

As Introduced

134th General Assembly

Regular Session

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H. B. No. 513

Representatives Cross, Roemer

**Cosponsors: Representatives Seitz, Riedel, Schmidt, Lipps, Stoltzfus, Fraizer,
Loychik**

A BILL

To amend section 5743.53 and to enact sections 1
5743.06 and 5743.091 of the Revised Code 2
regarding the deduction and recovery of bad 3
debts for cigarette and tobacco and vapor 4
products taxes. 5

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

Section 1. That section 5743.53 be amended and sections 6
5743.06 and 5743.091 of the Revised Code be enacted to read as 7
follows: 8

Sec. 5743.06. (A) As used in this section, "bad debt" 9
means any debt that arises from the sale by a wholesale dealer 10
of cigarettes properly stamped under section 5743.03, 5743.031, 11
or 5743.04 of the Revised Code, that has become worthless or 12
uncollectible, that has been uncollected for at least six 13
months, and that may be claimed as a deduction pursuant to the 14
"Internal Revenue Code of 1954," 26 U.S.C. 166, and regulations 15
adopted pursuant thereto, or that could be claimed as such a 16
deduction if the wholesale dealer kept accounts on an accrual 17
basis. "Bad debt" does not include any interest or financing 18

charges on the debt, expenses incurred in attempting to collect 19
the debt or for any portion of the debt recovered, any accounts 20
receivable that have been sold or assigned to a third party, or 21
repossessed property. 22

(B) A wholesale dealer may apply to the tax commissioner 23
for a refund of the net value of cigarette tax stamps that are 24
part of bad debt of the dealer. The commissioner shall not 25
refund any amount for bad debt under this section unless the 26
dealer has charged off the bad debt on its books as 27
uncollectible. If a purchaser or other person pays all or part 28
of a bad debt with respect to which a wholesale dealer received 29
a refund under this section, the dealer is liable for the 30
prorated amount of taxes refunded in connection with that 31
portion of the debt for which such payment was received and 32
shall remit such taxes to the commissioner in the manner the 33
commissioner prescribes. Any request for refund under this 34
section shall be supported by such evidence the commissioner 35
requires by rule, including all of the following: 36

(1) A copy of the original invoice; 37

(2) Evidence that the cigarettes described in the invoice 38
were delivered to the person that ordered them; 39

(3) Evidence that the person who ordered and received such 40
cigarettes did not pay the wholesale dealer for the cigarettes 41
and that the dealer used reasonable collection practices in 42
attempting to collect the debt. 43

(C) A request for refund under this section shall be filed 44
within three years after the date the bad debt became 45
uncollectible. For each request, the commissioner shall 46
determine the amount of refund to which the applicant is 47

entitled. If the amount is not less than that claimed, the 48
commissioner shall certify the amount to the director of budget 49
and management and treasurer of state for payment from the tax 50
refund fund created by section 5703.052 of the Revised Code. If 51
the amount is less than that claimed, the commissioner shall 52
proceed in accordance with section 5703.70 of the Revised Code. 53

(D) In lieu of granting a refund under division (C) of 54
this section, the commissioner may allow a wholesale dealer to 55
claim a credit equal to the amount of the bad debt. The credit 56
may be applied against the purchase of tax stamps or claimed 57
against the tax imposed under section 5743.02 or, if applicable, 58
section 5743.021, 5743.024, or 5743.026 of the Revised Code, on 59
the return filed under section 5743.03 of the Revised Code for 60
the period during which the debt became a bad debt. The 61
commissioner may require dealers to submit any information 62
necessary to support a claim for a credit under this division. 63

Sec. 5743.091. If the property of any person that has 64
purchased cigarettes, tobacco products, or vapor products from a 65
person holding a license issued under section 5743.61 or 66
division (C) of section 5743.15 of the Revised Code is seized 67
upon any intermediate or final process of any court in this 68
state, or if the business of any person that has purchased 69
cigarettes, tobacco products, or vapor products from such a 70
license holder is suspended by the action of creditors or put 71
into the hands of any assignee, receiver, or trustee, all 72
amounts that are due from the purchaser to the license holder 73
for taxes imposed under sections 5743.02, 5743.021, 5743.024, 74
5743.026, and 5743.51 of the Revised Code and remitted by the 75
license holder shall be paid in full. Any claim arising from the 76
failure to pay the amount in full shall be a preferred claim 77
against all of the assets of the purchaser, real and personal. 78

Sec. 5743.53. (A) The treasurer of state shall refund to a	79
taxpayer any of the following:	80
(1) Any tobacco products or vapor products tax paid	81
erroneously;	82
(2) Any tobacco products or vapor products tax paid on an	83
illegal or erroneous assessment;	84
(3) Any tax paid on tobacco products or vapor products	85
that have been sold or shipped to retail dealers, wholesale	86
dealers, or vapor distributors outside this state, returned to	87
the manufacturer, or destroyed by the taxpayer with the prior	88
approval of the tax commissioner;	89
<u>(4) In accordance with division (E) of this section, any</u>	90
<u>tax paid by a wholesale dealer on tobacco or vapor products that</u>	91
<u>are part of bad debt of the dealer.</u>	92
Any application for refund shall be filed with the	93
commissioner on a form prescribed by the commissioner for that	94
purpose. The commissioner may not pay any refund on an	95
application for refund filed with the commissioner more than	96
three years from the date of payment of the tax.	97
(B) On the filing of the application for refund, the	98
commissioner shall determine the amount of the refund to which	99
the applicant is entitled. If the amount is not less than that	100
claimed, the commissioner shall certify the amount to the	101
director of budget and management and to the treasurer of state	102
for payment from the tax refund fund created by section 5703.052	103
of the Revised Code. If the amount is less than that claimed,	104
the commissioner shall proceed in accordance with section	105
5703.70 of the Revised Code.	106
If a refund is granted for payment of an illegal or	107

erroneous assessment issued by the department of taxation, the 108
refund shall include interest on the amount of the refund from 109
the date of the overpayment. The interest shall be computed at 110
the rate per annum in the manner prescribed by section 5703.47 111
of the Revised Code. 112

(C) If any person entitled to a refund of tax under this 113
section or section 5703.70 of the Revised Code is indebted to 114
the state for any tax administered by the tax commissioner, or 115
any charge, penalties, or interest arising from such tax, the 116
amount allowable on the application for refund first shall be 117
applied in satisfaction of the debt. 118

(D) In lieu of granting a refund payable under division 119
(A) (3) of this section, the tax commissioner may allow a 120
taxpayer to claim a credit of the amount of refundable tax on 121
the return for the period during which the tax became 122
refundable. The commissioner may require taxpayers to submit any 123
information necessary to support a claim for a credit under this 124
section, and the commissioner shall allow no credit if that 125
information is not provided. 126

(E) (1) As used in this section, "bad debt" means any debt 127
that arises from the sale by a wholesale dealer of tobacco or 128
vapor products for which the dealer remitted the tax due under 129
section 5743.51 of the Revised Code, that has become worthless 130
or uncollectible, that has been uncollected for at least six 131
months, and that may be claimed as a deduction pursuant to the 132
"Internal Revenue Code of 1954," 26 U.S.C. 166, and regulations 133
adopted pursuant thereto, or that could be claimed as such a 134
deduction if the wholesale dealer kept account on an accrual 135
basis. "Bad debt" does not include any interest or financing 136
charges on the debt, expenses incurred in attempting to collect 137

the debt or for any portion of the debt recovered, any accounts 138
receivable that have been sold or assigned to a third party, or 139
repossessed property. 140

(2) The commissioner shall not refund any amount for bad 141
debt under division (A) (4) of this section unless the dealer has 142
charged off the bad debt on its books as uncollectible. If a 143
purchaser or other person pays all or part of a bad debt with 144
respect to which a wholesale dealer received a refund under this 145
section, the dealer is liable for the prorated amount of taxes 146
refunded in connection with that portion of the debt for which 147
such payment was received and shall remit such taxes to the 148
commissioner in the manner the commissioner prescribes. Any 149
request for refund under division (A) (4) of this section shall 150
be supported by such evidence the commissioner requires by rule, 151
including all of the following: 152

(a) A copy of the original invoice; 153

(b) Evidence that the tobacco or vapor products described 154
in the invoice were delivered to the person that ordered them; 155

(c) Evidence that the person who ordered and received such 156
tobacco or vapor products did not pay the wholesale dealer for 157
the tobacco or vapor products and that the dealer used 158
reasonable collection practices in attempting to collect the 159
debt. 160

Section 2. That existing section 5743.53 of the Revised 161
Code is hereby repealed. 162