

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB248 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Earl Sears

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

PROPOSED
COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 248

By: Mazzei of the Senate

and

Sears of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to cigarette stamp tax; amending 68 O.S. 2011, Sections 305 and 308, which relate to procedures for use of stamps; deleting requirement and procedures related to exchange of certain stamps; deleting authority for sale of certain stamps; modifying procedures related to credit for certain stamps; deleting authority for certain persons to sell certain stamps; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 305, is amended to read as follows:

Section 305. A. Every wholesaler doing business within this state and required to secure a license as provided under Section 304 of this title shall, upon withdrawal from storage, and before making any sale or distribution of cigarettes for consumption thereof, affix or cause the same to have affixed thereto the stamp or stamps

1 as required by Section 301 et seq. of this title. It shall be the
2 duty of the wholesaler to supply the necessary stamps to cover any
3 and all drop shipments of cigarettes billed to the retailer or
4 consumer by the wholesaler; and the wholesaler shall be liable to
5 the Oklahoma Tax Commission to perform this service. Wholesalers
6 may apply stamps only to cigarette packages that they have received
7 directly from a manufacturer or importer of cigarettes who possesses
8 a valid and current permit under Section 5712 of Title 26 of the
9 United States Code.

10 B. Every retailer who has received unstamped cigarettes from a
11 manufacturer or wholesaler not required to secure a license as
12 provided for under Section 304 of this title, or to affix stamps as
13 required under subsection A of this section, shall, within seventy-
14 two (72) hours, excluding Sundays and holidays, from the time such
15 cigarettes come into the retailer's possession, and before making
16 any sale or distribution for consumption thereof, affix stamps upon
17 all cigarette packages in the proper denomination and amount, as
18 required by Section 302 of this title.

19 C. It shall be unlawful for any person to sell or consume
20 cigarettes on which the tax, as levied by Section 301 et seq. of
21 this title, has not been paid, and which are not contained in
22 packages to which are securely affixed the stamps evidencing payment
23 of the tax imposed by Section 301 et seq. of this title.
24

1 D. If, upon examination of invoices or from other
2 investigations, the Tax Commission finds that cigarettes have been
3 sold without stamps affixed as required by Section 301 et seq. of
4 this title, the Tax Commission shall have the power to require such
5 person to pay to the Tax Commission a sum equal to twice the amount
6 of the tax due. If, under the same circumstances, a person is
7 unable to furnish evidence to the Tax Commission of sufficient stamp
8 purchases to cover unstamped cigarettes purchased, the prima facie
9 presumption shall arise that such cigarettes were sold without
10 proper stamps being affixed thereto.

11 E. 1. All contraband cigarettes upon which taxes are imposed
12 by Section 301 et seq. of this title and all cigarettes stamped,
13 sold, offered for sale, or imported into this state in violation of
14 the provisions of Section 305.1 of this title which shall be found
15 in the possession, custody, or control of any person, for the
16 purpose of being consumed, sold or transported from one place to
17 another in this state, for the purpose of evading or violating the
18 provisions of Section 301 et seq. of this title, or with intent to
19 avoid payment of the tax imposed hereunder, and any automobile,
20 truck, conveyance, or other vehicle whatsoever used in the
21 transportation of such cigarettes, and all paraphernalia, equipment
22 or other tangible personal property incident to the use of such
23 purposes, found in the place, building, vehicle or vehicles, where
24 such cigarettes are found, may be seized by any authorized agent of

1 the Tax Commission, or any sheriff, deputy sheriff, constable or
2 other peace officer within the state, without process. The same
3 shall be, from the time of such seizure, forfeited to the State of
4 Oklahoma, and a proper proceeding filed to maintain such seizure and
5 prosecute the forfeiture as herein provided.

6 2. All such cigarettes so seized shall first be listed and
7 appraised by the officer making such seizure and turned over to the
8 Tax Commission and a receipt therefor taken. The person making such
9 seizure shall immediately make and file a written report thereof,
10 showing the name of the person making such seizure, the place where
11 and the person from whom such property was seized, and an inventory
12 and appraisal thereof, at the usual and ordinary retail price of
13 such articles received, to the Tax Commission, and the Attorney
14 General, in the case of cigarettes stamped, sold, offered for sale,
15 or imported into this state in violation of the provisions of
16 Section 305.1 of this title. The Tax Commission shall then proceed
17 to hear and determine the matter of whether or not the cigarettes
18 should, in fact, be forfeited to the State of Oklahoma. The owner
19 of the cigarettes shall be given at least ten (10) days' notice of
20 the hearing. In the event the Commission finds that the cigarettes
21 should be forfeited to the State of Oklahoma, it shall make an order
22 forfeiting the cigarettes to the State of Oklahoma and directing the
23 destruction of such cigarettes.

1 3. Any and all such vehicles and property so seized shall first
2 be listed and appraised by the officer making such seizure and
3 turned over to the county sheriff of the county in which the seizure
4 is made and a receipt therefor taken. The person making such
5 seizure shall immediately make and file a written report thereof,
6 showing the name of the person making such seizure, the place where
7 and the person from whom such property was seized, and an inventory
8 and appraisal thereof, at the usual and ordinary retail price of
9 such articles received, to the Tax Commission. The district
10 attorney of the county in which the seizures are made shall, at the
11 request of the Tax Commission or Attorney General, file in the
12 district court forfeiture proceedings in the name of the State of
13 Oklahoma, as plaintiff, and in the name of the owner or person in
14 possession, as defendant, if known, and if unknown in the name of
15 the property seized. The clerk of the court shall issue summons to
16 the owner or person in whose possession such property was found,
17 directing the owner or person to answer within ten (10) days. If
18 the property is declared forfeited and ordered sold, notice of the
19 sale shall be posted in five public places in the county not less
20 than ten (10) days before the date of sale. The proceeds of the
21 sale shall be deposited with the clerk of the court, who shall after
22 deducting costs, including the costs of sale, pay the balance to the
23 Tax Commission as cigarette tax collected, or in the case of
24 vehicles and property seized in connection with cigarettes seized as

1 being in violation of the provisions of Section 305.1 of this title,
2 to the Attorney General. The Attorney General shall remit the
3 amount of cigarette tax, if any be due, including all penalties and
4 interest due, to the Tax Commission as cigarette tax collected and
5 shall deposit the remainder to the revolving fund created in Section
6 305.2 of this title.

7 4. The seizure of cigarettes shall not relieve the person from
8 whom such cigarettes were seized from any prosecution or the payment
9 of any penalties provided for under Section 301 et seq. of this
10 title.

11 5. The forfeiture provisions of Section 301 et seq. of this
12 title shall only apply to persons having possession of or
13 transporting cigarettes with intent to barter, sell or give away the
14 same; provided, that such possession of cigarettes in any quantity
15 of five or more cartons of ten packages each shall be prima facie
16 evidence of intent to barter, sell or give away such cigarettes in
17 violation of the provisions of Section 301 et seq. of this title.

18 ~~F. The Tax Commission shall exchange new stamps for any stamps~~
19 ~~which are damaged, or for stamps which have been affixed to packages~~
20 ~~of cigarettes returned to factories, or shipped to other states, or~~
21 ~~sold to government agencies or state institutions, or for stamps~~
22 ~~purchased in excess of floor stocks. Application to the Tax~~
23 ~~Commission for such exchanges must be accompanied by affidavit,~~
24 ~~damaged stamps, bill of lading covering shipment to factory or other~~

1 ~~states, or other proof required by the Tax Commission. Any person~~
2 ~~to whom stamps shall be issued under this paragraph may, upon~~
3 ~~approval of the Tax Commission, sell such stamps to any wholesaler~~
4 ~~as defined in Section 301 et seq. of this title.~~

5 G. Any person, including distributing agents, wholesalers,
6 carriers, retailers and consumers, having possession of unstamped
7 cigarettes in this state shall be liable for the tax on such
8 cigarettes in case the same are lost, stolen or unaccounted for, in
9 transit, storage or otherwise, and in such event a presumption shall
10 exist for the purposes of taxation, that such cigarettes were used
11 and consumed in Oklahoma.

12 SECTION 2. AMENDATORY 68 O.S. 2011, Section 308, is
13 amended to read as follows:

14 Section 308. (a) The stamps placed upon packages of cigarettes
15 shall be purchased by the Commission in proper denominations, shall
16 contain the words "Oklahoma Tax Commission," and shall be of such
17 design, character, color combinations, color changes, sizes, and
18 material as the Commission may, by its rules and regulations,
19 determine to afford the best security to the state. The Commission
20 may require of the manufacturer from whom it purchases such stamps a
21 bond in an amount to be determined by the Commission, containing
22 such conditions as the Commission may deem necessary in order to
23 protect the state against loss. The Commission shall be responsible
24 for the custody and sale of the stamps, and for the disposition of

1 the proceeds thereof. It shall be the duty of the Tax Commission to
2 manufacture or contract for revenue stamps required by this article;
3 provided, that if such stamps are contracted for, the manufacture
4 thereof shall be within the jurisdiction of the criminal and civil
5 courts of this state, unless such stamps cannot be obtained in this
6 state at a fair price or of acceptable quality. If stamps are
7 manufactured outside of the state, then the Commission shall keep a
8 reliable agent at the place of manufacture during the period of
9 manufacture and such agent shall be authorized and instructed to
10 take any and all precautions necessary to safeguard the state
11 against forgery and misdelivery of any stamps. The Commission
12 shall, in contracting for manufacture, consider the safeguarding of
13 stamps to be of paramount importance and shall provide therefor in a
14 manner commensurate with the monetary value of such stamps.

15 (b) The Tax Commission shall, under rules ~~and regulations~~
16 promulgated by the Commission, ~~exchange new stamps or give credit to~~
17 a wholesaler for any stamps affixed to any packages of cigarettes
18 ~~which stamps have become unfit for use or consumption or unsalable~~
19 returned to a manufacturer or not sold and destroyed in the presence
20 of an employee of the Tax Commission. Application to the Tax
21 Commission for credit must be accompanied by affidavit, copy of bill
22 of lading for shipment to the manufacturer, or other proof required
23 by the Tax Commission.
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1 (c) ~~Any person to whom stamps shall be issued hereunder may,~~
2 ~~upon notice and approval of the Tax Commission, sell such stamps to~~
3 ~~any licensed manufacturer, wholesaler, warehouseman, jobber and/or~~
4 ~~retailer.~~

5 (d) The Commission shall sell the stamps to all licensed
6 manufacturers, wholesalers, warehousemen and/or jobbers, retailers,
7 or consumers, who have purchased cigarettes from wholesalers or
8 jobbers within or without the State of Oklahoma, doing business
9 within the State of Oklahoma. All orders for stamps must be
10 accompanied by cash, cashier's check or money order, made payable to
11 the Oklahoma Tax Commission; provided, however, that the Tax
12 Commission may accept personal checks in payment for such stamps
13 upon a determination by the Commission that the purchaser thereof is
14 financially responsible.

15 SECTION 3. This act shall become effective November 1, 2015.

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