

1 ENGROSSED SENATE  
2 BILL NO. 1892

By: Johnson (Rob) of the Senate

3 and

4 Jackson of the House

5  
6 An Act relating to revenue and taxation; amending 68  
7 O.S. 2011, Sections 401 and 402, which relate to  
8 tobacco products tax; defining term; clarifying  
9 applicability; updating reference; and declaring an  
10 emergency.

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

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

14 Section 401. For the purpose of this article:

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

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

23 ~~(c)~~ 3. The word "wholesaler" shall include dealers whose  
24 principal business is that of a wholesale dealer or jobber, and who

1 is known to the trade as such, who shall sell any cigars or tobacco  
2 products to licensed retail dealers only for the purpose of resale,  
3 or giving them away, or exposing the same where they may be taken or  
4 purchased, or otherwise acquired by the retailer-;

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

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

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

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

1 include any other articles or products made of tobacco or any  
2 substitute therefor;

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

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

16 ~~1. The~~

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

19 ~~2. The~~

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

22 ~~3. The~~

23 c. the payment in lieu of taxes authorized pursuant to a  
24 compact entered into by the State of Oklahoma and a

1           federally recognized Indian tribe or nation pursuant  
2           to the provisions of subsection C of Section 346 of  
3           this title is paid~~;~~;

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

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

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

21       13. The words "vapor products" shall mean noncombustible  
22 products, that may or may not contain nicotine, that employ a  
23 mechanical heating element, battery, electronic circuit, or other  
24 mechanism, regardless of shape or size, that can be used to produce

1 a vapor in a solution or other form. "Vapor products" shall include  
2 any vapor cartridge or other container with or without nicotine or  
3 other form that is intended to be used with an electronic cigarette,  
4 electronic cigar, electronic cigarillo, electronic pipe, or similar  
5 product or device and any vapor cartridge or other container of a  
6 solution, that may or may not contain nicotine that is intended to  
7 be used with or in an electronic cigarette, electronic cigar,  
8 electronic cigarillo or electronic device. "Vapor products" do not  
9 include any products regulated by the United States Food and Drug  
10 Administration under Chapter V of the Federal Food, Drug, and  
11 Cosmetic Act.

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

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

17 1. Little Cigars. Upon cigars of all descriptions made of  
18 tobacco, or any substitute therefor, and weighing not more than  
19 three (3) pounds per thousand, four (4) mills for each cigar.

20 Provided, that the tax levied on the products coming under this  
21 paragraph shall not apply if the tax on such products is reported  
22 and paid as cigarette tax under Sections 301 through 325 of this  
23 title;

24

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

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

11       4. Smoking Tobacco. Upon all smoking tobacco including  
12 granulated, plug cut, crimp cut, ready rubbed and other kinds and  
13 forms of tobacco prepared in such manner as to be suitable for  
14 smoking in a pipe or cigarette, the tax shall be twenty-five percent  
15 (25%) of the factory list price exclusive of any trade discount,  
16 special discount or deals; and

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

20       The tax prescribed by this section shall not apply to vapor  
21 products as that term is defined in Section 1 of this act.

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

