



Ohio Legislative Service Commission

Final Analysis

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Reps. Beck, Letson, Antonio, Barnes, Boose, Combs, Gardner, Garland, Hackett, Newbold, O'Brien, Sears, Sprague, Thompson, Wachtmann, Winburn, Young, Batchelder

Sens. Peterson, Beagle, Kearney, Obhof, Oelslager, Smith, Tavares, Turner, Wagoner

Effective date: Emergency December 20, 2012; certain provisions effective January 1, 2014

ACT SUMMARY

Incorporating federal tax law

- Incorporates into Ohio tax law changes to federal tax law taking effect since March 7, 2011.

CAT exemption for suppliers of unrefined precious metals

- Exempts from the commercial activity tax base gross receipts derived from the sale of certain unrefined precious metals to refining facilities in the Appalachian region to the extent the refined products are shipped outside Ohio.

Municipal property tax abatement

- Authorizes the abatement of unpaid property taxes, penalties, and interest owed on property that is owned by a municipal corporation and that would have qualified for property tax exemption if not for a failure to comply with certain tax exemption procedures.

9-1-1 service law changes

Wireless 9-1-1 charges

- Requires continuous imposition of the monthly wireless 9-1-1 charge on prepaid subscribers, at 25¢, and collection by wireless service providers and resellers until

the new prepaid charge, which is 0.5% of the sale price of a prepaid service, collected by sellers, takes effect in 2014.

- Prohibits the wireless 9-1-1 charges from being imposed on a subscriber of lifeline service or a provider of that service.
- Delays until 2014 the Tax Commissioner's duty to notify known wireless service providers, resellers, and prepaid sellers of a change in the amount of the prepaid or nonprepaid wireless 9-1-1 charge.

Duties and authority of the Public Utilities Commission

- Requires duties and authority of the Public Utilities Commission (PUCO) and the Ohio 9-1-1 Coordinator within the PUCO to be maintained until 2014, rather than transferring those to the Tax Commissioner or the Department of Public Safety on December 20, 2012, including collecting charges, auditing and assessments, spending authority, and disbursement of funds.
- Terminates the 9-1-1 Service Program and the position of the Ohio 9-1-1 Coordinator, effective January 1, 2014.
- Removes provisions that would have required the Director of Public Safety to appoint and oversee an Ohio 9-1-1 Coordinator.
- Maintains the requirement that the PUCO determine the rates for the wireline telephone network portion of a 9-1-1 system, which rates are charged to wireline telephone customers.
- Modifies the membership of the Ohio 9-1-1 Council by requiring the Ohio 9-1-1 Coordinator (within the PUCO) to serve on the Council until January 1, 2014, and requiring the Director of Public Safety (or designee) to serve on and after that date.

Remittance of wireless 9-1-1 charges

- Alters provisions governing remittance of the prepaid and nonprepaid charges to the Tax Commissioner, including requiring remittance to the Tax Commissioner beginning in 2014, homogenizing requirements for the two charges, permitting 30-day extensions and removing a provision regarding reconciliation returns.

Audits and assessments

- Specifies that prepaid sellers are liable to the state for amounts not collected or remitted, and specifies that providers, resellers, and prepaid sellers are liable to the

state for failure to remit money to the Tax Commissioner regardless of whether the money was collected.

- Vests the audit and assessment duties with the Tax Commissioner beginning in 2014, but also modifies provisions governing those audits and assessments, including applying them to prepaid sellers, replacing procedural provisions, and permitting the Tax Commissioner to assess a person for an erroneously refunded charge.

Disbursements

- Requires that the Department of Public Safety, rather than the Tax Commissioner, receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used for.
- Requires the Tax Commissioner to take over disbursement duties in 2014 from the Ohio 9-1-1 Coordinator, rather than on December 20, 2012.
- Requires both the Coordinator and the Tax Commissioner to make the disbursements in the same manner as the 2012 disbursements, in accordance with the formula and determination provisions in prior law, rather than requiring the disbursements to "remain at the level disbursed in 2012."
- Requires the Tax Commissioner, beginning January 1, 2014, to make disbursements from the Next Generation 9-1-1 Fund in accordance with guidelines established by the Statewide Emergency Services Internet Protocol Network Steering Committee.
- Prescribes the wireless enhanced 9-1-1 purposes that disbursements from the Next Generation 9-1-1 Fund may be used for, and permits a subdivision or regional council of governments that certifies that it has paid these costs to use those disbursements to pay personnel costs of public safety answering points.
- Limits the number of public safety answering points that may use disbursements from the Next Generation 9-1-1 Fund.

Compliance with technical and operational standards

- Requires the Department of Public Safety to monitor compliance with technical and operation standards for public safety answering points set by rule of the Statewide Emergency Services Internet Protocol Network Steering Committee.

Administrative funding

- Makes effective in 2014 the funding for the Department of Public Safety (1% of the remitted wireless 9-1-1 charges) to be used for defraying administrative costs, rather than on December 20, 2012.
- Makes effective in 2014 the funding for the Tax Commissioner (1% of the remitted wireless 9-1-1 charges) to be used for defraying administrative costs, rather than on December 20, 2012.
- Requires the Tax Commissioner and the Director of Public Safety to annually transfer any excess from their administrative allotments to the Next Generation 9-1-1 Fund, rather than the Wireless 9-1-1 Government Assistance Fund (the main fund for the deposit of the wireless 9-1-1 charges).
- Appropriates \$1,174,000 from the General Revenue Fund to the Department of Taxation for operating expenses, effective December 20, 2012.

Rulemaking and administration of the 9-1-1 service law

- Permits, rather than requires, the Tax Commissioner to adopt rules to carry out the 9-1-1 service law, and relieves the Tax Commissioner of the duty to consult with the Director of Public Safety in adopting these rules.
- Removes a requirement that the Director of Public Safety, after consultation with the Tax Commissioner, adopt rules under the Administrative Procedure Act to carry out certain provisions of the 9-1-1 service law.
- Permits the Director of Public Safety to adopt rules under Chapter 111. of the Revised Code, which does not require public hearings, to approve, adopt, and prescribe such forms and processes as are necessary to carry out the duties required of the Director under the 9-1-1 service law.
- Permits the Director of Public Safety, at the Director's discretion, to assign Department employees to provide assistance in carrying out the Director's duties under the 9-1-1 service law.

Definitions

- Defines "consumer," for purposes of the 9-1-1 service law, in a way that accords with the sales tax law.

- Defines "reseller," for purposes of the 9-1-1 service law, as a nonfacilities-based provider of wireless service that provides that service under its own name to one or more end users in Ohio using the network of a wireless service provider.

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CONTENT AND OPERATION

Incorporation of Internal Revenue Code changes

The act incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 7, 2011.¹ The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

The principal amendments to the IRC that the act incorporates include two changes made in the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 that provide for tax-exempt bond financing of fixed-wing emergency medical aircraft and for an exclusion of amounts that are received by qualified airline employees in a commercial airline bankruptcy and transferred to an Individual Retirement Account.² Another amendment made in the Moving Ahead for Progress in the 21st Century Act (2012) permits a defined benefit pension plan to use excess pension assets to fund retiree group-term life insurance benefits and excludes from a retiree's gross income the cost of providing group-term life insurance purchased using the excess pension assets.³

Ongoing Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.⁴

Election to apply incorporation to closed years

The act also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Prior law authorized a taxpayer whose taxable year ended after December 15, 2010, and before March 7, 2011, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year if those laws differed from the laws that were incorporated in March 2011 under the most recent incorporation act. (The December and March dates are the dates of the two preceding incorporations.) The election is available to taxpayers who are subject to the corporation franchise tax or personal income tax and to electric companies that are subject to municipal income taxes.

¹ R.C. 5701.11.

² Sections 1105 and 1106 of the federal act.

³ Section 4042 of the federal act.

⁴ Cf. *State of Ohio v. Gill* (1992), 63 Ohio St.3d 53.

The act updates this election so that it may be made for a taxpayer's taxable year ending after March 7, 2011, but before the act's effective date. The act retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.

Commercial activity tax exemption

The act extends the existing commercial activity tax exemption for receipts derived from sales of certain property to "qualified distribution centers" to include sales of unrefined gold, silver, platinum, and palladium to refineries in the Appalachian region. Gross receipts of suppliers derived from such sales are exempted to the extent the refinery ships the refined precious metals outside Ohio.

Tax base

The commercial activity tax is an annual excise tax imposed on businesses for the privilege of doing business in Ohio. The tax base or measure for the commercial activity tax is "taxable gross receipts." Generally, taxable gross receipts are a company's gross receipts that are attributed to the company's Ohio business activity as prescribed under the "siting" or attribution rules. Taxable gross receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. There are currently 36 categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.⁵

Exemption for qualifying distribution center receipts

Continuing law exempts a percentage of receipts derived from property shipped to qualified distribution centers for purposes of the commercial activity tax. A "qualified distribution center" includes a warehouse or other similar facility in Ohio that has obtained a qualifying certificate from the Department of Taxation indicating that the facility's suppliers qualify for the exemption. All warehouses or other similar facilities that are operated by persons in the same taxpayer group and are located within one mile of each other are considered to be one qualified distribution center. To qualify for the exemption, a supplier must deliver property to the qualified distribution center solely for further shipping by the center to another location inside or outside Ohio. The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or processing at the distribution center.

The act revises the criteria for certification as a qualified distribution center so that suppliers of gold, silver, platinum, and palladium to "refining facilities" are eligible

⁵ R.C. 5751.01(F) and (G).

for the exemption. "Refining facility" is defined as one or more buildings located in an Appalachian county and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fineness acceptable for delivery to a "registered commodities exchange."⁶ Only a board of trade designated as a contract market by the Commodity Futures Trading Commission meets the criteria of being a registered commodities exchange for the purpose of the exemption. The New York Mercantile Exchange, Inc. (NYMEX) and Commodity Exchange, Inc. (COMEX) are examples of registered commodities exchanges.⁷

The act specifies that gold, silver, platinum, or palladium supplied to a refining facility may be smelted or put through some other process to extract the impurities without disqualifying the supplier from the exemption.⁸ It also specifies that, for purposes of property sold to a refining facility, "supplier" includes dealers, brokers, processors, sellers, vendors, cosigners, and distributors.⁹ Operators of refining facilities run by persons in the same taxpayer group and located in the same or adjacent counties are permitted, but not required, to treat multiple refining facilities as one qualified distribution center for the purpose of the exemption.¹⁰

Amount of the exemption

Subject to one exception provided under the act, only a percentage of the receipts from qualifying property delivered to a qualified distribution center is exempted from the commercial activity tax. The percentage exempted equals the percentage of the property supplied to the distribution center that is shipped from the center to locations outside Ohio.¹¹

Under the act, an exception to this percentage computation is made for receipts derived in calendar years 2013 and 2014 from the delivery of gold, silver, platinum, and palladium to refining facilities certified as qualified distribution centers. Receipts from all such deliveries are exempted from commercial activity tax for those two years. Then, for 2015 and thereafter, the exemption percentage for suppliers of refining

⁶ R.C. 5751.01(F)(2)(z)(i)(VIII).

⁷ R.C. 5751.01(F)(2)(z)(i)(IX).

⁸ R.C. 5751.01(F)(2)(z)(i)(II).

⁹ R.C. 5751.01(F)(2)(z)(i)(I).

¹⁰ R.C. 5751.01(F)(2)(z)(i)(III).

¹¹ R.C. 5751.01(F)(2)(z)(i)(VII) and (F)(2)(z)(iii).

facilities will be calculated in the same manner as for other qualifying distribution center receipts.¹²

Application deadline

Continuing law requires operators of distribution centers to submit annual applications to the Tax Commissioner for a "qualifying certificate" in order to be certified as a qualified distribution center. The application must be filed no later than September 1 of the year preceding the year for which the certificate is issued or 45 days after the distribution center is opened, whichever is later. A \$100,000 application fee must accompany each application. The fee is refunded to an applicant if an application for a certification is denied and that denial is ultimately affirmed on appeal.¹³

The act permits operators of refining facilities to apply for a qualifying certificate and pay the annual fee for calendar year 2013 within 30 days of the act's effective date.¹⁴ The same deadlines applicable to other distribution centers apply to refining facilities for calendar years 2014 and thereafter.

Information accompanying certificate application

Under continuing law, eligibility for a certificate is conditioned upon certain criteria being met by the distribution center during a "qualifying period," which is the period of July 1 of the second year preceding the year for which the certificate is issued to June 30 of the year immediately preceding the year for which the certificate is issued (e.g., July 1, 2011, to June 30, 2012, for a 2013 certificate). Every applicant must substantiate to the Tax Commissioner's satisfaction that, during the qualifying period, all persons operating the center had more than 50% of the cost of the property shipped from the center to a location outside Ohio. An applicant must also substantiate that the distribution center had cumulative costs from its suppliers of at least \$500 million for the qualifying period. The Tax Commissioner is authorized to require that an applicant obtain a certification from a certified public accountant that the calculations of the 50% situsing requirement and the \$500 million threshold have been made in accordance with generally accepted accounting principles. Finally, every application must certify the percentage of property shipped to locations inside Ohio during the qualifying period (referred to as the "Ohio delivery percentage").¹⁵

¹² Section 7 of the act.

¹³ R.C. 5751.01(F)(2)(z)(i)(VI).

¹⁴ Section 7 of the act.

¹⁵ R.C. 5751.01(F)(2)(z)(i)(VI) and (F)(2)(z)(iii).

For calendar years 2013 and 2014, the act exempts operators of refining facilities from the requirements of substantiating that all persons operating the center had more than 50% of the cost of the property shipped from the center situated to a location outside Ohio, obtaining certification from an independent certified public accountant that the calculation of the minimum thresholds has been made in accordance with generally accepted accounting principles, and providing documentation for the Tax Commissioner to ascertain the Ohio delivery percentage.¹⁶ The act does require operators of refining facilities to substantiate that the refining facility had cumulative costs from its suppliers equal to or exceeding \$500 million for the qualifying period. Refining facilities are subject to the same application requirements as other qualified distribution centers for calendar year 2015 and thereafter.

Property tax abatement for municipal property

The act provides for the abatement of unpaid property taxes, penalties, and interest on property that is owned by a municipal corporation and that would have been tax exempt if not for a failure to comply with the procedures for obtaining tax-exempt status.¹⁷ The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. Similarly, a prior owner of the property may file an application requesting exemption from prior taxes. The application must be filed within 12 months after the provision's effective date.

With the exception of the act's abatement provisions, continuing law allows the Tax Commissioner to abate only up to three years' worth of unpaid property taxes, interest, and penalties. No exemption may be granted if, after any abatement of taxes, there remain unabated unpaid taxes.

Procedures for receiving bill's tax abatement

Before filing an application for tax abatement, the property owner must request a certificate from the county treasurer stating that all taxes, penalties, and interest owed on the property before the property was used for a tax-exempt public purpose have been paid in full. This certificate must accompany the application filed with the Tax Commissioner.

The application form must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of unpaid taxes, penalties, and interest; the date of acquisition of the property; the use of the

¹⁶ Section 7 of the act.

¹⁷ Section 6 of the act.

property during any time in which unpaid taxes accrued; and any other information required by the Tax Commissioner.

Upon receipt of an application, the Tax Commissioner must determine whether the applicant meets all of the qualifications specified in the act and, if so, order that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest from each year the property meets the qualifications be abated. If the Tax Commissioner finds that the property does not meet the qualifications, or is otherwise being used for a purpose that would foreclose its right to exemption, the Tax Commissioner issues an order denying the application. For any year that the applicant is not entitled to tax abatement, the Tax Commissioner must order the county treasurer to collect any unpaid taxes, penalties, and interest on that property for those years.

In addition, the Tax Commissioner may consider whether property qualifies for tax abatement if that property is already subject to an application for exemption pending on the effective date of the act without requiring the property owner to file another application. The Tax Commissioner may also allow for abatement of unpaid taxes on any qualified property that is subject to an application for exemption within 12 months after the effective date even if the application does not specifically request tax abatement.

9-1-1 service law changes

Background on the changes in Sub. H.B. 360

In addition to changing prior law, this act makes numerous changes to provisions of Sub. H.B. 360, which was an emergency measure affecting the 9-1-1 service law that was enacted before this act but took effect on the same day (December 20, 2012). In brief, Sub. H.B. 360 established a new method and amount of the wireless 9-1-1 charge imposed on prepaid subscribers, and required this charge to take effect on July 1, 2013. It made the charge imposed on wireless subscribers permanent (rather than expiring on December 31, 2012), but exempted prepaid subscribers. It transferred all of the duties of the Public Utilities Commission (PUCO), in administering the 9-1-1 service law, to either the Department of Public Safety or the Tax Commissioner, and consequently it recodified the 9-1-1 service law in Chapter 5507. of the Revised Code. It delayed some of the Tax Commissioner's duties, mostly related to the new prepaid charge, until July 1, 2013. It also gave additional responsibilities to the Statewide Emergency Services Internet Protocol Network Steering Committee.

This analysis does not address all the changes made by Sub. H.B. 360 to the 9-1-1 service law nor does it directly address how Am. Sub. H.B. 472 changes that law. This analysis primarily addresses how this act changes provisions of Sub. H.B. 360 and, when appropriate, addresses the effect of both acts on the 9-1-1 service law.

Continuous imposition of the prepaid wireless 9-1-1 charge

The act requires the monthly wireless 9-1-1 charge, imposed under prior law on all wireless subscribers, to be continuously imposed on prepaid subscribers until a new prepaid charge takes effect in 2014. Under Sub. H.B. 360, the charge would have been terminated as to prepaid subscribers only on December 20, 2012. And the new prepaid charge would not have taken effect until July 1, 2013.

Under the act, the monthly charge on prepaid subscribers is to be imposed and collected until January 1, 2014, in almost the same manner as in prior law. The only differences are that: (1) the monthly amount is to be 25¢, which is consistent with the amount in Sub. H.B. 360, which is a decrease from 28¢ under prior law, and (2) wireless service providers and resellers are not permitted to collect the prepaid charge at the point of sale. The two methods of collection allowed by the act are: (1) reducing the subscriber's account balance at the beginning of the month and (2) taking the amount owed to the state out of the provider's or reseller's prepaid revenue from Ohio sales, according to a formula that is based on the 25¢ charge.

The act requires the new prepaid charge of 0.5%, imposed at the point of sale, to begin on January 1, 2014. Sub. H.B. 360, which enacted the new charge, would have required it to take effect on July 1, 2013.¹⁸

Exclusion for lifeline service

The act clarifies that the wireless 9-1-1 *charges* (instead of "charge") may not be imposed on a *subscriber* of a wireless lifeline service, or a provider of that service. Sub. H.B. 360 would have stated that the charge may not be imposed on a wireless lifeline service provider. But under Sub. H.B. 360, the charges are described as being imposed on the *subscribers* – not the providers. The providers are responsible for collection.¹⁹

Delay in duty of the Tax Commissioner regarding notice

The act delays, from July 1, 2013, to January 1, 2014, the requirement that the Tax Commissioner notify all known wireless service providers, resellers, and prepaid sellers of any change in the amount of the prepaid or nonprepaid wireless 9-1-1 charges.²⁰

¹⁸ R.C. 5507.42.

¹⁹ R.C. 5507.42.

²⁰ R.C. 5507.44.

Continuation of duties of the Public Utilities Commission (PUCO) until 2014

The act requires that the following duties and authority be maintained by the PUCO or the Ohio 9-1-1 Coordinator within the PUCO as under prior law until January 1, 2014. Sub. H.B. 360 would have required most of these duties and authority to be transferred to the Tax Commissioner on December 20, 2012. In the case of funding provisions, they would have been transferred to the Department of Taxation (or the Tax Commissioner) and the Department of Public Safety.

- Collection of remitted wireless 9-1-1 charges;²¹
- Auditing and assessing wireless service providers and resellers for failure to collect, bill, or remit wireless 9-1-1 charges;²²
- Authority to use up to 2% of the periodic remittances of the wireless 9-1-1 charges to cover the PUCO's costs of carrying out its duties under the wireless 9-1-1 law;²³
- Authority to make disbursements to counties from the Wireless 9-1-1 Government Assistance Fund (except that this act requires disbursements to be made in the same manner as the 2012 disbursements, in accordance with prior law).²⁴

Remittance of wireless 9-1-1 charges to the Tax Commissioner

Remittance requirements

The act changes Sub. H.B. 360's provisions governing remittance of both the prepaid and nonprepaid wireless 9-1-1 charges to the Tax Commissioner.

First, the act requires the charges to be remitted to the Tax Commissioner beginning January 1, 2014. Until then, the monthly charge on prepaid and nonprepaid subscribers must be remitted to the Ohio 9-1-1 Coordinator in accordance with prior law (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**"). Sub. H.B. 360 would have required the Tax Commissioner to begin remittance duties on December 20, 2012, for the nonprepaid charge.

²¹ R.C. 5507.46(A).

²² R.C. 5507.46(D).

²³ R.C. 5507.53(A) and Sections 4 and 5.

²⁴ R.C. 5507.53(B) and 5507.55(A).

Second, the act homogenizes the remittance requirements for the prepaid charge and the nonprepaid charge, as remitted to the Tax Commissioner. Sub. H.B. 360 would have required the nonprepaid charge to be remitted to the Tax Commissioner in the same manner as prior law governing remittance of the wireless 9-1-1 charges to the Ohio 9-1-1 Coordinator. But it also would have established separate remittance requirements for sellers required to collect the prepaid charge. For the most part, this act requires the wireless service providers and resellers required to collect the nonprepaid charge to be subject to the same requirements that were in Sub. H.B. 360 for prepaid sellers. The following table compares the act's requirements, now imposed on all charge collectors, to the requirements that would have applied only to wireless service providers and resellers under Sub. H.B. 360.

This act's (Am. Sub. H.B. 472's) requirements for both charges	Sub. H.B. 360 requirements for nonprepaid
Remittance by the 23rd of each month	Remittance by the end of each month
Make and file a return for the preceding month showing the amount due for the month.	No provision.
File return electronically using the Ohio Business Gateway, the Ohio Telefile System, or any other electronic means prescribed by the Tax Commissioner, unless excused for good cause shown.	No provision.
Remit the full amount due for the preceding month, minus a 3% collection fee.	Remit the amount collected for the second preceding calendar month, minus a 2% billing and collection fee.
Remit amounts due electronically in a manner approved by the Tax Commissioner, unless excused for good cause shown.	Remit amounts in any reasonable manner consistent with the provider's or reseller's operating or technological capabilities.
Extensions permitted for making and filing returns and remitting amounts due.	No provision.

The only remittance provision of Sub. H.B. 360 that the act continues to apply only to sellers collecting the prepaid charge is provision allowing the Tax Commissioner to authorize sellers to make and file returns less frequently than monthly. This is to apply if the seller is required to collect prepaid charges in amounts that do not merit monthly returns, ascertained on the basis of administrative costs to the state.

Third, the act changes some of the remittance requirements that, under the act, are applied to all charge collectors. Rather than requiring the return to show the amount of the charges collected during the preceding month, it requires the return to show the amount of the charges *due* for that month. It also clarifies that the 3% collection fee need not be remitted. Finally, it permits the Tax Commissioner to grant

one or more 30-day extensions for making and filing returns and remitting amounts due, rather than simply stating that the Tax Commissioner may "extend" that time.

The act also removes a provision of Sub. H.B. 360 that would have permitted the Tax Commissioner to require that the return for the last month of any annual or semiannual period be a reconciliation return detailing the prepaid charges collected during the preceding annual or semiannual period.²⁵

Liability

The act maintains the 9-1-1 charge liability law existing prior to the act's effective date until January 1, 2014, ascribing liability to subscribers on whom the monthly wireless 9-1-1 charge is imposed, and also to providers or resellers who fail to bill, collect, or remit that charge.

Beginning January 1, 2014, the act continues this 9-1-1 charge liability law for the most part, but adds that prepaid sellers are liable to the state for amounts not collected or remitted. It modifies slightly the liability provision regarding failure to remit charges, specifying that if a provider, reseller, or seller fails to remit money to the Tax Commissioner as required, that provider, reseller, or seller is liable to the state for the amount not remitted, *regardless of whether it was collected*. Sub. H.B. 360 would have made this liability apply only if the charge was collected but not remitted.²⁶

Audits and assessments

As explained above, the act maintains the PUCO's duties under prior law regarding audits and assessments of wireless service providers and resellers, until January 1, 2014 (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**").²⁷ Beginning on that date, the act vests the audit and assessment duties with the Tax Commissioner, but also modifies those duties as applied to the Tax Commissioner.

First, the act applies the audit and assessment provisions, which would have applied only to providers and resellers under Sub. H.B. 360, to prepaid sellers. But Sub. H.B. 360 subjects prepaid sellers to the sales-tax law as it applies to audits, assessments, appeals, enforcement, liability, and penalties, beginning July 1, 2013. (See **COMMENT 1.**)

²⁵ R.C. 5507.46(A) and (B).

²⁶ R.C. 5507.46(C)(1) and (2)(a).

²⁷ R.C. 5507.46(D).

Second, the act removes a provision of Sub. H.B. 360 stating that an assessment is final and due and payable and must be remitted to the Tax Commissioner unless the assessed party petitions for rehearing under law governing PUCO procedure. The act removes a related provision stating that proceedings of the Tax Commissioner are subject to and governed by that law, except that the court of appeals of Franklin County has exclusive, original jurisdiction to review, modify, or vacate an order of the Tax Commissioner. The act removes other provisions related to these court proceedings.

Instead, the act provides that unless the provider, reseller, or seller assessed files with the Tax Commissioner within 60 days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the party assessed to the Treasurer of State, for deposit to the Next Generation 9-1-1 Fund (which Sub. H.B. 360 creates). Sub. H.B. 360 would have required that all assessments be deposited to the credit of the Wireless 9-1-1 Government Assistance Fund. This act requires the petition to indicate the objections of the party assessed, but allows additional objections to be raised in writing if received by the Tax Commissioner prior to the date shown on the final determination. If the petition has been properly filed, the Tax Commissioner must proceed under law governing proceedings for petitions on reassessment under the tax law.

Third, the act adds a provision requiring that the portion of an assessment not paid within 60 days after the day the assessment was issued bears interest at the federal short-term interest rate (as determined by the Tax Commissioner under Ohio law) per annum from the day the Tax Commissioner issues the assessment until it is paid. The act requires interest to be remitted in the same manner as the 9-1-1 charges, and specifies that interest may be collected by the issuance of an assessment. The act then repeats in almost identical form the unpaid assessment language described above, making it apparent that the Tax Commissioner has authority to make further assessments on unpaid assessments for interest and to allow consecutive assessments for unpaid interest.

Fourth, the act changes a provision of Sub. H.B. 360 that would have permitted certified copies of unpaid assessments to be filed with the court of common pleas in the county in which the *place of business* of the assessed party is *located*. The act changes this to "in which the *business* of the assessed party is *conducted*."

Fifth and finally, the act permits the Tax Commissioner to assess a person for recovery of a refunded wireless 9-1-1 charge that the Tax Commissioner determines was erroneously refunded.²⁸

9-1-1 Service Program and Ohio 9-1-1 Coordinator

The act requires that the PUCO and the Ohio 9-1-1 Coordinator retain their duties as under prior law until January 1, 2014, with regard to the 9-1-1 Service Program and administration of the 9-1-1 Government Assistance Fund. The act also abolishes the position of the Coordinator, effective January 1, 2014. Sub. H.B. 360 would have transferred the program duties and duties related to the Coordinator to the Director of Public Safety, and the fund administration duties to the Tax Commissioner, both on December 20, 2012. Sub. H.B. 360 would have also required the Director to appoint an interim Coordinator, and, after submission of a list of nominees, a final Coordinator.²⁹

Rate-determination requirement transferred back to PUCO

The act maintains the requirement that the PUCO determine the rates for the wireline telephone network portion of a 9-1-1 system, to be charged to wireline telephone customers. Sub. H.B. 360 would have required the Tax Commissioner to make this determination.³⁰

Responsibilities transferred to the Department of Public Safety

Effective December 20, 2012, the act requires that the Department of Public Safety, rather than the Tax Commissioner (as would have been required by Sub. H.B. 360), receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used for. After this certification is made, the subdivision or council may use disbursements to pay personnel costs of public safety answering points providing countywide wireless enhanced 9-1-1 service.³¹ (See **COMMENT 2**.)

The act shifts responsibility solely to the Department of Public Safety, rather than the Department *or the Tax Commissioner*, for requesting that the Attorney General begin

²⁸ R.C. 5507.46(E).

²⁹ R.C. 5507.40 and Sections 4 and 5 of the act.

³⁰ R.C. 5507.18; conforming change in R.C. 5733.55.

³¹ R.C. 5507.57(B).

proceedings against a telephone company to enforce compliance with the 9-1-1 service law or a local-government plan or agreement under that law.³²

Compliance with standards adopted by the steering committee

The act requires the Department of Public Safety to monitor compliance with technical and operation standards for public safety answering points set by rule of the Statewide Emergency Services Internet Protocol Network Steering Committee. Under Sub. H.B. 360, disbursements may not be made to countywide 9-1-1 systems from either the Wireless 9-1-1 Government Assistance Fund or the Next Generation 9-1-1 Fund unless "the public safety answering point" meets those standards.³³ The rules that set the standards must incorporate industry standards and best practices for wireless 9-1-1 services. "Public safety answering points" must comply with the standards not later than two years after the effective date of the rules adopting the standards.³⁴ (See **COMMENT 3**.)

In addition to monitoring compliance with the standards, this act requires the Department to notify the Tax Commissioner to suspend disbursements to a countywide 9-1-1 system that fails to meet the standards. Upon receipt of the notification, the Tax Commissioner must suspend disbursements until the Tax Commissioner is notified of compliance with the standards.³⁵

Administrative funding

Effective January 1, 2014, the act creates the Wireless 9-1-1 Public Safety Administrative Fund, for 1% of remittances from the wireless 9-1-1 charges, to be used by the Director of Public Safety to defray the costs incurred in carrying out the Director's 9-1-1 duties. Sub. H.B. 360 would have required this 1% to go into the Wireless 9-1-1 Administrative Fund for use by the Director; this fund was previously used by the PUCO for administrative costs. Sub. H.B. 360 would have also made the Director's spending authority effective December 20, 2012.

Also effective January 1, 2014, the act requires the 1% of remittances authorized by Sub. H.B. 360 to be used by the Tax Commissioner to go into the Wireless 9-1-1 Administrative Fund. Sub. H.B. 360 would have made this spending authority effective December 20, 2012.

³² R.C. 5507.34(A).

³³ R.C. 5507.57(E).

³⁴ R.C. 5507.021, not in the act.

³⁵ R.C. 5507.57(B)(2).

The act requires that the Tax Commissioner and the Director of Public Safety annually transfer any excess from their administrative allotments to the Next Generation 9-1-1 Fund (which Sub. H.B. 360 creates). Sub. H.B. 360 contained a similar requirement, but the excess amounts would have been required to go into the Wireless 9-1-1 Government Assistance Fund.³⁶

Appropriation for the Department of Taxation

The act appropriates \$1,174,000 from the General Revenue Fund to the Department of Taxation for operating expenses, effective December 20, 2012.³⁷

Requirements for making disbursements

As explained above (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**"), the act requires the Ohio 9-1-1 Coordinator to continue making disbursements from the wireless 9-1-1 charge to counties until 2014. The act requires the Tax Commissioner to take over this duty on January 1, 2014.

The act requires both the Coordinator and the Tax Commissioner to make the disbursements in the same manner as the 2012 disbursements, in accordance with the formula and determination provisions in prior law. Sub. H.B. 360 would have required, effective July 1, 2013, the Tax Commissioner's disbursements to "remain at the level disbursed in 2012."

The act also requires the Tax Commissioner, beginning January 1, 2014, to make disbursements from the Next Generation 9-1-1 Fund in accordance with guidelines established by the Statewide Emergency Services Internet Protocol Network Steering Committee.³⁸

Use of disbursements

The act prescribes that disbursements from the Next Generation 9-1-1 Fund may be used only for the following three wireless enhanced 9-1-1 purposes:

- Designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for public safety answering points to provide wireless enhanced 9-1-1;

³⁶ R.C. 5507.53 and 5507.54.

³⁷ Section 3 of the act.

³⁸ R.C. 5507.55.

- Costs of training public-safety-answering-point staff to provide wireless enhanced 9-1-1;
- Annually, up to \$25,000 of disbursements received on or after January 1, 2009, may be used for data, hardware, and software that automatically alert personnel receiving a 9-1-1 call that a person at the subscriber's address or telephone number may have a mental or physical disability.

Disbursements from the Next Generation 9-1-1 Fund may *not* be used for costs enumerated above that were in part for the provision of *wireline* 9-1-1.

The act allows that a subdivision or regional council of governments that certifies to the Department of Public Safety that it has paid these costs may use disbursements from the Next Generation 9-1-1 Fund to pay personnel costs of public safety answering points providing countywide wireless enhanced 9-1-1 service.³⁹

But Sub. H.B. 360 requires the Statewide Emergency Services Internet Protocol Network Steering Committee to establish guidelines for the Tax Commissioner to use when disbursing money from the Next Generation 9-1-1 Fund. It also requires the guidelines to be consistent with the technical and operation standards adopted by the steering committee, and to specify that disbursements from the Next Generation 9-1-1 Fund may be used for costs associated with the operation of and equipment for Phase II wireless systems and for costs associated with a county's migration to next generation 9-1-1 systems and technology.⁴⁰ (See **COMMENT 4**.)

The act also limits the number of public safety answering points that may use disbursements from the Next Generation 9-1-1 Fund, in accordance with provisions enacted by Sub. H.B. 360.⁴¹

Suspension of disbursements for failure to make a report

The act provides that the Ohio 9-1-1 Coordinator must suspend disbursements from the Wireless 9-1-1 government Assistance Fund to a county whose county 9-1-1 planning committee chairperson or designee fails, by February 15, 2013, to submit a 9-1-1 system informational report to the Statewide Emergency Services Internet Protocol Network Steering Committee. When a late report is received, the act requires the Steering Committee to notify the Coordinator, who must then resume the reimbursements. Beginning January 1, 2014, the Tax Commissioner is to begin

³⁹ R.C. 5507.57.

⁴⁰ R.C. 5507.022, not in the act.

⁴¹ R.C. 5507.571, not in the act.

receiving the notice from the Steering Committee that a late report was received and is to have the duty to resume the reimbursements. Sub. H.B. 360 would have required the Tax Commissioner to be notified of the failure to make a report beginning in 2013, and likewise would have required the Tax Commissioner to cut off disbursements, as well as order the resumption of disbursements.⁴²

Rulemaking authority

Tax Commissioner

The act permits, rather than requires, the Tax Commissioner to adopt rules to carry out the 9-1-1 service law. It also relieves the Tax Commissioner of the duty to consult with the Director of Public Safety in adopting these rules. The act also specifies that the rulemaking authority is for the purpose of carrying out the whole 9-1-1 service law, not just sections enumerated in Sub. H.B. 360.⁴³

Director of Public Safety

The act removes a requirement of Sub. H.B. 360 that the Director of Public Safety, after consultation with the Tax Commissioner, adopt rules under the Administrative Procedure Act to carry out certain provisions of the 9-1-1 service law.⁴⁴ Instead, the act permits the Director to adopt rules under Chapter 111. of the Revised Code, which does not require public hearings, to approve, adopt, and prescribe such forms and processes as are necessary to carry out the duties required of the Director under the 9-1-1 service law.⁴⁵

The act also removes a provision requiring the Wireless 9-1-1 Advisory Board to make recommendations to and consult with the Director regarding rules to be adopted relative to the 9-1-1 service law.⁴⁶

Ohio 9-1-1 Council

The act modifies the membership of the Ohio 9-1-1 Council by requiring the Ohio 9-1-1 Coordinator (within the PUCO) to serve on the Council until January 1, 2014, and requiring the Director of Public Safety (or designee) to serve on and after that date.⁴⁷

⁴² R.C. 5507.02(D)(2).

⁴³ R.C. 5507.63.

⁴⁴ R.C. 5507.63.

⁴⁵ R.C. 5502.011(F)(2).

⁴⁶ R.C. 5507.66(D).

Duties of the Director of Public Safety

The act states that the Director of Public Safety or the Director's designee must carry out the duties required of the Director under the 9-1-1 service law. But the act permits the Director, at the Director's discretion, to assign Department employees to provide assistance in carrying out those duties.⁴⁸ Sub. H.B. 360 would have permitted the Director to assign one or more Department employees to assist the Ohio 9-1-1 Coordinator in carrying out the Coordinator's duties. But under Sub. H.B. 360, the Coordinator would have been appointed by the Director; under this act, the Coordinator remains within the PUCO until the position is abolished in 2014.⁴⁹ (See "**9-1-1 Service Program and Ohio 9-1-1 Coordinator**," above.)

Definitions

Consumer

The act defines "consumer," for purposes of the 9-1-1 service law, as the person for whom the prepaid wireless calling service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the prepaid wireless calling service is charged, or to whom the admission is granted. This generally conforms to the definition of "consumer" in continuing law governing the sales tax.⁵⁰

Reseller

The act defines "reseller," for purposes of the 9-1-1 service law, as a nonfacilities-based provider of wireless service that provides that service under its own name to one or more end users in Ohio using the network of a wireless service provider.⁵¹ "Wireless service provider" is defined in continuing law as a facilities-based provider of wireless service to one or more end users in Ohio.⁵²

Emergency clause

The act declares an emergency, causing it to become effective immediately and exempting it from the referendum. It took effect on December 20, 2012, though some provisions are repealed on January 1, 2014.

⁴⁷ R.C. 5507.65(A).

⁴⁸ R.C. 5502.011(F)(1).

⁴⁹ R.C. 5507.40 and Sections 4 and 5 of the act.

⁵⁰ R.C. 5507.01(BB); 5739.01(D)(1), not in the act.

⁵¹ R.C. 5507.01(CC); conforming changes in R.C. 5507.42, 5507.44, and 5507.46.

⁵² R.C. 5507.01(G).

COMMENT

1. The act applies specific and extensive audit and assessment requirements and provisions to prepaid sellers.⁵³ But Sub. H.B. 360 subjects prepaid sellers to the sales-tax law as it applies to audits, assessments, appeals, enforcement, liability, and penalties, beginning July 1, 2013.⁵⁴ These provisions may conflict if they subject prepaid sellers to different governing law regarding audits and assessments.

2. The act requires, effective December 20, 2012, the Department of Public Safety to receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used.⁵⁵ But the Public Utilities Commission retains sole responsibility for making disbursements until January 1, 2014.⁵⁶

3. The act describes provisions relating to a failure of compliance with standards adopted by the Statewide Emergency Services Internet Protocol Network Steering Committee in terms of a "countywide 9-1-1 system" failing to meet the standards.⁵⁷ But Sub. H.B. 360 describes the same concept as "the public safety answering point" and, separately, "public safety answering points" meeting the standards.⁵⁸ Therefore, the act adds to a lack of clarity created by Sub. H.B. 360 in terms of who or what is required to comply with the standards – whether it is a single public safety answering point, multiple points, or an entire 9-1-1 system.

4. The act requires disbursements from the Next Generation 9-1-1 Fund to be used for specific purposes enumerated in continuing law, such as designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for public safety answering points to provide wireless enhanced 9-1-1.⁵⁹ But Sub. H.B. 360 requires the Statewide Emergency Services Internet Protocol Network Steering Committee to establish guidelines that specify that disbursements from the Next Generation 9-1-1 Fund may be used for costs associated with the operation of and equipment for Phase II wireless systems and for

⁵³ R.C. 5507.46(E).

⁵⁴ R.C. 5507.52(A), not in the act.

⁵⁵ R.C. 5507.57(B).

⁵⁶ R.C. 5507.55.

⁵⁷ R.C. 5507.57(E)(2).

⁵⁸ R.C. 5507.021 (not in the act); R.C. 5507.57(E)(1).

⁵⁹ R.C. 5507.57.

costs associated with a county's migration to next generation 9-1-1 systems and technology.⁶⁰ These provisions may conflict if they require disbursements from the Next Generation 9-1-1 Fund to be spent for different purposes.

HISTORY

ACTION	DATE
Introduced	03-07-12
Reported, H. Ways & Means	05-03-12
Passed House (96-0)	05-15-12
Reported, S. Ways & Means & Economic Development	12-12-12
Passed Senate (33-0)	12-12-12
House concurred in Senate amendments (89-0)	12-13-12

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⁶⁰ R.C. 5507.022.

