

ENGROSSED HOUSE
BILL NO. 1979

BY: ISAAC, HUDSON, MAXEY and
MADDOX (Jim) of the
HOUSE

and

CULLISON of the SENATE

(REVENUE AND TAXATION - AMENDING 68 O.S.

1991, SECTIONS 301 AND 309 - CIGARETTE

STAMP EXCISE TAX -

EFFECTIVE DATE)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 301, is
amended to read as follows:

Section 301. For purposes of this article:

(a) The term "cigarette" is defined to mean and include all
rolled tobacco or any substitute therefor, wrapped in paper or any
substitute therefor and weighing not to exceed three (3) pounds per
thousand cigarettes.

(b) The term "person" is defined to mean and include any
individual, company, partnership, joint venture, joint agreement,
association (mutual or otherwise), corporation, estate, trust,
business trust receiver, or trustee appointed by any state or
federal court, or otherwise, syndicate, or any political subdivision
of the state or combination acting as a unit, in the plural or
singular number. In the case of an Indian tribe, the term "person"

shall also mean any tribal officer or designee, any tribal licensee or any tribal employee.

(c) The term "wholesaler" and/or "jobber" is defined to mean and include a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve; that purchases cigarettes directly from the manufacturer; that at least seventy-five percent (75%) of whose gross sales are made at wholesale; that handles goods in wholesale quantities and sells through salesmen, advertising and/or sales promotion devices; that carries at all times at his or its principal place of business a representative stock of cigarettes for sale, and that comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

In addition to the foregoing, and irrespective of the percentage or type of sales, the term "wholesaler" shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses.

(d) The term "retailer" is defined to be: (First) a person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail; or, (Second) a person, not coming within the classification of wholesaler and/or jobber as herein defined, having possession of more than one thousand cigarettes.

(e) The term "consumer" is defined to be a person who receives or who in any way comes into possession of cigarettes for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter or exchange.

(f) The term "Tax Commission" is defined to mean the Oklahoma Tax Commission.

(g) The term "sale" and/or "sales" is hereby defined to be and declared to include sales, barter, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another, and is also declared to be the use or consumption in this state in the first instance of cigarettes received from without the state or of any other cigarettes upon which the tax has not been paid. The term "first sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce or the first use or consumption of cigarettes within this state.

(h) The term "stamp" as herein used shall mean the stamp or stamps by use of which the tax levied hereunder is paid.

(i) The term "drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(j) The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the state to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigarettes to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on said cigarettes.

(k) The term "vending machine" shall mean and include any coin operating machine, contrivance, or device, by means of which cigarettes are sold or dispensed in their original container.

(l) The term "use" means and includes the exercise of any right or power over cigarettes incident to the ownership or possession

thereof, except that it shall not include the sale of cigarettes in the regular course of business.

(m) The term "tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe within the Indian country of that tribe or which is duly licensed by such tribe pursuant to tribal laws or ordinances to conduct business located within the Indian country of that tribe.

(n) The term "Indian smokeshop" means a tribally owned or licensed store which principally sells cigarettes.

(o) The term "federally recognized Indian tribe" means those Indian tribal entities which are recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States.

(p) The term "Indian country" means (1) land held in trust by the United States of America for the benefit of a federally recognized Indian tribe, by deed filed of record in the office of the county clerk of the county where the land is located, (2) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (3) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (4) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(q) The term "member of the tribe" or "tribal members" means a person who is duly enrolled within the membership of the federally recognized Indian tribe which owns or licenses the store.

Membership must be evidenced by a tribal identification card or a Certificate of Degree of Indian Blood card issued by the United

States Bureau of Indian Affairs, which states the name, tribal affiliation and enrolled number of the tribal member and entitles the member to the rights and privileges of membership in that tribe.

(r) The term "nonmember of the tribe" or "nontribal member" means, with respect to a particular Indian tribe, any person who is not a duly enrolled member of that tribe, and shall include any person who is a member of another Indian tribe but not that tribe.

(s) The term "unstamped cigarettes" means packages of cigarettes which bear no evidence of a state tax stamp or a special state tax-exempt stamp.

(t) The term "contraband cigarettes" means unstamped cigarettes in the possession, custody or control of any person, for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of this article.

(u) The term "stamped cigarettes" means packages of cigarettes which bear a state tax stamp or a special state tax-exempt stamp.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 309, is amended to read as follows:

Section 309. (a) The right of a common carrier in this state to carry unstamped cigarettes, as defined in this article, shall not be affected by this article, except that common carriers delivering unstamped cigarettes to a tribally owned or licensed store, as defined in this article, or to any person in this state for the purpose of selling or consuming unstamped cigarettes in this state in violation of this article will be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 305 of this title. However, should any common carrier sell cigarettes to its passengers while being carried in this state, the sale shall be subject to the stamp tax and other provisions of this article, and to the rules and regulations of the Tax Commission.

(b) Common carriers transporting cigarettes to a point within the state, or a bonded warehouseman or bailee having possession of cigarettes, are required, under this article and the rules and regulations to be prescribed by the Commission, to transmit to the Commission a statement of such consignment of cigarettes, showing the date, point of origin, point of delivery, and to whom delivered, and such other information as the Commission may require. All common carriers, bailees or warehousemen shall permit an examination by the Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of cigarettes. Any person who fails or refuses to transmit to the Commission the statements above provided for, or whoever refuses to permit the examination of the records by the Commission, shall be guilty of a misdemeanor.

SECTION 3. This act shall become effective July 1, 1992.

Passed the House of Representatives the 2nd day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate