

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1501

By: Shelton

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Sections 401 and 402, which relate to  
9 tobacco products; defining terms; placing tax on  
rolling papers; apportioning tax revenue; providing  
an effective date; and declaring an emergency.

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

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 401, is  
14 amended to read as follows:

15 Section 401. For the purpose of this article:

16 ~~(a)~~ 1. The word "person" shall mean any individual, company,  
17 limited liability company, corporation, partnership, association,  
18 joint adventure, estate, trust, or any other group, or combination  
19 acting as a unit, and the plural as well as the singular, unless the  
20 intention to give a more limited meaning is disclosed by the  
21 context;i

22 ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax  
23 Commission;i

1       ~~(c)~~ 3. The word "wholesaler" shall include dealers whose  
2 principal business is that of a wholesale dealer or jobber, and who  
3 is known to the trade as such, who shall sell any cigars or tobacco  
4 products to licensed retail dealers only for the purpose of resale,  
5 or giving them away, or exposing the same where they may be taken or  
6 purchased, or otherwise acquired by the retailer-; i

7       ~~(d)~~ 4. The word "retailer" shall include every dealer, other  
8 than a wholesale dealer as defined above, whose principal business  
9 is that of selling merchandise at retail, who shall sell, or offer  
10 for sale, cigars or tobacco products, irrespective of quantity,  
11 number of sales, giving the same away or exposing the same where  
12 they may be taken, or purchased, or otherwise acquired by the  
13 consumer-; i

14       ~~(e)~~ 5. The word "consumer" shall mean a person who comes into  
15 possession of tobacco for the purpose of consuming it, giving it  
16 away, or disposing of it in any way by sale, barter or exchange-; i

17       ~~(f)~~ 6. The words "first sale" shall mean and include the first  
18 sale, or distribution, of cigars or tobacco products in intrastate  
19 commerce, or the first use or consumption of cigars, or tobacco  
20 products within this state-; i

21       ~~(g)~~ 7. The words "tobacco products" shall mean any cigars,  
22 cheroots, stogies, smoking tobacco (including granulated, plug cut,  
23 crimp cut, ready rubbed and any other kinds and forms of tobacco  
24 suitable for smoking in a pipe or cigarette), chewing tobacco

1 (including cavendish, twist, plug, scrap and any other kinds and  
2 forms of tobacco suitable for chewing), however prepared; and shall  
3 include any other articles or products made of tobacco or any  
4 substitute therefor;

5 ~~(h)~~ 8. The term "distributing agent" shall mean and include  
6 every person in this state who acts as an agent of any person  
7 outside the state by receiving cigars and tobacco products in  
8 interstate commerce and storing such items subject to distribution  
9 or delivery, upon order from said person outside the state, to  
10 distributors, wholesale dealers and retail dealers, or to consumers.  
11 The term "distributing agent" shall also mean and include any person  
12 who solicits or takes orders for cigars and tobacco products to be  
13 shipped in interstate commerce to a person in this state by a person  
14 residing outside of Oklahoma, the tax not having been paid on such  
15 cigars and tobacco products;

16 ~~(i)~~ 9. The term "stamp" shall mean the stamp or stamps by use  
17 of which:

18 ~~1.~~ a. the tax levied pursuant to the provisions of Section  
19 401 et seq. of this title is paid;

20 ~~2.~~ b. the tax levied pursuant to the provisions of Section  
21 426 of this title is paid; or

22 ~~3.~~ c. the payment in lieu of taxes authorized pursuant to a  
23 compact entered into by the State of Oklahoma and a  
24 federally recognized Indian tribe or nation pursuant

1 to the provisions of subsection C of Section 346 of  
2 this title is paid-;

3 ~~(j)~~ 10. The term "drop shipment" shall mean and include any  
4 delivery of cigars or tobacco products received by any person within  
5 the state when payment for such cigars or tobacco products is made  
6 to the shipper or seller by or through a person other than the  
7 consignee-;

8 ~~(k)~~ 11. The term "cigars" shall include any roll of tobacco for  
9 smoking, irrespective of size or shape and irrespective of the  
10 tobacco being flavored, adulterated or mixed with any other  
11 ingredients, where such roll has a wrapper made chiefly of tobacco-,  
12 but shall not include "rolling papers" as defined in paragraph 13 of  
13 this section;

14 ~~(l)~~ 12. The word "dealer" shall include every person, firm,  
15 corporation, or association of persons, who manufactures cigars or  
16 tobacco products for distribution, sale, use or consumption in the  
17 State of Oklahoma. The word "dealer" is also further defined to  
18 mean any person, firm, corporation or association of persons, who  
19 imports cigars or tobacco products from any state or foreign  
20 country, for distribution, sale, use or consumption in the State of  
21 Oklahoma;

22 13. The term "rolling paper" shall mean any paper, tobacco or  
23 similar material suitable for use by consumers to wrap or roll  
24 tobacco fill material into the form of a cigarette or cigar. The

1 term "rolling paper" includes cigar wraps as defined in paragraph 14  
2 of this section; and

3 14. The term "cigar wrap" shall mean a packaged cigar tube made  
4 of tobacco leaves, homogenized tobacco paper or an equivalent that  
5 is rolled into a shaped tube with a longitudinal bore, a  
6 longitudinal opening and edges that can be moved apart so tobacco  
7 fill material can be added to the bore via the longitudinal opening.

8 SECTION 2. AMENDATORY 68 O.S. 2001, Section 402, is  
9 amended to read as follows:

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

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

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

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

6           4. Smoking Tobacco. Upon all smoking tobacco including  
7 granulated, plug cut, crimp cut, ready rubbed and other kinds and  
8 forms of tobacco prepared in such manner as to be suitable for  
9 smoking in a pipe or cigarette, the tax shall be twenty-five percent  
10 (25%) of the factory list price exclusive of any trade discount,  
11 special discount or deals; ~~and~~

12           5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco,  
13 and snuff, the tax shall be twenty percent (20%) of the factory list  
14 price exclusive of any trade discount, special discount or deals;  
15 and

16           6. Rolling Paper. Upon rolling paper, the tax shall be at the  
17 rate of fifty cents (\$0.50) per package of thirty-two rolling  
18 papers. For packages of greater or less than thirty-two rolling  
19 papers, the tax shall be calculated at one and fifty-six hundredths  
20 of one cent (\$0.0156) per rolling paper. The revenue collected  
21 pursuant to the tax levied by this paragraph on rolling paper shall  
22 be apportioned as follows:

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1           a.   forty percent (40%) shall be apportioned to the  
2                   Department of Mental Health and Substance Abuse  
3                   Services,

4           b.   forty percent (40%) shall be apportioned to the  
5                   Oklahoma State Bureau of Narcotics and Dangerous Drugs  
6                   Control, and

7           c.   twenty percent (20%) shall be apportioned to the  
8                   Alcoholic Beverage Laws Enforcement Commission.

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

12           Notwithstanding any other provision of law, the tax levied  
13 pursuant to the provisions of Section 401 et seq. of this title  
14 shall be part of the gross proceeds or gross receipts from the sale  
15 of cigars or tobacco products, or both, as those terms are defined  
16 in paragraph 7 12 of Section 1352 of this title.

17           SECTION 3. This act shall become effective July 1, 2011.

18           SECTION 4. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

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23           53-1-5300           CJB           01/14/11  
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