

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 231

Representative Combs

Cosponsors: Representatives Stebelton, Collier

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A B I L L

To amend sections 305.31, 1333.11, 4301.01, 4301.422, 1
4301.49, 4301.50, 4305.131, 4307.04, 4307.05, 2
5705.38, 5743.025, 5743.03, 5743.04, 5743.05, 3
5743.08, 5743.081, 5743.12, 5743.13, 5743.33, 4
5743.34, and 5743.35 and to enact sections 340.20, 5
340.201, 340.202, 340.203, 4301.425, 5743.027, 6
5743.028, and 5743.325 of the Revised Code to 7
authorize electors of a county to levy a tax on 8
alcoholic beverages and cigarettes to provide 9
funding for expenses relating to alcohol and drug 10
abuse and addiction services. 11

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

Section 1. That sections 305.31, 1333.11, 4301.01, 4301.422, 12
4301.49, 4301.50, 4305.131, 4307.04, 4307.05, 5705.38, 5743.025, 13
5743.03, 5743.04, 5743.05, 5743.08, 5743.081, 5743.12, 5743.13, 14
5743.33, 5743.34, and 5743.35 be amended and sections 340.20, 15
340.201, 340.202, 340.203, 4301.425, 5743.027, 5743.028, and 16
5743.325 of the Revised Code be enacted to read as follows: 17

Sec. 305.31. The procedure for submitting to a referendum any 18
resolution adopted by a board of county commissioners pursuant to 19

division (D)(1) of section 307.697, section 322.02, 322.06, ~~or~~ 20
324.02, or 340.20, sections 1515.22 and 1515.24, division (B)(1) 21
of section 4301.421, section 4301.425, 4504.02, 5739.021, 22
5739.026, 5741.021, or 5741.023, ~~or~~ division (C)(1) of section 23
5743.024, or section 5743.027 of the Revised Code, or rule adopted 24
pursuant to section 307.79 of the Revised Code shall be as 25
prescribed by this section. 26

Except as otherwise provided in this paragraph, when a 27
petition, signed by ten per cent of the number of electors who 28
voted for governor at the most recent general election for the 29
office of governor in the county, is filed with the county auditor 30
within thirty days after the date the resolution is passed or rule 31
is adopted by the board of county commissioners, or is filed 32
within forty-five days after the resolution is passed, in the case 33
of a resolution adopted pursuant to section 5739.021 of the 34
Revised Code that is passed within one year after a resolution 35
adopted pursuant to that section has been rejected or repealed by 36
the electors, requesting that the resolution be submitted to the 37
electors of the county for their approval or rejection, the county 38
auditor shall, after ten days following the filing of the 39
petition, and not later than four p.m. of the seventy-fifth day 40
before the day of election, transmit a certified copy of the text 41
of the resolution or rule to the board of elections. In the case 42
of a petition requesting that a resolution adopted under division 43
(D)(1) of section 307.697, section 340.20, division (B)(1) of 44
section 4301.421, ~~or~~ section 4301.425, division (C)(1) of section 45
5743.024, or section 5743.027 of the Revised Code be submitted to 46
electors for their approval or rejection, the petition shall be 47
signed by seven per cent of the number of electors who voted for 48
governor at the most recent election for the office of governor in 49
the county. The county auditor shall transmit the petition to the 50
board together with the certified copy of the resolution or rule. 51
The board shall examine all signatures on the petition to 52

determine the number of electors of the county who signed the petition. The board shall return the petition to the auditor within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the resolution or rule to the electors of the county, for their approval or rejection, at the succeeding general election held in the county in any year, or on the day of the succeeding primary election held in the county in even-numbered years, occurring subsequent to seventy-five days after the auditor certifies the sufficiency and validity of the petition to the board of elections.

No resolution shall go into effect until approved by the majority of those voting upon it. However, a rule shall take effect and remain in effect unless and until a majority of the electors voting on the question of repeal approve the repeal. Sections 305.31 to 305.41 of the Revised Code do not prevent a county, after the passage of any resolution or adoption of any rule, from proceeding at once to give any notice or make any publication required by the resolution or rule.

The board of county commissioners shall make available to any person, upon request, a certified copy of any resolution or rule subject to the procedure for submitting a referendum under sections 305.31 to 305.42 of the Revised Code beginning on the date the resolution or rule is adopted by the board. The board may charge a fee for the cost of copying the resolution or rule.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution or rule.

Sec. 340.20. (A) As used in this section "alcohol and drug abuse and addiction expenses" includes any operating or capital expenses liberally construed by the board of county commissioners

to be appropriate for the provision by the county, or by any other 84
political subdivision with the financial assistance of the county, 85
of any alcohol or drug abuse and addiction treatment, care, 86
prevention, or intervention services. 87

(B) For the purpose of funding alcohol and drug abuse and 88
addiction expenses in the county, or contributing to the county's 89
share of the funding of such services by a joint-county district 90
in which the county participates, to pay the expenses of 91
administering the tax, and to pay any or all of the charge the 92
board of elections makes against the county to hold the election 93
on the question of levying the tax, the board of county 94
commissioners of a county may levy a tax not to exceed three 95
dollars on each gallon of spirituous liquor sold to or purchased 96
by liquor permit holders for resale, and sold at retail by the 97
division of liquor control, in the county. The tax shall be levied 98
on the number of gallons so sold. The tax may be levied for a 99
specified number of years or for a continuing period of time. 100

(1) The tax may be levied pursuant to a resolution of the 101
board of county commissioners approved by a majority of the 102
electors in the county voting on the question of levying the tax, 103
which resolution shall specify the rate of the tax, the number of 104
years the tax will be levied or that it will be levied for a 105
continuing period of time, and the purpose for which the tax is 106
levied. The election may be held on the date of a general or 107
special election held not sooner than seventy-five days after the 108
date the board certifies its resolution to the board of elections. 109
If approved by the electors, the tax takes effect on the first day 110
of the month specified in the resolution but not sooner than the 111
first day of the month that is at least sixty days after the 112
certification of the election results by the board of elections. A 113
copy of the resolution levying the tax and the certification of 114
the board of elections shall be certified to the division of 115

liquor control at least sixty days prior to the date on which the 116
tax is to become effective. 117

A resolution under this section may be joined on the ballot 118
as a single question with a resolution adopted under section 119
4301.425 or 5743.027 of the Revised Code to levy a tax for the 120
same purposes, and for the purpose of paying the expenses of 121
administering that tax. 122

(2) The question of levying a tax under this section may be 123
initiated by filing with the board of elections of the county a 124
petition requesting that an election be held on the question. The 125
petition shall specify the terms of the proposed tax, as if it 126
were a resolution under division (B)(1) of this section. The 127
petition shall have complied with the rules enumerated in section 128
3501.38 of the Revised Code, and shall have been signed by 129
qualified electors residing in the county equal in number to ten 130
per cent of those voting for governor at the most recent 131
gubernatorial election. The petition shall be filed with the board 132
of elections not later than seventy-five days before the general 133
election. The petition may be joined as a single petition with a 134
petition proposing the levying of a tax or taxes under section 135
4301.425 or 5743.027 of the Revised Code. 136

The board of elections shall verify the petition. If the 137
board determines that the petition is valid, it shall submit the 138
question of levying the tax to the electors of the county at the 139
next general election. 140

If approved by the electors, the tax takes effect on the 141
first day of the month that is at least sixty days after the 142
certification of the election results by the board of elections. A 143
copy of the petition and the certification of the board of 144
elections shall be certified to the division of liquor control at 145
least sixty days prior to the date on which the tax is to become 146
effective. 147

(C) All revenue generated by a tax levied under this section shall be credited to the county cigarette and alcohol tax fund. 148
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Sec. 340.201. The form of the ballot in an election held pursuant to section 340.20, 4301.425, or 5743.027 of the Revised Code shall be as follows or in any other form acceptable to the secretary of state: 150
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"For the purpose of funding expenses related to alcohol and drug abuse and addiction services in the county (or, if appropriate, for the purpose of contributing to the county's share of the funding of such services by a joint-county district in which the county participates), shall (an) excise tax(es) be levied by county at the rate of (dollars on each gallon of spirituous liquor sold in the county by the Ohio division of liquor control, cents per gallon on the sale of beer at wholesale in the county, cents per gallon on the sale of wine and mixed beverages at wholesale in the county, cents per gallon on the sale of cider at wholesale in the county, or mills per cigarette on the sale of cigarettes at wholesale in the county), (for years) (for a continuing period of time)? 154
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	<u>Yes</u>	
	<u>No</u>	"

For an election in which questions under section 340.20, 4301.425, or 5743.027 of the Revised Code are joined as a single question, the form of the ballot shall be as above, except each of the proposed taxes shall be listed. 170
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Sec. 340.202. A special fund to be known as the county cigarette and alcohol tax fund is created in a county in which a tax has been adopted under section 340.20, 4301.425, or 5743.027 of the Revised Code. 174
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Sec. 340.203. Annually, the board of alcohol, drug addiction, 178
and mental health services or the board of alcohol and drug 179
addiction services shall provide to the county auditor an 180
accounting of all expenditures from the county cigarette and 181
alcohol tax fund. In the accounting, the board shall separately 182
state capital expenditures, operating expenditures, and 183
expenditures for personal services. 184

Sec. 1333.11. As used in sections 1333.11 to 1333.21 of the 185
Revised Code: 186

(A) "Cost to the retailer" means the invoice cost of 187
cigarettes to the retailer, or the replacement cost of cigarettes 188
to the retailer within thirty days prior to the date of sale, in 189
the quantity last purchased, whichever is lower, less all trade 190
discounts except customary discounts for cash, to which shall be 191
added the cost of doing business by the retailer as evidenced by 192
the standards and the methods of accounting regularly employed by 193
the retailer in the retailer's allocation of overhead costs and 194
expenses, paid or incurred. "Cost to the retailer" must include, 195
without limitation, labor, including salaries of executives and 196
officers, rent, depreciation, selling costs, maintenance of 197
equipment, delivery costs, all types of licenses, insurance, 198
advertising, and taxes, exclusive of county cigarette taxes paid 199
or payable on the cigarettes. Where the sale to the retailer is on 200
a cash and carry basis, the cartage to the retail outlet, if 201
performed or paid for by the retailer, shall be added to the 202
invoice cost of the cigarettes to the retailer. In the absence of 203
proof of a lesser or higher cost by the retailer, the cartage cost 204
shall be three-fourths of one per cent of the invoice cost of the 205
cigarettes to the retailer, not including the amount added thereto 206
by the wholesaler for the face value of state and county cigarette 207
tax stamps affixed to each package of cigarettes. 208

(B) In the absence of proof of a lesser or higher cost of 209
doing business by the retailer making the sale, the cost of doing 210
business to the retailer shall be eight per cent of the invoice 211
cost of the cigarettes to the retailer exclusive of the face value 212
of county cigarette taxes paid on the cigarettes or of the 213
replacement cost of the cigarettes to the retailer within thirty 214
days prior to the date of sale in the quantity last purchased 215
exclusive of the face value of county cigarette taxes paid on the 216
cigarettes, whichever is lower, less all trade discounts except 217
customary discounts for cash. 218

(C) "Cost to the wholesaler" means the invoice cost of the 219
cigarettes to the wholesaler, or the replacement cost of the 220
cigarettes to the wholesaler within thirty days prior to the date 221
of sale, in the quantity last purchased, whichever is lower, less 222
all trade discounts except customary discounts for cash, to which 223
shall be added a wholesaler's markup to cover in part the cost of 224
doing business, which wholesaler's markup, in the absence of proof 225
of a lesser or higher cost of doing business by the wholesaler as 226
evidenced by the standards and methods of accounting regularly 227
employed by the wholesaler in the wholesaler's allocation of 228
overhead costs and expenses, paid or incurred, including without 229
limitation, labor, salaries of executives and officers, rent, 230
depreciation, selling costs, maintenance of equipment, delivery, 231
delivery costs, all types of licenses, taxes, insurance, and 232
advertising, shall be three and five-tenths per cent of such 233
invoice cost of the cigarettes to the wholesaler, to which shall 234
be added the full face value of state and county cigarette tax 235
stamps affixed by the wholesaler to each package of cigarettes, or 236
of the replacement cost of the cigarettes to the wholesaler within 237
thirty days prior to the date of sale in the quantity last 238
purchased, whichever is lower, less all trade discounts except 239
customary discounts for cash. Where the sale by the wholesaler to 240
the retailer is on a cash and carry basis, the wholesaler may, in 241

the absence of proof of a lesser or higher cost, allow to the 242
retailer an amount not to exceed three-fourths of one per cent of 243
the "cost to the wholesaler" excluding the amount added thereto 244
for the face value of state and county cigarette tax stamps 245
affixed to each package of cigarettes. 246

(D) Any person licensed to sell cigarettes as both a 247
wholesaler and a retailer, who does sell cigarettes at retail, 248
shall, in determining "cost to the retailer", first compute "cost 249
to the wholesaler" as provided in division (C) of this section; 250
that "cost to the wholesaler" shall then be used in lieu of the 251
lower of either invoice cost or replacement cost less all trade 252
discounts except customary discounts for cash in computing "cost 253
to the retailer" as provided in divisions (A) and (B) of this 254
section. 255

(E) In all advertisements, offers for sale, or sales 256
involving two or more items at a combined price and in all 257
advertisements, offers for sale, or sales involving the giving of 258
any concession of any kind, whether it be coupons or otherwise, 259
the retailer's or wholesaler's selling price shall not be below 260
the "cost to the retailer" or the "cost to wholesaler", 261
respectively, of all articles, products, commodities, and 262
concessions included in such transactions. 263

(F)(1) "Sell at retail," "sales at retail," and "retail 264
sales" include any transfer of title to tangible personal property 265
for a valuable consideration made, in the ordinary course of trade 266
or usual prosecution of the seller's business, to the purchaser 267
for consumption or use. 268

(2) "Sell at wholesale," "sales at wholesale," and "wholesale 269
sales" include any such transfer of title to tangible personal 270
property for the purpose of resale. 271

(G) "Retailer" includes any person who is permitted to sell 272

cigarettes at retail within this state under section 5743.15 of 273
the Revised Code. 274

(H) "Wholesaler" includes any person who is permitted to sell 275
cigarettes at wholesale within this state under that section. 276

(I) "Person" includes individuals, corporations, 277
partnerships, associations, joint-stock companies, business 278
trusts, unincorporated organizations, receivers, or trustees. 279

(J) "County cigarette taxes" means the taxes levied under 280
section 5743.021, 5743.024, ~~or~~ 5743.026, or 5743.027 of the 281
Revised Code. 282

Sec. 4301.01. (A) As used in the Revised Code: 283

(1) "Intoxicating liquor" and "liquor" include all liquids 284
and compounds, other than beer, containing one-half of one per 285
cent or more of alcohol by volume which are fit to use for 286
beverage purposes, from whatever source and by whatever process 287
produced, by whatever name called, and whether they are medicated, 288
proprietary, or patented. "Intoxicating liquor" and "liquor" 289
include wine even if it contains less than four per cent of 290
alcohol by volume, mixed beverages even if they contain less than 291
four per cent of alcohol by volume, cider, alcohol, and all solids 292
and confections which contain any alcohol. 293

(2) Except as used in sections 4301.01 to 4301.20, 4301.22 to 294
4301.52, 4301.56, 4301.70, 4301.72, and 4303.01 to 4303.36 of the 295
Revised Code, "sale" and "sell" include exchange, barter, gift, 296
offer for sale, sale, distribution and delivery of any kind, and 297
the transfer of title or possession of beer and intoxicating 298
liquor either by constructive or actual delivery by any means or 299
devices whatever, including the sale of beer or intoxicating 300
liquor by means of a controlled access alcohol and beverage 301
cabinet pursuant to section 4301.21 of the Revised Code. "Sale" 302

and "sell" do not include the mere solicitation of orders for beer 303
or intoxicating liquor from the holders of permits issued by the 304
division of liquor control authorizing the sale of the beer or 305
intoxicating liquor, but no solicitor shall solicit any such 306
orders until the solicitor has been registered with the division 307
pursuant to section 4303.25 of the Revised Code. 308

(3) "Vehicle" includes all means of transportation by land, 309
by water, or by air, and everything made use of in any way for 310
such transportation. 311

(B) As used in this chapter: 312

(1) "Alcohol" means ethyl alcohol, whether rectified or 313
diluted with water or not, whatever its origin may be, and 314
includes synthetic ethyl alcohol. "Alcohol" does not include 315
denatured alcohol and wood alcohol. 316

(2) "Beer" includes all beverages brewed or fermented wholly 317
or in part from malt products and containing one-half of one per 318
cent or more, but not more than twelve per cent, of alcohol by 319
volume. 320

(3) "Wine" includes all liquids fit to use for beverage 321
purposes containing not less than one-half of one per cent of 322
alcohol by volume and not more than twenty-one per cent of alcohol 323
by volume, which is made from the fermented juices of grapes, 324
fruits, or other agricultural products, except that as used in 325
sections 4301.13, 4301.421, 4301.422, 4301.425, 4301.432, and 326
4301.44 of the Revised Code, and, for purposes of determining the 327
rate of the tax that applies, division (B) of section 4301.43 of 328
the Revised Code, "wine" does not include cider. 329

(4) "Mixed beverages," such as bottled and prepared cordials, 330
cocktails, and highballs, are products obtained by mixing any type 331
of whiskey, neutral spirits, brandy, gin, or other distilled 332
spirits with, or over, carbonated or plain water, pure juices from 333

flowers and plants, and other flavoring materials. The completed 334
product shall contain not less than one-half of one per cent of 335
alcohol by volume and not more than twenty-one per cent of alcohol 336
by volume. 337

(5) "Spirituous liquor" includes all intoxicating liquors 338
containing more than twenty-one per cent of alcohol by volume. 339

(6) "Sealed container" means any container having a capacity 340
of not more than one hundred twenty-eight fluid ounces, the 341
opening of which is closed to prevent the entrance of air. 342

(7) "Person" includes firms and corporations. 343

(8) "Manufacture" includes all processes by which beer or 344
intoxicating liquor is produced, whether by distillation, 345
rectifying, fortifying, blending, fermentation, or brewing, or in 346
any other manner. 347

(9) "Manufacturer" means any person engaged in the business 348
of manufacturing beer or intoxicating liquor. 349

(10) "Wholesale distributor" and "distributor" means a person 350
engaged in the business of selling to retail dealers for purposes 351
of resale. 352

(11) "Hotel" has the same meaning as in section 3731.01 of 353
the Revised Code, subject to the exceptions mentioned in section 354
3731.03 of the Revised Code. 355

(12) "Restaurant" means a place located in a permanent 356
building provided with space and accommodations wherein, in 357
consideration of the payment of money, hot meals are habitually 358
prepared, sold, and served at noon and evening, as the principal 359
business of the place. "Restaurant" does not include pharmacies, 360
confectionery stores, lunch stands, night clubs, and filling 361
stations. 362

(13) "Club" means a corporation or association of individuals 363

organized in good faith for social, recreational, benevolent, 364
charitable, fraternal, political, patriotic, or athletic purposes, 365
which is the owner, lessor, or occupant of a permanent building or 366
part of a permanent building operated solely for those purposes, 367
membership in which entails the prepayment of regular dues, and 368
includes the place so operated. 369

(14) "Night club" means a place operated for profit, where 370
food is served for consumption on the premises and one or more 371
forms of amusement are provided or permitted for a consideration 372
that may be in the form of a cover charge or may be included in 373
the price of the food and beverages, or both, purchased by 374
patrons. 375

(15) "At retail" means for use or consumption by the 376
purchaser and not for resale. 377

(16) "Pharmacy" means an establishment, as defined in section 378
4729.01 of the Revised Code, that is under the management or 379
control of a licensed pharmacist in accordance with section 380
4729.27 of the Revised Code. 381

(17) "Enclosed shopping center" means a group of retail sales 382
and service business establishments that face into an enclosed 383
mall, share common ingress, egress, and parking facilities, and 384
are situated on a tract of land that contains an area of not less 385
than five hundred thousand square feet. "Enclosed shopping center" 386
also includes not more than one business establishment that is 387
located within a free-standing building on such a tract of land, 388
so long as the sale of beer and intoxicating liquor on the tract 389
of land was approved in an election held under former section 390
4301.353 of the Revised Code. 391

(18) "Controlled access alcohol and beverage cabinet" means a 392
closed container, either refrigerated, in whole or in part, or 393
nonrefrigerated, access to the interior of which is restricted by 394

means of a device that requires the use of a key, magnetic card, 395
or similar device and from which beer, intoxicating liquor, other 396
beverages, or food may be sold. 397

(19) "Community facility" means either of the following: 398

(a) Any convention, sports, or entertainment facility or 399
complex, or any combination of these, that is used by or 400
accessible to the general public and that is owned or operated in 401
whole or in part by the state, a state agency, or a political 402
subdivision of the state or that is leased from, or located on 403
property owned by or leased from, the state, a state agency, a 404
political subdivision of the state, or a convention facilities 405
authority created pursuant to section 351.02 of the Revised Code; 406

(b) An area designated as a community entertainment district 407
pursuant to section 4301.80 of the Revised Code. 408

(20) "Low-alcohol beverage" means any brewed or fermented 409
malt product, or any product made from the fermented juices of 410
grapes, fruits, or other agricultural products, that contains 411
either no alcohol or less than one-half of one per cent of alcohol 412
by volume. The beverages described in division (B)(20) of this 413
section do not include a soft drink such as root beer, birch beer, 414
or ginger beer. 415

(21) "Cider" means all liquids fit to use for beverage 416
purposes that contain one-half of one per cent of alcohol by 417
volume, but not more than six per cent of alcohol by weight, and 418
that are made through the normal alcoholic fermentation of the 419
juice of sound, ripe apples, including, without limitation, 420
flavored, sparkling, or carbonated cider and cider made from pure 421
condensed apple must. 422

(22) "Sales area or territory" means an exclusive geographic 423
area or territory that is assigned to a particular A or B permit 424
holder and that either has one or more political subdivisions as 425

its boundaries or consists of an area of land with readily 426
identifiable geographic boundaries. "Sales area or territory" does 427
not include, however, any particular retail location in an 428
exclusive geographic area or territory that had been assigned to 429
another A or B permit holder before April 9, 2001. 430

Sec. 4301.422. (A) Any person who makes sales of beer, cider, 431
wine, or mixed beverages to persons for resale at retail in a 432
county in which a tax has been enacted pursuant to section 433
4301.421 ~~or~~, 4301.424, or 4301.425 of the Revised Code, and any 434
manufacturer, bottler, importer, or other person who makes sales 435
at retail in the county upon which the tax has not been paid, is 436
liable for the tax. Each person liable for the tax shall register 437
with the tax commissioner on a form prescribed by the commissioner 438
and provide whatever information the commissioner considers 439
necessary. 440

(B) Each person liable for the tax shall file a return and 441
pay the tax to the tax commissioner by the last day of the month 442
following the month in which the sale occurred. The return is 443
considered to be filed when received by the tax commissioner. The 444
return shall be prescribed by the commissioner, and no person 445
filing such a return shall fail to provide the information 446
specified on the return. If the return is filed and the amount of 447
tax shown on the return to be due is paid on or before the date 448
the return is required to be filed, the person required to file 449
the return shall receive an administrative fee of two and one-half 450
per cent of that person's total tax liability under section 451
4301.421 of the Revised Code for the purpose of offsetting 452
additional costs incurred in collecting and remitting the tax. Any 453
person required to file a return who fails to file timely may be 454
required to forfeit and pay into the state treasury an amount not 455
exceeding fifty dollars or ten per cent of the tax due, whichever 456
is greater, as revenue arising from the tax. That amount may be 457

collected by assessment in the manner specified in sections 458
4305.13 and 4305.131 of the Revised Code. 459

(C) A tax levied pursuant to section 4301.421 ~~or~~ 4301.424, 460
or 4301.425 of the Revised Code shall be administered by the tax 461
commissioner. The commissioner shall have all powers and authority 462
incident to such administration, including examination of records, 463
audit, refund, assessment, and seizure and forfeiture of untaxed 464
beverages. The procedures, rights, privileges, limitations, 465
prohibitions, responsibilities, and duties specified in sections 466
4301.48 to 4301.52, 4305.13, 4305.131, and 4307.01 to 4307.12 of 467
the Revised Code apply in the administration of the tax. 468

(D) Each person required to pay the tax levied pursuant to 469
section 4301.421 ~~or~~ 4301.424, or 4301.425 of the Revised Code who 470
sells beer, cider, wine, or mixed beverages for resale at retail 471
within a county in which the tax is levied shall clearly mark on 472
all invoices, billings, and similar documents the amount of tax 473
and the name of the county in which the tax is levied. 474

(E) Each person required to pay the tax levied by section 475
4301.421 ~~or~~ 4301.424, or 4301.425 of the Revised Code shall 476
maintain complete records of all sales for at least three years. 477
The records shall be open to inspection by the tax commissioner. 478

(F) All money collected by the tax commissioner under this 479
section shall be paid to the treasurer of state as revenue arising 480
from the tax imposed by section 4301.421 ~~or~~ 4301.424, or 4301.425 481
of the Revised Code. 482

Sec. 4301.425. (A) As used in this section, "alcohol and drug 483
abuse and addiction expenses" has the same meaning as in section 484
340.20 of the Revised Code. 485

(B) For the purpose of funding alcohol and drug abuse and 486
addiction expenses in the county under Chapter 340. of the Revised 487

Code or contributing to the county's share of the funding of such 488
services by a joint-county district in which the county 489
participates under that chapter, to pay the expenses of 490
administering the tax, and to pay any or all of the charge the 491
board of elections makes against the county to hold the election 492
on the question of levying the tax, the board of county 493
commissioners may levy a tax on the sale of beer at a rate not to 494
exceed sixteen cents per gallon, on the sale of cider at a rate 495
not to exceed twenty-four cents per gallon, and on the sale of 496
wine and mixed beverages at a rate not to exceed thirty-two cents 497
per gallon. The tax shall be imposed on all beer, cider, wine, and 498
mixed beverages sold for resale at retail in the county, and on 499
all beer, cider, wine, and mixed beverages sold at retail in the 500
county by the manufacturer, bottler, importer, or other person 501
upon which the tax has not been paid. The tax shall not be levied 502
on the sale of wine to be used for known sacramental purposes. The 503
tax may be levied for a specified number of years or for a 504
continuing period of time. The tax shall be in addition to the 505
taxes imposed by sections 4301.42, 4301.43, 4301.432, and 4305.01 506
of the Revised Code. The tax shall not be considered a cost in any 507
computation required under rules of the liquor control commission 508
regulating minimum prices or mark-ups. 509

Only one sale of the same article shall be used in computing, 510
reporting, and paying the amount of tax due. 511

(1) The tax may be levied pursuant to a resolution of the 512
county commissioners approved by a majority of the electors in the 513
county voting on the question of levying the tax, which resolution 514
shall specify the rate of the tax, the number of years the tax 515
will be levied or that it will be levied for a continuing period 516
of time, and the purpose for which the tax is levied. The election 517
may be held on the date of a general election or special election 518
held not sooner than seventy-five days after the date the board 519

certifies its resolution to the board of elections. If approved by 520
the electors, the tax takes effect on the first day of the month 521
specified in the resolution but not sooner than the first day of 522
the month that is at least sixty days after the certification of 523
the election results by the board of elections. A copy of the 524
resolution levying the tax and the certification of the board of 525
elections shall be certified to the tax commissioner at least 526
sixty days prior to the date on which the tax is to become 527
effective. 528

A resolution under this division may be joined on the ballot 529
as a single question with a resolution adopted under section 530
340.20 or 5743.027 of the Revised Code to levy a tax for the same 531
purposes and for the purpose of paying the expenses of 532
administering the tax. 533

(2) The question of levying of a tax under this section may 534
be initiated by filing with the board of elections of the county a 535
petition requesting that an election be held on the question. The 536
petition shall specify the terms of the proposed tax, as if it 537
were a resolution under division (B)(1) of this section. The 538
petition shall have complied with the rules enumerated in section 539
3501.38 of the Revised Code, and shall have been signed by 540
qualified electors residing in the county equal in number to ten 541
per cent of those voting for governor at the most recent 542
gubernatorial election. The petition shall be filed with the board 543
of elections not later than seventy-five days before the general 544
election. The petition may be joined as a single petition with a 545
petition proposing the levying of a tax or taxes under section 546
340.20 or 5743.027 of the Revised Code. 547

The board of elections shall verify the petition. If the 548
board determines that the petition is valid, it shall submit the 549
question of levying the tax to the electors of the county at the 550
next general election. 551

If approved by the electors, the tax takes effect on the first day of the month that is at least sixty days after the certification of the election results by the board of elections. A copy of the petition and the certification of the board of elections shall be certified to the tax commissioner at least sixty days prior to the date on which the tax is to become effective. 552
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(C) The form of the ballot in an election held pursuant to this section shall be as prescribed in section 340.201 of the Revised Code. 559
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(D) All revenue generated by a tax levied under this section shall be credited to the county cigarette and alcohol tax fund. 562
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Sec. 4301.49. No person shall prevent or hinder the tax commissioner from making a full inspection of any place where beer, wine, or mixed beverages subject to the tax imposed by section 4301.42, 4301.421, 4301.424, 4301.425, or 4301.43 of the Revised Code is manufactured, sold, or stored. No person shall prevent or hinder the full inspection of invoices, books, records, or papers required to be kept under this chapter and Chapters 4305. and 4307. of the Revised Code. 564
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Sec. 4301.50. No person, firm, or corporation or ~~his or its~~ an employee or agent thereof shall distribute or sell any beverage upon which the tax provided for by sections 4301.42, 4301.421, 4301.424, 4301.425, 4301.43, 4301.432, and 4305.01 of the Revised Code has not been paid. Any person, firm, or corporation ~~or his or its~~ an employee or agent ~~who~~ thereof that violates this section or any rule of the tax commissioner shall be subject to all penalties provided in division (A) of section 4307.99 of the Revised Code. 572
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Sec. 4305.131. (A) If any permit holder fails to pay the taxes levied by section 4301.42, 4301.43, 4301.432, or 4305.01 of 580
581

the Revised Code in the manner prescribed by section 4303.33 of 582
the Revised Code, or by section 4301.421 ~~or~~, 4301.424, or 4301.425 583
of the Revised Code in the manner prescribed in section 4301.422 584
of the Revised Code, and by the rules of the tax commissioner, the 585
commissioner may make an assessment against the permit holder 586
based upon any information in the commissioner's possession. 587

No assessment shall be made against any permit holder for any 588
taxes imposed by section 4301.42, 4301.421, 4301.424, 4301.425, 589
4301.43, 4301.432, or 4305.01 of the Revised Code more than three 590
years after the last day of the calendar month in which the sale 591
was made or more than three years after the return for that period 592
is filed, whichever is later. This section does not bar an 593
assessment against any permit holder or registrant as provided in 594
section 4303.331 of the Revised Code who fails to file a return as 595
required by section 4301.422 or 4303.33 of the Revised Code, or 596
who files a fraudulent return. 597

A penalty of up to thirty per cent may be added to the amount 598
of every assessment made under this section. The commissioner may 599
adopt rules providing for the imposition and remission of 600
penalties added to assessments made under this section. 601

The commissioner shall give the party assessed written notice 602
of the assessment in the manner provided in section 5703.37 of the 603
Revised Code. With the notice, the commissioner shall provide 604
instructions on how to petition for reassessment and request a 605
hearing on the petition. 606

(B) Unless the party assessed files with the tax commissioner 607
within sixty days after service of the notice of assessment, 608
either personally or by certified mail, a written petition for 609
reassessment, signed by the party assessed or that party's 610
authorized agent having knowledge of the facts, the assessment 611
becomes final and the amount of the assessment is due and payable 612
from the party assessed to the treasurer of state. The petition 613

shall indicate the objections of the party assessed, but 614
additional objections may be raised in writing if received by the 615
commissioner prior to the date shown on the final determination. 616
If the petition has been properly filed, the commissioner shall 617
proceed under section 5703.60 of the Revised Code. 618

(C) After an assessment becomes final, if any portion of the 619
assessment remains unpaid, including accrued interest, a certified 620
copy of the tax commissioner's entry making the assessment final 621
may be filed in the office of the clerk of the court of common 622
pleas in the county in which the permit holder's place of business 623
is located or the county in which the party assessed resides. If 624
the party assessed maintains no place of business in this state 625
and is not a resident of this state, the certified copy of the 626
entry may be filed in the office of the clerk of the court of 627
common pleas of Franklin county. 628

Immediately upon the filing of the entry, the clerk shall 629
enter a judgment for the state against the party assessed in the 630
amount shown on the entry. The judgment may be filed by the clerk 631
in a loose-leaf book entitled "special judgments for state beer 632
and liquor sales taxes," and shall have the same effect as other 633
judgments. Execution shall issue upon the judgment upon the 634
request of the commissioner, and all laws applicable to sales on 635
execution shall apply to sales made under the judgment, except as 636
otherwise provided in this chapter and Chapters 4301. and 4307. of 637
the Revised Code. 638

The portion of the assessment not paid within sixty days 639
after the day the assessment was issued shall bear interest at the 640
rate per annum prescribed by section 5703.47 of the Revised Code 641
from the day the commissioner issues the assessment until it is 642
paid. Interest shall be paid in the same manner as the tax and may 643
be collected by the issuance of an assessment under this section. 644

(D) All money collected under this section shall be 646
considered as revenue arising from the taxes imposed by sections 647
4301.42, 4301.421, 4301.424, 4301.425, 4301.43, 4301.432, and 648
4305.01 of the Revised Code. 649

Sec. 4307.04. The tax commissioner shall enforce and 650
administer sections 4301.42, 4301.421, 4301.422, 4301.423, 651
4301.424, 4301.425, 4303.33, 4303.331, 4305.01, and 4307.01 to 652
4307.12 of the Revised Code. The commissioner may adopt such rules 653
as are necessary to carry out such sections and may adopt 654
different detail rules applicable to diverse methods and 655
conditions of sale of bottled beverages in this state. All books, 656
papers, invoices, and records of any manufacturer, bottler, or 657
wholesale or retail dealer in this state, whether or not required 658
under sections 4307.01 to 4307.12 of the Revised Code to be kept 659
by that person, showing that person's sales receipts and purchases 660
of bottled beverages, shall at all times, during the usual 661
business hours of the day, be open for the inspection of the 662
commissioner. The commissioner may investigate and examine the 663
stock of bottled beverages in and upon any premises where the same 664
is placed, stored, or sold. 665

Sec. 4307.05. (A) The tax commissioner shall refund to 666
persons required to pay the tax levied under section 4301.42, 667
4301.421, 4301.424, 4301.425, 4301.43, 4301.432, 4303.33, or 668
4305.01 of the Revised Code the amount of tax paid illegally or 669
erroneously or paid on an illegal or erroneous assessment. 670
Applications for refund shall be filed with the commissioner, on 671
the form prescribed by the commissioner, within three years from 672
the date of the illegal or erroneous payment of the tax or 673
assessment. 674

On the filing of the application, the commissioner shall 675
determine the amount of the refund to which the applicant is 676

entitled. If the amount is not less than that claimed, the 677
commissioner shall certify the amount to the director of budget 678
and management and treasurer of state for payment from the tax 679
refund fund created by section 5703.052 of the Revised Code. If 680
the amount is less than that claimed, the commissioner shall 681
proceed in accordance with section 5703.70 of the Revised Code. 682

(B) The holder of a B-3 permit is entitled to a refund of the 683
actual amount of tax paid on wine sold for sacramental purposes, 684
upon the conditions that the permit holder make affidavit that the 685
wine was so sold, that the tax had been paid on the wine, and that 686
the permit holder furnish both of the following: 687

(1) A written acknowledgment from the purchaser that the 688
purchaser has received the wine and that the price paid did not 689
include the tax; 690

(2) The name and address of the purchaser. 691

Application for a refund shall be made as an application for 692
refund of tax erroneously paid and shall be subject to the 693
requirements and procedures of division (A) of this section. On 694
the filing of the application, the commissioner shall determine 695
the amount of refund due and certify that amount to the director 696
of budget and management and treasurer of state for payment from 697
the tax refund fund. When a refund is granted for payment of an 698
illegal or erroneous assessment issued by the commissioner, the 699
refund shall include interest on the amount of the refund from the 700
date of the overpayment. The interest shall be computed at the 701
rate per annum prescribed by section 5703.47 of the Revised Code. 702

Sec. 5705.38. (A) This division does not apply to school 703
district appropriation measures. On or about the first day of each 704
year, the taxing authority of each subdivision or other taxing 705
unit shall pass an appropriation measure, and thereafter during 706
the year it may pass any supplemental appropriation measures as it 707

finds necessary, based on the revised tax budget or the official 708
certificate of estimated resources or amendments of the 709
certificate. If it desires to postpone the passage of the annual 710
appropriation measure until an amended certificate is received 711
based on the actual balances, it may pass a temporary 712
appropriation measure for meeting the ordinary expenses of the 713
taxing unit until no later than the first day of April of the 714
current year, and the appropriations made in the temporary measure 715
shall be chargeable to the appropriations in the annual 716
appropriation measure for that fiscal year when passed. 717

(B) A board of education shall pass its annual appropriation 718
measure by the first day of October. If, by the first day of 719
October, a board has not received either the amended certificates 720
of estimated resources required by division (B) of section 5705.36 721
of the Revised Code or certifications that no amended certificates 722
need be issued, the adoption of the annual appropriation measure 723
shall be delayed until the amended certificates or certifications 724
are received. Prior to the passage of the annual appropriation 725
measure, the board may pass a temporary appropriation measure for 726
meeting the ordinary expenses of the district until it passes an 727
annual appropriation measure, and appropriations made in the 728
temporary measure shall be chargeable to the appropriations in the 729
annual appropriation measure for that fiscal year when passed. 730
During the fiscal year and after the passage of the annual 731
appropriation measure, a district may pass any supplemental 732
appropriation measures as it finds necessary, based on the revised 733
tax budget or the official certificate of estimated resources or 734
amendments of the certificate. School district appropriation 735
measures shall be in the form as the auditor of state, after 736
consultation with the tax commissioner, prescribes. 737

(C) Appropriation measures shall be classified so as to set 738
forth separately the amounts appropriated for each office, 739

department, and division, and, within each, the amount 740
appropriated for personal services. ~~In~~ 741

(1) In the case of a municipal university, the board of 742
directors of which have assumed, in the manner provided by law, 743
custody and control of the funds of the university, funds shall be 744
appropriated as a lump sum for the use of the university. 745

(2) In the case of a board of alcohol, drug addiction, and 746
mental health services or a board of alcohol and drug addiction 747
services, funds shall be appropriated annually from the county 748
cigarette and alcohol tax fund as a lump sum for the use of the 749
board. Once appropriated, the board has custody and control over 750
the funds. 751

Sec. 5743.025. In addition to the return required by section 752
5743.03 of the Revised Code, each retail dealer in a county in 753
which a tax is levied under section 5743.021, 5743.024, ~~or~~ 754
5743.026, or 5743.027 of the Revised Code shall, within thirty 755
days after the date on which the tax takes effect, make and file a 756
return, on forms prescribed by the tax commissioner, showing the 757
total number of cigarettes which such retail dealer had on hand as 758
of the beginning of business on the date on which the tax takes 759
effect, and such other information as the commissioner deems 760
necessary for the administration of section 5743.021, 5743.024, ~~or~~ 761
5743.026, or 5743.027 of the Revised Code. Each retail dealer 762
shall deliver the return together with a remittance of the 763
additional amount of tax due on the cigarettes shown on such 764
return to the treasurer of state. The treasurer of state shall 765
stamp or otherwise mark on the return the date it was received and 766
shall also show thereon by stamp or otherwise the tax payment 767
remitted with the return. Thereafter, the treasurer of state shall 768
immediately transmit all returns filed under this section to the 769
tax commissioner. Any retail dealer who fails to file a return 770

under this section shall, for each day the retail dealer so fails, 771
forfeit and pay into the state treasury the sum of one dollar as 772
revenue arising from the tax imposed by section 5743.021, 773
5743.024, ~~or~~ 5743.026, 5743.027 of the Revised Code, and such sum 774
may be collected by assessment in the manner provided in section 775
5743.081 of the Revised Code. For thirty days after the effective 776
date of a tax imposed by section 5743.021, 5743.024, ~~or~~ 5743.026, 777
5743.027 of the Revised Code, a retail dealer may possess for sale 778
or sell in the county in which the tax is levied cigarettes not 779
bearing the stamp or impression required by section 5743.03 of the 780
Revised Code to evidence payment of the county tax but on which 781
the tax has or will be paid. 782

Sec. 5743.027. (A) As used in this section, "alcohol and drug 783
abuse and addiction expenses" has the same meaning as in section 784
340.20 of the Revised Code. 785

(B) For the purpose of funding alcohol and drug abuse and 786
addiction expenses in the county under Chapter 340. of the Revised 787
Code or contributing to the county's share of the funding of such 788
services by a joint-county district in which the county 789
participates under that chapter, to pay the expenses of 790
administering the tax, and to pay any or all of the charge the 791
board of elections makes against the county to hold the election 792
on the question of levying the tax, the board of county 793
commissioners may levy a tax on sales of cigarettes sold for 794
resale at retail in the county. The tax shall not exceed two and 795
twenty-five hundredths of a mill per cigarette, and shall be 796
computed on each cigarette sold. The tax may be levied for a 797
specified number of years or for a continuing period of time. 798

Only one sale of the same article shall be used in computing 799
the amount of tax due. 800

(1) The tax may be levied pursuant to a resolution of the 801

county commissioners approved by a majority of the electors in the 802
county voting on the question of levying the tax, which resolution 803
shall specify the rate of the tax, the number of years the tax 804
will be levied or that it will be levied for a continuing period 805
of time, and the purposes for which the tax is levied. The 806
election may be held on the date of a general or special election 807
held not sooner than seventy-five days after the date the board 808
certifies its resolution to the board of elections. If approved by 809
the electors, the tax takes effect on the first day of the month 810
specified in the resolution but not sooner than the first day of 811
the month that is at least sixty days after the certification of 812
the election results by the board of elections. A copy of the 813
resolution levying the tax and the certification of the board of 814
elections shall be certified to the tax commissioner at least 815
sixty days prior to the date on which the tax is to become 816
effective. 817

A resolution under this section may be joined on the ballot 818
as a single question with a resolution adopted under section 819
340.20 or 4301.425 of the Revised Code to levy a tax for the same 820
purposes and for the purpose of paying the expenses of 821
administering the tax. 822

(2) The question of levying of a tax under this section may 823
be initiated by filing with the board of elections of the county a 824
petition requesting that an election be held on the question. The 825
petition shall specify the terms of the proposed tax, as if it 826
were a resolution under division (B)(1) of this section. The 827
petition shall have complied with the rules enumerated in section 828
3501.38 of the Revised Code, and shall have been signed by 829
qualified electors residing in the county equal in number to ten 830
per cent of those voting for governor at the most recent 831
gubernatorial election. The petition shall be filed with the board 832
of elections not later than seventy-five days before the general 833

election. The petition may be joined as a single petition with a 834
petition proposing the levying of a tax or taxes under section 835
340.20 or 4301.425 of the Revised Code. 836

The board of elections shall verify the petition. If the 837
board determines that the petition is valid, it shall submit the 838
question of levying the tax to the electors of the county at the 839
next general election. 840

If approved by the electors, the tax takes effect on the 841
first day of the month that is at least sixty days after the 842
certification of the election results by the board of elections. A 843
copy of the petition and the certification of the board of 844
elections shall be certified to the tax commissioner at least 845
sixty days prior to the date on which the tax is to become 846
effective. 847

(C) The form of the ballot in an election held pursuant to 848
this section shall be as prescribed in section 340.201 of the 849
Revised Code. 850

(D) The county treasurer shall credit all amounts received 851
from the tax commissioner under section 5743.028 of the Revised 852
Code to the county cigarette and alcohol tax fund. 853

Sec. 5743.028. The treasurer of state shall credit all moneys 854
arising from each county's taxes levied under sections 5743.027 855
and 5743.325 of the Revised Code as follows: 856

(A) To the tax refund fund created by section 5703.052 of the 857
Revised Code, amounts equal to the refunds from each tax levied 858
under section 5743.027 of the Revised Code certified by the tax 859
commissioner pursuant to section 5743.05 of the Revised Code; 860

(B) Following the crediting of amounts pursuant to division 861
(A) of this section: 862

(1) To the permissive tax distribution fund, an amount equal 863

to ninety-eight per cent of the remainder; 864

(2) To the local excise tax administrative fund, which is 865
hereby created in the state treasury, an amount equal to two per 866
cent of the remainder, for use by the tax commissioner in 867
defraying costs incurred in administering the taxes. 868

On or before the second working day of each month, the 869
treasurer of state shall certify to the tax commissioner the 870
amount of each county's taxes levied under sections 5743.027 and 871
5743.325 of the Revised Code and paid to the treasurer of state 872
during the preceding month. 873

On or before the tenth day of each month, the tax 874
commissioner shall distribute the amount credited to the 875
permissive tax distribution fund during the preceding month by 876
providing for payment of the appropriate amount to the county 877
treasurer of each county levying the taxes. 878

Sec. 5743.03. (A) Except as provided in section 5743.04 of 879
the Revised Code, the taxes imposed under sections 5743.02, 880
5743.021, 5743.024, ~~and~~ 5743.026, and 5743.027 of the Revised Code 881
shall be paid by the purchase of stamps. A stamp shall be affixed 882
to each package of an aggregate denomination not less than the 883
amount of the tax upon the contents thereof. The stamp, so 884
affixed, shall be prima-facie evidence of payment of the tax. 885

Except as is provided in the rules prescribed by the tax 886
commissioner under authority of sections 5743.01 to 5743.20 of the 887
Revised Code, and unless tax stamps have been previously affixed, 888
they shall be so affixed by each wholesale dealer, and canceled by 889
writing or stamping across the face thereof the number assigned to 890
such wholesale dealer by the tax commissioner for that purpose, 891
prior to the delivery of any cigarettes to any person in this 892
state, or in the case of a tax levied pursuant to section 893
5743.021, 5743.024, ~~or~~ 5743.026, or 5743.027 of the Revised Code, 894

prior to the delivery of cigarettes to any person in the county in 895
which the tax is levied. 896

(B) Except as provided in the rules prescribed by the 897
commissioner under authority of sections 5743.01 to 5743.20 of the 898
Revised Code, each retail dealer, within twenty-four hours after 899
the receipt of any cigarettes at the retail dealer's place of 900
business, shall inspect the cigarettes to ensure that tax stamps 901
are affixed. The inspection shall be completed before the 902
cigarettes are delivered to any person in this state, or, in the 903
case of a tax levied pursuant to section 5743.021, 5743.024, ~~or~~ 904
5743.026, or 5743.027 of the Revised Code, before the cigarettes 905
are delivered to any person in the county in which the tax is 906
levied. 907

(C) Whenever any cigarettes are found in the place of 908
business of any retail dealer without proper tax stamps affixed 909
thereto and canceled, it is presumed that such cigarettes are kept 910
therein in violation of sections 5743.01 to 5743.20 of the Revised 911
Code. 912

(D) Each wholesale dealer who purchases cigarettes without 913
proper tax stamps affixed thereto shall, on or before the 914
thirty-first day of the month following the close of each 915
semiannual period, which period shall end on the thirtieth day of 916
June and the thirty-first day of December of each year, make and 917
file a return of the preceding semiannual period, on such form as 918
is prescribed by the tax commissioner, showing the dealer's entire 919
purchases and sales of cigarettes and stamps or impressions for 920
such semiannual period and accurate inventories as of the 921
beginning and end of each semiannual period of cigarettes, stamped 922
or unstamped; cigarette tax stamps affixed or unaffixed and unused 923
meter impressions; and such other information as the commissioner 924
finds necessary to the proper administration of sections 5743.01 925
to 5743.20 of the Revised Code. The commissioner may extend the 926

time for making and filing returns and may remit all or any part 927
of amounts of penalties that may become due under sections 5743.01 928
to 5743.20 of the Revised Code. The wholesale dealer shall deliver 929
the return together with a remittance of the tax deficiency 930
reported thereon to the treasurer of state. The treasurer of state 931
shall stamp or otherwise mark on the return the date it was 932
received and shall also show thereon by stamp or otherwise a 933
payment or nonpayment of the deficiency shown by the return. 934
Thereafter, the treasurer of state shall immediately transmit all 935
returns filed under this section to the commissioner. 936

(E) Any wholesale dealer who fails to file a return under 937
this section and the rules of the commissioner, other than a 938
report required pursuant to division (F) of this section, may be 939
required, for each day the dealer so fails, to forfeit and pay 940
into the state treasury the sum of one dollar as revenue arising 941
from the tax imposed by sections 5743.01 to 5743.20 of the Revised 942
Code and such sum may be collected by assessment in the manner 943
provided in section 5743.081 of the Revised Code. If the 944
commissioner finds it necessary in order to insure the payment of 945
the tax imposed by sections 5743.01 to 5743.20 of the Revised 946
Code, the commissioner may require returns and payments to be made 947
other than semiannually. The returns shall be signed by the 948
wholesale dealer or an authorized agent thereof. 949

(F) Each person required to file a tax return under section 950
5743.03, 5743.52, or 5743.62 of the Revised Code shall report to 951
the commissioner the quantity of all cigarettes and roll-your-own 952
cigarette tobacco sold in Ohio for each brand not covered by the 953
tobacco master settlement agreement for which the person is liable 954
for the taxes levied under section 5743.02, 5743.51, or 5743.62 of 955
the Revised Code. 956

As used in this division, "tobacco master settlement 957
agreement" has the same meaning as in section 183.01 of the 958

Revised Code. 959

(G) The report required by division (F) of this section shall 960
be made on a form prescribed by the commissioner and shall be 961
filed not later than the last day of each month for the previous 962
month, except that if the commissioner determines that the 963
quantity reported by a person does not warrant monthly reporting, 964
the commissioner may authorize reporting at less frequent 965
intervals. The commissioner may assess a penalty of not more than 966
two hundred fifty dollars for each month or portion thereof that a 967
person fails to timely file a required report, and such sum may be 968
collected by assessment in the manner provided in section 5743.081 969
of the Revised Code. All money collected under this division shall 970
be considered as revenue arising from the taxes imposed by 971
sections 5743.01 to 5743.20 of the Revised Code. 972

Sec. 5743.04. The tax commissioner shall design and procure 973
the stamps provided for in section 5743.03 of the Revised Code and 974
shall enforce and administer sections 5743.01 to 5743.44 of the 975
Revised Code. With respect to packages containing any number of 976
cigarettes other than twenty, if the commissioner finds that it is 977
practicable to collect the taxes levied under sections 5743.02, 978
5743.021, 5743.024, ~~and 5743.026,~~ and 5743.027 of the Revised Code 979
by any method other than that provided in this section and section 980
5743.03 of the Revised Code, the commissioner may by rule 981
prescribe such other method for payment of the taxes upon such 982
packages of cigarettes as will adequately protect the revenue; 983
provided, that in any case where the commissioner prescribes that 984
the taxes upon such packages of cigarettes shall be paid on the 985
basis of returns filed by a wholesale or retail dealer, said 986
returns, together with a remittance of all taxes due as shown 987
thereon, shall be filed with the treasurer of state not later than 988
the tenth day of the month following the month in which such 989
cigarettes are sold in this state. The commissioner may promulgate 990

rules in accordance with sections 119.01 to 119.13 of the Revised Code as the commissioner deems necessary to carry out sections 5743.01 to 5743.44 of the Revised Code and may adopt different detailed rules applicable to diverse methods and conditions of sale of cigarettes, prescribing, in each class of cases, upon whom, as between the wholesale dealer and the retail dealer, the primary duty of affixing stamps shall rest, and the manner in which stamps shall be affixed. A copy of such rules shall be furnished to every licensed dealer as provided in sections 119.01 to 119.13 of the Revised Code. Any such rule so furnished which excuses a wholesale dealer from affixing stamps under the circumstances of the particular case shall be a defense in the prosecution of such dealer for violation of section 5743.03 of the Revised Code.

The commissioner, after determining that it is practicable to evidence payment of the taxes levied under sections 5743.02, 5743.021, 5743.024, ~~and 5743.026,~~ and 5743.027 of the Revised Code by impression made by a metering device, shall by resolution provide that such metering device may be used in lieu of the stamps otherwise provided for in section 5743.03 of the Revised Code. The commissioner may authorize any wholesale or retail dealer to use the metering device approved by the commissioner. Such device before being used shall be sealed by the treasurer of state, and shall be used only in accordance with the rules prescribed by the commissioner.

Wholesale and retail dealers authorized to use said device shall prepay the tax represented by meter impressions and shall deliver the metering device to the treasurer of state or county treasurer in the county in which the place of business of any wholesaler or retailer is located if such treasurer is designated by the treasurer of state, who shall seal the meter in accordance with the prepayments so made.

Sec. 5743.05. All stamps provided for by section 5743.03 of 1023
the Revised Code, when procured by the tax commissioner, shall be 1024
immediately delivered to the treasurer of state, who shall execute 1025
a receipt therefor showing the number and aggregate face value of 1026
each denomination received by the treasurer of state and any other 1027
information that the commissioner requires to enforce the 1028
collection and distribution of all taxes imposed under section 1029
5743.021, 5743.024, ~~or~~ 5743.026, or 5743.027 of the Revised Code, 1030
and deliver the receipt to the commissioner. The treasurer of 1031
state shall sell the stamps and, on the fifth day of each month, 1032
make a report showing all sales made during the preceding month, 1033
with the names of purchasers, the number of each denomination, the 1034
aggregate face value purchased by each, and any other information 1035
as the commissioner requires to enforce the collection and 1036
distribution of all taxes imposed under section 5743.021, 1037
5743.024, ~~or~~ 5743.026, or 5743.027 of the Revised Code, and 1038
deliver it to the commissioner. The treasurer of state shall be 1039
accountable for all stamps received and unsold. The stamps shall 1040
be sold and accounted for at their face value, except the 1041
commissioner shall, by rule certified to the treasurer of state, 1042
authorize the sale of stamps and meter impressions to wholesale or 1043
retail dealers in this state, or to wholesale dealers outside this 1044
state, at a discount of not less than one and eight-tenths per 1045
cent or more than ten per cent of their face value, as a 1046
commission for affixing and canceling the stamps or meter 1047
impressions. 1048

The commissioner, by rule certified to the treasurer of 1049
state, shall authorize the delivery of stamps and meter 1050
impressions to wholesale dealers in this state and to wholesale 1051
dealers outside this state on credit. If such a dealer has not 1052
been in good credit standing with this state for five consecutive 1053
years preceding the purchase, the tax commissioner shall require 1054

the dealer to file with the commissioner a bond to the state in 1055
the amount and in the form prescribed by the commissioner, with 1056
surety to the satisfaction of the commissioner, conditioned on 1057
payment to the treasurer of state within thirty days for stamps or 1058
meter impressions delivered within that time. If such a dealer has 1059
been in good credit standing with this state for five consecutive 1060
years preceding the purchase, the tax commissioner shall not 1061
require that the dealer file such a bond but shall require payment 1062
for the stamps and meter impressions within thirty days after 1063
purchase of the stamps and meter impressions. Stamps and meter 1064
impressions sold to a dealer not required to file a bond shall be 1065
sold at face value. The maximum amount that may be sold on credit 1066
to a dealer not required to file a bond shall equal one hundred 1067
ten per cent of the dealer's average monthly purchases over the 1068
preceding calendar year. The maximum amount shall be adjusted to 1069
reflect any changes in the tax rate and may be adjusted, upon 1070
application to the tax commissioner by the dealer, to reflect 1071
changes in the business operations of the dealer. The maximum 1072
amount shall be applicable to the period of July through April. 1073
Payment by a dealer not required to file a bond shall be remitted 1074
by electronic funds transfer as prescribed by section 5743.051 of 1075
the Revised Code. If a dealer not required to file a bond fails to 1076
make the payment in full within the thirty-day period, the 1077
treasurer of state shall not thereafter sell stamps or meter 1078
impressions to that dealer until the dealer pays the outstanding 1079
amount, including penalty and interest on that amount as 1080
prescribed in this chapter, and the commissioner thereafter may 1081
require the dealer to file a bond until the dealer is restored to 1082
good standing. The commissioner shall limit delivery of stamps and 1083
meter impressions on credit to the period running from the first 1084
day of July of the fiscal year until the first day of the 1085
following May. Any discount allowed as a commission for affixing 1086
and canceling stamps or meter impressions shall be allowed with 1087

respect to sales of stamps and meter impressions on credit. 1088

The treasurer of state shall redeem and pay for any 1089
destroyed, unused, or spoiled tax stamps and any unused meter 1090
impressions at their net value, and shall refund to wholesale 1091
dealers the net amount of state and county taxes paid erroneously 1092
or paid on cigarettes that have been sold in interstate or foreign 1093
commerce or that have become unsalable, and the net amount of 1094
county taxes that were paid on cigarettes that have been sold at 1095
retail or for retail sale outside a taxing county. 1096

An application for a refund of tax shall be filed with the 1097
tax commissioner, on the form prescribed by the commissioner for 1098
that purpose, within three years from the date the tax stamps are 1099
destroyed or spoiled, from the date of the erroneous payment, or 1100
from the date that cigarettes on which taxes have been paid have 1101
been sold in interstate or foreign commerce or have become 1102
unsalable. 1103

On the filing of the application, the commissioner shall 1104
determine the amount of refund to which the applicant is entitled, 1105
payable from receipts of the state tax, and, if applicable, 1106
payable from receipts of a county tax. If the amount is less than 1107
that claimed, the commissioner shall certify the amount to the 1108
director of budget and management and treasurer of state for 1109
payment from the tax refund fund created by section 5703.052 of 1110
the Revised Code. If the amount is less than that claimed, the 1111
commissioner shall proceed in accordance with section 5703.70 of 1112
the Revised Code. 1113

If a refund is granted for payment of an illegal or erroneous 1114
assessment issued by the department, the refund shall include 1115
interest on the amount of the refund from the date of the 1116
overpayment. The interest shall be computed at the rate per annum 1117
prescribed by section 5703.47 of the Revised Code. 1118

Sec. 5743.08. Whenever the tax commissioner discovers any 1119
cigarettes which are being shipped, or which have been shipped, or 1120
transported in violation of section 2927.023 of the Revised Code, 1121
or discovers cigarettes, subject to the taxes levied under section 1122
5743.02, 5743.021, 5743.024, ~~or~~ 5743.026, or 5743.027 of the 1123
Revised Code, and upon which the taxes have not been paid or that 1124
are held for sale or distribution in violation of any other 1125
provision of this chapter, the commissioner may seize and take 1126
possession of such cigarettes, which shall thereupon be forfeited 1127
to the state, and the commissioner, within a reasonable time 1128
thereafter sell or destroy the forfeited cigarettes. If the 1129
commissioner sells cigarettes under this section, the commissioner 1130
shall use proceeds from the sale to pay the costs incurred in the 1131
proceedings. Any proceeds remaining after all costs have been paid 1132
shall be considered revenue arising from the taxes levied under 1133
this chapter. Seizure and sale shall not be deemed to relieve any 1134
person from the fine or imprisonment provided for violation of 1135
sections 5743.01 to 5743.20 of the Revised Code. A sale shall be 1136
made where it is most convenient and economical. The tax 1137
commissioner may order the destruction of the forfeited cigarettes 1138
if the quantity or quality of the cigarettes is not sufficient to 1139
warrant their sale. 1140

Sec. 5743.081. (A) If any wholesale dealer or retail dealer 1141
fails to pay the tax levied under section 5743.02, 5743.021, 1142
5743.024, ~~or~~ 5743.026, or 5743.027 of the Revised Code as required 1143
by sections 5743.01 to 5743.20 of the Revised Code, and by the 1144
rules of the tax commissioner, or fails to collect the tax from 1145
the purchaser or consumer, the commissioner may make an assessment 1146
against the wholesale or retail dealer based upon any information 1147
in the commissioner's possession. 1148

The commissioner may make an assessment against any wholesale 1149

or retail dealer who fails to file a return required by section 1150
5743.03 or 5743.025 of the Revised Code. 1151

No assessment shall be made against any wholesale or retail 1152
dealer for any taxes imposed under section 5743.02, 5743.021, 1153
5743.024, ~~or~~ 5743.026, or 5743.027 of the Revised Code more than 1154
three years after the last day of the calendar month that 1155
immediately follows the semiannual period prescribed in section 1156
5743.03 of the Revised Code in which the sale was made, or more 1157
than three years after the semiannual return for such period is 1158
filed, whichever is later. This section does not bar an assessment 1159
against any wholesale or retail dealer who fails to file a return 1160
as required by section 5743.025 or 5743.03 of the Revised Code, or 1161
who files a fraudulent return. 1162

A penalty of up to thirty per cent may be added to the amount 1163
of every assessment made under this section. The commissioner may 1164
adopt rules providing for the imposition and remission of 1165
penalties added to assessments made under this section. 1166

The commissioner shall give the party assessed written notice 1167
of the assessment in the manner provided in section 5703.37 of the 1168
Revised Code. The notice shall specify separately any portion of 1169
the assessment that represents a county tax. With the notice, the 1170
commissioner shall provide instructions on how to petition for 1171
reassessment and request a hearing on the petition. 1172

(B) Unless the party assessed files with the tax commissioner 1173
within sixty days after service of the notice of assessment, 1174
either personally or by certified mail, a written petition for 1175
reassessment signed by the party assessed or that party's 1176
authorized agent having knowledge of the facts, the assessment 1177
becomes final and the amount of the assessment is due and payable 1178
from the party assessed to the treasurer of state. The petition 1179
shall indicate the objections of the party assessed, but 1180
additional objections may be raised in writing if received by the 1181

commissioner prior to the date shown on the final determination. 1182
If the petition has been properly filed, the commissioner shall 1183
proceed under section 5703.60 of the Revised Code. 1184

(C) After an assessment becomes final, if any portion of the 1185
assessment remains unpaid, including accrued interest, a certified 1186
copy of the tax commissioner's entry making the assessment final 1187
may be filed in the office of the clerk of the court of common 1188
pleas in the county in which the wholesale or retail dealer's 1189
place of business is located or the county in which the party 1190
assessed resides. If the party assessed maintains no place of 1191
business in this state and is not a resident of this state, the 1192
certified copy of the entry may be filed in the office of the 1193
clerk of the court of common pleas of Franklin county. 1194

Immediately upon the filing of the commissioner's entry, the 1195
clerk shall enter a judgment for the state against the party 1196
assessed in the amount shown on the entry. The judgment may be 1197
filed by the clerk in a loose-leaf book entitled "special 1198
judgments for state cigarette sales tax," and shall have the same 1199
effect as other judgments. Execution shall issue upon the judgment 1200
upon the request of the tax commissioner, and all laws applicable 1201
to sales on execution shall apply to sales made under the 1202
judgment, except as otherwise provided in sections 5743.01 to 1203
5743.20 of the Revised Code. 1204

The portion of the assessment not paid within sixty days 1205
after the assessment was issued shall bear interest at the rate 1206
per annum prescribed by section 5703.47 of the Revised Code from 1207
the day the commissioner issues the assessment until it is paid. 1208
Interest shall be paid in the same manner as the tax and may be 1209
collected by the issuance of an assessment under this section. 1210

(D) All money collected by the tax commissioner under this 1211
section shall be paid to the treasurer of state, and when paid 1212
shall be considered as revenue arising from the taxes imposed by 1213

sections 5743.01 to 5743.20 of the Revised Code. 1214

Sec. 5743.12. No person shall make a false entry upon an 1215
invoice, package, or container of cigarettes upon which an entry 1216
is required by sections 5743.01 to 5743.20 of the Revised Code, 1217
nor shall any person present any such false entry for the 1218
inspection of the tax commissioner with intent to evade the tax 1219
levied under section 5743.02, 5743.021, 5743.024, ~~or~~ 5743.026, or 1220
5743.027 of the Revised Code. 1221

Sec. 5743.13. No person shall falsely or fraudulently make, 1222
forge, alter, or counterfeit any stamp prescribed by the tax 1223
commissioner under section 5743.03 of the Revised Code, or cause 1224
to be falsely or fraudulently made, forged, altered, or 1225
counterfeited any such stamp, or possess any counterfeiting 1226
device, or knowingly and willfully utter, publish, pass, or tender 1227
as true, any such false, altered, forged, or counterfeited stamp, 1228
or use more than once any such stamp for the purpose of evading 1229
the tax levied under section 5743.02, 5743.021, 5743.024, ~~or~~ 1230
5743.026, or 5743.027 of the Revised Code. 1231

Sec. 5743.325. For the same purposes for which it levies a 1232
tax under section 5743.027 of the Revised Code the board of county 1233
commissioners of a county that levies a tax under that section, by 1234
resolution adopted by a majority of the board, shall levy a tax at 1235
the same rate on the use, consumption, or storage for consumption 1236
of cigarettes by consumers in the county, provided that the tax 1237
shall not apply if the tax levied by section 5743.027 of the 1238
Revised Code has been paid. The tax shall take effect on the date 1239
that a tax levied under that section takes effect, and shall 1240
remain in effect as long as the tax levied under that section 1241
remains effective. 1242

Sec. 5743.33. Except as provided in section 5747.331 of the Revised Code, every person who has acquired cigarettes for use, storage, or other consumption subject to the tax levied under section 5743.32, 5743.321, 5743.323, ~~or~~ 5743.324, or 5743.325 of the Revised Code, shall, on or before the fifteenth day of the month following receipt of such cigarettes, file with the tax commissioner a return showing the amount of cigarettes acquired, together with remittance of the tax thereon. No such person shall transport within this state, cigarettes that have a wholesale value in excess of three hundred dollars, unless that person has obtained consent to transport the cigarettes from the department of taxation prior to such transportation. Such consent shall not be required if the applicable taxes levied under sections 5743.02, 5743.021, 5743.024, ~~and~~ 5743.026, and 5743.027 of the Revised Code have been paid. Application for the consent shall be in the form prescribed by the tax commissioner.

Every person transporting such cigarettes shall possess the consent while transporting or possessing the cigarettes within this state and shall produce the consent upon request of any law enforcement officer or authorized agent of the tax commissioner.

Any person transporting such cigarettes without the consent required by this section, shall be subject to the provisions of this chapter, including the applicable taxes imposed under sections 5743.02, 5743.021, 5743.024, ~~and~~ 5743.026, and 5743.027 of the Revised Code.

Sec. 5743.34. If any person required to pay the tax levied under section 5743.32, 5743.321, 5743.323, ~~or~~ 5743.324, or 5743.325 of the Revised Code, fails to make remittance, the tax commissioner may issue an assessment against that person based on any information in the commissioner's possession.

Sections 5743.081 and 5743.082 of the Revised Code relating 1273
to the assessments or findings, appeals from assessments or 1274
findings, the effect of assessments or findings before or after 1275
hearing and before or after filing the same in the office of the 1276
clerk of the court of common pleas, and all sections relating to 1277
the procedure, authority, duties, liabilities, powers, and 1278
privileges of the person assessed, the commissioner, the clerk, 1279
and all other public officials, shall be applicable to assessments 1280
made pursuant to this section. 1281

Sec. 5743.35. No person required by section 5743.33 of the 1282
Revised Code to file a return with the tax commissioner shall fail 1283
to make such return, or fail to pay the applicable taxes levied 1284
under section 5743.32, 5743.321, 5743.323, ~~or~~ 5743.324, or 1285
5743.325 of the Revised Code, or fail to pay any lawful assessment 1286
issued by the commissioner. 1287

Section 2. That existing sections 305.31, 1333.11, 4301.01, 1288
4301.422, 4301.49, 4301.50, 4305.131, 4307.04, 4307.05, 5705.38, 1289
5743.025, 5743.03, 5743.04, 5743.05, 5743.08, 5743.081, 5743.12, 1290
5743.13, 5743.33, 5743.34, and 5743.35 of the Revised Code are 1291
hereby repealed. 1292