

MEMORANDUM

OKLAHOMA TAX COMMISSION TAX POLICY DIVISION

Date: May 15, 2013

To: Rick Miller Director
Tax Policy & Research Division

From: Christy Caesar
Tax Policy Analyst

Subject: HB 2097 CCS

This memo is in response to your request for a revenue impact for the Conference Committee Substitute for HB 2097.

Section 2

Provides that when ABLE determines that the penalty for violations of Section 600.3 of Title 37, which include furnishing tobacco-derived or vapor products to a minor, should include license or sales tax permit suspension, ABLE must notify the Tax Commission and in turn the OTC is to suspend the store's license to sell tobacco products or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products. The Section also provides that a storeowner's license to sell tobacco-products or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products shall be suspended by the Tax Commission upon notification by ABLE of a storeowner's failure to pay an administrative fine imposed pursuant to Section 600.3 of Title 37 within the time prescribed.

Section 10

Provides that if ABLE does not notify a licensee or sales tax permit regarding an employee's violation of the Prevention of Youth Access to Tobacco Act, the violation shall not apply against the licensee or sales tax permit holder for the purpose of determining a license or sales tax permit suspension pursuant to Section 600.3 of Title 68. Notification of violations shall be deemed given if ABLE mails, by mail with delivery confirmation the notification to the address which is on file the Oklahoma Tax Commission of the licensee or sales tax permit holder of the location at which the violation occurred.

Section 12

The definitions of wholesaler, retailer, consumer, first sale, distributing agent, drop shipment, and dealer contained in Section 401 of Title 68 are amended to include, as applicable, tobacco-derived products.

The definition of tobacco products is amended to exclude snus, tobacco-derived products or vapor products.

Section 13 also defines applicable terms as follows:

- Tobacco-derived products mean any noncombustible products derived from tobacco that contain nicotine and are intended for human consumption, including snus, whether chewed, absorbed, dissolved or ingested by any other means, but do not include vapor products or

any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

- Vapor products mean noncombustible products containing nicotine, that employ a mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge as well as any vapor cartridges or other container containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. Vapor products do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.
- Tobacco-derived product unit means the contents of any package of tobacco-derived products intended to be sold in such package at retail the net weight of which is any amount up to and including one ounce.
- Snus is defined to mean an oral tobacco product derived from finely ground tobaccos mixed with water and other additives, the manufacturing of which includes a heat treatment process rather than fermentation.
- Manufacturer is defined to mean a person within or outside of this state who produces cigarettes, tobacco products, tobacco-derived products or a person who contracts with another person to produce cigarettes, tobacco products, tobacco-derived products.

Section 13

This Section provides that no state excise tax or tobacco products tax shall be assessed on vapor products.

This Section also levies a tax on tobacco-derived products in the amount of ten cents per tobacco-derived product unit and a proportionate tax at the like rate on all fractional parts of a tobacco-derived unit in excess of a single tobacco-derived product unit; provided the tax levied on a tobacco-derived product unit shall not exceed one-tenth the rate of the tax imposed on a pack of cigarettes.

Section 14

Requires that all invoices issued by manufacturers for tobacco-derived products must include the actual pounds or ounces of tobacco-derived products, if available.

Further requires wholesale dealers, retailers, distributors, jobbers, and subjobbers to maintain copies of all invoices for the purchase or sale of any tobacco products, tobacco-derived products for a period of three years subject to examination by the Tax Commission.

Section 15

Provides that the sale, barter, or exchange of tobacco-derived products or possession of tobacco-derived products for consumption is subject to taxation authorized by Section 12 of Article X of the Oklahoma Constitution.

Section 16

Amends the violation and fine provision applicable to consumers who purchase or bring into this state unstamped cigars or tobacco products and fail to pay the tax thereon providing that any person who possesses more than one thousand small or large cigars or 216 ounces of chewing or smoking tobacco products or tobacco-derived products in packages or containers for which the

required tax has not been paid shall be punished by administrative fines¹ in the amounts provided in Section 418(D) of Title 68².

Section 17

Amends the violation and fine provision currently applicable to persons violating any provision of the Tobacco Tax Code, providing that any person who possesses more than one thousand small or large cigars or 216 ounces of chewing or smoking tobacco products or tobacco-derived products in packages or containers for which the required tax has not been paid shall be punished by administrative fines¹ in the amounts provided in Section 418(D) of Title 68².

Section 18

Authorizes the Tax Commission to prescribe rules and regulations as to the sale of tobacco-derived products

Section 19

Requires copies of all invoices for the purchase or sale of any tobacco-derived products to be retained in accordance with Section 402 of Title 68 and the rules and regulations of the Tax Commission.

Section 20

Amends Section 1355 of Title 68 providing that sales of tobacco-derived products on which the tax levied in Section 401 et seq of Title 68 are exempt from the levy of sales tax.

There is a minimal impact to state revenues resulting from this measure.

¹ Administrative fines collected pursuant to Section 418(D) of Title 68 are to be deposited in the revolving fund for the Office of the Attorney General.

² In accordance with Section 418(D) of Title 68, first offences are punished by an administrative fine of not more than \$5,000 and a second or subsequent offense by an administrative fine or not more the \$20,000.