

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 402

Representatives Duffey, Landis

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A B I L L

To amend section 5703.05 and to enact section 5703.77 1
of the Revised Code to require the Tax 2
Commissioner to notify taxpayers of tax or fee 3
overpayments, to authorize the Commissioner to 4
either apply an overpayment to future tax 5
liabilities or issue a refund, and to make an 6
appropriation. 7

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

Section 1. That section 5703.05 be amended and section 8
5703.77 of the Revised Code be enacted to read as follows: 9

Sec. 5703.05. All powers, duties, and functions of the 10
department of taxation are vested in and shall be performed by the 11
tax commissioner, which powers, duties, and functions shall 12
include, but shall not be limited to, the following: 13

(A) Prescribing all blank forms which the department is 14
authorized to prescribe, and to provide such forms and distribute 15
the same as required by law and the rules of the department. 16

(B) Exercising the authority provided by law, including 17
orders from bankruptcy courts, relative to remitting or refunding 18
taxes or assessments, including penalties and interest thereon, 19
illegally or erroneously assessed or collected, or for any other 20

reason overpaid, and in addition, the commissioner may on written 21
application of any person, firm, or corporation claiming to have 22
overpaid to the treasurer of state at any time within five years 23
prior to the making of such application any tax payable under any 24
law which the department of taxation is required to administer 25
which does not contain any provision for refund, or on the 26
commissioner's own motion investigate the facts and make in 27
triplicate a written statement of the commissioner's findings, 28
and, if the commissioner finds that there has been an overpayment, 29
issue in triplicate a certificate of abatement payable to the 30
taxpayer, the taxpayer's assigns, or legal representative which 31
shows the amount of the overpayment and the kind of tax overpaid. 32
One copy of such statement shall be entered on the journal of the 33
commissioner, one shall be certified to the attorney general, and 34
one certified copy shall be delivered to the taxpayer. All copies 35
of the certificate of abatement shall be transmitted to the 36
attorney general, and if the attorney general finds it to be 37
correct the attorney general shall so certify on each copy, and 38
deliver one copy to the taxpayer, one copy to the commissioner, 39
and the third copy to the treasurer of state. Except as provided 40
in section 5725.08 of the Revised Code, the taxpayer's copy of any 41
certificates of abatement may be tendered by the payee or 42
transferee thereof to the treasurer of state, or to the 43
commissioner on behalf of the treasurer, as payment, to the extent 44
of the amount thereof, of any tax payable to the treasurer of 45
state. 46

(C) Exercising the authority provided by law relative to 47
consenting to the compromise and settlement of tax claims; 48

(D) Exercising the authority provided by law relative to the 49
use of alternative tax bases by taxpayers in the making of 50
personal property tax returns; 51

(E) Exercising the authority provided by law relative to 52

authorizing the prepayment of taxes on retail sales of tangible 53
personal property or on the storage, use, or consumption of 54
personal property, and waiving the collection of such taxes from 55
the consumers; 56

(F) Exercising the authority provided by law to revoke 57
licenses; 58

(G) Maintaining a continuous study of the practical operation 59
of all taxation and revenue laws of the state, the manner in which 60
and extent to which such laws provide revenues for the support of 61
the state and its political subdivisions, the probable effect upon 62
such revenue of possible changes in existing laws, and the 63
possible enactment of measures providing for other forms of 64
taxation. For this purpose the commissioner may establish and 65
maintain a division of research and statistics, and may appoint 66
necessary employees who shall be in the unclassified civil 67
service; the results of such study shall be available to the 68
members of the general assembly and the public. 69

(H) Making all tax assessments, valuations, findings, 70
determinations, computations, and orders the department of 71
taxation is by law authorized and required to make and, pursuant 72
to time limitations provided by law, on the commissioner's own 73
motion, reviewing, redetermining, or correcting any tax 74
assessments, valuations, findings, determinations, computations, 75
or orders the commissioner has made, but the commissioner shall 76
not review, redetermine, or correct any tax assessment, valuation, 77
finding, determination, computation, or order which the 78
commissioner has made as to which an appeal or application for 79
rehearing, review, redetermination, or correction has been filed 80
with the board of tax appeals, unless such appeal or application 81
is withdrawn by the appellant or applicant or dismissed; 82

(I) Appointing not more than five deputy tax commissioners, 83
who, under such regulations as the rules of the department of 84

taxation prescribe, may act for the commissioner in the 85
performance of such duties as the commissioner prescribes in the 86
administration of the laws which the commissioner is authorized 87
and required to administer, and who shall serve in the 88
unclassified civil service at the pleasure of the commissioner, 89
but if a person who holds a position in the classified service is 90
appointed, it shall not affect the civil service status of such 91
person. The commissioner may designate not more than two of the 92
deputy commissioners to act as commissioner in case of the 93
absence, disability, or recusal of the commissioner or vacancy in 94
the office of commissioner. The commissioner may adopt rules 95
relating to the order of precedence of such designated deputy 96
commissioners and to their assumption and administration of the 97
office of commissioner. 98

(J) Appointing and prescribing the duties of all other 99
employees of the department of taxation necessary in the 100
performance of the work of the department which the tax 101
commissioner is by law authorized and required to perform, and 102
creating such divisions or sections of employees as, in the 103
commissioner's judgment, is proper; 104

(K) Organizing the work of the department, which the 105
commissioner is by law authorized and required to perform, so 106
that, in the commissioner's judgment, an efficient and economical 107
administration of the laws will result; 108

(L) Maintaining a journal, which is open to public 109
inspection, in which the tax commissioner shall keep a record of 110
all final determinations of the commissioner; 111

(M) Adopting and promulgating, in the manner provided by 112
section 5703.14 of the Revised Code, all rules of the department, 113
including rules for the administration of sections 3517.16, 114
3517.17, and 5747.081 of the Revised Code; 115

(N) Destroying any or all returns or assessment certificates 116
in the manner authorized by law; 117

(O) Adopting rules, in accordance with division (B) of 118
section 325.31 of the Revised Code, governing the expenditure of 119
moneys from the real estate assessment fund under that division; 120

(P) Informing taxpayers in a timely manner to resolve credit 121
account balances, as defined in section 5703.77 of the Revised 122
Code. 123

Sec. 5703.77. (A) As used in this section: 124

(1) "Taxpayer" means a person subject to or previously 125
subject to a tax or fee, a person that remits a tax or fee, or a 126
person required to or previously required to withhold or collect 127
and remit a tax or fee on behalf of another person. 128

(2) "Tax or fee" means a tax or fee administered by the tax 129
commissioner. 130

(3) "Credit account balance" means the amount of a tax or fee 131
that a taxpayer remits to the tax commissioner in excess of the 132
minimum amount required for the taxpayer to file for a refund of 133
that tax or fee, after accounting for factors applicable to the 134
taxpayer such as accelerated payments, estimated payments, tax 135
credits, and tax credit balances that may be carried forward. 136

(B) As soon as practicable, but not later than sixty days 137
before the expiration of the period of time during which a 138
taxpayer may file a refund application for a tax or fee, the tax 139
commissioner shall review the taxpayer's accounts for the tax or 140
fee and notify the taxpayer of any credit account balance, 141
regardless of whether the taxpayer files a refund application or 142
amended return with respect to that tax or fee. The notice shall 143
be made using contact information for the taxpayer on file with 144
the commissioner. 145

(C) Notwithstanding sections 128.47, 3734.905, 4307.05, 5726.30, 5727.28, 5727.42, 5727.91, 5728.061, 5735.122, 5736.08, 5739.07, 5739.104, 5741.10, 5743.05, 5743.53, 5747.11, 5749.08, 5751.08, 5753.06, and any other section of the Revised Code governing refunds of taxes or fees, the commissioner may apply the amount of any credit account balance as a credit against the taxpayer's liability for the tax or fee in the taxpayer's next reporting period for that tax or fee or issue a refund of the credit account balance to the taxpayer, subject to division (D) of this section. 146
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(D) Before issuing a refund to a taxpayer under division (C) of this section, the tax commissioner shall withhold from that refund the amount of any of the taxpayer's tax debt certified to the attorney general under section 131.02 of the Revised Code and the amount of the taxpayer's liability, if any, for a tax or fee. The commissioner shall apply any amount withheld first in satisfaction of the amount of the taxpayer's certified tax debt and then in satisfaction of the taxpayer's liability. 156
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(E) The tax commissioner may adopt rules to administer this section. 164
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Section 2. That existing section 5703.05 of the Revised Code is hereby repealed. 166
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Section 3. All appropriation items in this act are appropriated out of any moneys in the state treasury to the credit of the designated fund that are not otherwise appropriated. For all appropriations made in this act, the amounts in the first column are for fiscal year 2014 and the amounts in the second column are for fiscal year 2015. The appropriations made in this act are in addition to any other appropriations made for the FY 2014-FY 2015 biennium. 168
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GRF 110321 Operating Expenses	\$	0	\$	924,000	177
TOTAL GRF General Revenue Fund	\$	0	\$	924,000	178
TOTAL ALL BUDGET FUND GROUPS	\$	0	\$	924,000	179