STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 248 By: Mazzei

AS INTRODUCED

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 as required by Section 301 et seq. of this title. It shall be the duty of the wholesaler to supply the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or consumer by the wholesaler; and the wholesaler shall be liable to

the Oklahoma Tax Commission to perform this service. Wholesalers may apply stamps only to cigarette packages that they have received directly from a manufacturer or importer of cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.

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

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

D. If, upon examination of invoices or from other investigations, the Tax Commission finds that cigarettes have been sold without stamps affixed as required by Section 301 et seq. of this title, the Tax Commission shall have the power to require such person to pay to the Tax Commission a sum equal to twice the amount

of the tax due. If, under the same circumstances, a person is unable to furnish evidence to the Tax Commission of sufficient stamp purchases to cover unstamped cigarettes purchased, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

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

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

3. Any and all such vehicles and property so seized shall first be listed and appraised by the officer making such seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place where

and the person from whom such property was seized, and an inventory and appraisement thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission. The district attorney of the county in which the seizures are made shall, at the request of the Tax Commission or Attorney General, file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale. The proceeds of the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected, or in the case of vehicles and property seized in connection with cigarettes seized as being in violation of the provisions of Section 305.1 of this title, to the Attorney General. The Attorney General shall remit the amount of cigarette tax, if any be due, including all penalties and interest due, to the Tax Commission as cigarette tax collected and shall deposit the remainder to the revolving fund created in Section 305.2 of this title.

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

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

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

~~G.~~ Any person, including distributing agents, wholesalers, carriers, retailers and consumers, having possession of unstamped

cigarettes in this state shall be liable for the tax on such cigarettes in case the same are lost, stolen or unaccounted for, in transit, storage or otherwise, and in such event a presumption shall exist for the purposes of taxation, that such cigarettes were used and consumed in Oklahoma.

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

Section 308. (a) The stamps placed upon packages of cigarettes shall be purchased by the Commission in proper denominations, shall contain the words "Oklahoma Tax Commission," and shall be of such design, character, color combinations, color changes, sizes, and material as the Commission may, by its rules and regulations, determine to afford the best security to the state. The Commission may require of the manufacturer from whom it purchases such stamps a bond in an amount to be determined by the Commission, containing such conditions as the Commission may deem necessary in order to protect the state against loss. The Commission shall be responsible for the custody and sale of the stamps, and for the disposition of the proceeds thereof. It shall be the duty of the Tax Commission to manufacture or contract for revenue stamps required by this article; provided, that if such stamps are contracted for, the manufacture thereof shall be within the jurisdiction of the criminal and civil courts of this state, unless such stamps cannot be obtained in this state at a fair price or of acceptable quality. If stamps are

manufactured outside of the state, then the Commission shall keep a reliable agent at the place of manufacture during the period of manufacture and such agent shall be authorized and instructed to take any and all precautions necessary to safeguard the state against forgery and misdelivery of any stamps. The Commission shall, in contracting for manufacture, consider the safeguarding of stamps to be of paramount importance and shall provide therefor in a manner commensurate with the monetary value of such stamps.

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

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

~~(d)~~ The Commission shall sell the stamps to all licensed manufacturers, wholesalers, warehousemen and/or jobbers, retailers, or consumers, who have purchased cigarettes from wholesalers or jobbers within or without the State of Oklahoma, doing business

within the State of Oklahoma. All orders for stamps must be accompanied by cash, cashier's check or money order, made payable to the Oklahoma Tax Commission; provided, however, that the Tax Commission may accept personal checks in payment for such stamps upon a determination by the Commission that the purchaser thereof is financially responsible.

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

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