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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research and Drafting

Legislative Budget Office

H.B. 223*

134th General Assembly

Bill Analysis

Click here for H.B. 223's Fiscal Note

Version: As Reported by Senate Ways & Means

Primary Sponsor: Rep. Hillyer

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SUMMARY

- Allows vendors to deduct sales tax remitted for bad debts on private label credit accounts when the debt is charged off as uncollectible by the credit account lender or by a person succeeding to such accounts (e.g., debt collector).

DETAILED ANALYSIS

Sales tax deduction for bad debts

The bill expands an existing sales tax deduction for bad debts by allowing vendors to deduct bad debts on certain third-party accounts affiliated with the vendor even though the debt is charged off on the books of the third party and not the vendor.

Existing bad debt deduction

Under continuing law, a sales tax deduction is available when a vendor makes a sale on credit, collects the sales tax due and remits it to the state, and eventually suffers a default by the purchaser. The debt must have remained uncollected for at least six months, and the deduction may be obtained only for debts that have become worthless or uncollectible during the most recent sales tax reporting period and that the vendor may deduct for federal income tax purposes. The deduction is applied against the vendor's sales tax remittances. A refund is available if a vendor's bad debt for a reporting period exceeds the vendor's taxable sales for that period.

Under current law, a vendor may claim the bad debt deduction, or a refund on the basis of sales tax the vendor previously remitted, only if bad debts are charged off as uncollectible on

* This analysis was prepared before the report of the Senate Ways & Means Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

the vendor's books. Current law does not allow a deduction to be claimed on the basis of bad debts on anyone else's books.[1]

Expanded bad debt deduction

The bill expands the existing sales tax deduction for bad debts by allowing vendors to take a deduction for bad debts on "private label credit accounts" used to make purchases from the vendor or the vendor's affiliates, even though the debt is charged off as uncollectible on the books of the owner of the credit account (referred to as a "lender") and not on the vendor's books.[2]

A private label credit account is a credit account that carries, refers to, or is branded with the vendor's name, and for which the lender, when establishing the consumer's credit limit, complied with all applicable Ohio and federal consumer protection laws.[3] A typical private label credit account arrangement might involve a department store (the vendor) contracting with a bank (the lender) for the bank to issue a charge account labeled with the department store's name; the charge account is used to make purchases at the store on credit; and the bank extends the credit, processes the credit purchases, bills customers, and remits payments, including sales tax, to the department store in exchange for retaining a fee from the store. Unpaid bills are a debt held by the bank, not the store.

For a vendor to receive the bill's expanded deduction, the private label credit account debt must be deductible by the lender for federal income tax purposes, and the lender must charge off the debt as uncollectible on or after July 1, 2023. The bill refers to such debt as "accounts or receivables bad debt." The expanded deduction is available not only for the bad debt of the original account issuer but also the bad debt of any other person that acquired the accounts, or acquired receivables arising from such accounts, from either a third party or the vendor, provided the vendor has remitted the sales tax.[4] (Such other persons, such as debt collectors or factoring agents, are all defined to be "lenders," and their bad debt is "accounts or receivables bad debt.")

Unlike the existing deduction for a vendor's own bad debts, if the bill's expanded deduction exceeds the vendor's taxable sales for the month, no refund is allowed, but the vendor may carry forward and apply the difference to a future tax liability. There is no limit on the number of carryforward months. As with the existing deduction, the bill's deduction requires the vendor to repay the state any deducted tax if the lender eventually collects its debt after the vendor claims the deduction for that debt.

The bill permits a vendor to claim the deduction on the basis of a lender's bad debt without regard to the vendor's reporting period during which the debt became worthless or

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[1] R.C. 5739.121(B) to (F). See, e.g., *Home Depot U.S.A. v. Levin*, 121 Ohio St.3d 482 (2009).

[2] R.C. 5739.121(F).

[3] R.C. 5739.121(A)(3).

[4] R.C. 5739.121(A)(2) and (4).

uncollectible to the lender. The bill also stipulates that, absent an agreement between the vendor and lender, the economic benefit of the bill's expanded deduction must be realized by the party that suffered the economic harm due to the accounts or receivables bad debt.[5]

The bill authorizes the Tax Commissioner to adopt rules necessary to administer the existing and the bill's expanded bad debt deductions.[6]

HISTORY

Action	Date
Introduced	03-17-21
Reported, H. Ways & Means	12-08-21
Passed House (65-28)	12-09-21
Reported, S. Ways & Means	--

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[5] R.C. 5739.121(F).

[6] R.C. 5739.121(G).