

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1892

By: Johnson (Rob)

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Sections 401, 402, 403, 404, 412, as
9 amended by Section 1, Chapter 334, O.S.L. 2013, 418,
10 as amended by Section 2, Chapter 334, O.S.L. 2013,
11 420 and 420.1 (68 O.S. Supp. 2013, Sections 412 and
12 418), which relate to tobacco products tax; modifying
13 definitions; defining terms; prohibiting taxation of
14 vapor products; providing for taxation of certain
15 tobacco-derived products, subject to specified limit;
16 providing for applicability of certain requirements
17 to tobacco-derived products; requiring certain
18 information be included in specified invoices;
19 requiring certain documents to be retained in certain
20 manner; providing that tobacco-derived products are
21 subject to taxation; applying certain penalties to
22 tobacco-derived products; authorizing Oklahoma Tax
23 Commission to prescribe specified rules; clarifying
24 references; requiring certain documents to be
retained in accordance with specified statute and
rules; and declaring an emergency.

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

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

Section 401. For the purpose of this article:

~~(a)~~ 1. The word "person" shall mean any individual, company,
limited liability company, corporation, partnership, association,

1 joint adventure, estate, trust, or any other group, or combination
2 acting as a unit, and the plural as well as the singular, unless the
3 intention to give a more limited meaning is disclosed by the
4 context-;i

5 ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax
6 Commission-;i

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

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

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

1 ~~(f)~~ 6. The words "first sale" shall mean and include the first
2 sale, or distribution, of cigars ~~or~~, tobacco products or tobacco-
3 derived products in intrastate commerce, or the first use or
4 consumption of cigars, ~~or~~ tobacco products or tobacco-derived
5 products within this state.;

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

15 ~~(h)~~ 8. The term "distributing agent" shall mean and include
16 every person in this state who acts as an agent of any person
17 outside the state by receiving cigars ~~and~~, tobacco products or
18 tobacco-derived products in interstate commerce and storing such
19 items subject to distribution or delivery, upon order from said
20 person outside the state, to distributors, wholesale dealers and
21 retail dealers, or to consumers. The term "distributing agent"
22 shall also mean and include any person who solicits or takes orders
23 for cigars ~~and~~, tobacco products or tobacco-derived products to be
24 shipped in interstate commerce to a person in this state by a person

1 residing outside of Oklahoma, the tax not having been paid on such
2 cigars ~~and,~~ tobacco products ~~and tobacco-derived products;~~

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

5 ~~1.~~ ~~The~~

6 a. the tax levied pursuant to the provisions of Section
7 401 et seq. of this title is paid ~~;~~

8 ~~2.~~ ~~The~~

9 b. the tax levied pursuant to the provisions of Section
10 426 of this title is paid ~~;~~ or

11 ~~3.~~ ~~The~~

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

17 ~~(j)~~ 10. The term "drop shipment" shall mean and include any
18 delivery of cigars ~~or,~~ tobacco products or tobacco-derived products

19 received by any person within the state when payment for such cigars
20 ~~or,~~ tobacco products or tobacco-derived products is made to the
21 shipper or seller by or through a person other than the consignee ~~;~~

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

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

11 13. The words "tobacco-derived products" shall mean any
12 noncombustible products derived from tobacco that contain nicotine
13 and are intended for human consumption, including snus, whether
14 chewed, absorbed, dissolved or ingested by any other means, but do
15 not include vapor products or any products regulated by the United
16 States Food and Drug Administration under Chapter V of the Federal
17 Food, Drug, and Cosmetic Act;

18 14. The words "vapor products" shall mean noncombustible
19 products containing nicotine that employ a mechanical heating
20 element, battery or electronic circuit, regardless of shape or size,
21 that can be used to heat a liquid nicotine solution contained in a
22 vapor cartridge as well as any vapor cartridge or other container
23 containing liquid nicotine solution that can be used with or in a
24 vapor product and electronic cigarettes, electronic cigars,

1 electronic cigarillos and electronic pipes. "Vapor products" do not
2 include any products regulated by the United States Food and Drug
3 Administration under Chapter V of the Federal Food, Drug, and
4 Cosmetic Act;

5 15. The words "tobacco-derived product unit" shall mean the
6 content of any package of tobacco-derived products intended to be
7 sold in such package at retail, the net weight of which is any
8 amount up to and including one (1) ounce;

9 16. for purposes of the tax statutes, the word "snus" shall
10 mean an oral tobacco product derived from finely ground tobaccos
11 mixed with water and other additives, the manufacturing of which
12 includes a heat treatment process rather than fermentation; and

13 17. The word "manufacturer" shall mean a person within or
14 outside of this state who produces cigarettes, tobacco products or
15 tobacco-derived products or a person who contracts with another
16 person to produce cigarettes, tobacco products or tobacco-derived
17 products.

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

20 Section 402. There shall be levied, assessed, collected, and
21 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 6. Vapor products. There shall be no state excise tax or
2 tobacco products tax assessed on vapor products; and

3 7. Tobacco-derived products. Upon all tobacco-derived
4 products, the tax shall be ten cents (\$0.10) per tobacco-derived
5 product unit and a proportionate tax at the like rate on all
6 fractional parts of a tobacco-derived product unit in excess of a
7 single tobacco-derived product unit. At no time shall the rate
8 levied upon a tobacco-derived product unit exceed one-tenth (0.10)
9 the rate of tax imposed on a pack of cigarettes in this state.

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

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

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 403, is
19 amended to read as follows:

20 Section 403. ~~(a)~~ A. The excise taxes levied by this article
21 shall be paid by affixing stamps in the manner and at the time
22 herein set forth. In the case of cigars, including five-pack and
23 other small packs, stogies and cheroots, the stamps shall be affixed
24 to the box, or container, in which or from which normally sold at

1 wholesale. Wholesalers and jobbers shall affix the required stamps
2 within seventy-two (72) hours after such tobacco products are
3 received by them. Any retailer shall have twenty-four (24) hours
4 within which to affix the stamps after such tobacco products are
5 received by him, or them. Provided that the Tax Commission may, in
6 its discretion, where it is practical and reasonable for the
7 enforcement of the collection of taxes provided hereunder,
8 promulgate such rules and regulations as to permit cigars, stogies,
9 cheroots, and tobacco products, to remain unstamped in the hands of
10 the wholesalers and jobbers until the original case or crate is
11 broken, unpacked or sold.

12 ~~(b)~~ B. In the case of tobacco products wrapped in packages of
13 two (2) pounds or less, the stamps shall be affixed to the
14 containers in which or from which the individual packages are
15 normally sold at wholesale and the stamps shall be affixed by
16 wholesalers and jobbers within seventy-two (72) hours after such
17 products are received by them, and by any retailer within the
18 twenty-four (24) hours of receipt by him or them of any such
19 products. Such goods must be stamped before being sold. All retail
20 dealers in manufactured tobacco products or tobacco-derived
21 products, purchasing or receiving such commodities from without the
22 state, whether the same shall have been ordered through a wholesaler
23 or jobber in this state and/or by drop shipment and/or otherwise,
24 shall within five (5) days after receipt of same, mail a duplicate

1 invoice of all such purchases or receipts to the Tax Commission.
2 Failure to furnish duplicate invoices as required shall be deemed a
3 misdemeanor, and, upon conviction, be punishable by a fine of not
4 more than One Hundred Dollars (\$100.00) for each offense, or
5 imprisonment in the county jail for a period not exceeding thirty
6 (30) days.

7 ~~(e)~~ C. It is the intent and purpose of this section to require
8 all manufacturers within this state, wholesale dealers, jobbers,
9 distributors and retail dealers, to affix the stamps provided for in
10 this section to taxable commodities, but when the stamps have been
11 affixed as required herein, no further or other stamp shall be
12 required regardless of how often such articles may be sold or resold
13 within this state.

14 D. All invoices for tobacco-derived products issued by
15 manufacturers shall include the actual pounds of tobacco-derived
16 products, if available.

17 E. Copies of all invoices for the purchase or sale of any
18 tobacco products or tobacco-derived products shall be retained by
19 each wholesale dealer, retailer, distributor, jobber and subjobber
20 for a period of three (3) years, subject to the examination of the
21 Oklahoma Tax Commission.

22 SECTION 4. AMENDATORY 68 O.S. 2011, Section 404, is
23 amended to read as follows:

24

1 Section 404. The sale, barter or exchange of tobacco products
2 or tobacco-derived products or possession of tobacco products or
3 tobacco-derived products for consumption, is hereby declared to be
4 subject to taxation authorized by Section 12 of Article X of the
5 Oklahoma Constitution, and it is the purpose and intention of this
6 article to provide revenue for the expense of the state government.
7 The revenue, including interest and penalties, collected under this
8 article shall be paid monthly by the Tax Commission to the State
9 Treasurer to be placed in the General Revenue Fund, to be paid out
10 pursuant to direct appropriation by the Legislature.

11 SECTION 5. AMENDATORY 68 O.S. 2011, Section 412, as
12 amended by Section 1, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2013,
13 Section 412), is amended to read as follows:

14 Section 412. (a) Every wholesaler, jobber, retailer or
15 consumer who purchases or allows to come into his or her possession
16 any unstamped merchandise coming under the scope of this article
17 shall file with the Oklahoma Tax Commission a surety or collateral
18 or cash bond in the amount of Twenty-five Thousand Dollars
19 (\$25,000.00), payable to the State of Oklahoma and conditioned upon
20 compliance with the provisions of this article and the rules of the
21 Tax Commission.

22 (b) Any consumer who purchases or brings into this state
23 unstamped cigars or tobacco products whereon the tax would be more
24 than twenty-five cents (\$0.25) is subject to the tax thereon. Upon

1 failure to pay the tax levied in this article, the consumer shall be
2 subject to a fine of not more than Five Hundred Dollars (\$500.00) or
3 not less than Twenty-five Dollars (\$25.00). Provided, any person in
4 possession of more than one thousand small or large cigars or two
5 hundred sixteen (216) ounces of chewing or smoking tobacco products
6 or tobacco-derived products in packages or containers for which the
7 tax required by law has not been paid shall be punished by
8 administrative fines in the manner and amounts provided in
9 subsection D of Section 418 of this title.

10 SECTION 6. AMENDATORY 68 O.S. 2011, Section 418, as
11 amended by Section 2, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2013,
12 Section 418), is amended to read as follows:

13 Section 418. A. It shall be unlawful for any person to
14 transport or possess unstamped tobacco products where the tax on
15 such unstamped tobacco products exceeds the sum of One Dollar
16 (\$1.00).

17 B. Except as otherwise provided in subsections C and D of this
18 section, any person found guilty of violating the provisions of
19 Section 401 et seq. of this title shall be punished by an
20 administrative fine of not more than Five Hundred Dollars (\$500.00).
21 Provided, any person in possession of more than one thousand small
22 or large cigars or two hundred sixteen (216) ounces of chewing or
23 smoking tobacco products or tobacco-derived products in packages or
24 containers for which the tax required by law has not been paid shall

1 be punished by administrative fines in the manner and amounts
2 provided in subsection D of this section.

3 C. Any retailer violating the provisions of Section 403.2 of
4 this title shall:

5 1. For a first offense, be punished by an administrative fine
6 of not more than One Thousand Dollars (\$1,000.00);

7 2. For a second offense, punished by an administrative fine of
8 not more than Five Thousand Dollars (\$5,000.00); and

9 3. For a third or subsequent offense, be punished by an
10 administrative fine of not more than Ten Thousand Dollars
11 (\$10,000.00).

12 D. Any wholesaler, distributing agent or dealer violating the
13 provisions of Section 403.2 of this title shall:

14 1. For a first offense, be punished by an administrative fine
15 of not more than Five Thousand Dollars (\$5,000.00); and

16 2. For a second or subsequent offense, be punished by an
17 administrative fine of not more than Twenty Thousand Dollars
18 (\$20,000.00).

19 Administrative fines collected pursuant to the provisions of
20 this subsection shall be deposited to the revolving fund created in
21 Section 305.2 of this title.

22 E. The Oklahoma Tax Commission shall immediately revoke the
23 license of a person punished for a violation pursuant to the
24 provisions of paragraph 3 of subsection C of this section or a

1 person punished for a violation pursuant to the provisions of
2 subsection D of this section. A person whose license is so revoked
3 shall not be eligible to receive another license pursuant to the
4 provisions of Section 301 et seq. of this title for a period of ten
5 (10) years.

6 SECTION 7. AMENDATORY 68 O.S. 2011, Section 420, is
7 amended to read as follows:

8 Section 420. The Oklahoma Tax Commission shall prescribe such
9 rules and make such regulations as to the sale of such tobacco
10 products or tobacco-derived products and the exemption from the
11 tobacco products tax thereon, as shall be deemed necessary to comply
12 with the provisions of the preceding section.

13 SECTION 8. AMENDATORY 68 O.S. 2011, Section 420.1, is
14 amended to read as follows:

15 Section 420.1. A. Each distributor of tobacco products, as
16 defined in Section 401 of ~~Title 68 of the Oklahoma Statutes~~ this
17 title, shall maintain copies of invoices or equivalent documentation
18 for each of its facilities for every transaction in which the
19 distributor is the seller, purchaser, consignor, consignee, or
20 recipient of tobacco products. The invoices or documentation shall
21 contain the distributor's tobacco license number and the quantity by
22 brand style of the tobacco products involved in the transaction.

23 B. Each retailer of tobacco products, as defined in Section 401
24 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain

1 copies of invoices or equivalent documentation for every transaction
2 in which the retailer receives or purchases tobacco products at each
3 of its facilities. The invoices or documentation shall show the
4 name and address of the distributor from whom, or the address of
5 another facility of the same retailer from which, the tobacco
6 products were received, the quantity of each brand style received in
7 such transaction and the retail cigarette license number or sales
8 tax license number.

9 C. Copies of all invoices for the purchase or sale of any
10 tobacco-derived products shall be retained in accordance with
11 Section 403 of this title and the rules of the Oklahoma Tax
12 Commission.

13 SECTION 9. AMENDATORY 68 O.S. 2011, Section 1355, is
14 amended to read as follows:

15 Section 1355. There are hereby specifically exempted from the
16 tax levied pursuant to the provisions of Section 1350 et seq. of
17 this title:

18 1. Sale of gasoline, motor fuel, methanol, "M-85" which is a
19 mixture of methanol and gasoline containing at least eighty-five
20 percent (85%) methanol, compressed natural gas, liquefied natural
21 gas, or liquefied petroleum gas on which the Motor Fuel Tax,
22 Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special
23 Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or
24 Section 701 et seq. of this title has been, or will be paid;

1 2. Sale of motor vehicles or any optional equipment or
2 accessories attached to motor vehicles on which the Oklahoma Motor
3 Vehicle Excise Tax levied in Section 2101 et seq. of this title has
4 been, or will be paid;

5 3. Sale of crude petroleum or natural or casinghead gas and
6 other products subject to gross production tax pursuant to the
7 provisions of Section 1001 et seq. and Section 1101 et seq. of this
8 title. This exemption shall not apply when such products are sold
9 to a consumer or user for consumption or use, except when used for
10 injection into the earth for the purpose of promoting or
11 facilitating the production of oil or gas. This paragraph shall not
12 operate to increase or repeal the gross production tax levied by the
13 laws of this state;

14 4. Sale of aircraft on which the tax levied pursuant to the
15 provisions of Sections 6001 through 6007 of this title has been, or
16 will be paid or which are specifically exempt from such tax pursuant
17 to the provisions of Section 6003 of this title;

18 5. Sales from coin-operated devices on which the fee imposed by
19 Sections 1501 through 1512 of this title has been paid;

20 6. Leases of twelve (12) months or more of motor vehicles in
21 which the owners of the vehicles have paid the vehicle excise tax
22 levied by Section 2103 of this title;

23 7. Sales of charity game equipment on which a tax is levied
24 pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of

1 Title 3A of the Oklahoma Statutes, or which is sold to an
2 organization that is:

3 a. a veterans' organization exempt from taxation pursuant
4 to the provisions of paragraph (4), (7), (8), (10) or
5 (19) of subsection (c) of Section 501 of the United
6 States Internal Revenue Code of 1986, as amended, 26
7 U.S.C., Section 501(c) et seq., or

8 b. a group home for mentally disabled individuals exempt
9 from taxation pursuant to the provisions of paragraph
10 (3) of subsection (c) of Section 501 of the United
11 States Internal Revenue Code of 1986, as amended, 26
12 U.S.C., Section 501(c) et seq.;

13 8. Sales of cigarettes or tobacco products to:

14 a. a federally recognized Indian tribe or nation which
15 has entered into a compact with the State of Oklahoma
16 pursuant to the provisions of subsection C of Section
17 346 of this title or to a licensee of such a tribe or
18 nation, upon which the payment in lieu of taxes
19 required by the compact has been paid, or

20 b. a federally recognized Indian tribe or nation or to a
21 licensee of such a tribe or nation upon which the tax
22 levied pursuant to the provisions of Section 349 or
23 Section 426 of this title has been paid;

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1 9. Leases of aircraft upon which the owners have paid the
2 aircraft excise tax levied by Section 6001 et seq. of this title or
3 which are specifically exempt from such tax pursuant to the
4 provisions of Section 6003 of this title;

5 10. The sale of low-speed or medium speed electrical vehicles on
6 which the Oklahoma Motor Vehicle Excise Tax levied in Section 2101
7 et seq. of this title has been or will be paid; and

8 11. Effective January 1, 2005, sales of cigarettes on which the
9 tax levied in Section 301 et seq. of this title or tobacco products
10 or tobacco-derived products on which the tax levied in Section 401
11 et seq. of this title has been paid.

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

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