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H.B. 66
135th General Assembly

Bill Analysis

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Version: As Reported by House Ways and Means

Primary Sponsors: Reps. Hall and Stoltzfus

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SUMMARY

- Allows 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.

DETAILED ANALYSIS

Excise tax refunds on bad debts

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 bill allows 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 applies only to the specific tax levied on the product that is the basis of the qualifying bad debt, and applies to both the state and, if 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.)

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

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

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 bill allows 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 must include 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 must, in addition to the information described above, include evidence of the wholesale price or vapor volume, as applicable, at the time the product was subject to taxation.

A qualifying bad debt is 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, 2024.
- The wholesaler or distributor deducts, or would be allowed to deduct, the bad debt in calculating federal income tax liability.

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

The Commissioner must 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 may receive a bad debt refund. If any portion of a bad debt for which a wholesaler or distributor receives a refund is later paid, the wholesaler or distributor must pay the applicable tax on the amount of the debt recovered.

The Commissioner may adopt any rules necessary to administer these refunds. These rules are not subject to the requirements in continuing law governing agency review of rules to identify regulatory restrictions. In addition, the Commissioner is exempted from the provision of that law requiring the removal of two regulatory restrictions upon adoption of one regulatory restriction.⁴

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

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

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.

HISTORY

Action	Date
Introduced	02-21-23
Reported, H. Ways & Means	03-29-23

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⁵ R.C. 5739.121, not in the bill.