

**As Introduced**

**131st General Assembly  
Regular Session  
2015-2016**

**H. B. No. 473**

**Representative Amstutz**

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**A BILL**

To amend sections 122.86, 324.02, 324.021, 5703.70, 1  
5739.121, 5743.05, and 5743.53 and to enact 2  
section 5743.06 of the Revised Code to require 3  
voter approval before a county may levy a new 4  
utilities services tax, to allow small 5  
businesses to count employees of related or 6  
affiliated entities towards satisfying the 7  
employment criteria of the business investment 8  
tax credit, to permit a bad debt refund for 9  
cigarette and tobacco product excise taxes paid 10  
when a purchaser fails to pay a dealer for the 11  
cigarettes or tobacco products and the unpaid 12  
amount is charged off as uncollectible by the 13  
dealer, and to allow vendors to receive a refund 14  
of sales taxes remitted for bad debts on private 15  
label credit cards when the debt is charged off 16  
as uncollectible by the credit card lender. 17

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 122.86, 324.02, 324.021, 5703.70, 18  
5739.121, 5743.05, and 5743.53 be amended and section 5743.06 of 19  
the Revised Code be enacted to read as follows: 20

<b>Sec. 122.86.</b> (A) As used in this section and section	21
5747.81 of the Revised Code:	22
(1) "Small business enterprise" means a corporation, pass-	23
through entity, or other person satisfying all of the following:	24
(a) At the time of a qualifying investment, the enterprise	25
meets all of the following requirements:	26
(i) Has no outstanding tax or other liabilities owed to	27
the state;	28
(ii) Is in good standing with the secretary of state, if	29
the enterprise is required to be registered with the secretary;	30
(iii) Is current with any court-ordered payments;	31
(iv) Is not engaged in any illegal activity.	32
(b) At the time of a qualifying investment, the	33
enterprise's assets according to generally accepted accounting	34
principles do not exceed fifty million dollars, or its annual	35
sales do not exceed ten million dollars. When making this	36
determination, the assets and annual sales of all of the	37
enterprise's related or affiliated entities shall be included in	38
the calculation.	39
(c) The enterprise employs at least fifty full-time	40
equivalent employees in this state for whom the enterprise is	41
required to withhold income tax under section 5747.06 of the	42
Revised Code, or more than one-half the enterprise's total	43
number of full-time equivalent employees employed anywhere in	44
the United States are employed in this state and are subject to	45
that withholding requirement. <u>When making this determination,</u>	46
<u>the employees of all of the enterprise's related or affiliated</u>	47
<u>entities, including shared employees coemployed by a</u>	48

professional employer organization and a client employer shall 49  
be included in the calculation. For the purposes of this 50  
division, "coemploy," "shared employee," "professional employer 51  
organization," and "client employer" have the same meanings as 52  
in section 4125.01 of the Revised Code. 53

(d) The enterprise, within six months after an eligible 54  
investor's qualifying investment is made, invests in or incurs 55  
cost for one or more of the following in an amount at least 56  
equal to the amount of the qualifying investment: 57

(i) Tangible personal property, other than motor vehicles 58  
operated on public roads and highways, used in business and 59  
physically located in this state from the time of its 60  
acquisition by the enterprise until the end of the investor's 61  
holding period; 62

(ii) Motor vehicles operated on public roads and highways 63  
if, from the time of acquisition by the enterprise until the end 64  
of the investor's holding period, the motor vehicles are 65  
purchased in this state, registered in this state under Chapter 66  
4503. of the Revised Code, are used primarily for business 67  
purposes, and are necessary for the operation of the 68  
enterprise's business; 69

(iii) Real property located in this state that is used in 70  
business from the time of its acquisition by the enterprise 71  
until the end of the holding period; 72

(iv) Intangible personal property, including patents, 73  
copyrights, trademarks, service marks, or licenses used in 74  
business primarily in this state from the time of its 75  
acquisition by the enterprise until the end of the holding 76  
period; 77

(v) Compensation for new employees of the enterprise for 78  
whom the enterprise is required to withhold income tax under 79  
section 5747.06 of the Revised Code, not including increased 80  
compensation for owners, officers, or managers of the 81  
enterprise. For this purpose compensation for new employees 82  
includes compensation for newly hired or retained employees. 83

(2) "Qualifying investment" means an investment of money 84  
made on or after July 1, 2011, to acquire capital stock or other 85  
equity interest in a small business enterprise. "Qualifying 86  
investment" does not include either of the following: 87

(a) Any investment of money an eligible investor derives, 88  
directly or indirectly, from a grant or loan from the federal 89  
government or the state or a political subdivision, including 90  
the third frontier program under Chapter 184. of the Revised 91  
Code; 92

(b) Any investment of money which is the basis of a tax 93  
credit granted under any other section of the Revised Code. 94

(3) "Eligible investor" means an individual, estate, or 95  
trust subject to the tax imposed by section 5747.02 of the 96  
Revised Code, or a pass-through entity in which such an 97  
individual, estate, or trust holds a direct or indirect 98  
ownership or other equity interest. To qualify as an eligible 99  
investor, the individual, estate, trust, or pass-through entity 100  
shall not owe any outstanding tax or other liability to the 101  
state at the time of a qualifying investment. 102

(4) "Holding period" means the two-year period beginning 103  
on the day a qualifying investment is made. 104

(5) "Pass-through entity" has the same meaning as in 105  
section 5733.04 of the Revised Code. 106

(B) Any eligible investor that makes a qualifying 107  
investment in a small business enterprise on or after July 1, 108  
2011, may apply to the director of development services to 109  
obtain a small business investment certificate from the 110  
director. Alternatively, a small business enterprise may apply 111  
on behalf of eligible investors to obtain the certificates for 112  
those investors. The director, in consultation with the tax 113  
commissioner, shall prescribe the form or manner in which an 114  
applicant shall apply for the certificate, devise the form of 115  
the certificate, and prescribe any records or other information 116  
an applicant shall furnish with the application to evidence the 117  
qualifying investment. The applicant shall state the amount of 118  
the intended investment. The applicant shall pay an application 119  
fee equal to the greater of one-tenth of one per cent of the 120  
amount of the intended investment or one hundred dollars. 121

A small business investment certificate entitles the 122  
certificate holder to receive a tax credit under section 5747.81 123  
of the Revised Code if the certificate holder qualifies for the 124  
credit as otherwise provided in this section. If the certificate 125  
holder is a pass-through entity, the certificate entitles the 126  
entity's equity owners to receive their distributive or 127  
proportionate shares of the credit. In any fiscal biennium, an 128  
eligible investor may not apply for small business investment 129  
certificates representing intended investment amounts in excess 130  
of ten million dollars. Such certificates are not transferable. 131

The director of development services may reserve small 132  
business investment certificates to qualifying applicants in the 133  
order in which the director receives applications, but may issue 134  
the certificates as the applications are completed. An 135  
application is completed when the director has validated that an 136  
eligible investor has made a qualified investment and the small 137

business enterprise has made the appropriate reinvestment of the 138  
qualified investment pursuant to the requirements of division 139  
(A) (1) (d) of this section. To qualify for a certificate, an 140  
eligible investor must satisfy both of the following, subject to 141  
the limitation on the amount of qualifying investments for which 142  
certificates may be issued under division (C) of this section: 143

(1) The eligible investor makes a qualifying investment on 144  
or after July 1, 2011. 145

(2) The eligible investor pledges not to sell or otherwise 146  
dispose of the qualifying investment before the conclusion of 147  
the applicable holding period. 148

(C) (1) The amount of any eligible investor's qualifying 149  
investments for which small business investment certificates may 150  
be issued for a fiscal biennium shall not exceed ten million 151  
dollars. 152

(2) The director of development services shall not issue a 153  
small business investment certificate to an eligible investor 154  
representing an amount of qualifying investment in excess of the 155  
amount of the intended investment indicated on the investor's 156  
application for the certificate. 157

(3) The director of development services shall not issue 158  
small business investment certificates in a total amount that 159  
would cause the tax credits claimed in any fiscal biennium to 160  
exceed one hundred million dollars. 161

(4) The director of development services may issue a small 162  
business investment certificate only if both of the following 163  
apply at the time of issuance: 164

(a) The small business enterprise meets all the 165  
requirements listed in divisions (A) (1) (a) (i) to (iv) of this 166

section; 167

(b) The eligible investor does not owe any outstanding tax 168  
or other liability to the state. 169

(D) Before the end of the applicable holding period of a 170  
qualifying investment, each enterprise in which a qualifying 171  
investment was made for which a small business investment 172  
certificate has been issued, upon the request of the director of 173  
development services, shall provide to the director records or 174  
other evidence satisfactory to the director that the enterprise 175  
is a small business enterprise for the purposes of this section. 176  
Each enterprise shall also provide annually to the director 177  
records or evidence regarding the number of jobs created or 178  
retained in the state. No credit may be claimed under this 179  
section and section 5747.81 of the Revised Code if the director 180  
finds that an enterprise is not a small business enterprise for 181  
the purposes of this section. The director shall compile and 182  
maintain a register of small business enterprises qualifying 183  
under this section and shall certify the register to the tax 184  
commissioner. The director shall also compile and maintain a 185  
record of the number of jobs created or retained as a result of 186  
qualifying investments made pursuant to this section. 187

(E) After the conclusion of the applicable holding period 188  
for a qualifying investment, a person to whom a small business 189  
investment certificate has been issued under this section may 190  
claim a credit as provided under section 5747.81 of the Revised 191  
Code. 192

(F) The director of development services, in consultation 193  
with the tax commissioner, may adopt rules for the 194  
administration of this section, including rules governing the 195  
following: 196

(1) Documents, records, or other information eligible	197
investors shall provide to the director;	198
(2) Any information a small business enterprise shall	199
provide for the purposes of this section and section 5747.81 of	200
the Revised Code;	201
(3) Determination of the number of full-time equivalent	202
employees of a small business enterprise;	203
(4) Verification of a small business enterprise's	204
investment in tangible personal property and intangible personal	205
property under division (A) (1) (d) of this section, including	206
when such investments have been made and where the property is	207
used in business;	208
(5) Circumstances under which small business enterprises	209
or eligible investors may be subverting the purposes of this	210
section and section 5747.81 of the Revised Code.	211
There is hereby created in the state treasury the	212
InvestOhio support fund. The fund shall consist of the fees paid	213
under division (B) of this section and shall be used by the	214
development services agency to pay the costs of administering	215
the small business investment certificate program established	216
under this section.	217
<b>Sec. 324.02.</b> For the purpose of providing additional	218
general revenues for the county and paying the expense of	219
administering such levy, any county may levy a county excise tax	220
to be known as the utilities service tax on the charge for every	221
utility service to customers within the county at a rate not to	222
exceed two per cent of such charge. On utility service to	223
customers engaged in business, the tax shall be imposed at a	224
rate of one hundred fifty per cent of the rate imposed upon all	225

other consumers within the county. The tax shall be levied 226  
pursuant to a resolution adopted by the board of county 227  
commissioners of the county and shall be levied at uniform rates 228  
required by this section upon all charges for utility service 229  
except as provided in section 324.03 of the Revised Code. 230

The resolution shall be certified to the board of 231  
elections not less than ninety days before the general or 232  
primary election upon which it will be voted, and shall be 233  
submitted in the manner provided in section 5705.25 of the 234  
Revised Code. If the majority of the electors voting on the 235  
question vote in favor of the tax levy, the board may levy the 236  
tax within the county for the period specified in the 237  
resolution. 238

The tax levied by the resolution shall apply to all bills 239  
rendered after the sixtieth day after the effective date of the 240  
resolution. The tax shall be levied upon the customer and shall 241  
be paid by the customer to the utility supplying the service at 242  
the time the customer pays the utility for the service. If the 243  
charge for utility service is billed to a person other than the 244  
customer at the request of such person, the tax commissioner ~~of~~ 245  
~~the state may~~, in accordance with section 324.04 of the Revised 246  
Code, provide for the levy of the tax against and the payment of 247  
the tax by such other person. Each utility furnishing a utility 248  
service the charge for which is subject to the tax shall set 249  
forth the tax as a separate item on each bill or statement 250  
rendered to the customer. No bills shall be rendered out of the 251  
ordinary course of business to avoid payment of the tax. 252

Prior to the adoption of any resolution levying a 253  
utilities service tax the board of county commissioners shall 254  
conduct two public hearings thereon, the second hearing to be 255

not less than three nor more than ten days after the first. 256  
Notice of the date, time, and place of such hearings shall be 257  
given by publication in a newspaper of general circulation in 258  
the county once a week on the same day of the week for two 259  
consecutive weeks or as provided in section 7.16 of the Revised 260  
Code. The second publication shall be not less than ten nor more 261  
than thirty days prior to the first hearing. ~~No resolution~~ 262  
~~levying a utilities service tax pursuant to this section of the~~ 263  
~~Revised Code shall be effective sooner than thirty days~~ 264  
~~following its adoption and such resolution is subject to a~~ 265  
~~referendum as provided in sections 305.31 to 305.41 of the~~ 266  
~~Revised Code, unless such resolution is adopted as an emergency~~ 267  
~~measure necessary for the immediate preservation of the public~~ 268  
~~peace, health, or safety, in which case it shall go into~~ 269  
~~immediate effect. Such emergency measure must receive an~~ 270  
~~affirmative vote of all of the members of the board of~~ 271  
~~commissioners, and shall state the reasons for such necessity. A~~ 272  
~~resolution may direct the board of elections to submit the~~ 273  
~~question of levying the tax to the electors of the county at the~~ 274  
~~next primary or general election in the county occurring not~~ 275  
~~less than ninety days after such resolution is certified to the~~ 276  
~~board. No such resolution shall go into effect unless approved~~ 277  
~~by a majority of those voting upon it. The tax levied by such~~ 278  
~~resolution shall apply to all bills rendered subsequent to the~~ 279  
~~sixtieth day after the effective date of the resolution. No~~ 280  
~~bills shall be rendered out of the ordinary course of business~~ 281  
~~to avoid payment of the tax.~~ 282

**Sec. 324.021.** The question of repeal of a county 283  
permissive tax adopted ~~as an emergency measure~~ pursuant to 284  
section 324.02 of the Revised Code may be initiated by filing 285  
with the board of elections of the county not less than ninety 286

days before the general election in any year a petition 287  
requesting that an election be held on such question. Such 288  
petition shall be signed by qualified electors residing in the 289  
county equal in number to ten per cent of those voting for 290  
governor at the most recent gubernatorial election. 291

After determination by it that such petition is valid, the 292  
board of elections shall submit the question to the electors of 293  
the county at the next general election. The election shall be 294  
conducted, canvassed, and certified in the same manner as 295  
regular elections for county offices in the county. Notice of 296  
the election shall be published in a newspaper of general 297  
circulation in the district once a week for two consecutive 298  
weeks prior to the election or as provided in section 7.16 of 299  
the Revised Code. If the board of elections operates and 300  
maintains a web site, notice of the election also shall be 301  
posted on that web site for thirty days prior to the election. 302  
The notice shall state the purpose, time, and place of the 303  
election. The form of the ballot cast at such election shall be 304  
prescribed by the secretary of state. The question covered by 305  
such petition shall be submitted as a separate proposition, but 306  
it may be printed on the same ballot with any other proposition 307  
submitted at the same election other than the election of 308  
officers. If a majority of the qualified electors voting on the 309  
question of repeal approve the repeal, the result of the 310  
election shall be certified immediately after the canvass by the 311  
board of elections to the board of county commissioners, who 312  
shall thereupon, after the current year, cease to levy the tax. 313

**Sec. 5703.70.** (A) On the filing of an application for 314  
refund under section 3734.905, 4307.05, 4307.07, 5726.30, 315  
5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 316  
5735.141, 5735.142, 5735.18, 5736.08, 5739.07, 5739.071, 317

5739.104, 5741.10, 5743.05, 5743.06, 5743.53, 5749.08, 5751.08, 318  
or 5753.06 of the Revised Code, or an application for 319  
compensation under section 5739.061 of the Revised Code, if the 320  
tax commissioner determines that the amount of the refund or 321  
compensation to which the applicant is entitled is less than the 322  
amount claimed in the application, the commissioner shall give 323  
the applicant written notice by ordinary mail of the amount. The 324  
notice shall be sent to the address shown on the application 325  
unless the applicant notifies the commissioner of a different 326  
address. The applicant shall have sixty days from the date the 327  
commissioner mails the notice to provide additional information 328  
to the commissioner or request a hearing, or both. 329

(B) If the applicant neither requests a hearing nor 330  
provides additional information to the tax commissioner within 331  
the time prescribed by division (A) of this section, the 332  
commissioner shall take no further action, and the refund or 333  
compensation amount denied becomes final. 334

(C) (1) If the applicant requests a hearing within the time 335  
prescribed by division (A) of this section, the tax commissioner 336  
shall assign a time and place for the hearing and notify the 337  
applicant of such time and place, but the commissioner may 338  
continue the hearing from time to time as necessary. After the 339  
hearing, the commissioner may make such adjustments to the 340  
refund or compensation as the commissioner finds proper, and 341  
shall issue a final determination thereon. 342

(2) If the applicant does not request a hearing, but 343  
provides additional information, within the time prescribed by 344  
division (A) of this section, the commissioner shall review the 345  
information, make such adjustments to the refund or compensation 346  
as the commissioner finds proper, and issue a final 347

determination thereon. 348

(3) The commissioner shall serve a copy of the final 349  
determination made under division (C) (1) or (2) of this section 350  
on the applicant in the manner provided in section 5703.37 of 351  
the Revised Code, and the decision is final, subject to appeal 352  
under section 5717.02 of the Revised Code. 353

(D) The tax commissioner shall certify to the director of 354  
budget and management and treasurer of state for payment from 355  
the tax refund fund created by section 5703.052 of the Revised 356  
Code, the amount of the refund to be refunded under division (B) 357  
or (C) of this section. The commissioner also shall certify to 358  
the director and treasurer of state for payment from the general 359  
revenue fund the amount of compensation to be paid under 360  
division (B) or (C) of this section. 361

**Sec. 5739.121.** (A) As used in this section, ~~"bad-;~~ 362

(1) "Bad debt" means any debt that has become worthless or 363  
uncollectible in the time period between a vendor's preceding 364  
return and the present return, has been uncollected for at least 365  
six months, and that may be claimed as a deduction pursuant to 366  
the "Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 367  
166, as amended, and regulations adopted pursuant thereto, or 368  
that could be claimed as such a deduction if the vendor kept 369  
accounts on an accrual basis. "Bad debt" does not include any 370  
interest or sales tax on the purchase price, uncollectible 371  
amounts on property that remains in the possession of the vendor 372  
until the full purchase price is paid, expenses incurred in 373  
attempting to collect any account receivable or for any portion 374  
of the debt recovered, and repossessed property. 375

(2) "Lender" means a person or an affiliate, assignee, or 376

transferee of a person that owns a private label credit card 377  
account, or an interest in a private label credit card 378  
receivable, provided that interest was any of the following: 379

(a) Transferred from a third party; 380

(b) Purchased directly from a vendor that remitted tax 381  
imposed under this chapter or from an affiliate of the vendor; 382

(c) Originated according to a written agreement between 383  
the person and a vendor that remitted tax imposed under this 384  
chapter or an affiliate of the vendor. 385

(3) "Private label credit card" means a charge card or 386  
credit card on which the name or logo of a vendor appears. 387

(4) "Accounts or receivables bad debt" means the unpaid 388  
balance on private label credit card accounts or receivables 389  
that are bad debt and are charged off as uncollectible on the 390  
books of a lender on or after July 1, 2014, and against which a 391  
deduction or refund has not previously been taken or allowed, 392  
respectively, under this section. For the purposes of division 393  
(A) (4) of this section only, "bad debt" shall be determined 394  
without regard to when the debt has become worthless or 395  
uncollectible relative to the period between a vendor's returns, 396  
and the deductibility of the debt for federal income tax 397  
purposes shall be determined with respect to the lender instead 398  
of the vendor. 399

(5) "Affiliate" means any person that is a member of an 400  
affiliated group or that would be a member of an affiliated 401  
group if the person was a corporation. 402

(6) "Affiliated group" has the same meaning as in section 403  
1504 of the Internal Revenue Code. 404

(B) In computing taxable receipts for purposes of this 405  
chapter, a vendor may deduct the amount of bad debts. ~~The Except~~ 406  
as provided in division (F) of this section, the amount deducted 407  
must be charged off as uncollectible on the books of the vendor. 408  
A deduction may be claimed only with respect to bad debts on 409  
which the taxes pursuant to sections 5739.10 and 5739.12 of the 410  
Revised Code were paid in a preceding tax period. If the 411  
vendor's business consists of taxable and nontaxable 412  
transactions, the deduction shall equal the full amount of the 413  
debt if the debt is documented as a taxable transaction in the 414  
vendor's records. If no such documentation is available, the 415  
maximum deduction on any bad debt shall equal the amount of the 416  
bad debt multiplied by the quotient obtained by dividing the 417  
sales taxed pursuant to this chapter during the preceding 418  
calendar year by all sales during the preceding calendar year, 419  
whether taxed or not. If a consumer or other person pays all or 420  
part of a bad debt with respect to which a vendor claimed a 421  
deduction under this section, the vendor shall be liable for the 422  
amount of taxes deducted in connection with that portion of the 423  
debt for which payment is received and shall remit such taxes in 424  
the vendor's next payment to the tax commissioner. 425

(C) Any claim for a bad debt deduction under this section 426  
shall be supported by such evidence as the tax commissioner by 427  
rule requires. The commissioner shall review any change in the 428  
rate of taxation applicable to any taxable sales by a vendor 429  
claiming a deduction pursuant to this section and adopt rules 430  
for altering the deduction in the event of such a change in 431  
order to ensure that the deduction on any bad debt does not 432  
result in the vendor claiming the deduction recovering any more 433  
or less than the taxes imposed on the sale that constitutes the 434  
bad debt. 435

(D) In any reporting period in which the amount of bad debt exceeds the amount of taxable sales for the period, the vendor may file a refund claim for any tax collected on the bad debt in excess of the tax reported on the return. The refund claim shall be filed in the manner provided in section 5739.07 of the Revised Code, except that the claim may be filed within four years of the due date of the return on which the bad debt first could have been claimed.

(E) When the filing responsibilities of a vendor have been assumed by a certified service provider, the certified service provider shall claim the bad debt allowance provided by this section on behalf of the vendor. The certified service provider shall credit or refund to the vendor the full amount of any bad debt allowance or refund.

~~(F) No person other than the vendor in the transaction that generated the bad debt or, as provided in division (E) of this section, a certified service provider, may claim the bad debt allowance provided by this section.~~  
(1) A vendor may deduct on a return or obtain a refund of tax remitted by the vendor on accounts or receivables bad debt.

A vendor taking a deduction or claiming a refund under division (F) (1) of this section shall include all credit sale transactions outstanding in the account or receivable at the time the account or receivable is charged off as uncollectible on the books of a lender in calculating the deduction or refund, regardless of the date on which the credit sale transaction occurs.

(2) The deduction or refund authorized under division (F) (1) of this section may be taken or obtained by the vendor only on the basis of accounts or receivables bad debt from purchases

from the vendor whose name or logo appears on the private label 466  
credit card or from purchases from any of the vendor's 467  
affiliates or franchisees. 468

(3) A vendor taking a deduction or receiving a refund 469  
under division (F)(1) of this section shall maintain books, 470  
records, or other documents verifying the accounts or 471  
receivables bad debt, which shall be open to inspection by the 472  
commissioner upon request. 473

(4) If the vendor collects in whole or part any accounts 474  
or receivables bad debt on the basis of which the vendor took a 475  
deduction or received a refund under division (F) of this 476  
section, the vendor shall include the amount collected in the 477  
vendor's first return filed after the collection and pay tax on 478  
the portion of that amount with respect to which the vendor took 479  
the deduction or received a refund. 480

For the purpose of calculating the amount of tax to remit 481  
under division (F)(4) of this section, the vendor shall allocate 482  
payments made by the holder of a private label credit card on 483  
the holder's accounts based on the agreement between the account 484  
holder and the vendor or lender. 485

(G) The tax commissioner may adopt rules necessary to 486  
administer this section. 487

**Sec. 5743.05.** The tax commissioner shall sell all stamps 488  
provided for by section 5743.03 of the Revised Code. The stamps 489  
shall be sold at their face value, except the commissioner 490  
shall, by rule, authorize the sale of stamps to wholesale 491  
dealers in this state, or to wholesale dealers outside this 492  
state, at a discount of not less than one and eight-tenths per 493  
cent or more than ten per cent of their face value, as a 494

commission for affixing and canceling the stamps. 495

The commissioner, by rule, shall authorize the delivery of 496  
stamps to wholesale dealers in this state and to wholesale 497  
dealers outside this state on credit. If such a dealer has not 498  
been in good credit standing with this state for five 499  
consecutive years preceding the purchase, the commissioner shall 500  
require the dealer to file with the commissioner a bond to the 501  
state in the amount and in the form prescribed by the 502  
commissioner, with surety to the satisfaction of the 503  
commissioner, conditioned on payment to the treasurer of state 504  
or the commissioner within thirty days or the following twenty- 505  
third day of June, whichever comes first for stamps delivered 506  
within that time. If such a dealer has been in good credit 507  
standing with this state for five consecutive years preceding 508  
the purchase, the commissioner shall not require that the dealer 509  
file such a bond but shall require payment for the stamps within 510  
thirty days after purchase of the stamps or the following 511  
twenty-third day of June, whichever comes first. Stamps sold to 512  
a dealer not required to file a bond shall be sold at face 513  
value. The maximum amount that may be sold on credit to a dealer 514  
not required to file a bond shall equal one hundred ten per cent 515  
of the dealer's average monthly purchases over the preceding 516  
calendar year. The maximum amount shall be adjusted to reflect 517  
any changes in the tax rate and may be adjusted, upon 518  
application to the commissioner by the dealer, to reflect 519  
changes in the business operations of the dealer. The maximum 520  
amount shall be applicable to the period between the first day 521  
of July to the following twenty-third day of June. Payment by a 522  
dealer not required to file a bond shall be remitted by 523  
electronic funds transfer as prescribed by section 5743.051 of 524  
the Revised Code. If a dealer not required to file a bond fails 525

to make the payment in full within the required payment period, 526  
the commissioner shall not thereafter sell stamps to that dealer 527  
until the dealer pays the outstanding amount, including penalty 528  
and interest on that amount as prescribed in this chapter, and 529  
the commissioner thereafter may require the dealer to file a 530  
bond until the dealer is restored to good standing. The 531  
commissioner shall limit delivery of stamps on credit to the 532  
period running from the first day of July of the fiscal year 533  
until the twenty-third day of the following June. Any discount 534  
allowed as a commission for affixing and canceling stamps shall 535  
be allowed with respect to sales of stamps on credit. 536

The commissioner shall redeem and pay for any destroyed, 537  
unused, or spoiled tax stamps at their net value, and shall 538  
refund to wholesale dealers the net amount of state and county 539  
taxes paid erroneously or paid on cigarettes that have been sold 540  
in interstate or foreign commerce or that have become unsalable, 541  
and the net amount of county taxes that were paid on cigarettes 542  
that have been sold at retail or for retail sale outside a 543  
taxing county. 544

An application for a refund of tax shall be filed with the 545  
commissioner, on the form prescribed by the commissioner for 546  
that purpose, within three years from the date the tax stamps 547  
are destroyed or spoiled, from the date of the erroneous 548  
payment, or from the date that cigarettes on which taxes have 549  
been paid have been sold in interstate or foreign commerce or 550  
have become unsalable. 551

On the filing of the application, the commissioner shall 552  
determine the amount of refund to which the applicant is 553  
entitled, payable from receipts of the state tax, and, if 554  
applicable, payable from receipts of a county tax. If the amount 555

is not less than that claimed, the commissioner shall certify 556  
the amount to the director of budget and management and 557  
treasurer of state for payment from the tax refund fund created 558  
by section 5703.052 of the Revised Code. If the amount is less 559  
than that claimed, the commissioner shall proceed in accordance 560  
with section 5703.70 of the Revised Code. 561

If a refund is granted for payment of an illegal or 562  
erroneous assessment issued by the department, the refund shall 563  
include interest on the amount of the refund from the date of 564  
the overpayment. The interest shall be computed at the rate per 565  
annum prescribed by section 5703.47 of the Revised Code. 566

Sec. 5743.06. (A) As used in this section, "bad debt" 567  
means any debt that arises from the sale by a wholesale dealer 568  
of cigarettes properly stamped under section 5743.03, 5743.031, 569  
or 5743.04 of the Revised Code, that has become worthless or 570  
uncollectible, that has been uncollected for at least six 571  
months, and that may be claimed as a deduction pursuant to the 572  
"Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 166, as 573  
amended, and regulations adopted pursuant thereto, or that could 574  
be claimed as such a deduction if the wholesale dealer kept 575  
accounts on an accrual basis. "Bad debt" does not include any 576  
interest or financing charges on the debt, expenses incurred in 577  
attempting to collect the debt or for any portion of the debt 578  
recovered, any accounts receivable that have been sold or 579  
assigned to a third party, or repossessed property. 580

(B) A wholesale dealer may apply to the tax commissioner 581  
for a refund of the net value of cigarette tax stamps that are 582  
part of bad debt of the dealer. The commissioner shall not 583  
refund any amount for bad debt under this section unless the 584  
dealer has charged off the bad debt on its books as 585

uncollectible. If a purchaser or other person pays all or part 586  
of a bad debt with respect to which a wholesale dealer received 587  
a refund under this section, the dealer is liable for the 588  
prorated amount of taxes refunded in connection with that 589  
portion of the debt for which such payment was received, and 590  
shall remit such taxes to the commissioner in the manner the 591  
commissioner prescribes. 592

Any request for refund under this section shall be 593  
supported by such evidence the commissioner requires by rule, 594  
including all of the following: 595

(1) A copy of the original invoice; 596

(2) Evidence that the cigarettes described in the invoice 597  
were delivered to the person that ordered them; 598

(3) Evidence that the person who ordered and received such 599  
cigarettes did not pay the wholesale dealer for the cigarettes 600  
and that the dealer used reasonable collection practices in 601  
attempting to collect the debt; 602

(4) Evidence that the debt was deducted for federal income 603  
tax purposes as described in division (A) of this section or 604  
could have been so deducted if the dealer kept accounts on an 605  
accrual basis. 606

(C) A request for refund under this section must be filed 607  
within three years after the date the bad debt became 608  
uncollectible. For each request for refund the commissioner 609  
shall determine the amount of refund to which the applicant is 610  
entitled. The refund is payable from receipts of the state tax, 611  
and, if applicable, from receipts of a county tax. If the amount 612  
is not less than that claimed, the commissioner shall certify 613  
the amount to the director of budget and management and 614

treasurer of state for payment from the tax refund fund created 615  
by section 5703.052 of the Revised Code. If the amount is less 616  
than that claimed, the commissioner shall proceed in accordance 617  
with section 5703.70 of the Revised Code. 618

(D) In lieu of granting a refund payable under division 619  
(C) of this section, the commissioner may allow a wholesale 620  
dealer to claim a credit of the amount of refundable tax on the 621  
return for the period during which the tax became refundable or 622  
against the purchase of tax stamps. The commissioner may require 623  
dealers to submit any information necessary to support a claim 624  
for a credit under this division, and shall not allow a credit 625  
if that information is not provided. 626

**Sec. 5743.53.** (A) The treasurer of state shall refund to a 627  
taxpayer any of the following: 628

(1) Any tobacco products tax paid erroneously~~+~~. 629

(2) Any tobacco products tax paid on an illegal or 630  
erroneous assessment~~+~~. 631

(3) Any tax paid on tobacco products that have been sold 632  
or shipped to retail or wholesale dealers outside this state, 633  
returned to the manufacturer, or destroyed by the taxpayer with 634  
the prior approval of the tax commissioner. 635

(4) Any tax paid by a wholesale dealer on tobacco products 636  
that are part of bad debt of the dealer. The commissioner shall 637  
not refund any amount for bad debt under this section unless the 638  
dealer has charged off the bad debt on its books as 639  
uncollectible. If a purchaser or other person pays all or part 640  
of a bad debt with respect to which a wholesale dealer received 641  
a refund under this section, the dealer is liable for the 642  
prorated amount of taxes refunded in connection with that 643

portion of the debt for which such payment was received, and 644  
shall remit such taxes to the commissioner in the manner the 645  
commissioner prescribes. 646

Any request for refund under division (A)(4) of this 647  
section shall be supported by such evidence the commissioner 648  
requires by rule, including all of the following: 649

(a) A copy of the original invoice; 650

(b) Evidence that the tobacco products described in the 651  
invoice were delivered to the person that ordered them; 652

(c) Evidence that the person who ordered and received such 653  
tobacco products did not pay the wholesale dealer for the 654  
tobacco products and that the dealer used reasonable collection 655  
practices in attempting to collect the debt; 656

(d) Evidence that the debt was deducted for federal income 657  
tax purposes as described in division (A) of this section or 658  
could have been so deducted if the dealer kept accounts on an 659  
accrual basis. 660

As used in this division, "bad debt" means any debt that 661  
arises from the sale by a wholesale dealer of tobacco products 662  
for which the dealer remitted the tax due under section 5743.51 663  
as provided under section 5743.52 of the Revised Code, that has 664  
become worthless or uncollectible, that has been uncollected for 665  
at least six months, and that may be claimed as a deduction 666  
pursuant to the "Internal Revenue Code of 1954," 68A Stat. 50, 667  
26 U.S.C. 166, as amended, and regulations adopted pursuant 668  
thereto, or that could be claimed as such a deduction if the 669  
wholesale dealer kept accounts on an accrual basis. "Bad debt" 670  
does not include any interest or financing charges on the debt, 671  
expenses incurred in attempting to collect the debt or for any 672

portion of the debt recovered, any accounts receivable that have 673  
been sold or assigned to a third party, or repossessed property. 674

Any application for refund shall be filed with the tax 675  
commissioner on a form prescribed by the commissioner for that 676  
purpose. The commissioner may not pay any refund on an 677  
application for refund filed with the commissioner more than 678  
three years from the date of payment of the tax. 679

(B) On the filing of the application for refund, the 680  
commissioner shall determine the amount of the refund to which 681  
the applicant is entitled. If the amount is not less than that 682  
claimed, the commissioner shall certify the amount to the 683  
director of budget and management and to the treasurer of state 684  
for payment from the tax refund fund created by section 5703.052 685  
of the Revised Code. If the amount is less than that claimed, 686  
the commissioner shall proceed in accordance with section 687  
5703.70 of the Revised Code. 688

If a refund is granted for payment of an illegal or 689  
erroneous assessment issued by the department of taxation, the 690  
refund shall include interest on the amount of the refund from 691  
the date of the overpayment. The interest shall be computed at 692  
the rate per annum in the manner prescribed by section 5703.47 693  
of the Revised Code. 694

(C) If any person entitled to a refund of tax under this 695  
section or section 5703.70 of the Revised Code is indebted to 696  
the state for any tax administered by the tax commissioner, or 697  
any charge, penalties, or interest arising from such tax, the 698  
amount allowable on the application for refund first shall be 699  
applied in satisfaction of the debt. 700

(D) In lieu of granting a refund payable under division 701

(A) (3) of this section, the tax commissioner may allow a 702  
taxpayer to claim a credit of the amount of refundable tax on 703  
the return for the period during which the tax became 704  
refundable. The commissioner may require taxpayers to submit any 705  
information necessary to support a claim for a credit under this 706  
section, and the commissioner shall allow no credit if that 707  
information is not provided. 708

**Section 2.** That existing sections 122.86, 324.02, 324.021, 709  
5703.70, 5739.121, 5743.05, and 5743.53 of the Revised Code are 710  
hereby repealed. 711

**Section 3.** The amendment by this act of section 122.86 of 712  
the Revised Code applies to any qualifying investment made on or 713  
after July 1, 2011. 714

**Section 4.** The amendment by this act of sections 324.02 715  
and 324.021 of the Revised Code applies to resolutions to levy a 716  
tax under that section adopted on or after the effective date of 717  
this act. 718