Cigarette and Other Tobacco Products Tax

Ohio has levied an excise tax on cigarettes since 1931. The current rate, $1.25 per pack, was set by the Ohio General Assembly effective July 1, 2005. The tax is paid primarily by wholesale dealers through the purchase of stamps (tax indicia) that are affixed to packs of cigarettes. Individual consumers are responsible for paying the tax on cigarettes that are not taxed at the wholesale dealer level.

In fiscal year 2009, total state receipts from the sale of stamps amounted to over $883 million, an amount that does not include revenue from taxes on other tobacco products. This amount was credited to the state General Revenue Fund.

An excise tax on "other tobacco products" – including cigars, chewing tobacco, snuff, smoking tobacco and other tobacco products – was enacted effective Feb. 1, 1993. The 17 percent tax is levied on the wholesale price of other tobacco products manufactured in Ohio or imported into Ohio. In fiscal year 2009, total net receipts were over $41.7 million. This amount was credited to the state General Revenue Fund.

In 1986, the Ohio General Assembly authorized county governments to levy a permissive tax of up to 4.5 cents per

pack 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 voters approved such a levy effective Aug. 1, 1990, with revenue devoted to facilities used by the Cleveland Indians, Cavaliers and Browns. In 2006, the General Assembly authorized qualified counties to levy an additional permissive tax of up to 30 cents per pack for the purpose of funding a regional arts and cultural district. Voters in Cuyahoga County approved such an additional levy effective Feb. 1, 2007.

In 2008, the General Assembly prohibited new local taxes on cigarettes. The grandfathered Cuyahoga County levies, with a total combined rate of 34.5 cents per pack of 20 cigarettes, produced revenue of more than $21 million during FY 2009 for sports facilities and the regional arts and cultural district.

The Department of Taxation administers and collects both the state tax and the permissive taxes. For the permissive taxes, 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 percent of the collections for administrative expenses.

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

Taxpayer

(Ohio Revised Code 5743.01)

The cigarette tax is paid by:

- Wholesale dealers, meaning those who purchase cigarettes directly from manufacturers, producers, importers, or other wholesalers and then sell cigarettes to retailers for the purpose of resale.
- Persons, meaning individuals, companies, or any other person who have cigarettes in their possession on which the excise tax has not been paid.

The tax on other tobacco products is paid by:

- Distributors, meaning all manufacturers, wholesalers or retailers who are licensed as other tobacco product distributors.
- Any person who receives untaxed other tobacco products in this state on which the excise tax has not been paid.

Tax Base

The base of the taxes discussed in this chapter includes:

- the sale of cigarettes in Ohio (R.C. 5743.02, 5743.021).
- the use, consumption, or storage for consumption of cigarettes in Ohio (R.C. 5743.32).
- the receipt or import of other tobacco products for resale (R.C. 5743.51).

Rates

The state tax rate on the sales or use of cigarettes is $1.25 per pack of 20 or 6.25 cents per cigarette (R.C. 5743.02, 5743.32).

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

The combined additional cigarette tax rate in Cuyahoga County is 34.5 cents per pack. Of that amount, 4.5 cents per pack is levied in support of sports facilities (R.C. 5743.024) and 30 cents per pack funds a regional arts and cultural district.

Exemptions

Cigarettes sold in interstate or foreign commerce or to the U.S. government or its agencies are exempt (R.C. 5743.05).

Special Provisions

Discounts (R.C. 5743.05, 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.

Monthly reports (R.C. 5743.072, 5743.15 and 5743.66)

Manufacturers, importers and brokers shipping cigarettes and other tobacco products into Ohio are required to register and file monthly reports with the Tax Commissioner.

Authorized sales (R.C. 5743.20)

The identities of all entities authorized to make cigarette and other tobacco products sales – including registered manufacturers, importers and brokers of cigarettes and other tobacco products, as well as all licensed cigarette wholesalers and distributors of other tobacco products – are subject to public disclosure. As required by law, the Tax Commissioner maintains this list at **tax.Ohio.gov.**

Unstamped cigarette prohibitions (R.C. 5743.10, 5743.111, and 5743.112)

It is a crime for any person to possess, transport, distribute or otherwise trade more than 1,200 unstamped cigarettes (meaning, cigarettes in packages that do not display the stamp indicating that the tax has been paid) without the consent of the Tax Commissioner. Any person in possession of less than 1,200 unstamped cigarettes is still liable for the excise tax on these cigarettes.

Authorized recipients of cigarettes (R.C. 2927.023)

All cigarettes coming into Ohio can only be transported or shipped to an "authorized recipient of tobacco products," such as a licensed cigarette dealer. All other exchanges of cigarettes must be made in "face-to-face" transactions. It is an offense, punishable by a fine of up to $1,000, to transport, or cause to be shipped, cigarettes to a person other than an "authorized recipient of tobacco products."

Cigarettes legal for sale in Ohio (R.C. 1346.04 – 1346.10)

The office of the Ohio Attorney General maintains a list, on its Web site, of all cigarette brands that may be sold in Ohio. This list represents brands that are produced by manufacturers that are certified to be in compliance with the tobacco Master Settlement Agreement. It is illegal to sell in Ohio any brand of cigarette not on this list.

Master Settlement Agreement reports (R.C. 5743.03)

Persons who pay the cigarette or other tobacco products excise taxes are required to report the quantity of all cigarettes and roll-your-own cigarette tobacco sold in Ohio for each brand not covered by a manufacturer participating in the tobacco Master Settlement Agreement. A penalty of up to $250 per month may be imposed for failing to file this report.

Filing and Payment Dates

Method of tax payment

All cigarette wholesale dealers are required to purchase stamps from the Treasurer of State. Dealers are required to pay for stamps at the time of purchase unless they have been authorized to make purchases on credit. The Tax Commissioner may authorize wholesale dealers to purchase stamps on credit, payable within 30 days. Credit sales are allowed only during the months of July through April of each fiscal year.

Any person in possession of unstamped cigarettes (for example, a consumer who makes an out-of-state purchase), is required to pay the tax by direct payment to the Department of Taxation.

Filing Dates

Wholesale dealers file semi-annual returns on July 31 for the January to June period and on Jan. 31 for the preceding July through December period. The returns are required even though such dealers may have paid all their tax through the purchase of stamps. Any payment due on cigarettes not previously taxed is included (R.C. 5743.03).

Persons with untaxed cigarettes file monthly by the 15th day of each month for the preceding month (R.C. 5743.33).

Distributors or importers of other tobacco products file monthly reports by the last day of each month for the preceding month. Distributors with minimal sales activity may, upon authorization by the Tax Commissioner, file quarterly returns by April 30, July 31, Oct. 31 and Jan. 31 for the previous quarter's liability (R.C. 5743.52).

Disposition of Revenue

Revenue from the state cigarette and other tobacco products taxes are deposited in the state General Revenue Fund.

Revenue from Cuyahoga County's cigarette tax levies are distributed to the county, less a 2 percent administrative draw that is retained for the state Excise Tax Administrative Fund.

Administration

The state cigarette tax, the county cigarette tax and the tax on other tobacco products are administered by the Tax Commissioner.

Ohio Revised Code Citations

Chapter 5743.

Recent Legislation

House Bill 1, 128th General Assembly

Change to license fees – The bill amended R.C. 5743.15 and 5743.61 effective Jan. 1, 2010, to raise the annual license fees for cigarette wholesale dealers, tobacco products distributors, and cigarette retailers. License fees for cigarette wholesalers and tobacco distributors increased to $1,000 from $200 and $100, respectively. The retailer license fee increased to $125 for each place of business, from $30 for the first five places and $25 for each additional place.

This bill also changed the distribution of revenue from license fees to the Cigarette Tax Enforcement Fund so that the fund receives all of the wholesaler revenue and 60 percent of the retailer revenue. Of the remaining revenue from retailer license fees, 30 percent is distributed to the political subdivision where the business is located and 10 percent is distributed to the county.

Table 1

Cuyahoga County Cigarette Tax Receipts: Fiscal Years 2005 - 2009			
Fiscal Year	**Gross Stamp Tax**	**Discount**	**Net Tax Collected**
2005	$4,329,850	$77,937	$4,251,913
2006	3,721,103	66,980	3,654,123
2007	12,167,370	219,013	11,948,357
2008	23,451,611	422,129	23,029,482
2009	22,034,003	396,612	21,644,404

Source: Treasurer of State.

Table 2

Cigarette Tax Receipts: Fiscal Years 2005 - 2009			
Fiscal Year	**Gross Stamp Tax**	**Discount**	**Net Tax Collected**
2005	$561,492,445	$10,106,864	$551,385,581
2006	1,010,469,343	18,188,448	992,280,895
2007	972,740,773	17,509,334	955,231,439
2008	932,281,345	16,781,064	915,500,281
2009	898,908,375	16,180,351	883,014,121

Source: Treasurer of State.

Table 3

Other Tobacco Products Tax Receipts: Fiscal Years 2005 - 2009			
Fiscal Year	**Gross Tax**	**Discount**	**Net Tax Collected**
2005	$28,370,283	$672,118	$27,698,165
2006	30,589,487	761,678	29,827,809
2007	31,786,206	782,286	31,003,920
2008	38,515,634	948,501	37,567,133
2009	42,807,378	1,074,863	41,732,515

Source: State accounting systems (OAKS), Treasurer of State.