

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1747

By: Wright

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Sections 301 and 401, which relate to  
9 cigarette taxes; modifying definitions; expanding  
10 definition of cigarette; modifying tax treatment of  
11 certain tobacco; providing an effective date; and  
12 declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 301, is  
15 amended to read as follows:

16 Section 301. For purposes of Section 301 et seq. of this title:

17 1. The term "cigarette" is defined to mean and include:

18 a. all rolled tobacco or any substitute therefor, wrapped  
19 in paper or any substitute therefor and weighing not  
20 to exceed three (3) pounds per thousand cigarettes,  
21 and

22 b. any roll of tobacco for smoking, with a ring size of  
23 twenty-eight or less, irrespective of the tobacco  
24 being flavored, adulterated or mixed with any other

1           ingredients, where such rolled tobacco has a wrapper  
2           made chiefly of tobacco;

3           2. The term "person" is defined to mean and include any  
4 individual, company, partnership, joint venture, joint agreement,  
5 association (mutual or otherwise), limited liability company,  
6 corporation, estate, trust, business trust receiver, or trustee  
7 appointed by any state or federal court, or otherwise, syndicate, or  
8 any political subdivision of the state or combination acting as a  
9 unit, in the plural or singular number;

10          3. The term "wholesaler", "distributor" and/or "jobber" is  
11 defined to mean and include a person, firm or corporation organized  
12 and existing, or doing business, primarily to sell cigarettes to,  
13 and render service to retailers in the territory such person, firm  
14 or corporation chooses to serve, and that:

- 15           a. purchases cigarettes directly from the manufacturer,
- 16           b. at least seventy-five percent (75%) of whose gross  
17           sales are made at wholesale,
- 18           c. handles goods in wholesale quantities and sells  
19           through salespersons, advertising and/or sales  
20           promotion devices,
- 21           d. carries at all times at its principal place of  
22           business a representative stock of cigarettes for  
23           sale, and

1 e. comes into the possession of cigarettes for the  
2 purpose of selling them to retailers or to persons  
3 outside or within the state who might resell or retail  
4 such cigarettes to consumers.

5 In addition to the foregoing, and irrespective of the percentage  
6 or type of sales, the term "wholesaler", "distributor" and/or  
7 "jobber" shall also include all purchasers of cigarettes making  
8 purchases directly from the manufacturer for distribution at  
9 wholesale or retail sale and this shall not affect the requirements  
10 relating to retail licenses;

11 4. The term "retailer" is defined to be:

12 a. a person who comes into the possession of cigarettes  
13 for the purpose of selling, or who sells them at  
14 retail, or

15 b. a person, not coming within the classification of  
16 wholesaler, distributor and/or jobber as herein  
17 defined, having possession of more than one thousand  
18 cigarettes;

19 5. The term "consumer" is defined to be a person who receives  
20 or who in any way comes into possession of cigarettes for the  
21 purpose of consuming them, giving them away, or disposing of them in  
22 a way other than by sale, barter or exchange;

23 6. The term "Tax Commission" is defined to mean the Oklahoma  
24 Tax Commission;

1           7. The term "sale" and/or "sales" is hereby defined to be and  
2 declared to include sales, barter, exchanges and every other  
3 manner, method and form of transferring the ownership of personal  
4 property from one person to another, and is also declared to be the  
5 use or consumption in this state in the first instance of cigarettes  
6 received from without the state or of any other cigarettes upon  
7 which the tax has not been paid. The term "first sale" shall mean  
8 and include the first sale or distribution of cigarettes in  
9 intrastate commerce or the first use or consumption of cigarettes  
10 within this state;

11           8. The term "stamp" as herein used shall mean the stamp or  
12 stamps by use of which:

13           a. the tax levied pursuant to the provisions of Section  
14           301 et seq. of this title is paid,

15           b. the tax levied pursuant to the provisions of Section  
16           349 of this title is paid, or

17           c. the payment in lieu of taxes authorized pursuant to a  
18           compact entered into by the State of Oklahoma and a  
19           federally recognized Indian tribe or nation pursuant  
20           to the provisions of subsection C of Section 346 of  
21           this title is paid;

22           9. The term "drop shipment" shall mean and include any delivery  
23 of cigarettes received by any person within this state when payment  
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1 for such cigarettes is made to the shipper or seller by or through a  
2 person other than the consignee;

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

13 11. The term "vending machine" shall mean and include any coin  
14 operating machine, contrivance, or device, by means of which  
15 cigarettes are sold or dispensed in their original container;

16 12. The term "use" means and includes the exercise of any right  
17 or power over cigarettes incident to the ownership or possession  
18 thereof, except that it shall not include the sale of cigarettes in  
19 the regular course of business;

20 13. a. The term "delivery sale" means any sale of cigarettes  
21 to a consumer in Oklahoma where either:

22 (1) the purchaser submits the order for such sale by  
23 means of a telephonic or other method of voice  
24 transmission, the mails or any other delivery

1 service, or the Internet or other online service,  
2 or

3 (2) the cigarettes are delivered by use of the mails  
4 or other delivery service.

5 b. A sale of cigarettes which satisfies the criteria in  
6 subparagraph a of this paragraph shall be a delivery  
7 sale regardless of whether the seller is located  
8 within or outside of Oklahoma.

9 c. A sale of cigarettes not for personal consumption to a  
10 person who is a wholesale dealer or a retail dealer  
11 shall not be a delivery sale.

12 d. For purposes of this paragraph, any sale of cigarettes  
13 to an individual in Oklahoma shall be treated as a  
14 sale to a consumer unless such individual is licensed  
15 as a distributor or retailer of cigarettes by the Tax  
16 Commission;

17 14. The term "delivery service" means any person, including but  
18 not limited to the United States Postal Service, that is engaged in  
19 the commercial delivery of letters, packages, or other containers;

20 15. The term "manufacturer" means any person who manufactures,  
21 fabricates, assembles, processes, or labels a finished cigarette; or  
22 imports, either directly or indirectly, a finished cigarette for  
23 sale or distribution in this state;

1        16. The term "mails" or "mailing" means the shipment of  
2 cigarettes through the United States Postal Service;

3        17. The term "shipping container" means a container in which  
4 cigarettes are shipped in connection with a delivery sale; and

5        18. The term "shipping documents" means bills of lading,  
6 airbills, or any other documents used to evidence the undertaking by  
7 a delivery service to deliver letters, packages, or other  
8 containers.

9        SECTION 2.        AMENDATORY        68 O.S. 2011, Section 401, is  
10 amended to read as follows:

11        Section 401. For the purpose of this article:

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

18        ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax  
19 Commission.

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

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

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

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

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

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

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

14       1. The tax levied pursuant to the provisions of Section 401 et  
15 seq. of this title is paid;

16       2. The tax levied pursuant to the provisions of Section 426 of  
17 this title is paid; or

18       3. The payment in lieu of taxes authorized pursuant to a  
19 compact entered into by the State of Oklahoma and a federally  
20 recognized Indian tribe or nation pursuant to the provisions of  
21 subsection C of Section 346 of this title is paid.

22       ~~(j)~~ 10. The term "drop shipment" shall mean and include any  
23 delivery of cigars or tobacco products received by any person within  
24 the state when payment for such cigars or tobacco products is made

1 to the shipper or seller by or through a person other than the  
2 consignee.

3 ~~(k)~~ 11. The term "cigars" shall include any roll of tobacco for  
4 smoking, irrespective of size or shape and irrespective of the  
5 tobacco being flavored, adulterated or mixed with any other  
6 ingredients, where such roll has a wrapper made chiefly of tobacco;  
7 provided, however, the term "cigars" shall not include any item that  
8 meets the definition of "cigarette" pursuant to paragraph 1 of  
9 Section 301 of this title.

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

18 SECTION 3. This act shall become effective July 1, 2013.

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

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24 54-1-5086 CJB 01/06/13