



Ohio Revised Code

Section 128.46 Filing returns; remitting charges and fees; subscriber liability; audit and assessment.

Effective: October 3, 2023

Legislation: House Bill 33 - 135th General Assembly

(A)(1) An entity required to collect a wireless 9-1-1 charge under section 128.40 of the Revised Code or the next generation 9-1-1 access fee under section 128.414 or 128.421 of the Revised Code shall, on or before the twenty-third day of each month, except as provided in divisions (A)(2) and (3) of this section, do both of the following:

(a) Make and file a return for the preceding month, in the form prescribed by the tax commissioner, showing the amount of the charges or fees due for that month;

(b) Remit the full amount due, as shown on the return, with the exception of charges or fees equivalent to the amount authorized as a collection fee under division (B) of this section.

(2) The commissioner may grant one or more thirty-day extensions for making and filing returns and remitting amounts due.

(3) If a seller is required to collect prepaid wireless 9-1-1 charges under section 128.40 of the Revised Code or next generation 9-1-1 access fees under section 128.421 of the Revised Code in amounts that do not merit monthly returns, the commissioner may authorize the seller to make and file returns less frequently. The commissioner shall ascertain whether this authorization is warranted upon the basis of administrative costs to the state.

(B) A wireless service provider, reseller, and seller may each retain as a collection fee three per cent of the total wireless 9-1-1 charges required to be collected under sections 128.40, 128.41, and 128.42 of the Revised Code, and shall account to the tax commissioner for the amount retained.

(C) The return required under division (A)(1)(a) of this section shall be filed electronically using the Ohio business gateway, as defined in section 718.01 of the Revised Code, or any other electronic means prescribed by the tax commissioner. Remittance of the amount due shall be made



electronically in a manner approved by the commissioner. An entity required to file the return may apply to the commissioner on a form prescribed by the commissioner to be excused from either electronic requirement of this division. For good cause shown, the commissioner may excuse the entity from either or both of the requirements and may permit the entity to file returns or make remittances by nonelectronic means.

(D)(1) Each subscriber or consumer on which a wireless 9-1-1 charge is imposed under section of the Revised Code or on which a next generation 9-1-1 access fee is imposed under section 128.41 or 128.42 of the Revised Code is liable to the state for the amount of the charge.

(2) An entity required to collect the wireless 9-1-1 charge under section 128.40 of the Revised Code or the next generation 9-1-1 access fee under section 128.414 or 128.421 of the Revised Code is liable to the state for any amount that was required to be collected but that was not remitted, regardless of whether the amount was collected.

(3) No provider of a prepaid wireless calling service shall be liable to the state for any wireless 9-1-1 charge imposed under section 128.40 of the Revised Code or any next generation 9-1-1 access fee imposed under section 128.42 of the Revised Code that was not collected or remitted.

(E)(1) If the tax commissioner has reason to believe that an entity required to collect a wireless 9-1-1 charge under section 128.40 of the Revised Code or the next generation 9-1-1 access fee under section 128.414 or 128.421 of the Revised Code has failed to bill, collect, or remit the charge or fee as required by this section and sections 128.40 to 128.422 of the Revised Code or has retained more than the amount authorized under division (B) of this section, and after written notice to the entity, the tax commissioner may audit the entity for the sole purpose of making such a determination. The audit may include, but is not limited to, a sample of the entity's billings, collections, remittances, or retentions for a representative period, and the tax commissioner shall make a good faith effort to reach agreement with the entity in selecting that sample.

(2) Upon written notice to the entity, the tax commissioner, after completion of the audit, may make an assessment against the entity if, pursuant to the audit, the tax commissioner determines that the entity has failed to bill, collect, or remit the charge or fee as required by sections 128.40 to 128.422 of the Revised Code or has retained more than the amount authorized under division (B) of this



section. The assessment shall be in the amount of any remittance that was due and unpaid on the date notice of the audit was sent by the tax commissioner to the entity or, as applicable, in the amount of the excess amount under division (B) of this section retained by the entity as of that date.

(3) The portion of any assessment consisting of charges or fees due and not paid within sixty days after the date that the assessment was made under division (E)(2) of this section shall bear interest from that date until paid at the rate per annum prescribed by section 5703.47 of the Revised Code. That interest may be collected by making an assessment under division (E)(2) of this section.

(4) Unless the entity assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the entity assessed or that entity's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the entity assessed to the treasurer of state, for deposit to the next generation 9-1-1 fund, which is created under section 128.54 of the Revised Code. The petition shall indicate the objections of the entity assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(5) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas in the county in which the business of the assessed entity is conducted. If the entity assessed maintains no place of business in this state, the certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas of Franklin county. Immediately upon the filing, the clerk shall enter a judgment for the state against the assessed entity in the amount shown on the final assessment. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for 9-1-1 charges and fees" and shall have the same effect as other judgments. The judgment shall be executed upon the request of the tax commissioner.

(6) If the commissioner determines that the commissioner erroneously has refunded a 9-1-1 charge or fee to any person, the commissioner may make an assessment against that person for recovery of the erroneously refunded charge.



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(7) An assessment under division (E) of this section does not discharge a subscriber's or consumer's liability to reimburse the entity for a 9-1-1 charge or fee. If, after the date of service of the audit notice under division (E)(1) of this section, a subscriber or consumer pays a 9-1-1 charge or fee for the period covered by the assessment, the payment shall be credited against the assessment.