Am. Sub. H.B. 166
As Passed by the Senate
TAXCD47, TAXCD49,
TAXCD55, TAXCD64,
TAXCD74

moved to amend as follows:

In line 20 of the title, after "991.02," insert "1346.04,"
In line 129 of the title, after "5743.025," insert "5743.03,"
In line 196 of the title, delete "5747.031,"
In line 236, after "991.02," insert "1346.04,"
In line 316, after "5743.025," insert "5743.03,"
After line 15714, insert:

"Sec. 1346.04. As used in this section and sections 1346.05
to 1346.10 of the Revised Code:

(A) "Brand family" means all styles of cigarettes sold under
the same trademark and differentiated from one another by means of
additional modifiers or descriptors, including, but not limited
to, "menthol," "lights," "kings," and "100s." "Brand family"
includes cigarettes sold under any brand name (whether that name
is used alone or in conjunction with any other word), trademark,
logo, symbol, motto, selling message, recognizable pattern of
colors, or other indicia of product identification identical or
similar to, or identifiable with, a previous brand of cigarettes.  

(B) "Cigarette," "Master Settlement Agreement," "qualified escrow fund," "tobacco product manufacturer," and "units sold" have the same meanings as in section 1346.01 of the Revised Code.

(C) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(D) "Participating manufacturer" means a participating manufacturer as that term is defined in section II(jj) of the Master Settlement Agreement and all amendments to that agreement.

(E) "Stamping agent" means a person who is authorized to affix tax stamps to packages or other containers of cigarettes under section 5743.03 of the Revised Code or a person who is required to pay the excise tax imposed on cigarettes and other tobacco products under sections 5743.03 and 5743.51 of the Revised Code, except for a vapor distributor licensed to engage solely in the distribution of vapor products under section 5743.61 of the Revised Code."

In line 73962, strike through everything after "(54)"

Strike through lines 73963 through 73967

In line 73968, strike through "(55)"

In line 73974, strike through "(55)" and insert "(54)"

In line 73977, strike through "(56)" and insert "(55)"

In line 73986, strike through "(56)" and insert "(55)"

In line 74712, strike through "(56)" and insert "(55)"

In line 74863, strike through "(56)" and insert "(55)"

In line 76860, delete "Vapor" and insert "Electronic smoking"; after "includes" insert ", but is not limited to,"
In line 76870, delete "or"

In line 76871, delete "or"

In line 76874, after "paid" insert "i"

(5) Is a wholesale dealer located outside this state that sells vapor products to a wholesale dealer in this state"

After line 76905, insert:

"Sec. 5743.03. (A) Except as provided in section 5743.04 of the Revised Code, the taxes imposed under sections 5743.02, 5743.021, 5743.024, and 5743.026 of the Revised Code shall be paid by the purchase of tax stamps. A tax stamp shall be affixed to each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. The tax stamp, so affixed, shall be prima-facie evidence of payment of the tax.

Except as is provided in the rules prescribed by the tax commissioner under authority of sections 5743.01 to 5743.20 of the Revised Code, and unless tax stamps have been previously affixed, they shall be so affixed by each wholesale dealer, and canceled by writing or stamping across the face thereof the number assigned to such wholesale dealer by the tax commissioner for that purpose, prior to the delivery of any cigarettes to any person in this state, or in the case of a tax levied pursuant to section 5743.021, 5743.024, or 5743.026 of the Revised Code, prior to the delivery of cigarettes to any person in the county in which the tax is levied.

(B) Except as provided in the rules prescribed by the commissioner under authority of sections 5743.01 to 5743.20 of the Revised Code, each retail dealer, within twenty-four hours after the receipt of any cigarettes at the retail dealer's place of
business, shall inspect the cigarettes to ensure that tax stamps are affixed. The inspection shall be completed before the cigarettes are delivered to any person in this state, or, in the case of a tax levied pursuant to section 5743.021, 5743.024, or 5743.026 of the Revised Code, before the cigarettes are delivered to any person in the county in which the tax is levied.

(C) Whenever any cigarettes are found in the place of business of any retail dealer without proper tax stamps affixed thereto and canceled, it is presumed that such cigarettes are kept therein in violation of sections 5743.01 to 5743.20 of the Revised Code.

(D) Each wholesale dealer who purchases cigarettes without proper tax stamps affixed thereto shall, on or before the last day of each month, make and file a return for the preceding calendar month, on such form as is prescribed by the tax commissioner, showing the dealer's entire purchases and sales of cigarettes and stamps for such month and accurate inventories as of the beginning and end of each month of cigarettes, stamped or unstamped; cigarette tax stamps affixed or unaffixed; and such other information as the commissioner finds necessary to the proper administration of sections 5743.01 to 5743.20 of the Revised Code. The commissioner may extend the time for making and filing returns and may remit all or any part of amounts of penalties that may become due under sections 5743.01 to 5743.20 of the Revised Code. The wholesale dealer shall deliver the return together with a remittance of the tax deficiency reported thereon to the commissioner.

(E) Any wholesale dealer who fails to file a return under this section and the rules of the commissioner, other than a report required pursuant to division (F) of this section, may be
required, for each day the dealer so fails, to forfeit and pay
into the state treasury the sum of one dollar as revenue arising
from the tax imposed by sections 5743.01 to 5743.20 of the Revised
Code and such sum may be collected by assessment in the manner
provided in section 5743.081 of the Revised Code. If the
commissioner finds it necessary in order to insure the payment of
the tax imposed by sections 5743.01 to 5743.20 of the Revised
Code, the commissioner may require returns and payments to be made
other than monthly. The returns shall be signed by the wholesale
dealer or an authorized agent thereof.

(F) Each person required to file a tax return under section 5743.03,
5743.52, or 5743.62 of the Revised Code shall report to the
commissioner the quantity of all cigarettes and roll-your-own
cigarette tobacco sold in Ohio for each brand not covered by the
tobacco master settlement agreement for which the person is liable
for the taxes levied under section 5743.02, 5743.51, or 5743.62 of
the Revised Code. A vapor distributor licensed to engage solely in
the distribution of vapor products under section 5743.61 of the
Revised Code is not required to file the report.

As used in this division, "tobacco master settlement
agreement" has the same meaning as in section 183.01 of the
Revised Code.

(G) The report required by division (F) of this section shall
be made on a form prescribed by the commissioner and shall be
filed not later than the last day of each month for the previous
month, except that if the commissioner determines that the
quantity reported by a person does not warrant monthly reporting,
the commissioner may authorize reporting at less frequent
intervals. The commissioner may assess a penalty of not more than
two hundred fifty dollars for each month or portion thereof that a 
person fails to timely file a required report, and such sum may be 
collected by assessment in the manner provided in section 5743.081 
of the Revised Code. All money collected under this division shall 
be considered as revenue arising from the taxes imposed by 
sections 5743.01 to 5743.20 of the Revised Code.

(H) The commissioner may sell tax stamps only to a licensed 
wholesale dealer, except as otherwise authorized by the 
commissioner. The commissioner may charge the costs associated 
with the shipment of tax stamps to the licensed wholesale dealer. 
Amounts collected from such charges shall be credited to the 
cigarette tax enforcement fund created under section 5743.15 of 
the Revised Code."

In line 76944, delete "or vapor"
In line 76945, delete "products"
In line 76946, delete "or vapor products"
In line 76947, delete "or"
In line 76948, delete "vapor products"
In line 76949, delete "or"
In line 76950, delete "vapor products"; after "and" insert 
"if"
In line 76951, delete "or vapor products"
In line 76952, delete "or"
In line 76953, delete "vapor products, as applicable"
After line 76953, insert:

"A retail dealer may purchase vapor products only from a 
licensed vapor distributor. A licensed vapor distributor may sell
vapor products only to a retail dealer, except a licensed vapor
distributor may sell vapor products (A) to a consumer if the licensed
vapor distributor is a retail dealer or (B) to another licensed
vapor distributor if the tax commissioner has authorized the sale
of the vapor products between those distributors and if the
distributor that sells the vapor products received them directly
from a manufacturer or importer of vapor products."

In line 76955, after "distributors" insert "or vapor
distributors"
In line 76962, delete "A licensed vapor distributor may sell
vapor"

Delete lines 76963 through 76966
In line 77059, after "products" insert "or vapor products"
In line 77222, delete "or the first invoice"
In line 77223, delete "price of the vapor products"; after
"dollars" insert ", or when the vapor volume of the vapor products
exceeds five hundred milliliters or five hundred grams, as
applicable."

Delete lines 77225 through 77228
In line 77414, strike through the comma
In line 77415, delete "or vapor products"
In line 77416, after the comma insert "or vapor products with
a vapor volume in excess of five hundred milliliters or five
hundred grams, as applicable."

In line 77910, after "individual's" insert "federal"
In line 77911, after "is" insert "eligible"
Delete lines 77943 through 77956
In line 77957, after "(B)" insert "(1)"

After line 77966, insert:

"(2) "Eligible business income" means business income excluding income from a trade or business that performs either or both of the following:

(a) Legal services provided by an active attorney admitted to the practice of law in this state or by an attorney registered for corporate counsel status under section 6 of rule VI of the Ohio supreme court rules for the government of the bar of Ohio;

(b) Executive agency lobbying activity, retirement system lobbying activity, or actively advocating by a person required to register with the joint legislative ethics committee under section 101.78, 101.92, or 121.62 of the Revised Code. Terms used in division (B)(2) of this section have the same meaning as in section 101.70, 101.92, or 121.60 of the Revised Code."

In line 78529, reinsert everything after "(HH)"

In line 78530, reinsert "individual's"; after the reinserted "individual's" insert "eligible"; reinsert the balance of the line

In line 78531, reinsert everything before "business"; after the reinserted "of" insert "eligible"; reinsert the balance of the line

Reinsert lines 78532 and 78533

In line 78534, reinsert "(II)"

In line 78544, delete "(II)" and insert "(JJ)"

In line 78559, reinsert "(4)"; delete "(3)"

In line 78568, reinsert "rate of"

In line 78569, after "ten thousandths" insert "one and
forty-two thousand seven hundred forty-four thousandths";
reinsert "per cent for"; delete "following rates on"

In line 78571, reinsert "and, for"; delete ": for taxable
years beginning in 2019, one and"

Delete lines 78572 and 78573

In line 78574, delete everything before "income"

In line 78579, reinsert "on income"

In line 78580, reinsert "other than taxable business income"

In line 78581, reinsert ", less taxable business income and"

Delete lines 78589 through 78601

Reinsert line 78602a

In line 78612, delete "297.54" and insert "310.47"; delete 
"2.731" and insert "2.850"

In line 78613, delete "890.17" and insert "928.92"; delete 
"3.188" and insert "3.326"

In line 78614, delete "2,275.36" and insert "2,374.07"

In line 78614a, delete "3.643" and insert "3.802"

In line 78615, delete "3,069.53" and insert "3,202.91"

In line 78615a, delete "4.229" and insert "4.413"

In line 78616, delete "7,666.45" and insert "7,999.84"

In line 78616a, delete "4.597" and insert "4.797"

In line 78617, reinsert "(a) In the case of individuals,"

In line 78618, reinsert "the tax imposed by this section"

Reinsert lines 78619 through 78627

In line 78628, reinsert "(5)"
In line 78709, reinsert "taxable"
In line 78710, reinsert "business income and"
In line 78750, delete "2021" and insert "2020"
In line 78926, reinsert "combined"
In line 78927, reinsert "and business income"
In line 78942, reinsert "combined"
In line 78943, reinsert "and business income"
In line 78949, reinsert "combined"
In line 78950, reinsert "and business income"
In line 78956, reinsert "combined"
In line 78957, reinsert "and business income"
In line 80165, strike through "Ohio" and insert "modified"
In line 80168, strike through "Ohio" and insert "modified"
In line 82826, after "991.02," insert "1346.04,"
In line 82907, after "5743.025," insert "5743.03,"
In line 82924, delete "5747.031,"
In line 97373, delete "divisions" and insert "division";
delete "and (D)"
In line 97375, delete "5747.031,"
In line 97379, delete "enactment" and insert "amendment";
delete "division (A)(34)" and insert "divisions (A)(31), (B), and (HH)"
Delete lines 97382 through 97389
In line 97391, delete "or 2020"
In line 97393, delete "(4)" and insert "(5)"; delete ", as
amended"

In line 97394, delete "by this act,"

In line 97508, after "sections" insert "1346.04,"; after
"5743.025," insert "5743.03,"

The motion was __________ agreed to.

**SYNOPSIS**

**Income tax: Business income deduction**

**R.C. 5747.01; Section 757.150**

Retains current law's business income deduction of up to $250,000 and restores current law's permanent 3% flat tax rate on business income above that threshold for most taxpayers. The House bill would have reduced the threshold to $100,000 and eliminated the 3% flat rate beginning in 2019. The Senate bill would have retained the $250,000 threshold and eliminated the 3% flat rate beginning in 2020.

Disallows the business income deduction and the 3% tax rate on business income greater than $250,000 if the business income arises from either (1) the practice of law by an attorney or (2) lobbying by a person required to register with JLEC (i.e., legislative and executive agency lobbyists and retirement system lobbyists). Disallowance applies to taxable years beginning in 2020.

**Income tax: Rates on nonbusiness income**

**R.C. 5747.02; Section 757.150**

Reduces tax rates on nonbusiness income and on the income of
estates and trusts by 4% compared to current law rates beginning in 2019. The House bill would have reduced rates by 6.6% in 2019, and the Senate bill would have reduced rates by 4% in 2019 and another 4% beginning in 2020 for a total rate reduction of 8% after 2019.

Retains both the Senate and House proposal to eliminate the lowest two income brackets (below $21,750).

**Income tax: Educator expense deduction**

R.C. 5747.01(A)(34); Section 757.150

Removes a proposed income tax deduction for educators' out-of-pocket expenses for professional development and classroom supplies. The Senate added the deduction to the bill.

**Sales tax: Repeal investment coin/metals exemption**

R.C. 5739.02(B)(54), 5739.03, and 5739.05

Repeals the existing sales and use tax exemption for investment coins and bullion. The House bill would have repealed the exemption; the Senate bill would have preserved the exemption.

**School district income tax base**

R.C. 5748.01

Reinserts a provision, added by the House and removed by the Senate, requiring that, for purposes of school district income taxes that use "earned income" as the tax base, self-employment income or other earnings deducted under the business income deduction must be added back when computing a taxpayer's taxable income.

Currently, such amounts must be added back when computing the taxable income of taxpayers in school districts that use the broader state income tax base as a base, but not in districts that
have an earned-income tax base.

**Vapor products tax modifications**

**R.C. 1346.04, 5743.01, 5743.03, 5743.20, 5743.51, 5743.60, 5743.64; Section 757.270**

Makes the following modifications to a provision added by the Senate that would impose an excise tax on nicotine vapor products:

1. Requires a vapor distributor to obtain the Tax Commissioner's authorization before selling vapor products to another vapor distributor, and allows such a transfer only if the selling distributor obtained the vapor products directly from a manufacturer or importer. (A similar requirement exists for transfers of tobacco products other than tobacco.)

2. Authorizes a manufacturer of vapor products to avoid payment of the tax if it submits to the Tax Commissioner a statement from the retailer asserting that the retailer will pay the tax.

3. Prohibits a person from distributing vapor products with the intent to avoid the new tax if the products' volume or weight exceed 500 milliliters (mLs) or grams during a 12-month period. The Senate bill prohibits such distribution if the invoice price of the vapor products exceeds $300 during that period.

4. Prohibits a person from transporting vapor products with a volume or weight in excess of 500 mLs or grams without the permission of the Tax Commissioner. The Senate bill prohibits transporting vapor products with a wholesale value of $300 or more.

5. Excuses vapor distributors licensed solely to distribute vapor products from the requirement under continuing law for tobacco product excise taxpayers to report their sales of certain
tobacco products, i.e., "roll-your-own" cigarettes, to the Tax Commissioner for the purpose of complying with and enforcing the Tobacco Master Settlement Agreement.

(6) Specifies that a wholesale dealer of vapor products located outside Ohio that sells products to an Ohio wholesaler is a vapor distributor required to register with the Tax Commissioner and remit the new excise tax.