

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1979

BY: ISAAC

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68
O.S. 1991, SECTIONS 301, 305 AND 309, WHICH RELATE
TO THE CIGARETTE STAMP EXCISE TAX; MODIFYING
DEFINITION; DEFINING TERMS; MODIFYING APPORTIONMENT
OF PROCEEDS OF CERTAIN SEIZURES AND FORFEITURES;
AUTHORIZING SEIZURE AND FORFEITURE OF CERTAIN
COMMON CARRIER SHIPMENTS UNDER CERTAIN
CIRCUMSTANCES; PROVIDING FOR CERTAIN REGULATION OF
THE SALE OF CIGARETTES AT TRIBALLY OWNED OR
LICENSED STORES AND PROCEDURES RELATED THERETO;
PROVIDING PENALTY; REQUIRING CERTAIN REGISTRATION
OF TRIBALLY OWNED OR LICENSED STORES TO SELL
CIGARETTES; REQUIRING CERTAIN DOCUMENTATION OF
SALES; PROVIDING PROCEDURE FOR REGULATING LICENSED
WHOLESALE'S SALE OF CIGARETTES TO TRIBAL STORES;
PROVIDING FOR THE SALE OF CIGARETTES BY UNLICENSED
WHOLESALE'S LOCATED OUTSIDE OF THIS STATE;
AUTHORIZING CERTAIN ALLOCATION METHOD; AMENDING 68
O.S. 1991, SECTIONS 401, 413 AND 417, WHICH RELATE
TO THE TOBACCO PRODUCTS EXCISE TAX; MODIFYING
DEFINITION; DEFINING TERMS; AUTHORIZING SEIZURE AND
FORFEITURE OF CERTAIN COMMON CARRIER SHIPMENTS
UNDER CERTAIN CIRCUMSTANCES; MODIFYING
APPORTIONMENT OF CERTAIN SEIZURES AND FORFEITURES;

PROVIDING FOR CERTAIN REGULATION OF THE SALE OF TOBACCO PRODUCTS AT TRIBALLY OWNED OR LICENSED STORE AND PROCEDURES RELATED THERETO; PROVIDING PENALTY; REQUIRING CERTAIN REGISTRATION FOR TRIBALLY OWNED OR LICENSED STORES TO SELL TOBACCO PRODUCTS; REQUIRING CERTAIN DOCUMENTATION OF SALES; PROVIDING PROCEDURE FOR REGULATING LICENSED WHOLESALER'S SALE OF TOBACCO PRODUCTS TO TRIBAL STORES; PROVIDING FOR THE SALE OF TOBACCO PRODUCTS BY UNLICENSED WHOLESALERS LOCATED OUTSIDE OF THIS STATE; AUTHORIZING CERTAIN ALLOCATION METHOD; PROVIDING FOR CERTAIN INDEMNIFICATION OF EMPLOYEES OF OKLAHOMA TAX COMMISSION; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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 305, is amended to read as follows:

Section 305. (a) Every wholesaler, jobber, or warehouseman doing business within this state and required to secure a license as provided under Section 304 of this Code shall, upon withdrawal from storage, and before making any sale or distribution for consumption thereof, cause the same to have affixed thereto the stamp or stamps as required by this article. It shall be the duty of the wholesaler, jobber, or warehouseman to supply and charge to the retailer the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or consumer by the wholesaler, jobber, or warehouseman; and the wholesaler, jobber, or warehouseman shall be liable to the Commission to perform this service.

(b) Every retailer who has received cigarettes from a manufacturer, wholesaler, jobber, warehouseman or distributor not required to secure a license as provided for under Section 304 of this Code, or to affix stamps as required under the preceding paragraph, shall, within seventy-two (72) hours, excluding Sundays and holidays, from the time such cigarettes come into his possession, and before making any sale or distribution for consumption thereof, affix stamps upon all cigarette packages in the proper denomination and amount, as required by Section 302 of this Code.

(c) Any unlicensed consumer who buys direct from any distributor, jobber, manufacturer, warehouseman, or wholesaler, or other person, within or without this state, any cigarettes in excess of forty, at any one time to which are not affixed the stamps required by this article shall, before purchasing such cigarettes, secure from the tax Commission a written license and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00), and shall post with the Commission a surety bond in the sum of One Thousand Dollars (\$1,000.00), conditioned that he will comply with the rules and regulations of the Tax Commission and pay all taxes and penalties and affix to all such cigarettes the proper tax stamps as provided by law, and he shall immediately, upon the receipt of any unstamped cigarettes, report the same to the Tax Commission on such forms as the Commission may prescribe, and immediately purchase from the Commission proper stamps and attach the same to all such cigarettes received. It shall be unlawful for any person to sell or consume cigarettes on which the tax, as levied by this article, has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by this article.

If, upon examination of invoices or from other investigations, the Commission finds that cigarettes have been sold without stamps

affixed as required by this article, the Commission shall have the power to require such person to pay to the Commission a sum equal to twice the amount of the tax due. If, under the same circumstances, a person is unable to furnish evidence to the Commission of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

(d) (1) All unstamped cigarettes upon which taxes are imposed by this article which shall be found 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, or with intent to avoid payment of the tax imposed hereunder, and any automobile, truck, conveyance, or other vehicle whatsoever used in the transportation of such cigarettes, and all paraphernalia, equipment or other tangible personal property incident to the use of such purposes, found in the place, building, vehicle or vehicles, where such cigarettes are found, may be seized by any authorized agent of the Tax Commission, or any sheriff, deputy sheriff, constable or other peace officer within the state, without process; and the same shall be, from the time of such seizure, forfeited to the State of Oklahoma, and a proper proceeding filed in a court of competent jurisdiction in the county of seizure, to maintain such seizure and prosecute said forfeiture as herein provided.

(2) All such cigarettes, vehicles and property so seized, as aforesaid, shall first be listed and appraised by the officer making such seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken; and the person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place, and the person where, and from whom such property was seized, and an inventory and appraisal thereof, at the usual and

ordinary retail price of such articles received, to the Tax Commission. The district attorney of the county in which the seizures are made shall, at the request of the Tax Commission, file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing him to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale. The proceeds of said sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay thirty percent (30%) of the balance to the law enforcement agency which seized such property and seventy percent (70%) of the balance to the Tax Commission as cigarette tax collected.

(3) The seizure and sale of said cigarettes shall not relieve the person from whom such cigarettes were seized from any prosecution or the payment of any penalties provided for under this article; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of said cigarettes or the personal consumption of the same.

(4) The forfeiture provisions of this article shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same; provided, that such possession of cigarettes in any quantity of five or more cartons of ten packages each shall be prima facie evidence of intent to barter, sell or give away such cigarettes in violation of the provisions of this article.

(e) The Tax Commission shall exchange new stamps for any stamps which are damaged, or for stamps which have been affixed to packages of cigarettes returned to factories, or shipped to other states, or sold to government agencies or state institutions, or for stamps purchased in excess of floor stocks. Application to the Tax Commission for such exchanges must be accompanied by affidavit, damaged stamps, bill of lading covering shipment to factory or other states, or other proof required by the Tax Commission. Any person to whom stamps shall be issued under this paragraph may, upon approval of the Tax Commission, sell such stamps to any wholesaler as defined in this article.

(f) Any person, including distributing agents, wholesalers, jobbers, carriers, warehousemen, retailers and consumers, having possession of unstamped cigarettes in this state shall be liable for the tax on such cigarettes in case the same are lost, stolen or unaccounted for, in transit, storage or otherwise, and in such event a presumption shall exist for the purposes of taxation, that such cigarettes were used and consumed in Oklahoma.

SECTION 3. 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 4. 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. The sale of cigarettes at a store, place of business or Indian smokeshop owned or licensed by a federally recognized Indian tribe on Indian country within this state to members of the tribe which owns or licenses the store is not subject to cigarette excise taxes imposed by this article.

B. All cigarettes at a tribally owned or licensed store which are sold or held for sale to tribal members must bear a special tax-exempt cigarette stamp issued by the Oklahoma Tax Commission for that purpose.

C. The sale of cigarettes at a tribal store to nonmembers of the tribe which owns or licenses the store is subject to cigarette excise taxes imposed by this article.

D. All cigarettes at a tribally owned or licensed store which are sold or held for sale to nontribal members must have affixed thereto the stamp or stamps required by Section 305 of this title.

E. All unstamped cigarettes which by this article are required to bear stamps as herein provided, which shall be found in the possession, custody, or control of any person for the purpose of being offered for sale or consumption to either members of the tribe, or nonmembers of the tribe, are hereby declared to be contraband cigarettes. Provided that the term "contraband cigarettes" shall not include unstamped cigarettes sold to veterans hospitals, state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 321 through 324 of this title.

F. 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, upon conviction, shall 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 punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) or by a term of imprisonment in the State Penitentiary for not more than two (2) years, or both such fine and imprisonment.

G. Any person who engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband cigarettes as defined in this article, shall be subject to the forfeiture of property as is provided by Section 305 of this title 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 352 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any person who operates a store under a tribal license, and in the case of a store owned by an Indian tribe, the individual designated by such tribe as the principal operator or manager responsible for the store, located within Indian country in this state where cigarettes are sold or held for sale, shall register the store with the Oklahoma Tax Commission by filing a registration form prescribed by the Commission setting forth such information as the Commission may require. No fee shall be required to register a tribally owned or licensed store. The tribe shall notify the Commission in writing in order to cancel a registration if the tribal store ceases operation or the tribal license is revoked or if there is a change in the individual designated by the tribe as the principal operator or manager responsible for the tribal store.

B. The Oklahoma Tax Commission shall issue a registration certificate for the place of business set forth in the registration form. A separate registration must be made for each place of business. A registration certificate is not assignable and shall be valid only for the person, or the tribe if tribally owned, in whose name it is issued and for the transaction of business at the place designated therein. The certificate shall at all times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen.

C. A registration certificate may be issued only to stores which are located within Indian country and which are owned or properly licensed with an Indian tribe.

D. All registration certificates issued under the provisions of this article shall expire three (3) years from the date of issuance.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All tribally owned or licensed stores shall keep the following documentation to claim exemption from the excise tax levied by this article on sales to tribal members from wholesalers of cigarettes. The following records shall be turned in to the wholesaler who supplies the tribal store each month by the tenth day of the month following the month of purchase of the cigarette inventory in order to document exempt sales of cigarettes:

1. The tribal store shall maintain a monthly inventory record separately stating the quantity of taxed and tax-exempt stamped cigarettes as follows:

- a. the quantity of taxed and tax-exempt stamped cigarettes in the beginning inventory,
- b. all purchases and the names of the wholesalers from whom the purchases were made, and
- c. the quantity of taxed and tax-exempt stamped cigarettes in the ending inventory; and

2. The tribal store shall also provide the wholesaler with a monthly sales journal to document each sale to tribal members which shall include the following items:

- a. place of the sale,
- b. date of the sale,
- c. name of tribal member purchaser,
- d. tribal affiliation of purchaser,
- e. enrolled number of the tribal member purchaser,
- f. dollar amount of the sale, and
- g. quantity sold.

B. A tribal member must present his or her tribal identification card in order to purchase tax-exempt cigarettes at a tribal store. The tribal store shall also record and account for

the quantity and dollar value of taxable sales to nonmembers of the tribe on a monthly basis.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 354 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 under Section 304 of this title may sell stamped cigarettes to registered tribal stores in this state. It shall be the duty of the wholesaler, jobber or warehouseman to affix the cigarette excise tax stamp to cigarette inventory held by the registered tribal store for sale to nontribal members. The wholesaler, jobber or warehouseman will have the further duty to affix the tax-exempt stamp to that portion of the cigarette inventory held by the registered tribal store for sale to tribal members.

B. In addition to all records and reports required under Section 312 of this title, every wholesaler, jobber or warehouseman who sells cigarettes to registered tribal stores shall file a report or schedule on the tenth day of the second month following the sale showing documentation received from the registered tribal stores which substantiates the exempt purchases previously made. The wholesaler must either remit the documentation for all tax-exempt sales made or pay the tax on all exempt sales that are not documented.

C. Wholesalers, jobbers or warehousemen licensed with this state may only sell cigarettes to stores owned or licensed by an Indian tribe which are properly registered pursuant to Section 5 of this act. Sales to unregistered tribal stores are unlawful.

D. Tribally owned or licensed stores which are properly registered pursuant to Section 5 of this act may only purchase, receive, stock, possess, sell or distribute stamped cigarettes. The registration of any tribally-owned or licensed store which deals in

any of these ways with unstamped cigarettes shall have its registration revoked.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 355 of Title 68, unless there is created a duplication in numbering, reads as follows:

All unstamped cigarettes sold or shipped into this state by wholesalers not licensed or located in this state to tribally owned or licensed stores or smokeshops in this state for the purpose of selling or consuming unstamped cigarettes in this state in violation of the provisions 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 article.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 356 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission is authorized to use an allocation method for Indian tribes who request to use such a method that would allow wholesalers to sell a predetermined amount of tax-exempt cigarettes to registered tribal stores without the requirement of keeping documentation to substantiate actual tribal member sales pursuant to Section 6 of this act.

B. The amount of tax-exempt sales to be allowed for each tribe will be determined by a ratio of Oklahoma resident adult tribal population to general per capita consumption of cigarettes. A monthly allocation for each tribe will be calculated and all purchases by registered tribal stores exceeding that tribe's monthly allocation will be taxable.

C. The Tax Commission will maintain records under this allocation method on the total amount of tribal purchases from all wholesalers to ensure that each month's predetermined amount is not exceeded. These records will be based on reports from wholesalers.

D. If sales to the tribal stores whose tribe is a party to this allocation method order tax-exempt cigarettes in excess of the predetermined amount, then those stores will be responsible to pay the tax on those cigarettes or the allocation method will be discontinued. Any wholesaler who makes sales pursuant to this allocation method while the method is in effect will not be responsible for taxes if the tax-exempt allocation is exceeded.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 401, is amended to read as follows:

Section 401. For the purposes of this article:

(a) The word "person" shall mean any individual, company, corporation, partnership, association, joint ~~adventure~~ venture, 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. 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.

(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 tax levied hereunder 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.

(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 tobacco products.

(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 "untaxed tobacco products" means packages of tobacco products which are held for sale to nontribal members upon which state tobacco products taxes have not been paid.

(t) The term "contraband tobacco products" means untaxed tobacco products 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 "taxed tobacco products" means packages of tobacco products which are held for sale to nontribal members upon which state tobacco products taxes have been paid.

SECTION 11. 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, except that common carriers delivering untaxed tobacco products 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 untaxed tobacco products 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 417 of this title; provided, however, 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 12. AMENDATORY 68 O.S. 1991, Section 417, is amended to read as follows:

Section 417. (a) All unstamped tobacco products upon which a tax is levied by this article, found 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, or with intent to avoid payment of the tax imposed thereunder, may be seized by any authorized agent of the Tax Commission, or any sheriff, deputy sheriff or police within the state. Tobacco products from the time of seizure shall be forfeited to the State of Oklahoma. A proper proceeding shall be filed in the district court of the county of seizure, to maintain such seizure and prosecute the forfeiture as herein provided; the provisions of this section shall not apply, however, where the tax on such unstamped tobacco products does not exceed One Dollar (\$1.00).

(b) All such tobacco products so seized, as aforesaid, shall first be listed and appraised by the officer making such seizure and turned over to the sheriff of the county in which the seizure is made, and a receipt taken therefor.

(c) The person making such seizure shall immediately make and file a written report thereof to the Tax Commission, showing the name of the person making such seizure, the place where seized, the person from whom seized, the property seized and an inventory and appraisal thereof, which inventory shall be based on the usual and ordinary retail price or value of the articles seized. The

district attorney of the county in which such seizure is made shall, at the request of the Tax Commission, file in the district court forfeiture proceedings in the name of the State of Oklahoma against the owner or person in possession of the property seized, if known, and if unknown, against the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found. Summons so issued and all procedure thereafter shall be governed by statutes relating to procedure in civil actions. If personal service cannot be had, or if suit be filed against the property seized, service may be obtained by the posting of notices in five public places within the county. The notice shall direct the owner, or if the owner be unknown, the person in possession of the property seized, to answer the petition filed within twenty (20) days from the date of the posting of such notices. The district attorney shall within three (3) days after the posting of said notices cause a copy of the same to be mailed to any defendant on whom personal service was not had, addressed to his last-known address. If, after a full hearing upon the petition, the court finds that the property seized is forfeited to the State of Oklahoma, the court shall direct to the sheriff to sell said property at public auction ten (10) days after the posting of notices of said sale in five public places within said county. The proceeds of the sale shall be deposited with the clerk of the court who shall, after deducting costs including the cost of sale, pay ~~same~~ thirty percent (30%) of the balance to the law enforcement agency which seized such property and seventy percent (70%) of the balance to the Tax Commission as tobacco products tax collected.

(d) The seizure and sale of such tobacco products shall not relieve the person from whom such tobacco products were seized from prosecution or the payment of penalties. The purchaser of forfeited tobacco products shall pay the regular tobacco products tax and

shall place proper stamps thereon before any of such tobacco products are sold or consumed.

(e) The forfeiture provisions of this article shall only apply to persons having possession of or transporting tobacco products with intent to barter, sell or give away the same.

SECTION 13. 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:

A. The sale of tobacco products at a store, place of business or Indian smokeshop owned or licensed by a federally recognized Indian tribe on Indian country within this state, to members of the tribe which owns or licenses the store is not subject to tobacco products excise taxes imposed by this article.

B. The sale of tobacco products at a tribal store to nonmembers of the tribe which owns or licenses the store is subject to tobacco products excise taxes imposed by this article.

C. All untaxed tobacco products upon which taxes are imposed by this article which shall be found in the possession, custody, or control of any person for the purpose of being offered for sale or consumption to nonmembers of the tribe, are hereby declared to be contraband tobacco products. Except that the term "contraband tobacco products" shall not include untaxed tobacco products sold to veterans hospitals, 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 this title.

D. 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, upon conviction, shall 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 punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) or by a term of imprisonment in the State Penitentiary for not more than two (2) years, or both such fine and imprisonment.

E. Any person who engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband tobacco products as defined in this article, shall be subject to the forfeiture of property as provided by Section 417 of this title and assessment of penalty as provided thereby and assessment for any delinquent taxes found to be owing.

SECTION 14. 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. Any person who operates a store under a tribal license, and in the case of a store owned by an Indian tribe, the individual designated by such tribe as the principal operator or manager responsible for the store, located within Indian country in this state where tobacco products are sold or held for sale, shall register the store with the Oklahoma Tax Commission by filing a registration form prescribed by the Tax Commission setting forth such information as the Tax Commission may require. No fee shall be required to register a tribally owned or licensed store. The tribe shall notify the Tax Commission in writing in order to cancel a registration if the tribal store ceases operation or the tribal license is revoked or if there is a change in the individual designated by the tribe as the principal operator or manager responsible for the tribal store.

B. The Oklahoma Tax Commission shall issue a registration certificate for the place of business set forth in the registration form. A separate registration must be made for each place of business. A registration certificate is not assignable and shall be valid only for the person, or the tribe if tribally owned, in whose

name it is issued and for the transaction of business at the place designated therein. The certificate shall at all times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen.

C. A registration certificate may be issued only to stores which are located within Indian country and which are owned or properly licensed with an Indian tribe.

D. All registration certificates issued under the provisions of this article shall expire three (3) years from the date of issuance.

SECTION 15. 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:

A. All tribally owned or licensed stores shall keep the following documentation to claim exemption from the excise tax levied by this article on sales to tribal members from wholesalers of tobacco products. The following records shall be turned in to the wholesaler who supplies the tribal store each month by the tenth day of the month following the month of purchase of the tobacco products inventory in order to document exempt sales of tobacco products:

1. The tribal store shall maintain a monthly inventory record separately stating the quantity of taxed and tax-exempt tobacco products as follows:

- a. the quantity of such products in the beginning inventory,
- b. all purchases and the names of the wholesalers from whom the purchases were made, and
- c. the quantity of such products in the ending inventory; and

2. The tribal store shall also provide the wholesaler with a monthly sales journal to document sales to tribal members which shall include the following items:

- a. place of the sale,
- b. date of the sale,
- c. name of tribal member purchaser,
- d. tribal affiliation of purchaser,
- e. enrolled number of the tribal member purchaser,
- f. dollar amount of the sale,
- g. quantity sold, and
- h. identification of the product sold and the size of such product.

B. A tribal member must present his or her tribal identification card in order to purchase tax-exempt tobacco products at a tribal store. The tribal store shall also record and account for the quantity and dollar value of taxable sales to nonmembers of the tribe on a monthly basis.

SECTION 16. 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. Every wholesaler, jobber or warehouseman doing business within this state and required to secure a license as provided under Section 415 of this title may sell tobacco products to registered tribal stores in this state. It shall be the duty of the wholesaler, jobber or warehouseman to collect, report and remit the excise tax levied by this article on the tobacco products inventory held by the registered tribal store for sale to nontribal members. The wholesaler, jobber or warehouseman will have the further duty to report the sale of the tax-exempt tobacco products inventory held by the registered tribal store for sale to tribal members.

B. In addition to all records and reports required under Section 403.1 and 413 of this title, every wholesaler, jobber or warehouseman who sells tobacco products to registered tribal stores shall file a report or schedule on the tenth day of the second month following the sale showing documentation received from the

registered tribal stores which substantiates the exempt purchases previously made. The wholesaler must either remit the documentation for all tax-exempt sales made or pay the tax on all exempt sales that are not documented.

C. Wholesalers, jobbers or warehousemen licensed with this state may only sell tobacco products to stores owned or licensed by an Indian tribe which are properly registered pursuant to Section 14 of this act. Sales to unregistered tribal stores are unlawful.

SECTION 17. 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:

All untaxed tobacco products sold or shipped into this state by wholesalers not licensed or located in this state to tribally owned or licensed stores or smokeshops in this state for the purpose of selling or consuming untaxed tobacco products 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 417 of this title.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 430 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission is authorized to use an allocation method for Indian tribes who request to use such a method that would allow wholesalers to sell a predetermined amount of tax-exempt tobacco products to registered tribal stores without the requirement of keeping documentation to substantiate actual tribal member sales pursuant to Section 15 of this act.

B. The amount of tax-exempt sales to be allowed for each tribe will be determined by a ratio of Oklahoma resident adult tribal population to general per capita consumption of tobacco products. A monthly allocation for each tribe will be calculated and all

purchases by registered tribal stores exceeding that tribe's monthly allocation will be taxable.

C. The Tax Commission will maintain records under this allocation method on the total amount of tribal purchases from all wholesalers to ensure that each month's predetermined amount is not exceeded. These records will be based on reports from wholesalers.

D. If sales to the tribal stores whose tribe is a party to this allocation method order tax-exempt tobacco products in excess of the predetermined amount, then those stores will be responsible to pay the tax on those tobacco products or the allocation method will be discontinued. Any wholesaler who makes sales pursuant to this allocation method while the method is in effect will not be responsible for taxes if the tax-exempt allocation is exceeded.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 203.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The State of Oklahoma shall:

1. Provide a defense for any employee, as defined in Section 152 of Title 51 of the Oklahoma Statutes, of the Oklahoma Tax Commission when liability is sought for any violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment; and

2. Pay, or cause to be paid, any and all costs, fees, awards or damages ordered or incurred in any judgment entered in the courts of the United States, the State of Oklahoma, or any other state against any employee of the Oklahoma Tax Commission, or settlement agreed to by the Oklahoma Tax Commission entered against any employee of the Oklahoma Tax Commission, for a violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States which occurred while the employee was acting

within the scope of employment to enforce any state tax law or collect any state tax under color of state law.

B. The provisions hereof shall not be construed as a waiver by the State of Oklahoma of the doctrine of sovereign immunity or of any rights under the Eleventh Amendment to the United States Constitution.

SECTION 20. This act shall become effective July 1, 1992.

SECTION 21. 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.

43-2-7765

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