



Ohio Revised Code

Section 5703.54 Action for damages by taxpayer.

Effective: April 9, 2003

Legislation: Senate Bill 120 - 124th General Assembly

(A) A taxpayer aggrieved by an action or omission of an officer or employee of the department of taxation may bring an action for damages in the court of claims pursuant to Chapter 2734. of the Revised Code, if all of the following apply:

- (1) In the action or omission the officer or employee frivolously disregards a provision of Chapter 5711., 5733., 5739., 5741., or 5747. of the Revised Code or a rule of the tax commissioner adopted under authority of one of those chapters;
- (2) The action or omission occurred with respect to an audit or assessment and the review and collection proceedings connected with the audit or assessment;
- (3) The officer or employee did not act manifestly outside the scope of the officer's or employee's office or employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner.

(B) In any action brought under division (A) of this section, upon a finding of liability on the part of the state, the state shall be liable to the taxpayer in an amount equal to the sum of the following:

- (1) Compensatory damages sustained by the taxpayer as a result of the action or omission by the department's officer or employee;
- (2) Reasonable costs of litigation and attorneys fees sustained by the taxpayer.

(C) In the awarding of damages under division (B) of this section, the court shall take into account the negligent actions or omissions, if any, on the part of the taxpayer that contributed to the damages, but shall not be bound by the provisions of sections 2315.32 to 2315.36 of the Revised Code.



(D) Whenever it appears to the court that a taxpayer's conduct in the proceedings brought under division (A) of this section is frivolous, the court may impose a penalty against the taxpayer in an amount not to exceed ten thousand dollars which shall be paid to the general revenue fund of the state.

(E)(1) Division (A) of this section does not apply to advisory opinions or other informational functions of an officer or employee of the department.

(2) Division (A) of this section does not authorize a taxpayer to bring an action for damages based on an action or omission of a county auditor or an employee of a county auditor.

(F) As used in this section, "frivolous" means that the conduct of the commissioner, or of the taxpayer or the taxpayer's counsel of record satisfies either of the following:

(1) It obviously serves merely to harass or maliciously injure the state or its employees or officers if referring to the conduct of a taxpayer, or to harass or maliciously injure the taxpayer if referring to the conduct of the tax commissioner;

(2) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.