Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

H.B. 513
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Reps. Cross and Roemer

Local Impact Statement Procedure Required: No

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Highlights

- Allowing a wholesaler to obtain a refund of excise taxes on cigarettes and other tobacco products (OTP) remitted on bad debts would reduce revenue to the GRF by an uncertain amount, likely hundreds of thousands of dollars annually, and varying considerably from year to year. The revenue losses will lower amounts distributed to counties, municipalities, and townships through the Local Government Fund (LGF, Fund 7069), and to public libraries through the Public Library Fund (PLF, Fund 7065). This provision also potentially reduces revenue from Cuyahoga County's excise tax on cigarettes.
- The bill creates new exemptions to the nicotine vapor product tax, which would decrease revenue from this tax. The extent of the revenue decrease would be dependent on the value of vapor products held and destined to be exported, so the GRF revenue loss is undetermined, but likely to be less than $1 million per year.
- The bill prohibits local regulation of tobacco products and alternative nicotine products. This provision has no state fiscal effect, but would reduce revenue for a political subdivision that imposes taxes or fees on such products. As of this writing, LBO does not know of a political subdivision that would be affected by the provision.

Detailed Analysis

Refund of wholesaler bad debts

Excise taxes on cigarettes and other tobacco products are generally paid by wholesalers and passed through to retailers of those products (in whole or in part, via an increase in price). Payments by retailers could be in cash, but generally those transactions are made on credit, resulting in the creation of account receivables (i.e., the balance of money due for goods delivered) on the wholesaler's balance sheet.

The bill allows a wholesaler to obtain a refund of excise taxes remitted on certain business bad debts, if the bad debt is charged off on or after January 1, 2023. The bill specifies that the bad debt refund would be only available on cigarette, tobacco product, and vapor taxes, net of any tax discounts that are part of the bad debt (wholesale dealers receive a discount of 1.8% of the face value of cigarette stamps; other tobacco products (OTP) and vapor products taxpayers receive a discount of 2.5% for timely payment of the tax).

The wholesaler would apply to the Tax Commissioner for a refund if the debt owed has become worthless, charged off as uncollectable on the wholesaler's books, and deducted in calculating the wholesaler's federal income tax liability.[1] The bad debt refund request is to be filed within three years after the debt became uncollectible and must be supported by evidence required by the Tax Commissioner. Under the bill, the Tax Commissioner may apply the refund as a credit against future tobacco or vapor products tax liability. FY 2022 revenue from the cigarette and OTP taxes totaled $884.6 million, including $772.3 million from the sale of cigarettes and $112.2 million from the sale of OTP. The bill will reduce revenue from this GRF source, likely by hundreds of thousands of dollars annually.[2] The revenue decline would be variable and dependent on both the amount of uncollectible bad debts incurred by wholesalers and the amount of refunds requested from the Tax Commissioner. LBO cannot rule out that the fiscal loss could exceed $1 million in certain years, depending on financial difficulties or bankruptcies of retailers that sell tobacco products.

Receipts from the excise taxes on cigarettes, OTP, and vapor products are deposited in the GRF. Reductions in revenue to the GRF as a result of the bill would lower amounts distributed to counties, municipalities, and townships through the Local Government Fund (LGF, Fund 7069), and to public libraries through the Public Library Fund (PLF, Fund 7065). In the current biennium, the PLF receives 1.70% of GRF tax revenue under an uncodified provision of H.B. 110 of the 134th General Assembly (the main operating budget act). In codified law, the LGF and the PLF each receive 1.66% of GRF tax revenue, so the GRF would bear the bulk of the revenue loss from the bill.

Under continuing law, Cuyahoga County is the only Ohio county authorized to levy an excise tax on cigarettes, and the bill's refund provision would also apply to this local tax. The revenue loss would be dependent on purchases by retailers within the county at the origin of qualified bad debts of wholesalers. In FY 2021, the yield of the local excise tax on cigarettes was $14.7 million.

New exemptions for nicotine vapor products tax

Generally, the nicotine vapor products tax applies at the first point in which a vapor product distributor receives untaxed products in the state. The bill specifically creates two

[1] "Bad debt," as defined by the bill, excludes any interest on the bad debt and any expenses incurred in attempting to collect the debt. Also, a request for refund must be made within three years of the date the bad debt became uncollectable.

[2] LBO has not found data on business bad debt deductions of Ohio tobacco dealers. This fiscal assessment is based on business bad debt deductions in federal corporate income tax returns, and communications with Department of Revenue officials in states that allow refunds for business bad debt deductions for tobacco dealers.

exemptions from the state tax on nicotine vapor products. The first exemption makes tax-free the receipt of vapor products by a qualifying distributor who (a) is a manufacturer or importer registered with the state and the federal government and (b) only sells vapor products to other distributors or purchasers outside of the state. However, the bill allows a manufacturer or importer to voluntarily pay the tax on vapor products it sells to another distributor in the state, if the other distributor agrees. The second exemption from the nicotine vapor products tax is for the storage, use, or consumption of those products held by a manufacturer or importer for sale outside of the state.

Under the described scenario for the first exemption whereby the manufacturer or another vapor distributor pays the tax, the provision has no fiscal effect on the GRF. However, the exemption for storage and use of vapor products held for sale outside the state is likely to create a revenue loss because that inventory would have been taxed under existing use tax law. The extent of the revenue decrease would be dependent on the value of vapor products held and destined to be exported, so the GRF revenue loss is undetermined, but likely to be less than $1 million per year.

Prohibition of local regulation of tobacco and alternative nicotine products

The bill prohibits local regulation of tobacco products and alternative nicotine products. Specifically, the bill prohibits fees, taxes, assessments, and charges on such products other than those expressly authorized by state law, e.g., state and local sales taxes, local cigarette taxes, and state tobacco and vapor product taxes. This provision has no state fiscal effect, but if any political subdivision currently imposes taxes or fees on cigarettes, it would reduce such revenue. As of this writing, LBO does not know of any political subdivisions for which a revenue reduction would result.

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