

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 82

**Senators Reynolds, Ingram
Cosponsors: Senators Cirino, Romanchuk, Antonio**



A BILL

To amend sections 5739.12 and 5739.99 and to enact 1
section 5739.28 of the Revised Code to allow 2
certain tax-exempt retailers to retain a portion 3
of state sales taxes to fund employment 4
services. 5

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

Section 1. That sections 5739.12 and 5739.99 be amended 6
and section 5739.28 of the Revised Code be enacted to read as 7
follows: 8

Sec. 5739.12. (A) (1) Each person who has or is required to 9
have a vendor's license, on or before the twenty-third day of 10
each month, shall make and file a return for the preceding month 11
in the form prescribed by the tax commissioner, and shall pay 12
the tax shown on the return to be due. The return shall be filed 13
electronically using the Ohio business gateway, as defined in 14
section 718.01 of the Revised Code, the Ohio telefile system, or 15
any other electronic means prescribed by the commissioner. 16
Payment of the tax shown on the return to be due shall be made 17
electronically in a manner approved by the commissioner. The 18

commissioner may require a vendor that operates from multiple 19
locations or has multiple vendor's licenses to report all tax 20
liabilities on one consolidated return. The return shall show 21
the amount of tax due from the vendor to the state for the 22
period covered by the return and such other information as the 23
commissioner deems necessary for the proper administration of 24
this chapter. The commissioner may extend the time for making 25
and filing returns and paying the tax, and may require that the 26
return for the last month of any annual or semiannual period, as 27
determined by the commissioner, be a reconciliation return 28
detailing the vendor's sales activity for the preceding annual 29
or semiannual period. The reconciliation return shall be filed 30
by the last day of the month following the last month of the 31
annual or semiannual period. The commissioner may remit all or 32
any part of amounts or penalties that may become due under this 33
chapter and may adopt rules relating thereto. Such return shall 34
be filed electronically as directed by the tax commissioner, and 35
payment of the amount of tax shown to be due thereon, after 36
deduction of any discount provided for under this section, shall 37
be made electronically in a manner approved by the tax 38
commissioner. 39

(2) Any person required to file returns and make payments 40
electronically under division (A)(1) of this section may apply 41
to the tax commissioner on a form prescribed by the commissioner 42
to be excused from that requirement. For good cause shown, the 43
commissioner may excuse the person from that requirement and may 44
permit the person to file the returns and make the payments 45
required by this section by nonelectronic means. 46

(B)(1) If the return is filed and the amount of tax shown 47
thereon to be due is paid on or before the date such return is 48
required to be filed, the vendor shall be entitled to a discount 49

of three-fourths of one per cent of the amount shown to be due 50
on the return. 51

(2) A vendor that has selected a certified service 52
provider as its agent shall not be entitled to the discount if 53
the certified service provider receives a monetary allowance 54
pursuant to section 5739.06 of the Revised Code for performing 55
the vendor's sales and use tax functions in this state. Amounts 56
paid to the clerk of courts pursuant to section 4505.06 of the 57
Revised Code shall be subject to the applicable discount. The 58
discount shall be in consideration for prompt payment to the 59
clerk of courts and for other services performed by the vendor 60
in the collection of the tax. 61

(C) (1) Upon application to the tax commissioner, a vendor 62
who 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 65
less than an amount determined by the commissioner to be the 66
average monthly tax liability of the vendor, based upon a review 67
of the returns or other information pertaining to such vendor 68
for a 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 74
of the amount of tax shown to be due thereon, after deduction of 75
any discount provided in this section, shall be made 76
electronically in a manner approved by the commissioner. Failure 77
of a vendor to comply with any of the above conditions may 78
result in immediate reinstatement of the requirement of 79
reporting and paying the actual tax liability on each monthly 80

return, and the commissioner may at the commissioner's 81
discretion deny the vendor the right to report and pay based 82
upon the average monthly liability for a period not to exceed 83
two years. The amount ascertained by the commissioner to be the 84
average monthly tax liability of a vendor may be adjusted, based 85
upon a review of the returns or other information pertaining to 86
the vendor for a period of not less than six months nor more 87
than two years preceding such adjustment. 88

(2) The commissioner may authorize vendors whose tax 89
liability is not such as to merit monthly returns, as 90
ascertained by the commissioner upon the basis of administrative 91
costs to the state, to make and file returns at less frequent 92
intervals. When returns are filed at less frequent intervals in 93
accordance with such authorization, the vendor shall be allowed 94
the discount provided in this section in consideration for 95
prompt payment with the return, provided the return is filed and 96
payment is made of the amount of tax shown to be due thereon, at 97
the time specified by the commissioner, but a vendor that has 98
selected a certified service provider as its agent shall not be 99
entitled to the discount. 100

(D) Any vendor who fails to file a return or, except as 101
authorized under section 5739.28 of the Revised Code, to pay the 102
full amount of the tax shown on the return to be due in the 103
manner prescribed under this section and the rules of the 104
commissioner may, for each such return, be required to forfeit 105
and pay into the state treasury an additional charge not 106
exceeding fifty dollars or ten per cent of the tax required to 107
be paid for the reporting period, whichever is greater, as 108
revenue arising from the tax imposed by this chapter, and such 109
sum may be collected by assessment in the manner provided in 110
section 5739.13 of the Revised Code. The commissioner may remit 111

all or a portion of the additional charge and may adopt rules 112
relating to the imposition and remission of the additional 113
charge. 114

(E) If the amount required to be collected by a vendor 115
from consumers is in excess of the applicable percentage of the 116
vendor's receipts from sales that are taxable under section 117
5739.02 of the Revised Code, or in the case of sales subject to 118
a tax levied pursuant to section 5739.021, 5739.023, or 5739.026 119
of the Revised Code, in excess of the percentage equal to the 120
aggregate rate of such taxes and the tax levied by section 121
5739.02 of the Revised Code, such excess shall be remitted along 122
with the remittance of the amount of tax due under section 123
5739.10 of the Revised Code. 124

(F) The commissioner, if the commissioner deems it 125
necessary in order to insure the payment of the tax imposed by 126
this chapter, may require returns and payments to be made for 127
other than monthly periods. 128

(G) Any vendor required to file a return and pay the tax 129
under this section whose total payment for a year equals or 130
exceeds the amount shown in division (A) of section 5739.122 of 131
the Revised Code is subject to the accelerated tax payment 132
requirements in divisions (B) and (C) of that section. For a 133
vendor that operates from multiple locations or has multiple 134
vendor's licenses, in determining whether the vendor's total 135
payment equals or exceeds the amount shown in division (A) of 136
that section, the vendor's total payment amount shall be the 137
amount of the vendor's total tax liability for the previous 138
calendar year for all of the vendor's locations or licenses. 139

Sec. 5739.28. (A) As used in this section: 140

(1) "Qualifying retailer" means a vendor that is an 141
organization exempt from federal income taxation under section 142
501(a) of the Internal Revenue Code, as described in section 143
501(c)(3) of the Internal Revenue Code, that has been certified 144
by the director of development under division (B) of this 145
section as satisfying both of the following conditions: 146

(a) Operates one or more retail stores that routinely sell 147
tangible personal property donated to the vendor; 148

(b) Has experience in providing and uses a portion of its 149
revenue to provide job training and placement services and 150
employment to individuals with workplace disadvantages. 151

(2) "Workplace disadvantages" means disabilities and other 152
barriers to employment including mental health issues, criminal 153
history, veteran status, and homelessness. 154

(B) A vendor may apply to the director of development to 155
be certified as a qualifying retailer on a form and in the 156
manner that the director shall prescribe. The vendor shall 157
include with the application records of the number of 158
individuals trained and employed through workforce development 159
programs offered by the vendor and any other information the 160
director may require to determine whether the vendor qualifies 161
as a qualifying retailer. The director shall issue a 162
determination to the vendor within thirty days after receiving 163
an application. If the application is approved, the director 164
shall certify the determination to the tax commissioner and 165
issue a certificate to the vendor. If the application is denied, 166
the director shall inform the vendor of the reason for the 167
denial. 168

(C) Except as provided in division (D) of this section, a 169

qualifying retailer may retain up to twenty-five per cent of the 170
revenue the vendor receives from collecting the tax levied under 171
section 5739.02 of the Revised Code from consumers on the sale 172
of tangible personal property donated to the vendor. A 173
qualifying retailer shall report the amount retained for each 174
applicable time period on the vendor's return filed under 175
section 5739.12 of the Revised Code. 176

Retained revenue shall be used by a qualifying retailer 177
exclusively to fund job training and placement services for 178
individuals with workplace disadvantages. Not later than the 179
thirty-first day of January of each year, a qualifying retailer 180
shall file a report with the department of development 181
accounting for the use of funds retained in the preceding year 182
and listing the number of individuals served by the retailer's 183
workforce programs in that year. The department shall review 184
each report to ensure compliance with this division and notify 185
the tax commissioner of any noncompliance. The department shall 186
not conduct such a review more than four years after the last 187
day of the year covered by the report. 188

The tax commissioner may make an assessment under section 189
5739.13 of the Revised Code to recover any taxes retained under 190
this section that a qualifying retailer did not use for purposes 191
authorized under this section. 192

(D) A qualifying retailer shall not retain more than one 193
million dollars in revenue under this section in any calendar 194
year. The retention of revenue in excess of this limitation by a 195
qualifying retailer shall be treated as a failure to pay the 196
full amount of tax under division (D) of section 5739.12 of the 197
Revised Code. 198

Sec. 5739.99. (A) Whoever violates section 5739.26 or 199

5739.29 of the Revised Code shall be fined not less than twenty- 200
five nor more than one hundred dollars for a first offense; for 201
each subsequent offense such person shall, if a corporation, be 202
fined not less than one hundred nor more than five hundred 203
dollars, or if an individual, or a member of a partnership, 204
firm, or association, be fined not less than twenty-five nor 205
more than one hundred dollars, or imprisoned not more than sixty 206
days, or both. 207

(B) Whoever violates division (A) of section 5739.30 of 208
the Revised Code shall be fined not less than one hundred nor 209
more than one thousand dollars, or imprisoned not more than 210
sixty days, or both. 211

(C) (1) Whoever violates division (A) (1) of section 5739.31 212
of the Revised Code shall be fined not less than twenty-five nor 213
more than one hundred dollars. If the offender previously has 214
been convicted of a violation of division (A) (1) of section 215
5739.31 of the Revised Code, the offender is guilty of a felony 216
of the fourth degree. 217

(2) Whoever violates division (A) (2) of section 5739.31 of 218
the Revised Code shall be fined not less than one hundred 219
dollars nor more than five hundred dollars, or imprisoned for 220
not more than ten days, or both, for the first offense; for each 221
subsequent offense, each such person shall be fined not less 222
than one thousand dollars nor more than twenty-five hundred 223
dollars, or imprisoned not more than thirty days, or both. The 224
motor vehicles and goods of any person charged with violating 225
division (A) (2) of section 5739.31 of the Revised Code may be 226
impounded and held pending the disposition of the charge, and 227
may be sold at auction by the county sheriff in the manner 228
prescribed by law to satisfy any fine imposed by this division. 229

(3) Whoever violates division (B) of section 5739.31 of the Revised Code is guilty of a felony of the fourth degree. Each day that business is conducted while a vendor's license is suspended constitutes a separate offense.

(D) Except as otherwise provided in this section, whoever violates sections 5739.01 to 5739.31 of the Revised Code, or any lawful rule promulgated by the department of taxation under authority of such sections, shall be fined not less than twenty-five nor more than one hundred dollars.

(E) Whoever violates section 5739.12 of the Revised Code by failing to remit to the state the tax collected under section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code, except as authorized under section 5739.28 of the Revised Code, is guilty of a felony of the fourth degree and shall suffer the loss of the person's vendor's license as required by section 5739.17 of the Revised Code. A person shall not be eligible for a vendor's license for two years following conviction.

(F) Whoever violates division (E) of section 5739.17 of the Revised Code is guilty of failure to display a transient vendor's license, a minor misdemeanor. A sheriff or police officer in a municipal corporation may enforce this division. The prosecuting attorney of a county shall inform the tax commissioner of any instance when a complaint is brought against a transient vendor pursuant to this division.

(G) Whoever violates section 5739.103 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars. If the offender previously has been convicted of violating that section, the offender is guilty of a felony of the fourth degree.

(H) The penalties provided in this section are in addition 259
to any penalties imposed by the tax commissioner under section 260
5739.133 of the Revised Code. 261

Section 2. That existing sections 5739.12 and 5739.99 of 262
the Revised Code are hereby repealed. 263

Section 3. Section 5739.99 of the Revised Code is 264
presented in this act as a composite of the section as amended 265
by both S.B. 143 and S.B. 200 of the 124th General Assembly. The 266
General Assembly, applying the principle stated in division (B) 267
of section 1.52 of the Revised Code that amendments are to be 268
harmonized if reasonably capable of simultaneous operation, 269
finds that the composite is the resulting version of the section 270
in effect prior to the effective date of the section as 271
presented in this act. 272