

As Introduced

**129th General Assembly
Regular Session
2011-2012**

S. B. No. 250

Senator Tavares

—

A BILL

To amend sections 5743.01, 5743.51, 5743.62, and 1
5743.63 of the Revised Code to increase the 2
tobacco products excise tax rate and to add 3
dissolvable tobacco products to the kinds of 4
products subject to the tax. 5

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

Section 1. That sections 5743.01, 5743.51, 5743.62, and 6
5743.63 of the Revised Code be amended to read as follows: 7

Sec. 5743.01. As used in this chapter: 8

(A) "Person" includes individuals, firms, partnerships, 9
associations, joint-stock companies, corporations, combinations of 10
individuals of any form, and the state and any of its political 11
subdivisions. 12

(B) "Wholesale dealer" includes only those persons: 13

(1) Who bring in or cause to be brought into this state 14
unstamped cigarettes purchased directly from the manufacturer, 15
producer, or importer of cigarettes for sale in this state but 16
does not include persons who bring in or cause to be brought into 17
this state cigarettes with respect to which no evidence of tax 18
payment is required thereon as provided in section 5743.04 of the 19

Revised Code; or	20
(2) Who are engaged in the business of selling cigarettes or tobacco products to others for the purpose of resale.	21 22
"Wholesale dealer" does not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. 5713 if that person sells cigarettes in this state only to wholesale dealers holding valid and current licenses under section 5743.15 of the Revised Code or to an export warehouse proprietor or another manufacturer.	23 24 25 26 27 28
(C) "Retail dealer" includes:	29
(1) In reference to dealers in cigarettes, every person other than a wholesale dealer engaged in the business of selling cigarettes in this state, regardless of whether the person is located in this state or elsewhere, and regardless of quantity, amount, or number of sales;	30 31 32 33 34
(2) In reference to dealers in tobacco products, any person in this state engaged in the business of selling tobacco products to ultimate consumers in this state, regardless of quantity, amount, or number of sales.	35 36 37 38
(D) "Sale" includes exchange, barter, gift, offer for sale, and distribution, and includes transactions in interstate or foreign commerce.	39 40 41
(E) "Cigarettes" includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials other than cigar tobacco.	42 43 44 45 46 47 48
(F) "Package" means the individual package, box, or other	49

container in or from which retail sales of cigarettes are normally 50
made or intended to be made. 51

(G) "Stamp" includes an impression made by a metering device 52
as provided for in section 5743.04 of the Revised Code. 53

(H) "Storage" includes any keeping or retention of cigarettes 54
or tobacco products for use or consumption in this state. 55

(I) "Use" includes the exercise of any right or power 56
incidental to the ownership of cigarettes or tobacco products. 57

(J) "Tobacco product" or "other tobacco product" means any 58
product made from tobacco, other than cigarettes, that is made ~~for~~ 59
~~smoking or chewing, or both~~ to be smoked, chewed, or dissolved 60
orally, and snuff. 61

(K) "Wholesale price" means the invoice price, including all 62
federal excise taxes, at which the manufacturer of the tobacco 63
product sells the tobacco product to unaffiliated distributors, 64
excluding any discounts based on the method of payment of the 65
invoice or on time of payment of the invoice. If the taxpayer buys 66
from other than a manufacturer, "wholesale price" means the 67
invoice price, including all federal excise taxes and excluding 68
any discounts based on the method of payment of the invoice or on 69
time of payment of the invoice. 70

(L) "Distributor" means: 71

(1) Any manufacturer who sells, barter, exchanges, or 72
distributes tobacco products to a retail dealer in the state, 73
except when selling to a retail dealer that has filed with the 74
manufacturer a signed statement agreeing to pay and be liable for 75
the tax imposed by section 5743.51 of the Revised Code; 76

(2) Any wholesale dealer located in the state who receives 77
tobacco products from a manufacturer, or who receives tobacco 78
products on which the tax imposed by this chapter has not been 79

paid; 80

(3) Any wholesale dealer located outside the state who sells, 81
barters, exchanges, or distributes tobacco products to a wholesale 82
or retail dealer in the state; or 83

(4) Any retail dealer who receives tobacco products on which 84
the tax has not or will not be paid by another distributor, 85
including a retail dealer that has filed a signed statement with a 86
manufacturer in which the retail dealer agrees to pay and be 87
liable for the tax that would otherwise be imposed on the 88
manufacturer by section 5743.51 of the Revised Code. 89

(M) "Taxpayer" means any person liable for the tax imposed by 90
section 5743.51, 5743.62, or 5743.63 of the Revised Code. 91

(N) "Seller" means any person located outside this state 92
engaged in the business of selling tobacco products to consumers 93
for storage, use, or other consumption in this state. 94

(O) "Manufacturer" means any person who manufactures and 95
sells cigarettes or tobacco products. 96

(P) "Importer" means any person that is authorized, under a 97
valid permit issued under Section 5713 of the Internal Revenue 98
Code, to import finished cigarettes into the United States, either 99
directly or indirectly. 100

Sec. 5743.51. (A) To provide revenue for the general revenue 101
fund of the state, an excise tax on tobacco products is hereby 102
levied at the rate of ~~seventeen~~ fifty-five per cent of the 103
wholesale price of the tobacco product received by a distributor 104
or sold by a manufacturer to a retail dealer located in this 105
state. Each distributor who brings tobacco products, or causes 106
tobacco products to be brought, into this state for distribution 107
within this state, or any out-of-state distributor who sells 108
tobacco products to wholesale or retail dealers located in this 109

state for resale by those wholesale or retail dealers is liable 110
for the tax imposed by this section. Only one sale of the same 111
article shall be used in computing the amount of the tax due. 112

(B) The treasurer of state shall place to the credit of the 113
tax refund fund created by section 5703.052 of the Revised Code, 114
out of the receipts from the tax levied by this section, amounts 115
equal to the refunds certified by the tax commissioner pursuant to 116
section 5743.53 of the Revised Code. The balance of the taxes 117
collected under this section shall be paid into the general 118
revenue fund. 119

(C) The commissioner may adopt rules as are necessary to 120
assist in the enforcement and administration of sections 5743.51 121
to 5743.66 of the Revised Code, including rules providing for the 122
remission of penalties imposed. 123

(D) A manufacturer is not liable for payment of the tax 124
imposed by this section for sales of tobacco products to a retail 125
dealer that has filed a signed statement with the manufacturer in 126
which the retail dealer agrees to pay and be liable for the tax, 127
as long as the manufacturer has provided a copy of the statement 128
to the tax commissioner. 129

Sec. 5743.62. (A) To provide revenue for the general revenue 130
fund of the state, an excise tax is hereby levied on the seller of 131
tobacco products in this state at the rate of ~~seventeen~~ fifty-five 132
per cent of the wholesale price of the tobacco product whenever 133
the tobacco product is delivered to a consumer in this state for 134
the storage, use, or other consumption of such tobacco products. 135
The tax imposed by this section applies only to sellers having 136
nexus in this state, as defined in section 5741.01 of the Revised 137
Code. 138

(B) A seller of tobacco products who has nexus in this state 139
as defined in section 5741.01 of the Revised Code shall register 140

with the tax commissioner and supply any information concerning 141
the seller's contacts with this state as may be required by the 142
tax commissioner. A seller who does not have nexus in this state 143
may voluntarily register with the tax commissioner. A seller who 144
voluntarily registers with the tax commissioner is entitled to the 145
same benefits and is subject to the same duties and requirements 146
as a seller required to be registered with the tax commissioner 147
under this division. 148

(C) Each seller of tobacco products subject to the tax levied 149
by this section, on or before the last day of each month, shall 150
file with the tax commissioner a return for the preceding month 151
showing any information the tax commissioner finds necessary for 152
the proper administration of sections 5743.51 to 5743.66 of the 153
Revised Code, together with remittance of the tax due, payable to 154
the treasurer of state. The return and payment of the tax required 155
by this section shall be filed in such a manner that it is 156
received by the tax commissioner on or before the last day of the 157
month following the reporting period. If the return is filed and 158
the amount of the tax shown on the return to be due is paid on or 159
before the date the return is required to be filed, the seller is 160
entitled to a discount equal to two and five-tenths per cent of 161
the amount shown on the return to be due. 162

(D) The tax commissioner shall immediately forward to the 163
treasurer of state all money received from the tax levied by this 164
section, and the treasurer shall credit the amount to the general 165
revenue fund. 166

(E) Each seller of tobacco products subject to the tax levied 167
by this section shall mark on the invoices of tobacco products 168
sold that the tax levied by that section has been paid and shall 169
indicate the seller's account number as assigned by the tax 170
commissioner. 171

Sec. 5743.63. (A) To provide revenue for the general revenue 172
fund of the state, an excise tax is hereby levied on the storage, 173
use, or other consumption of tobacco products at the rate of 174
~~seventeen~~ fifty-five per cent of the wholesale price of the 175
tobacco product, provided the tax has not been paid by the seller 176
as provided in section 5743.62 of the Revised Code, or by the 177
distributor as provided in section 5743.51 of the Revised Code. 178

(B) Each person subject to the tax levied by this section, on 179
or before the last day of each month, shall file with the tax 180
commissioner a return for the preceding month showing any 181
information the tax commissioner finds necessary for the proper 182
administration of sections 5743.51 to 5743.66 of the Revised Code, 183
together with remittance of the tax due, payable to the treasurer 184
of state. The return and payment of the tax required by this 185
section shall be filed in such a manner that it is received by the 186
tax commissioner on or before the last day of the month following 187
the reporting period. 188

(C) The tax commissioner shall immediately forward to the 189
treasurer of state all money received from the tax levied by this 190
section, and the treasurer shall credit the amount to the general 191
revenue fund. 192

Section 2. That existing sections 5743.01, 5743.51, 5743.62, 193
and 5743.63 of the Revised Code are hereby repealed. 194