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H.B. 513*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Ways and Means

Primary Sponsors: Reps. Cross and Roemer

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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.
- Authorizes an exemption from the state's vapor products tax for certain distributors.
- Prohibits local regulation of tobacco products and alternative nicotine products.

DETAILED ANALYSIS

Tobacco and vapor product taxation and regulation

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

* This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

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

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 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, 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 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.⁴

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

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.

Vapor products tax exemption for certain distributors

The bill authorizes 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 bill, a distributor that receives untaxed vapor products is not 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 bill allows 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 bill exempts 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 bill adds 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

Local regulation of tobacco products and alternative nicotine products

The bill states that the regulation of tobacco products and alternative nicotine products⁹ is a matter of general statewide concern that requires statewide regulation. The bills states 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

⁵ R.C. 5739.121, not in the bill.

⁶ R.C. 5743.01(X) and 5743.51(E).

⁷ R.C. 5743.63.

⁸ R.C. 5743.64.

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

marketing of tobacco products and alternative nicotine products. The bill prohibits 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 bill does not prohibit any 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 bill requires a court to award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, resolution, regulation, local law, or other action as being in conflict with the bill.

Finally, the bill states 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 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

COMMENT

The bill may be vulnerable to a challenge under the Home Rule Amendment to the Ohio Constitution, which allows a municipal corporation to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general law.¹¹ Municipal corporations have authority to supplement state police regulations so long as the municipal regulation does not conflict with the state regulation.¹² The Ohio Supreme Court previously upheld similar preemptive language regarding firearms¹³ but disallowed language attempting to preempt local towing regulations.¹⁴

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	---

ANHB0513RS-134/ks

¹⁰ R.C. 9.681.

¹¹ Ohio Constitution, Article XVIII, Section 3.

¹² *Mendenhall v. City of Akron*, 117 Ohio St.3d 33 (2008).

¹³ *Cleveland v. State*, 128 Ohio St.3d 135 (2010).

¹⁴ *Cleveland v. State*, 138 Ohio St.3d 232 (2014).