OHIO LEGISLATIVE SERVICE COMMISSION

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# Fiscal Note & Local Impact Statement

**Bill:** H.B. 545 of the 132nd G.A.

**Status:** As Passed by the House

**Sponsor:** Rep. Arndt

**Local Impact Statement Procedure Required:** Yes

**Subject:** Modifies sales and use tax remittance by certain vendors and exempts specified feminine hygiene products from the sales tax

## State & Local Fiscal Highlights

| STATE FUND | FY 2019 | FY 2020 | FUTURE YEARS |
|---|---|---|---|
| **General Revenue Fund** | | | |
| Revenues | - 0 - | Potential loss of up to $38.7 million, depending on vendors choosing the alternative sales tax remittance; loss of up to $4.4 million from the exemption for feminine hygiene products | Minimal loss from alternative sales tax remittance; annual loss of up to $4.4 million from the exemption for feminine hygiene products |
| **Local Government Fund and Public Library Fund (counties, municipalities, townships, and public libraries)** | | | |
| Revenues | - 0 - | Potential loss of up to $1.3 million, depending on vendors choosing the alternative sales tax remittance; loss of up to $0.2 million from the exemption for feminine hygiene products | Minimal loss from alternative sales tax remittance; annual loss of up to $0.2 million from the exemption for feminine hygiene products |
| **Counties and transit authorities** | | | |
| Revenues | - 0 - | Potential loss of up to $10.0 million, depending on vendors choosing the alternative sales tax remittance; loss of up to $1.1 million from the exemption for feminine hygiene products | Minimal loss from alternative sales tax remittance; annual loss of up to $1.1 million from the exemption for feminine hygiene products |

Note: The state fiscal year is July 1 through June 30. For example, FY 2018 is July 1, 2017 – June 30, 2018.

- The bill allows certain qualifying vendors to delay remitting sales tax from taxable credit sales until after the vendor has received a customer's payment. The delay will create a one-time decrease in state sales tax revenue and revenue from local county permissive and transit authority sales taxes. The size of the revenue decrease is dependent on the number of vendors that choose the alternative sales tax remittance provided by the bill.

- The alternative remittance provision is effective January 1, 2020, making the one-time revenue loss likely to be realized in FY 2020. There would likely be minimal revenue losses during subsequent fiscal years.
- The sales tax exemption for specified feminine hygiene products reduces state sales tax receipts, and also decreases revenue from local permissive county and transit authority sales taxes. This provision is effective July 1, 2019, making the revenue loss realized starting in FY 2020.
- The state sales tax revenue loss would be shared by the state General Revenue Fund (GRF, 96.68%), the Local Government Fund (LGF, 1.66%) and the Public Library Fund (PLF, 1.66%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

# Detailed Fiscal Analysis

## Change to sales tax remittance for qualifying vendors

The bill authorizes certain small vendors, beginning in 2020, to change the manner in which the vendor remits sales taxes on sales in which a customer pays for an item or service after the item is delivered or the service is actually provided. More specifically, the bill allows qualifying vendors to delay remitting sales tax from credit sales until after the vendor has received a customer's payment. This authority would be available on an annual calendar year basis.

To qualify for this option, a vendor must (1) have annual gross sales of no more than $1 million in the preceding year and (2) qualify as a "microbusiness" for at least seven months of the preceding year.[1] If the vendor decides to remit taxes in this manner, it must do so for all credit sales made in a calendar year. If a customer makes a partial payment to the vendor for one of those credit sales, the vendor must remit sales tax on the partial payment. If any of these credit sales becomes bad debt, the vendor is required to report the bad debt and the identity of the defaulting customer to the Tax Commissioner on the return for the reporting period in which the vendor charges off the bad debt as uncollectible. Once reported, the vendor is absolved of liability for the unpaid sales tax on that debt. After utilizing the alternative sales tax system, a qualifying vendor may in future years revert to remitting sales tax under the conventional sales tax remittance method if it complies with certain provisions in the bill.

### Fiscal effect

A significant number of purchases are made on credit, with buyers settling their debts several weeks and potentially months after the transaction. The bill is permissive, thus certain sales tax taxpayers are likely to continue to remit sales taxes under current

[1] A microbusiness employs fewer than the equivalent of 20 full-time employees, defined as 20 employees working the equivalent of 30 hours or more per week.

law, while others would choose the alternative permitted by the bill. The behavior of thousands of vendors as they assess the impact of the benefits and costs of the bill on their businesses cannot be forecasted. Though the bill would not change sales tax liabilities, the timing effects of the bill could cause a significant one-time revenue loss in the first fiscal year for which the bill was in effect.

The Economic Census for Ohio estimated that in 2012 about 159,000 firms had 20 employees or less and they had about $120 billion in estimated receipts. Thus, it is more likely than not that the majority of those businesses with 20 employees or less during the year would have, on average, annual sales below $1 million. Data from the Department of Taxation indicate that sales and use vendors with annual sales of $1 million or less remitted about $1.86 billion of the $11.63 billion in state and permissive county and transit authority nonauto sales tax revenue in FY 2017, or roughly $155 million each month.[2] Of that total, monthly remittances from vendors that possibly qualify under the bill might be up to $50 million.[3] Thus, the revenue loss from the bill could be up to $50 million the first year the bill is in effect, including $10 million in permissive local sales taxes which share the same tax base as the state sales tax. Please note that the estimate above excludes vendors on a semiannual schedule (about half of all vendors), under the presumption that they would have more time to collect payment from customers before taxes are due.

Receipts from the state sales and use tax are deposited into the GRF. Under codified law a portion of GRF tax receipts is subsequently transferred to the LGF and PLF with each local fund receiving 1.66% of GRF tax revenue. The GRF revenue loss from the bill is uncertain, but may potentially be up to $38.7 million and the LGF and PLF losses may total up to $1.3 million. LSC is unable to provide a precise estimate of the fiscal cost of the bill as it depends on the number of qualifying vendors that choose to file under this parallel system. LSC also cannot rule out that the actual revenue loss from the bill could be substantially less than estimated above if a large number of qualifying vendors continue to file under the conventional sales tax remittance system. This Fiscal Note assumes the bill generally affects revenue in FY 2020 and most qualifying vendors elect to delay sales tax remittances during the fiscal year.

[2] Taxpayers required to make accelerated payments by electronic funds transfer (EFT) account for the large majority of monthly sales and use tax revenues. Of 242,000 accounts, according to the Department of Taxation, 14,869 (about 6% of the total) were EFT taxpayers and their remittances were about $10.01 billion (86% of total collections). These statistics exclude sales tax revenues from clerks of courts for motor vehicle sales.

[3] This estimate excludes revenue from all taxpayers that file semiannual or quarterly sales tax returns, and revenue from other types of sales and use tax accounts who file monthly sales tax returns (e.g., masters accounts, transient accounts, direct pay accounts, out-of-state, and streamlined sales taxpayers).

### Sales tax remittance – current law

State law prescribes the manner in which vendors must collect and remit sales taxes. Current law requires all vendors to charge the tax and remit the full amount of sales tax with the return for the reporting period in which the sale is made, which may require a vendor to remit sales tax before receiving the customer's payment in the case of credit sales. Sales tax remittances depend on the type of holder of a sales and use tax account and the amount of sales and use tax due. For example, monthly sales tax returns are due by the 23rd of the following month from the period filed, e.g., a sales tax return for sales made during the period January 1 through January 31 is due by February 23. Semiannual sales tax returns are due by the 23rd of the following month from the end of the six-month period. For example: a sales tax return for the period January 1 through June 30 is due on July 23 and that of the period of July 1 through December 31 is due on January 23. However, current law and the administrative code include numerous special provisions for certain types of account holders. For example, the calculation of the tax payment by fast food outlets, coin-operated vending machine operators, and construction contractors vary from the general rule. Other provisions apply to sales tax vendors with sales tax liability exceeding $75,000 per calendar year who are required to remit payment by electronic funds transfer (EFT) and to make advance payment of 75% of each month's anticipated tax by the 23rd day of that month, though they would also file a sales tax return by the 23rd of the next month and pay the balance of their tax due, along with that month's accelerated payment.

## Sales tax exemption for feminine hygiene products associated with menstruation

The bill exempts from the sales and use tax sales of feminine hygiene products principally used in connection with the menstrual cycle, e.g., tampons, panty liners, menstrual cups, sanitary napkins, etc., beginning July 1, 2019. As a result, the bill decreases the sales and use tax base and reduces sales tax revenue. The potential reduction in state sales tax revenue would be up to $4.5 million per year, beginning in FY 2020. The revenue loss would be shared by the GRF ($4.4 million) and the LGF and PLF ($0.1 million each).

The bill would also reduce the tax base for county permissive and transit authorities' sales taxes; as noted above local permissive taxes share the same tax base as the state sales and use tax. The annual potential revenue loss to local governments, at approximately 24.5% of state sales tax revenues, would be up to $1.1 million.

The estimates above are based on sources of information from Statista.com and the U.S. Census. Total sales of liners and tampons in the United States was estimated at approximately $3.0 billion in 2018, or about $36 for each female person aged between 15 and 50 years. Using Ohio's female population in that age range of about 2.6 million would result in potential sales of nearly $92.5 million per year. That amount was reduced by 15% to adjust for nontaxable purchases by nonprofit organizations (that may not give rise to sales taxes) and revenue leakages due to remote sales to provide an estimated annual taxable base of about $78.6 million. The resulting potential state revenue loss from the bill, at the state sales tax rate of 5.75%, would be about $4.5 million. Please note that the bill exempts more than liners and tampons. Thus, to the extent actual taxable sales in Ohio of all items exempted in the bill would be substantially above $78.6 million on an annual basis, the potential revenue loss above would be understated.