



Ohio Revised Code

Section 5703.56 Sham transactions.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

(A) As used in this section:

(1) "Sham transaction" means a transaction or series of transactions without economic substance because there is no business purpose or expectation of profit other than obtaining tax benefits.

(2) "Tax" includes any tax or fee administered by the tax commissioner.

(3) "Taxpayer" includes any entity subject to a tax.

(4) "Controlled group" means two or more persons related in such a way that one person directly or indirectly owns or controls the business operation of another member of the group. In the case of persons with stock or other equity, one person owns or controls another if it directly or indirectly owns more than fifty per cent of the other person's common stock with voting rights or other equity with voting rights.

(B) The tax commissioner may disregard any sham transaction in ascertaining any taxpayer's tax liability. Except as otherwise provided in the Revised Code, with respect to transactions between members of a controlled group, the taxpayer shall bear the burden of establishing by a preponderance of the evidence that a transaction or series of transactions between the taxpayer and one or more members of the controlled group was not a sham transaction. Except as otherwise provided in the Revised Code, for all other taxpayers, the tax commissioner shall bear the burden of establishing by a preponderance of the evidence that a transaction or series of transactions was a sham transaction.

(C) In administering any tax, the tax commissioner may apply the doctrines of "economic reality," "substance over form," and "step transaction."

(D) If the commissioner disregards a sham transaction under division (B) of this section, the applicable limitation period for assessing the tax, together with applicable penalties, charges, and



interest, shall be extended for a period equal to the applicable limitation period. Nothing in this division shall be construed as extending an applicable limitation period for claiming any refund of a tax.

(E) The tax commissioner may, in accordance with Chapter 119. of the Revised Code, adopt rules that are necessary to administer this section, including rules establishing criteria for identifying sham transactions.