

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. B. No. 473

Representative Amstutz

A BILL

To amend sections 122.86, 324.02, 324.021, 5703.70, 1
5739.121, 5743.05, and 5743.53 and to enact 2
section 5743.06 of the Revised Code to require 3
voter approval before a county may levy a new 4
utilities services tax, to allow small 5
businesses to count employees of related or 6
affiliated entities towards satisfying the 7
employment criteria of the business investment 8
tax credit, to permit a bad debt refund for 9
cigarette and tobacco product excise taxes paid 10
when a purchaser fails to pay a dealer for the 11
cigarettes or tobacco products and the unpaid 12
amount is charged off as uncollectible by the 13
dealer, and to allow vendors to receive a refund 14
of sales taxes remitted for bad debts on private 15
label credit cards when the debt is charged off 16
as uncollectible by the credit card lender. 17

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

Section 1. That sections 122.86, 324.02, 324.021, 5703.70, 18
5739.121, 5743.05, and 5743.53 be amended and section 5743.06 of 19
the Revised Code be enacted to read as follows: 20

Sec. 122.86. (A) As used in this section and section	21
5747.81 of the Revised Code:	22
(1) "Small business enterprise" means a corporation, pass-	23
through entity, or other person satisfying all of the following:	24
(a) At the time of a qualifying investment, the enterprise	25
meets all of the following requirements:	26
(i) Has no outstanding tax or other liabilities owed to	27
the state;	28
(ii) Is in good standing with the secretary of state, if	29
the enterprise is required to be registered with the secretary;	30
(iii) Is current with any court-ordered payments;	31
(iv) Is not engaged in any illegal activity.	32
(b) At the time of a qualifying investment, the	33
enterprise's assets according to generally accepted accounting	34
principles do not exceed fifty million dollars, or its annual	35
sales do not exceed ten million dollars. When making this	36
determination, the assets and annual sales of all of the	37
enterprise's related or affiliated entities shall be included in	38
the calculation.	39
(c) The enterprise employs at least fifty full-time	40
equivalent employees in this state for whom the enterprise is	41
required to withhold income tax under section 5747.06 of the	42
Revised Code, or more than one-half the enterprise's total	43
number of full-time equivalent employees employed anywhere in	44
the United States are employed in this state and are subject to	45
that withholding requirement. <u>When making this determination,</u>	46
<u>the employees of all of the enterprise's related or affiliated</u>	47
<u>entities, including shared employees coemployed by a</u>	48

professional employer organization and a client employer shall 49
be included in the calculation. For the purposes of this 50
division, "coemploy," "shared employee," "professional employer 51
organization," and "client employer" have the same meanings as 52
in section 4125.01 of the Revised Code. 53

(d) The enterprise, within six months after an eligible 54
investor's qualifying investment is made, invests in or incurs 55
cost for one or more of the following in an amount at least 56
equal to the amount of the qualifying investment: 57

(i) Tangible personal property, other than motor vehicles 58
operated on public roads and highways, used in business and 59
physically located in this state from the time of its 60
acquisition by the enterprise until the end of the investor's 61
holding period; 62

(ii) Motor vehicles operated on public roads and highways 63
if, from the time of acquisition by the enterprise until the end 64
of the investor's holding period, the motor vehicles are 65
purchased in this state, registered in this state under Chapter 66
4503. of the Revised Code, are used primarily for business 67
purposes, and are necessary for the operation of the 68
enterprise's business; 69

(iii) Real property located in this state that is used in 70
business from the time of its acquisition by the enterprise 71
until the end of the holding period; 72

(iv) Intangible personal property, including patents, 73
copyrights, trademarks, service marks, or licenses used in 74
business primarily in this state from the time of its 75
acquisition by the enterprise until the end of the holding 76
period; 77

(v) Compensation for new employees of the enterprise for 78
whom the enterprise is required to withhold income tax under 79
section 5747.06 of the Revised Code, not including increased 80
compensation for owners, officers, or managers of the 81
enterprise. For this purpose compensation for new employees 82
includes compensation for newly hired or retained employees. 83

(2) "Qualifying investment" means an investment of money 84
made on or after July 1, 2011, to acquire capital stock or other 85
equity interest in a small business enterprise. "Qualifying 86
investment" does not include either of the following: 87

(a) Any investment of money an eligible investor derives, 88
directly or indirectly, from a grant or loan from the federal 89
government or the state or a political subdivision, including 90
the third frontier program under Chapter 184. of the Revised 91
Code; 92

(b) Any investment of money which is the basis of a tax 93
credit granted under any other section of the Revised Code. 94

(3) "Eligible investor" means an individual, estate, or 95
trust subject to the tax imposed by section 5747.02 of the 96
Revised Code, or a pass-through entity in which such an 97
individual, estate, or trust holds a direct or indirect 98
ownership or other equity interest. To qualify as an eligible 99
investor, the individual, estate, trust, or pass-through entity 100
shall not owe any outstanding tax or other liability to the 101
state at the time of a qualifying investment. 102

(4) "Holding period" means the two-year period beginning 103
on the day a qualifying investment is made. 104

(5) "Pass-through entity" has the same meaning as in 105
section 5733.04 of the Revised Code. 106

(B) Any eligible investor that makes a qualifying 107
investment in a small business enterprise on or after July 1, 108
2011, may apply to the director of development services to 109
obtain a small business investment certificate from the 110
director. Alternatively, a small business enterprise may apply 111
on behalf of eligible investors to obtain the certificates for 112
those investors. The director, in consultation with the tax 113
commissioner, shall prescribe the form or manner in which an 114
applicant shall apply for the certificate, devise the form of 115
the certificate, and prescribe any records or other information 116
an applicant shall furnish with the application to evidence the 117
qualifying investment. The applicant shall state the amount of 118
the intended investment. The applicant shall pay an application 119
fee equal to the greater of one-tenth of one per cent of the 120
amount of the intended investment or one hundred dollars. 121

A small business investment certificate entitles the 122
certificate holder to receive a tax credit under section 5747.81 123
of the Revised Code if the certificate holder qualifies for the 124
credit as otherwise provided in this section. If the certificate 125
holder is a pass-through entity, the certificate entitles the 126
entity's equity owners to receive their distributive or 127
proportionate shares of the credit. In any fiscal biennium, an 128
eligible investor may not apply for small business investment 129
certificates representing intended investment amounts in excess 130
of ten million dollars. Such certificates are not transferable. 131

The director of development services may reserve small 132
business investment certificates to qualifying applicants in the 133
order in which the director receives applications, but may issue 134
the certificates as the applications are completed. An 135
application is completed when the director has validated that an 136
eligible investor has made a qualified investment and the small 137

business enterprise has made the appropriate reinvestment of the 138
qualified investment pursuant to the requirements of division 139
(A) (1) (d) of this section. To qualify for a certificate, an 140
eligible investor must satisfy both of the following, subject to 141
the limitation on the amount of qualifying investments for which 142
certificates may be issued under division (C) of this section: 143

(1) The eligible investor makes a qualifying investment on 144
or after July 1, 2011. 145

(2) The eligible investor pledges not to sell or otherwise 146
dispose of the qualifying investment before the conclusion of 147
the applicable holding period. 148

(C) (1) The amount of any eligible investor's qualifying 149
investments for which small business investment certificates may 150
be issued for a fiscal biennium shall not exceed ten million 151
dollars. 152

(2) The director of development services shall not issue a 153
small business investment certificate to an eligible investor 154
representing an amount of qualifying investment in excess of the 155
amount of the intended investment indicated on the investor's 156
application for the certificate. 157

(3) The director of development services shall not issue 158
small business investment certificates in a total amount that 159
would cause the tax credits claimed in any fiscal biennium to 160
exceed one hundred million dollars. 161

(4) The director of development services may issue a small 162
business investment certificate only if both of the following 163
apply at the time of issuance: 164

(a) The small business enterprise meets all the 165
requirements listed in divisions (A) (1) (a) (i) to (iv) of this 166

section; 167

(b) The eligible investor does not owe any outstanding tax 168
or other liability to the state. 169

(D) Before the end of the applicable holding period of a 170
qualifying investment, each enterprise in which a qualifying 171
investment was made for which a small business investment 172
certificate has been issued, upon the request of the director of 173
development services, shall provide to the director records or 174
other evidence satisfactory to the director that the enterprise 175
is a small business enterprise for the purposes of this section. 176
Each enterprise shall also provide annually to the director 177
records or evidence regarding the number of jobs created or 178
retained in the state. No credit may be claimed under this 179
section and section 5747.81 of the Revised Code if the director 180
finds that an enterprise is not a small business enterprise for 181
the purposes of this section. The director shall compile and 182
maintain a register of small business enterprises qualifying 183
under this section and shall certify the register to the tax 184
commissioner. The director shall also compile and maintain a 185
record of the number of jobs created or retained as a result of 186
qualifying investments made pursuant to this section. 187

(E) After the conclusion of the applicable holding period 188
for a qualifying investment, a person to whom a small business 189
investment certificate has been issued under this section may 190
claim a credit as provided under section 5747.81 of the Revised 191
Code. 192

(F) The director of development services, in consultation 193
with the tax commissioner, may adopt rules for the 194
administration of this section, including rules governing the 195
following: 196

(1) Documents, records, or other information eligible	197
investors shall provide to the director;	198
(2) Any information a small business enterprise shall	199
provide for the purposes of this section and section 5747.81 of	200
the Revised Code;	201
(3) Determination of the number of full-time equivalent	202
employees of a small business enterprise;	203
(4) Verification of a small business enterprise's	204
investment in tangible personal property and intangible personal	205
property under division (A) (1) (d) of this section, including	206
when such investments have been made and where the property is	207
used in business;	208
(5) Circumstances under which small business enterprises	209
or eligible investors may be subverting the purposes of this	210
section and section 5747.81 of the Revised Code.	211
There is hereby created in the state treasury the	212
InvestOhio support fund. The fund shall consist of the fees paid	213
under division (B) of this section and shall be used by the	214
development services agency to pay the costs of administering	215
the small business investment certificate program established	216
under this section.	217
Sec. 324.02. For the purpose of providing additional	218
general revenues for the county and paying the expense of	219
administering such levy, any county may levy a county excise tax	220
to be known as the utilities service tax on the charge for every	221
utility service to customers within the county at a rate not to	222
exceed two per cent of such charge. On utility service to	223
customers engaged in business, the tax shall be imposed at a	224
rate of one hundred fifty per cent of the rate imposed upon all	225

other consumers within the county. The tax shall be levied 226
pursuant to a resolution adopted by the board of county 227
commissioners of the county and shall be levied at uniform rates 228
required by this section upon all charges for utility service 229
except as provided in section 324.03 of the Revised Code. 230

The resolution shall be certified to the board of 231
elections not less than ninety days before the general or 232
primary election upon which it will be voted, and shall be 233
submitted in the manner provided in section 5705.25 of the 234
Revised Code. If the majority of the electors voting on the 235
question vote in favor of the tax levy, the board may levy the 236
tax within the county for the period specified in the 237
resolution. 238

The tax levied by the resolution shall apply to all bills 239
rendered after the sixtieth day after the effective date of the 240
resolution. The tax shall be levied upon the customer and shall 241
be paid by the customer to the utility supplying the service at 242
the time the customer pays the utility for the service. If the 243
charge for utility service is billed to a person other than the 244
customer at the request of such person, the tax commissioner ~~of~~ 245
~~the state may~~, in accordance with section 324.04 of the Revised 246
Code, provide for the levy of the tax against and the payment of 247
the tax by such other person. Each utility furnishing a utility 248
service the charge for which is subject to the tax shall set 249
forth the tax as a separate item on each bill or statement 250
rendered to the customer. No bills shall be rendered out of the 251
ordinary course of business to avoid payment of the tax. 252

Prior to the adoption of any resolution levying a 253
utilities service tax the board of county commissioners shall 254
conduct two public hearings thereon, the second hearing to be 255

not less than three nor more than ten days after the first. 256
Notice of the date, time, and place of such hearings shall be 257
given by publication in a newspaper of general circulation in 258
the county once a week on the same day of the week for two 259
consecutive weeks or as provided in section 7.16 of the Revised 260
Code. The second publication shall be not less than ten nor more 261
than thirty days prior to the first hearing. ~~No resolution~~ 262
~~levying a utilities service tax pursuant to this section of the~~ 263
~~Revised Code shall be effective sooner than thirty days~~ 264
~~following its adoption and such resolution is subject to a~~ 265
~~referendum as provided in sections 305.31 to 305.41 of the~~ 266
~~Revised Code, unless such resolution is adopted as an emergency~~ 267
~~measure necessary for the immediate preservation of the public~~ 268
~~peace, health, or safety, in which case it shall go into~~ 269
~~immediate effect. Such emergency measure must receive an~~ 270
~~affirmative vote of all of the members of the board of~~ 271
~~commissioners, and shall state the reasons for such necessity. A~~ 272
~~resolution may direct the board of elections to submit the~~ 273
~~question of levying the tax to the electors of the county at the~~ 274
~~next primary or general election in the county occurring not~~ 275
~~less than ninety days after such resolution is certified to the~~ 276
~~board. No such resolution shall go into effect unless approved~~ 277
~~by a majority of those voting upon it. The tax levied by such~~ 278
~~resolution shall apply to all bills rendered subsequent to the~~ 279
~~sixtieth day after the effective date of the resolution. No~~ 280
~~bills shall be rendered out of the ordinary course of business~~ 281
~~to avoid payment of the tax.~~ 282

Sec. 324.021. The question of repeal of a county 283
permissive tax adopted ~~as an emergency measure~~ pursuant to 284
section 324.02 of the Revised Code may be initiated by filing 285
with the board of elections of the county not less than ninety 286

days before the general election in any year a petition 287
requesting that an election be held on such question. Such 288
petition shall be signed by qualified electors residing in the 289
county equal in number to ten per cent of those voting for 290
governor at the most recent gubernatorial election. 291

After determination by it that such petition is valid, the 292
board of elections shall submit the question to the electors of 293
the county at the next general election. The election shall be 294
conducted, canvassed, and certified in the same manner as 295
regular elections for county offices in the county. Notice of 296
the election shall be published in a newspaper of general 297
circulation in the district once a week for two consecutive 298
weeks prior to the election or as provided in section 7.16 of 299
the Revised Code. If the board of elections operates and 300
maintains a web site, notice of the election also shall be 301
posted on that web site for thirty days prior to the election. 302
The notice shall state the purpose, time, and place of the 303
election. The form of the ballot cast at such election shall be 304
prescribed by the secretary of state. The question covered by 305
such petition shall be submitted as a separate proposition, but 306
it may be printed on the same ballot with any other proposition 307
submitted at the same election other than the election of 308
officers. If a majority of the qualified electors voting on the 309
question of repeal approve the repeal, the result of the 310
election shall be certified immediately after the canvass by the 311
board of elections to the board of county commissioners, who 312
shall thereupon, after the current year, cease to levy the tax. 313

Sec. 5703.70. (A) On the filing of an application for 314
refund under section 3734.905, 4307.05, 4307.07, 5726.30, 315
5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 316
5735.141, 5735.142, 5735.18, 5736.08, 5739.07, 5739.071, 317

5739.104, 5741.10, 5743.05, 5743.06, 5743.53, 5749.08, 5751.08, 318
or 5753.06 of the Revised Code, or an application for 319
compensation under section 5739.061 of the Revised Code, if the 320
tax commissioner determines that the amount of the refund or 321
compensation to which the applicant is entitled is less than the 322
amount claimed in the application, the commissioner shall give 323
the applicant written notice by ordinary mail of the amount. The 324
notice shall be sent to the address shown on the application 325
unless the applicant notifies the commissioner of a different 326
address. The applicant shall have sixty days from the date the 327
commissioner mails the notice to provide additional information 328
to the commissioner or request a hearing, or both. 329

(B) If the applicant neither requests a hearing nor 330
provides additional information to the tax commissioner within 331
the time prescribed by division (A) of this section, the 332
commissioner shall take no further action, and the refund or 333
compensation amount denied becomes final. 334

(C) (1) If the applicant requests a hearing within the time 335
prescribed by division (A) of this section, the tax commissioner 336
shall assign a time and place for the hearing and notify the 337
applicant of such time and place, but the commissioner may 338
continue the hearing from time to time as necessary. After the 339
hearing, the commissioner may make such adjustments to the 340
refund or compensation as the commissioner finds proper, and 341
shall issue a final determination thereon. 342

(2) If the applicant does not request a hearing, but 343
provides additional information, within the time prescribed by 344
division (A) of this section, the commissioner shall review the 345
information, make such adjustments to the refund or compensation 346
as the commissioner finds proper, and issue a final 347

determination thereon. 348

(3) The commissioner shall serve a copy of the final 349
determination made under division (C) (1) or (2) of this section 350
on the applicant in the manner provided in section 5703.37 of 351
the Revised Code, and the decision is final, subject to appeal 352
under section 5717.02 of the Revised Code. 353

(D) The tax commissioner shall certify to the director of 354
budget and management and treasurer of state for payment from 355
the tax refund fund created by section 5703.052 of the Revised 356
Code, the amount of the refund to be refunded under division (B) 357
or (C) of this section. The commissioner also shall certify to 358
the director and treasurer of state for payment from the general 359
revenue fund the amount of compensation to be paid under 360
division (B) or (C) of this section. 361

Sec. 5739.121. (A) As used in this section, ~~"bad-;~~ 362

(1) "Bad debt" means any debt that has become worthless or 363
uncollectible in the time period between a vendor's preceding 364
return and the present return, has been uncollected for at least 365
six months, and that may be claimed as a deduction pursuant to 366
the "Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 367
166, as amended, and regulations adopted pursuant thereto, or 368
that could be claimed as such a deduction if the vendor kept 369
accounts on an accrual basis. "Bad debt" does not include any 370
interest or sales tax on the purchase price, uncollectible 371
amounts on property that remains in the possession of the vendor 372
until the full purchase price is paid, expenses incurred in 373
attempting to collect any account receivable or for any portion 374
of the debt recovered, and repossessed property. 375

(2) "Lender" means a person or an affiliate, assignee, or 376

transferee of a person that owns a private label credit card 377
account, or an interest in a private label credit card 378
receivable, provided that interest was any of the following: 379

(a) Transferred from a third party; 380

(b) Purchased directly from a vendor that remitted tax 381
imposed under this chapter or from an affiliate of the vendor; 382

(c) Originated according to a written agreement between 383
the person and a vendor that remitted tax imposed under this 384
chapter or an affiliate of the vendor. 385

(3) "Private label credit card" means a charge card or 386
credit card on which the name or logo of a vendor appears. 387

(4) "Accounts or receivables bad debt" means the unpaid 388
balance on private label credit card accounts or receivables 389
that are bad debt and are charged off as uncollectible on the 390
books of a lender on or after July 1, 2014, and against which a 391
deduction or refund has not previously been taken or allowed, 392
respectively, under this section. For the purposes of division 393
(A) (4) of this section only, "bad debt" shall be determined 394
without regard to when the debt has become worthless or 395
uncollectible relative to the period between a vendor's returns, 396
and the deductibility of the debt for federal income tax 397
purposes shall be determined with respect to the lender instead 398
of the vendor. 399

(5) "Affiliate" means any person that is a member of an 400
affiliated group or that would be a member of an affiliated 401
group if the person was a corporation. 402

(6) "Affiliated group" has the same meaning as in section 403
1504 of the Internal Revenue Code. 404

(B) In computing taxable receipts for purposes of this 405
chapter, a vendor may deduct the amount of bad debts. ~~The Except~~ 406
as provided in division (F) of this section, the amount deducted 407
must be charged off as uncollectible on the books of the vendor. 408
A deduction may be claimed only with respect to bad debts on 409
which the taxes pursuant to sections 5739.10 and 5739.12 of the 410
Revised Code were paid in a preceding tax period. If the 411
vendor's business consists of taxable and nontaxable 412
transactions, the deduction shall equal the full amount of the 413
debt if the debt is documented as a taxable transaction in the 414
vendor's records. If no such documentation is available, the 415
maximum deduction on any bad debt shall equal the amount of the 416
bad debt multiplied by the quotient obtained by dividing the 417
sales taxed pursuant to this chapter during the preceding 418
calendar year by all sales during the preceding calendar year, 419
whether taxed or not. If a consumer or other person pays all or 420
part of a bad debt with respect to which a vendor claimed a 421
deduction under this section, the vendor shall be liable for the 422
amount of taxes deducted in connection with that portion of the 423
debt for which payment is received and shall remit such taxes in 424
the vendor's next payment to the tax commissioner. 425

(C) Any claim for a bad debt deduction under this section 426
shall be supported by such evidence as the tax commissioner by 427
rule requires. The commissioner shall review any change in the 428
rate of taxation applicable to any taxable sales by a vendor 429
claiming a deduction pursuant to this section and adopt rules 430
for altering the deduction in the event of such a change in 431
order to ensure that the deduction on any bad debt does not 432
result in the vendor claiming the deduction recovering any more 433
or less than the taxes imposed on the sale that constitutes the 434
bad debt. 435

(D) In any reporting period in which the amount of bad debt exceeds the amount of taxable sales for the period, the vendor may file a refund claim for any tax collected on the bad debt in excess of the tax reported on the return. The refund claim shall be filed in the manner provided in section 5739.07 of the Revised Code, except that the claim may be filed within four years of the due date of the return on which the bad debt first could have been claimed.

(E) When the filing responsibilities of a vendor have been assumed by a certified service provider, the certified service provider shall claim the bad debt allowance provided by this section on behalf of the vendor. The certified service provider shall credit or refund to the vendor the full amount of any bad debt allowance or refund.

~~(F) No person other than the vendor in the transaction that generated the bad debt or, as provided in division (E) of this section, a certified service provider, may claim the bad debt allowance provided by this section.~~
(1) A vendor may deduct on a return or obtain a refund of tax remitted by the vendor on accounts or receivables bad debt.

A vendor taking a deduction or claiming a refund under division (F) (1) of this section shall include all credit sale transactions outstanding in the account or receivable at the time the account or receivable is charged off as uncollectible on the books of a lender in calculating the deduction or refund, regardless of the date on which the credit sale transaction occurs.

(2) The deduction or refund authorized under division (F) (1) of this section may be taken or obtained by the vendor only on the basis of accounts or receivables bad debt from purchases

from the vendor whose name or logo appears on the private label 466
credit card or from purchases from any of the vendor's 467
affiliates or franchisees. 468

(3) A vendor taking a deduction or receiving a refund 469
under division (F)(1) of this section shall maintain books, 470
records, or other documents verifying the accounts or 471
receivables bad debt, which shall be open to inspection by the 472
commissioner upon request. 473

(4) If the vendor collects in whole or part any accounts 474
or receivables bad debt on the basis of which the vendor took a 475
deduction or received a refund under division (F) of this 476
section, the vendor shall include the amount collected in the 477
vendor's first return filed after the collection and pay tax on 478
the portion of that amount with respect to which the vendor took 479
the deduction or received a refund. 480

For the purpose of calculating the amount of tax to remit 481
under division (F)(4) of this section, the vendor shall allocate 482
payments made by the holder of a private label credit card on 483
the holder's accounts based on the agreement between the account 484
holder and the vendor or lender. 485

(G) The tax commissioner may adopt rules necessary to 486
administer this section. 487

Sec. 5743.05. The tax commissioner shall sell all stamps 488
provided for by section 5743.03 of the Revised Code. The stamps 489
shall be sold at their face value, except the commissioner 490
shall, by rule, authorize the sale of stamps to wholesale 491
dealers in this state, or to wholesale dealers outside this 492
state, at a discount of not less than one and eight-tenths per 493
cent or more than ten per cent of their face value, as a 494

commission for affixing and canceling the stamps. 495

The commissioner, by rule, shall authorize the delivery of 496
stamps to wholesale dealers in this state and to wholesale 497
dealers outside this state on credit. If such a dealer has not 498
been in good credit standing with this state for five 499
consecutive years preceding the purchase, the commissioner shall 500
require the dealer to file with the commissioner a bond to the 501
state in the amount and in the form prescribed by the 502
commissioner, with surety to the satisfaction of the 503
commissioner, conditioned on payment to the treasurer of state 504
or the commissioner within thirty days or the following twenty- 505
third day of June, whichever comes first for stamps delivered 506
within that time. If such a dealer has been in good credit 507
standing with this state for five consecutive years preceding 508
the purchase, the commissioner shall not require that the dealer 509
file such a bond but shall require payment for the stamps within 510
thirty days after purchase of the stamps or the following 511
twenty-third day of June, whichever comes first. Stamps sold to 512
a dealer not required to file a bond shall be sold at face 513
value. The maximum amount that may be sold on credit to a dealer 514
not required to file a bond shall equal one hundred ten per cent 515
of the dealer's average monthly purchases over the preceding 516
calendar year. The maximum amount shall be adjusted to reflect 517
any changes in the tax rate and may be adjusted, upon 518
application to the commissioner by the dealer, to reflect 519
changes in the business operations of the dealer. The maximum 520
amount shall be applicable to the period between the first day 521
of July to the following twenty-third day of June. Payment by a 522
dealer not required to file a bond shall be remitted by 523
electronic funds transfer as prescribed by section 5743.051 of 524
the Revised Code. If a dealer not required to file a bond fails 525

to make the payment in full within the required payment period, 526
the commissioner shall not thereafter sell stamps to that dealer 527
until the dealer pays the outstanding amount, including penalty 528
and interest on that amount as prescribed in this chapter, and 529
the commissioner thereafter may require the dealer to file a 530
bond until the dealer is restored to good standing. The 531
commissioner shall limit delivery of stamps on credit to the 532
period running from the first day of July of the fiscal year 533
until the twenty-third day of the following June. Any discount 534
allowed as a commission for affixing and canceling stamps shall 535
be allowed with respect to sales of stamps on credit. 536

The commissioner shall redeem and pay for any destroyed, 537
unused, or spoiled tax stamps at their net value, and shall 538
refund to wholesale dealers the net amount of state and county 539
taxes paid erroneously or paid on cigarettes that have been sold 540
in interstate or foreign commerce or that have become unsalable, 541
and the net amount of county taxes that were paid on cigarettes 542
that have been sold at retail or for retail sale outside a 543
taxing county. 544

An application for a refund of tax shall be filed with the 545
commissioner, on the form prescribed by the commissioner for 546
that purpose, within three years from the date the tax stamps 547
are destroyed or spoiled, from the date of the erroneous 548
payment, or from the date that cigarettes on which taxes have 549
been paid have been sold in interstate or foreign commerce or 550
have become unsalable. 551

On the filing of the application, the commissioner shall 552
determine the amount of refund to which the applicant is 553
entitled, payable from receipts of the state tax, and, if 554
applicable, payable from receipts of a county tax. If the amount 555

is not less than that claimed, the commissioner shall certify 556
the amount to the director of budget and management and 557
treasurer of state for payment from the tax refund fund created 558
by section 5703.052 of the Revised Code. If the amount is less 559
than that claimed, the commissioner shall proceed in accordance 560
with section 5703.70 of the Revised Code. 561

If a refund is granted for payment of an illegal or 562
erroneous assessment issued by the department, the refund shall 563
include interest on the amount of the refund from the date of 564
the overpayment. The interest shall be computed at the rate per 565
annum prescribed by section 5703.47 of the Revised Code. 566

Sec. 5743.06. (A) As used in this section, "bad debt" 567
means any debt that arises from the sale by a wholesale dealer 568
of cigarettes properly stamped under section 5743.03, 5743.031, 569
or 5743.04 of the Revised Code, that has become worthless or 570
uncollectible, that has been uncollected for at least six 571
months, and that may be claimed as a deduction pursuant to the 572
"Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 166, as 573
amended, and regulations adopted pursuant thereto, or that could 574
be claimed as such a deduction if the wholesale dealer kept 575
accounts on an accrual basis. "Bad debt" does not include any 576
interest or financing charges on the debt, expenses incurred in 577
attempting to collect the debt or for any portion of the debt 578
recovered, any accounts receivable that have been sold or 579
assigned to a third party, or repossessed property. 580

(B) A wholesale dealer may apply to the tax commissioner 581
for a refund of the net value of cigarette tax stamps that are 582
part of bad debt of the dealer. The commissioner shall not 583
refund any amount for bad debt under this section unless the 584
dealer has charged off the bad debt on its books as 585

uncollectible. If a purchaser or other person pays all or part 586
of a bad debt with respect to which a wholesale dealer received 587
a refund under this section, the dealer is liable for the 588
prorated amount of taxes refunded in connection with that 589
portion of the debt for which such payment was received, and 590
shall remit such taxes to the commissioner in the manner the 591
commissioner prescribes. 592

Any request for refund under this section shall be 593
supported by such evidence the commissioner requires by rule, 594
including all of the following: 595

(1) A copy of the original invoice; 596

(2) Evidence that the cigarettes described in the invoice 597
were delivered to the person that ordered them; 598

(3) Evidence that the person who ordered and received such 599
cigarettes did not pay the wholesale dealer for the cigarettes 600
and that the dealer used reasonable collection practices in 601
attempting to collect the debt; 602

(4) Evidence that the debt was deducted for federal income 603
tax purposes as described in division (A) of this section or 604
could have been so deducted if the dealer kept accounts on an 605
accrual basis. 606

(C) A request for refund under this section must be filed 607
within three years after the date the bad debt became 608
uncollectible. For each request for refund the commissioner 609
shall determine the amount of refund to which the applicant is 610
entitled. The refund is payable from receipts of the state tax, 611
and, if applicable, from receipts of a county tax. If the amount 612
is not less than that claimed, the commissioner shall certify 613
the amount to the director of budget and management and 614

treasurer of state for payment from the tax refund fund created 615
by section 5703.052 of the Revised Code. If the amount is less 616
than that claimed, the commissioner shall proceed in accordance 617
with section 5703.70 of the Revised Code. 618

(D) In lieu of granting a refund payable under division 619
(C) of this section, the commissioner may allow a wholesale 620
dealer to claim a credit of the amount of refundable tax on the 621
return for the period during which the tax became refundable or 622
against the purchase of tax stamps. The commissioner may require 623
dealers to submit any information necessary to support a claim 624
for a credit under this division, and shall not allow a credit 625
if that information is not provided. 626

Sec. 5743.53. (A) The treasurer of state shall refund to a 627
taxpayer any of the following: 628

(1) Any tobacco products tax paid erroneously~~+~~. 629

(2) Any tobacco products tax paid on an illegal or 630
erroneous assessment~~+~~. 631

(3) Any tax paid on tobacco products that have been sold 632
or shipped to retail or wholesale dealers outside this state, 633
returned to the manufacturer, or destroyed by the taxpayer with 634
the prior approval of the tax commissioner. 635

(4) Any tax paid by a wholesale dealer on tobacco products 636
that are part of bad debt of the dealer. The commissioner shall 637
not refund any amount for bad debt under this section unless the 638
dealer has charged off the bad debt on its books as 639
uncollectible. If a purchaser or other person pays all or part 640
of a bad debt with respect to which a wholesale dealer received 641
a refund under this section, the dealer is liable for the 642
prorated amount of taxes refunded in connection with that 643

portion of the debt for which such payment was received, and 644
shall remit such taxes to the commissioner in the manner the 645
commissioner prescribes. 646

Any request for refund under division (A)(4) of this 647
section shall be supported by such evidence the commissioner 648
requires by rule, including all of the following: 649

(a) A copy of the original invoice; 650

(b) Evidence that the tobacco products described in the 651
invoice were delivered to the person that ordered them; 652

(c) Evidence that the person who ordered and received such 653
tobacco products did not pay the wholesale dealer for the 654
tobacco products and that the dealer used reasonable collection 655
practices in attempting to collect the debt; 656

(d) Evidence that the debt was deducted for federal income 657
tax purposes as described in division (A) of this section or 658
could have been so deducted if the dealer kept accounts on an 659
accrual basis. 660

As used in this division, "bad debt" means any debt that 661
arises from the sale by a wholesale dealer of tobacco products 662
for which the dealer remitted the tax due under section 5743.51 663
as provided under section 5743.52 of the Revised Code, that has 664
become worthless or uncollectible, that has been uncollected for 665
at least six months, and that may be claimed as a deduction 666
pursuant to the "Internal Revenue Code of 1954," 68A Stat. 50, 667
26 U.S.C. 166, as amended, and regulations adopted pursuant 668
thereto, or that could be claimed as such a deduction if the 669
wholesale dealer kept accounts on an accrual basis. "Bad debt" 670
does not include any interest or financing charges on the debt, 671
expenses incurred in attempting to collect the debt or for any 672

portion of the debt recovered, any accounts receivable that have 673
been sold or assigned to a third party, or repossessed property. 674

Any application for refund shall be filed with the tax 675
commissioner on a form prescribed by the commissioner for that 676
purpose. The commissioner may not pay any refund on an 677
application for refund filed with the commissioner more than 678
three years from the date of payment of the tax. 679

(B) On the filing of the application for refund, the 680
commissioner shall determine the amount of the refund to which 681
the applicant is entitled. If the amount is not less than that 682
claimed, the commissioner shall certify the amount to the 683
director of budget and management and to the treasurer of state 684
for payment from the tax refund fund created by section 5703.052 685
of the Revised Code. If the amount is less than that claimed, 686
the commissioner shall proceed in accordance with section 687
5703.70 of the Revised Code. 688

If a refund is granted for payment of an illegal or 689
erroneous assessment issued by the department of taxation, the 690
refund shall include interest on the amount of the refund from 691
the date of the overpayment. The interest shall be computed at 692
the rate per annum in the manner prescribed by section 5703.47 693
of the Revised Code. 694

(C) If any person entitled to a refund of tax under this 695
section or section 5703.70 of the Revised Code is indebted to 696
the state for any tax administered by the tax commissioner, or 697
any charge, penalties, or interest arising from such tax, the 698
amount allowable on the application for refund first shall be 699
applied in satisfaction of the debt. 700

(D) In lieu of granting a refund payable under division 701

(A) (3) of this section, the tax commissioner may allow a 702
taxpayer to claim a credit of the amount of refundable tax on 703
the return for the period during which the tax became 704
refundable. The commissioner may require taxpayers to submit any 705
information necessary to support a claim for a credit under this 706
section, and the commissioner shall allow no credit if that 707
information is not provided. 708

Section 2. That existing sections 122.86, 324.02, 324.021, 709
5703.70, 5739.121, 5743.05, and 5743.53 of the Revised Code are 710
hereby repealed. 711

Section 3. The amendment by this act of section 122.86 of 712
the Revised Code applies to any qualifying investment made on or 713
after July 1, 2011. 714

Section 4. The amendment by this act of sections 324.02 715
and 324.021 of the Revised Code applies to resolutions to levy a 716
tax under that section adopted on or after the effective date of 717
this act. 718