

1 **SENATE FLOOR VERSION**

February 3, 2015

2 **AS AMENDED**

3 SENATE BILL NO. 248

By: Mazzei

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7 **[cigarette stamp tax - use of stamps - authority for**
8 **certain persons to sell certain stamps - effective**
9 **date]**

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

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

13 Section 305. A. Every wholesaler doing business within this
14 state and required to secure a license as provided under Section 304
15 of this title shall, upon withdrawal from storage, and before making
16 any sale or distribution of cigarettes for consumption thereof,
17 affix or cause the same to have affixed thereto the stamp or stamps
18 as required by Section 301 et seq. of this title. It shall be the
19 duty of the wholesaler to supply the necessary stamps to cover any
20 and all drop shipments of cigarettes billed to the retailer or
21 consumer by the wholesaler; and the wholesaler shall be liable to
22 the Oklahoma Tax Commission to perform this service. Wholesalers
23 may apply stamps only to cigarette packages that they have received
24 directly from a manufacturer or importer of cigarettes who possesses

1 a valid and current permit under Section 5712 of Title 26 of the
2 United States Code.

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

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

17 D. If, upon examination of invoices or from other
18 investigations, the Tax Commission finds that cigarettes have been
19 sold without stamps affixed as required by Section 301 et seq. of
20 this title, the Tax Commission shall have the power to require such
21 person to pay to the Tax Commission a sum equal to twice the amount
22 of the tax due. If, under the same circumstances, a person is
23 unable to furnish evidence to the Tax Commission of sufficient stamp
24 purchases to cover unstamped cigarettes purchased, the prima facie

1 presumption shall arise that such cigarettes were sold without
2 proper stamps being affixed thereto.

3 E. 1. All contraband cigarettes upon which taxes are imposed
4 by Section 301 et seq. of this title and all cigarettes stamped,
5 sold, offered for sale, or imported into this state in violation of
6 the provisions of Section 305.1 of this title which shall be found
7 in the possession, custody, or control of any person, for the
8 purpose of being consumed, sold or transported from one place to
9 another in this state, for the purpose of evading or violating the
10 provisions of Section 301 et seq. of this title, or with intent to
11 avoid payment of the tax imposed hereunder, and any automobile,
12 truck, conveyance, or other vehicle whatsoever used in the
13 transportation of such cigarettes, and all paraphernalia, equipment
14 or other tangible personal property incident to the use of such
15 purposes, found in the place, building, vehicle or vehicles, where
16 such cigarettes are found, may be seized by any authorized agent of
17 the Tax Commission, or any sheriff, deputy sheriff, constable or
18 other peace officer within the state, without process. The same
19 shall be, from the time of such seizure, forfeited to the State of
20 Oklahoma, and a proper proceeding filed to maintain such seizure and
21 prosecute the forfeiture as herein provided.

22 2. All such cigarettes so seized shall first be listed and
23 appraised by the officer making such seizure and turned over to the
24 Tax Commission and a receipt therefor taken. The person making such

1 seizure shall immediately make and file a written report thereof,
2 showing the name of the person making such seizure, the place where
3 and the person from whom such property was seized, and an inventory
4 and appraisalment thereof, at the usual and ordinary retail price of
5 such articles received, to the Tax Commission, and the Attorney
6 General, in the case of cigarettes stamped, sold, offered for sale,
7 or imported into this state in violation of the provisions of
8 Section 305.1 of this title. The Tax Commission shall then proceed
9 to hear and determine the matter of whether or not the cigarettes
10 should, in fact, be forfeited to the State of Oklahoma. The owner
11 of the cigarettes shall be given at least ten (10) days' notice of
12 the hearing. In the event the Commission finds that the cigarettes
13 should be forfeited to the State of Oklahoma, it shall make an order
14 forfeiting the cigarettes to the State of Oklahoma and directing the
15 destruction of such cigarettes.

16 3. Any and all such vehicles and property so seized shall first
17 be listed and appraised by the officer making such seizure and
18 turned over to the county sheriff of the county in which the seizure
19 is made and a receipt therefor taken. The person making such
20 seizure shall immediately make and file a written report thereof,
21 showing the name of the person making such seizure, the place where
22 and the person from whom such property was seized, and an inventory
23 and appraisalment thereof, at the usual and ordinary retail price of
24 such articles received, to the Tax Commission. The district

1 attorney of the county in which the seizures are made shall, at the
2 request of the Tax Commission or Attorney General, file in the
3 district court forfeiture proceedings in the name of the State of
4 Oklahoma, as plaintiff, and in the name of the owner or person in
5 possession, as defendant, if known, and if unknown in the name of
6 the property seized. The clerk of the court shall issue summons to
7 the owner or person in whose possession such property was found,
8 directing the owner or person to answer within ten (10) days. If
9 the property is declared forfeited and ordered sold, notice of the
10 sale shall be posted in five public places in the county not less
11 than ten (10) days before the date of sale. The proceeds of the
12 sale shall be deposited with the clerk of the court, who shall after
13 deducting costs, including the costs of sale, pay the balance to the
14 Tax Commission as cigarette tax collected, or in the case of
15 vehicles and property seized in connection with cigarettes seized as
16 being in violation of the provisions of Section 305.1 of this title,
17 to the Attorney General. The Attorney General shall remit the
18 amount of cigarette tax, if any be due, including all penalties and
19 interest due, to the Tax Commission as cigarette tax collected and
20 shall deposit the remainder to the revolving fund created in Section
21 305.2 of this title.

22 4. The seizure of cigarettes shall not relieve the person from
23 whom such cigarettes were seized from any prosecution or the payment
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1 of any penalties provided for under Section 301 et seq. of this
2 title.

3 5. The forfeiture provisions of Section 301 et seq. of this
4 title shall only apply to persons having possession of or
5 transporting cigarettes with intent to barter, sell or give away the
6 same; provided, that such possession of cigarettes in any quantity
7 of five or more cartons of ten packages each shall be prima facie
8 evidence of intent to barter, sell or give away such cigarettes in
9 violation of the provisions of Section 301 et seq. of this title.

10 ~~F. The Tax Commission shall exchange new stamps for any stamps
11 which are damaged, or for stamps which have been affixed to packages
12 of cigarettes returned to factories, or shipped to other states, or
13 sold to government agencies or state institutions, or for stamps
14 purchased in excess of floor stocks. Application to the Tax
15 Commission for such exchanges must be accompanied by affidavit,
16 damaged stamps, bill of lading covering shipment to factory or other
17 states, or other proof required by the Tax Commission. Any person
18 to whom stamps shall be issued under this paragraph may, upon
19 approval of the Tax Commission, sell such stamps to any wholesaler
20 as defined in Section 301 et seq. of this title.~~

21 ~~G.~~ Any person, including distributing agents, wholesalers,
22 carriers, retailers and consumers, having possession of unstamped
23 cigarettes in this state shall be liable for the tax on such
24 cigarettes in case the same are lost, stolen or unaccounted for, in

1 transit, storage or otherwise, and in such event a presumption shall
2 exist for the purposes of taxation, that such cigarettes were used
3 and consumed in Oklahoma.

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

6 Section 308. (a) The stamps placed upon packages of cigarettes
7 shall be purchased by the Commission in proper denominations, shall
8 contain the words "Oklahoma Tax Commission," and shall be of such
9 design, character, color combinations, color changes, sizes, and
10 material as the Commission may, by its rules and regulations,
11 determine to afford the best security to the state. The Commission
12 may require of the manufacturer from whom it purchases such stamps a
13 bond in an amount to be determined by the Commission, containing
14 such conditions as the Commission may deem necessary in order to
15 protect the state against loss. The Commission shall be responsible
16 for the custody and sale of the stamps, and for the disposition of
17 the proceeds thereof. It shall be the duty of the Tax Commission to
18 manufacture or contract for revenue stamps required by this article;
19 provided, that if such stamps are contracted for, the manufacture
20 thereof shall be within the jurisdiction of the criminal and civil
21 courts of this state, unless such stamps cannot be obtained in this
22 state at a fair price or of acceptable quality. If stamps are
23 manufactured outside of the state, then the Commission shall keep a
24 reliable agent at the place of manufacture during the period of

1 manufacture and such agent shall be authorized and instructed to
2 take any and all precautions necessary to safeguard the state
3 against forgery and misdelivery of any stamps. The Commission
4 shall, in contracting for manufacture, consider the safeguarding of
5 stamps to be of paramount importance and shall provide therefor in a
6 manner commensurate with the monetary value of such stamps.

7 (b) The Tax Commission shall, under rules ~~and regulations~~
8 promulgated by the Commission, ~~exchange new stamps or~~ give credit to
9 a wholesaler for any stamps affixed to any packages of cigarettes
10 ~~which stamps have become unfit for use or consumption or unsalable~~
11 returned to a manufacturer. Application to the Tax Commission for
12 credit must be accompanied by affidavit, copy of bill of lading for
13 shipment to the manufacturer, and other proof required by the Tax
14 Commission.

15 (c) ~~Any person to whom stamps shall be issued hereunder may,~~
16 ~~upon notice and approval of the Tax Commission, sell such stamps to~~
17 ~~any licensed manufacturer, wholesaler, warehouseman, jobber and/or~~
18 ~~retailer.~~

19 ~~(d)~~ The Commission shall sell the stamps to all licensed
20 manufacturers, wholesalers, warehousemen and/or jobbers, retailers,
21 or consumers, who have purchased cigarettes from wholesalers or
22 jobbers within or without the State of Oklahoma, doing business
23 within the State of Oklahoma. All orders for stamps must be
24 accompanied by cash, cashier's check or money order, made payable to

1 the Oklahoma Tax Commission; provided, however, that the Tax
2 Commission may accept personal checks in payment for such stamps
3 upon a determination by the Commission that the purchaser thereof is
4 financially responsible.

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

6 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
7 February 3, 2015 - DO PASS AS AMENDED
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