

CIGARETTE AND OTHER TOBACCO PRODUCTS TAX

An excise tax on cigarettes has been levied in Ohio since 1931. In 1981, cigarettes also became subject to the Ohio sales tax. The excise tax rate increased to \$1.25 per pack from 55 cents per pack effective July 1, 2005, under the provisions of House Bill 66, the Fiscal Year 2006-2007 biennium budget bill.

The tax is paid primarily by wholesale dealers through the purchase of stamps (tax indicia) that are affixed to cigarette packs. Retailers, individuals, and other consumers are responsible for paying the tax on cigarettes not taxed at the wholesale dealer level. The Tax Commissioner can authorize dealers to purchase the tax indicia on credit payable within 30 days during July through April. The cigarette tax is credited to the state General Revenue Fund. In FY 2006, total receipts from the sale of stamps were almost \$992.3 million (not including other tobacco products).

An excise tax on "other tobacco products" was enacted effective February 1, 1993. These products include cigars, chewing tobacco, snuff, smoking tobacco, and other tobacco products. The tax is levied on the wholesale price of other tobacco products manufactured in Ohio or imported into Ohio that are to be sold for resale at retail. The rate is 17 percent of the wholesale price. The other tobacco products tax is credited to the state General Revenue Fund. In FY 2006, total net receipts were over \$29.8 million.

In 1986, the Ohio General Assembly gave authorization to county governments to levy a permissive tax of .225 cents per cigarette (4.5 cents per pack of 20) for the purpose of funding the operation or servicing the debt of a sports facility operated by the county or a development corporation. Cuyahoga County enacted such a levy at the maximum rate effective August 1, 1990.

The Department of Taxation administers and collects the tax. Collection is made through sales of tax indicia for cigarettes to be sold in Cuyahoga County. The revenues are distributed to Cuyahoga County in the month following their collection. The Department of Taxation retains 2.0 percent of the collections for administrative expenses. The levy produced revenues of more than \$3.65 million during FY 2005.

All state cigarette tax exemptions and credits apply to the county levies.

TAXPAYER (OHIO REVISED CODE 5743.01):

Cigarettes:

Wholesale Dealers —

Those who purchase cigarettes directly from manufacturers, producers, importers, or other wholesalers, who then sell cigarettes to retailers for the purpose of resale.

Retail Dealers —

Includes everyone, other than a wholesale dealer, engaged in the sale of cigarettes. Retail dealers must remit the tax on any cigarettes not previously taxed.

Persons —

Individuals, companies, and other consumers who have cigarettes in their possession on which the excise tax has not been paid.

Other Tobacco Products:

Wholesalers —

Distributors who receive other tobacco products for sale to retailers or wholesalers for resale within the state.

Manufacturers —

Any person who manufactures and sells other tobacco products or cigarettes.

Retailers —

Any person engaged in the business of selling cigarettes or tobacco products to consumers in this state.

TAX BASE (R.C. 5743.02, 5743.32, 5743.51):

1. The sale of cigarettes in Ohio (R.C. 5743.02, 5743.023).
2. The use, consumption, or storage for consumption of cigarettes in Ohio (R.C. 5743.32, 5743.322).
3. The receipt or import of other tobacco products for resale (R.C. 5743.51).

RATES (R.C. 5743.02, 5743.32, 5743.024, 5743.51):

Ohio Revised Code Section	Tax Rate Per Pack of 20	Tax Rate Per Pack of 25
5743.02 (Sales)		
5743.32 (Use)	125.0 cents	156.25 cents
5743.024 (County)	4.5 cents	5.625 cents

The rate on other tobacco products is 17 percent of the wholesale price (R.C. 5743.51, 5743.63).

METHOD OF TAX PAYMENT:

All cigarette taxpayers are required to pay for stamps from the Treasurer of State at the time of purchase. When it is more practical to collect the tax without the use of stamps (for example, consumers who have out-of-state purchases), the tax is paid with returns or by direct payment to the Department of Taxation.

EXEMPTIONS (R.C. 5743.05):

Cigarettes sold in interstate or foreign commerce or to the U.S. government or its agencies.

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Permissive Cigarette Tax (R.C. 5743.024):

Counties may, with voter approval, levy a permissive cigarette tax of up to 2.25 mills (4.5 cents per pack of 20) per cigarette. The levy must be for the purpose of servicing the debt of a sports facility. Cuyahoga County currently levies this tax. (Note: A voter-approved levy to support arts and culture increases the Cuyahoga County tax by 1.5 cents per cigarette, or 30 cents per pack, effective February 1, 2007.)

Discounts (R.C. 5743.05 and 5743.52):

As a consideration for affixing and canceling cigarette stamps, wholesale dealers receive a discount of 1.8 percent of the face value of stamps. Other tobacco products taxpayers receive a 2.5 percent discount for timely payment of the tax.



Wholesale dealers are required to file a semi-annual return even though they may have paid all their tax through the purchase of stamps. Any payment due on cigarettes not previously taxed is included. Others who have untaxed cigarettes file a monthly use tax return along with payment of the tax (see the chart on the following page for exact filing dates).

ADMINISTRATION:

Both state and county taxes on cigarettes and other tobacco products are administered by the Department of Taxation.

OHIO REVISED CODE CITATIONS:

Chapter 5743.



Amended Substitute House Bill 66, 126th General Assembly (FY 2006-2007 biennium budget bill, effective July 1, 2005).

Increase for the Cigarette Tax (R.C. 5743.02 and 5743.32; R.C. 612.27; R.C. 557.06): The tax levied on the sale, use, consumption, or storage of cigarettes in the state was increased from 27.5 mills per cigarette (2.75 cents per cigarette; 55 cents per pack of 20) to 62.5 mills per cigarette (6.25 cents per cigarette; \$1.25 per pack). This increase took effect on July 1, 2005. The new law requires that wholesale and retail dealers with inventories of cigarettes on July 1, 2005 must pay a "net additional tax" on their existing inventory (floor stock tax), as well as on any tax stamps in their possession that have not yet been affixed to merchandise.

Unstamped Cigarette Prohibitions (R.C. 5743.10, 5743.111, and 5743.112; R.C. 612.21):

The law prohibited the possession of or trading of unstamped cigarettes (that is, cigarettes in packages that do not display the stamp indicating that the tax has been paid). It is a crime for any person to possess 1,200 or more unstamped cigarettes. It is also a crime for any person to ship, transport, deliver, distribute, or otherwise trade 1,200 or more unstamped cigarettes.

DISPOSITION OF REVENUE:

Tax Rate	Revised Code Section	Disposition Revenue
6.25 cents per cigarette effective July 1, 2005	5743.02	State General Revenue Fund
17 percent of wholesale price of other tobacco products	5743.51	State General Revenue Fund
County levy: Up to .225 cent(s) per cigarette	5743.024	2.0 percent to Local Excise Tax Administrative Fund and the remainder to the county



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Type of Return	Filing Date	Revised Code Section	Taxpayer
Semi-annual	By July 31 for the preceding January - June period; by January 31 for the preceding July-December period.	5743.03	Wholesale dealers
Monthly	By the 15 th of each month for the preceding month.	5743.33	Persons with untaxed cigarettes
	By the last day of each month for the preceding month.	5743.52	Distributors or importers of tobacco products
Quarterly	By April 30, July 31, October 31, and January 31 for the previous quarter's liability.	5743.52	Distributors or importers of tobacco products

Method of Payment	Revised Code Section	Description of Payment
Cash payments	5743.03	Dealers are required to pay for stamps at the time of purchase unless they have been authorized to make credit purchases.
Credit payments	5743.05	The Tax Commissioner may authorize wholesale dealers to purchase stamps on credit payable within 30 days. Credit sales are allowed during July through April of each fiscal year.
Direct payments	5743.33	Direct payments are made primarily by manufacturers on gift samples of cigarettes, but also include assessments and deficiency payments, and voluntary payments by consumers.

Prior law had a similar prohibition, but it was based on the wholesale value of the cigarettes, not the physical quantity. The old law prohibited the possession or transfer of unstamped cigarettes with a wholesale value of \$60 or more. Also, the old law applied the prohibition against possessing unstamped cigarettes only to retail dealers. The new law imposes the penalty on "any person."

Persons Subject to Ohio Laws Governing Sale, Distribution, and Taxation of Cigarettes (R.C. 5743.01):

The law provided that "dealer" includes every person, other than a wholesale dealer, who is engaged in the business of selling cigarettes in this state. This definition applies to dealers located in Ohio, as well as dealers located outside of Ohio. The law now makes it clear that, for purposes of Ohio's cigarette laws, a "sale" of cigarettes includes transactions in interstate and foreign commerce.

Tax Stamps (R.C. 5743.031):

The law specified who may affix tax stamps and established rules governing the shipping of unstamped cigarettes through Ohio.

Monthly Reports to be Filed (R.C. 5743.072):

The law required that manufacturers and importers shipping cigarettes into or within Ohio must file monthly reports with the Tax Commissioner.

Seizure and Forfeiture of Cigarettes (R.C. 5743.08):

The law gave the Tax Commissioner authority to seize and take possession of any cigarettes that are held for sale or distribution in Ohio in violation of any of Ohio's cigarette laws. This expands the prior law, which gave the commissioner the authority to confiscate cigarettes for which the taxes had not been paid.

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The law now also gives the Tax Commissioner authority to either destroy or sell any cigarettes that have been confiscated. The destruction of confiscated cigarettes does not make the owners immune from possible fines or penalties.

Tax Commissioner's Inspection Powers (R.C. 5743.14):

The law authorized the Tax Commissioner to inspect facilities and records belonging to cigarette manufacturers, importers, wholesalers, and retailers, and requires that any inspection not conducted during normal business hours be conducted pursuant to a search warrant. The law also authorizes the commissioner or an agent of the commissioner to stop and inspect any vehicle where there is reasonable cause to believe that it is illegally transporting cigarettes.

Licenses to Traffic in Cigarettes (R.C. 5743.15):

The law required that cigarette manufacturers and importers obtain a license from the Tax Commissioner before trafficking in cigarettes in Ohio. The law also specifies additional information to be included in applications for licenses to traffic in cigarettes in Ohio.

Authorized Sales (R.C. 5743.20):

The law specified from whom and to whom manufacturers, importers, wholesalers, and retailers may buy and sell cigarettes. The bill provides that the identities of licensed distributors of tobacco products are subject to public disclosure. The Tax Commissioner must maintain a list of distributors and post the list on a Web site on the Internet. This list is to be updated periodically.

Authorized Recipients of Cigarettes (R.C. 2927.023 (A), (B), and (D)):

The law required that cigarettes coming into Ohio may only be transported or shipped to an "authorized recipient of tobacco products." These authorized recipients are: (1) a licensed cigarette wholesale dealer; (2) a licensed distributor of tobacco products; (3) an export warehouse proprietor; (4) an operator of a customs bonded warehouse; (5) an officer, employee, or agent of the federal or state government acting in the person's official capacity; (6) a department, agency, instrumentality, or political subdivision of the federal or state government; and (7) a person receiving consent for consumer shipment issued from the Tax Commissioner.

The law now makes it an offense punishable by a fine up to \$1,000 to transport, or cause to be shipped, cigarettes to a person other than an "authorized recipient of tobacco products."

Shipping Containers and Wrappings (R.C. 2927.023 (C) and (D)):

The law required that cigarettes be shipped in a way that identifies them clearly. This requirement is met if the cigarettes are shipped or transported in their original containers or wrappings or if the substitute containers or wrappings are marked with the word "cigarettes" in a plain and visible manner. Anyone who ships cigarettes in violation of this rule can be fined up to \$1,000 for each violation.

Consent for Consumer Shipment (R.C. 5743.71):

The law provided a means for any person who is not an "authorized recipient" to receive shipments of tobacco products that are not reasonably available at a retail location. The person may apply to the Tax Commissioner for a "consent for consumer shipment." The consent for consumer shipment must be obtained before any cigarettes or other tobacco products are purchased for shipment into Ohio.

Amended Substitute H.B. 95, 125th General Assembly (effective September 26, 2003). R.C. 5743.05, 5743.051:

Allowed wholesale cigarette dealers in good standing for five years to purchase stamps and meter impressions on credit without a bond. Payment by electronic funds transfer (EFT) is required.

R.C. 1346.04 – 1346.10 (effective July 1, 2003):

Provided that the office of the Ohio Attorney General list on their Web site the cigarette brands that may be sold in Ohio that the manufacturers have certified to be in compliance with the tobacco Master Settlement Agreement. Cigarette wholesalers and other tobacco products distributors must provide the Department of Taxation with an e-mail address so they can be notified of additions and deletions to the list.

Am. Sub. Senate Bill 242, 124th General Assembly (various effective dates). R.C. 1333.11, 2927.02 and 5743.03 (effective July 1, 2002):

(R.C. 1333.11) The wholesale cigarette minimum markup was increased from 2.5 percent to 3.5 percent and the retail cigarette minimum markup was increased from 6.0 percent to 8.0 percent. (R.C. 2927.02) This law prohibits the manufacture, sale, or distribution of packs of cigarettes containing fewer than 20 cigarettes or packages of roll-your-own tobacco containing less than six-tenths of one ounce. Cigarettes may not be sold in a smaller quantity than that placed in by the manufacturer, effective September 19, 2002. (R.C. 5743.03) Persons filing cigarette or other tobacco products tax returns are required to report the quantity of all cigarettes and roll-your-own cigarette tobacco sold in Ohio for each brand not covered by the tobacco Master Settlement Agreement. A penalty of up to \$250 per month may be imposed for not filing the report (replaces requirements in Rule 5703-15-19).

Recent Information Releases:

XT 2006-01 – "Excise and Motor Fuel Tax Division Information Release – Tobacco Requirements," July 2006.

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TABLE 1
 CUYAHOGA COUNTY CIGARETTE STAMP SALES,
 FISCAL YEARS 2001 - 2006

Fiscal Year	Gross Stamp Tax	Discount	Net Sales
2001	\$5,333,080	\$191,991	\$5,141,089
2002	4,894,766	129,619	4,765,147
2003	4,455,341	80,196	4,375,145
2004	4,350,822	78,315	4,272,507
2005	4,329,850	77,937	4,251,913
2006	3,721,103	66,980	3,654,123

Source: Treasurer of State

TABLE 2
 CIGARETTE TAX RECEIPTS,
 FISCAL YEARS 2001 - 2006

Fiscal Year	Gross Stamp Tax	Discount	Net Tax Collected
2001	\$272,598,343	\$9,813,540	\$262,784,803
2002	264,300,240	7,008,887	257,291,353
2003	548,764,842	9,877,767	538,887,075
2004	540,376,592	9,726,779	530,649,813
2005	561,492,445	10,106,864	551,385,581
2006	1,010,469,343	18,188,448	992,280,895

Source: Treasurer of State

TABLE 3
 OTHER TOBACCO PRODUCTS TAX RECEIPTS,
 FISCAL YEARS 2001 - 2006

Fiscal Year	Gross Stamp Tax	Discount	Net Sales
2001	\$23,963,624	\$578,178	\$23,385,446
2002	25,353,802	620,798	24,733,004
2003	26,382,986	643,520	25,739,466
2004	27,394,131	682,290	26,711,841
2005	28,370,283	672,118	27,698,165
2006	30,589,487	761,678	29,827,809

Source: Treasurer of State