

**As Reported by the House Finance and Appropriations  
Committee**

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2013-2014**

**Am. Sub. S. B. No. 263**

**Senators Peterson, Beagle**

**Cosponsors: Senators Jones, Obhof, Bacon, Patton, Schaffer, Hughes,  
Gardner, Burke, Coley, Balderson, Eklund, Faber, Jordan, LaRose, Manning,  
Oelslager, Schiavoni, Tavares, Uecker, Widener**

**Representatives Amstutz, Beck**

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**A B I L L**

To amend sections 5703.05 and 5739.121 and to enact 1  
section 5703.77 of the Revised Code to require the 2  
Tax 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, to provide for a 6  
sales tax deduction or refund for bad debts, and 7  
to make an appropriation. 8

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

**Section 1.** That sections 5703.05 and 5739.121 be amended and 9  
section 5703.77 of the Revised Code be enacted to read as follows: 10

**Sec. 5703.05.** All powers, duties, and functions of the 11  
department of taxation are vested in and shall be performed by the 12  
tax commissioner, which powers, duties, and functions shall 13  
include, but shall not be limited to, the following: 14

(A) Prescribing all blank forms which the department is 15

authorized to prescribe, and to provide such forms and distribute 16  
the same as required by law and the rules of the department. 17

(B) Exercising the authority provided by law, including 18  
orders from bankruptcy courts, relative to remitting or refunding 19  
taxes or assessments, including penalties and interest thereon, 20  
illegally or erroneously assessed or collected, or for any other 21  
reason overpaid, and in addition, the commissioner may on written 22  
application of any person, firm, or corporation claiming to have 23  
overpaid to the treasurer of state at any time within five years 24  
prior to the making of such application any tax payable under any 25  
law which the department of taxation is required to administer 26  
which does not contain any provision for refund, or on the 27  
commissioner's own motion investigate the facts and make in 28  
triplicate a written statement of the commissioner's findings, 29  
and, if the commissioner finds that there has been an overpayment, 30  
issue in triplicate a certificate of abatement payable to the 31  
taxpayer, the taxpayer's assigns, or legal representative which 32  
shows the amount of the overpayment and the kind of tax overpaid. 33  
One copy of such statement shall be entered on the journal of the 34  
commissioner, one shall be certified to the attorney general, and 35  
one certified copy shall be delivered to the taxpayer. All copies 36  
of the certificate of abatement shall be transmitted to the 37  
attorney general, and if the attorney general finds it to be 38  
correct the attorney general shall so certify on each copy, and 39  
deliver one copy to the taxpayer, one copy to the commissioner, 40  
and the third copy to the treasurer of state. Except as provided 41  
in section 5725.08 of the Revised Code, the taxpayer's copy of any 42  
certificates of abatement may be tendered by the payee or 43  
transferee thereof to the treasurer of state, or to the 44  
commissioner on behalf of the treasurer, as payment, to the extent 45  
of the amount thereof, of any tax payable to the treasurer of 46  
state. 47

(C) Exercising the authority provided by law relative to	48
consenting to the compromise and settlement of tax claims;	49
(D) Exercising the authority provided by law relative to the	50
use of alternative tax bases by taxpayers in the making of	51
personal property tax returns;	52
(E) Exercising the authority provided by law relative to	53
authorizing the prepayment of taxes on retail sales of tangible	54
personal property or on the storage, use, or consumption of	55
personal property, and waiving the collection of such taxes from	56
the consumers;	57
(F) Exercising the authority provided by law to revoke	58
licenses;	59
(G) Maintaining a continuous study of the practical operation	60
of all taxation and revenue laws of the state, the manner in which	61
and extent to which such laws provide revenues for the support of	62
the state and its political subdivisions, the probable effect upon	63
such revenue of possible changes in existing laws, and the	64
possible enactment of measures providing for other forms of	65
taxation. For this purpose the commissioner may establish and	66
maintain a division of research and statistics, and may appoint	67
necessary employees who shall be in the unclassified civil	68
service; the results of such study shall be available to the	69
members of the general assembly and the public.	70
(H) Making all tax assessments, valuations, findings,	71
determinations, computations, and orders the department of	72
taxation is by law authorized and required to make and, pursuant	73
to time limitations provided by law, on the commissioner's own	74
motion, reviewing, redetermining, or correcting any tax	75
assessments, valuations, findings, determinations, computations,	76
or orders the commissioner has made, but the commissioner shall	77
not review, redetermine, or correct any tax assessment, valuation,	78

finding, determination, computation, or order which the 79  
commissioner has made as to which an appeal or application for 80  
rehearing, review, redetermination, or correction has been filed 81  
with the board of tax appeals, unless such appeal or application 82  
is withdrawn by the appellant or applicant or dismissed; 83

(I) Appointing not more than five deputy tax commissioners, 84  
who, under such regulations as the rules of the department of 85  
taxation prescribe, may act for the commissioner in the 86  
performance of such duties as the commissioner prescribes in the 87  
administration of the laws which the commissioner is authorized 88  
and required to administer, and who shall serve in the 89  
unclassified civil service at the pleasure of the commissioner, 90  
but if a person who holds a position in the classified service is 91  
appointed, it shall not affect the civil service status of such 92  
person. The commissioner may designate not more than two of the 93  
deputy commissioners to act as commissioner in case of the 94  
absence, disability, or recusal of the commissioner or vacancy in 95  
the office of commissioner. The commissioner may adopt rules 96  
relating to the order of precedence of such designated deputy 97  
commissioners and to their assumption and administration of the 98  
office of commissioner. 99

(J) Appointing and prescribing the duties of all other 100  
employees of the department of taxation necessary in the 101  
performance of the work of the department which the tax 102  
commissioner is by law authorized and required to perform, and 103  
creating such divisions or sections of employees as, in the 104  
commissioner's judgment, is proper; 105

(K) Organizing the work of the department, which the 106  
commissioner is by law authorized and required to perform, so 107  
that, in the commissioner's judgment, an efficient and economical 108  
administration of the laws will result; 109

(L) Maintaining a journal, which is open to public 110

inspection, in which the tax commissioner shall keep a record of 111  
all final determinations of the commissioner; 112

(M) Adopting and promulgating, in the manner provided by 113  
section 5703.14 of the Revised Code, all rules of the department, 114  
including rules for the administration of sections 3517.16, 115  
3517.17, and 5747.081 of the Revised Code; 116

(N) Destroying any or all returns or assessment certificates 117  
in the manner authorized by law; 118

(O) Adopting rules, in accordance with division (B) of 119  
section 325.31 of the Revised Code, governing the expenditure of 120  
moneys from the real estate assessment fund under that division; 121

(P) Informing taxpayers in a timely manner to resolve credit 122  
account balances as required by section 5703.77 of the Revised 123  
Code. 124

**Sec. 5703.77.** (A) As used in this section: 125

(1) "Taxpayer" means a person subject to or previously 126  
subject to a tax or fee, a person that remits a tax or fee, or a 127  
person required to or previously required to withhold or collect 128  
and remit a tax or fee on behalf of another person. 129

(2) "Tax or fee" means a tax or fee administered by the tax 130  
commissioner. 131

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

(4) "Tax debt" means an unpaid tax or fee or any unpaid 137  
penalty, interest, or additional charge on such a tax or fee due 138  
the state. 139

(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.

(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.

(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.

(E) The tax commissioner may adopt rules to administer this

section. 172

**Sec. 5739.121.** (A) As used in this section, ~~"bad:~~ 173

(1) "Bad debt" means any debt that has become worthless or 174  
uncollectible in the time period between a vendor's preceding 175  
return and the present return, has been uncollected for at least 176  
six months, and that may be claimed as a deduction pursuant to the 177  
"Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 166, as 178  
amended, and regulations adopted pursuant thereto, or that could 179  
be claimed as such a deduction if the vendor kept accounts on an 180  
accrual basis. "Bad debt" does not include any interest or sales 181  
tax on the purchase price, uncollectible amounts on property that 182  
remains in the possession of the vendor until the full purchase 183  
price is paid, expenses incurred in attempting to collect any 184  
account receivable or for any portion of the debt recovered, and 185  
repossessed property. 186

(2) "Lender" means a person or an affiliate, assignee, or 187  
transferee of a person that owns a private label credit card 188  
account, or an interest in a private label credit card receivable, 189  
provided that interest was any of the following: 190

(a) Transferred from a third party; 191

(b) Purchased directly from a vendor that remitted tax 192  
imposed under this chapter or from an affiliate of the vendor; 193

(c) Originated according to a written agreement between the 194  
person and a vendor that remitted tax imposed under this chapter 195  
or an affiliate of the vendor. 196

(3) "Private label credit card" means a charge card or credit 197  
card on which the name or logo of a vendor appears. 198

(4) "Accounts or receivables bad debt" means the unpaid 199  
balance on private label credit card accounts or receivables that 200  
are bad debt and are charged off as uncollectible on the books of 201

a lender on or after July 1, 2014, and against which a deduction 202  
or refund has not previously been taken or allowed, respectively, 203  
under this section. For the purposes of division (A)(4) of this 204  
section only, "bad debt" shall be determined without regard to 205  
when the debt has become worthless or uncollectible relative to 206  
the period between a vendor's returns, and the deductibility of 207  
the debt for federal income tax purposes shall be determined with 208  
respect to the lender instead of the vendor. 209

(5) "Affiliate" means any person that is a member of an 210  
affiliated group or that would be a member of an affiliated group 211  
if the person was a corporation. 212

(6) "Affiliated group" has the same meaning as in section 213  
1504 of the Internal Revenue Code. 214

(B) In computing taxable receipts for purposes of this 215  
chapter, a vendor may deduct the amount of bad debts. ~~The~~ Except 216  
as provided in division (F) of this section, the amount deducted 217  
must be charged off as uncollectible on the books of the vendor. A 218  
deduction may be claimed only with respect to bad debts on which 219  
the taxes pursuant to sections 5739.10 and 5739.12 of the Revised 220  
Code were paid in a preceding tax period. If the vendor's business 221  
consists of taxable and nontaxable transactions, the deduction 222  
shall equal the full amount of the debt if the debt is documented 223  
as a taxable transaction in the vendor's records. If no such 224  
documentation is available, the maximum deduction on any bad debt 225  
shall equal the amount of the bad debt multiplied by the quotient 226  
obtained by dividing the sales taxed pursuant to this chapter 227  
during the preceding calendar year by all sales during the 228  
preceding calendar year, whether taxed or not. If a consumer or 229  
other person pays all or part of a bad debt with respect to which 230  
a vendor claimed a deduction under this section, the vendor shall 231  
be liable for the amount of taxes deducted in connection with that 232  
portion of the debt for which payment is received and shall remit 233

such taxes in the vendor's next payment to the tax commissioner. 234

(C) Any claim for a bad debt deduction under this section 235  
shall be supported by such evidence as the tax commissioner by 236  
rule requires. The commissioner shall review any change in the 237  
rate of taxation applicable to any taxable sales by a vendor 238  
claiming a deduction pursuant to this section and adopt rules for 239  
altering the deduction in the event of such a change in order to 240  
ensure that the deduction on any bad debt does not result in the 241  
vendor claiming the deduction recovering any more or less than the 242  
taxes imposed on the sale that constitutes the bad debt. 243

(D) In any reporting period in which the amount of bad debt 244  
exceeds the amount of taxable sales for the period, the vendor may 245  
file a refund claim for any tax collected on the bad debt in 246  
excess of the tax reported on the return. The refund claim shall 247  
be filed in the manner provided in section 5739.07 of the Revised 248  
Code, except that the claim may be filed within four years of the 249  
due date of the return on which the bad debt first could have been 250  
claimed. 251

(E) When the filing responsibilities of a vendor have been 252  
assumed by a certified service provider, the certified service 253  
provider shall claim the bad debt allowance provided by this 254  
section on behalf of the vendor. The certified service provider 255  
shall credit or refund to the vendor the full amount of any bad 256  
debt allowance or refund. 257

(F) ~~No person other than the vendor in the transaction that 258  
generated the bad debt or, as provided in division (E) of this 259  
section, a certified service provider, may claim the bad debt 260  
allowance provided by this section~~ (1) A vendor may deduct on a 261  
return or obtain a refund of tax remitted by the vendor on 262  
accounts or receivables bad debt. 263

A vendor taking a deduction or claiming a refund under 264

division (F)(1) of this section shall include all credit sale 265  
transactions outstanding in the account or receivable at the time 266  
the account or receivable is charged off as uncollectible on the 267  
books of a lender in calculating the deduction or refund, 268  
regardless of the date on which the credit sale transaction 269  
occurs. 270

(2) The deduction or refund authorized under division (F)(1) 271  
of this section may be taken or obtained by the vendor only on the 272  
basis of accounts or receivables bad debt from purchases from the 273  
vendor whose name or logo appears on the private label credit card 274  
or from purchases from any of the vendor's affiliates or 275  
franchisees. 276

(3) A vendor taking a deduction or receiving a refund under 277  
division (F)(1) of this section shall maintain books, records, or 278  
other documents verifying the accounts or receivables bad debt, 279  
which shall be open to inspection by the commissioner upon 280  
request. 281

(4) If the vendor collects in whole or part any accounts or 282  
receivables bad debt on the basis of which the vendor took a 283  
deduction or received a refund under division (F) of this section, 284  
the vendor shall include the amount collected in the vendor's 285  
first return filed after the collection and pay tax on the portion 286  
of that amount with respect to which the vendor took the deduction 287  
or received a refund. 288

For the purpose of calculating the amount of tax to remit 289  
under division (F)(4) of this section, the vendor shall allocate 290  
payments made by the holder of a private label credit card on the 291  
holder's accounts based on the agreement between the account 292  
holder and the vendor or lender. 293

(G) The tax commissioner may adopt rules necessary to 294  
administer this section. 295

**Section 2.** That existing sections 5703.05 and 5739.121 of the Revised Code are hereby repealed.

**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.

TAX DEPARTMENT OF TAXATION

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