

As Introduced

**129th General Assembly
Regular Session
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H. B. No. 8

Representative Blair

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A B I L L

To amend sections 5739.12 and 5747.07 of the Revised Code to increase the sales and use tax prompt remittance discount and to authorize a discount for prompt remittance of income tax withholding. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5739.12 and 5747.07 of the Revised Code be amended to read as follows: 5
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Sec. 5739.12. (A)(1) Each person who has or is required to have a vendor's license, on or before the twenty-third day of each month, shall make and file a return for the preceding month in the form prescribed by the tax commissioner, and shall pay the tax shown on the return to be due. The return shall be filed electronically using the Ohio business gateway, as defined in section 718.051 of the Revised Code, the Ohio telefile system, or any other electronic means prescribed by the commissioner. Payment of the tax shown on the return to be due shall be made electronically in a manner approved by the commissioner. The commissioner may require a vendor that operates from multiple locations or has multiple vendor's licenses to report all tax liabilities on one consolidated return. The return shall show the amount of tax due from the vendor to the state for the period 7
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covered by the return and such other information as the 21
commissioner deems necessary for the proper administration of this 22
chapter. The commissioner may extend the time for making and 23
filing returns and paying the tax, and may require that the return 24
for the last month of any annual or semiannual period, as 25
determined by the commissioner, be a reconciliation return 26
detailing the vendor's sales activity for the preceding annual or 27
semiannual period. The reconciliation return shall be filed by the 28
last day of the month following the last month of the annual or 29
semiannual period. The commissioner may remit all or any part of 30
amounts or penalties that may become due under this chapter and 31
may adopt rules relating thereto. Such return shall be filed 32
electronically as directed by the tax commissioner, and payment of 33
the amount of tax shown to be due thereon, after deduction of any 34
discount provided for under this section, shall be made 35
electronically in a manner approved by the tax commissioner. 36

(2) Any person required to file returns and make payments 37
electronically under division (A)(1) of this section may apply to 38
the tax commissioner on a form prescribed by the commissioner to 39
be excused from that requirement. For good cause shown, the 40
commissioner may excuse the person from that requirement and may 41
permit the person to file the returns and make the payments 42
required by this section by nonelectronic means. 43

(B)(1) If the return is filed and the amount of tax shown 44
thereon to be due is paid on or before the date such return is 45
required to be filed, the vendor shall be entitled to a discount 46
of ~~three-fourths of one~~ five per cent of the amount shown to be 47
due on the return. The discount authorized under this section, 48
when combined with the discount authorized under section 5747.07 49
of the Revised Code, may not exceed ten thousand dollars per 50
vendor per calendar year. 51

(2) A vendor that has selected a certified service provider 52

as its agent shall not be entitled to the discount if the 53
certified service provider receives a monetary allowance pursuant 54
to section 5739.06 of the Revised Code for performing the vendor's 55
sales and use tax functions in this state. Amounts paid to the 56
clerk of courts pursuant to section 4505.06 of the Revised Code 57
shall be subject to the applicable discount. The discount shall be 58
in consideration for prompt payment to the clerk of courts and for 59
other services performed by the vendor in the collection of the 60
tax. 61

(C)(1) Upon application to the tax commissioner, a vendor who 62
is required to file monthly returns may be relieved of the 63
requirement to report and pay the actual tax due, provided that 64
the vendor agrees to remit to the commissioner payment of not less 65
than an amount determined by the commissioner to be the average 66
monthly tax liability of the vendor, based upon a review of the 67
returns or other information pertaining to such vendor for a 68
period of not less than six months nor more than two years 69
immediately preceding the filing of the application. Vendors who 70
agree to the above conditions shall make and file an annual or 71
semiannual reconciliation return, as prescribed by the 72
commissioner. The reconciliation return shall be filed 73
electronically as directed by the tax commissioner, and payment of 74
the amount of tax shown to be due thereon, after deduction of any 75
discount provided in this section, shall be made electronically in 76
a manner approved by the commissioner. Failure of a vendor to 77
comply with any of the above conditions may result in immediate 78
reinstatement of the requirement of reporting and paying the 79
actual tax liability on each monthly return, and the commissioner 80
may at the commissioner's discretion deny the vendor the right to 81
report and pay based upon the average monthly liability for a 82
period not to exceed two years. The amount ascertained by the 83
commissioner to be the average monthly tax liability of a vendor 84
may be adjusted, based upon a review of the returns or other 85

information pertaining to the vendor for a period of not less than 86
six months nor more than two years preceding such adjustment. 87

(2) The commissioner may authorize vendors whose tax 88
liability is not such as to merit monthly returns, as ascertained 89
by the commissioner upon the basis of administrative costs to the 90
state, to make and file returns at less frequent intervals. When 91
returns are filed at less frequent intervals in accordance with 92
such authorization, the vendor shall be allowed the discount 93
provided in this section in consideration for prompt payment with 94
the return, provided the return is filed and payment is made of 95
the amount of tax shown to be due thereon, at the time specified 96
by the commissioner, but a vendor that has selected a certified 97
service provider as its agent shall not be entitled to the 98
discount. 99

(D) Any vendor who fails to file a return or to pay the full 100
amount of the tax shown on the return to be due in the manner 101
prescribed under this section and the rules of the commissioner 102
may, for each such return, be required to forfeit and pay into the 103
state treasury an additional charge not exceeding fifty dollars or 104
ten per cent of the tax required to be paid for the reporting 105
period, whichever is greater, as revenue arising from the tax 106
imposed by this chapter, and such sum may be collected by 107
assessment in the manner provided in section 5739.13 of the 108
Revised Code. The commissioner may remit all or a portion of the 109
additional charge and may adopt rules relating to the imposition 110
and remission of the additional charge. 111

(E) If the amount required to be collected by a vendor from 112
consumers is in excess of the applicable percentage of the 113
vendor's receipts from sales that are taxable under section 114
5739.02 of the Revised Code, or in the case of sales subject to a 115
tax levied pursuant to section 5739.021, 5739.023, or 5739.026 of 116
the Revised Code, in excess of the percentage equal to the 117

aggregate rate of such taxes and the tax levied by section 5739.02 118
of the Revised Code, such excess shall be remitted along with the 119
remittance of the amount of tax due under section 5739.10 of the 120
Revised Code. 121

(F) The commissioner, if the commissioner deems it necessary 122
in order to insure the payment of the tax imposed by this chapter, 123
may require returns and payments to be made for other than monthly 124
periods. 125

(G) Any vendor required to file a return and pay the tax 126
under this section whose total payment for a year equals or 127
exceeds the amount shown in division (A) of section 5739.122 of 128
the Revised Code is subject to the accelerated tax payment 129
requirements in divisions (B) and (C) of that section. For a 130
vendor that operates from multiple locations or has multiple 131
vendor's licenses, in determining whether the vendor's total 132
payment equals or exceeds the amount shown in division (A) of that 133
section, the vendor's total payment amount shall be the amount of 134
the vendor's total tax liability for the previous calendar year 135
for all of the vendor's locations or licenses. 136

Sec. 5747.07. (A) As used in this section: 137

(1) "Partial weekly withholding period" means a period during 138
which an employer directly, indirectly, or constructively pays 139
compensation to, or credits compensation to the benefit of, an 140
employee, and that consists of a consecutive Saturday, Sunday, 141
Monday, and Tuesday or a consecutive Wednesday, Thursday, and 142
Friday. There are two partial weekly withholding periods each 143
week, except that a partial weekly withholding period cannot 144
extend from one calendar year into the next calendar year; if the 145
first day of January falls on a day other than Saturday or 146
Wednesday, the partial weekly withholding period ends on the 147
thirty-first day of December and there are three partial weekly 148

withholding periods during that week. 149

(2) "Undeposited taxes" means the taxes an employer is 150
required to deduct and withhold from an employee's compensation 151
pursuant to section 5747.06 of the Revised Code that have not been 152
remitted to the tax commissioner pursuant to this section or to 153
the treasurer of state pursuant to section 5747.072 of the Revised 154
Code. 155

(3) A "week" begins on Saturday and concludes at the end of 156
the following Friday. 157

(B) Except as provided in divisions (C) and (D) of this 158
section and in division (A) of section 5747.072 of the Revised 159
Code, every employer required to deduct and withhold any amount 160
under section 5747.06 of the Revised Code shall file a return and 161
shall pay the amount required by law as follows: 162

(1) An employer who accumulates or is required to accumulate 163
undeposited taxes of one hundred thousand dollars or more during a 164
partial weekly withholding period shall make the payment of the 165
undeposited taxes by the close of the first banking day after the 166
day on which the accumulation reaches one hundred thousand 167
dollars. If required under division (I) of this section, the 168
payment shall be made by electronic funds transfer under section 169
5747.072 of the Revised Code. 170

(2)~~(a)~~ Except as required by division (B)(1) of this section, 171
~~an employer described in division (B)(2)(b) of this section~~ if an 172
employer's actual and required payments under this section were at 173
least eighty-four thousand dollars during the twelve-month period 174
ending on the thirtieth day of June of the preceding calendar 175
year, the employer shall make the payment of undeposited taxes 176
within three banking days after the close of a partial weekly 177
withholding period during which the employer was required to 178
deduct and withhold any amount under this chapter. ~~If required~~ 179

~~under division (I) of this section, and the payment shall be made~~ 180
~~by electronic funds transfer under section 5747.072 of the Revised~~ 181
~~Code.~~ 182

~~(b) For amounts required to be deducted and withheld during~~ 183
~~1994, an employer described in division (B)(2)(b) of this section~~ 184
~~is one whose actual or required payments under this section~~ 185
~~exceeded one hundred eighty thousand dollars during the~~ 186
~~twelve month period ending June 30, 1993. For amounts required to~~ 187
~~be deducted and withheld during 1995 and each year thereafter, an~~ 188
~~employer described in division (B)(2)(b) of this section is one~~ 189
~~whose actual or required payments under this section were at least~~ 190
~~eighty four thousand dollars during the twelve month period ending~~ 191
~~on the thirtieth day of June of the preceding calendar year.~~ 192

(3) Except as required by divisions (B)(1) and (2) of this 193
section, if an employer's actual or required payments were more 194
than two thousand dollars during the twelve-month period ending on 195
the thirtieth day of June of the preceding calendar year, the 196
employer shall make the payment of undeposited taxes for each 197
month during which they were required to be withheld no later than 198
fifteen days following the last day of that month. The employer 199
shall file the return prescribed by the tax commissioner with the 200
payment. 201

(4) Except as required by divisions (B)(1), (2), and (3) of 202
this section, an employer shall make the payment of undeposited 203
taxes for each calendar quarter during which they were required to 204
be withheld no later than the last day of the month following the 205
last day of March, June, September, and December each year. The 206
employer shall file the return prescribed by the tax commissioner 207
with the payment. 208

(C) The return and payment schedules prescribed by divisions 209
(B)(1) and (2) of this section do not apply to the return and 210
payment of undeposited school district income taxes arising from 211

taxes levied pursuant to Chapter 5748. of the Revised Code. 212
Undeposited school district income taxes shall be returned and 213
paid pursuant to divisions (B)(3) and (4) of this section, as 214
applicable. 215

(D)(1) The requirements of division (B) of this section are 216
met if the amount paid, plus the discount allowed under division 217
(J) of this section, is not less than ninety-five per cent of the 218
actual tax withheld or required to be withheld for the prior 219
quarterly, monthly, or partial weekly withholding period, and the 220
underpayment is not due to willful neglect. Any underpayment of 221
withheld tax shall be paid within thirty days of the date on which 222
the withheld tax was due without regard to division (D)(1) of this 223
section. An employer described in division (B)(1) or (2) of this 224
section shall make the payment by electronic funds transfer under 225
section 5747.072 of the Revised Code. 226

(2) If the tax commissioner believes that quarterly or 227
monthly payments would result in a delay that might jeopardize the 228
remittance of withholding payments, the commissioner may order 229
that the payments be made weekly, or more frequently if necessary, 230
and the payments shall be made no later than three banking days 231
following the close of the period for which the jeopardy order is 232
made. An order requiring weekly or more frequent payments shall be 233
delivered to the employer personally or by certified mail and 234
remains in effect until the commissioner notifies the employer to 235
the contrary. 236

(3) If compelling circumstances exist concerning the 237
remittance of undeposited taxes, the commissioner may order the 238
employer to make payments under any of the payment schedules under 239
division (B) of this section. The order shall be delivered to the 240
employer personally or by certified mail and shall remain in 241
effect until the commissioner notifies the employer to the 242
contrary. For purposes of division (D)(3) of this section, 243

"compelling circumstances" exist if either or both of the 244
following are true: 245

(a) Based upon annualization of payments made or required to 246
be made during the preceding calendar year and during the current 247
calendar year, the employer would be required for the next 248
calendar year to make payments under division (B)(2) of this 249
section. 250

(b) Based upon annualization of payments made or required to 251
be made during the current calendar year, the employer would be 252
required for the next calendar year to make payments under 253
division (B)(2) of this section. 254

(E)(1) An employer described in division (B)(1) or (2) of 255
this section shall file, not later than the last day of the month 256
following the end of each calendar quarter, a return covering, but 257
not limited to, both the actual amount deducted and withheld and 258
the amount required to be deducted and withheld for the tax 259
imposed under section 5747.02 of the Revised Code during each 260
partial weekly withholding period or portion of a partial weekly 261
withholding period during that quarter. The employer shall file 262
the quarterly return even if the aggregate amount required to be 263
deducted and withheld for the quarter is zero dollars. At the time 264
of filing the return, the employer shall pay any amounts of 265
undeposited taxes for the quarter, whether actually deducted and 266
withheld or required to be deducted and withheld, that have not 267
been previously paid. If required under division (I) of this 268
section, the payment shall be made by electronic funds transfer. 269
The tax commissioner shall prescribe the form and other 270
requirements of the quarterly return. 271

(2) In addition to other returns required to be filed and 272
payments required to be made under this section, every employer 273
required to deduct and withhold taxes shall file, not later than 274
the thirty-first day of January of each year, an annual return 275

covering, but not limited to, both the aggregate amount deducted 276
and withheld and the aggregate amount required to be deducted and 277
withheld during the entire preceding year for the tax imposed 278
under section 5747.02 of the Revised Code and for each tax imposed 279
under Chapter 5748. of the Revised Code. At the time of filing 280
that return, the employer shall pay over any amounts of 281
undeposited taxes for the preceding year, whether actually 282
deducted and withheld or required to be deducted and withheld, 283
that have not been previously paid. The employer shall make the 284
annual report, to each employee and to the tax commissioner, of 285
the compensation paid and each tax withheld, as the commissioner 286
by rule may prescribe. 287

Each employer required to deduct and withhold any tax is 288
liable for the payment of that amount required to be deducted and 289
withheld, whether or not the tax has in fact been withheld, unless 290
the failure to withhold was based upon the employer's good faith 291
in reliance upon the statement of the employee as to liability, 292
and the amount shall be deemed to be a special fund in trust for 293
the general revenue fund. 294

(F) Each employer shall file with the employer's annual 295
return the following items of information on employees for whom 296
withholding is required under section 5747.06 of the Revised Code: 297

(1) The full name of each employee, the employee's address, 298
the employee's school district of residence, and in the case of a 299
nonresident employee, the employee's principal county of 300
employment; 301

(2) The social security number of each employee; 302

(3) The total amount of compensation paid before any 303
deductions to each employee for the period for which the annual 304
return is made; 305

(4) The amount of the tax imposed by section 5747.02 of the 306

Revised Code and the amount of each tax imposed under Chapter 307
5748. of the Revised Code withheld from the compensation of the 308
employee for the period for which the annual return is made. The 309
commissioner may extend upon good cause the period for filing any 310
notice or return required to be filed under this section and may 311
adopt rules relating to extensions of time. If the extension 312
results in an extension of time for the payment of the amounts 313
withheld with respect to which the return is filed, the employer 314
shall pay, at the time the amount withheld is paid, an amount of 315
interest computed at the rate per annum prescribed by section 316
5703.47 of the Revised Code on that amount withheld, from the day 317
that amount was originally required to be paid to the day of 318
actual payment or to the day an assessment is issued under section 319
5747.13 of the Revised Code, whichever occurs first. 320

(5) In addition to all other interest charges and penalties 321
imposed, all amounts of taxes withheld or required to be withheld 322
and remaining unpaid after the day the amounts are required to be 323
paid shall bear interest from the date prescribed for payment at 324
the rate per annum prescribed by section 5703.47 of the Revised 325
Code on the amount unpaid, in addition to the amount withheld, 326
until paid or until the day an assessment is issued under section 327
5747.13 of the Revised Code, whichever occurs first. 328

(G) An employee of a corporation, limited liability company, 329
or business trust having control or supervision of or charged with 330
the responsibility of filing the report and making payment, or an 331
officer, member, manager, or trustee of a corporation, limited 332
liability company, or business trust who is responsible for the 333
execution of the corporation's, limited liability company's, or 334
business trust's fiscal responsibilities, shall be personally 335
liable for failure to file the report or pay the tax due as 336
required by this section. The dissolution, termination, or 337
bankruptcy of a corporation, limited liability company, or 338

business trust does not discharge a responsible officer's, 339
member's, manager's, employee's, or trustee's liability for a 340
failure of the corporation, limited liability company, or business 341
trust to file returns or pay tax due. 342

(H) If an employer required to deduct and withhold income tax 343
from compensation and to pay that tax to the state under sections 344
5747.06 and 5747.07 of the Revised Code sells the employer's 345
business or stock of merchandise or quits the employer's business, 346
the taxes required to be deducted and withheld and paid to the 347
state pursuant to those sections prior to that time, together with 348
any interest and penalties imposed on those taxes, become due and 349
payable immediately, and that person shall make a final return 350
within fifteen days after the date of selling or quitting 351
business. The employer's successor shall withhold a sufficient 352
amount of the purchase money to cover the amount of the taxes, 353
interest, and penalties due and unpaid, until the former owner 354
produces a receipt from the tax commissioner showing that the 355
taxes, interest, and penalties have been paid or a certificate 356
indicating that no such taxes are due. If the purchaser of the 357
business or stock of merchandise fails to withhold purchase money, 358
the purchaser shall be personally liable for the payment of the 359
taxes, interest, and penalties accrued and unpaid during the 360
operation of the business by the former owner. If the amount of 361
taxes, interest, and penalties outstanding at the time of the 362
purchase exceeds the total purchase money, the tax commissioner in 363
the commissioner's discretion may adjust the liability of the 364
seller or the responsibility of the purchaser to pay that 365
liability to maximize the collection of withholding tax revenue. 366

~~(I)(1) An employer described in division (I)(2) of this~~ 367
~~section~~ If an employer's payments under this section exceeded 368
eighty-four thousand dollars during the twelve-month period ending 369
on the thirtieth day of June of the preceding calendar year, the 370

employer shall make all payments required by this section for the 371
year by electronic funds transfer under section 5747.072 of the 372
Revised Code. 373

~~(2)(a) For 1994, an employer described in division (I)(2) of 374
this section is one whose actual or required payments under this 375
section exceeded five hundred thousand dollars during the 376
twelve month period ending June 30, 1993. 377~~

~~(b) For 1995, an employer described in division (I)(2) of 378
this section is one whose actual or required payments under this 379
section exceeded five hundred thousand dollars during the 380
twelve month period ending June 30, 1994. 381~~

~~(c) For 1996, an employer described in division (I)(2) of 382
this section is one whose actual or required payments under this 383
section exceeded three hundred thousand dollars during the 384
twelve month period ending June 30, 1995. 385~~

~~(d) For 1997 through 2000, an employer described in division 386
(I)(2) of this section is one whose actual or required payments 387
under this section exceeded one hundred eighty thousand dollars 388
during the twelve month period ending on the thirtieth day of June 389
of the preceding calendar year. 390~~

~~(e) For 2001 and thereafter, an employer described in 391
division (I)(2) of this section is one whose actual or required 392
payments under this section exceeded eighty four thousand dollars 393
during the twelve month period ending on the thirtieth day of June 394
of the preceding calendar year. 395~~

(J) If the return required by this section is filed, and the 396
amount of tax shown to be due on the return is paid, on or before 397
the day required by this section, the employer is entitled to a 398
discount equal to five per cent of the amount of undeposited taxes 399
remitted. The discount authorized under this section, when 400
combined with the discount authorized under section 5739.12 of the 401

Revised Code, may not exceed ten thousand dollars per employer per 402
calendar year. With respect to each employee, the discount 403
retained by the employer shall be considered to have been remitted 404
for purposes of reporting the state and school district income tax 405
deducted and withheld from the employee's compensation under 406
section 5747.06 of the Revised Code and for purposes of 407
determining the state and school district income tax paid by the 408
employee. 409

Section 2. That existing sections 5739.12 and 5747.07 of the 410
Revised Code are hereby repealed. 411

Section 3. That the amendment by this act of sections 5739.12 412
and 5747.07 of the Revised Code applies to returns filed under 413
those sections on and after the first day of the first month 414
beginning on or after the effective date of this act. For the year 415
in which this act takes effect, the \$10,000-per-calendar-year 416
limitation on the discount allowed under those sections shall be 417
reduced ratably according to the number of months in that year 418
ending before the first month in which those sections apply. 419