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House Bill 66 - Bad Debt Refund/Excise Tax Proponent Testimony House Ways and Means Committee

**Beth Wymer, Executive Director
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Chairman Roemer, Vice Chair Merrin, Ranking Member Troy and members of the committee, thank you for the opportunity to testify in support of House Bill 66 which permits wholesalers to receive a refund for cigarette, other tobacco and vapor product excise taxes when a purchaser fails to pay the wholesaler and the account becomes uncollectible.

OWMA's core membership is wholesalers who supply products to convenience stores (c-stores), mom-n-pop corner stores and similar retailers. A single invoice to their retail accounts will include tobacco items, prepackaged foods, candy/snacks, food service lines, paper products, non-alcoholic drinks and anything else in the store. Despite the variety of products being delivered, the tobacco category is the largest part of sales, representing 70 to 90 percent of total annual sales for the typical wholesaler.

In terms of dollars for the state, tobacco category sales produced almost \$885 million in excise tax receipts last fiscal year. These taxes are levied at the wholesale level, not at the register when the consumer buys the products. Wholesalers pay the taxes up front to the state and the assumption is that they recover the taxes when the retailer, who often has payment terms, pays for the products. Despite front end credit checks with new retail accounts and monitoring of accounts for indications of potential payment problems on the horizon, wholesalers still deal with bad debt that includes the excise taxes the wholesaler is required to remit to the state but has not recouped from the retailer.

C-store wholesalers don't have exclusive territories where they do business. They compete against each other for retailer business, and payment terms is one of the offerings they can make to a potential or current retail account. At the same time, retailers prioritize payments to vendors. The beer and wine distributor gets paid and recoups the excise taxes they've remitted because the law requires payment for beer and wine on delivery, and the retailer risks suspension of the license to sell those products if they pay for that delivery with a bad check. Next in line is the fuel delivery and if the store sells lottery, they have to remit ticket sale money to the state or lose lottery agent status. At the bottom of the list is the wholesaler who supplies all of the tobacco category and most of the other products in the store.

Examples of how a bad debt can happen include if the retailer sells the business, goes out of business voluntarily or through court/creditor action, simply doesn't pay invoices and instead starts buying from another wholesaler, or pays with a bad check. The fact that the wholesaler is out the entire cost of the tobacco and non-tobacco items when the customer doesn't pay, combined with the fact that collection

actions also come at additional cost, is plenty of reason for wholesalers to take giving payment terms seriously. But the fact remains that despite their best efforts, bad debt can happen. House Bill 66 applies only to the excise tax associated with bad debts.

Wholesalers are already allowed to request a refund of excise taxes paid on unsalable product, product returned to the manufacturer and even product that is stolen. My perspective is that not receiving payment for product that has been delivered is 'stealing', therefore the wholesaler should have the option to file for a refund of the excise taxes paid.

House Bill 66 requires that the request for a refund of tax paid be supported by evidence the commissioner requires by rule, including that the wholesaler used reasonable collection practices in attempting to collect the debt. It is worth noting that it is in wholesaler's financial interest to attempt to collect on the entire debt because the excise tax paid on the tobacco is just a fraction of the total product cost on the invoice. The bill also requires that any request for a refund include a copy of the original invoice and evidence that the excise taxed products described in the invoice were delivered to the person that ordered them.

The language of House Bill 66 is not new for the state. Current law already allows retailers to claim a refund of sales tax remitted to the state on transactions that become a bad debt to the retailer. The bill is taking that exact language and applying it to cigarette, tobacco and vapor excise taxes. There are also a few other states, including Michigan and Indiana, that allow excise tax bad debt refunds. The fiscal impact of refunds in those states has been minimal compared to excise taxes collected. Some of the states even report no refunds filed for or issued, but the tool for recovery is available if needed ... and that is the point.

Mr. Chairman and members of the committee thank you for your time and I would be happy to answer any questions.