

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 108

Representatives Santucci, Miller, A.

**Cosponsors: Representatives Gross, Williams, McNally, White, Dell'Aquila,
Schmidt**

A BILL

To amend sections 5739.12 and 5739.99 and to enact 1
section 5739.28 of the Revised Code to enact the 2
Nonprofit Workforce Reinvestment Act to allow 3
certain tax-exempt retailers to retain a portion 4
of state sales taxes to fund employment 5
services. 6

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

Section 1. That sections 5739.12 and 5739.99 be amended 7
and section 5739.28 of the Revised Code be enacted to read as 8
follows: 9

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

electronically in a manner approved by the commissioner. The 19
commissioner may require a vendor that operates from multiple 20
locations or has multiple vendor's licenses to report all tax 21
liabilities on one consolidated return. The return shall show 22
the amount of tax due from the vendor to the state for the 23
period covered by the return and such other information as the 24
commissioner deems necessary for the proper administration of 25
this chapter. The commissioner may extend the time for making 26
and filing returns and paying the tax, and may require that the 27
return for the last month of any annual or semiannual period, as 28
determined by the commissioner, be a reconciliation return 29
detailing the vendor's sales activity for the preceding annual 30
or semiannual period. The reconciliation return shall be filed 31
by the last day of the month following the last month of the 32
annual or semiannual period. The commissioner may remit all or 33
any part of amounts or penalties that may become due under this 34
chapter and may adopt rules relating thereto. Such return shall 35
be filed electronically as directed by the tax commissioner, and 36
payment of the amount of tax shown to be due thereon, after 37
deduction of any discount provided for under this section, shall 38
be made electronically in a manner approved by the tax 39
commissioner. 40

(2) Any person required to file returns and make payments 41
electronically under division (A)(1) of this section may apply 42
to the tax commissioner on a form prescribed by the commissioner 43
to be excused from that requirement. For good cause shown, the 44
commissioner may excuse the person from that requirement and may 45
permit the person to file the returns and make the payments 46
required by this section by nonelectronic means. 47

(B)(1) If the return is filed and the amount of tax shown 48
thereon to be due is paid on or before the date such return is 49

required to be filed, the vendor shall be entitled to a discount 50
of three-fourths of one per cent of the amount shown to be due 51
on the return. 52

(2) A vendor that has selected a certified service 53
provider as its agent shall not be entitled to the discount if 54
the certified service provider receives a monetary allowance 55
pursuant to section 5739.06 of the Revised Code for performing 56
the vendor's sales and use tax functions in this state. Amounts 57
paid to the clerk of courts pursuant to section 4505.06 of the 58
Revised Code shall be subject to the applicable discount. The 59
discount shall be in consideration for prompt payment to the 60
clerk of courts and for other services performed by the vendor 61
in the collection of the tax. 62

(C) (1) Upon application to the tax commissioner, a vendor 63
who is required to file monthly returns may be relieved of the 64
requirement to report and pay the actual tax due, provided that 65
the vendor agrees to remit to the commissioner payment of not 66
less than an amount determined by the commissioner to be the 67
average monthly tax liability of the vendor, based upon a review 68
of the returns or other information pertaining to such vendor 69
for a period of not less than six months nor more than two years 70
immediately preceding the filing of the application. Vendors who 71
agree to the above conditions shall make and file an annual or 72
semiannual reconciliation return, as prescribed by the 73
commissioner. The reconciliation return shall be filed 74
electronically as directed by the tax commissioner, and payment 75
of the amount of tax shown to be due thereon, after deduction of 76
any discount provided in this section, shall be made 77
electronically in a manner approved by the commissioner. Failure 78
of a vendor to comply with any of the above conditions may 79
result in immediate reinstatement of the requirement of 80

reporting and paying the actual tax liability on each monthly 81
return, and the commissioner may at the commissioner's 82
discretion deny the vendor the right to report and pay based 83
upon the average monthly liability for a period not to exceed 84
two years. The amount ascertained by the commissioner to be the 85
average monthly tax liability of a vendor may be adjusted, based 86
upon a review of the returns or other information pertaining to 87
the vendor for a period of not less than six months nor more 88
than two years preceding such adjustment. 89

(2) The commissioner may authorize vendors whose tax 90
liability is not such as to merit monthly returns, as 91
ascertained by the commissioner upon the basis of administrative 92
costs to the state, to make and file returns at less frequent 93
intervals. When returns are filed at less frequent intervals in 94
accordance with such authorization, the vendor shall be allowed 95
the discount provided in this section in consideration for 96
prompt payment with the return, provided the return is filed and 97
payment is made of the amount of tax shown to be due thereon, at 98
the time specified by the commissioner, but a vendor that has 99
selected a certified service provider as its agent shall not be 100
entitled to the discount. 101

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

section 5739.13 of the Revised Code. The commissioner may remit 112
all or a portion of the additional charge and may adopt rules 113
relating to the imposition and remission of the additional 114
charge. 115

(E) If the amount required to be collected by a vendor 116
from consumers is in excess of the applicable percentage of the 117
vendor's receipts from sales that are taxable under section 118
5739.02 of the Revised Code, or in the case of sales subject to 119
a tax levied pursuant to section 5739.021, 5739.023, or 5739.026 120
of the Revised Code, in excess of the percentage equal to the 121
aggregate rate of such taxes and the tax levied by section 122
5739.02 of the Revised Code, such excess shall be remitted along 123
with the remittance of the amount of tax due under section 124
5739.10 of the Revised Code. 125

(F) The commissioner, if the commissioner deems it 126
necessary in order to insure the payment of the tax imposed by 127
this chapter, may require returns and payments to be made for 128
other than monthly periods. 129

(G) Any vendor required to file a return and pay the tax 130
under this section whose total payment for a year equals or 131
exceeds the amount shown in division (A) of section 5739.122 of 132
the Revised Code is subject to the accelerated tax payment 133
requirements in divisions (B) and (C) of that section. For a 134
vendor that operates from multiple locations or has multiple 135
vendor's licenses, in determining whether the vendor's total 136
payment equals or exceeds the amount shown in division (A) of 137
that section, the vendor's total payment amount shall be the 138
amount of the vendor's total tax liability for the previous 139
calendar year for all of the vendor's locations or licenses. 140

Sec. 5739.28. (A) As used in this section: 141

(1) "Qualifying retailer" means a vendor that is an 142
organization exempt from federal income taxation under section 143
501(a) of the Internal Revenue Code, as described in section 144
501(c)(3) of the Internal Revenue Code, that has been certified 145
by the director of development under division (B) of this 146
section as satisfying both of the following conditions: 147

(a) Operates one or more retail stores that routinely sell 148
tangible personal property donated to the vendor; 149

(b) Has experience in providing and uses a portion of its 150
revenue to provide job training and placement services and 151
employment to individuals with workplace disadvantages. 152

(2) "Workplace disadvantages" means disabilities and other 153
barriers to employment including mental health issues, criminal 154
history, veteran status, and homelessness. 155

(B) A vendor may apply to the director of development to 156
be certified as a qualifying retailer on a form and in the 157
manner that the director shall prescribe. The vendor shall 158
include with the application records of the number of 159
individuals trained and employed through workforce development 160
programs offered by the vendor and any other information the 161
director may require to determine whether the vendor qualifies 162
as a qualifying retailer. The director shall issue a 163
determination to the vendor within thirty days after receiving 164
an application. If the application is approved, the director 165
shall certify the determination to the tax commissioner and 166
issue a certificate to the vendor. If the application is denied, 167
the director shall inform the vendor of the reason for the 168
denial. 169

(C) Except as provided in division (D) of this section, a 170

qualifying retailer may retain up to twenty-five per cent of the 171
revenue the vendor receives from collecting the tax levied under 172
section 5739.02 of the Revised Code from consumers on the sale 173
of tangible personal property donated to the vendor. A 174
qualifying retailer shall report the amount retained for each 175
applicable time period on the vendor's return filed under 176
section 5739.12 of the Revised Code. 177

Retained revenue shall be used by a qualifying retailer 178
exclusively to fund job training and placement services for 179
individuals with workplace disadvantages into competitive 180
employment. Not later than the thirty-first day of January of 181
each year, a qualifying retailer shall file a report with the 182
department of development accounting for the use of funds 183
retained in the preceding year and listing the number of 184
individuals served by the retailer's workforce programs in that 185
year. The department shall review each report to ensure 186
compliance with this division and notify the tax commissioner of 187
any noncompliance. The department shall not conduct such a 188
review more than four years after the last day of the year 189
covered by the report. 190

The tax commissioner may make an assessment under section 191
5739.13 of the Revised Code to recover any taxes retained under 192
this section that a qualifying retailer did not use for purposes 193
authorized under this section. 194

(D) A qualifying retailer shall not retain more than one 195
million dollars in revenue under this section in any calendar 196
year. The retention of revenue in excess of this limitation by a 197
qualifying retailer shall be treated as a failure to pay the 198
full amount of tax under division (D) of section 5739.12 of the 199
Revised Code. 200

Sec. 5739.99. (A) Whoever violates section 5739.26 or 201
5739.29 of the Revised Code shall be fined not less than twenty- 202
five nor more than one hundred dollars for a first offense; for 203
each subsequent offense such person shall, if a corporation, be 204
fined not less than one hundred nor more than five hundred 205
dollars, or if an individual, or a member of a partnership, 206
firm, or association, be fined not less than twenty-five nor 207
more than one hundred dollars, or imprisoned not more than sixty 208
days, or both. 209

(B) Whoever violates division (A) of section 5739.30 of 210
the Revised Code shall be fined not less than one hundred nor 211
more than one thousand dollars, or imprisoned not more than 212
sixty days, or both. 213

(C) (1) Whoever violates division (A) (1) of section 5739.31 214
of the Revised Code shall be fined not less than twenty-five nor 215
more than one hundred dollars. If the offender previously has 216
been convicted of a violation of division (A) (1) of section 217
5739.31 of the Revised Code, the offender is guilty of a felony 218
of the fourth degree. 219

(2) Whoever violates division (A) (2) of section 5739.31 of 220
the Revised Code shall be fined not less than one hundred 221
dollars nor more than five hundred dollars, or imprisoned for 222
not more than ten days, or both, for the first offense; for each 223
subsequent offense, each such person shall be fined not less 224
than one thousand dollars nor more than twenty-five hundred 225
dollars, or imprisoned not more than thirty days, or both. The 226
motor vehicles and goods of any person charged with violating 227
division (A) (2) of section 5739.31 of the Revised Code may be 228
impounded and held pending the disposition of the charge, and 229
may be sold at auction by the county sheriff in the manner 230

prescribed by law to satisfy any fine imposed by this division.	231
(3) Whoever violates division (B) of section 5739.31 of the Revised Code is guilty of a felony of the fourth degree.	232
Each day that business is conducted while a vendor's license is suspended constitutes a separate offense.	233
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(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.	236
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(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, <u>except as authorized under section 5739.28 of the Revised Code,</u> 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.	241
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(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.	249
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(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	256
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the fourth degree. 260

(H) The penalties provided in this section are in addition 261
to any penalties imposed by the tax commissioner under section 262
5739.133 of the Revised Code. 263

Section 2. That existing sections 5739.12 and 5739.99 of 264
the Revised Code are hereby repealed. 265

Section 3. This act shall be referred to as the Nonprofit 266
Workforce Reinvestment Act. 267

Section 4. Section 5739.99 of the Revised Code is 268
presented in this act as a composite of the section as amended 269
by both S.B. 143 and S.B. 200 of the 124th General Assembly. The 270
General Assembly, applying the principle stated in division (B) 271
of section 1.52 of the Revised Code that amendments are to be 272
harmonized if reasonably capable of simultaneous operation, 273
finds that the composite is the resulting version of the section 274
in effect prior to the effective date of the section as 275
presented in this act. 276