

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1892

By: Johnson (Rob) of the Senate

and

Jackson of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to revenue and taxation; amending 68
11 O.S. 2011, Sections 401 and 402, which relate to
12 tobacco products tax; modifying definitions; defining
13 terms; providing that tobacco tax shall not apply to
14 vapor or alternative nicotine products; and declaring
15 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 intention to give a more limited meaning is disclosed by the
context~~;~~;

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

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

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

17 ~~(e)~~ 5. The word "consumer" shall mean a person who comes into
18 possession of tobacco or tobacco-derived products for the purpose of
19 consuming it, giving it away, or disposing of it in any way by sale,
20 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 or tobacco-
23 derived products in intrastate commerce, or the first use or
24

1 consumption of cigars, ~~or~~ tobacco products or tobacco-derived
2 products within this state-;

3 ~~(g)~~ 7. The words "tobacco products" shall mean any cigars,
4 cheroots, stogies, smoking tobacco (including granulated, plug cut,
5 crimp cut, ready rubbed and any other kinds and forms of tobacco
6 suitable for smoking in a pipe or cigarette), chewing tobacco
7 (including cavendish, twist, plug, scrap and any other kinds and
8 forms of tobacco suitable for chewing), however prepared; and shall
9 include any other articles or products made of tobacco or any
10 substitute therefor- but shall not include snus, tobacco-derived
11 products or vapor products;

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

24

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

3 ~~1. The~~

4 a. the tax levied pursuant to the provisions of Section
5 401 et seq. of this title is paid~~;~~;

6 ~~2. The~~

7 b. the tax levied pursuant to the provisions of Section
8 426 of this title is paid~~;~~; or

9 ~~3. The~~

10 c. the payment in lieu of taxes authorized pursuant to a
11 compact entered into by the State of Oklahoma and a
12 federally recognized Indian tribe or nation pursuant
13 to the provisions of subsection C of Section 346 of
14 this title is paid~~;~~;

15 ~~(j)~~ 10. The term "drop shipment" shall mean and include any
16 delivery of cigars ~~or,~~ tobacco products or tobacco-derived products
17 received by any person within the state when payment for such cigars
18 ~~or,~~ tobacco products or tobacco-derived products is made to the
19 shipper or seller by or through a person other than the consignee~~;~~;

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

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1 ~~(1)~~ 12. The word "dealer" shall include every person, firm,
2 corporation, or association of persons, who manufactures cigars ~~or~~,
3 tobacco products or tobacco-derived products for distribution, sale,
4 use or consumption in the State of Oklahoma. The word "dealer" is
5 also further defined to mean any person, firm, corporation or
6 association of persons, who imports cigars ~~or~~, tobacco products or
7 tobacco-derived products from any state or foreign country, for
8 distribution, sale, use or consumption in the State of Oklahoma;

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

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1 14. "Alternative nicotine products" shall mean any
2 noncombustible product containing nicotine that is intended for
3 human consumption, whether chewed, absorbed, dissolved or ingested
4 by any other means. "Alternative nicotine products" do not include
5 any vapor product, tobacco products as defined by paragraph 7 of
6 this section or any product regulated as a drug or device by the
7 United States Food and Drug Administration under Chapter V of the
8 Food, Drug and Cosmetic Act.

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

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

14 1. Little Cigars. Upon cigars of all descriptions made of
15 tobacco, or any substitute therefor, and weighing not more than
16 three (3) pounds per thousand, four (4) 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 through 325 of this
20 title;

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

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

8 4. Smoking Tobacco. Upon all smoking tobacco including
9 granulated, plug cut, crimp cut, ready rubbed and other kinds and
10 forms of tobacco prepared in such manner as to be suitable for
11 smoking in a pipe or cigarette, the tax shall be twenty-five percent
12 (25%) of the factory list price exclusive of any trade discount,
13 special discount or deals; and

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

17 The tax prescribed by this section shall not apply to vapor
18 products or alternative nicotine products as those terms are defined
19 in Section 1 of this act.

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

23 Notwithstanding any other provision of law, the tax levied
24 pursuant to the provisions of Section 401 et seq. of this title

1 shall be part of the gross proceeds or gross receipts from the sale
2 of cigars or tobacco products, or both, as those terms are defined
3 in paragraph 7 12 of Section 1352 of this title.

4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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