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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 513  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Cross and Roemer

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### SUMMARY

- Allows a wholesaler 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.
- Establishes a preferred claim by a wholesaler against a purchaser's assets for outstanding tax debts from the sale of cigarette, OTP, or vapor products when the purchaser's assets are seized or business suspended by actions of creditors.

### 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. These taxes are generally paid by wholesalers and passed through to retailers and, ultimately, consumers of those products.

The bill allows a wholesaler to obtain a refund of excise taxes remitted on certain bad debts arising from the sale of those products (referred to in this analysis as "qualifying bad debts"). 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.<sup>1</sup> No other local excise tax may specifically target these products.)

<sup>1</sup> 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 to remit directly the taxes on OTP and vapor products.<sup>2</sup>

The bill allows a wholesaler 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 used reasonable collection practices to try to collect the debt, and any other information the Commissioner prescribes by rule.

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 charges off the debt as uncollectible on the wholesaler's books.
- The wholesaler deducts, or would be allowed to deduct, the bad debt in calculating the wholesaler's 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 entitled to a refund. Instead of receiving a refund, a wholesaler may, if the Commissioner allows, apply the credit against the wholesaler's future cigarette, OTP, or vapor products tax liability.

If any portion of a bad debt for which a wholesaler receives a refund is later paid, the wholesaler must pay the applicable tax on the amount of the debt recovered.<sup>3</sup>

Continuing law authorizes a very similar deduction and refund for sales taxes paid on bad debt.<sup>4</sup> However, sales taxes are assessed against a consumer and remitted to the vendor, for payment to the state. In contrast, the wholesaler 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.

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<sup>2</sup> R.C. 5743.03 and 5743.51, not in the bill.

<sup>3</sup> R.C. 5743.06 and 5743.53.

<sup>4</sup> R.C. 5739.121, not in the bill.

### Preferred claims for taxes owed

The bill requires the purchaser of cigarettes, OTP, or vapor products from a wholesaler to immediately remit all cigarette, OTP, and vapor products taxes due on those products if either of the following occur:

- The purchaser’s property is seized by court order;
- The purchaser’s business is suspended by action of creditors or placed into the control of an assignee, receiver, or trustee.

If either of those circumstances arise, but the purchaser fails to pay the debt owed, the wholesaler is allowed a preferred claim for the tax debt owed against all of the purchaser’s assets.<sup>5</sup>

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### HISTORY

Action	Date
Introduced	12-14-21

H0513-I-134/ks

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<sup>5</sup> R.C. 5743.091.