CIGARETTE AND OTHER TOBACCO PRODUCTS TAXES

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The excise tax on cigarettes was first levied in 1931. The tax rate increased from its original $0.01 per pack to $0.15 per pack in 1971. The rate was reduced to $0.14 in 1981 as it became subject to the sales and use tax. The rate was increased to $0.24 per pack in 1993 and was increased to $0.55 per pack in 2002 and to $1.25 in 2005. In 2015, the current tax rate of $1.60 (80 mills per cigarette, translating into $0.08 per cigarette) per pack became effective.

Other tobacco products include: cigars, chewing tobacco, rolling tobacco, smoking tobacco, snuff, little cigars, premium cigars, and similar tobacco products. The excise tax on other tobacco products was levied beginning in 1993. The current rate is 17.0 percent on the wholesale price. However, the tax rate for little cigars is 37.0 percent of wholesale price and for premium cigars it is a maximum amount of $0.50 plus an inflationary factor set by ODT each year. For FY 2019, that rate for premium cigars is $0.51 per cigar.

Am. Sub. H.B. 166 (FY 2022-FY 2023 Biennial Operating Budget) created a tax on vapor products. The tax became effective October 1, 2019 and is based on volume and is given below.

**Taxpayer**

The cigarette tax is paid by wholesale dealers, meaning those who purchase cigarettes directly from manufacturers, producers, importers, or other wholesalers for stamping and then sell cigarettes to retailers for the purpose of resale. The Other Tobacco Tax (OTP) is paid by distributors, meaning all manufacturers, wholesalers, and retailers who are licensed as OTP distributors. An excise tax is levied on the use, consumption, or storage for consumption of cigarettes and OTP by consumers in Ohio if the tax has not already been paid.

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41 “Little cigars” are defined in R.C. 5743.01(P) as “(A)ny roll for smoking, other than cigarettes, made wholly or in part of tobacco that uses an integrated cellulose acetate filter and is wrapped in any substance containing tobacco, other than natural leaf tobacco.” “Premium cigars,” defined in R.C. 5743.01(Q), are defined as “(A)ny roll for smoking, other than cigarettes or little cigars,” that is made wholly or in part of tobacco and that has all of the following characteristics: binder and wrapper consists entirely of leaf tobacco, roll contains no filter or tip, nor any mouthpiece consisting of a material other than tobacco, and the weight of one thousand such rolls is at least six pounds.”

42 “Vapor products” are defined in R.C. 5743.01(T) as liquid solution or other substance that (1) contains nicotine and (2) is depleted as it is used in an electronic smoking product. “Vapor product” does not include any solution or substance regulated as a drug, device, or combination product under Chapter V of the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. 301, et seq.
Tax Base

The cigarette tax applies to the sale, use, consumption, or storage of cigarettes in Ohio. It is a tax per cigarette. The excise tax on other tobacco products applies to the receipt or import of other tobacco products for resale. While the tax on most other tobacco products is based on wholesale price, the tax for premium cigars is based on a maximum amount per premium cigar. The tax base for vapor is volume. “Vapor volume” is defined as one-tenth of one milliliter if the vapor product is sold in liquid form or one-tenth of one gram of vapor product if it is sold in something other than liquid form.

Tax Rate

The cigarette tax rate is $0.08 per cigarette (translating into $1.60 per package of 20 cigarettes). The other tobacco products tax is 17.0 percent of the wholesale price, except for little cigars, which is taxed at 37.0 percent, and premium cigars are taxed at a maximum of $0.50 per premium cigar, indexed for inflation. Currently, for FY 2019, the rate for premium cigars is $0.51. For vapor products, the tax rate is $0.01 per one-tenth of one milliliter if the vapor product is sold in liquid form or $0.01 per one-tenth of one gram of vapor product if it is sold in something other than liquid form.

Significant Changes Enacted by the 133rd General Assembly

Am. Sub. H.B. 166 created a separate structure for vapor products. A “vapor product” is any liquid solution or other substance that (a) contains nicotine, and (b) is depleted as it is used in an “electronic smoking product.” It does not include any solution or substance that is not regulated as a drug, device, or combination product under Chapter V of the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. 301, et seq.

An “electronic smoking product” is any non-combustible product other than a cigarette or tobacco product, that (a) contains or is designed to use vapor products; and (b) employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from the vapor product. It does not include a product regulated as a drug, device, or combination product under Chapter V of the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. 301, et seq. It includes, but is not limited to:

1. Electronic Cigarettes;
2. Electronic Cigars;
3. Electronic Cigarillos;
4. Electronic Hookahs;
5. Electronic Pipes;
6. Vaporizers, or;
7. Other similar products and devices.

The tax is levied on the sale of vapor products the time an Ohio distributor receives untaxed vapor products or whenever an out-of-state distributor sells vapor products to an Ohio purchaser at a rate of $0.01 per one-tenth per milliliter or one-tenth per gram, dependent upon if the product is sold in a liquid or a non-liquid form. The excise tax on vapor products does not apply to the electronic smoking products, but only on the defined vapor products as defined above. Additionally, if a tax-paid vapor product is repackaged, reconstituted, diluted, or reprocessed, the tax does not apply to a subsequent sale of the vapor product. Only secondary manufacturers that are licensed vapor distributors are permitted to do so.43

The tax is imposed on (a) distributors who bring in or cause vapor products to be brought into Ohio for distribution within Ohio; (b) out-of-state distributors who sell vapor products to Ohio wholesale or retail dealers for resale; (c) sellers of vapor products with substantial nexus; and (d) the storage, use, or other consumption of vapor products if the tax has not been paid by the vapor distributor or seller. Distributors include any person that:

1. Sells vapor product to a retail dealer;
2. Is a retail dealer who receives untaxed vapor products on which the tax has not or will not be paid by another distributor;
3. Is an Ohio wholesale dealer who receives vapor products from a manufacturer or receives untaxed vapor products, or;
4. Is an out-of-state wholesale dealer that sells vapor products to an Ohio wholesale dealer.

A “retail dealer” includes any person in Ohio engaged in the business of selling vapor products to ultimate consumers in Ohio, regardless of the quantity, amount, or number of sales. A “wholesale dealer” includes persons who are engaged in the business of selling vapor products to others for the purpose of resale. A “secondary manufacturer” is any person in Ohio engaged in the business of repackaging, reconstituting, diluting, or reprocessing vapor products for resale to consumers. A “seller” includes any person located outside Ohio engaged in the business of selling vapor products to consumers for storage, use or other consumption in Ohio.

**Cigarette and Other Tobacco Products Tax Expenditure Estimates**

The estimates shown below reflect the estimated revenue foregone by the GRF from each tax expenditure and are based primarily on tax returns filed with ODT.

43 This is to avoid the “pyramiding” affect as discussed in the Sales & Use Tax Section.
A. Credits

8.01 Discount for cigarette tax stamps

Cigarette excise taxpayers are eligible to receive a discount when purchasing cigarette excise tax stamps or meter impressions as a commission for affixing and cancelling the stamps or meter impressions. The value of this discount shall not be less than 1.8 percent or more than 10.0 percent of the face value of the tax stamps and meter impressions, the exact rate set by rule.\textsuperscript{44} Cigarette excise taxpayers shall not receive this discount on payments made when filing a monthly or semi-monthly return, but when they purchase the stamps.

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Data Source Code: B

8.02 Discount for timely payment of other tobacco products excise tax
_r.C. 5743.52(A); originally enacted 1934, revised 2000, 2014, 2019._

Wholesalers and retailers of other tobacco products and vapor products are eligible for a 2.5 percent discount for the timely payment of their other tobacco product excise tax liability.

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\textsuperscript{44} Currently, the rate is 1.8 percent.