



Ohio Revised Code

Section 5733.23 Petition for judgment for taxes - injunction - procedure - evidence.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

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

Such petition shall be in the name of the state. All or any of the corporations having their principal places of business in the county may be joined in one suit. On the motion of the attorney general, the court of common pleas shall enter an order requiring all defendants to answer by a day certain, and may appoint a special master commissioner to take testimony, with such other power and authority as the court confers, and permitting process to be served by registered mail and by publication in a newspaper of general circulation in the county, which publication need not be made more than once, setting forth the name of each delinquent corporation, the matter in which such corporation is delinquent, the names of its officers, directors, and managing agents, if set forth in the petition, and the amount of any taxes, fees, or penalties claimed to be owing by said corporation.

All or any of the officers, directors, shareholders, or managing agents of any corporation may be joined as defendants with such corporation.

If it appears to the court upon hearing that any corporation which is a party to such proceeding is



indebted to the state for taxes, fees, or penalties, judgment shall be entered therefor with interest; and if it appears that any corporation has failed to make or file any report or return, a mandatory injunction may be issued against such corporation, its officers, directors, and managing agents, enjoining them from the transaction of any business within this state, other than acts incidental to liquidation or winding up, until the making and filing of all proper reports or returns and until the payment in full of all taxes, fees, and penalties.

If the officers, directors, shareholders, or managing agents of a corporation are not made parties in the first instance, and a judgment or an injunction is rendered or issued against such corporation, such officers, directors, shareholders, or managing agents may be made parties to such proceedings upon the motion of the attorney general, and, upon notice to them of the form and terms of such injunction, they shall be bound thereby as fully as if they had been made parties in the first instance.

In any action authorized by this section, a statement of the commissioner, or the secretary of state, when duly certified, shall be prima-facie evidence of the amount of taxes, fees, or penalties due from any corporation, or of the failure of any corporation to file with the commissioner or the secretary of state any report required by law, and any such certificate of the commissioner or the secretary of state may be required in evidence in any such proceeding.

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

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

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

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