

As Reported by the House Ways and Means Committee

130th General Assembly

Regular Session

2013-2014

Am. H. B. No. 402

Representatives Duffey, Landis

**Cosponsors: Representatives Letson, McClain, Schuring, Beck, Barnes,
Green, Blair**

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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 in the manner authorized by law;	116 117
(O) Adopting rules, in accordance with division (B) of section 325.31 of the Revised Code, governing the expenditure of moneys from the real estate assessment fund under that division;	118 119 120
<u>(P) Informing taxpayers in a timely manner to resolve credit account balances as required by section 5703.77 of the Revised Code.</u>	121 122 123
<u>Sec. 5703.77.</u> (A) As used in this section:	124
<u>(1) "Taxpayer" means a person subject to or previously subject to a tax or fee, a person that remits a tax or fee, or a person required to or previously required to withhold or collect and remit a tax or fee on behalf of another person.</u>	125 126 127 128
<u>(2) "Tax or fee" means a tax or fee administered by the tax commissioner.</u>	129 130
<u>(3) "Credit account balance" means the amount of a tax or fee that a taxpayer remits to the state in excess of the amount required to be remitted, after accounting for factors applicable to the taxpayer such as accelerated payments, estimated payments, tax credits, and tax credit balances that may be carried forward.</u>	131 132 133 134 135
<u>(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.</u>	136 137 138
<u>(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</u>	139 140 141 142 143 144

taxpayer were to file a refund application for that balance, 145
regardless of whether the taxpayer files a refund application or 146
amended return with respect to that tax or fee. The notice shall 147
be made using contact information for the taxpayer on file with 148
the commissioner. 149

(C) Notwithstanding sections 128.47, 3734.905, 4307.05, 150
5726.30, 5727.28, 5727.42, 5727.91, 5728.061, 5735.122, 5736.08, 151
5739.07, 5739.104, 5741.10, 5743.05, 5743.53, 5747.11, 5749.08, 152
5751.08, 5753.06, and any other section of the Revised Code 153
governing refunds of taxes or fees, the commissioner may apply the 154
amount of any credit account balance for which the commissioner is 155
required to issue a refund if the taxpayer were to file a refund 156
application for that balance as a credit against the taxpayer's 157
liability for the tax or fee in the taxpayer's next reporting 158
period for that tax or fee or issue a refund of that credit 159
account balance to the taxpayer, subject to division (D) of this 160
section. 161

(D) Before issuing a refund to a taxpayer under division (C) 162
of this section, the tax commissioner shall withhold from that 163
refund the amount of any of the taxpayer's tax debt certified to 164
the attorney general under section 131.02 of the Revised Code and 165
the amount of the taxpayer's liability, if any, for a tax or fee. 166
The commissioner shall apply any amount withheld first in 167
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