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Bill Analysis
Legislative Service Commission

S.B. 98

123rd General Assembly
(As Introduced)

Sens. Nein, Gardner, Latta, White

BILL SUMMARY

- Establishes limitations on affixing state cigarette tax stamps to cigarette packages when they are intended to be exported to foreign markets.
- Declares an emergency.

CONTENT AND OPERATION

Overview of state and federal cigarette taxes

Ohio levies an excise tax on sales of cigarettes at the rate of 12 mills on each cigarette (24¢ per package of 20 cigarettes). The tax is paid by the purchase from the Tax Commissioner of tax indicia in the form of stamps or meter impressions (stamps, for the purpose of this analysis). The stamps are affixed to each cigarette package and are prima facie evidence that the tax has been paid. Tax stamps generally are affixed by the wholesale dealer and canceled in a particular manner (R.C. §§ 5743.02 and 5743.03, not in the bill).

The federal government also levies a tax on tobacco products, including cigarettes, at the rate of \$19.50 per thousand for cigarettes weighing no more than three pounds per thousand, or \$40.95 per thousand for cigarettes weighing more than three pounds per thousand (26 U.S.C.A. 5701). A cigarette manufacturer or importer is liable for the tax, but may transfer cigarettes, without payment of the tax, to the bonded premises of another manufacturer or export warehouse proprietor for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States (26 U.S.C.A. 5703 and 5704). Where the cigarettes are being shipped in this manner, federal regulations require that every package have a label affixed to it with the words "Tax-exempt. For use outside U.S." or "U.S. Tax-exempt. For use outside U.S." except where a different stamp, sticker, or notice required by a foreign country or possession of the United States

that identifies the country or possession is imprinted or affixed (27 C.F.R. 290.185).

Limitations on affixing state tax stamps

(sec. 5743.21)

The bill establishes additional limitations on affixing state tax stamps where the cigarettes are being exported and are exempt from federal taxation. These limitations are aimed at preventing the smuggling of cigarettes into the state or the defacing of federal tax-exempt labels where the cigarettes were intended for foreign markets. The bill prohibits a person from affixing a state cigarette tax stamp to any package that:

(1) Bears any label or notice prescribed by the United States to identify cigarettes exempt from federal taxation under federal law because the cigarettes are being removed from the factory or export warehouse for exportation, including any tax-exempt notice or label described in the federal regulation discussed above;

(2) Is not labeled in conformity with the Federal Cigarette Labeling and Advertising Act, which requires the Surgeon General's warning of the health hazards of cigarette smoking on cigarette packages, or any other federal requirement for the placement of labels, warnings, or other information applicable to packages of cigarettes intended for domestic consumption;

(3) Has been altered by anyone other than the manufacturer or a person authorized by the manufacturer, including by the placement of a sticker to cover information on or add information to the package;

(4) Has been imported or brought into the United States after January 1, 2000, in violation of the federal law that regulates how cigarettes that were previously exported from the United States may be imported or brought back into the United States, or regulations adopted under that law.

The bill further prohibits a person from transferring to any person any unused cigarette tax stamp, except as specifically permitted under the state cigarette tax law.

Whenever the Tax Commissioner discovers any packages to which stamps have been affixed in violation of the bill, the Commissioner is required to seize the packages, which must be forfeited to the state, and order their destruction.

Prohibitions

(secs. 5743.11 and 5743.111)

Existing state law provides that no person may possess packages of cigarettes when the wholesale value exceeds \$60, or sell cigarettes, if state tax stamps are not affixed to the packages.

The bill provides that these prohibitions extend to cigarettes with tax stamps affixed in violation of the new limitation law discussed immediately above, or where stamps have been affixed in violation of the state cigarette tax law.

License revocation

(secs. 5743.17 and 5743.18)

The bill extends the existing wholesale or retail cigarette license revocation procedure, and the Tax Commissioner's right to revoke a license, for violation of the new limitation law.

Penalties

(sec. 5743.99)

Whoever violates the bill's new limitation law is guilty of a felony of the second degree. If the offender has been previously convicted of an offense under that law, the violation is a felony of the first degree.

The bill also increases the penalty for selling cigarettes without a tax stamp on the package from a first degree misdemeanor to a fourth degree felony.

Effective date

(Section 3)

The bill takes effect immediately pursuant to an emergency clause. The reason given for the emergency is that Ohio's legitimate and taxpaying cigarette wholesalers and retailers are being threatened by unfair competition from gray-market dealers, and Ohio's tax collections and payments under the tobacco industry settlement are being threatened with losses to the gray market.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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