

**As Passed by the House**

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

**Am. H. B. No. 402**

**Representatives Duffey, Landis**

**Cosponsors: Representatives Letson, McClain, Schuring, Beck, Barnes, Green, Blair, Amstutz, Adams, R., Anielski, Antonio, Baker, Barborak, Blessing, Boose, Boyce, Brown, Buchy, Budish, Burkley, Butler, Carney, Conditt, Curtin, Damschroder, Derickson, DeVitis, Dovilla, Driehaus, Gerberry, Grossman, Hackett, Hagan, C., Hagan, R., Hall, Hayes, Heard, Henne, Hill, Huffman, Lundy, Lynch, Mallory, Milkovich, Patmon, Patterson, Pelanda, Perales, Phillips, Pillich, Reece, Retherford, Roegner, Rogers, Romanchuk, Ruhl, Scherer, Sears, Slaby, Slesnick, Smith, Stautberg, Stebelton, Stinziano, Strahorn, Wachtmann, Winburn, Young**

**Speaker Batchelder**

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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 required by 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 state in excess of the amount 132  
required to be remitted, after accounting for factors applicable 133  
to the taxpayer such as accelerated payments, estimated payments, 134  
tax credits, and tax credit balances that may be carried forward. 135

(4) "Tax debt" means an unpaid tax or fee or any unpaid penalty, interest, or additional charge on such a tax or fee due the state. 136  
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(B) As soon as practicable, but not later than sixty days before the expiration of the period of time during which a taxpayer may file a refund application for a tax or fee, the tax commissioner shall review the taxpayer's accounts for the tax or fee and notify the taxpayer of any credit account balance for which the commissioner is required to issue a refund if the taxpayer were to file a refund application for that balance, regardless of whether the taxpayer files a refund application or amended return with respect to that tax or fee. The notice shall be made using contact information for the taxpayer on file with the commissioner. 139  
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(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 for which the commissioner is required to issue a refund if the taxpayer were to file a refund application for that 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 that credit account balance to the taxpayer, subject to division (D) of this section. 150  
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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 162  
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satisfaction of the amount of the taxpayer's certified tax debt 168  
and then in satisfaction of the taxpayer's liability. 169

(E) The tax commissioner may adopt rules to administer this 170  
section. 171

**Section 2.** That existing section 5703.05 of the Revised Code 172  
is hereby repealed. 173

**Section 3.** All appropriation items in this act are 174  
appropriated out of any moneys in the state treasury to the credit 175  
of the designated fund that are not otherwise appropriated. For 176  
all appropriations made in this act, the amounts in the first 177  
column are for fiscal year 2014 and the amounts in the second 178  
column are for fiscal year 2015. The appropriations made in this 179  
act are in addition to any other appropriations made for the FY 180  
2014-FY 2015 biennium. 181

TAX DEPARTMENT OF TAXATION 182

GRF 110321 Operating Expenses	\$	0	\$ 682,000	183
TOTAL GRF General Revenue Fund	\$	0	\$ 682,000	184
TOTAL ALL BUDGET FUND GROUPS	\$	0	\$ 682,000	185