

SUBCOMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1892 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Mike Jackson _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 PROPOSED SUBCOMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1892

By: Johnson (Rob) of the Senate
and
Jackson of the House

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8
9
10 PROPOSED SUBCOMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68
12 O.S. 2011, Sections 401, 402, 402-1, 402-2 and 402-3,
13 which relate to tobacco products tax; defining term;
14 excluding vapor products from excise tax levies; and
15 declaring an emergency.

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

17 SECTION 1. AMENDATORY 68 O.S. 2011, Section 401, is
18 amended to read as follows:

19 Section 401. For the purpose of this article:

20 ~~(a)~~ 1. The word "person" shall mean any individual, company,
21 limited liability company, corporation, partnership, association,
22 joint adventure, estate, trust, or any other group, or combination
23 acting as a unit, and the plural as well as the singular, unless the
24

1 intention to give a more limited meaning is disclosed by the
2 context-;

3 ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax
4 Commission-;

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

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

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

21 ~~(f)~~ 6. The words "first sale" shall mean and include the first
22 sale, or distribution, of cigars or tobacco products in intrastate
23 commerce, or the first use or consumption of cigars, or tobacco
24 products within this state-;

1 ~~(g)~~ 7. The words "tobacco products" shall mean any cigars,
2 cheroots, stogies, smoking tobacco (including granulated, plug cut,
3 crimp cut, ready rubbed and any other kinds and forms of tobacco
4 suitable for smoking in a pipe or cigarette), chewing tobacco
5 (including cavendish, twist, plug, scrap and any other kinds and
6 forms of tobacco suitable for chewing), however prepared; and shall
7 include any other articles or products made of tobacco or any
8 substitute therefor;;

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

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

22 ~~1. The~~

23 a. the tax levied pursuant to the provisions of Section
24 401 et seq. of this title is paid;;

1 ~~2.~~ ~~The~~

2 b. the tax levied pursuant to the provisions of Section
3 426 of this title is paid~~+~~; or

4 ~~3.~~ ~~The~~

5 c. the payment in lieu of taxes authorized pursuant to a
6 compact entered into by the State of Oklahoma and a
7 federally recognized Indian tribe or nation pursuant
8 to the provisions of subsection C of Section 346 of
9 this title is paid~~+~~;

10 ~~(j)~~ 10. The term "drop shipment" shall mean and include any
11 delivery of cigars or tobacco products received by any person within
12 the state when payment for such cigars or tobacco products is made
13 to the shipper or seller by or through a person other than the
14 consignee~~+~~;

15 ~~(k)~~ 11. The term "cigars" shall include any roll of tobacco for
16 smoking, irrespective of size or shape and irrespective of the
17 tobacco being flavored, adulterated or mixed with any other
18 ingredients, where such roll has a wrapper made chiefly of tobacco~~+~~;

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

1 country, for distribution, sale, use or consumption in the State of
2 Oklahoma; and

3 13. The words "vapor products" shall mean noncombustible
4 products that may or may not contain nicotine, that employ a
5 mechanical heating element, battery, electronic circuit, or other
6 mechanism, regardless of shape or size, that can be used to produce
7 a vapor in a solution or other form. "Vapor products" shall include
8 any vapor cartridge or other container with or without nicotine or
9 other form that is intended to be used with an electronic cigarette,
10 electronic cigar, electronic cigarillo, electronic pipe, or similar
11 product or device and any vapor cartridge or other container of a
12 solution that may or may not contain nicotine that is intended to be
13 used with or in an electronic cigarette, electronic cigar,
14 electronic cigarillo or electronic device. "Vapor products" does
15 not include any products regulated by the United States Food and
16 Drug Administration under Chapter V of the Federal Food, Drug, and
17 Cosmetic Act.

18 SECTION 2. AMENDATORY 68 O.S. 2011, Section 402, is
19 amended to read as follows:

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

23 1. Little Cigars. Upon cigars of all descriptions made of
24 tobacco, or any substitute therefor, and weighing not more than

1 three (3) pounds per thousand, four (4) mills for each cigar.
2 Provided, that the tax levied on the products coming under this
3 paragraph shall not apply if the tax on such products is reported
4 and paid as cigarette tax under Sections 301 through 325 of this
5 title;

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

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

16 4. Smoking Tobacco. Upon all smoking tobacco including
17 granulated, plug cut, crimp cut, ready rubbed and other kinds and
18 forms of tobacco prepared in such manner as to be suitable for
19 smoking in a pipe or cigarette, the tax shall be twenty-five percent
20 (25%) of the factory list price exclusive of any trade discount,
21 special discount or deals; and

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

1 B. No tax otherwise authorized by the provisions of this
2 section shall be imposed upon vapor products as defined by paragraph
3 13 of Section 401 of this title.

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

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

12 SECTION 3. AMENDATORY 68 O.S. 2011, Section 402-1, is
13 amended to read as follows:

14 Section 402-1. A. In addition to the tax levied by Section 402
15 of this title, there is hereby levied upon the sale, use, exchange
16 or possession of articles containing tobacco as defined in said
17 Section 402, a tax in the following amounts:

18 ~~(a)~~ 1. Upon little cigars of all descriptions made of tobacco,
19 or any substitute therefor, and weighing not more than three (3)
20 pounds per thousand, two and one-half (2 1/2) mills for each cigar.
21 Provided, that the tax levied on the products coming under this
22 paragraph shall not apply if the tax on such products is reported
23 and paid as cigarette tax under Sections 301 through 325 of this
24 title;

1 ~~(b)~~ 2. Upon cigars of all descriptions made of tobacco, or any
2 substitute therefor, and weighing more than three (3) pounds per
3 thousand, and having a manufacturer's recommended retail selling
4 price, under the Federal Code, of more than four cents (\$0.04) for
5 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
6 computing the tax, cheroots, stogies, etc., are hereby classed as
7 cigars-;

8 ~~(c)~~ 3. Upon all smoking tobacco including granulated, plug cut,
9 crimp cut, ready rubbed and other kinds and forms of tobacco
10 prepared in such manner as to be suitable for smoking in a pipe or
11 cigarette, the tax shall be fifteen percent (15%) of the factory
12 list price exclusive of any trade discount, special discount or
13 deals-;

14 ~~(d)~~ 4. Upon chewing tobacco, smokeless tobacco, and snuff, the
15 tax shall be ten percent (10%) of the factory list price exclusive
16 of any trade discount, special discount or deals.

17 This tax shall be paid by the consumer and no retailer may
18 advertise that he will pay or absorb this tax-; and

19 ~~(e)~~ 5. The tax herein levied on tobacco products shall be
20 evidenced by stamps and collected on the same basis and in the same
21 manner and in all respects as the tax levied by the Tobacco Products
22 Tax Law. The revenue from this additional tax shall be apportioned
23 by the Oklahoma Tax Commission in the same manner as provided in
24

1 Section 404 of this title, for the apportionment of other tobacco
2 products tax revenue.

3 B. No tax otherwise authorized by the provisions of this
4 section shall be imposed upon vapor products as defined by paragraph
5 13 of Section 401 of this title.

6 SECTION 4. AMENDATORY 68 O.S. 2011, Section 402-2, is
7 amended to read as follows:

8 Section 402-2. A. In addition to the tax levied by Section 402
9 of this title, and 402-1 of Section 2, Chapter 48, Oklahoma Session
10 Laws 1972 (68 O.S. Supp. 1972, Section 402-1), there is hereby
11 levied upon the sale, use, exchange or possession of articles
12 containing tobacco as defined in said Section 402, a tax in the
13 following amounts:

14 ~~(a)~~ 1. Upon little cigars of all descriptions made of tobacco,
15 or any substitute therefor, and weighing not more than three (3)
16 pounds per thousand, two and one-half (2 1/2) mills for each cigar.
17 Provided, that the tax levied on the products coming under this
18 paragraph shall not apply if the tax on such products is reported
19 and paid as cigarette tax under Sections 301 et seq. of this title;
20 and

21 ~~(b)~~ 2. The revenue from the additional tax herein levied shall
22 be apportioned by the Oklahoma Tax Commission and transmitted to the
23 State Treasurer who shall deposit the same in the General Revenue
24 Fund of the State of Oklahoma.

1 B. No tax otherwise authorized by the provisions of this
2 section shall be imposed upon vapor products as defined by paragraph
3 13 of Section 401 of this title.

4 SECTION 5. AMENDATORY 68 O.S. 2011, Section 402-3, is
5 amended to read as follows:

6 Section 402-3. A. In addition to the tax levied in Sections
7 402, 402-1 and 402-2 of this title, effective January 1, 2005, there
8 shall be levied, assessed, collected, and paid in respect to the
9 articles containing tobacco enumerated in Section 401 et seq. of
10 this title, a tax in the following amounts:

11 1. Little Cigars. Upon cigars of all descriptions made of
12 tobacco, or any substitute therefor, and weighing not more than
13 three (3) pounds per thousand, twenty-seven (27) mills for each
14 cigar. Provided, that the tax levied on the products coming under
15 this paragraph shall not apply if the tax on such products is
16 reported and paid as cigarette tax under Sections 301 through 325 of
17 this title;

18 2. Cigars. Upon all other cigars of all descriptions made of
19 tobacco, or any substitute therefor, and weighing more than three
20 (3) pounds per thousand, Ninety Dollars (\$90.00) per thousand. For
21 the purpose of computing the tax, cheroots, stogies, etc., are
22 hereby classed as cigars;

23 3. Smoking Tobacco. Upon all smoking tobacco including
24 granulated, plug cut, crimp cut, ready rubbed and other kinds and

1 forms of tobacco prepared in such manner as to be suitable for
2 smoking in a pipe or cigarette, the tax shall be forty percent (40%)
3 of the factory list price exclusive of any trade discount, special
4 discount or deals; and

5 4. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco,
6 and snuff, the tax shall be thirty percent (30%) of the factory list
7 price exclusive of any trade discount, special discount or deals.

8 B. No tax otherwise authorized by the provisions of this
9 section shall be imposed upon vapor products as defined by paragraph
10 13 of Section 401 of this title.

11 C. Except as provided in subsection E D of this section, the
12 revenue resulting from the additional tax levied in subsection A of
13 this section shall be apportioned by the Oklahoma Tax Commission and
14 transmitted to the State Treasurer as follows:

15 1. Twenty-two and six-hundredths percent (22.06%) shall be
16 placed to the credit of the Health Employee and Economy Improvement
17 Act Revolving Fund created in Section 1010.1 of Title 56 of the
18 Oklahoma Statutes;

19 2. Three and nine-hundredths percent (3.09%) shall be placed to
20 the credit of the Comprehensive Cancer Center Debt Service Revolving
21 Fund created in Section 160.1 of Title 62 of the Oklahoma Statutes;

22 3. Before July 1, 2008, seven and fifty-hundredths percent
23 (7.50%) shall be placed to the credit of the Trauma Care Assistance
24 Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the

1 Oklahoma Statutes. On and after July 1, 2008, seven and fifty-
2 hundredths percent (7.50%) shall be allocated as follows:

3 a. every month, an amount equal to the actual amount
4 placed to the credit of the Trauma Care Assistance
5 Revolving Fund pursuant to this paragraph for the same
6 month of the 2008 fiscal year shall be credited to the
7 Trauma Care Assistance Revolving Fund,

8 b. every month, any amount over and above the amount
9 placed to the credit of the Trauma Care Assistance
10 Revolving Fund pursuant to subparagraph a of this
11 paragraph shall be credited to the Oklahoma Emergency
12 Response Systems Stabilization and Improvement
13 Revolving Fund as created in Section ~~§~~ 1-2512.1 of
14 ~~this act~~ Title 63 of the Oklahoma Statutes until the
15 combined amount credited to the Oklahoma Emergency
16 Response Systems Stabilization and Improvement
17 Revolving Fund pursuant to this section and Section
18 302-5 of this title is equal to Two Million Five
19 Hundred Thousand Dollars (\$2,500,000.00) each year,
20 and

21 c. any additional revenue allocated pursuant to this
22 paragraph shall be placed to the credit of the Trauma
23 Care Assistance Revolving Fund;

24

1 4. Three and nine-hundredths percent (3.09%) shall be placed to
2 the credit of the Oklahoma State University College of Osteopathic
3 Medicine Revolving Fund created in Section 160.2 of Title 62 of the
4 Oklahoma Statutes;

5 5. Twenty-six and thirty-eight-hundredths percent (26.38%)
6 shall be placed to the credit of the Oklahoma Health Care Authority
7 Medicaid Program Fund created in Section 5020 of Title 63 of the
8 Oklahoma Statutes for the purposes of maintaining programs and
9 services funded under the federal "Jobs and Growth Tax Relief
10 Reconciliation Act of 2003", reimbursing city/county-owned
11 hospitals, increasing emergency room physician rates, and providing
12 TEFRA 134, also known as "Katie Beckett" services;

13 6. Two and sixty-five-hundredths percent (2.65%) shall be
14 placed to the credit of the Department of Mental Health and
15 Substance Abuse Services Revolving Fund created in Section 2-303 of
16 Title 43A of the Oklahoma Statutes;

17 7. Forty-four-hundredths of one percent (0.44%) shall be placed
18 to the credit of the Belle Maxine Hilliard Breast and Cervical
19 Cancer Treatment Revolving Fund created in Section 1-559 of Title 63
20 of the Oklahoma Statutes;

21 8. One percent (1%) shall be placed to the credit of the
22 Teachers' Retirement System Revolving Fund created in Section 158 of
23 Title 62 of the Oklahoma Statutes;

1 9. Two and seven-hundredths percent (2.07%) shall be placed to
2 the credit of the Education Reform Revolving Fund created in Section
3 ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes;

4 10. Sixty-six-hundredths percent (.66%) shall be placed to the
5 credit of the Tobacco Prevention and Cessation Revolving Fund
6 created in Section 1-105d of Title 63 of the Oklahoma Statutes;

7 11. Sixteen and eighty-three-hundredths percent (16.83%) shall
8 be placed to the credit of the General Revenue Fund; and

9 12. For fiscal years beginning July 1, 2004, and ending June
10 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)
11 shall be apportioned to municipalities and counties that levy a
12 sales tax, in the proportions which total municipal and county sales
13 tax revenue was apportioned by the Tax Commission in the preceding
14 month.

15 For fiscal years beginning July 1, 2006, and thereafter, the
16 apportionment percentage specified in paragraph 12 of this
17 subsection will be adjusted by dividing the total municipal and
18 county sales tax revenue collected in the calendar year immediately
19 preceding the commencement of the fiscal year by the sum of the
20 state sales tax revenue and total municipal and county sales tax
21 revenue collected in the same year. This ratio shall be divided by
22 the ratio of the total municipal and county sales tax revenue
23 collected in the calendar year beginning January 1, 2004, and ending
24 December 31, 2004, divided by the sum of the state sales tax revenue

1 and total municipal and county sales tax revenue collected in the
2 same year. The resulting quotient shall be multiplied by fourteen
3 and twenty-three-hundredths percent (14.23%) to determine the
4 apportionment percentage for the fiscal year.

5 For fiscal years beginning July 1, 2006, and thereafter, any
6 adjustment to the percentage of revenues apportioned to
7 municipalities and counties shall be reflected in the percent of
8 revenues apportioned to the General Revenue Fund.

9 ~~E.~~ D. The net amount of any revenue resulting from a payment in
10 lieu of excise taxes on little cigars, cigars, smoking tobacco and
11 chewing tobacco levied by this section, pursuant to a compact with a
12 federally recognized Indian tribe or nation after deductions for
13 deposits into trust accounts pursuant to such compacts, shall be
14 apportioned by the Tax Commission and transmitted to the State
15 Treasurer as follows:

16 1. Thirty-three and forty-nine-hundredths percent (33.49%)
17 shall be placed to the credit of the Health Employee and Economy
18 Improvement Act Revolving Fund created in Section 1010.1 of Title 56
19 of the Oklahoma Statutes;

20 2. Four and sixty-nine-hundredths percent (4.69%) shall be
21 placed to the credit of the Comprehensive Cancer Center Debt Service
22 Revolving Fund created in Section 160.1 of Title 62 of the Oklahoma
23 Statutes;

24

1 3. Before July 1, 2008, eleven and thirty-nine-hundredths
2 percent (11.39%) shall be placed to the credit of the Trauma Care
3 Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of
4 Title 63 of the Oklahoma Statutes. On and after July 1, 2008,
5 eleven and thirty-nine-hundredths percent (11.39%) shall be
6 allocated as follows:

7 a. every month, an amount equal to the actual amount
8 placed to the credit of the Trauma Care Assistance
9 Revolving Fund pursuant to this paragraph for the same
10 month of the 2008 fiscal year shall be credited to the
11 Trauma Care Assistance Revolving Fund,

12 b. every month, any amount over and above the amount
13 placed to the credit of the Trauma Care Assistance
14 Revolving Fund pursuant to subparagraph a of this
15 paragraph shall be credited to the Oklahoma Emergency
16 Response Systems Stabilization and Improvement
17 Revolving Fund as created in Section ~~&~~ 1-2512.1 of
18 ~~this act~~ Title 63 of the Oklahoma Statutes until the
19 combined amount credited to the Oklahoma Emergency
20 Response Systems Stabilization and Improvement
21 Revolving Fund pursuant to this section and Section
22 302-5 of this title is equal to Two Million Five
23 Hundred Thousand Dollars (\$2,500,000.00) each year,
24 and

1 c. any additional revenue allocated pursuant to this
2 paragraph shall be placed to the credit of the Trauma
3 Care Assistance Revolving Fund;

4 4. Four and sixty-nine-hundredths percent (4.69%) shall be
5 placed to the credit of the Oklahoma State University College of
6 Osteopathic Medicine Revolving Fund created in Section 160.2 of
7 Title 62 of the Oklahoma Statutes;

8 5. Forty and six-hundredths percent (40.06%) shall be placed to
9 the credit of the Oklahoma Health Care Authority Medicaid Program
10 Fund created in Section 5020 of Title 63 of the Oklahoma Statutes
11 for the purposes of maintaining programs and services funded under
12 the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003",
13 reimbursing city/county-owned hospitals, increasing emergency room
14 physician rates, and providing TEFRA 134, also known as "Katie
15 Beckett" services;

16 6. Four and one-hundredths percent (4.01%) shall be placed to
17 the credit of the Department of Mental Health and Substance Abuse
18 Services Revolving Fund created in Section 2-303 of Title 43A of the
19 Oklahoma Statutes;

20 7. Sixty-seven-hundredths percent (0.67%) shall be placed to
21 the credit of the Belle Maxine Hilliard Breast and Cervical Cancer
22 Treatment Revolving Fund created in Section 1-559 of Title 63 of the
23 Oklahoma Statutes; and
24

1 8. One percent (1%) shall be placed to the credit of the
2 Tobacco Prevention and Cessation Revolving Fund created in Section
3 1-105d of Title 63 of the Oklahoma Statutes.

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

7 SECTION 6. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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12 54-2-10686 MAH 03/28/14

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