

ENROLLED SENATE
BILL NO. 759

BY: CULLISON, FISHER and
HENDRICK of the SENATE

and

JOHNSON (Glen) of the HOUSE

AN ACT RELATING TO REVENUE AND TAXATION;
AMENDING 68 O.S. 1991, SECTIONS 301, 309, 321,
401, 403.1, 413, 419 AND 1355 (SECTION 1,
CHAPTER 337, O.S.L. 1991), WHICH RELATE TO
CIGARETTE STAMP TAXES, TOBACCO PRODUCTS TAXES
AND SALES TAXES; SPECIFYING LEGISLATIVE FINDINGS
AND INTENT; AUTHORIZING GOVERNOR TO ENTER INTO
CERTAIN COMPACTS AND SPECIFYING CONDITIONS
THEREOF; LIMITING CERTAIN TERM; PROVIDING THAT
CERTAIN PROVISIONS NOT APPLY TO CERTAIN INDIAN
TRIBES OR NATIONS OR THEIR LICENSEES; DEFINING
TERMS; LEVYING CERTAIN TAX ON SALE OF CIGARETTES
AND TOBACCO PRODUCTS AT TRIBALLY OWNED OR
LICENSED STORE; PROVIDING PROCEDURES FOR CERTAIN
REFUNDS; REQUIRING TAX COMMISSION TO PROMULGATE
CERTAIN RULES AND REGULATIONS; REQUIRING CERTAIN
STAMP BE AFFIXED; SPECIFYING UNLAWFUL ACTS AND
PROVIDING PENALTIES THEREFOR; AUTHORIZING SALES
BY CERTAIN PERSONS; REQUIRING TRIBALLY OWNED OR
LICENSED STORE TO DO BUSINESS ONLY WITH STAMPED
CIGARETTES; PROVIDING THAT CERTAIN CIGARETTES
AND TOBACCO PRODUCTS BE SUBJECT TO SEIZURE AND
FORFEITURE; SPECIFYING CERTAIN AUTHORITY OF
PEACE OFFICERS; PROVIDING FOR APPORTIONMENT OF
CERTAIN REVENUES; MODIFYING DEFINITIONS;
PROVIDING THAT CERTAIN COMMON CARRIERS BE
SUBJECT TO SEIZURE AND FORFEITURE OF INVENTORY;
MODIFYING SALES WHICH ARE EXEMPT FROM CERTAIN
TAXES; AUTHORIZING TAX COMMISSION TO ESTABLISH
CERTAIN PROCEDURES; MODIFYING CERTAIN PROVISIONS
IN THE EVENT OF CERTAIN DETERMINATION BY TAX
COMMISSION; REPEALING 68 O.S. 1991, SECTION 1355
(SECTION 19, CHAPTER 235, O.S.L. 1991), WHICH IS
A DUPLICATE SECTION AND WHICH RELATES TO SALES
TAXES; PROVIDING FOR CODIFICATION; PROVIDING AN
EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 346 of Title 68, unless there is
created a duplication in numbering, reads as follows:

A. The Legislature finds that:

1. Federal law recognizes the right of Indian tribes and nations to engage in sales of cigarettes and tobacco products to their members free of state taxation;

2. The doctrine of tribal sovereign immunity prohibits the State of Oklahoma from bringing a lawsuit against an Indian tribe or nation to compel the tribe or nation to collect state taxes on sales made in Indian country to either members or nonmembers of the tribe or nation without a waiver of immunity by the tribe or nation or congressional abrogation of the doctrine; and

3. The Supreme Court of the United States, in "Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma", suggested that a state may provide other methods of collection of state taxes on sales of cigarettes and tobacco products made by Indian tribes or nations to persons who are not members of the tribe or nation, such as entering into mutually satisfactory agreements with Indian tribes or nations.

B. It is the intent of the Legislature to establish a system of state taxation of sales of cigarettes and tobacco products made by federally recognized Indian tribes or nations or their licensees, other than such tribes or nations which have entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of this section, under which the rate of payments in lieu of state taxes is less than the rate of state taxes on other sales of cigarettes and tobacco products in order to allow such tribes or nations or their licensees to make sales of cigarettes and tobacco products to tribal members free of state taxation.

C. The Governor is authorized by this enactment to enter into cigarette and tobacco products tax compacts on behalf of the State of Oklahoma with the federally recognized Indian tribes or nations of this state. The compacts shall set forth the terms of agreement between the sovereign parties regulating sale of cigarettes and tobacco products by the tribes or nations or their licensees in Indian country. All sales in Indian country by those compacting tribes or nations and their licensees shall be exempt from the taxes levied pursuant to the provisions of Section 301 et seq., Section 401 et seq. and Section 1350 et seq. of Title 68 of the Oklahoma Statutes and Sections 4 and 9 of this act, subject to the following terms and conditions:

1. A payment in lieu of state sales and excise taxes, as provided for in said compact, shall be paid to the State of Oklahoma by the tribes or nations, their licensees or their wholesalers upon purchase of all cigarettes and tobacco products intended for resale in Indian country by the tribes or nations or their licensees;

2. All cigarettes and tobacco products sold or held for sale to the public, without distinction between member and nonmember sales, shall bear a payment in lieu of tax stamp evidencing that payment in lieu of state taxes has been paid to the state. State and tribal officials may provide for use of a single joint stamp evidencing payment of both the payment in lieu of tax as specified in a compact pursuant to the provisions of this section and any tax levied by a tribe or nation;

3. Records of all sales of cigarettes and tobacco products to the tribes or nations and their licensees shall be kept by all wholesalers doing business in the State of Oklahoma and shall be made available for inspection by state officials on a timely basis. Copies of all invoices of wholesale sales of cigarettes or tobacco products to tribally owned or licensed retail stores shall be forwarded by the wholesaler to the Oklahoma Tax Commission; and

4. For purposes of a compact pursuant to the provisions of this section, the term "tribal licensee" shall only extend to:

- a. members of the tribe or nation, and
- b. business entities in which the tribe or nation or tribal members have a majority ownership interest.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 347 of Title 68, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 3 through 6 of this act shall not apply to a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act or to a licensee of such a tribe or nation during the period that such compact is effective.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 348 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in Sections 3 through 6 of this act:

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

2. "Federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States;

3. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,
- b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation,
- c. 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
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same;

4. "Member of the tribe" or "tribal member" means a person who is duly enrolled within the membership of the federally recognized Indian tribe or nation which owns or licenses the store;

5. "Nonmember of the tribe" or "nontribal member" means, with respect to a particular Indian tribe or nation, any person who is not a duly enrolled member of that tribe or nation, and shall include any person who is a member of another Indian tribe or nation but not a member of that tribe or nation;

6. "Unstamped cigarettes" means packages of cigarettes which bear no evidence of a tax stamp required by state law;

7. "Contraband cigarettes" means unstamped cigarettes which are required by the provisions of Sections 3 through 6 of this act or Section 301 et seq. of Title 68 of the Oklahoma Statutes to bear stamps and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 304 of Title 68 of the Oklahoma Statutes; provided, contraband cigarettes shall not include unstamped cigarettes sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Section 321 through 324 of Title 68 of the Oklahoma Statutes;

8. "Stamped cigarettes" means packages of cigarettes which bear a tax stamp required by state law;

9. "Commission" means the Oklahoma Tax Commission; and

10. "Person" shall include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, trust, estate, business trust receiver or trustee appointed by any state or federal court, syndicates or any combination acting as a unit, in the plural or singular number.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 349 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby levied upon the sale of cigarettes at a tribally owned or licensed store a tax in the amount of seventy-five percent (75%) of the cigarette excise taxes imposed by Section 301 et seq. of Title 68 of the Oklahoma Statutes, which tax shall be in lieu of all sales and excise taxes on such cigarettes.

B. A federally recognized Indian tribe or nation may receive a refund for a portion of the tax imposed pursuant to the provisions of this section if it can provide sufficient documentation that sales of cigarettes to its tribal members exceed twenty-five percent (25%) of its total sales of cigarettes. The amount of the refund shall be the amount of tax paid which is attributable to sales of cigarettes made to tribal members which is in excess of twenty-five percent (25%) of the tribe's or nation's total sales of cigarettes. Refunds shall be paid quarterly. The Tax Commission shall promulgate rules and regulations to administer the provisions of this subsection.

C. All cigarettes which are sold or held for sale at a tribally owned or licensed store shall have affixed thereto a stamp or stamps evidencing payment of the in lieu tax required by subsection A of this section.

D. It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute or purchase contraband cigarettes. Any person who engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband cigarettes shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and shall be punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by a term of imprisonment in the State Penitentiary for not more than two (2) years, or by both such fine and imprisonment.

E. Any person who knowingly engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband cigarettes shall be subject to the forfeiture of property as is provided by Section 305 of Title 68 of the Oklahoma Statutes and assessment of penalty as provided thereby and assessment for any delinquent taxes found to be owing.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 350 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Every wholesaler, jobber or warehouseman doing business within this state and required to secure a license as provided in Section 304 of Title 68 of the Oklahoma Statutes may sell cigarettes to tribally owned or licensed stores in this state. It shall be the duty of the wholesaler, jobber or warehouseman to affix the tax stamp required by Section 4 of this act to cigarette inventory sold to a tribally owned or licensed store.

B. Tribally owned or licensed stores may only purchase, receive, stock, possess, sell or distribute stamped cigarettes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 351 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All unstamped cigarettes sold or shipped to tribally owned or licensed stores in this state by wholesalers, jobbers or warehousemen not licensed by this state pursuant to the provisions of Section 304 of Title 68 of the Oklahoma Statutes for the purpose of selling or consuming unstamped cigarettes in this state in violation of this act shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 305 of Title 68 of the Oklahoma Statutes.

B. Any peace officer of this state, including but not limited to officers of the Department of Public Safety or the Oklahoma State Bureau of Investigation, any sheriff, any salaried deputy sheriff or any municipal police officer is authorized to stop any vehicle upon any road or highway of this state in order to inspect the bill of lading or to take such action as may be necessary to determine if unstamped cigarettes are being sold or shipped in violation of the provisions of this section. Such officers shall also have the duty to cooperate with the Oklahoma Tax Commission to enforce the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 352 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any revenue from a payment in lieu of excise taxes on cigarettes pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 1 of this act shall be deposited to the General Revenue Fund.

B. Any revenue from payment of the tax imposed by Section 4 of this act shall be deposited to the General Revenue Fund.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 424 of Title 68, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 9 through 12 of this act shall not apply to a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act or to a licensee of such a tribe or nation during the period that such compact is effective.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 425 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in Sections 9 through 13 of this act:

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of

Oklahoma pursuant to the provisions of subsection C of Section 1 of this act during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

2. "Federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States;

3. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,
- b. 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,
- c. 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
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same;

4. "Member of the tribe" or "tribal member" means a person who is duly enrolled within the membership of the federally recognized Indian tribe or nation which owns or licenses the store;

5. "Nonmember of the tribe or nation" or "nontribal member" means, with respect to a particular Indian tribe or nation, any person who is not a duly enrolled member of that tribe or nation, and shall include any person who is a member of another Indian tribe or nation but not a member of that tribe or nation;

6. "Untaxed tobacco products" means packages of tobacco products upon which taxes required by state law have not been paid;

7. "Contraband tobacco products" means untaxed tobacco products for which taxes are required to be paid pursuant to the provisions of Sections 9 through 12 of this act or Section 401 et seq. of Title 68 of the Oklahoma Statutes and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 415 of Title 68 of the Oklahoma Statutes; provided, contraband tobacco products shall not include untaxed tobacco products sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 419 through 421 of Title 68 of the Oklahoma Statutes;

8. "Taxed tobacco products" means packages of tobacco products upon which taxes required by law have been paid;

9. "Commission" means the Oklahoma Tax Commission; and

10. "Person" shall include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, trust, estate, business trust receiver or trustee appointed by any state or federal court, syndicates or any combination acting as a unit, in the plural or singular number.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 426 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby levied upon the sale of tobacco products at a tribally owned or licensed store a tax in the amount of seventy-five percent (75%) of the tobacco products excise taxes imposed by Section 401 et seq. of Title 68 of the Oklahoma Statutes, which tax shall be in lieu of all sales and excise taxes on said tobacco products.

B. A federally recognized Indian tribe or nation may receive a refund for a portion of the tax imposed pursuant to the provisions of this section if it can provide sufficient documentation that sales of tobacco products to its tribal members exceed twenty-five percent (25%) of its total sales of tobacco products. The amount of the refund shall be the amount of tax paid which is attributable to sales of tobacco products made to tribal members which is in excess of twenty-five percent (25%) of the tribe's or nation's total sales of tobacco products. Refunds shall be paid quarterly. The Tax Commission shall promulgate rules and regulations to administer the provisions of this subsection.

C. It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute or purchase contraband tobacco products. Any person who engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband tobacco products shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and shall be punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by a term of imprisonment in the State Penitentiary for not more than two (2) years, or by both such fine and imprisonment.

D. Any person who knowingly engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband tobacco products shall be subject to the forfeiture of property as is provided by Section 417 of Title 68 of the Oklahoma Statutes and assessment of penalty as provided thereby and assessment for any delinquent taxes found to be owing.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 427 of Title 68, unless there is created a duplication in numbering, reads as follows:

Every wholesaler, jobber or warehouseman doing business within this state and required to secure a license as provided in Section 415 of Title 68 of the Oklahoma Statutes may sell tobacco products to tribally owned or licensed stores in this state. It shall be the duty of the wholesaler, jobber or warehouseman to collect, report and remit the tax imposed by Section 10 of this act on the tobacco products inventory sold to a tribally owned or licensed store.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 428 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All untaxed tobacco products sold or shipped to tribally owned or licensed stores in this state by wholesalers, jobbers or warehousemen not licensed by this state pursuant to the provisions of Section 415 of Title 68 of the Oklahoma Statutes for the purpose of selling or consuming untaxed tobacco products in this state in violation of this act shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 417 of Title 68 of the Oklahoma Statutes.

B. Any peace officer of this state, including but not limited to officers of the Department of Public Safety or the Oklahoma State

Bureau of Investigation, any sheriff, any salaried deputy sheriff or any municipal police officer is authorized to stop any vehicle upon any road or highway of this state in order to inspect the bill of lading or to take such action as may be necessary to determine if untaxed tobacco products are being sold or shipped in violation of the provisions of this section. Such officers shall also have the duty to cooperate with the Oklahoma Tax Commission to enforce the provisions of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 429 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any revenue from a payment in lieu of excise taxes on tobacco products pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 1 of this act shall be deposited to the General Revenue Fund.

B. Any revenue from payment of the tax imposed by Section 10 of this act shall be deposited to the General Revenue Fund.

SECTION 14. 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.

(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~~:

1. The tax levied hereunder is paid pursuant to the provisions of Section 301 et seq. of this title is paid;

2. The tax levied pursuant to the provisions of Section 4 of this act is paid; or

3. The payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 1 of this act 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.

SECTION 15. 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; provided that common carriers delivering unstamped cigarettes to any person in this state for the purpose of selling or consuming unstamped cigarettes in this state in violation of Section 301 et seq. of this title or this act shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 305 of this title. ~~However, should~~ 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 16. AMENDATORY 68 O.S. 1991, Section 321, is amended to read as follows:

Section 321. The following sales are hereby exempted from the stamp excise tax levied pursuant to the provisions of Section 301 et seq. of this title:

1. All cigarettes sold to veterans hospitals and state operated domiciliary homes for veterans located in the State of Oklahoma, for distribution or sale to disabled ex-servicemen or disabled ex-servicewomen interned in, or inmates of, such hospitals, or residents of such homes, and all;

2. All sales to the United States are hereby exempted from the stamp excise tax levied by this article;

3. All sales to a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; and

4. All sales to a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 4 of this act has been paid.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 401, is amended to read as follows:

Section 401. For the purpose of this article:

(a) The word "person" shall mean any individual, company, corporation, partnership, association, joint adventure, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "Tax Commission" shall mean the Oklahoma Tax Commission.

(c) The word "wholesaler" shall include dealers whose principal business is that of a wholesale dealer or jobber, and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale, or giving them away, or exposing the same where they may be taken or purchased, or otherwise acquired by the retailer.

(d) The word "retailer" shall include every dealer, other than a wholesale dealer as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale, cigars or tobacco products, irrespective of quantity, number of sales, giving the same away or exposing the same where they may be taken, or purchased, or otherwise acquired by the consumer.

(e) The word "consumer" shall mean a person who comes into possession of tobacco for the purpose of consuming it, giving it away, or disposing of it in any way by sale, barter or exchange.

(f) The words "first sale" shall mean and include the first sale, or distribution, of cigars or tobacco products in intrastate commerce, or the first use or consumption of cigars, or tobacco products within this state.

(g) The words "tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.

(h) 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 cigars and tobacco products in interstate commerce and storing such items 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 cigars and tobacco products 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 such cigars and tobacco products.

(i) The term "stamp" shall mean the stamp or stamps by use of which ~~the~~:

1. The tax levied hereunder is paid pursuant to the provisions of Section 401 et seq. of this title is paid;

2. The tax levied pursuant to the provisions of Section 10 of this act is paid; or

3. The payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 1 of this act is paid.

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

(k) The term "cigars" shall include any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.

(l) The word "dealer" shall include every person, firm, corporation, or association of persons, who manufactures cigars or tobacco products for distribution, sale, use or consumption in the State of Oklahoma. The word "dealer" is also further defined to mean any person, firm, corporation or association of persons, who imports cigars or tobacco products from any state or foreign country, for distribution, sale, use or consumption in the State of Oklahoma.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 403.1, is amended to read as follows:

Section 403.1 The Oklahoma Tax Commission is hereby authorized and empowered, if in its discretion it deems practical and reasonable, to establish procedures for payment of excise taxes levied in Sections 401 et seq. of ~~Title 68~~ this title, for the collection from a wholesaler, jobber or warehouseman of payments in lieu of excise taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 1 of this act or for the payment of the tax specified in Section 10 of this act, in respect to articles containing tobacco, pursuant to monthly tobacco products tax reports in lieu of payment by purchasing and affixing stamps, notwithstanding the provisions of

Sections 403 et seq. of ~~Title 68~~ this title. Provided, exercise by the Tax Commission of the authority granted herein shall be by adoption of rules and regulations necessary to establish procedures for collection of such tax through monthly reporting procedures consistent with the provisions of Sections 401 et seq. of ~~Title 68~~ this title, other than those provisions relating directly to payment of such tax by purchasing and affixing stamps.

In the event the Tax Commission shall determine to collect such tax through monthly reporting procedures and adopt rules and regulations therefor:

1. All provisions of Sections 401 et seq. of ~~Title 68~~ this title relating to unstamped tobacco products shall be interpreted to include and shall be applicable to all tobacco products for which ~~such exercise the tax~~ required by law has not been paid;

2. No person, dealer, distributing agent or wholesaler, as defined in Section 401 of ~~Title 68~~ this title, shall possess, sell, use, exchange, barter, give away or in any manner deal with any tobacco products within this state upon which such tax is levied and unpaid, unless such person, dealer, retailer, distributing agent or wholesaler holds a valid tobacco license issued pursuant to Section 415 of ~~Title 68~~ this title; and

3. Any person required to report and remit such taxes or payments in lieu of taxes required pursuant to a compact authorized by subsection C of Section 1 of this act to the Tax Commission shall be allowed a discount of two percent (2%) of the tax due for maintaining and collecting such tax or payments for the benefit of the state, if such tax or payment is timely reported and remitted.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 413, is amended to read as follows:

Section 413. (a) The right of a common carrier in this state to carry unstamped cigars and tobacco products shall not be affected hereby; provided, ~~however,~~ that common carriers delivering untaxed tobacco products to any person in this state for the purpose of selling or consuming untaxed tobacco products in this state in violation of this article shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 417 of this title. Provided further, that should any such carrier sell any cigars and tobacco products in this state, such sale shall be subject to the stamp tax and other provisions of this article and to the rules and regulations of the Tax Commission. The common carrier transporting tobacco products and cigars to a point within this state, or a bonded warehouseman or bailee having in its possession tobacco products and cigars, shall transmit to the Commission a statement of such consignment of tobacco products and cigars, showing the date, point of origin, point of delivery, and to whom delivered. All common carriers or bailees or warehousemen shall permit an examination by the Tax Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of tobacco products and cigars. Any person who fails or refuses to transmit to the Commission the aforesaid statement, or who refuses to permit the examination of his records by the Commission or its legally authorized agents or representatives, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars (\$500.00) and not less than Twenty-five Dollars (\$25.00).

(b) Wholesalers, jobbers, and/or warehousemen shall make a monthly report to the Tax Commission. Such report must be received in the office of the Tax Commission not later than the fifteenth ~~(15th)~~ day of each month, showing purchases and invoices of all merchandise coming under this article, for the previous month; and

the report shall also show the invoice number, the name and address of the consignee and consignor, the date, and such other information as may be requested by the Tax Commission. Retailers or consumers purchasing tobacco products and cigars in drop shipments shall be required to make monthly reports to the Oklahoma Tax Commission, as are required of wholesale dealers.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 419, is amended to read as follows:

Section 419. The following sales are hereby exempted from the tobacco products tax levied pursuant to the provisions of Section 401 et seq. of this title:

1. All tobacco products sold to veterans hospitals and state-operated domiciliary homes for veterans located in the State of Oklahoma, for sale or distribution to disabled ex-servicemen or disabled ex-servicewomen interned in or inmates of such hospitals, or residents of such homes, ~~are hereby exempted from the tobacco products tax levied under the provisions of this article;~~

2. All sales to a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; and

3. All sales to a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 10 of this act has been paid.

SECTION 21. AMENDATORY 68 O.S. 1991, Section 1355 (Section 1, Chapter 337, O.S.L. 1991), is amended to read as follows:

Section 1355. Exemptions - Subject to other tax.

There are hereby specifically exempted from the tax levied pursuant to the provisions of this article:

(A) Sale of gasoline ~~or~~, motor fuel, compressed natural gas, liquefied natural gas or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, or Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Article 5, 6, or 7 of this title has been, or will be paid;

(B) Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid;

(C) Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Articles 10 and 11 of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This subsection shall not operate to increase or repeal the gross production tax levied by the laws of this state;

(D) Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6004 of this title has been, or will be paid;

(E) Sales from coin-operated devices on which the fee imposed by Sections 1501 through 1513 of this title has been paid; ~~and~~

(F) Leases of twenty-four (24) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title. ~~Provided any such lease exempt from the tax levied pursuant to the provisions of this article which is terminated prior to the expiration of the original term shall be subject to the tax levied by this article in an amount equal to the amount of tax which would have been due without the~~

~~exemption plus a penalty of twenty percent (20%) of the principal amount of tax which would have been due; provided, however, the penalty provided by this subsection shall not apply if the original lessee acquires title to the leased vehicle within the original term of the lease; and~~

(G) Sales of cigarettes or tobacco products to:

1. A federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; or

2. A federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 4 or Section 10 of this act has been paid.

SECTION 22. REPEALER 68 O.S. 1991, Section 1355 (Section 19, Chapter 235, O.S.L. 1991), is hereby repealed.

SECTION 23. Sections 2 through 22 of this act shall become effective January 1, 1993.

SECTION 24. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 21st day of May, 1992.

President of the Senate

Passed the House of Representatives the 22d day of May, 1992.

Speaker of the House of Representatives