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H.B. 513
134th General Assembly

Final Analysis

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Primary Sponsors: Reps. Cross and Roemer

Effective date: Vetoed

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SUMMARY

- Would have allowed a wholesaler or distributor to obtain a refund of excise taxes on cigarettes, other tobacco products, and nicotine vapor products remitted on bad debts arising from the sale of those products.
- Would have authorized an exemption from the state's vapor products tax for certain distributors.
- Would have prohibited local regulation of tobacco products and alternative nicotine products.

DETAILED ANALYSIS

On January 5, 2023, Governor DeWine vetoed H.B. 513. The following describes the provisions of the act that would have become law but for the Governor's veto.

Excise tax refunds on bad debts – tobacco and vapor products

The state levies excise taxes on the sale of cigarettes, other tobacco products (OTP), and vapor products containing nicotine. Cigarette taxes are generally paid by wholesalers, whereas, OTP and vapor products taxes are paid by distributors. In either case, the taxes are passed through to retailers and, ultimately, consumers of those products.

The act would have allowed a wholesaler or distributor to obtain a refund of excise taxes remitted on certain bad debts arising from the sale of those products, less any discounts allowed, under continuing law, for affixing the tax stamp or prompt payment (referred to in this analysis as "qualifying bad debts").¹ The deduction would have applied only to the specific tax levied on the product that is the basis of the qualifying bad debt, and to both the state and, if

¹ See R.C. 5743.05 and 5743.52, not in the act.

applicable, local excise taxes. (Under continuing law, Cuyahoga County is authorized to levy excise taxes on cigarettes to fund a regional arts and cultural district and to construct and operate a sports facility.² No other local excise tax may specifically target these products.)

Under continuing law, wholesalers are primarily required to pay the cigarette tax by purchasing tax stamps, which must be fixed to each package of cigarettes, and distributors are required to remit directly the taxes on OTP and vapor products.³

The act would have allowed a wholesaler or distributor to apply to the Tax Commissioner for a refund of the cigarette, OTP, or vapor products taxes paid on qualifying bad debts. The application would have included a copy of the original invoice, evidence of delivery of the product to the purchaser, evidence that the purchaser did not pay for the product, evidence that the wholesaler or distributor used reasonable collection practices to try to collect the debt, and any other information the Commissioner requires. An application for a refund of OTP or vapor products taxes would have included, in addition to the information described above, evidence of the wholesale price or vapor volume, as applicable, at the time the product was subject to taxation.

The act would have defined a qualifying bad debt as any debt arising from the sale of cigarettes, OTP, or vapor products that satisfy each of the following criteria:

- The cigarette, OTP, or vapor products tax has been paid.
- The debt has become worthless or uncollectible.
- The debt has been uncollected for at least six months, but not more than three years from either the time the debt became uncollectible (in the case of cigarette taxes) or the time the tax was remitted (OTP and vapor products taxes).
- The wholesaler or distributor charges off the debt as uncollectable on its books on or after January 1, 2023.
- The wholesaler or distributor deducts, or would be allowed to deduct, the bad debt in calculating federal income tax liability.

A qualifying bad debt would not have included interest or financing charges, collections costs, accounts receivable that have been sold or assigned to a third party, or repossessed property.

The Commissioner would have been required to provide for payment to a wholesaler or distributor entitled to a refund. No person other than a wholesaler or distributor that remitted the applicable tax and generated the bad debt could have received a bad debt refund. If any portion of a bad debt for which a wholesaler or distributor received a refund is later paid, the wholesaler or distributor would have been required pay the applicable tax on the amount of

² R.C. 5743.021 and 5743.024, not in the act.

³ R.C. 5743.03 and 5743.51, not in the act.

the debt recovered. The act would have required the Commissioner to adopt any rules necessary to administer these refunds.⁴

Continuing law authorizes a very similar deduction and refund for sales taxes paid on bad debt.⁵ However, sales taxes are assessed against a consumer and remitted to the vendor, for payment to the state. In contrast, the wholesaler or distributor is generally liable for the cigarette, OTP, and vapor products tax even though each tax is generally passed down to retailers and consumers as a matter of practice.

Vapor products tax exemption for certain distributors

The act would have authorized an exemption from the state's vapor products tax for certain distributors.

In general, the vapor products tax applies at the first point in which a distributor receives untaxed products in the state. Under the act, a distributor that receives untaxed vapor products would have not been required to pay the tax if the distributor (1) is a manufacturer or importer of vapor products registered with the state and the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives and (2) only sells vapor products to other state-licensed distributors or to purchasers outside of the state. However, the act would have allowed such a distributor to pay the tax voluntarily on products it sells to another distributor in the state, if that other distributor agrees to the arrangement in a signed statement filed with the Tax Commissioner.⁶

The vapor products tax also applies to the "storage, use, or consumption" of vapor products, if the tax has not already been paid on the products by a distributor or an out-of-state seller. The act would have exempted a manufacturer or importer described above from paying this tax on its storage, use, or consumption of vapor products that will be sold outside of Ohio.⁷

Additionally, under continuing law, any person that intends to transport vapor products with a volume greater than 500 milliliters (for liquid products) or 500 grams (nonliquids) must first obtain consent from the Tax Commissioner. The consent is not required if the tax has already been paid on the transported product. The act would have added that consent is also not required if that volume of product is transported by a manufacturer or importer described above, even if the tax has not been paid.⁸

⁴ R.C. 5743.06 and 5743.53; Section 3.

⁵ R.C. 5739.121, not in the act.

⁶ R.C. 5743.01(X) and 5743.51(E).

⁷ R.C. 5743.63.

⁸ R.C. 5743.64.

Local regulation of tobacco products and alternative nicotine products

The act would have stated that the regulation of tobacco products and alternative nicotine products⁹ is a matter of general statewide concern that requires statewide regulation, and that Ohio has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. The act would have prohibited a political subdivision from enacting, adopting, renewing, maintaining, enforcing, or continuing in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products, specifically including the following:

- Setting or imposing standards, requirements, taxes, fees, assessments, or charges of any kind regarding tobacco products or alternative nicotine products that are the same as or similar to, that conflict with, that are different from, or that are in addition to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law. However, the act would not have prohibited local taxes or fees already expressly authorized by state law, i.e., local sales taxes and cigarette taxes.
- Lowering or raising an age requirement provided for in state law in connection with the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products or alternative nicotine products;
- Prohibiting an employee 18 years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from selling tobacco products or alternative nicotine products;
- Prohibiting an employee 18 years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.

The act would have required a court to award costs and reasonable attorney fees to any person, group, or entity that prevailed in a challenge to an ordinance, resolution, regulation, local law, or other action as being in conflict with the act.

Finally, the act would have stated the following:

The general assembly finds and declares that this section is part of a statewide and comprehensive legislative enactment regulating all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and

⁹ Defined in R.C. 2729.02, not in the act.

marketing of tobacco products and alternative nicotine products. The general assembly further finds and declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment. Therefore, regulation of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products is a matter of general statewide concern that requires uniform statewide regulation. By the enactment of this section, it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products.¹⁰

HISTORY

Action	Date
Introduced	12-14-21
Reported, H. Ways & Means	05-25-22
Passed House (90-0)	06-01-22
Reported, S. Ways & Means	12-14-22
Passed Senate (24-8)	12-14-22
House concurred in Senate amendments (53-35)	12-14-22
Vetoed by the Governor	01-05-23

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¹⁰ R.C. 9.681.