

**As Reported by the Senate Ways and Means and Economic  
Development Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Sub. H. B. No. 75**

**Representatives Chandler, Moran**

**Cosponsors: Representatives Harwood, Harris, Fende, Williams, B., Dodd,  
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Slesnick, Snitchler, Uecker, Winburn, Zehringer**

**Senators Schaffer, Schuring**

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**A B I L L**

To amend sections 5747.113, 5751.08, and 5751.09 and 1  
to enact sections 149.308 and 5502.23 of the 2  
Revised Code to allow taxpayers to contribute a 3  
portion of their income tax refunds to the Ohio 4  
Historical Society and the American Red Cross Ohio 5  
Disaster Readiness and Preparedness Fund, to 6  
permanently authorize the Tax Commissioner to 7  
refund erroneously made commercial activity tax 8  
payments made by persons not required to pay the 9  
tax, and to expressly permit consensual extensions 10  
of the four-year time limit on assessments and 11  
refund requests for the commercial activity tax. 12

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 5747.113, 5751.08, and 5751.09 be 13  
amended and sections 149.308 and 5502.23 of the Revised Code be 14  
enacted to read as follows: 15

**Sec. 149.308.** There is hereby created in the state treasury 16  
the Ohio historical society income tax contribution fund, which 17  
shall consist of money contributed to it under section 5747.113 of 18  
the Revised Code and of contributions made directly to it. Any 19  
person may contribute directly to the fund in addition to or 20  
independently of the income tax refund contribution system 21  
established in section 5747.113 of the Revised Code. 22

The Ohio historical society shall use money credited to the 23  
fund in furtherance of the public functions with which the society 24  
is charged under section 149.30 of the Revised Code. 25

**Sec. 5502.23.** (A) There is hereby created in the state 26  
treasury the American red cross Ohio disaster response readiness 27  
and preparedness fund, which shall consist of money transferred to 28  
it under section 5747.113 of the Revised Code and of contributions 29  
made directly to it. Any person may contribute directly to the 30  
fund in addition to or independently of the income tax 31  
contribution system established in section 5747.113 of the Revised 32  
Code. 33

(B) Each year, the executive director of the state emergency 34  
management agency created under section 5502.22 of the Revised 35  
Code shall make one or more grants to the American red cross 36  
greater Columbus chapter from money appropriated for that purpose 37  
from the American red cross Ohio disaster response readiness and 38  
preparedness fund, to be used by the American red cross chapters 39

in Ohio for planning, for the implementation of programs to assist 40  
in disaster preparedness and response throughout this state, and 41  
for the costs of administering those programs. The American red 42  
cross greater Columbus chapter, on behalf of American red cross 43  
chapters in Ohio, shall submit to the executive director its plan 44  
for the use of any grants received under this section within sixty 45  
days after the effective date of any section of law appropriating 46  
money from the fund for the purpose of such grants. 47

(C) If the American red cross greater Columbus chapter ceases 48  
to exist, the executive director shall use money in the American 49  
red cross Ohio disaster response readiness and preparedness fund 50  
to make grants to the American red cross to be used for disaster 51  
preparedness, response, and planning throughout this state. 52

**Sec. 5747.113.** (A) (1) Any taxpayer claiming a refund under 53  
section 5747.11 of the Revised Code ~~for taxable years ending on or~~ 54  
~~after October 14, 1983,~~ who wishes to contribute any part of the 55  
taxpayer's refund to the natural areas and preserves fund created 56  
in section 1517.11 of the Revised Code, the nongame and endangered 57  
wildlife fund created in section 1531.26 of the Revised Code, the 58  
military injury relief fund created in section 5101.98 of the 59  
Revised Code, the Ohio historical society income tax contribution 60  
fund created in section 149.308 of the Revised Code, or all of 61  
those funds, may designate on the taxpayer's income tax return the 62  
amount that the taxpayer wishes to contribute to the fund or 63  
funds. A 64

(2) For taxable years beginning in 2010 or thereafter, a 65  
taxpayer who wishes to contribute to the American red cross Ohio 66  
disaster response readiness and preparedness fund created in 67  
section 5502.23 of the Revised Code may do so by contributing any 68  
part of the taxpayer's refund. A taxpayer shall designate on the 69  
taxpayer's income tax return the amount the taxpayer wishes to 70

contribute to the fund, provided that the amount contributed shall 71  
be at least one dollar. In no case shall a contribution under this 72  
division operate to reduce the combined amount of the state and 73  
school district income taxes shown to be due on a taxpayer's 74  
annual return. 75

(3) A designated contribution of any part of a refund is 76  
irrevocable upon the filing of the return and shall be made in the 77  
full amount designated if the refund found due the taxpayer upon 78  
the initial processing of the taxpayer's return, after any 79  
deductions including those required by section 5747.12 of the 80  
Revised Code, is greater than or equal to the designated 81  
contribution. If the refund due as initially determined is less 82  
than the designated contribution, the contribution shall be made 83  
in the full amount of the refund. The tax commissioner shall 84  
subtract the amount of the contribution from the amount of the 85  
refund initially found due the taxpayer and shall certify the 86  
difference to the director of budget and management and treasurer 87  
of state for payment to the taxpayer in accordance with section 88  
5747.11 of the Revised Code. For the purpose of any subsequent 89  
determination of the taxpayer's net tax payment, the contribution 90  
shall be considered a part of the refund paid to the taxpayer. 91

(B) The tax commissioner shall provide a space on the income 92  
tax return form in which a taxpayer may indicate that the taxpayer 93  
wishes to make a donation in accordance with this section. The tax 94  
commissioner shall also print in the instructions accompanying the 95  
income tax return form a description of the purposes for which the 96  
natural areas and preserves fund, the nongame and endangered 97  
wildlife fund, ~~and~~ the military injury relief fund, the American 98  
red cross Ohio disaster response readiness and preparedness fund, 99  
and the Ohio historical society income tax contribution fund were 100  
created and the use of moneys from the income tax refund 101  
contribution system established in this section. No person shall 102

designate on the person's income tax return any part of a refund 103  
claimed under section 5747.11 of the Revised Code as a 104  
contribution to any fund other than the natural areas and 105  
preserves fund, the nongame and endangered wildlife fund, the 106  
military injury relief fund, the American red cross Ohio disaster 107  
response readiness and preparedness fund, or ~~all of those funds~~ 108  
the Ohio historical society income tax contribution fund. 109

(C) The money collected under the income tax refund 110  
contribution system established in this section shall be deposited 111  
by the tax commissioner into the natural areas and preserves fund, 112  
the nongame and endangered wildlife fund, ~~and~~ the military injury 113  
relief fund, the American red cross Ohio disaster response 114  
readiness and preparedness fund, and the Ohio historical society 115  
income tax contribution fund in the amounts designated on the tax 116  
returns. 117

(D) No later than the thirtieth day of September each year, 118  
the tax commissioner shall determine the total amount contributed 119  
to each fund under this section during the preceding eight months, 120  
any adjustments to prior months, and the cost to the department of 121  
taxation of administering the income tax refund contribution 122  
system during that eight-month period. The commissioner shall make 123  
an additional determination no later than the thirty-first day of 124  
January of each year of the total amount contributed to each fund 125  
under this section during the preceding four calendar months, any 126  
adjustments to prior years made during that four-month period, and 127  
the cost to the department of taxation of administering the income 128  
tax contribution system during that period. The cost of 129  
administering the income tax contribution system shall be 130  
certified by the tax commissioner to the director of budget and 131  
management, who shall transfer an amount equal to ~~one-third~~ 132  
one-fifth of such administrative costs from ~~the natural areas and~~ 133  
~~preserves fund,~~ ~~one-third of such costs from the nongame and~~ 134

~~endangered wildlife fund, and one third of such costs from the~~ 135  
~~military injury relief fund each of the five funds to the litter~~ 136  
~~control and natural resource tax administration income tax refund~~ 137  
~~contribution fund, which is hereby created, provided that the~~ 138  
~~moneys that the department receives to pay the cost of~~ 139  
~~administering the income tax refund contribution system in any~~ 140  
~~year shall not exceed two and one-half per cent of the total~~ 141  
~~amount contributed under that system during that year.~~ 142

(E)(1) The director of natural resources, in January of every 143  
odd-numbered year, shall report to the general assembly on the 144  
effectiveness of the income tax refund contribution system as it 145  
pertains to the natural areas and preserves fund and the nongame 146  
and endangered wildlife fund. ~~The report shall include the amount~~ 147  
~~of money contributed to each fund in each of the previous five~~ 148  
~~years, the amount of money contributed directly to each fund in~~ 149  
~~addition to or independently of the income tax refund contribution~~ 150  
~~system in each of the previous five years, and the purposes for~~ 151  
~~which the money was expended.~~ 152

(2) The director of job and family services and the director 153  
of the Ohio historical society, in January of every odd-numbered 154  
year, each shall report to the general assembly on the 155  
effectiveness of the income tax refund contribution system as it 156  
pertains to the military injury relief fund and the Ohio 157  
historical society income tax contribution fund, respectively. ~~The~~ 158  
~~report shall include the amount of money contributed to the fund~~ 159  
~~in each of the previous five years, the amount of money~~ 160  
~~contributed directly to the fund in addition to or independently~~ 161  
~~of the income tax refund contribution system in each of the~~ 162  
~~previous five years, and the purposes for which the money was~~ 163  
~~expended~~ 164

(3) In January of every odd-numbered year, beginning January 165  
2012, the executive director of the state emergency management 166

agency created under section 5502.22 of the Revised Code shall 167  
report to the general assembly on the effectiveness of the income 168  
tax refund contribution system as it pertains to the American red 169  
cross Ohio disaster response readiness and preparedness fund. 170

(4) Each report made under division (E) of this section also 171  
shall include the amount of money contributed to each fund in each 172  
of the previous five years, the amount of money contributed 173  
directly to each fund in addition to or independently of the 174  
income tax refund contribution system in each of the previous five 175  
years, and the purposes for which the money in each fund was 176  
expended. 177

**Sec. 5751.08.** (A) An application for refund to the taxpayer 178  
of the amount of taxes imposed under this chapter that are 179  
overpaid, paid illegally or erroneously, or paid on any illegal or 180  
erroneous assessment shall be filed by the reporting person with 181  
the tax commissioner, on the form prescribed by the commissioner, 182  
within four years after the date of the illegal or erroneous 183  
payment of the tax, or within any additional period allowed under 184  
division (F) of section 5751.09 of the Revised Code. The applicant 185  
shall provide the amount of the requested refund along with the 186  
claimed reasons for, and documentation to support, the issuance of 187  
a refund. 188

(B) On the filing of the refund application, the tax 189  
commissioner shall determine the amount of refund to which the 190  
applicant is entitled. If the amount is not less than that 191  
claimed, the commissioner shall certify the amount to the director 192  
of budget and management and treasurer of state for payment from 193  
the tax refund fund created under section 5703.052 of the Revised 194  
Code. If the amount is less than that claimed, the commissioner 195  
shall proceed in accordance with section 5703.70 of the Revised 196  
Code. 197

(C) Interest on a refund applied for under this section, 198  
computed at the rate provided for in section 5703.47 of the 199  
Revised Code, shall be allowed from the later of the date the tax 200  
was paid or when the tax payment was due. 201

(D) A calendar quarter taxpayer with more than one million 202  
dollars in taxable gross receipts in a calendar year other than 203  
calendar year 2005 and that is not able to exclude one million 204  
dollars in taxable gross receipts because of the operation of the 205  
taxpayer's business in that calendar year may file for a refund 206  
under this section to obtain the full exclusion of one million 207  
dollars in taxable gross receipts for that calendar year. 208

~~(E) No person with an active registration as a taxpayer under 209  
this chapter may claim a refund under this section for the tax 210  
imposed under division (B) of section 5751.03 of the Revised Code 211  
unless the person cancelled the registration before the tenth day 212  
of May of the current calendar year pursuant to division (D) of 213  
section 5751.04 of the Revised Code. 214~~

~~(F)~~ Except as provided in section ~~5751.091~~ 5751.081 of the 215  
Revised Code, the tax commissioner may, with the consent of the 216  
taxpayer, provide for the crediting against tax due for a tax year 217  
the amount of any refund due the taxpayer under this chapter for a 218  
preceding tax year. 219

**Sec. 5751.09.** (A) The tax commissioner may make an 220  
assessment, based on any information in the commissioner's 221  
possession, against any person that fails to file a return or pay 222  
any tax as required by this chapter. The commissioner shall give 223  
the person assessed written notice of the assessment as provided 224  
in section 5703.37 of the Revised Code. With the notice, the 225  
commissioner shall provide instructions on the manner in which to 226  
petition for reassessment and request a hearing with respect to 227  
the petition. The commissioner shall send any assessments against 228



consolidated elected taxpayer and combined taxpayer groups under 229  
section 5751.011 or 5751.012 of the Revised Code to the taxpayer's 230  
"reporting person" as defined under division (R) of section 231  
5751.01 of the Revised Code. The reporting person shall notify all 232  
members of the group of the assessment and all outstanding taxes, 233  
interest, and penalties for which the assessment is issued. 234

(B) Unless the person assessed, within sixty days after 235  
service of the notice of assessment, files with the tax 236  
commissioner, either personally or by certified mail, a written 237  
petition signed by the person or the person's authorized agent 238  
having knowledge of the facts, the assessment becomes final, and 239  
the amount of the assessment is due and payable from the person 240  
assessed to the treasurer of state. The petition shall indicate 241  
the objections of the person assessed, but additional objections 242  
may be raised in writing if received by the commissioner prior to 243  
the date shown on the final determination. 244

If a petition for reassessment has been properly filed, the 245  
commissioner shall proceed under section 5703.60 of the Revised 246  
Code. 247

(C)(1) After an assessment becomes final, if any portion of 248  
the assessment, including accrued interest, remains unpaid, a 249  
certified copy of the tax commissioner's entry making the 250  
assessment final may be filed in the office of the clerk of the 251  
court of common pleas in the county in which the person resides or 252  
has its principal place of business in this state, or in the 253  
office of the clerk of court of common pleas of Franklin county. 254

(2) Immediately upon the filing of the entry, the clerk shall 255  
enter judgment for the state against the person assessed in the 256  
amount shown on the entry. The judgment may be filed by the clerk 257  
in a loose-leaf book entitled, "special judgments for the 258  
commercial activity tax" and shall have the same effect as other 259

judgments. Execution shall issue upon the judgment at the request 260  
of the tax commissioner, and all laws applicable to sales on 261  
execution shall apply to sales made under the judgment. 262

(3) The portion of the assessment not paid within sixty days 263  
after the day the assessment was issued shall bear interest at the 264  
rate per annum prescribed by section 5703.47 of the Revised Code 265  
from the day the tax commissioner issues the assessment until it 266  
is paid. Interest shall be paid in the same manner as the tax and 267  
may be collected by the issuance of an assessment under this 268  
section. 269

(D) If the tax commissioner believes that collection of the 270  
tax will be jeopardized unless proceedings to collect or secure 271  
collection of the tax are instituted without delay, the 272  
commissioner may issue a jeopardy assessment against the person 273  
liable for the tax. Immediately upon the issuance of the jeopardy 274  
assessment, the commissioner shall file an entry with the clerk of 275  
the court of common pleas in the manner prescribed by division (C) 276  
of this section. Notice of the jeopardy assessment shall be served 277  
on the person assessed or the person's authorized agent in the 278  
manner provided in section 5703.37 of the Revised Code within five 279  
days of the filing of the entry with the clerk. The total amount 280  
assessed is immediately due and payable, unless the person 281  
assessed files a petition for reassessment in accordance with 282  
division (B) of this section and provides security in a form 283  
satisfactory to the commissioner and in an amount sufficient to 284  
satisfy the unpaid balance of the assessment. Full or partial 285  
payment of the assessment does not prejudice the commissioner's 286  
consideration of the petition for reassessment. 287

(E) The tax commissioner shall immediately forward to the 288  
treasurer of state all amounts the commissioner receives under 289  
this section, and such amounts shall be considered as revenue 290  
arising from the tax imposed under this chapter. 291

(F) Except as otherwise provided in this division, no 292  
assessment shall be made or issued against a taxpayer for the tax 293  
imposed under this chapter more than four years after the due date 294  
for the filing of the return for the tax period for which the tax 295  
was reported, or more than four years after the return for the tax 296  
period was filed, whichever is later. The time limit may be 297  
extended if both the taxpayer and the commissioner consent in 298  
writing to the extension or enter into an agreement waiving or 299  
extending the time limit. Any such extension shall extend the 300  
four-year time limit in division (B) of section 5751.08 of the 301  
Revised Code for the same period of time. Nothing in this division 302  
bars an assessment against a taxpayer that fails to file a return 303  
required by this chapter or that files a fraudulent return. 304

(G) If the tax commissioner possesses information that 305  
indicates that the amount of tax a taxpayer is required to pay 306  
under this chapter exceeds the amount the taxpayer paid, the tax 307  
commissioner may audit a sample of the taxpayer's gross receipts 308  
over a representative period of time to ascertain the amount of 309  
tax due, and may issue an assessment based on the audit. The tax 310  
commissioner shall make a good faith effort to reach agreement 311  
with the taxpayer in selecting a representative sample. The tax 312  
commissioner may apply a sampling method only if the commissioner 313  
has prescribed the method by rule. 314

(H) If the whereabouts of a person subject to this chapter is 315  
not known to the tax commissioner, the commissioner shall follow 316  
the procedures under section 5703.37 of the Revised Code. 317

**Section 2.** That existing sections 5747.113, 5751.08, and 318  
5751.09 of the Revised Code are hereby repealed. 319

**Section 3.** The amendment by this act of section 5747.113 of 320  
the Revised Code applies to taxable years beginning on or after 321

January 1, 2010. 322

**Section 4.** A person may request a refund of the annual 323  
minimum commercial activity tax paid for calendar year 2007, 2008, 324  
or 2009 under Chapter 5751. of the Revised Code if the person 325  
satisfies both of the following: 326

(A) The person was not subject to the tax for 2007, 2008, or 327  
2009 because the person was an excluded person under division 328  
(E)(1) of section 5751.01 of the Revised Code. 329

(B) The person erroneously registered for the tax and failed 330  
to cancel the registration before the tenth day of February of the 331  
calendar year for which the tax was paid. 332