

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 452

By: Fisher

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 305, as amended by Sections 9, Chapter 278, O.S.L. 1994, 306, 403, 417 and 418 (68 O.S. Supp. 1998, Section 305), which relate to taxation of cigarettes and tobacco products; prohibiting affixing or attaching of stamps to cigarettes or tobacco products except under certain circumstances; modifying cigarettes and tobacco products subject to seizure and forfeiture; specifying unlawful acts; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 305, as amended by Section 9, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1998, Section 305), is amended to read as follows:

Section 305. ~~(a)~~ 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 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 Section 301 et seq. of this article title. 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 Oklahoma Tax Commission to perform this service. A wholesaler, jobber or warehouseman shall not affix or cause to have affixed a stamp to a package or container of cigarettes unless the package or container complies with all

federal tax laws, federal trademark and copyright laws, and all federal laws regarding the placement of labels, warnings or any other information.

~~(b)~~ 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 title, or to affix stamps as required under subsection ~~(a)~~ A of this section, shall, within seventy-two (72) hours, excluding Sundays and holidays, from the time such cigarettes come into his or her 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 title. A retailer shall not affix or cause to have affixed a stamp to a package or container of cigarettes unless the package or container complies with all federal tax laws, federal trademark and copyright laws, and all federal laws regarding the placement of labels, warnings or any other information.

~~(e)~~ 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 (40), at any one time to which are not affixed the stamps required by Section 301 et seq. of this article title 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 ~~he~~ shall immediately, upon the receipt of any unstamped cigarettes, report the same to the Tax Commission on such forms as the Tax Commission may prescribe, and immediately purchase from the Tax 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 Section 301 et seq. of this article title, 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 Section 301 et seq. of this article title. A person subject to the provisions of this subsection shall not attach or cause to have attached a stamp to a package or container of cigarettes unless the package or container complies with all federal tax laws, federal trademark and copyright laws, and all federal laws regarding the placement of labels, warnings or any other information.

If, upon examination of invoices or from other investigations, the Tax Commission finds that cigarettes have been sold without stamps affixed as required by Section 301 et seq. of this article title, the Tax Commission shall have the power to require such person to pay to the Tax 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 Tax Commission of sufficient stamp purchases to cover unstamped cigarettes purchased by ~~him~~ such person, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

~~(d)~~—(1) D. 1. All unstamped cigarettes upon which taxes are imposed by Section 301 et seq. of this article title and all cigarettes which do not comply with all federal tax laws, federal trademark and copyright laws and all federal laws regarding the placement of labels, warnings or any other information 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 Section 301 et seq. of this article title or the provisions of any federal tax law, federal trademark and copyright law or federal law regarding the placement of labels, warnings or any other information, 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~~ the forfeiture as herein provided.

~~(2)~~ 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~~. 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~~ the owner or person to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five (5) public places in the county not less than ten (10) days before the date of sale. The proceeds of ~~said~~ the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected.

~~(3)~~ 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 Section 301 et seq. of this article title; 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)~~ 4. The forfeiture provisions of Section 301 et seq. of this article title 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 (5) or more cartons of ten (10) packages each shall be prima facie evidence of intent to barter, sell or give away such cigarettes in violation of the provisions of Section 301 et seq. of this article title.

~~(e)~~ 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 Section 301 et seq. of this article title.

~~(f)~~ 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 2. AMENDATORY 68 O.S. 1991, Section 306, is amended to read as follows:

Section 306. A. It shall be unlawful for any person to sell, ~~or display for sale,~~ ~~or have in his possession~~ possess, for consumption in this state, cigarettes on which the tax levied by Section 301 et seq. of this article title has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax.

B. It shall be unlawful for any person to sell, display for sale or possess, for consumption in this state, cigarettes which do not comply with all federal tax laws, federal trademark and copyright laws and all federal laws regarding the placement of labels, warnings or any other information.

C. It shall be unlawful to import into this state cigarettes that violate any federal requirement for the placement of labels, warnings or any other information, including but not limited to health hazards, required to be placed on the container or individual package.

D. Any cigarettes so held or imported shall be subject to seizure and sale as provided by law for sale of property under execution, and the proceeds derived from the sale thereof shall be paid to the State Treasurer and placed in the State General Revenue Fund.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 403, is amended to read as follows:

Section 403. ~~(a)~~ A. The excise taxes levied by Section 401 et seq. of this article title shall be paid by affixing stamps in the manner and at the time herein set forth. In the case of cigars, including five-pack and other small packs, stogies and cheroots, the stamps shall be affixed to the box, or container, in which or from

which normally sold at wholesale. Wholesalers and jobbers shall affix the required stamps within seventy-two (72) hours after such tobacco products are received ~~by them~~. Any retailer shall have twenty-four (24) hours within which to affix the stamps after such tobacco products are received ~~by him, or them~~. Provided ~~that~~, the Oklahoma Tax Commission may, in its discretion, where it is practical and reasonable for the enforcement of the collection of taxes provided hereunder, promulgate such rules ~~and regulations~~ as to permit cigars, stogies, cheroots, and tobacco products, to remain unstamped in the hands of the wholesalers and jobbers until the original case or crate is broken, unpacked or sold. A wholesaler, jobber or retailer shall not affix or cause to have affixed a stamp to a package or container of tobacco products unless the package or container complies with all federal tax laws, federal trademark and copyright laws, and all federal laws regarding the placement of labels, warnings or any other information.

~~(b)~~ B. In the case of tobacco products wrapped in packages of two (2) pounds or less, the stamps shall be affixed to the containers in which or from which the individual packages are normally sold at wholesale and the stamps shall be affixed by wholesalers and jobbers within seventy-two (72) hours after such products are received ~~by them~~, and by any retailer within the twenty-four (24) hours of receipt ~~by him or them~~ of any such products. Such goods must be stamped before being sold. All retail dealers in manufactured tobacco products, purchasing or receiving such commodities from without the state, whether the same shall have been ordered through a wholesaler or jobber in this state ~~and/or~~, by drop shipment ~~and/or~~ otherwise, shall within five (5) days after receipt of same, mail a duplicate invoice of all such purchases or receipts to the Tax Commission. Failure to furnish duplicate invoices as required shall be deemed a misdemeanor, and, upon conviction, be punishable by a fine of not more than One Hundred

Dollars (\$100.00) for each offense, or imprisonment in the county jail for a period not exceeding thirty (30) days.

~~(e)~~ C. It is the intent and purpose of this section to require all manufacturers within this state, wholesale dealers, jobbers, distributors and retail dealers, to affix the stamps provided for in this section to taxable commodities, but when the stamps have been affixed as required herein, no further or other stamp shall be required regardless of how often such articles may be sold or resold within this state.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 417, is amended to read as follows:

Section 417. ~~(a)~~ A. All unstamped tobacco products upon which a tax is levied by Section 401 et seq. of this article title, and all tobacco products which do not comply with all federal tax laws, federal trademark and copyright laws and all federal laws regarding the placement of labels, warnings or any other information, 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 Section 401 et seq. of this article title or the provisions of any federal tax law, federal trademark and copyright law or federal law regarding the placement of labels, warnings or any other information, or with intent to avoid payment of the tax imposed thereunder, may be seized by any authorized agent of the Oklahoma 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~~. 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)~~ 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)~~ 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 appraisement 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~~ the notices cause a copy of the same to be mailed to any defendant on whom personal service was not had, addressed to ~~his~~ the defendant's 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~~ the property at public auction ten (10) days after the posting of notices of ~~said~~ the sale in five public

places within ~~said~~ the county. The proceeds of the sale shall be deposited with the clerk of the court who shall, after deducting costs including the cost of the sale, pay same to the Tax Commission as tobacco products tax collected.

~~(d)~~ 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)~~ E. The forfeiture provisions of Section 401 et seq. of this article title shall only apply to persons having possession of or transporting tobacco products with intent to barter, sell or give away the same.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 418, is amended to read as follows:

Section 418. A. It shall be unlawful for any person to transport, ~~or have in his possession,~~ possess unstamped tobacco products where the tax on such unstamped tobacco products exceeds the sum of One Dollar (\$1.00).

B. It shall be unlawful for any person to sell, display for sale or possess, for consumption in this state, tobacco products which do not comply with all federal tax laws, federal trademark and copyright laws and all federal laws regarding the placement of labels, warnings or any other information.

C. It shall be unlawful to import into this state tobacco products that violate any federal requirement for the placement of labels, warnings or any other information, including but not limited to health hazards, required to be placed on the container or individual package.

D. Any person found guilty of violating the provisions of Section 401 et seq. of this article title shall be deemed guilty of

a misdemeanor, and shall upon conviction be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by confinement in the county jail for not to exceed thirty (30) days, or by both such fine and imprisonment.

SECTION 6. This act shall become effective November 1, 1999.

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