

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2660:

Adair of the House

and

Hobson of the Senate

AS INTRODUCED

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; providing for levy of tax on sale of cigarettes; providing for apportionment of funds; providing for collection and administration of tax; amending 68 O.S. 2001, Section 311, which relates to the Cigarette Stamp Tax; modifying amount of discount compensation; providing for discount compensation for sale of cigarettes to Indian tribes under certain compacts; amending 68 O.S. 2001, Section 402, which relates to the Tobacco Products Tax; increasing amount of tax on certain tobacco products; amending 68 O.S. 2001, Section 1355, which relates to exemptions for items subject to other tax; providing exemption for cigarettes and other tobacco products; providing for codification; providing an effective date; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next General Election.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Effective January 1, 2005, in addition to the tax levied in Sections 302, 302-1, 302-2, 302-3 and 302-4 of Title 68 of the Oklahoma Statutes, there is hereby levied upon the sale, use, gift,

possession, or consumption of cigarettes, as defined in Sections 301 through 325 of Title 68 of the Oklahoma Statutes, within this state, a tax at the rate of thirty-eight and one-half (38 1/2) mills per cigarette. The tax shall be evidenced by tax stamps as now provided for; however, as to cigarette packages of less than ten cigarettes for free distribution as samples, the tax herein levied shall be computed and paid as provided for other cigarette taxes without affixing stamps on each such package.

B. No part of the revenues resulting from the additional tax levied in this section shall be used in determining the amount of cigarette tax collections to be paid into:

1. The State of Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the provisions of Sections 57.31 through 57.43 of Title 62 of the Oklahoma Statutes;

2. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund pursuant to the provisions of Sections 57.61 through 57.73 of Title 62 of the Oklahoma Statutes;

3. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund Series C and Series D pursuant to Sections 57.81 through 57.112 of Title 62 of the Oklahoma Statutes;

4. The State of Oklahoma Building Bonds of 1968 Sinking Fund pursuant to the provisions of Sections 57.121 through 57.193 of Title 62 of the Oklahoma Statutes; or

5. The Oklahoma Building Bonds of 1992 Sinking Fund pursuant to the provisions of Sections 57.300 through 57.313 of Title 62 of the Oklahoma Statutes.

C. The revenue resulting from the additional tax levied in subsection A of this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer as follows:

1. Sixteen and six-tenths percent (16.6%) shall be apportioned to each municipality and county that levies a sales tax on cigarette or tobacco products, in the proportions which total municipal and

county cigarette and tobacco products tax revenue was apportioned by the Tax Commission in the preceding month; and

2. Eighty-three and four-tenths percent (83.4%) shall be deposited into the General Revenue Fund of the State of Oklahoma.

D. The cigarette tax levied in this section shall be collected and administered in all respects not inconsistent with as now or hereafter provided for by law for other cigarette taxes now levied, collected, and administered pursuant to the provisions of Sections 301 through 325 of Title 68 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 311, is amended to read as follows:

Section 311. For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamp to each package of cigarettes and tobacco before making a sale of such cigarettes and tobacco, each person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission as required by law, may purchase said stamps from the said Commission at a reduction of ~~four percent (4%)~~ one percent (1%) of the face value of each lot of stamps so purchased, provided that such discount or reduction shall not be applicable on purchases of less than One Hundred Dollars (\$100.00) at any one time; and provided, further, that no discount shall be allowed to out-of-state purchasers which reside in the states that do not give discounts on cigarette stamps purchased from said State of Oklahoma cigarette dealers. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission except for the discount provided in Section 4 of this act; provided, that if a purchaser refuses to comply with the laws of the State of Oklahoma, the Tax Commission shall require the full face value for stamps purchased until such time as said person has complied with the provisions of the law. The Tax Commission may authorize the use of a metering device for the impress of the tax stamp.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamp to each package of cigarettes and tobacco before making a sale of such cigarettes and tobacco to an Indian tribe selling cigarettes under a compact entered into with the State of Oklahoma pursuant to Section 346 of Title 68 of the Oklahoma Statutes since July 1, 2003, each person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission pursuant to this section as required, may purchase stamps from the Oklahoma Tax Commission at a reduction of one-half of one percent (1/2 of 1%) of the face value of each lot of stamps purchased. The Tax Commission may authorize the use of a metering device for the impress of the tax stamp.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 402, is amended to read as follows:

Section 402. There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in Section 401 et seq. of this title, a tax in the following amounts:

1. Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, ~~four (4)~~ eleven and one-half (11 1/2) mills for each cigar. Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of this title;

2. Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, weighing more than three (3) pounds per thousand and having a manufacturer's recommended retail selling price, under the Federal Code, of not exceeding four cents (\$0.04) per cigar, one cent (\$0.01) for each cigar;

3. Cigars. Upon all other cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, ~~Twenty Dollars (\$20.00)~~ Fifty-five Dollars (\$55.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars;

4. Smoking Tobacco. Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be ~~twenty-five percent (25%)~~ thirty-five percent (35%) of the factory list price exclusive of any trade discount, special discount or deals; and

5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be ~~twenty percent (20%)~~ twenty-eight percent (28%) of the factory list price exclusive of any trade discount, special discount or deals.

It shall not be permissible for a retailer to advertise that the retailer will absorb the tax due on the taxable merchandise described herein. Such tax shall be paid by the consumer.

Notwithstanding any other provision of law, the tax levied pursuant to the provisions of Section 401 et seq. of this title shall be part of the gross proceeds or gross receipts from the sale of cigars or tobacco products, or both, as those terms are defined in paragraph 7 of Section 1352 of this title.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 1355, 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~~ Section 1350 et seq. of this title:

1. Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural

gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in ~~Article 5, 6, or 7~~ Section 500.1 et seq., Section 601 et seq. or Section 701 et seq. of this title has been, or will be paid;

2. 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~~ Section 2101 et seq. of this title has been, or will be paid;

3. 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~~ Section 1001 et seq. and Section 1101 et seq. 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 paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;

4. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through ~~6004~~ 6007 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

5. Sales from coin-operated devices on which the fee imposed by Sections 1501 through ~~1513~~ 1512 of this title has been paid;

6. Leases of twelve (12) 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;

7. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes;

8. Sales of cigarettes or tobacco products to:

- a. 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 346 of this title 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
- b. 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 349 or Section 426 of this title has been paid;

9. Leases of aircraft upon which the owners have paid the aircraft excise tax levied by Section 6001 et seq. of this title or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title; ~~and~~

10. The sale of low-speed electrical vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in ~~Article 21~~ Section 2101 et seq. of this title has been or will be paid; and

11. Sales of cigarettes on which the tax levied in Section 301 et seq. of this title or tobacco products on which the tax levied in Section 401 et seq. of this title has been paid.

SECTION 7. This act shall become effective January 1, 2005.

SECTION 8. The Ballot Title for the proposed amendments as set forth in SECTIONS 2 through 6 of this act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure will impose an additional tax on the sale of cigarettes. The tax will be 38 1/2 mills per cigarette. Revenues from the tax will be apportioned to counties and municipalities and into the General Revenue Fund of the State of Oklahoma. The measure increases the current tax on little

cigars, cigars, smoking tobacco and chewing tobacco. The measure also exempts cigarettes and other tobacco products from sales tax. The tax will begin on January 1, 2005.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL - YES \_\_\_\_\_

AGAINST THE PROPOSAL - NO \_\_\_\_\_

SECTION 9. The Chief Clerk of the House of Representatives, immediately after the passage of this act, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 8 hereof, with the Secretary of State and one copy with the Attorney General.

49-2-8260 DLW 01/22/04