Ohio Legislative Service Commission

Bill Analysis

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H.B. 473

131st General Assembly

(As Introduced)

Rep. Amstutz

BILL SUMMARY

- Allows vendors to deduct or apply for a refund of sales tax remitted for bad debts on private label credit cards used to make purchases from the vendor, even though the debt is charged off on the books of the credit card lender.
- Authorizes a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the amount is charged off as uncollectible by the dealer.
- Requires voter approval before a county may levy a utilities service tax.
- Authorizes county voters to repeal a nonemergency utilities service tax.
- Modifies the employment criterion that a company must satisfy in order for its investors to qualify for an income tax credit for their investment in the company.

CONTENT AND OPERATION

Sales tax deduction or refund for bad debts

The bill expands an existing sales tax deduction for bad debts by allowing vendors to take a deduction or claim a refund of sales tax remitted for bad debts on accounts for "private label credit cards" used to make purchases from the vendor or the vendor's affiliates, even though the debt is charged off as uncollectible on the books of the owner of the credit card account (referred to as a "lender") and not on the vendor's books.[1]

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[1] R.C. 5739.121.

The deduction currently is available when a vendor makes a sale on credit, collects the sales tax due and remits it to the state, and eventually suffers a default by the purchaser. The debt must have remained uncollected for at least six months, and the deduction may be obtained only for debts that have become worthless or uncollectible during the most recent sales tax reporting period and that the vendor may deduct for federal income tax purposes. The deduction is applied against the vendor's sales tax remittances. A refund is available if a vendor's bad debt for a reporting period exceeds the vendor's taxable sales for that period.

For the bill's purposes, a private label credit card is a charge card, credit card, or charge account bearing the vendor's name or logo. A typical private label credit card arrangement might involve a department store (the vendor) contracting with a bank (the lender) for the bank to issue a charge card labeled with the department store's name; the charge card is used to make purchases at the store on credit; and the bank extends the credit, processes the credit purchases, bills customers, and remits payments, including sales tax, to the department store in exchange for retaining a fee from the store. Unpaid bills are a debt held by the bank, not the store.

For a vendor to receive the bill's expanded deduction or refund, the private label credit card debt must be deductible by the lender for federal income tax purposes, and the lender must charge off the debt as uncollectible on or after July 1, 2014. The expanded deduction or refund is available not only for the bad debt of the original card issuer but also the bad debt of any other person that acquired the card accounts, or acquired receivables arising from such accounts, from either a third party or the vendor, provided the vendor has remitted the sales tax. (Such other persons are all defined to be "lenders," and their bad debt is "accounts or receivables bad debt.") As with the existing deduction for a vendor's own bad debts, the bill's expanded deduction requires the vendor to repay any deducted tax if the lender eventually collects its debt after the vendor claims the deduction for that debt.

The bill permits a vendor to claim the deduction or refund on the basis of a lender's bad debt without regard to the vendor's reporting period during which the debt became worthless or uncollectible to the lender.

Under current law, a vendor may claim the bad debt deduction or refund on the basis of sales tax the vendor previously remitted only if bad debts are charged off as uncollectible on the vendor's books. Current law does not allow a deduction or refund to be claimed on the basis of bad debts on anyone else's books.[2]

[2] R.C. 5739.121(F); *Home Depot U.S.A. v. Levin*, 121 Ohio St.3d 482 (2009).

Tobacco taxes bad debt refunds

The bill authorizes a refund for cigarette and tobacco product excise taxes paid on cigarettes and tobacco products purchased on credit when the sale is charged off as uncollectible. Under the bill, this "bad debt" arises when a cigarette or tobacco products dealer sells cigarettes or tobacco products, for which the dealer has paid the applicable excise tax, on credit and eventually suffers a default by the purchaser. The debt must have remained uncollected for at least six months, and the deduction is available only for debts that have become worthless or uncollectible and that the dealer may deduct for federal income tax purposes.[3] ("Bad debt" has a similar meaning to the same term employed in context of the sales tax bad debt deduction and refund described above.)

Cigarette tax refunds

Under continuing law, the state and certain local jurisdictions levy or are authorized to levy an excise tax on wholesale dealers of cigarettes. The tax is remitted through the dealer's purchase of tax stamps that are affixed to packages of cigarettes.

The bill authorizes a dealer to apply for a refund of amounts paid for tax stamps affixed to any of the dealer's cigarettes that are purchased on credit but that are later charged off by the dealer as bad debt. The request must be filed within three years after the date the bad debt becomes uncollectible. The dealer must include with the refund request a copy of the original invoice for the cigarettes and evidence of the cigarettes' delivery, that the cigarettes were purchased on credit, and that the dealer deducted the debt for federal tax purposes. The Commissioner may adopt rules to require the dealer to provide additional evidence. The bill requires the dealer to repay any refunded tax if the dealer eventually collects its debt after receiving a refund for that debt.[4]

In lieu of providing a refund, the Commissioner may instead provide the dealer a credit against future tax stamp purchases or allow the dealer to claim a credit against any of the dealer's future liability for cigarette tax deficiencies.[5] (Continuing law requires dealers to file a reconciliation report twice per year and remit the difference between the tax due and the tax paid on cigarettes sold by the dealer.[6])

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[3] R.C. 5743.06(A) and 5743.53(D).

[4] R.C. 5703.70 and 5743.06(B) and (C).

[5] R.C. 5743.06(D).

[6] R.C. 5743.03(D), not in the bill.

Tobacco product tax refunds

Under continuing law, the state levies an excise tax on tobacco products other than cigarettes. This "other tobacco products" (OTP) tax is levied on distributors of OTPs and is reported and remitted monthly directly to the state.

The bill authorizes a distributor to apply for a refund of tax paid on OTP purchased on credit but that is later charged off by the distributor as bad debt. Similar to the cigarette tax stamp refund for bad debt, the debt must be charged off on the distributor's books, and the distributor must provide to the Commissioner a copy of the original invoice and evidence substantiating the sale of the OTP and the bad debt in addition to any other evidence the Commissioner may require by rule. The distributor must file the refund application refund within three years from the date the bad debt-related OTP tax was paid. The bill requires the distributor to repay any refunded tax if the distributor eventually collects its debt after receiving a refund for that debt.[7]

The Commissioner may allow a distributor to claim a credit against the OTP tax rather than receive a refund.[8]

County utilities service tax – voter approval

The bill requires voter approval before a county may levy a utilities service tax. Continuing law authorizes counties to levy an excise tax on customers of public utilities such as electric, gas, and telephone companies providing utility service to customers in the county. The tax equals up to 2% of amounts charged by the company to residential customers in the county for utility service, with an increased rate for business customers. Customers pay the tax with their utility bill, and utilities remit the tax to the county.

Under current law, county commissioners may levy a utilities service tax by resolution or by submitting the tax to voter approval. If the resolution levying the tax is not adopted as an emergency measure, the resolution is subject to referendum and takes effect after 30 days. If the resolution is adopted as an emergency measure, the tax is not subject to referendum and becomes effective immediately but may later be repealed by voters at a general election following the submission of a petition signed by 10% of county voters.

The bill prohibits any utilities service tax from becoming effective unless county voters first approve the resolution levying the tax at a general or primary election. The

[7] R.C. 5743.53(A)(4).

[8] R.C. 5743.53(D).

tax may be levied only for the time period specified in the resolution.[9] An approved tax may be repealed in a manner similar to an emergency tax levied under current law, i.e., by voters at a general election following the submission of a petition signed by 10% of county voters.[10]

Under the bill, an approved tax applies to utility bills rendered 60 days after the resolution's effective date. (The bill does not explicitly specify whether the tax applies to utility bills rendered before the date of the election, but presumably it would not be possible to apply the tax to bills rendered before the tax is approved by voters.) The bill also prohibits utilities from rendering bills out of the ordinary course of business with the objective of allowing customers to avoid payment of the tax.[11]

The bill's changes apply to resolutions levying a county utilities service tax on or after the bill's effective date.[12]

Investment tax credit – employment criterion

The bill modifies the employment criterion that a company must satisfy in order for its investors to qualify for an income tax credit for their investment in the company. Continuing law grants income tax credits for investors in businesses having not more than $50 million in assets or $10 million in annual sales and having specified minimum employment in Ohio – 50 full-time equivalent employees in Ohio or at least one-half of its U.S. employment in Ohio. Within six months after an investment, a business must spend at least the amount of the investment to purchase or acquire assets or to pay employees (new or existing) in Ohio. The credit equals 10% of a taxpayer's qualifying investment, up to $1 million in credit per taxpayer per state fiscal biennium (up to $2 million for joint filers). The credit is not refundable but may be carried forward for up to seven years. The total amount of credits that may granted for a biennium is limited to $100 million.

Under the bill, the employment criterion would be determined not only by the number of employees directly employed by the company in Ohio or throughout the United States, but also on the basis of "shared" employees and employees of all the company's related or affiliated entities.[13] A "shared" employee is a person who is

[9] R.C. 324.02.

[10] R.C. 324.021.

[11] R.C. 324.02.

[12] Section 4.

[13] The bill does not define what would constitute being affiliated with or related to a company, such as extent of ownership or control.

assigned by a professional employer organization (PEO) to a company (the "client employer") on a "permanent basis" and not as a temporary supplement to the client's workforce (also known as a "leased" employee); a PEO agreement, which is subject to state regulation in some respects, governs the arrangement.[14] Generally, a PEO pays the wages and associated payroll taxes, including workers' compensation premiums, and the client employer has direction and control over a shared employee's activities.[15]

Under a current statute not amended by the bill, shared employees are considered to be the client's employees for the purposes of determining employment-based state and local tax credits and economic incentives.[16]

The modification to the criterion would apply retroactively to investments made since the inception of the tax credit, July 1, 2011.[17]

HISTORY

ACTION	DATE
Introduced	02-23-16

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[14] See R.C. Chapter 4125.

[15] It is not clear whether shared employees in other states would be included in computing a company's 50% Ohio employment threshold.

[16] R.C. 4125.042.

[17] Section 3.