitutionality of division (H)(3) of section 5751.01 of the Revised Code or an issue arising under Section 3, 5a, or 13 of Article XII, Ohio Constitution. Such final determination shall clearly indicate that any appeal thereof must be made directly to the supreme court within the thirty-day period prescribed in this division.

Effective Date: 06-30-2005

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED
(EXCEPTING APPROPRIATION LAWS)

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

EIGHTY-SIXTH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS,
JANUARY 5, 1925 to April 17, 1925
(both inclusive)

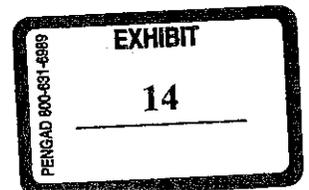
Also the Times for Holding the Courts of Appeals,
and Courts of Common Pleas in Ohio,
A. D. 1925

VOLUME CXI



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1925.

0265



Repeals.

SECTION 2. That existing sections 1558-48, 1558-78 and 1558-85 of the General Code be, and the same are hereby repealed.

HARRY D. SILVER,
Speaker of the House of Representatives.
CHARLES H. LEWIS,
President of the Senate.

Passed March 26, 1925.

The sectional numbers in this act are in conformity to the General Code.
C. C. CRABBE,
Attorney General.

This bill was presented to the Governor on April 4th, 1925, and was not signed or returned to the house wherein it originated within ten days after being so presented, exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State, April 16, 1925.

JAMES W. HUFFMAN,
Veto Clerk.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 16th day of April, A. D. 1925.

THAD H. BROWN,
Secretary of State.

153B.

[House Bill No. 44.]

AN ACT

To provide for the adequate maintenance of the public highways and streets of the state, to supplement existing revenues available for road and street maintenance and repair by the levy of an excise tax upon the sale of motor vehicle fuel, and the appropriation of the proceeds thereof, and to transfer to the state the duty of maintaining the entire main market road and inter-county highway systems thereof and to amend sections 6292 and 6295 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 5526

Definition of terms.

SECTION 1. The following words, terms and phrases, as used in this act, are hereby defined as follows:

"Motor vehicles" shall include all vehicles, engines, machine or mechanical contrivances which are propelled by internal combustion of motor vehicle fuels, as herein defined. "Motor vehicle fuels" shall include gasoline and all other volatile and inflammable liquids derived from petroleum, which are produced, refined, prepared, distilled, compounded or used for the purpose of generating power by means of internal combustion motors, by whatever name such fuels may be known or sold. The term "motor vehicle fuels", however, shall not include the product commonly known as kerosene oil.

Dealer, etc.

"Dealer" shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the state of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and de-

livery in Ohio, and after the same reaches the state of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the state of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers.

Sec. 5527

SECTION 2. For the purpose of providing revenue for maintaining the main market roads and inter-county highways of this state in passable condition for travel, for repairing the damage caused to such highway system by motor vehicles used on the same, for widening existing surfaces on such highways where such widening is rendered necessary by the volume of motor vehicle traffic thereon, for resurfacing such highways where existing surfaces have become worn or rutted, for enabling the several counties and municipal corporations of the state to properly maintain and repair their roads and streets, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles, and for distributing equitably upon those persons using the privilege of driving such motor vehicles upon such highways and streets a fair share of the cost of maintaining and repairing the same, there is hereby levied and imposed on the sale and use of each gallon of motor vehicle fuel sold or used by any dealer, as herein defined, within the state of Ohio, an excise tax of two cents; subject, however, to the following specific exemptions. The sale of motor vehicle fuel shall not be subject to said tax

Purpose of tax;
exemptions.

(a) if such motor vehicle fuel be sold in tank car lots to be used wholly for purposes other than propelling motor vehicles on the public highway.

(b) if such motor vehicle fuel be exported or sold for exportation from the state of Ohio to any other state, or to any foreign country;

(c) if such motor vehicle fuel be sold by a dealer, as herein defined, to the United States government or any of its agencies;

(d) if such motor vehicle fuel be in process of transportation in international or interstate commerce, except in so far as the same may be permitted under the provisions of the constitution of the United States and acts of Congress.

After the excise tax herein provided for on the sale or use of any motor vehicle fuel has been paid by the dealer as herein defined, such motor vehicle fuel may thereafter be

used or sold or resold by any person, firm, association, partnership or corporation having lawful title to the same, without incurring any liability whatsoever for such tax.

Sec. 5528

Dealer's certificate and contents; filing of certificate.

SECTION 3. Within thirty days after this act takes effect, each dealer, as herein defined, doing business within the state of Ohio, shall file with the tax commission of Ohio, a certificate stating the name under which such dealer is transacting business within the state of Ohio, the location of its principal office or place of business within the state, the names and addresses of the partners, if such dealer is a partnership, or the names and addresses of the principal officers, if said dealer is a corporation or an association. If such dealer is a corporation organized under the laws of another state, territory or country such dealer shall furnish evidence to the tax commission that it has complied with the laws of Ohio relating to the transaction of business in Ohio. After thirty days from the date when this act goes into effect, no dealer shall sell, use or distribute any motor vehicle fuel until such certificate has been filed, and in the case of a foreign corporation, such evidence of authority has been furnished. The tax commission shall receive and file such certificates as comply with the terms of this act, and keep an alphabetical index thereof. Upon filing the certificate herein provided for, such dealer shall pay to the tax commission of Ohio as a filing fee the sum of five dollars. Anyone becoming a dealer within this state after this act takes effect shall forthwith file the certificate herein provided for, and if a foreign corporation, the evidence of authority to do business in this state.

Sec. 5529

Sworn monthly statement of vehicle fuel sold.

SECTION 4. Each dealer, as defined in this act, who shall engage within the state of Ohio in the sale or use of motor vehicle fuel, as herein defined, in his own name, in the name of others, or in the name of his representatives or agents, shall, not later than the fifteenth day of each calendar month, file with the tax commission of Ohio a statement under oath, of all such motor vehicle fuel sold or used by him or them in the state of Ohio during the preceding calendar month. Such statement shall include a separate statement of the amount of motor vehicle fuel upon which the excise tax is not required to be paid by this act. Such statement shall be sworn to by such dealer, if an individual; or by the general or managing agent or chief accountant, if a corporation.

The time intervening between the date when this act takes effect and the first day of the following calendar month or the time intervening between the time when anyone shall become a dealer within this state and the first day of the following calendar month, shall, for the purpose of this

section, be regarded as a calendar month and the statement relating to such period shall be filed as herein provided.

Sec. 5530

SECTION 5. On the twentieth day of each calendar month the tax commission shall transmit to the auditor of state a statement showing:

Monthly statement by tax commission to state auditor.

(a) The names of all dealers who have filed the statement provided for in section 4 of this act during the same calendar month.

(b) The number of gallons of motor vehicle fuel the sale or use of which is subject to the tax herein levied as shown by the reports of such dealers or as determined by investigation of the tax commission.

(c) The names of any dealers whom the tax commission finds to have improperly reported the quantity of fuel so used or sold during any preceding calendar month, together with the number of gallons of such fuel found by the commission to have been omitted, if any.

(d) Such other information as the commission may deem necessary.

Upon receipt of such statement from the tax commission the auditor of state shall compute the tax due from each such dealer at the rate of two cents per gallon. A penalty of 15 per cent shall be added to the tax so computed on the basis of items found by the commission to have been omitted from the reports of any dealer. Between the twenty-fifth and the last day of said calendar month the auditor of state shall transmit to the treasurer of state a copy of such statement showing the amounts due from such dealers.

Duties of state auditor.

The auditor of state shall send to each dealer against whom findings have been made by the tax commission as herein provided a notice of the amounts due on such findings.

Sec. 5531

SECTION 6. On or before the last day of each calendar month each dealer shall pay to the treasurer of state the excise tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payments shall be accompanied by a copy of the statement filed with the tax commission of Ohio.

Payment by dealer to state treasurer.

Sec. 5532

SECTION 7. Each seller shall render to all purchasers of motor vehicle fuel, except in cases of retail sales where exemption is not claimed by the purchasers under the terms of this act, and except in the case of sales of motor vehicle fuel upon which the excise tax is not levied by this act, a bill showing the quantity and price of the motor vehicle fuel so sold. Such bill shall have printed or written thereon, in a conspicuous place, a statement that the liability to the state for the excise tax herein imposed has been assumed by the dealer, and that he or they have paid or will pay such excise tax on or before the last day of the following calendar month.

Statement by dealer to purchasers.

Sec. 5533

Penalty for
sale, etc.

SECTION 8. Any person, firm, association, partnership or corporation within this state who shall receive or accept any shipment in intra-state commerce of motor vehicle fuel from any dealer as defined in this act, or pay for the same or sell or offer the same for sale, unless the statement provided for by section 7 of this act shall appear upon the invoice covering such shipment or delivery; or any person, firm, association, partnership or corporation who shall receive, accept, pay for, sell or offer for sale, any quantity of motor vehicle fuel in violation of the terms of this act, shall be liable for the tax payable upon such quantity and in addition thereto a penalty of 15 per cent.

Sec. 5534

Refunder of
tax.

SECTION 9. Any person, firm, association, partnership or corporation who shall use any motor vehicle fuel, as defined in this act, on which the tax herein imposed has been paid, for the purpose of operating or propelling stationary gas engines, tractors not used on highways, motor boats or aircraft, or who shall use any such fuel upon which the tax herein provided for has been paid, for cleaning or dyeing, or any other purpose than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of this state, shall be reimbursed to the extent of the amount of the tax so paid on such motor vehicle fuel in the following manner: provided however that such applications for refunds must be filed with the secretary of state within ninety days from the date of purchase or invoice.

Sworn statement.

Such person, firm, association, partnership or corporation shall file with the tax commission of Ohio a statement of the quantity of fuel used for purposes other than propulsion of motor vehicles, as set out in this section. Such statement shall be accompanied by the original invoice showing such purchase. On filing of such statement and invoice in form herein prescribed, the tax commission of Ohio shall determine the amount of refund due and within thirty days from the time of filing the same shall certify such amount to the auditor of state. The auditor of state shall thereupon draw a warrant on the treasurer of state in favor of the person claiming such refund. Such refund shall be paid by the treasurer of state from the rotary fund hereinafter provided for. The tax commission shall require the statement provided for herein to be supported by the affidavit of the claimant.

Sec. 5535

Tax commission
to prescribe
forms; records
open for inspection;
hearings
by commission.

SECTION 10. The records of every dealer showing his purchases, receipts, sales, distribution and use of motor vehicle fuels shall at all times during the usual business hours of the day be open for inspection of the tax commission of Ohio or any deputy or employ authorized by it for such purpose. The tax commission shall have authority to prescribe all forms upon which reports shall be made to the commission, claims for refund presented to the commission, or forms of record to be used by dealers, as herein defined. In

the enforcement of the provisions of this act the tax commission shall have power to hold such hearings and conduct such investigations as it may deem necessary and correct any errors found therein.

Sec. 5536

SECTION 11. Any dealer, whether person, firm, association, partnership or corporation, who shall knowingly make any false statement in a report to the tax commission of Ohio or in connection with an application for refund of any tax as provided in this act, or who shall knowingly collect either directly or indirectly or cause to be repaid to him or to any other person any refund of such tax, without being entitled to the same, or who shall engage in business as a dealer as defined in this act, without having filed with the tax commission of Ohio the certificate provided for by section 3 hereof, or, if a foreign corporation the evidence of authority to do business in this state, shall upon conviction thereof be fined not less than twenty-five dollars nor more than one thousand dollars. Upon conviction of a second offense under the provisions of this section the offender shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than six months, or both.

Failure to file statement; making false statement, etc.

Penalty.

Sec. 5537

SECTION 12. Upon receipt of taxes herein provided for the treasurer of state shall place the first \$50,000.00 collected in a special fund to be known as the gasoline tax rotary fund. Thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to \$50,000.00. The balance of taxes collected under the provisions of this act, after the credits to said rotary fund, shall be credited to a fund to be known as the gasoline tax excise fund.

Rotary fund. Distribution; 30% to municipalities; 25% to counties; 45% to state.

Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation.

Wherever a municipal corporation is on the line of an inter-county highway or main market road, one-sixth of the amount so paid to any municipal corporation shall be used by such municipal corporation for the sole purpose of maintaining and repairing such streets and roads within such municipal corporation, as may be designated by the director of highways and public works as extensions or continuances of intercounty highways or main market roads.

Twenty-five per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the aud-

itor of state in equal proportions to the county treasurer of each county within the state, and shall be used for the sole purpose of maintaining and repairing the county system of public roads and highways within such counties. Forty-five per cent of such gasoline tax excise fund shall be apportioned to and expended by the department of highways and public works of the state of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways and public works of this state.

Out of the percentage so apportioned to the department of highways and public works not less than one million dollars in the fiscal year 1925-1926, and not less than one million five hundred thousand dollars in the fiscal year 1926-1927 shall be expended for the purposes of section 13 of this act.

Sec. 5538

Duties of director of highways; main market roads and inter-county highways.

SECTION 13. As soon as this act shall take effect and funds become available, and as soon as it is practicable to organize proper working forces, the director of highways and public works shall take over for maintenance purposes as hereinafter defined, such mileage of the present system of main market roads and inter-county highways outside of incorporated municipalities as have not been constructed by the state or taken over by the state for maintenance, provided that all such portions of the inter-county highway system not at present under state maintenance, be first improved by the county to an extent which in the opinion of the director of highways and public works will permit of economical maintenance for the purpose of making them passable for traffic.

From the time such roads and highways are taken over, the director of highways and public works shall maintain said roads and highways, and the respective counties and townships of the state in which such roads and highways are located shall thenceforth be relieved of the duty of the maintenance thereof, but for the purpose of this section, maintenance shall not be construed to include the construction of any new bridges or culverts or the replacement of any bridges or culverts destroyed by the elements or by natural wear and tear, nor any construction work changing the type of construction existing on said roads at the time the same are taken over in accordance with the provisions of this section.

Nothing in this act shall be construed to prevent the authorities of any county or township from co-operating with the state in the construction, maintenance or repair of any section of main market road or inter-county highway within such county or township.

Sec. 5539

SECTION 14. There is hereby appropriated out of the gasoline tax rotary fund all sums that shall be placed to the credit thereof from the time this act takes effect until the 30th day of June, 1927. The sums so appropriated shall be used only for the purpose of paying the refunds provided for by section 9 of this act.

Rotary fund
to be used for
refunds;
appropriation
to counties and
municipalities.

There is hereby appropriated for the use of the several municipal corporations and counties of the state and the department of highways and public works of Ohio from the gasoline tax excise fund all sums which shall be paid into said fund from the date this act takes effect until the 30th day of June, 1927. The sums so appropriated shall be used by such municipal corporations and counties and by the department of highways and public works for the purposes set out in sections 2 and 12 of this act and for no other purpose whatsoever.

Sec. 5540

SECTION 15. The general assembly of Ohio shall from time to time appropriate from the gasoline tax rotary fund and from the gasoline tax excise fund the monies therein contained, to be used for the purposes set out in this act.

SECTION 16. That sections 6292 and 6295 of the General Code be amended to read as follows:

Repeal.

Sec. 6292. Each owner of a motor vehicle shall pay or cause to be paid as follows:

Tax on motor
vehicle.

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For the calendar year 1925 for each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horse-power, twelve dollars; for each such car having more than thirty-five horse-power, twenty dollars.

For the calendar year 1926 and for each calendar year thereafter, for each passenger car having twenty-five horse-power or less, four dollars; for each such car having more than twenty-five and not more than thirty-five horse-power, six dollars; for each such car having more than thirty-five horse-power, ten dollars

For each commercial car having twenty-five horse-power or less, eight dollars, and in addition thereto twenty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each commercial car having more than twenty-five and not more than thirty horse-power, twelve dollars, and in addition thereto thirty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each commercial car having more than thirty horse-power twenty dollars, and in addition thereto eighty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each trailer of more than one ton gross weight, fifty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each trailer of less than one ton gross weight,

twenty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

The minimum tax for any vehicle having motor power other than a motor bicycle or a motorcycle shall be eight dollars for the calendar year 1925 and four dollars for each year thereafter; and for each trailer, two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.

Tax payable;
apportionment
per quarter.

Sec. 6295. Every owner of a commercial car, before operating or driving such motor vehicle upon the public roads or highways of this state or permitting the same to be driven, shall file a like application.

On all applications required by this section the taxes payable shall be as follows:

1. If such application be made prior to April first, the normal tax.
2. If made on or after April first and prior to July first, three-fourths of the normal tax.
3. If made on or after July first and prior to October first, one-half of the normal tax, and
4. If made on or after October first, one-fourth of the normal tax.

Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal law relating thereto.

The secretary of state shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government.

Repeals.

SECTION 17. That original sections 6292 and 6295 of the General Code be, and the same hereby are repealed.

HARRY D. SILVER,
Speaker of the House of Representatives.

CHARLES H. LEWIS,
President of the Senate.

Passed March 18, 1925.

HOUSE OF REPRESENTATIVES.

Passed—Notwithstanding the objections of the Governor—April 17, 1925.

HARRY D. SILVER,
Speaker of the House of Representatives.

SENATE.

Passed—Notwithstanding the objections of the Governor—April 17, 1925.

CHARLES H. LEWIS,
President of the Senate.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of April, A. D. 1925.

THAD H. BROWN,
Secretary of State.

155B.

The sectional
numbers on the
margin hereof
are designated
as provided by
law.
C. C. CRABBE,
*Attorney
General.*

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED
(EXCEPTING APPROPRIATION LAWS)

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

EIGHTY-SEVENTH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS,
JANUARY 3, 1927 to MAY 31, 1927
(both inclusive)

Also the Times for Holding the Courts of Appeals,
and Courts of Common Pleas in Ohio,
A. D. 1927

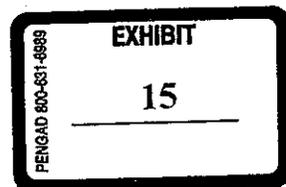
VOLUME CXII



COLUMBUS, OHIO.
THE F. J. HEER PRINTING CO.,
1927

Bound at the State Bindery

0275



Attorney General shall prepare conveyance.

SECTION 2. The attorney-general shall prepare a proper instrument of conveyance conveying to the commissioners of Wayne county the rights and privileges mentioned in section one of this act.

Governor shall sign and deliver deed.

SECTION 3. The governor shall sign said deed or instrument of conveyance and cause the great seal of the state of Ohio to be affixed thereon, and the secretary of state shall countersign the same; and when said instrument is executed it shall be delivered to the auditor of state, who shall record the same according to law and then transmit it to the commissioners of Wayne county.

EARL D. BLOOM,
President of the Senate.

O. C. GRAY,
Speaker of the House of Representatives.

Passed May 11, 1927.

Approved May 23, 1927.

VIC DONAHEY,
Governor.

This act is not of a general and permanent nature, and requires no sectional number.

EDWARD C. TURNER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 24th day of May, A. D. 1927.

CLARENCE J. BROWN,
Secretary of State.

147B

(House Bill No. 206)

AN ACT

To impose an additional excise tax on the sale and use of motor vehicle fuel, and to provide revenue for supplying the state's share of the cost of constructing and reconstructing highways and abolishing railway grade crossings thereon.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 5541.—Definition of terms.

SECTION 1. The following words, terms and phrases, as used in this act, are hereby defined as follows:

"Motor vehicles" and "dealer" are hereby defined as provided in sections 5526, 5526-3 and 5526-4 of the General Code.

"Motor vehicle fuels" are hereby defined as provided in section 5526 of the General Code and in section 5526-1 of the General Code, as enacted in House Bill No. 11, passed March 3, 1927.

Sec. 5541-1.—Purpose of tax.

SECTION 2. For the purpose of providing revenue for supplying the state's share of the cost of constructing and reconstructing the main market roads and inter-county highways of this state, or any other state highway system that may be created by law, and also for supplying the state's share of the cost of abolishing railway grade crossings upon such roads and highways, there is hereby levied and imposed on the sale and use of each gallon of motor vehicle fuel sold or used by any dealer, as herein defined, within the state of Ohio, an excise tax of one cent, which tax shall be in addition to the tax imposed by section 5527 of the General Code; subject, however, to the specific exemptions set forth in said section 5527 of the General Code. After the excise tax herein provided for on the sale or use of any motor vehicle fuel has been paid by the dealer as herein defined, such motor vehicle fuel may thereafter be used or sold or resold by any person, firm, association, partnership or corporation having lawful title to the same, without incurring any liability whatsoever for such tax.

Sec. 5541-2.—Duties of state auditor; penalty for omitted items.

SECTION 3. Upon receipt from the tax commission of the statement provided for by section 5530 of the General Code, the auditor of state, in addition to computing the tax due under section 5527 of the General Code, shall also compute the tax due under the provisions of this act from each dealer at the rate of one cent per gallon; and the tax imposed by this act shall be computed upon the same number of gallons as is the tax imposed by section 5527 of the General Code. A penalty of fifteen per cent. shall be added to the tax so computed on the basis of items found by the tax commission to have been omitted from the reports of any dealer. Between the twenty-seventh and the last day of said calendar month, the auditor of state shall transmit to the treasurer of state a separate copy of such statement showing the amount due under this act from such dealers. The auditor of state shall send to each dealer against whom findings have been made by the tax commission as herein provided a notice of the amounts due on such findings.

Sec. 5541-3.—Payment by dealer to state treasurer.

SECTION 4. On or before the last day of each calendar month each dealer shall pay to the treasurer of state, in addition to the excise tax imposed by section 5527 of the General Code, the excise tax imposed by this act and due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payments shall be accompanied by a duplicate copy of the statement filed with the tax commission of Ohio under the provisions of section 5529 of the General Code.

Sec. 5541-4.—Statement by dealer to state treasurer.

SECTION 5. In addition to the matter required to be printed or written on the bill provided for by section 5532 of the General Code, there shall also be printed or written on such bill, in a conspicuous place, a

statement that the liability to the state for the excise tax herein imposed has been assumed by the dealer, and that he or they have paid or will pay such excise tax on or before the last day of the following calendar month.

Sec. 5541-5.—Penalty for sale, etc.

SECTION 6. Any person, firm, association, partnership or corporation within this state who shall receive or accept any shipment in intrastate commerce of motor vehicle fuel from any dealer as defined in this act, or pay for the same or sell or offer the same for sale, unless the statement provided for by the preceding section of this act shall appear upon the invoice covering such shipment or delivery; or any person, firm, association, partnership or corporation who shall receive, accept, pay for, sell or offer for sale, any quantity of motor vehicle fuel in violation of the terms of this act, shall be liable for the tax payable upon such quantity and in addition thereto a penalty of fifteen percent.

Sec. 5541-6.—Refunder of tax.

SECTION 7. Where applications for refunds are made and allowed under the provisions of section 5534 of the General Code, a refund of the tax paid under the provisions of this act shall also be allowed and paid, and the procedure in the matter of claiming, allowing and paying such refunds shall be in all respects the same as is provided in section 5534 of the General Code.

Sec. 5541-7.—Rotary fund; state highway construction fund.

SECTION 8. Upon receipts of taxes herein provided for, the treasurer of state shall place the first twenty-five thousand dollars collected in a special fund, which shall constitute a rotary fund; and thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to twenty-five thousand dollars. The refunds provided for by this act shall be paid from such rotary fund. The balance of taxes collected under the provisions of this act, after the credits to said rotary fund, shall be credited to a fund to be known as the state highway construction fund and shall be used solely for the purposes enumerated in section 2 of this act. No disbursements shall, however, be made from said state highway construction fund except in pursuance of specific appropriations made therefrom from time to time by the General Assembly of Ohio.

Sec. 5541-8.—Appropriation and distribution of state highway construction fund.

SECTION 9. When appropriated by the General Assembly such state highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions:

Forty per cent. thereof shall be appropriated for use in and shall be used in the several counties of the state in proportion to the number of motor vehicles registered from each of said counties during the calendar year preceding the making of such appropriation.

Sixty per cent. thereof shall be appropriated for use in and shall be

used in the several counties of the state according to such equitable plan or method of apportionment as shall be from time to time adopted and prescribed by the director of highways and public works or such other state official as may from time to time be the chief officer of any department of state having charge of the main market roads and inter-county highways of the state or other state highway system.

Provided, however, that not more than one million dollars of said state highway construction fund may be appropriated for use in or used in any one calendar year for the purpose of paying the state's share of the cost of abolishing railway grade crossings.

The director of highways and public works, or such other state official as may from time to time be the chief officer of any department of state having charge of the main market roads and intercounty highways of the state, or other state highway system, shall have the same authority to expend portions of the proceeds of the tax herein imposed upon the extensions of such main market roads and intercounty highways, or other state highways, within cities, as is conferred upon him by law with respect to such extensions within villages, and the procedure with respect to such expenditure within cities shall be the same as is provided by law with respect to such expenditures within villages.

Sec. 5541-9.—When dealer shall file statement of motor vehicle fuel sold.

SECTION 10. Should this act take effect on any day other than the first day of a calendar month, each dealer, as defined in this act, who shall engage within the state of Ohio in the sale or use of motor vehicle fuel, as herein defined, in his own name, in the name of others; or in the name of his representatives or agents, shall, not later than the fifteenth day of the calendar month following the calendar month in which this act shall take effect, file with the tax commission of Ohio, a statement under oath of all such motor vehicle fuel sold or used by him or them in the state of Ohio during that portion of the preceding calendar month following the taking effect of this act. Such statement shall include a separate statement of the amount of motor vehicle fuel upon which the excise tax is not required to be paid by this act. Such statement shall be sworn to by such dealer, if an individual; or by the general or managing agent or chief accountant, if a corporation.

Sec. 5541-10.—Statement by tax commission; duties of state auditor.

SECTION 11. On the twentieth day of the calendar month following the calendar month in which this act shall take effect, the tax commission shall transmit to the auditor of state, a statement showing the names of all dealers who have filed the statement provided for in section 10 of this act, the number of gallons of motor vehicle fuel the sale or use of which is subject to the tax herein levied as shown by the reports of such dealers or as determined by investigation of the tax commission, and the names of any dealers whom the tax commission finds to have improperly reported the quantity of fuel so used or sold, together with the number of gallons of such fuel found by the commission to have been omitted, if any. Upon receipt of such statement from the tax commission, the auditor of state shall compute the tax due under the provisions of this

act from each such dealer for such fraction of a calendar month at the rate of one cent per gallon, and the provisions of sections 3 and 4 of this act relating to penalty, procedure and time and method of payment of such tax shall apply to the tax so computed.

O. C. GRAY,
Speaker of the House of Representatives.

EARL D. BLOOM,
President of the Senate.

Passed May 11, 1927.

This bill was presented to the Governor, May 12, 1927, and was not signed or returned to the House wherein it originated within ten days after being so presented, exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State May 26, 1927.

S. P. DUNKLE,
Veto Clerk.

The sectional numbers on the margin hereof are designated as provided by law.
EDWARD C. TURNER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26th day of May, A. D. 1927.

CLARENCE J. BROWN,
Secretary of State.

148B

(Amended Senate Bill No. 161)

AN ACT

To provide for a proper clearance for all structures and material contiguous to railroad tracks, sidings and switches.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 8976-1.—Placement of structures and material; limitations; power and authority of public utilities commission.

SECTION 1. After the effective date of this act and except in cases in which the public utilities commission of Ohio finds that such placement or construction is impracticable, material of all kinds and all permanent structures such as buildings, walls, coal bins, tunnels, bridges, station shelter sheds, stand pipes, signal masts, poles, freight platforms and structures of like character, placed adjacent or contiguous to a track of a railroad by a county, municipality, township, railroad company, other corporation, or person, shall not be less than eight feet in the clear from the center of such track, measured horizontally therefrom and such lateral clearance shall be uniformly maintained vertically upward a distance of twenty-one feet from the top of rail. The foregoing does not apply to present structures. The public utilities commission is hereby given full power and authority to prescribe rules and regulations governing all such placement and construction.

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

EIGHTY-NINTH GENERAL ASSEMBLY

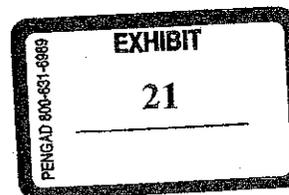
At Its Special Sessions

BEGUN AND HELD IN THE CITY OF COLUMBUS, MARCH 29, 1932,
TO APRIL 1, 1932, INCLUSIVE, MAY 16, 1932, AND SEPTEMBER
27, 1932 TO OCTOBER 3, 1932, INCLUSIVE.

VOLUME CXIV—PART II.


COLUMBUS, OHIO:
THE F. J. HEER PRINTING CO.
1932
Bound at the State Bindery

0281



(Amended Senate Bill No. 3)

AN ACT

To provide for the expenditure of gasoline and motor vehicle license tax funds in counties, cities and townships for poor relief purposes, to amend sections 5527, 5541 and 6291 of the General Code, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

Proceeds of gasoline and motor vehicle license taxes may be expended for relief of poor, when; statement to state relief commission; hearing.

SECTION 1. In addition to the purposes specified in sections 5527, 5541, and 6309-2b, of the General Code, for which the proceeds of the gasoline and motor vehicle taxes, allocated under existing law to counties and cities, may be expended, at any time prior to the first day of March, 1933, the whole or any part of the proceeds of the gasoline and motor vehicle license taxes allocated under existing law to counties and cities, hereafter received may, by action of the county commissioners of any county or the council of any city, with the approval of the state relief commission, be expended for poor relief within such subdivision. The taxing authority of such subdivision shall adopt and submit to the state relief commission, a statement in such form as the commission shall prescribe, of the amount proposed to be so expended and the particular type or types of relief proposed to be rendered. Two or more copies of such statement shall be filed in the office of the fiscal officer of the subdivision for public inspection not less than five days before its adoption by the taxing authority; and such taxing authority shall hold one or more public hearings thereon, of which notice shall be given not less than five days previous to the date thereof, by publication in the official publication of such subdivision or in a newspaper having a general circulation in such subdivision.

Transfer of funds for relief of poor.

SECTION 2. At any time prior to the first day of March, 1933, the county commissioners of any county may, upon approval of the state relief commission, transfer to cities or townships in such county, all or any part of the proceeds of the gasoline and motor vehicle license taxes hereafter collected and allocated under existing laws to the county, such funds to be used for poor relief in the subdivision to which they are allocated and for no other purpose.

SECTION 3. That sections 5527, 5541 and 6291 of the General Code are hereby amended to read as follows:

Excise tax of two cents per gallon on motor vehicle fuel; purpose; exemption.

Sec. 5527. For the purpose of providing revenue for maintaining the state highway system of this state in passable condition for travel,

for repairing the damage caused to such highway system by motor vehicles used on the same, for widening existing surfaces on such highways where such widening is rendered necessary by the volume of motor vehicle traffic thereon, for resurfacing such highways where existing surfaces have become worn or rutted, for enabling the several counties of the state properly to maintain and repair their roads and for enabling the several municipal corporations of the state properly to maintain, repair, construct and repave their streets, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles, and for distributing equitably upon these persons using the privilege of driving such motor vehicles upon such highways and streets a fair share of the cost of maintaining and repairing the same, *and as to the tax levied between the effective date of this act, and March 1, 1933, for the purpose of providing poor relief in the various counties of this state*, an excise tax is hereby imposed on all dealers in motor vehicle fuel upon the use, distribution or sale within this state by them of motor vehicle fuel at the rate of two cents (2¢) per gallon so used, distributed or sold, to be computed in the manner hereinafter set forth; provided, however, that no tax is hereby imposed upon or with respect to the following transactions;

(a) The sale of motor vehicle fuel in tank car or cargo lots for delivery by tank car or boat for use wholly for purposes other than propelling motor vehicles on the public highways, or the use thereof wholly for such purposes when so purchased; or

(b) The sale of motor vehicle fuel by a duly licensed dealer in tank car or cargo lots to another duly licensed dealer for delivery by tank car or boat; or

(c) The exportation or sale for exportation of motor vehicle fuel from the state of Ohio to any other state or to any foreign country; or

(d) The sale of motor vehicle fuel to the United States government or any of its agencies; or

(e) The sale of motor vehicle fuel which is in the process of transportation in foreign or interstate commerce, except insofar as the same may be taxable under the provisions of the constitution and statutes of the United States.

After the excise tax herein provided for on the sale, distribution or use of any motor vehicle fuel has been paid by the dealer, such motor vehicle fuel may thereafter be used or sold or resold by any person having lawful title to the same, without incurring liability for such tax.

Additional excise tax of two cents per gallon on motor vehicle fuel; purpose.

Sec. 5541. For the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets, and for paying the costs and ex-

penses of the tax commission incident to the administration of the motor vehicle fuel laws, and supplementing revenue already available for such purposes, and as to the tax levied between the effective date of this act and March 1, 1933, for the purpose of providing poor relief in the various counties of this state, an excise tax is hereby imposed on all dealers in motor vehicle fuel, upon the use, distribution, or sale within the state by them of motor vehicle fuel at the rate of two cents (2c) per gallon so used, distributed or sold, subject to the specific exemptions therein set forth, to be reported, computed, paid, collected, administered, enforced and refunded, and the failure properly and correctly to report and pay same penalized in exactly the same manner as is provided in sections 5527 to 5536-1, both inclusive, of the General Code; and all of the provisions contained in said sections 5527 to 5536-1, both inclusive, of the General Code, relating to motor vehicle fuel excise taxes shall be, and the same hereby are re-enacted and incorporated as if specifically set forth herein; which tax shall be in addition to the tax imposed under said sections 5527 to 5536-1 of the General Code.

Purpose of annual license tax.

Sec. 6291. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles * * *, maintaining and repairing public roads, highways and streets, paying the counties' proportion of the cost and expenses of cooperating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructing, improving, maintaining and repairing roads, and for the use of the general funds of the counties and the townships, and as to the tax levied between the effective date of this act and March 1, 1933, for the purpose of providing poor relief in the various counties of this state. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided.

Repeal.

SECTION 4. That existing sections 5527, 5541 and 6291 of the General Code be, and the same are hereby repealed.

Emergency.

SECTION 5. This act is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that the conditions of wide-spread unemployment and necessity for relief in many communities require the immediate expenditure of gasoline tax funds for poor relief purposes. Therefore, this act shall go into immediate effect.

ARTHUR HAMILTON,
Speaker of the House of Representatives.

WILLIAM G. PICKREL,
President of the Senate.

Passed March 31, 1932.

Approved April 5, 1932.

GEORGE WHITE,
Governor.

The sectional numbers herein are in conformity to the General Code.

GILBERT BETTMAN,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 6th day of April, A. D. 1932.

CLARENCE J. BROWN,
Secretary of State.

File No. 4.

(Amended Senate Bill No. 4)

AN ACT

To authorize the issue of bonds by counties and cities and the expenditure of public money for the relief of the poor and unemployed, and the investment of public funds in such bonds, to levy an excise tax on certain public utilities, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

Definitions.

SECTION 1. The following definitions shall be applied to terms used in this act:

- a. The term "taxing authorities" shall mean "county commissioners."
- b. The term "work relief" shall mean "relief given in exchange for labor."
- c. The term "direct relief" shall mean "any relief given other than work relief and institutional relief."

Administration of funds for poor relief; definition of terms.

SECTION 2. Funds raised under this act by the issue of bonds shall be used for poor relief. Any subdivision administering funds raised under this act shall require labor in exchange for relief given to any family where there is a wage earner or wage earners, except in cases which may be exempted in accordance with rulings that may be made by the state relief commission. "Poor relief," in the case of a county, shall mean the payment of mothers' pensions allowed, or to be allowed, by the juvenile court, under sections 1683-2 to 1683-9 inclusive, of the General Code; soldiers' relief as provided in sections 2930 to 2941, inclusive, of the General Code; the furnishing of temporary support and medical relief to non-residents, pursuant to sections 3476 and 3484-2 of the Gen-

2 G. L.

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED
(EXCEPTING APPROPRIATION ACTS)

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

NINETIETH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JANUARY 2, 1933 to JULY 10, 1933,
(both inclusive)

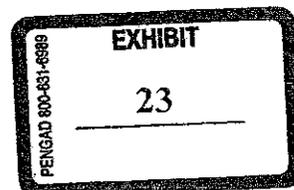
Also the Times for Holding the Courts of Appeals,
and Courts of Common Pleas in Ohio,
A. D. 1933.

VOLUME CXV



Columbus, Ohio
THE F. J. HEER PRINTING CO.
1933
Bound at State Bindery

0286



in this clause shall deny or impair any remedy provided by law in such case by suit on the official bond of such justice of the peace, or by amercement or otherwise, for such neglect or failure to pay over money so collected.

Repeal.

SECTION 2. That existing section 10224 of the General Code be, and the same is hereby repealed.

KEITH LAWRENCE,
Speaker Pro Tem of the House of Representatives.

D. H. DeARMOND,
President Pro Tem of the Senate.

Passed March 14, 1933.

Approved March 21, 1933.

GEORGE WHITE,
Governor.

The sectional number herein is in conformity to the General Code.

JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of March, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 27.

(House Bill No. 337)

AN ACT

To provide for the use of the receipts from the motor vehicle fuel tax for the purpose of poor relief, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

Additional funds for state emergency relief in 1933.

SECTION 1. In the year 1933, the treasurer of state, from the proceeds of the motor vehicle fuel tax as provided for by section 5541 of the General Code, and in addition to the rotary fund provided for in section 5541-7 of the General Code, and after the deduction of the amounts necessary and currently appropriated to cover the costs and expenses of the tax commission incident to the administration of the motor vehicle

fuel laws, and the cost of maintenance and administration of the motor vehicle fuel laws, and before crediting the balance to the highway construction fund, shall place to the credit of the state emergency relief fund such amounts, out of the proceeds of said tax, as the state relief commission shall from time to time certify to be necessary for the purpose for which said fund was created, not exceeding in the aggregate the sum of two million dollars. All such amounts so credited to the state emergency relief fund shall be deducted from the state's share of the highway construction fund provided for in section 5541-8 of the General Code.

Emergency.

SECTION 2. This measure is hereby declared to be an emergency in that in order to preserve the health, peace and safety of the public it is necessary to provide housing for many persons and since local subdivisions are unable to provide funds for such purpose this act shall take effect immediately.

FRANK CAVE,
Speaker of the House of Representatives.

CHARLES SAWYER,
President of the Senate.

Passed March 16, 1933.
Approved March 21, 1933.

GEORGE WHITE,
Governor.

This act is not of a general and permanent nature, and requires no sectional number.

JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of March, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 28.

(House Bill No. 134)

AN ACT

Providing for the levy and collection of a tax upon sales of tangible personal property at retail, for the purposes of emergency poor relief, of affording the advantages of a free education to all the youth of the state, of the general revenues of the state, and of affording revenues, in addition to those from general property taxes permitted under constitutional limitations, for the support of local governmental activities; amending sections 6212-49a and 6212-49b of the General Code, relating to the excise tax on the sale of bottled beverages so as to limit the same to the sale of bottled beer for the year 1935; suspending for the year 1935 sections 5548-1 to 5548-20, both inclusive, of the General Code, relating to the excise tax on cosmetics or toilet preparations.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 5546-1. Definitions.

SECTION I. As used in this act:

"Person" includes individuals, firms, partnerships, associations, joint stock companies, corporations, and combinations of individuals of whatsoever form and character.

"Commission" means the tax commission of Ohio.

"Sale" and "selling" include all transactions whereby title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange or barter, and by any means whatsoever.

"Vendor" means the person by whom the transfer effected or license given by a sale is or is to be made or given; and in case two or more persons shall be engaged in business in the same retail establishment under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor for the purposes of this act.

"Consumer" means the person to whom the transfer effected or license given by a sale is or is to be made or given, or to whom the admission is granted.

"Retail sale" and "sale at retail" include all sales excepting those in which the purpose of the consumer is (a) to re-sell the thing transferred in the form in which the same is, or is to be, received by him; or (b) to incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing or refining, or to use or consume the thing transferred in manufacturing, retailing, processing or refining or in the rendition of a public utility service; or (c) security for the performance of an obligation by the vendor.

"Price" means the aggregate value in money of any thing or things paid or delivered, or promised to be paid or delivered by a consumer to a vendor in the consummation and complete performance of a retail sale without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense whatsoever. The tax collected by the vendor from the consumer under the provisions of this act shall not be considered as a part of the price, but shall be considered as a tax collection for the benefit of the state, and, except for the discount authorized in section 8 of this act, no persons other than the state shall derive any benefit from the collection or payment of such tax.

"Retail establishment" means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

Sec. 5546-2. Tax on retail sales; purpose; rates; exceptions.

SECTION 2. For the purpose of providing revenue with which to meet the needs of the state for poor relief in the existing economic crisis, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this act, an excise tax is hereby levied on each retail sale in this state of tangible personal property occurring during the period beginning on the first day of January, 1935, and ending on the thirty-first day of December, 1935, with the exceptions hereinafter mentioned and described, as follows:

One cent, if the price is forty cents or less;

Two cents, if the price is more than forty cents and not more than seventy cents;

Three cents, if the price is more than seventy cents and not more than one dollar;

If the price is in excess of one dollar, three cents on each full dollar thereof; and if, in such case, the price is not an even number of dollars, then, in addition to the said tax on each full dollar thereof, one cent, if the price exceeds an even number of dollars by more than eight cents, but not more than forty cents; two cents if such excess is more than forty cents and not more than seventy cents; and three cents if such excess is over seventy cents.

If the price is less than nine cents, no tax shall be imposed.

The taxes hereby imposed shall apply and be collected when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale as herein defined made during said period, the price of which as herein defined consists in whole or in part of rentals for the use of the thing transferred, the taxes hereby imposed shall, as regards such rentals, be measured by the installments thereof falling due within said period only.

The tax hereby levied does not apply to the following sales:

1. When the consumer is the state of Ohio or any of its political subdivisions.
2. When the vendor is a farmer, the thing transferred is the product of his own farm, or of a farm which he operates, and the retail establishment is located on such farm, or when the sale is of feed, seeds, lime or fertilizer.
 - 2a. Sale of fluid milk defined by the milk marketing act for consumption off the premises of the vendor and of bread in loaf form.
 - 2b. The sale of newspapers.
3. Sales of motor vehicle fuel and of liquid fuel upon the receipt, use, distribution or sale of which in this state a tax is imposed by the law of this state.
4. Sales of cigarettes and of brewer's wort and malt, upon the sale of which a tax is imposed by law of this state, so long, respectively, as such law is in force.
5. Sales of beer as defined by section 6212-63 of the General Code, whether in bulk or in bottles, sales of wine, and sales of spirituous liquors by the department of liquor control.
6. Sales of artificial gas by a gas company as defined in section 5416 of the General Code, of natural gas by a natural gas company, as so defined, of electricity by an electric light company, as so defined, of water by a water-works company, as so defined, if in each case the thing sold is delivered to consumers through wires, pipes or conduits; and all sales by any other public utility as defined in section 5415 of the General Code.
7. Casual and isolated sales by a vendor who is not engaged in the business of selling tangible personal property.
8. Sales which are not within the taxing power of this state under the constitution of the United States.

Nothing in this act shall be so construed as to impose any tax on the transportation of persons or property.

9. Professional or personal service transactions which involve sales as inconsequential elements, for which no separate charges are made.

10. Tangible personal property sold by charitable and religious organizations, the income of which is used in philanthropic activities.

For the purpose of the proper administration of this act and to prevent the evasion of the tax hereby levied, it shall be presumed that all sales made in this state during the period defined in this section are subject to the tax hereby levied until the contrary is established.

Sec. 5546-3. Collection and payment of tax.

SECTION 3. Excepting as provided in section 5 of this act, the tax hereby imposed shall be paid by the consumer to the vendor in every instance, and it shall be the duty of each vendor to collect from the consumer the full and exact amount of the tax payable in respect of each taxable sale, and to evidence the payment of the tax in each case by

cancelling prepaid tax receipts, equal in face value to the amount thereof, in the manner and at the times provided in this section, to-wit:

(a) If the price is, at or prior to the delivery of possession of the thing sold, to the consumer, paid in currency passed from hand to hand by the consumer or his agent to the vendor or his agent, the vendor or his agent shall:

1. Collect the tax with and at the same time as the price.
2. Immediately cancel in the presence of the buyer by immediately tearing into two parts a prepaid tax receipt or receipts of the proper face value, deliver one part of each such cancelled prepaid tax receipt to the consumer or his agent, and retain the other part thereof.

(b) If the price is otherwise paid or to be paid, the vendor or his agent shall, at or prior to the delivery of possession of the thing sold, to the consumer, cancel or cause to be cancelled by tearing into two parts prepaid tax receipts equal in face value to the amount of the tax imposed by this act. Thereupon and thereby the amount of the tax with respect to such sale, payment of which to the state is evidenced by such cancellation, shall become a legal charge in favor of the vendor and against the consumer, which shall in every case be collected by the vendor, as herein provided, in addition to the price; and at or immediately after such collection, the vendor shall deliver one part of each such cancelled prepaid tax receipt to the consumer and retain the other part thereof.

Sec. 5546-4. Issuance of prepaid tax receipts; specifications.

SECTION 4. Prepaid tax receipts required by this act shall be issued by the commission in such denominations as the commission may deem necessary. They shall be printed on durable paper, be of different design and distinctly different coloring for each of such denominations, and shall bear plainly on their face the denominations represented thereby.

Sec. 5546-5. Powers and duties of commission.

SECTION 5. The commission shall design and procure the prepaid tax receipts herein provided for. The commission shall enforce and administer the provisions of this act, which is hereby declared to be one of the laws which the commission is required to administer within the meaning of sections 1465-9, 1465-12 to 1465-30, inclusive, 1465-32, 1465-34 and 12924-3 of the General Code. It shall have power to adopt and promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act, and without prejudice to the generality of the powers of the commission by virtue of the foregoing provisions, the commission may:

1. Prescribe the form and manner of cancelling prepaid tax receipts consistently with the provisions of this act.
2. Authorize a vendor to prepay the tax levied by this act upon sales of things produced or distributed by such vendor, and waive the collection of the tax from the consumer in the manner otherwise provided in this act; but no such authority shall be granted or exercised excepting upon application to the commission and unless the commission shall, after hearing, advance notice of which must be given by the commission to all

vendors in the same general classification as the applicant, find that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided by this act and upon the applicant furnishing bond payable to the state of Ohio in such amount as the commission may determine to be sufficient to secure the prepayment of the taxes levied by this act in the manner desired, with surety to the satisfaction of the treasurer of state, with whom such bond shall be filed; nor shall the authority so granted be exercised nor the vendor or vendors actually selling such products be exempted from the other provisions of this act by virtue thereof unless the person to whom such authority is granted shall print plainly upon the product sold or offered for sale, a statement to the effect that the tax levied by this act has been paid in advance.

Sec. 5546-6. Vendors reimbursed, when and how.

SECTION 6. In the event prepaid purchases are returned to the vendor by the consumer after the tax imposed by this act has been collected or charged to the account of the consumer, the vendor shall be entitled to reimbursement of the amount of the tax so collected or charged by him, either through the cancellation of prepaid tax receipts paid for by the consumer, or through the cancelling of prepaid tax receipts paid for by the vendor and charged to the account of the consumer, in the manner herein provided. Upon receipt of a sworn statement by the vendor as to the gross amount of such refunds, during the period covered by such sworn statement, which period shall not be longer than sixty days, the commission shall issue to the vendor an official credit memorandum equal to the net amount paid by the vendor for such cancelled prepaid tax receipts. Such memorandum shall be accepted by the state treasurer or his agents at full face value, from the vendor to whom it is issued, in the purchase of prepaid tax receipts under the provisions of section 7 of this act.

Sec. 5546-7. Powers and duties of treasurer of state and county treasurers.

SECTION 7. All prepaid tax receipts procured by the commission shall be immediately delivered to the treasurer of state, who shall execute duplicate receipts therefor, showing the number of and aggregate face value of each denomination received by him, and deliver such receipt to the commission and a duplicate thereof to the auditor of state. The treasurer of state shall be accountable for all prepaid tax receipts received and unsold by him. He may appoint agents for the sale of prepaid tax receipts at such places in the state as he may deem expedient, fix their compensation, payable from any appropriation to him for the purpose of administering the provisions of this act, and require of each such bond or other security as he may deem necessary. He shall deliver to each county treasurer such number and denomination of prepaid tax receipts as in his judgment may be required for sale in each county pursuant to this act, and may prescribe such regulations and forms of receipts and reports as he may deem necessary and advisable for the transaction of the business of selling such prepaid tax receipts. On the fifth day of

each month, the treasurer of state shall make a report in duplicate showing all sales of prepaid tax receipts made during the preceding month with the names of the purchasers, the aggregate face value purchased by each, and the office from which sold, and deliver one copy thereof to the commission and the other to the auditor of state. Each county treasurer shall pay on the first business day of each week to the treasurer of state all moneys arising from the sale of prepaid tax receipts by him during the preceding week, together with a report showing all sales, the names of the purchasers and the aggregate face value purchased by each, which the treasurer of state shall include in his monthly report. But such county treasurer shall retain for the use of the general fund of the county an amount equal to one-tenth of one per centum of the proceeds of such sales. All the powers and duties hereby imposed upon the county treasurer shall be deemed and considered to be within the scope of his office as county treasurer for all purposes.

Sec. 5546-8. Sale of prepaid tax receipts; redemption of unused or spoiled tax receipts.

SECTION 8. The treasurer of state, his agents, and the several county treasurers, shall sell prepaid tax receipts only to licensed vendors. All such prepaid tax receipts shall be sold and accounted for at a discount of not to exceed three per centum of the face value thereof, as a commission for handling and cancelling such prepaid tax receipts. The commission shall by regulation, certified to the treasurer of state, fix within the limitations herein prescribed the rate of discount applicable to the sale of prepaid tax receipts to such classes of licensed vendors as it may establish. The treasurer of state shall redeem and pay for any unused or spoiled tax receipts at the net value thereof, on written verified request made by any licensed vendor, his administrators, executors, successors or assignus. Such payments shall be made from an appropriation of the treasurer of state for the purpose of defraying the expenses of administering this act.

Sec. 5546-9. Licensed vendors to purchase receipts from treasurer of state or agents.

SECTION 9. Within five days after the issuance of his license, it shall be the duty of each such licensed vendor to purchase and have on hand at all times prepaid tax receipts in suitable denominations and in amount sufficient to supply the normal requirements of his business. A licensed vendor shall procure prepaid tax receipts only from the treasurer of state, or his agent authorized to sell such receipts, or the treasurer of the county in which he is licensed.

Sec. 5546-9a. Liability of vendor for failure to collect tax and cancel prepaid tax receipts; assessment against vendor; petition for reassessment; levy and sale; appeal.

SECTION 9a. In case any vendor fails to collect the tax herein imposed, or having collected the tax, fails to cancel the prepaid tax receipts in the manner prescribed by this act and by the regulations of the com-

mission, he shall be personally liable for such amount as he failed to collect, or for the amount of the prepaid tax receipts which he failed to cancel.

In such case the commission shall have power to make an assessment against such vendor based upon any information within its possession or that shall come into its possession. The commission shall give to the vendor written notice of such assessment, together with written notice of the time and place where the vendor may be heard on a petition by him for reassessment. Such notice may be served upon the vendor personally or by registered mail.

Any amount assessed by the commission under the provisions of this section, together with a penalty of fifteen per centum thereof shall be due and payable from the vendor to the treasurer of state fifteen days after the service upon the vendor of notice of such assessment and when paid shall be considered as revenue arising from the tax imposed by this act.

Any vendor, against whom an assessment is made by the commission under the provisions of this section, may petition for a reassessment thereof. Notice of intention to file such a petition or to appear and be heard shall be given to the commission prior to the time the assessment becomes due and payable. A petition for such a reassessment may be filed with the commission on or before the date designated in the notice of such assessment as the time when the vendor may be heard on a petition by him for reassessment. Each such hearing shall be held at the time and place designated in such notice to the vendor, but the commission shall have power to continue the same from time to time as may be necessary. Each such petition filed with the commission shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous. If no petition for reassessment is filed with the commission, the vendor may nevertheless appear at the hearing and present his objections orally.

All amounts assessed under this section, which are not paid to the treasurer of state by the vendor on the date when the same become due and payable, shall bear interest at the rate of twelve per centum per annum from and after such date until paid.

If any vendor against whom an assessment has been made by the commission, pursuant to this section, shall fail to give due notice of an intention to petition for reassessment, or to file a petition for reassessment or to appear for hearing, the assessment shall be considered final. The commission by its deputy or deputies authorized by it for such purpose, shall forthwith call at the place of business of such person and in case of refusal to pay such assessment and penalty, on demand shall levy on the moneys, goods and chattels or other personal property of such person wherever found in this state. Such levy shall take precedence of all liens, mortgages, conveyances, or encumbrances hereafter taken on such moneys, goods and chattels, or other personal property. No property of any such person liable to pay the tax, penalty and costs shall be exempt from such levy.

The commission shall give like notice of the time and sale of the personal property to be sold under this act as in the case of sale of personal property on execution. All provisions of law applicable to sales of personal property on execution shall be applicable to sales under this act,

except as herein otherwise provided; all moneys collected by the commission shall be paid into the state treasury.

The vendor may appeal from an assessment by the commission to the court of common pleas in the same manner and form as that provided in section 5611-2 of the General Code of Ohio.

Sec. 5546-10. Licenses required; application, when made; fee; "retail establishment".

SECTION 10. No person shall engage in making retail sales as herein defined, as a business, without having a license therefor, excepting that in the case of the dissolution of a partnership by death, the surviving partner or partners may operate under the license of the partnership for a period of sixty days, and the heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy, appointed by any competent authority, may operate under the license of the person so succeeded in possession by such heir, representative, receiver, or trustee in bankruptcy; and excepting further that two or more persons constituting a single "vendor" as defined by section 1 of this act may operate a single retail establishment under one license, and in such case neither the retirement of one or more such persons from business in such establishment, nor the entrance of one or more thereinto, under an existing arrangement, shall affect the license or require the issuance of a new license. Each applicant for such license shall, on or before the third Monday of December in the year 1934, make out and deliver to the auditor of each county, wherein he desires to engage in such business, upon a blank to be furnished by such auditor for that purpose, a statement showing the name of the applicant, each retail establishment in the county where the applicant's business is to be conducted, the kind or nature of such business and such other information as the commission may reasonably prescribe in the form of statement prescribed by it.

At the time of making such application, the applicant shall pay into the county treasury a license fee in the sum of one dollar for each retail establishment in the county where he proposes to carry on such business. Upon receipt of such application and exhibition of the county treasurer's receipt, showing the payment of such fee or fees, the county auditor shall issue to the applicant a license for each retail establishment designated in the application, authorizing the applicant to engage in business at such retail establishment. This license shall continue valid until surrendered by the vendor or cancelled, for cause, by the commission. The form of such license shall be prescribed by the commission. The fees thus collected shall be credited to the general fund of the county.

In the case of a vendor who has no fixed place of business and sells from one or more vehicles, each such vehicle intended to be used within a county shall constitute a "retail establishment" for the purpose of this section. In the case of a vendor who has no fixed place of business and does not sell from a vehicle the application for license shall nevertheless set forth a place in the county to which any notice or other communication authorized by this act may be sent, and the place so designated shall constitute a "retail establishment" for the purpose of this section.

Sec. 5546-11. List of licensed vendors; duties of county auditor.

SECTION 11. On the fourth Monday in December, 1934, each county auditor shall make in triplicate a list showing the names of all vendors licensed in his county pursuant to this act, and such other information as to each, available from the records in his office, as the commission may prescribe, and shall immediately certify one of such lists to the commission, one to the treasurer of state, and one to the county treasurer of the county. Thereafter, on the first business day of each week, the county auditor shall make and certify like lists showing such information with respect to licenses issued during the preceding week. The commission shall keep an alphabetical index of such licensees so certified to it.

Sec. 5546-12. Records of sales open to inspection of commission.

SECTION 12. Each vendor shall keep such records of sales together with invoices, bills of lading, retained parts of cancelled prepaid tax receipts, and such other pertinent documents, in such form as the commission may by regulation require. Such records and other documents shall be open at any time during business hours to the inspection of the commission and shall be preserved for a period of three years, unless the commission shall in writing consent to their destruction within that period, or by order require that they be kept longer.

Sec. 5546-13. Penalty for issuing or circulating illegal prepaid tax receipts.

SECTION 13. Whoever falsely or fraudulently makes, forges, alters, or counterfeits any prepaid tax receipt prescribed by the commission under the provisions of this act, or knowingly and wilfully utters, publishes, passes, or tenders as true, any such false, altered, forged or counterfeited receipt shall be imprisoned in the penitentiary for a term of not less than one year or more than ten years.

Sec. 5546-14. Failure to secure license a misdemeanor; penalty.

SECTION 14. Whoever engages in the business of selling tangible personal property at retail, or sells tangible personal property at retail incidental to any other regularly conducted business, as such sales are herein defined, on or after the fourth Monday in December, 1934, and to and including the thirty-first day of December, 1935, without having a license therefor, as required by this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars.

Sec. 5546-15. Failure to collect tax, etc., a misdemeanor; penalty.

SECTION 15. Whoever being a vendor, as defined in this act, fails, neglects, or refuses to collect the full and exact tax as required by this act, or fails, neglects, or refuses to comply with the provisions of this act and the rules and regulations of the commission with respect to the cancellation of prepaid tax receipts, or excepting as expressly authorized pursuant to this act, refunds, remits or rebates to a consumer, either directly or

indirectly and by whatsoever means, all or any part of the tax levied by this act, or makes in any form of advertising, verbal or otherwise, any statements which might infer that he is absorbing the tax or paying the tax for the consumer by an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, and upon conviction for a second or other subsequent offense, shall, if a corporation, be fined not less than one hundred dollars nor more than five hundred dollars, or if an individual or a member of a partnership, firm or association, be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail, or a workhouse, or other like penal or correctional institution not more than sixty days, or both.

Sec. 5546-16. Penalty for other violations.

SECTION 16. Whoever violates any provision of this act or any lawful rule or regulation promulgated by the commission under authority of this act for the violation of which no penalty is provided by law, shall be fined not less than twenty-five dollars nor more than one hundred dollars.

Sec. 5546-17. Revocation of license; procedure.

SECTION 17. Upon notice and hearing the commission may revoke any retail vendor's license for wilful violation of any provision of this act. The commission shall first notify the licensee in writing, specifying the violations charged, and fixing the time, not less than five days after the date of service of such notice, and the place at which such licensee shall appear before the commission to show cause why his license should not be revoked. The commission shall, at the time and place so specified, accord to the licensee a hearing in person and by counsel. The licensee shall be entitled to offer evidence and to compel the attendance of witnesses and the production of books, papers and records. The commission, for the purpose of such hearing, shall have and exercise the powers in it vested by sections 1465-6, 1465-17 and 1465-21 of the General Code, and all the appropriate provisions of said sections and of sections 1465-22, 1465-23, 1465-25, 1465-26 and 1465-27 of the General Code shall apply to the commission, its members and agents and to the court of common pleas for such purpose. A certified copy of the order revoking such license shall be transmitted to the auditor of the county in which the license was issued. An appeal may be taken from the action of the commission in revoking a license to the common pleas court of the county in which the place of business of the licensee is located, by filing a petition therefor with such court within ten days from the date of the commission's order against such commission, officially, as defendant, alleging therein the issuance of such license, its revocation, and praying for a reversal of the official action complained of. Upon service of summons upon any member of said commission, returnable within three days from its date, but otherwise made as in civil actions, said commission shall, within one week from such return day, file an answer, in which it shall allege, by way of defense, the grounds previously assigned in its notice to such licensee, and such other grounds as shall, in the meantime, accrue or be discovered.

All allegations of the answer shall be deemed to stand denied without further pleading and the burden shall rest upon the plaintiff to disprove the grounds assigned and specified in the official action complained of. The hearing upon such appeal shall be entitled to be advanced out of its order on the docket. The judgment of the common pleas court may be reviewed upon proceedings in error in the court of appeals. Such court of common pleas and the court of appeals may suspend any order revoking such license pending the hearing in such courts.

Sec. 5546-18. Distribution of revenue; "local government fund"; "subdivision" and term "essential local governmental purposes" defined.

SECTION 18. The moneys received into the state treasury under the provisions of this act shall be credited to funds therein as follows:

To the county poor relief excise fund, the amount of four million dollars in the year 1935, together with such additional amounts for such year as the general assembly may set apart from such moneys for the use of said fund.

To the general revenue fund, an aggregate amount sufficient to cover any appropriations made by the general assembly for said year to defray the expenses of administering this act, together with such additional amounts for any year as the general assembly may set apart from such moneys for the use of said fund. To the state public school fund to be distributed according to law, sixty per centum of the remainder of such moneys so received. All remaining funds existing after the foregoing deductions shall constitute a fund, hereby created, which shall be known as the "local government fund", the revenues accruing to which shall, when appropriated, be allocated and distributed to and among the treasuries of subdivisions of this state in the manner provided by law, for the purpose of supplementing the local revenues from taxes on property according to value and from other taxes and income available for essential local governmental purposes.

Prior to the first business day of each month one-twelfth of the annual amount required by or pursuant to this section to be credited to each fund in the state treasury herein mentioned, other than the local government fund, shall be credited to each such fund.

As used in this act "subdivision" shall mean any county, municipal corporation, park district or township in this state and the term "essential local governmental purposes" includes all functions which any subdivision is required by general law to exercise or discharge, including like functions which are exercised under a charter adopted pursuant to the constitution of this state.

Sec. 5546-19. Allocation of local government fund in 1935.

SECTION 19. In the year 1935 the local government fund shall be allocated among the local subdivisions in this state in the following manner and subject to the following conditions:

On the first business day of each month the auditor of state shall draw a voucher and warrant payable to the county treasurer of each county for

an amount equal to that proportion of the total amount standing to the credit of the local government fund, after the amounts required by this act to be credited to other funds have been so credited, which is represented by the ratio which the average of the real, public utility and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county during the previous five years, bears to the average of the aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state during the previous five years, respectively.

Moneys received into the treasury of a county in the year 1935 from the local government fund in the state treasury shall be credited to the undivided local government fund in the treasury of the county. On or before the tenth day of each month, the county treasurer shall distribute and pay the undivided local government fund in the county treasury to the subdivisions therein in the respective amounts allowed by the budget commission to each.

Sec. 5546-20. Duties of county budget commission; certification of tax commission; duties of county auditors and county treasurers.

SECTION 20. Within ten days after this act shall take effect, the budget commission of each county shall complete its work with respect to tax levies and tax budgets for the year 1935 as required by section 5625-25 of the General Code, including the making of such revisions as may be necessary on account of the distribution to school districts of the additional amount credited to the state public school fund pursuant to this and other acts of this present session of the general assembly, or of the approval of the proposition of levying a tax by the electors of any subdivision or subdivisions in a county, and shall certify its action as therein required; excepting that unless prior to the effective date of this act, the certification of such action to the taxing authority of each subdivision or taxing unit has been made in the form required by section 5625-26 of the General Code, such certification shall omit the matters and things referred to in said last named section, which such matters and things shall in any event be included and attached to a supplemental certification which the budget commission shall make to the taxing authority of each subdivision forthwith upon the completion of its work at its special meeting in the year 1935, herein required.

Within ten days after this act shall take effect, the tax commission of Ohio shall cause to be made and shall certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to the county in the year 1935. Immediately upon receiving the commission's certificate, each county auditor shall convene the budget commission of his county in special session for the purpose of reviewing its work of determining tax rates pursuant to the first paragraph of this section if such work has been theretofore completed without such revision, and of determining the amounts to be distributed in the year 1935 from the local government fund in the county treasury. Notice of the time and place of such meeting shall be given by mail to the fiscal officer of each subdivision in whole or in part within the county.

The county auditor shall lay before the budget commission, when so convened, the certificate of the tax commission, the annual tax budgets and estimates and the record showing the action of the budget commission in its last preceding regular session. The budget commission, after affording to each subdivision an opportunity to be heard, and considering all the facts and information laid before it by the county auditor, shall determine the amount needed by each subdivision for current operating expenses for the year 1935, in addition to revenues available from all other sources, in order to enable each to maintain its respective essential local governmental purposes as defined in this act for said year.

The budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions in which need for additional revenues has been found in proportion to the amount of the needs of each as so determined. On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government fund and certify such percentage shares to the county treasurer, who shall be governed thereby in making distribution of the moneys in the undivided local government fund in the year 1935, pursuant to this act.

All moneys received into the treasury of a subdivision in the year 1935 from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision, and shall not be appropriated or expended, by transfer or otherwise, for any other purpose.

If any county auditor, or county treasurer, fails to maintain the records required by this act, or by the regulations issued by the commission or the treasurer of state, pursuant to this act, the funds allocated to that county shall be withheld until such time as the county auditor or county treasurer, or both shall have complied with the provisions of this act and the regulations issued pursuant thereto.

Sec. 5546-21. Appeal.

SECTION 21. The action of the budget commission in the year 1935, under the preceding section of this act, may be appealed to the tax commission of Ohio in the manner and with the effect provided in section 5625-28 of the General Code.

Appropriations.

SECTION 22. The sums hereinafter set forth for the purposes specified are hereby set apart for the use of the general revenue fund out of the moneys received into the state treasury under the provisions of this act and appropriated. The sums hereinafter named shall not be expended to pay liabilities incurred subsequent to June 30, 1935.

Appropriations herein made shall be and remain in full force and effect for a period of two years, commencing with the dates on which such appropriations shall take effect, for the purpose of drawing money from the state treasury in payment of liabilities lawfully incurred hereunder, and at the expiration of such period of two years, and not before, the

unincumbered balances of the moneys hereby appropriated shall lapse into the general revenue fund.

DEPARTMENT OF FINANCE, DIVISION OF TAX COMMISSION OF OHIO

Personal service..... \$375,000.00
Maintenance 250,000.00

AUDITOR OF STATE

Personal service..... \$30,000.00
Supplies and equipment..... 8,000.00

TREASURER OF STATE

Personal service..... \$75,000.00
Supplies and equipment..... 30,000.00
Refunds 250,000.00

ATTORNEY GENERAL

Personal service..... \$7,500.00

STATE RELIEF COMMISSION

State emergency relief fund..... \$6,000,000.00

DEPARTMENT OF PUBLIC WELFARE, DIVISION OF AID FOR THE AGED

Pensions \$6,000,000.00

Such appropriation may be expended for direct relief and for work relief as defined in amended senate bill No. 4, passed March 31, 1932 and approved April 5, 1932, as amended by house bill No. 7, passed August 23, 1933 and approved August 25, 1933, and as further amended by house bill No. 39 passed February 16, 1934 and approved February 21, 1934.

SECTION 23. Sections 6212-49a, 6212-49b of the General Code are hereby amended to read as follows:

Definitions.

Sec. 6212-49a. As used in sections 6212-49a to 6212-49t, both inclusive, of the General Code.

"Beverages" *** means beer as defined by section 6212-63 of the General Code as amended, and after December 31, 1935, shall include also all beverages whatsoever excepting milk and cream and proprietary medicines; and excepting also all intoxicating liquor.

"Commission" means the tax commission of Ohio.

"Person" includes firms and corporations.

"Wholesale dealer" includes only those persons who sell bottled beverages to retail dealers or for purposes of resale only.

"Retail dealer" includes every person other than wholesale dealer or a manufacturer engaged in the business of selling bottled beverages in this state, irrespective of quantity or amount or number of sales thereof.

"Sales" includes exchange, barter, gift, offer for sale and distribution and excludes transactions in interstate or foreign commerce.

Tax on beverages in sealed bottles; purpose; rate; exception.

Sec. 6212-49b. In addition to the tax on the sale or distribution of beer, imposed by section 6212-49 of the General Code of Ohio, and for the purpose of providing revenue for emergency poor relief and of the carrying out of the other purposes and provisions of the act entitled "An act to authorize the issue of bonds by counties and cities and the expenditure of public money for the relief of the poor and unemployed, and the investment of public funds in such bonds, to levy an excise tax on certain public utilities, and to declare an emergency," passed March 31, 1932, and approved April 5, 1932, known as Amended Senate Bill No. 4, and to defray the expenses of administering sections 6212-49a to 6212-49t, both inclusive, of the General Code as hereinafter provided, a tax is hereby levied upon the sale within this state of beverages in sealed bottles, at the rate of one-half cent on each six ounces of liquid content or fractional part thereof. Only one sale of the same article shall be used in computing the amount of tax due hereunder. The tax hereby imposed after December 31, 1935, shall not apply to the sale or distribution of beverages (other than beer) in sealed bottles retailing for five cents or less.

Sec. 5546-22. Repeal; effect of amendments or suspension of certain sections.

SECTION 24. That existing sections 6212-49a and 6212-49b of the General Code, are hereby repealed, and sections 5543-1 to 5543-20, both inclusive, 6212-49q, 6212-49r, 6212-49s and 6212-49t of the General Code are hereby suspended January 1, 1935, until and including December 31, 1935. Said amendments or suspensions shall not affect the right to refund for unused stamps purchased under any of said sections which right shall extend to refunds on account of stamps affixed to articles unsold at the end of business on December 31, 1935; and the moneys appropriated to the treasurer of state under section 22 of this act for the purpose of making refunds may be expended for the purpose of making refunds authorized by this section.

Sec. 5546-23. Saving clause.

SECTION 25. If any provision of this act shall be held unconstitutional, such holding shall not affect any of the other provisions of this

act, not inseparably connected in meaning and effect with such part so held unconstitutional.

FRANK CAVE,
Speaker of the House of Representatives.

CHARLES SAWYER,
President of the Senate.

Passed December 6, 1934.

Approved December 13, 1934.

GEORGE WHITE,
Governor.

The sectional numbers on the margin hereof are designated as provided by law.

JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 14th day of December, A. D. 1934.

GEORGE S. MYERS,
Secretary of State.

File No. 65.

(House Bill No. 43)

AN ACT

To increase the rates of excise taxation imposed on the gross receipts and gross earnings of certain public utilities, and to apply the increased revenues resulting therefrom to the general fund of counties for county statutory relief and welfare purposes and for such purposes to amend sections 5474, 5475, 5483, 5485, 5486, 5487 and 5491 of the General Code and to enact supplemental section 5487-1 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5474, 5475, 5483, 5485, 5486, 5487 and 5491 of the General Code are hereby amended and supplemental section 5487-1 enacted to read as follows:

Contents of statement.

Sec. 5474. In the case of all such public utilities except railroad, street, suburban and interurban railroad companies and express, telegraph and telephone companies such statement shall also contain the entire gross receipts of the company, *** actually received *** from whatever source derived, for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies,

21 L. A.

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED
(EXCEPTING APPROPRIATION ACTS)

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

NINETIETH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JANUARY 2, 1933 to JULY 10, 1933,
(both inclusive)

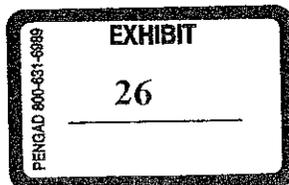
Also the Times for Holding the Courts of Appeals,
and Courts of Common Pleas in Ohio,
A. D. 1933.

VOLUME CXV



Columbus, Ohio
THE F. J. HEER PRINTING CO.
1933
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0305



Repeal.

SECTION 2. That original and existing sections 5527 and 5541 of the General Code be, and the same are hereby repealed; Provided, however, that all of the provisions of said sections of the General Code shall remain in force for the reporting, assessment and collection of all taxes imposed thereby and for the assessment, imposition and collection of all interest, fines and penalties which have accrued or may accrue in relation to said taxes.

FRANK CAVE,
Speaker of the House of Representatives.

CHARLES SAWYER,
President of the Senate.

Passed June 30, 1933.

Effective without the signature of
the Governor due to lapse of time.

The sectional numbers herein are in conformity to the General Code.

JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on
the 26th day of July, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 208.

(Amended Substitute Senate Bill No. 354)

AN ACT

Providing for the levy and collection of a tax on the use, distribution
or sale of liquid fuel within this state.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 5542-1. Definitions.

SECTION I. As used in this act:

"Liquid fuel" includes any volatile or inflammable liquid by whatever name such liquid may be known or sold, which is used or usable, either alone or when mixed or compounded, for the purposes of generating light, heat or power, or for any purpose whatsoever; and without prejudice to the generality of said description, includes gasoline, kerosene and all other like substances, but does not include tar or petroleum residue oils from which gasoline and kerosene have been extracted.

"Commission" means the tax commission of Ohio.

"Person" includes natural persons, and partnerships, firms, associations, and corporations.

"Dealer" shall mean and include any person, including the state of Ohio or any political subdivision thereof (1) importing or causing to be imported into the state of Ohio any liquid fuel for use, distribution or sale and delivery in Ohio, or (2) producing, refining, preparing, distilling, manufacturing or compounding liquid fuel in the state of Ohio for use, distribution or sale and delivery in Ohio. The United States government or any of its agencies shall in no event, however, be deemed a dealer.

Liquid fuel produced, refined, prepared, distilled, manufactured or compounded at any refinery in the state of Ohio by any person shall be deemed to be "received" by such person when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at the refinery where the same shall be produced, refined, prepared, distilled, manufactured or compounded, but not before;

Liquid fuel delivered by boat at a marine terminal for storage or delivered by pipe line at a pipe line terminal or tank farm for storage, shall be deemed to have been "received" when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at such respective marine or pipe line terminal or tank farm, but not before;

Liquid fuel purchased or otherwise acquired in a tank car by any person shall be deemed to be "received" within the state of Ohio by such person at the time when such tank car shall be unloaded in the state of Ohio, whether the tank car shall be caused to be unloaded by the person purchasing or otherwise acquiring the same or by any other person to whom such tank car was sold or otherwise transferred, but not before; provided, however, that liquid fuel delivered in a tank car to any person for export by such person which shall be unloaded from such tank car in the state of Ohio and placed in any tank from which no liquid fuel whatsoever is withdrawn except for tank car shipments in interstate commerce, shall not be deemed to have been "received" by such person;

Liquid fuel imported into the state of Ohio, other than by boat for storage at marine terminals, or by pipe line for storage at pipe line terminals or tank farms, or by tank car, shall be deemed to be "received" in the state of Ohio by the importer thereof when the same shall be withdrawn from the containers in which it was imported.

"Duly licensed dealer" shall mean and include any dealer possessing an unrevoked license issued by the commission pursuant to section 5528 of the General Code, or as provided in this act.

Sec. 5542-2. Purpose of tax; rate.

SECTION 2. For the purpose of affording the advantages of a free education to the youth of the state and to defray the expenses of administering this act, an excise tax is hereby imposed on all dealers in liquid

fuel upon the use, distribution or sale within this state by them of liquid fuel on and after the day of passage of this act, and to and including the thirty-first day of December, 1934, at the rate of one cent (1c) per gallon so used, distributed or sold, to be computed in the manner hereinafter set forth; provided, however, that no tax is hereby imposed upon or with respect to the following transactions:

(a) The sale of liquid fuel by a duly licensed dealer in tank car or cargo lots to another duly licensed dealer for delivery by tank car or boat; or

(b) The exportation or sale for exportation of liquid fuel from the state of Ohio to any other state or to any foreign country; or

(c) The sale of liquid fuel to the United States government or any of its agencies; or

(d) The sale of liquid fuel which is in the process of transportation in foreign or interstate commerce, except in so far as the same may be taxable under the provisions of the constitution and statutes of the United States.

After the excise tax herein provided for on the sale, distribution or use of any liquid fuel has been paid by the dealer, such liquid fuel may thereafter be used or sold or resold by any person having lawful title to the same, without incurring liability for such tax.

Sec. 5542-3. License required; application; bond; refusal to issue license; when; fee; certificate issued, when; record of applications and licensed dealers.

SECTION 3. It shall be unlawful for any dealer to receive, use, sell or distribute any liquid fuel or to engage in business within this state unless such dealer is the holder of an unrevoked license issued by the tax commission of Ohio pursuant to section 5528 of the General Code to engage in the business of receiving, using, selling or distributing motor vehicle fuel, or unless such dealer is the holder of an unrevoked license issued by the commission pursuant to this act. To procure a license pursuant to this act every dealer not licensed pursuant to said section 5528 shall file with the commission an application upon oath and in such form as the commission may prescribe, setting forth:

(a) The name under which the dealer will transact any business within the state of Ohio;

(b) The location with street number address of its principal office or place of business within this state;

(c) The name and address of the owner or the names and addresses of the partners, if such dealer is a partnership, or the names and addresses of the principal officers, if such dealer is a corporation or an association;

(d) If such dealer is a corporation organized under the laws of another state, territory or country, a certified copy of the certificate or license issued by the secretary of state of Ohio showing that such corporation is authorized to transact business in the state of Ohio.

Upon the filing of an application for a license and concurrently therewith a bond of the character stipulated, and in the amount provided for in section 4 of this act, shall be filed with the commission. No license shall issue upon any application unless accompanied by such a bond.

In the event that any application for a license certificate to transact business as a dealer in the state of Ohio shall be filed by any person whose license or registration as a motor vehicle fuel dealer or as a dealer under this act shall at any time theretofore have been canceled for cause by the commission, or in case said commission shall be of the opinion that such application is not filed in good faith or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause by said commission, then and in any of said events the commission after a hearing, of which the applicant shall have been given five (5) days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, shall have and is hereby given the right and authority to refuse to issue to such person a license certificate to transact business as a dealer in the state of Ohio.

Upon the filing of the application for a license, a filing fee of five dollars (\$5.00) shall be paid to the commission.

The application in proper form having been accepted for filing, the filing fee paid and the bond having been accepted and approved, the commission shall issue to such dealer a license certificate to transact business as a dealer in the state of Ohio, subject to cancellation of such license as provided by law.

Persons other than "dealers" purchasing or otherwise acquiring liquid fuel in tank car or cargo lots for sale, distribution or use within the state of Ohio may also be licensed as above set forth upon compliance with the provisions of this section, and thereupon shall be deemed to be the "dealer" with respect to any such liquid fuel received while such license remains unrevoked for all the purposes of this act.

The commission shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed dealers.

Sec. 5542-4. Additional or substitute bond.

SECTION 4. Every dealer who has heretofore filed with the commission a bond conditioned as required by section 5528-1 of the General Code shall within twenty days after this act becomes effective either;

- (a) File an additional bond in the amount of two thousand dollars on a form to be approved and with a surety or sureties satisfactory to the commission and upon which such dealer shall be the principal obligor and the state of Ohio shall be the obligee, conditioned upon the prompt filing of true reports under this act and the payment by such dealer to the treasurer of state of Ohio of any and all liquid fuel excise taxes which are now or which hereafter may be levied or imposed by the state of Ohio together with any and all penalties and/or interest thereon; or
- (b) File a substitute bond in the amount of five thousand dollars, conforming in all respects to the requirements of section 5528-1 of the

General Code, and in addition thereto conditioned as required in subparagraph (a) of this section.

Every dealer who has not heretofore filed such a bond shall file a bond in the amount and conditioned as prescribed by paragraph (a) of this section.

The commission shall have like powers and duties, as regards such bond or such additional or substitute bond, the sufficiency or acceptability of the surety thereon, the adjustment of its amount, the release and discharge of sureties thereon, the requirement of new bonds and the cancellation of license certificates as are provided by section 5528-1 of the General Code with respect to the bond thereby required; and as regards the cancellation of licenses, such power shall extend to the cancellation of the license issued pursuant to section 5528 of the General Code, or pursuant to this act.

Sec. 5542-5. Power of commission to revoke or cancel license; cancellation of bond.

SECTION 5. If a dealer shall at any time file a false monthly report of the data or information required under section 6 of this act or shall fail, refuse or neglect to file its monthly report as required by said section 6 of this act, or to pay the full amount of the tax as required by this act, the commission may forthwith revoke the license of said dealer, whether issued pursuant to this act or pursuant to section 5528 of the General Code, and notify such dealer in writing of such revocation by registered mail to the last known address of said dealer appearing on the files of the commission.

The commission is hereby given the power to cancel any license hitherto or hereafter issued to any dealer under this act, such cancellation to become effective sixty (60) days from the date of receipt of the written request of such dealer for cancellation thereof, or said commission may cancel the license of any dealer upon investigation and sixty (60) days' notice mailed to the last known address of such dealer if it shall ascertain and find that the person to whom such license has been issued is no longer engaged in the receipt, use or sale of liquid fuel as a dealer within the meaning of this act, and has not been so engaged for the period of six (6) months prior to such cancellation. But no such license shall be cancelled upon the request of any dealer until and unless the dealer shall, prior to the date of such cancellation, have paid to the state of Ohio all excise taxes payable under this act, together with any and all penalties and fines accruing by reason of any failure on the part of said dealer to make accurate reports of receipts of liquid fuel and/or to pay said taxes and/or penalties.

In the event that the license of any dealer shall be cancelled by the tax commission as hereinbefore in this section provided, and in the further event that said dealer shall have paid to the state of Ohio all excise taxes due and payable by him under this act upon the receipt, sale or use of liquid fuel, together with any and all penalties accruing by reason of any failure on the part of said dealer to make accurate reports or to

pay said tax and/or penalties; then the commission shall cancel and surrender the bond theretofore filed by said dealer.

Sec. 5542-6. Dealer to file monthly report; contents.

SECTION 6. For the purpose of determining the amount of the tax herein imposed, each dealer shall, not later than the twentieth day of each calendar month, file with the tax commission of Ohio on forms prescribed by said commission, monthly reports sworn to by the dealer which shall include the following:

(a) An itemized statement of the number of gallons of all liquid fuel received during the next preceding calendar month by such dealer, which has been produced, refined, prepared, distilled, manufactured or compounded by such dealer in the state of Ohio;

(b) An itemized statement of the number of gallons of all liquid fuel received by such dealer in the state of Ohio from any source whatsoever during the next preceding calendar month as shown by the shipper's invoices thereof, other than liquid fuel falling within the provisions of (a) above, together with a statement showing the date of receipt of such liquid fuel; the name of the person from whom purchased and/or received; the date of receipt of each shipment of liquid fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of each tank car, its initials, date of receipt, and the number of gallons contained in each car, if shipped by rail; or the name and owner of the boat, ship, barge or vessel, if shipped by water;

(c) An itemized statement of the number of gallons, if any, of liquid fuel which such dealer has during the preceding calendar month (1) exported or sold for exportation from the state of Ohio to any other state or to any foreign country, (2) sold to the United States government or any of its agencies, (3) sold for delivery in tank car or cargo lots to duly licensed dealers. Such statement shall give a record of all tank car or cargo sales of liquid fuel, giving the date of shipment, and the initials of and number of gallons contained in each tank car, if shipped by rail, and the name and owner of the boat, barge or vessel, and the number of gallons contained therein, if shipped by water, and shall set forth the name of the person to whom sold, point of shipment and point of delivery.

(d) Such other information incidental to the enforcing of this act as the commission may require.

In the case of a dealer who is required to file monthly reports showing the receipt and disposition of motor vehicle fuel and/or kerosene pursuant to section 5529 of the General Code, the report required by this section may be combined with or made as a supplement to the report required by said section 5529 of the General Code in such form as the commission may prescribe.

Sec. 5542-7. Duplicate report filed with treasurer; payment of tax, when; computation of tax.

SECTION 7. At the time of the filing of each monthly report with the commission as required by section 5529 of the General Code and/or

by section 6 of this act, each dealer in liquid fuel shall file with the treasurer of state an executed duplicate thereof, and, not later than the last day of the month next succeeding the month for which the report is made, shall pay to the treasurer of state the full amount of the liquid fuel excise tax for the next preceding calendar month, which shall be computed as follows:

From the total number of gallons of liquid fuel received by the dealer within the state of Ohio during the next preceding calendar month, shall be made the following deductions:

(a) The total number of gallons of liquid fuel received by the dealer within the state of Ohio and sold or otherwise disposed of during the next preceding calendar month as set forth in sub-paragraphs (a), (b), (c) and/or (d) of section 2 of this act; and

(b) That number of gallons of liquid fuel which shall be equal to three per cent of the total number of gallons of liquid fuel received by the dealer within the state of Ohio during the next preceding calendar month less the total number of gallons deducted under sub-paragraph (a) of this section, this deduction being allowed to cover evaporation, shrinkage and unaccounted for losses.

The number of gallons remaining after the deductions hereinabove set forth have been made shall be multiplied by one cent, and the resulting figure shall be the amount of the liquid fuel tax for the next preceding calendar month.

Sec. 5542-8. Statements and reports; contents; penalty for failure to make report, etc.

SECTION 8. The statement and reports required by section 5529-2 of the General Code to be filed by a person purchasing or otherwise acquiring motor vehicle fuel and/or kerosene in tank car or cargo lots and who is not required by the provisions of section 5528 of the General Code to be licensed as a dealer in motor vehicle fuel, shall, in addition to the matters and things therein mentioned, contain like information with respect to purchases and other acquisition, and sales or other disposition of liquid fuel, other than motor vehicle fuel and/or kerosene, and failure to submit in such monthly report the data required by this section, shall be deemed an offense punishable as provided in said section 5529-2 of the General Code. Every person purchasing or otherwise acquiring liquid fuel other than motor vehicle fuel and/or kerosene in tank car or cargo lots and selling or otherwise disposing of the same for delivery in Ohio, but who is not required by the provisions of this act to be licensed pursuant to this act as a dealer in liquid fuel, shall file a statement setting forth the information required by section 5529-2 of the General Code and on forms prescribed by the tax commission of Ohio shall, on or before the 15th day of each month, report to the commission all purchases or other acquisition and sales or other disposition of liquid fuel during the next preceding calendar month, giving a record of each tank car delivered to a point within Ohio and furnishing any other additional information the commission may require relative to such liquid fuel. Such report shall set forth

the detailed information required by section 5529-2 of the General Code as to motor vehicle fuel and/or kerosene purchased and shipped in tank car or cargo lots.

Any person required by this section to make monthly reports who shall fail to submit any monthly report to the commission by the fifteenth day of the month succeeding that for which said report is required, or who shall fail to submit in such monthly report the data required by this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined an amount not greater than one hundred dollars for the first offense and for each subsequent offense an amount not less than one hundred dollars nor more than one thousand dollars.

Sec. 5542-9. Report of deliveries by public carriers; contents.

SECTION 9. Every railroad company, every street, suburban or inter-urban railroad company, every pipe line company and every water transportation company, transporting liquid fuel, either in interstate or in intrastate commerce, to points within Ohio, and every person transporting liquid fuel by whatsoever manner to a point in Ohio, shall report all deliveries of liquid fuel so made to points within Ohio to the tax commission of Ohio on forms prescribed by said commission.

Such reports shall cover monthly periods, shall be submitted within thirty days after the close of the month covered by the report, shall show the name and address of the person to whom the deliveries of liquid fuel have actually and in fact been made, the name and address of the originally named consignee, if liquid fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each car, if shipped by rail, the quantity of each shipment and delivery in gallons, the date delivered, the name of the person to whom delivered, the point of shipment, the point of delivery, the name of the boat or barge if delivered by water and if delivered by other means, the manner in which such delivery is made. The report hereby required may be combined with the report required under section 5529-3 of the General Code.

Sec. 5542-10. Commission to determine amount of liquid fuel received by dealer, when.

SECTION 10. Whenever any dealer shall neglect or refuse to make and file any report for any calendar month as required by this act, the commission shall determine, from any information obtainable in its office or elsewhere, the number of gallons of liquid fuel received within the state of Ohio by such dealer during said month, less any deductions allowed by this act.

Sec. 5542-11. Statement by commission; computation of tax and penalties.

SECTION 11. On the twenty-seventh day of each calendar month, the tax commission shall transmit to the auditor of state a statement showing:

(a) The names of all dealers who have filed reports required by section 5529 of the General Code and/or by section 6 of this act during the same calendar month, and the names of any other dealers who have incurred tax liability under this act;

(b) The number of gallons of liquid fuel with respect to which the liquid fuel tax is imposed, as shown by the reports of such dealers or as determined by investigation of the commission;

(c) The names of any dealers whom the commission finds to have reported improperly the number of gallons of liquid fuel with respect to which the liquid fuel tax is imposed, together with the number of gallons of liquid fuel found by the commission to have been omitted, if any;

(d) Such other information as the commission may deem necessary.

Upon receipt of such statement from the commission, the auditor of state shall compute the tax due from each dealer at the rate as prescribed by law, together with any penalties which have been incurred under this act. A penalty of fifteen per cent shall be added to the tax so computed on the basis of items found by the commission to have been improperly reported and/or omitted from the reports of any dealer. Between the twenty-seventh day and the last day of said calendar month, the auditor of state shall transmit to the treasurer of state a copy of such statement showing the amounts due from each dealer.

The treasurer of state shall send to each dealer against whom findings have been made by the commission as herein provided, a notice of the amounts due on such findings.

Sec. 5542-12. Refund of tax when liquid fuel lost or destroyed; procedure.

SECTION 12. A refund shall be made to any dealer for the liquid fuel tax paid on any liquid fuel which shall be lost or destroyed through theft, leakage, fire, explosion, lightning, flood, tornado, wind storm, or other casualty. No refund shall be authorized or ordered under this section except upon notice to the commission within ten (10) days from the date of such loss or destruction or the discovery thereof and upon presentation within sixty (60) days thereafter of affidavit sworn to by the claimant to the commission setting forth in full the circumstances of the loss, and upon presentation of supporting evidence satisfactory to said commission. The commission shall determine the amount of the refund due and shall certify such amount to the auditor of state. The auditor of state shall thereupon draw his warrant for such certified amount on the treasurer of state in favor of the dealer claiming such refund. Such refund shall be paid by the treasurer of state from the rotary fund hereinafter provided for.

Sec. 5542-13. Failure of dealer to file report or pay tax; penalty; exception.

SECTION 13. Whenever any dealer shall fail to submit his monthly report to the tax commission of Ohio by the twentieth day of the succeeding month for which said report is required, or when such dealer

fails to submit the data required by section 6 of this act in such monthly report, or when such dealer shall fail to pay to the treasurer of state the amount of liquid fuel excise taxes due to the state of Ohio when the same shall be payable, the auditor of state shall add a penalty of fifteen per cent to the amount of the tax due, and said penalty of fifteen per cent shall immediately accrue and thereafter said tax and penalty shall bear interest at the rate of one per cent per month until the same is paid. Provided, that if the commission shall find and certify to the auditor of state that such failure to submit monthly reports, or data contained therein or failure to pay said taxes was due to justifiable cause, said penalty and interest shall be waived by the auditor of state.

Sec. 5542-14. Refund when report of liquid fuel sold exceeds amount received.

SECTION 14. Whenever the commission shall determine, upon the filing of a monthly report by the dealer, that during the next preceding calendar month the amount of liquid fuel which such dealer has sold or otherwise disposed of as set forth in sub-paragraphs (a), (b), (c) and/or (d) of section 2 of this act exceeds the amount of liquid fuel received by the dealer within the state of Ohio during the next preceding calendar month, the commission shall thereupon compute the number of gallons of liquid fuel by which the liquid fuel so sold or disposed of, as set forth in sub-paragraphs (a), (b), (c) and/or (d) of section 2 of this act during the next preceding calendar month exceeds the total number of gallons of liquid fuel received by the dealer within the state of Ohio during the same calendar month; and said dealer shall be entitled to a refund of one cent per gallon upon the excess gallonage so computed, provided, however, that said dealer shall not be in default in the payment of any liquid fuel excise taxes and/or penalties. The commission shall thereupon certify the amount of the refund to the auditor of state. The auditor of state shall thereupon draw a warrant for such certified amount on the treasurer of state in favor of the dealer entitled to such refund. Such refund shall be forthwith paid by the treasurer of state from the rotary fund hereinafter provided for.

Sec. 5542-15. Powers of commission.

SECTION 15. For the purpose of administering and enforcing the provisions of this act, the commission or its duly authorized agent, shall have all the powers conferred by section 5535 of the General Code in the case of enforcement of the motor vehicle fuel laws of Ohio, subject to the limitations therein prescribed.

Sec. 5542-16. Refusal to make statement; false statements, etc.; penalty.

SECTION 16. Any person who shall refuse or neglect to make any statement or return required by this act or who shall knowingly make any false statement in a report to the commission, or in connection with an application for refund of any tax, or who shall knowingly col-

lect or attempt to collect or cause to be repaid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same, or who shall engage in business in the state of Ohio as a dealer without being the holder of an unrevoked license to engage in such business, or to engage in the business of a dealer in motor vehicle fuel, or who shall knowingly sell or use any liquid fuel upon which the tax herein imposed has not been paid, shall upon conviction thereof be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), or imprisonment in the county jail for a term of not less than thirty (30) days, and not more than one (1) year, or both such fine and imprisonment. Each day or part thereof, during which such person shall engage in business as a dealer without being the holder of an unrevoked license, shall constitute a separate offense within the meaning of this section.

Sec. 5542-17. Certain powers and duties conferred on treasurer of state, attorney general and sheriffs.

SECTION 17. The treasurer of state, the attorney general and any sheriff, shall for the purpose of collecting any excise tax and/or penalty thereon, payable under this act, have the powers conferred and duties devolved upon said officers respectively by section 5536-1 of the General Code with respect to the collection of taxes and/or penalties upon the sale or use of motor vehicle fuel; and the sheriff shall be entitled to like fees for his services herein; nothing in this section shall be construed as forfeiting or waiving any right to collect such taxes by an action upon any bond that may be filed with the tax commission under section 4 of this act, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of such tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

Sec. 5542-18. Liquid fuel tax rotary fund; state public school fund; apportionment to school districts.

SECTION 18. Upon receipt of the taxes herein provided for, the treasurer of state shall place the first fifteen thousand dollars collected in a special fund to be known as the liquid fuel tax rotary fund; and thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to fifteen thousand dollars.

The balance collected under the provisions of this act, after the credits to said rotary fund, shall be placed in "the state public school fund", which fund is hereby created, and which shall be apportioned to each school district of the state on the basis of the average daily attendance in the schools thereof during the next school year preceding such apportionment as determined by the director of education.

On or before the fifteenth day of December each year the director of education shall certify to the auditor of state the average daily attendance in each school district for the next preceding school year. On

the basis of these data the auditor of state shall apportion the said fund quarterly each year and as of the last day of March, June, September and December, to the several school districts of the state and shall issue his warrant on the treasurer of state in favor of each district for the amount due and the treasurer of state shall forthwith pay the same to the designated districts.

FRANK CAVE,
Speaker of the House of Representatives.

CHARLES SAWYER,
President of the Senate.

Passed July 1, 1933.

Effective without the signature of
the Governor due to lapse of time.

The sectional numbers on the margin hereof are designated as provided by law.

JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on
the 26th day of July, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 209.

(Amended Senate Bill No. 399)

AN ACT

Providing for the levy of an additional tax on the sale of bottled
beer, barreled beer and for the purpose of providing for
emergency relief.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 6212-49a. Definitions.

SECTION I. As used in this act:

"Beer" includes beer, lager beer, ale, stout and porter, and other brewed or fermented beverages containing one-half of one per centum or more, of alcohol by volume but not more than 3.2 per centum of alcohol by weight.

"Commission" means the tax commission of Ohio.

"Person" includes firms and corporations.

(Substitute House Bill No. 1)

AN ACT

To redefine "liquid fuel" and extend the period of the excise tax thereon, and for that purpose to amend sections 5542-1, 5542-2, 5542-18 and 5542-18c of the General Code, relating to said excise tax on liquid fuel.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5542-1, 5542-2, 5542-18 and 5542-18c of the General Code be, and they are hereby amended to read as follows:

Definitions.

Sec. 5542-1. As used in this act:

"Liquid fuel" includes any volatile or inflammable liquid by whatever name such liquid may be known or sold, which is used or usable, either alone or when mixed or compounded, for the purposes of generating light, heat or power ***; and without prejudice to the generality of said description, includes gasoline *** and kerosene, *** but does not include *** other petroleum products or tar, except when such products are used for the purpose of generating power for the propulsion of motor vehicles, as such motor vehicles are defined in section 5526 of the General Code, other than those operated upon tracks specifically provided therefor.

"Commission" means the tax commission of Ohio.

"Person" includes natural persons, and partnerships, firms, associations, and corporations.

"Dealer" shall mean and include any person, including the state of Ohio or any political subdivision thereof (1) importing or causing to be imported into the state of Ohio any liquid fuel for use, distribution or sale and delivery in Ohio, or (2) producing, refining, preparing, distilling, manufacturing or compounding liquid fuel in the state of Ohio for use, distribution or sale and delivery in Ohio. The United States government or any of its agencies shall in no event, however, be deemed a dealer.

Liquid fuel produced, refined, prepared, distilled, manufactured or compounded at any refinery in the state of Ohio by any person shall be deemed to be "received" by such person when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at the refinery where the same shall be produced, refined, prepared, distilled, manufactured or compounded, but not before;

Liquid fuel delivered by boat at a marine terminal for storage or delivered by pipe line at a pipe line terminal or tank farm for storage, shall be deemed to have been "received" when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at such respective marine or pipe line terminal or tank farm, but not before;

Liquid fuel purchased or otherwise acquired in a tank car by any person shall be deemed to be "received" within the state of Ohio by such

person at the time when such tank car shall be unloaded in the state of Ohio, whether the tank car shall be caused to be unloaded by the person purchasing or otherwise acquiring the same or by any other person to whom such tank car was sold or otherwise transferred, but not before; provided, however, that liquid fuel delivered in a tank car to any person for export by such person which shall be unloaded from such tank car in the state of Ohio and placed in any tank from which no liquid fuel whatsoever is withdrawn except for tank car shipments in interstate commerce, shall not be deemed to have been "received" by such person;

Liquid fuel imported into the state of Ohio, other than by boat for storage at marine terminals, or by pipe line for storage at pipe line terminals or tank farms, or by tank car, shall be deemed to be "received" in the state of Ohio by the importer thereof when the same shall be withdrawn from the containers in which it was imported.

"Duly licensed dealer" shall mean and include any dealer possessing an unrevoked license issued by the commission pursuant to section 5528 of the General Code, or as provided in *** sections 5542-1 to 5542-18c both inclusive of the General Code.

Liquid fuel excise tax; purpose; rate; exceptions.

Sec. 5542-2. For the purpose of *** providing revenues for the general revenue fund of the state and to defray the expenses of administering *** the provisions of sections 5542-1 to 5542-18c, both inclusive, of the General Code, an excise tax is hereby imposed on all dealers in liquid fuel upon the use, distribution or sale within this state by them of liquid fuel on and after the day of passage of this act, and to and including the 31st day of March, *** 1941, at the rate of one cent per gallon so used, distributed or sold, to be computed in the manner hereinafter set forth; provided, however, that no tax is hereby imposed upon or with respect to the following transactions:

(a) The sale of liquid fuel by a duly licensed dealer in tank car or cargo lots to another duly licensed dealer for delivery by tank car or boat; or

(b) The exportation or sale for exportation of liquid fuel from the state of Ohio to any other state or to any foreign country; or

(c) The sale of liquid fuel to the United States government or any of its agencies, except such as may be permitted by it; or

(d) The sale of liquid fuel which is in the process of transportation in foreign or interstate commerce, except in so far as the same may be taxable under the provisions of the constitution and statutes of the United States, and except such as may be agreed upon in writing by and between the dealer and the tax commission of Ohio; or

(e) The sale of liquid fuel in tank car or cargo lots for delivery by tank car or boat for use wholly for purposes other than the generation of light, heat or power or the use thereof for such purposes when so purchased.

After the excise tax herein provided for on the sale, distribution or use of any liquid fuel has been paid by the dealer, such liquid fuel may thereafter be used or sold or resold by any person having lawful title to the same without incurring liability for such tax.

Liquid fuel tax rotary fund; general revenue fund.

Sec. 5542-18. Upon receipt of the taxes *** levied by sections 5542-1 to 5542-18c, both inclusive, of the General Code, the treasurer of state shall place the first fifteen thousand dollars collected in a special fund to be known as the liquid fuel tax rotary fund; and thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said funds at the time of each such credit amount to fifteen thousand dollars. ***

The balance collected under the provisions of *** sections 5542-1 to 5542-18c, both inclusive, of the General Code, after the credits to said rotary fund, *** shall be paid into the general revenue fund of the state.

Purpose of act.

Sec. 5542-18c. The extent and purpose of this act includes the extension of the tax on liquid fuel levied by and pursuant to sections 5542-1 to 5542-18c, both inclusive, of the General Code, during the years *** 1938, 1939, 1940 and to and including March 31, *** 1941, and all of the provisions of said sections of the General Code are hereby so extended in effect excepting as affected by the amendment herein made of sections 5542-1, 5542-2, 5542-18, *** and 5542-18c of the General Code.

Repeal.

SECTION 2. Said existing sections 5542-1, 5542-2, 5542-18, and 5542-18c of the General Code be, and the same are hereby repealed, provided, however, that the repeal of said original sections shall in no respect affect the levy, assessment or collection of liquid fuel taxes, fines or penalties, if any, which have accrued or may accrue under said original sections.

WILLIAM M. McCULLOCH,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed January 31, 1939.

Approved February 8, 1939.

JOHN W. BRICKER,
Governor.

The sectional numbers in this act are in conformity to the General Code.

THOMAS J. HERBERT,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 14th day of February, A. D. 1939.

EARL GRIFFITH,
Secretary of State.

File No. 3.

THE STATE OF OHIO
LEGISLATIVE ACTS
PASSED
(EXCEPTING APPROPRIATION ACTS)

AND
JOINT RESOLUTIONS
ADOPTED

By THE
NINETY-SEVENTH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JANUARY 6, 1947, to JUNE 30, 1947, inclusive,

AND AT THE FIRST SPECIAL SESSION

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
DECEMBER 3, 1947, to DECEMBER 22, 1947, inclusive,

AND AT THE SECOND SPECIAL SESSION

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JULY 22, 1948, to JULY 26, 1948, inclusive;

Also the Times for Holding the Courts of Appeals and
the Courts of Common Pleas in Ohio for the Years
1947 and 1948

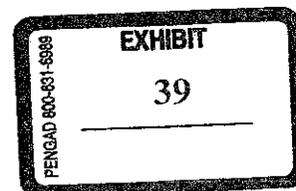
VOLUME CXXII

NOTE: Laws, enacted at the Second Special Session
commence on page 899, and reference to such
laws is not contained in the Index.



F. J. Heer Printing Company
Columbus, O.
1948
Bound at State Bindery

0321



GENERAL LAWS
and
APPROPRIATION ACT
Of The
NINETY-SEVENTH
GENERAL ASSEMBLY
OF OHIO

First Special Session

December 3, 1947, to December 22, 1947, Inclusive

STATE OF OHIO
EXECUTIVE DEPARTMENT
OFFICE OF THE GOVERNOR
COLUMBUS

PROCLAMATION

WHEREAS, Section 8, Article III of the Constitution of Ohio empowers the Governor on extraordinary occasions to convene the General Assembly by Proclamation which shall state the purpose for which such Special Session is called.

NOW, THEREFORE, I, Thomas J. Herbert, Governor of the State of Ohio, by virtue of the authority so vested in me by the Constitution of the State of Ohio, do hereby convene the Ninety-seventh General Assembly of Ohio in Extraordinary Session at the State House in Columbus at 1:30 P. M. on Wednesday, December 3, 1947, to consider the enactment of legislation to become effective immediately, to accomplish the following purposes:

- (1) To enable the Bureau of Motor Vehicles, during the month of March, 1948 and thereafter, to collect the annual license tax for motor vehicles at the rates provided in House Bill 115 of the 97th General Assembly's Regular Session.
- (2) To provide for the restoration of a Highway Construction Fund and the distribution of the proceeds thereof by proper amendments to General Code Sections 5537 and 5541-8 of the General Code.
- (3) To repeal Section 5542-2 and related sections of the General Code in conformity with the recently adopted amendment to Article XII of the Constitution of Ohio designated as Section 5a thereof prohibiting the expenditure of moneys derived from certain taxes relating to vehicles for other than Highway and related purposes and to provide in substitution therefor an increase of the excise tax on motor vehicle fuel now levied by Sections 5527 and 5541 of the General Code. In this regard, I recommend the increase of each such tax by one-half cent per gallon.
- (4) To adjust appropriations made in House Bill 496 of the 97th General Assembly to the political subdivisions on the basis of anticipated liquid fuel tax revenues and to supplement appropriations to the certain Departments of the State of Ohio for which insufficient funds were appropriated.
- (5) To make appropriation from the General Revenue Fund to the World War II Compensation Bond Retirement Fund, thereby delaying the necessity for the Commissioners of the Sinking Fund

to levy and certify a state tax on all taxable property subject to taxation and relieving all taxpayers of the payment of such tax to the extent of such appropriation. In view of the present financial position of the State, I recommend this appropriation in the amount of \$20,000,000.00.

- (6) To authorize the Department of Liquor Control to dispose of over-stocks of slow moving inventory items by permitting the Department of Liquor Control to sell spirituous liquor in bulk lots, at prices fixed by the Director, to non-residents, to permit holders, and to residents of Ohio for resale outside the State, such authority to expire by December 1, 1948.
- (7) To enable political subdivisions to transfer lands to the Government of the United States for Veterans' Hospitals.

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Ohio to be affixed hereto at Columbus this 25th day of November, in the year of our Lord, One Thousand Nine Hundred Forty-seven.

[SEAL]

By the Governor:

THOMAS J. HERBERT,
Governor.

EDWARD J. HUMMEL,
Secretary of State.

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED

(EXCEPTING APPROPRIATION ACTS)

AND

JOINT RESOLUTIONS

ADOPTED

By THE

NINETY-SEVENTH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JANUARY 6, 1947, to JUNE 30, 1947, inclusive,

AND AT THE FIRST SPECIAL SESSION

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
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BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
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Columbus, O.
1948
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0325

EXHIBIT

40

PENGAD 600-631-6988

GENERAL LAWS
and
APPROPRIATION ACT
Of The
NINETY-SEVENTH
GENERAL ASSEMBLY
OF OHIO

First Special Session

December 3, 1947, to December 22, 1947, Inclusive

RECAPITULATION

Appropriations herein made are charged to the following sources of funds in the amounts indicated:

General Revenue Fund	\$9,025,087 00
Highway Department Funds	441,000 00
Liquor Control Fund	210,000 00
Total Fund Appropriations	\$9,676,087 00

C. WILLIAM O'NEILL,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed December 4, 1947.

Approved December 5, 1947.

THOMAS J. HERBERT,
Governor.

This act is of a special nature and does not require a code number.

WILLARD D. CAMPBELL,
Director of Code Revision.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 8th day of December, A. D. 1947.

EDWARD J. HUMMEL,
Secretary of State.

File No. 255.

(Amended Senate Bill No. 358)

AN ACT

To repeal sections 5542-1, 5542-2, 5542-3, 5542-4, 5542-5, 5542-6, 5542-6a, 5542-7, 5542-8, 5542-9, 5542-10, 5542-11, 5542-12, 5542-13, 5542-13a, 5542-13b, 5542-13c, 5542-14, 5542-14a, 5542-15, 5542-16, 5542-17 and 5542-18 of the General Code of Ohio, relating to the liquid fuel tax, to provide for the distribution of funds derived therefrom, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 5543. Repeal; certain provisions to remain in force and effect.

SECTION I. That existing sections 5542-1, 5542-2, 5542-3, 5542-4, 5542-5, 5542-6, 5542-6a, 5542-7, 5542-8, 5542-9, 5542-10, 5542-11, 5542-12, 5542-13, 5542-13a, 5542-13b, 5542-13c, 5542-14, 5542-14a, 5542-15, 5542-16, 5542-17 and 5542-18 of the General Code of Ohio, are hereby repealed.

Provided, however, that all the provisions of said sections shall remain in full force and effect for the purpose of governing the reporting, assessing and collecting of all taxes, interest, fines and penalties accruing under the provisions thereof prior to the effective date of this act, and for the purpose of preserving and enforcing the liability of all principals and sureties under bonds filed with the Tax Commissioner prior to the effective date of this act securing the payment of liquid fuel taxes so accruing, and for the purpose of permitting and securing the payment of refunds of liquid fuel taxes as provided in existing sections 5542-12, 5542-13b, 5542-14 and 5542-14a of the General Code arising prior to the effective date of this act.

Sec. 5544. Distribution of funds.

SECTION 2. Taxes, interest, fines and penalties collected on and after the effective date of this act under the provisions thereof in excess of amounts credited to the liquid fuel tax rotary fund shall be distributed as follows: One-half thereof in accordance with section 5537 of the General Code, and one-half thereof in accordance with section 5541-8 of the General Code, provided, however, that no part of such funds shall be credited to the rotary funds provided for in sections 5537 and 5541-7 of the General Code.

Emergency.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason of such necessity is to avoid conflict between the sections herein repealed and section 5a of Article XII of the Ohio Constitution, and to provide for the allocation of funds arising on and after January 1, 1948 in accordance with the provisions of section 5a of Article XII of the Ohio Constitution. Therefore, this act shall go into immediate effect.

C. WILLIAM O'NEILL,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed December 4, 1947.

Approved December 31, 1947.

THOMAS J. HERBERT,
Governor.

The sectional numbers on the margin hereof are designated as provided by law.

WILLARD D. CAMPBELL,
Director of Code Revision.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 31st day of December, A. D. 1947.

File No. 256.

EDWARD J. HUMMEL,
Secretary of State.

this section and under Chapter 5751. of the Revised Code as
enacted by this act by means of advertising and other reasonable
means.

102676
102677
102678

Section 557.09.03. It is the intent of the General Assembly
that section 5751.033 of the Revised Code, as enacted by this act,
be applied in a manner that is consistent with and identical to
the situsing provisions that apply to the corporation franchise
tax. That section shall be interpreted and applied by the Tax
Commissioner in a manner that is consistent with the body of case
law addressing the situsing of sales for purposes of the sales
factor as determined under Chapter 5733. of the Revised Code, and
in a manner that is consistent with the Tax Commissioner's prior
treatment of the corporation franchise tax sales factor situsing
law for taxpayers under that chapter.

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Section 557.09.06. (A) Notwithstanding any provision of
Chapter 5751. of the Revised Code as enacted by this act, "gross
receipts," as defined in section 5751.01 of the Revised Code,
excludes all of the following receipts if they are received prior
to July 1, 2007:

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(1) Receipts from the sale of fuel by a refinery to a
terminal that is intended to be used as motor fuel;

102695
102696

(2) Receipts from the sale of motor fuel from a terminal to a
motor fuel dealer, excluding motor fuel that is not subject to
taxation under Chapter 5735. of the Revised Code;

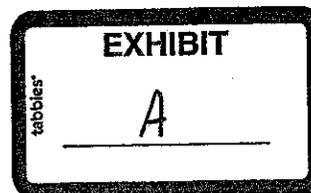
102697
102698
102699

(3) Receipts from the sale of motor fuel upon which the tax
under Chapter 5735. of the Revised Code has been imposed.

102700
102701

For the purposes of this division, "motor fuel," "motor fuel
dealer, and "terminal" have the same meanings as used in section
5735.01 of the Revised Code.

102702
102703
102704



(B) For the purposes of division (A) of this section, the
imposition of tax on motor fuel for the illegal use of that fuel
shall not be considered motor fuel subject to the tax under
Chapter 5735. of the Revised Code.

102705
102706
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102708

(C) The Tax Commissioner may promulgate rules to administer
this section, including prescribing the method to determine which
fuel is intended to be used as motor fuel.

102709
102710
102711

Between July 1, 2005, and March 1, 2007, the Tax Commissioner
shall accept recommendations and comments on the taxation of
receipts from the sale or other transfer of motor fuel under
Chapter 5751. of the Revised Code, including from persons required
to report and pay the tax under Chapter 5735. of the Revised Code,
and shall prepare a report summarizing those recommendations and
comments and presenting any recommendations of the Tax
Commissioner. The Tax Commissioner and shall submit the report to
the President of the Senate, the Speaker of the House of
Representatives, and the leader of the minority caucus in each
house on or before March 1, 2007.

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Section 557.09.07. Notwithstanding anything in Chapter 5735.
of the Revised Code as amended by this act, the discount or
shrinkage allowance provided for in sections 5735.06 and 5735.141
of the Revised Code for the period July 1, 2005, through June 30,
2007, shall be based on divisions (A) and (B) of this section:

102723
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102727

(A) For the discount under section 5735.06 of the Revised
Code:

102728
102729

(1) For July 2005 through June 2006, if the monthly report is
timely filed and the tax is timely paid, 2.5 per cent of the total
number of gallons of motor fuel received by the motor fuel dealer
within the state during the preceding calendar month less the
total number of gallons deducted under divisions (B)(1)(a) and (b)

102730
102731
102732
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102734

[CHAPTER 585.]

AN ACT

Making receivers appointed by any United States courts and authorized to conduct any business, or conducting any business, subject to taxes levied by the State the same as if such business were conducted by private individuals or corporations.

June 18, 1934.
[H. R. 8644.]
[Public, No. 392.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after the enactment of this Act, be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation: *Provided, however,* That nothing in this Act contained shall be construed to prohibit or prejudice the collection of any such taxes which accrued prior to the approval of this Act, in the event that the United States court having final jurisdiction of the subject matter under existing law should adjudge and decide that the imposition of such taxes was a valid exercise of the taxing power by the State or States, or by the civil subdivisions of the State or States imposing the same.

Receivers, etc., in Federal courts.
Business conducted under, subject to State and local taxes.

Proviso.
Collecting such taxes accruing prior to date of Act.

Approved, June 18, 1934.

[CHAPTER 586.]

AN ACT

To increase employment by authorizing an appropriation to provide for emergency construction of public highways and related projects, and to amend the Federal Aid Road Act, approved July 11, 1916, as amended and supplemented, and for other purposes.

June 18, 1934.
[H. R. 8731.]
[Public, No. 393.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of increasing employment by providing for emergency construction of public highways and other related projects there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000, which shall be apportioned by the Secretary of Agriculture immediately upon the passage of this Act under the provisions of section 204 of the National Industrial Recovery Act, approved June 16, 1933 (in addition to any sums heretofore allocated under such section), in making grants under said section to the several States to be expended by their highway departments pursuant to the provisions of such section, and to remain available until expended: *Provided,* That the Secretary of Agriculture shall act upon projects submitted to him under his apportionment of this authorization, and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto: *Provided further,* That not less than 25 per centum of the apportionment to any State shall be applied to secondary or feeder roads, including farm to market roads, rural free delivery mail roads, and public-school bus routes, except that the Secretary of Agriculture, upon request and satisfactory showing from the highway department of any State, may fix a less percentage of the apportionment of such State for expenditure on secondary or feeder roads: *And provided further,* That any funds allocated under the provisions of section 204 (a) (2) of such Act shall also be available for the cost of any construction that will provide safer traffic facilities or definitely eliminate existing hazards to pedestrian or vehicular traffic.

Emergency construction of public highways, etc.
Appropriation authorized.
Post, p. 1057.

Apportionment of, among the several States.
Ante, p. 203.

Expenditure

Provisos.
Approval by Secretary of Agriculture, effect.

Amount for secondary and feeder roads

Constructing safer traffic facilities, etc.

Roads through Gov-
ernment lands.
Sums authorized for
highways, trails,
bridges in national
forests, etc.

Executive Order No.
6169.

Special relief fund for
repairing flood, earth-
quake, etc., damages.

Aid in rural post-
road construction.
Vol. 39, p. 356.

Availability; resp-
artitionment of balance
among States.
Vol. 42, p. 217.

Forest highways, etc.
Vol. 42, p. 218.
Available until ex-
pended.

Cooperative road
construction through
public lands, Federal
reservations, etc.

Maintenance of main
roads.

SEC. 2. To further increase employment by providing for emergency construction of public highways and other related projects, there is hereby also authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$24,000,000 for allotment under the provisions of section 205 (a) of the National Industrial Recovery Act, approved June 16, 1933 (in addition to any sums heretofore allotted under such section), to be expended for the survey, construction, reconstruction, and maintenance of highways, roads, trails, bridges, and related projects in national parks and monuments (including areas transferred to the National Park Service for administration by Executive order dated June 10, 1933), national forests, Indian reservations, and public lands, pursuant to the provisions of such section, and to remain available until expended.

SEC. 3. Not to exceed \$10,000,000 of any money heretofore, herein, or hereafter appropriated for expenditure in accordance with the provisions of the Federal Highway Act shall be available for expenditure by the Secretary of Agriculture, in accordance with the provisions of the Federal Highway Act, as an emergency relief fund, after receipt of an application therefor from the highway department of any State, in the repair or reconstruction of highways and bridges on the system of Federal-aid highways, which he finds, after investigation, have been damaged or destroyed by floods, hurricanes, earthquakes, or landslides, and there is hereby authorized to be appropriated any sum or sums necessary to reimburse the funds so expended from time to time under the authority of this section.

SEC. 4. For the purpose of carrying out the provisions of the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes", approved July 11, 1916, and all Acts amendatory thereof and supplementary thereto, there is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, the following sums, to be expended according to the provisions of such Act as amended: The sum of \$125,000,000 for the fiscal year ending June 30, 1936; and the sum of \$125,000,000 for the fiscal year ending June 30, 1937.

All sums authorized in this section and apportioned to the States shall be available for expenditure for one year after the close of the fiscal year for which said sums, respectively, are authorized, and any sum remaining unexpended at the end of the period during which it is available for expenditure shall be reapportioned among the States as provided in section 21 of the Federal Highway Act.

SEC. 5. For the purpose of carrying out the provisions of section 23 of the Federal Highway Act, approved November 9, 1921, there is hereby authorized to be appropriated for forest highways, roads, and trails, the following sums, to be available until expended in accordance with the provisions of said section 23: The sum of \$10,000,000 for the fiscal year ending June 30, 1936; the sum of \$10,000,000 for the fiscal year ending June 30, 1937.

SEC. 6. For the purpose of carrying out the provisions of section 3 of the Federal Highway Act, approved November 9, 1921, as amended June 24, 1930 (46 Stat. 805), there is hereby authorized to be appropriated for the survey, construction, reconstruction, and maintenance of main roads through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations other than the forest reservations, the sum of \$2,500,000 for the fiscal year ending June 30, 1936, and the sum of \$2,500,000 for the fiscal year ending June 30, 1937, to remain available until expended.

SEC. 7. For the construction, reconstruction, and improvement of roads and trails, inclusive of necessary bridges, in the national parks, monuments, and other areas administered by the National Park Service, including areas authorized to be established as national parks and monuments, and national park and monument approach roads authorized by the Act of January 31, 1931 (46 Stat. 1053), as amended, there is hereby authorized to be appropriated the sum of \$7,500,000 for the fiscal year ending June 30, 1936, and the sum of \$7,500,000 for the fiscal year ending June 30, 1937.

Road systems in national parks, etc.
Vol. 46, p. 1053

SEC. 8. For construction and improvement of Indian reservation roads under the provisions of the Act approved May 26, 1928 (45 Stat. 750), there is hereby authorized to be appropriated the sum of \$4,000,000 for the fiscal year ending June 30, 1936, and the sum of \$4,000,000 for the fiscal year ending June 30, 1937.

Indian reservations.
Constructing roads in, not eligible, under Federal Highway Act.
Vol. 45, p. 751.

SEC. 9. The term "highway" as defined in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, shall for the period covered by this Act be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system.

"Highway" defined.
Vol. 42, p. 212.

SEC. 10. Section 19 of the Federal Highway Act, approved November 9, 1921, is hereby amended to read as follows:

Vol. 42, p. 216.

"SEC. 19. That on or before the first Monday in January of each year the Secretary of Agriculture shall make a report to Congress, which shall include a detailed statement of the work done, the status of each project undertaken, the allocation of appropriations, an itemized statement of the expenditures and receipts during the preceding fiscal year under this Act, and itemized statement of the traveling and other expenses, including a list of employees, their duties, salaries, and traveling expenses, if any, and his recommendations, if any, for new legislation amending or supplementing this Act. The Secretary of Agriculture shall also make such special reports as Congress may request."

Annual detailed statements from Secretary.

Special reports.

SEC. 11. With the approval of the Secretary of Agriculture, not to exceed 1½ per centum of the amount apportioned for any year to any State under sections 1 and 4 of this Act may be used for surveys, plans, and engineering investigations of projects for future construction in such State, either on the Federal-aid highway system and extensions thereof or on secondary or feeder roads.

Surveys, plans, and engineering investigations.

SEC. 12. Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts now provided by law for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Agriculture shall promulgate from time to time: *Provided*, That in no case shall the provisions of this section operate to deprive any State of more than one-third of the amount to which that State would be entitled under any apportionment hereafter made, for the fiscal year for which the apportionment is made.

Diversion of motor tax and gasoline taxes from highway maintenance, etc., restricted.

Retirement of bonds.

Proviso.
No State deprived of more than one-third its allocation thereby.

SEC. 13. The limitations in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, upon highway construction, reconstruction, and bridges within municipalities and

Limitations in Federal Highway Act as to highway and bridge construction not to apply herein.

upon payments per mile which may be made from Federal funds, shall hereafter not apply.

Emergency Relief
and Construction Act,
1932.
No deduction on ac-
count of advances un-
der.
Ante, p. 203.

SEC. 14. No deductions shall hereafter be made on account of prior advances and/or loans to the States for the construction of roads under the requirements of the Federal Highway Act or on account of amounts paid under the provisions of title I of the Emergency Relief and Construction Act of 1932 for furnishing relief and work relief to needy and distressed people.

Inter-American
Highway.
Continuing coopera-
tion, in surveys as to
feasibility of building,
etc.
Vol. 45, p. 1697.
Post, p. 1042.

SEC. 15. To provide for the continuation of the cooperative reconnaissance surveys for a proposed inter-American highway as provided in Public Resolution Numbered 104, approved March 4, 1929 (45 Stat. 1697), and for making location surveys, plans, and estimates for such highway, the Secretary of Agriculture is hereby authorized to expend not more than \$75,000 to pay all costs hereafter incurred for such work from any moneys available from the administrative funds provided under the Act of July 11, 1916 (U.S.C., title 23, sec. 21), as amended, or as otherwise provided.

Vol. 42, p. 217.
U.S.C., p. 667.

Inconsistent laws re-
pealed.

SEC. 16. Acts or parts of Acts in any way inconsistent with the provisions of this Act are hereby repealed and this Act shall take effect on its passage.

Approved, June 18, 1934.

[CHAPTER 587.]

AN ACT

To amend section 35 of the Criminal Code of the United States.

June 18, 1934.
[H.R. 8912.]
[Public, No. 394.]

Criminal Code
amendments.
Vol. 35, pp. 1095, 555.
U.S.C., p. 465.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 35 of the Criminal Code of the United States, as amended (U.S.C., title 18, secs. 80, 82, 83, 84, 85, and 86), be, and the same is hereby, amended to read as follows:

Presenting false
claims to Government
or officer thereof.

"SEC. 35. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for the War or Navy Departments of the United States; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the pay-

Willful damage, or
depredation against
Government, etc.,
property.

57 Stat. 521,
31 U. S. C., Supp.
III, § 734c note.

silver held or owned by the United States", approved July 12, 1943 (Public Law 137, Seventy-eighth Congress), is amended to read as follows:

"SEC. 2. This Act shall expire on December 31, 1945."
Approved December 20, 1944.

[CHAPTER 625]

AN ACT

December 20, 1944
[S. 1962]
[Public Law 620]

Extending the provisions of Public Law 47, Seventy-seventh Congress, as amended, to reemployment committeemen of the Selective Service System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 47, Seventy-seventh Congress, approved May 5, 1941 (55 Stat. 150), as amended, be amended to read as follows:

5 U. S. C., Supp.
III, § 99 note.

Nonapplicability of
designated laws to cer-
tain personnel.
36 Stat. 1107, 1109.

54 Stat. 885,
50 U. S. C., app.
§§ 301-318; Supp. III,
§§ 302-315.
Note, pp. 720, 728.

54 Stat. 830,
50 U. S. C., app.
§ 305 (g).

1 Stat. 577.

"That nothing in sections 109 and 113 of the Criminal Code (U. S. C., title 18, secs. 198 and 203) or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to apply to any person because of his appointment under authority of the Selective Training and Service Act of 1940 or the Selective Service regulations made in pursuance thereof as a member of a local board, a board of appeal, an advisory board for registrants, as a State director, a Government appeal agent, a reemployment committeeman, or as an individual to conduct hearings on appeals of persons claiming exemption from combatant training and service because of conscientious objections as provided in section 5 (g) of the Selective Training and Service Act of 1940; or because of his appointment as a member of an alien enemy hearing board to assist the Attorney General in the execution of any proclamations heretofore or hereafter issued by the President under the authority of the Alien Enemy Act of 1798 as amended (U. S. C., title 50, secs. 21-24)."

Approved December 20, 1944.

[CHAPTER 626]

AN ACT

December 20, 1944
[S. 2106]
[Public Law 521]

To amend and supplement the Federal-Aid Road Act, approved July 11, 1916, as amended and supplemented, to authorize appropriations for the post-war construction of highways and bridges, to eliminate hazards at railroad-grade crossings, to provide for the immediate preparation of plans, and for other purposes.

Federal-Aid High-
way Act of 1944.

"Construction."

"Urban area."

Fixing of bound-
aries.

"Rural areas."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, when used in this Act, unless the context indicates otherwise—

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of rights-of-way, and elimination of hazards of railway-grade crossings.

The term "urban area" means an area including and adjacent to a municipality or other urban place, of five thousand or more, the population of such included municipality or other urban place to be determined by the latest available Federal census. The boundaries of urban areas, as defined herein, will be fixed by the State highway department of each State subject to the approval of the Public Roads Administration.

The term "rural areas" means all areas of the State not included in "urban areas".

The term "secondary and feeder roads" means roads in rural areas, including farm-to-market roads, rural-mail routes, and school-bus routes, and not on the Federal-aid system.

SEC. 2. For the purpose of carrying out the provisions of the Federal Highway Act, approved November 9, 1921, as amended and supplemented, there is hereby authorized to be appropriated the sum of \$1,500,000,000 to become available at the rate of \$500,000,000 a year for each of three successive post-war fiscal years: *Provided*, That of the sums authorized to be appropriated for the first of such fiscal years \$100,000,000 may be appropriated in accordance with the provisions of this Act to become available immediately upon apportionment of the authorization for said fiscal year for the making of surveys and plans and for construction: *Provided further*, That except for the sum appropriated pursuant to the preceding proviso, no part of the funds made available pursuant to this Act shall be used to pay costs incurred under any construction contract entered into by any State before the beginning of the first post-war fiscal year. The first post-war fiscal year shall be that fiscal year which ends on June 30th following the date proclaimed by the President as the termination of the existing war emergency, or following the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, or following the date on which the Congress by a concurrent resolution of the two Houses finds as a fact that the war emergency hereinbefore referred to has been relieved to an extent that will justify proceeding with the highway construction program provided for by this Act, whichever date is the earliest. The authorization for the first post-war fiscal year shall be apportioned among the States within thirty days from the passage of this Act. The authorization for the second post-war fiscal year shall be apportioned among the States within twelve months after the date of such termination or finding as above specified, and the authorization for the third post-war fiscal year shall be apportioned among the States within twelve months after the apportionment of the authorization for the second post-war fiscal year. As soon as the funds for each of the post-war fiscal years have been apportioned, the Commissioner of Public Roads is authorized to enter into agreements with the State highway departments for the making of surveys and plans, the acquisition of rights-of-way, and the post-war construction of projects. His approval of any such agreement shall be a contractual obligation of the Federal Government for the payment of its pro rata share of the cost of construction: *Provided, however*, That the Commissioner of Public Roads shall not, as a condition of approval of any project for Federal aid hereunder, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes and sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

SEC. 3. The sum authorized in section 2 for each year shall be available for expenditures as follows:

- (a) \$225,000,000 for projects on the Federal-aid highway system.
- (b) \$150,000,000 for projects on the principal secondary and feeder roads, including farm-to-market roads, rural free delivery mail and public-school bus routes, either outside of municipalities or inside of municipalities of less than five thousand population: *Provided*, That these funds shall be expended on a system of such roads selected by the State highway departments in cooperation with the county supervisors, county commissioners, or other appropriate local road officials

"Secondary and feeder roads."

Appropriation authorized.
42 Stat. 212.
23 U. S. C. § 1;
Supp. III, § 2 et seq.
Availability.
Amount for surveys, plans, and construction.

Restriction.

First post-war fiscal year defined.

Apportionment of authorizations.

Contractual obligation following apportionment.

State acquisition of excess marginal land along proposed highway.

Expenditures.

Federal-aid highway system.
Secondary and feeder roads.

Selection of system of roads.

and the Commissioner of Public Roads: *Provided further*, That in any State having a population density of more than two hundred per square mile, as shown by the latest available Federal census, the said system may be selected by the State highway department with the approval of the Commissioner of Public Roads without regard to included municipal boundaries: *Provided further*, That any of such funds for secondary and feeder roads which are apportioned to a State in which all public roads and highways are under the control and supervision of the State highway department may, if the State highway department and the Commissioner of Public Roads jointly agree that such funds are not needed for secondary and feeder roads, be expended for projects in such State on the Federal-aid highway system.

Use of funds for secondary, etc., roads on Federal-aid highway system.

Urban areas. (c) \$125,000,000 for projects on the Federal-aid highway system in urban areas.

Apportionment. 42 Stat. 217; 23 U. S. C. § 21; Supp. III, § 21. Sec. 4. After making the deductions for administration, research, and investigations as provided in section 21 of the Federal Highway Act of 1921, the sums authorized shall be apportioned as follows:

Federal-aid highway system. (a) The \$225,000,000 per year available for projects on the Federal-aid highway system shall be apportioned among the States as provided in section 21 of the Federal Highway Act.

Secondary, etc., roads. (b) The \$150,000,000 per year available for projects on the secondary and feeder roads shall be apportioned among the States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the rural population of each State bears to the total rural population of all the States, as shown by the Federal census of 1940; and one-third in the ratio which the mileage of rural delivery and star routes in each State bears to the total mileage of rural delivery and star routes in all the States: *Provided*, That no State shall receive less than one-half of one per centum of each year's allotment under subsection (a) and this subsection.

Manner of apportionment. (c) The \$125,000,000 per year available for projects on highways in urban areas shall be apportioned among the States in the ratio which the population in municipalities and other urban places, of five thousand or more, in each State bears to the total population in municipalities and other urban places, of five thousand or more, in all the States as shown by the latest available Federal census: *Provided*, That Connecticut and Vermont towns shall be considered municipalities regardless of their incorporated status.

Minimum. (d) Any sums apportioned to any State under the provisions of this section shall be available for expenditure in that State for one year after the close of the fiscal year for which such sums are authorized, and any amount so apportioned remaining unexpended at the end of such period shall lapse: *Provided*, That such funds shall be deemed to have been expended if covered by formal agreement with the Commissioner of Public Roads for the improvement of a specific project as provided by this Act.

Projects on highways in urban areas. (e) The \$125,000,000 per year available for projects on highways in urban areas shall be apportioned among the States in the ratio which the population in municipalities and other urban places, of five thousand or more, in each State bears to the total population in municipalities and other urban places, of five thousand or more, in all the States as shown by the latest available Federal census: *Provided*, That Connecticut and Vermont towns shall be considered municipalities regardless of their incorporated status.

Period of availability of funds. (d) Any sums apportioned to any State under the provisions of this section shall be available for expenditure in that State for one year after the close of the fiscal year for which such sums are authorized, and any amount so apportioned remaining unexpended at the end of such period shall lapse: *Provided*, That such funds shall be deemed to have been expended if covered by formal agreement with the Commissioner of Public Roads for the improvement of a specific project as provided by this Act.

Federal share of cost. Sec. 5. (a) The Federal share payable on account of any project provided for by the funds made available under the foregoing provisions of this Act shall not exceed 50 per centum of the construction cost thereof other than costs of rights-of-way, and as to costs of rights-of-way shall not exceed one-third of such costs: *Provided*, That in the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein the Federal share shall be increased in each of the three post-war years by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area: *Pro-*

States containing public lands, etc.

vided further, That the entire construction cost of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from Federal funds, except that not more than 50 per centum of the right-of-way and property damage costs, paid from public funds, on any such project, may be paid from Federal funds: *Provided further*, That not more than 10 per centum of the sums apportioned to any State under the terms of this Act for each of such post-war fiscal years shall be used for such railway-highway projects, to be expended in accordance with the Federal Highway Act, as amended and supplemented, and the provisions of this section.

(b) Any railway involved in any project for the elimination of hazards of railway-highway crossings paid for in whole or in part from funds made available under this Act, shall be liable to the United States for a sum bearing the same ratio to the net benefit received by such railway from such project that the Federal funds expended on such project bear to the total cost of such project. For the purposes of this subsection, the net benefit received by a railway from any such project shall be deemed to be the amount by which the reasonable value of the total benefits received by it from such project exceeds the amount paid by it (including the reasonable value of any property rights contributed by it) toward the cost of such project; and in no case shall the total benefits to any railway or railways be deemed to have a reasonable value in excess of 10 per centum of the cost of any such project. The liability of any railway to the United States with respect to any such project may be discharged by paying to the United States, within six months after the completion of such project, such amount as the Commissioner of Public Roads determines to be the amount of such liability. Any such determination of the Commissioner shall be made on the basis of recommendations made to him by the State highway department and on the basis of such other information and investigation, if any, as the Commissioner deems necessary or proper. If any such railway has failed so to discharge its liability to the United States with respect to any project within six months after the completion thereof, the Commissioner of Public Roads shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railway is liable for in the premises. Any amounts paid to or recovered by the United States under this subsection shall be covered into the Treasury as miscellaneous receipts.

SEC. 6. If the Commissioner of Public Roads shall determine that it is necessary for the expeditious completion of projects undertaken pursuant to this Act, he may advance to any State from funds heretofore or hereafter made available the Federal share of the cost thereof to enable the State highway department to make prompt payments for work as it progresses: *Provided*, That such State, after June 30, 1945, does not divert to other than highway uses road user revenues in violation of section 12 of the Highway Act of June 18, 1934. The funds so advanced shall be deposited in a special trust account by the State treasurer, or other State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State highway department for work actually

Railway - highway crossings, etc.

Exception.

Limitation.

42 Stat. 212.
23 U. S. C. § 1; Supp.
III, § 2 *et seq.*
Liability of railway involved in project.

Determination of benefits.

Discharge of liability.

Basis of determination.

Recovery.

Court proceedings.

Advancement to State of Federal share of cost.

Improper diversion of road user revenues.
48 Stat. 995.
23 U. S. C. § 55.
Accounting.

Disposition of unexpended balances.	Deductions for advances not repaid.	performed in accordance with plans, specifications, and estimates approved by the Public Roads Administration under the provisions of this Act. Any unexpended balances of funds so advanced shall be returned to the credit of the appropriation from which the funds have been advanced: <i>Provided</i> , That any advance made to any State under the provisions of this section and not repaid shall be deducted from any apportionment allocated to such State under the provisions of this Act for the year next succeeding the year in which such advance is made, and no agreement made in accordance with the provisions of section 2 of this Act shall be valid for any pro rata share of the cost of construction in excess of such apportionment less such advance.
National System of Interstate Highways. Designation, extent, location, etc.	Selection of routes.	SEC. 7. There shall be designated within the continental United States a National System of Interstate Highways not exceeding forty thousand miles in total extent so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of the National System of Interstate Highways shall be selected by joint action of the State highway departments of each State and the adjoining States, as provided by the Federal Highway Act of November 9, 1921, for the selection of the Federal-aid system. All highways or routes included in the National System of Interstate Highways as finally approved, if not already included in the Federal-aid highway system, shall be added to said system without regard to any mileage limitation.
Surveys, etc., of projects for future construction.	Appropriation authorized.	SEC. 8. With the approval of the Federal Works Administrator, not to exceed 1½ per centum of the amount apportioned for any year to any State under the Federal Highway Act, as amended and supplemented, except sections 3 and 23 thereof, shall hereafter be used with or without State funds for surveys, plans, engineering, and economic investigations of projects for future construction in such State, on the Federal-aid highway system and extensions thereof within municipalities, on secondary or feeder roads, urban highways or grade-crossing eliminations, and for highway research necessary in connection therewith.
Forest highways in Alaska, etc.	Roads and trails.	SEC. 9. For the purpose of carrying out the provisions of section 23 of the Federal Highway Act (42 Stat. 218), as amended and supplemented, there is hereby authorized to be appropriated (1) for forest highways the sum of \$25,000,000 for the first post-war fiscal year and a like amount for each of the second and third post-war fiscal years; and (2) for forest development roads and trails the sum of \$12,500,000 for the first post-war fiscal year and a like amount for each of the second and third post-war fiscal years: <i>Provided</i> , That the apportionment for forest highways in Alaska shall be for each year \$1,500,000 and that such additional amount as otherwise would have been apportioned to Alaska for each of said years shall be apportioned among those States, including Puerto Rico, whose forest highway apportionment for such year otherwise would be less than 1 per centum of the entire apportionment for forest highways for that year.
Park roads and trails.		SEC. 10. (a) For the construction, reconstruction, improvement, and maintenance of roads and trails, inclusive of necessary bridges, in national parks, monuments, and other areas administered by the National Park Service, including areas authorized to be established as national parks and monuments, and national park and monument approach roads authorized by the Act of January 31, 1931 (46 Stat. 1053), as amended, there is hereby authorized to be appropriated the sum of \$12,750,000, to become available at the rate of \$4,250,000 a year for each of the three successive post-war fiscal years.

(b) For the construction and maintenance of parkways, to give access to national parks and national monuments, or to become connecting sections of a national parkway plan, over lands to which title has been transferred to the United States by the States or by private individuals, there is hereby authorized to be appropriated the sum of \$30,000,000, to become available at the rate of \$10,000,000 a year for each of the three successive post-war fiscal years.

(c) For the construction, improvement, and maintenance of Indian reservation roads and bridges and roads and bridges to provide access to Indian reservations and Indian lands under the provisions of the Act approved May 26, 1928 (45 Stat. 750), there is hereby authorized to be appropriated the sum of \$6,000,000 for the first post-war fiscal year and a like amount for each of the second and third post-war fiscal years: *Provided*, That the location, type, and design of all roads and bridges constructed shall be approved by the Public Roads Administration before any expenditures are made thereon, and all such construction shall be under the general supervision of the Public Roads Administration.

SEC. 11. Federal highway funds shall not be used for the reconstruction or relocation of any highway giving access to an airport (if such airport has been constructed or extended after the date of enactment of this Act), or for the reconstruction or relocation of any highway which has been or may be closed or the usefulness of which has been or may be impaired by the location or construction of any airport (if such airport has been constructed or extended after the date of enactment of this Act), unless, prior to such extension or construction, as the case may be, the State highway department and the Public Roads Administration have concurred with the officials in charge of the airport that the location of such airport or extension thereof and the consequent reconstruction or relocation of the highway are in the public interest.

SEC. 12. On any highway or street hereafter constructed with Federal aid in any State, the location, form, and character of informational, regulatory, and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority, or other agency, shall be subject to the approval of the State highway department with the concurrence of the Public Roads Administration; and the Commissioner of Public Roads is hereby directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

SEC. 13. If any section, subsection, or other provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such section, subsection, or other provision to other persons or circumstances shall not be affected thereby.

SEC. 14. This Act may be cited as the "Federal-Aid Highway Act of 1944".

Approved December 20, 1944.

[CHAPTER 627]

AN ACT

Authorizing appropriations for the United States Navy for additional ordnance manufacturing and production facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, \$50,000,000 for necessary tools, equip-

Access parkways to national parks, etc.

Appropriation authorized.

Indian reservation roads and bridges.

26 U. S. C. § 318a.

Approval by Public Roads Administration.

Access roads to airports.

Location, etc., of signs, markings, and traffic signals.
Approval.

Saving clause.

Short title.

December 20, 1944
[S. 2194]
[Public Law 522]

Navy.
Ordnance manufacturing facilities.
Appropriation authorized.