STATE OF OKLAHOMA

1st Extraordinary Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1035 By: Wallace and Casey of the House

and

David and Fields of the Senate

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; stating purpose; imposing additional tax levy upon cigarettes; specifying amount of additional levy; providing for apportionment of revenues; exempting levy from inclusion in determination of certain amounts; requiring certain collections and administration of levy; prohibiting sale of cigarette excise tax stamps to wholesalers in excess of certain amount; providing exception; creating the State Health Care Enhancement Fund; exempting fund from fiscal year limitations; identifying funding source; authorizing appropriations from fund for certain purpose; amending 68 O.S. 2011, Section 311, which relates to discount sales of tax stamps on cigarettes and tobacco; decreasing amount of discount; amending 68 O.S. 2011, Sections 402, 402-1 and 402-3, which relate to tax levies on tobacco products; providing that little cigars be taxed in the same rate and manner as cigarettes; clarifying language; imposing additional tax levy upon chewing tobacco; specifying amount of additional levy; providing for apportionment of revenues; prohibiting certain acts; declaring levy as a tax on the consumer; stating purpose; imposing tax on gasoline and diesel fuel;

establishing amount of tax per gallon; requiring deposit of certain revenue, penalties and interest in certain fund; amending 68 O.S. 2011, Section 500.10, which relates to exemption from motor fuels tax; extending exemptions to additional tax levy; amending 69 O.S. 2011, Section 1521, as last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp. 2017, Section 1521), which relates to the Rebuilding Oklahoma Access and Driver Safety Fund; modifying calculation of certain annual apportionments; amending 37 O.S. 2011, Section 576, as last amended by Section 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2017, Section 576), which relates to gross receipts taxes on products sold by certain licensees; making applicable to low-point beer; defining term; providing that tax be in addition to other taxes; repealing 37 O.S. 2011, Section 576, as last amended by Section 11 of this act, which relates to gross receipts taxes on products sold by certain licensees; repealing 68 O.S. 2011, Section 402-2, which relates to additional tax on tobacco products; providing for codification; providing for noncodification; and providing effective dates.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing revenue for the support of the functions of state government, in addition to the tax levied in Sections 302, 302-1, 302-2, 302-3, 302-4 and 302-5 of Title 68 of the Oklahoma Statutes, there is hereby levied upon the sale, use, gift, possession or consumption of cigarettes, as defined in Sections 301 through 325 of Title 68 of the Oklahoma Statutes, within this state, a tax at the rate of seventy-five (75) mills per cigarette.

B. 1. Except as provided in paragraph 2 of this subsection, the revenue resulting from the additional tax levied in subsection A of this section shall be apportioned as provided in paragraph 3 of this subsection.

2. The net amount of any revenue resulting from a payment in lieu of excise taxes on cigarettes levied by this section, which net amount shall be calculated after deductions for rebates owed pursuant to a compact with a federally recognized Indian tribe or nation, shall be apportioned as provided in paragraph 3 of this subsection.

3. a. Prior to July 1, 2018, the resulting revenues as described by paragraphs 1 and 2 of this subsection shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer who shall deposit such revenue in the General Revenue Fund.

b. Beginning July 1, 2018, the resulting revenues as described by paragraphs 1 and 2 of this subsection shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer, who shall deposit such revenue to the credit of the State Health

Care Enhancement Fund, created in Section 3 of this act.

C. No part of the revenues resulting from the additional taxes levied in this section shall be used in determining the amount of cigarette tax collections to be paid into:

1. The State of Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the provisions of Sections 57.31 through 57.43 of Title 62 of the Oklahoma Statutes;

2. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund pursuant to the provisions of Sections 57.61 through 57.73 of Title 62 of the Oklahoma Statutes;

3. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund Series C and Series D pursuant to the provisions of Sections 57.81 through 57.112 of Title 62 of the Oklahoma Statutes;

4. The State of Oklahoma Building Bonds of 1968 Sinking Fund pursuant to the provisions of Sections 57.121 through 57.193 of Title 62 of the Oklahoma Statutes; or

5. The Oklahoma Building Bonds of 1992 Sinking Fund pursuant to the provisions of Sections 57.300 through 57.313 of Title 62 of the Oklahoma Statutes.

D. The cigarette taxes levied in this section shall be collected and administered as provided by law for other cigarette taxes now levied, collected and administered pursuant to the provisions of Sections 301 through 325 of Title 68 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Tax Commission shall not sell cigarette excise tax stamps to any wholesaler in excess of the amount of the monthly average amount of such excise tax stamps sold to such wholesaler during the preceding calendar year prior to the effective date of Sections 1 and 2 of this act. Provided, the wholesaler may purchase in excess of the monthly average purchased during the preceding calendar year upon documentation, to the Tax Commission's satisfaction, of probable sales greater than the wholesaler's sales in the preceding calendar year.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-7a of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a fund to be designated the "State Health Care Enhancement Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies received pursuant to Section 1 of this act and any monies designated to the fund by law. All monies accruing to the credit of the fund shall be appropriated at the discretion of the Legislature for the purpose of enhancing the health of Oklahomans.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 311, is amended to read as follows:

Section 311. For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamp to each package of cigarettes and tobacco before making a sale of such cigarettes and tobacco, each person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission as required by law may purchase stamps from the Tax Commission at a reduction of ~~one and one-half cents ($0.015)~~ <u>one cent ($0.01)</u> per stamp~~,~~<u>;</u> provided<u>,</u> that such discount or reduction shall not be applicable on purchases of less than One Hundred Dollars ($100.00) at any one time; and provided~~,~~ further, that no discount shall be allowed to out-of-state purchasers which reside in the states that do not give discounts on cigarette stamps purchased from State of Oklahoma cigarette dealers. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission; provided, that if a purchaser refuses to comply with the laws of the State of Oklahoma, the Tax Commission shall require the full face value for stamps purchased until such time as the person has complied with the provisions of the law. The Tax Commission may authorize the use of a metering device for the impress of the tax stamp.

SECTION 5. AMENDATORY 68 O.S. 2011, Section 402, is amended to read as follows:

Section 402. There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in Section 401 et seq. of this title, a tax in the following amounts:

1. Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, ~~four (4) mills for each cigar. Provided, that~~ the tax levied on the products coming under this paragraph shall ~~not apply if~~ be equal to the tax on such products that is reported and paid as cigarette tax under Sections 301 through 325 of this title. Further, the tax levied herein shall be paid in the same manner as required in Sections 301 through 325 of this title;

2. Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, weighing more than three (3) pounds per thousand and having a manufacturer's recommended retail selling price, under the Federal Code, of not exceeding four cents ($0.04) per cigar, one cent ($0.01) for each cigar;

3. Cigars. Upon all other cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, Twenty Dollars ($20.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars;

4. Smoking Tobacco. Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and

forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be twenty-five percent (25%) of the factory list price exclusive of any trade discount, special discount or deals; and

5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be twenty percent (20%) of the factory list price exclusive of any trade discount, special discount or deals.

It shall not be permissible for a retailer to advertise that the retailer will absorb the tax due on the taxable merchandise described herein. Such tax shall be paid by the consumer. Notwithstanding any other provision of law, the tax levied pursuant to the provisions of Section 401 et seq. of this title shall be part of the gross proceeds or gross receipts from the sale of cigars or tobacco products, or both, as those terms are defined in paragraph 7 of Section 1352 of this title.

SECTION 6. AMENDATORY 68 O.S. 2011, Section 402-1, is amended to read as follows:

Section 402-1. In addition to the tax levied by Section 402 of this title, there is hereby levied upon the sale, use, exchange or possession of articles containing tobacco as defined in said Section 402, a tax in the following amounts:

(a) ~~Upon little cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, two and one-half (2 1/2) mills for each cigar.~~

~~Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of this title.~~

~~(b)~~ Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, and having a manufacturer's recommended retail selling price, under the Federal Code, of more than four cents ($0.04) for each cigar, Ten Dollars ($10.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars~~.~~;

~~(c)~~ (b) Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be fifteen percent (15%) of the factory list price exclusive of any trade discount, special discount or deals~~.~~; and

~~(d)~~ (c) Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be ten percent (10%) of the factory list price exclusive of any trade discount, special discount or deals.

This tax shall be paid by the consumer and no retailer may advertise that he will pay or absorb this tax.

~~(e)~~ The tax herein levied on tobacco products shall be evidenced by stamps and collected on the same basis and in the same manner and in all respects as the tax levied by the Tobacco Products Tax Law. The revenue from this additional tax shall be apportioned by the Oklahoma Tax Commission in the same manner as provided in Section 404 of this title, for the apportionment of other tobacco products tax revenue.

SECTION 7. AMENDATORY 68 O.S. 2011, Section 402-3, is amended to read as follows:

Section 402-3. A. In addition to the tax levied in Sections 402~~,~~ and 402-1 ~~and 402-2~~ of this title, effective January 1, 2005, there shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in Section 401 et seq. of this title, a tax in the following amounts:

1. ~~Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, twenty-seven (27) mills for each cigar. Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of this title;~~

~~2.~~ Cigars. Upon all ~~other~~ cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, Ninety Dollars ($90.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars;

~~3.~~ 2. Smoking Tobacco. Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be forty percent (40%) of the factory list price exclusive of any trade discount, special discount or deals; and

~~4.~~ 3. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be thirty percent (30%) of the factory list price exclusive of any trade discount, special discount or deals.

B. Except as provided in subsection C of this section, the revenue resulting from the additional tax levied in subsection A of this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer as follows:

1. Twenty-two and six-hundredths percent (22.06%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1010.1 of Title 56 of the Oklahoma Statutes;

2. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 160.1 of Title 62 of the Oklahoma Statutes;

3. Before July 1, 2008, seven and fifty-hundredths percent (7.50%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the

Oklahoma Statutes. On and after July 1, 2008, seven and fifty-hundredths percent (7.50%) shall be allocated as follows:

a. every month, an amount equal to the actual amount placed to the credit of the Trauma Care Assistance Revolving Fund pursuant to this paragraph for the same month of the 2008 fiscal year shall be credited to the Trauma Care Assistance Revolving Fund,

b. every month, any amount over and above the amount placed to the credit of the Trauma Care Assistance Revolving Fund pursuant to subparagraph a of this paragraph shall be credited to the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund as created in Section ~~8~~ <u>1-2512.1</u> of ~~this act~~ <u>Title 63 of the Oklahoma Statutes</u> until the combined amount credited to the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund pursuant to this section and Section 302-5 of this title is equal to Two Million Five Hundred Thousand Dollars ($2,500,000.00) each year, and

c. any additional revenue allocated pursuant to this paragraph shall be placed to the credit of the Trauma Care Assistance Revolving Fund;

4. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 160.2 of Title 62 of the Oklahoma Statutes;

5. Twenty-six and thirty-eight-hundredths percent (26.38%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Two and sixty-five-hundredths percent (2.65%) shall be placed to the credit of the Department of Mental Health and Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Forty-four-hundredths of one percent (0.44%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1-559 of Title 63 of the Oklahoma Statutes;

8. One percent (1%) shall be placed to the credit of the Teachers' Retirement System Revolving Fund created in Section 158 of Title 62 of the Oklahoma Statutes;

9. Two and seven-hundredths percent (2.07%) shall be placed to the credit of the Education Reform Revolving Fund created in Section ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes;

10. Sixty-six-hundredths percent (.66%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes;

11. Sixteen and eighty-three-hundredths percent (16.83%) shall be placed to the credit of the General Revenue Fund; and

12. For fiscal years beginning July 1, 2004, and ending June 30, 2006, fourteen and twenty-three-hundredths percent (14.23%) shall be apportioned to municipalities and counties that levy a sales tax, in the proportions which total municipal and county sales tax revenue was apportioned by the Tax Commission in the preceding month.

For fiscal years beginning July 1, 2006, and thereafter, the apportionment percentage specified in paragraph 12 of this subsection will be adjusted by dividing the total municipal and county sales tax revenue collected in the calendar year immediately preceding the commencement of the fiscal year by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. This ratio shall be divided by the ratio of the total municipal and county sales tax revenue collected in the calendar year beginning January 1, 2004, and ending December 31, 2004, divided by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. The resulting quotient shall be multiplied by fourteen and twenty-three-hundredths percent (14.23%) to determine the apportionment percentage for the fiscal year.

For fiscal years beginning July 1, 2006, and thereafter, any adjustment to the percentage of revenues apportioned to municipalities and counties shall be reflected in the percent of revenues apportioned to the General Revenue Fund.

C. The net amount of any revenue resulting from a payment in lieu of excise taxes on little cigars, cigars, smoking tobacco and chewing tobacco levied by this section, pursuant to a compact with a federally recognized Indian tribe or nation after deductions for deposits into trust accounts pursuant to such compacts, shall be apportioned by the Tax Commission and transmitted to the State Treasurer as follows:

1. Thirty-three and forty-nine-hundredths percent (33.49%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1010.1 of Title 56 of the Oklahoma Statutes;

2. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 160.1 of Title 62 of the Oklahoma Statutes;

3. Before July 1, 2008, eleven and thirty-nine-hundredths percent (11.39%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the Oklahoma Statutes. On and after July 1, 2008, eleven and thirty-nine-hundredths percent (11.39%) shall be allocated as follows:

a. every month, an amount equal to the actual amount placed to the credit of the Trauma Care Assistance Revolving Fund pursuant to this paragraph for the same month of the 2008 fiscal year shall be credited to the Trauma Care Assistance Revolving Fund,

b. every month, any amount over and above the amount placed to the credit of the Trauma Care Assistance Revolving Fund pursuant to subparagraph a of this paragraph shall be credited to the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund as created in Section ~~8~~ 1-2512.1 of ~~this act~~ Title 63 of the Oklahoma Statutes until the combined amount credited to the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund pursuant to this section and Section 302-5 of this title is equal to Two Million Five Hundred Thousand Dollars ($2,500,000.00) each year, and

c. any additional revenue allocated pursuant to this paragraph shall be placed to the credit of the Trauma Care Assistance Revolving Fund;

4. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 160.2 of Title 62 of the Oklahoma Statutes;

5. Forty and six-hundredths percent (40.06%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Four and one-hundredths percent (4.01%) shall be placed to the credit of the Department of Mental Health and Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Sixty-seven-hundredths percent (0.67%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1-559 of Title 63 of the Oklahoma Statutes; and

8. One percent (1%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes.

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402-4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing revenue for the support of the functions of state government, in addition to the tax levied in Sections 402, 402-1 and 402-3 of Title 68 of the Oklahoma Statutes, there shall be levied, assessed, collected and paid in respect to the articles containing tobacco enumerated in Section 401 et seq. of Title 68 of the Oklahoma Statutes, a tax in the following amounts:

Chewing Tobacco. Upon chewing tobacco, smokeless tobacco and snuff, the tax shall be ten percent (10%) of the factory list price exclusive of any trade discount, special discount or deals.

B. 1. Except as provided in paragraph 2 of this subsection, the revenue resulting from the additional tax levied in subsection A of this section shall be apportioned as provided in paragraph 3 of this subsection.

2. The net amount of any revenue resulting from a payment in lieu of excise taxes on chewing tobacco levied by this section,

which net amount shall be calculated after deductions for rebates owed pursuant to a compact with a federally recognized Indian tribe or nation, shall be apportioned as provided in paragraph 3 of this subsection.

3. a. Prior to July 1, 2018, the resulting revenues as described by paragraphs 1 and 2 of this subsection shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer who shall deposit such revenue in the General Revenue Fund.

b. Beginning July 1, 2018, the resulting revenues as described by paragraphs 1 and 2 of this subsection shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer, who shall deposit such revenue to the credit of the State Health Care Enhancement Fund created in Section 3 of this act.

C. No retailer shall advertise that the retailer will absorb the tax due on the taxable merchandise described in this section. Such tax shall be paid by the consumer.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 500.4B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing revenue for the support of the functions of state government, in addition to the tax imposed by

Section 500.4 of Title 68 of the Oklahoma Statutes, there is hereby imposed a tax of six cents ($0.06) per gallon on all:

1. Gasoline used or consumed in this state; and

2. Diesel fuel used or consumed in this state.

B. All remaining revenue from the tax imposed by subsection A of this section and penalties and interest thereon collected by the Oklahoma Tax Commission, after the requirements of Section 500.63 of this title have been fulfilled, shall be deposited as follows:

1. Prior to July 1, 2018, the remaining revenue shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer who shall deposit such revenue in the General Revenue Fund; and

2. Beginning July 1, 2018, the remaining revenue shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer who shall deposit such revenue in the Rebuilding Oklahoma Access and Driver Safety Fund created in Section 1521 of Title 69 of the Oklahoma Statutes.

SECTION 10. AMENDATORY 68 O.S. 2011, Section 500.10, is amended to read as follows:

Section 500.10 Subject to the procedural requirements and conditions set out in this section and Sections 500.11 through 500.17 of this title, the following are exempt from the ~~tax~~ taxes on motor fuel imposed by Section 500.4 of this title ~~on motor fuel~~ and Section 9 of this act:

1. Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper:

a. exported by a supplier who is licensed in the destination state, or

b. sold by a supplier to a licensed exporter for immediate export;

2. Motor fuel which was acquired by an unlicensed exporter and as to which the tax imposed by Section 500.4 of this title has previously been paid or accrued and was subsequently exported by transport truck by or on behalf of the licensed exporter in a diversion across state boundaries properly reported in conformity with Section 500.46 of this title;

3. Motor fuel exported out of a bulk plant in this state in a tank wagon if the destination of that vehicle does not exceed twenty-five (25) miles from the border of this state and as to which the tax imposed by Section 500.4 of this title has previously been paid or accrued, subject to gallonage limits and other conditions established by the Oklahoma Tax Commission;

4. K-1 kerosene sold at retail through dispensers which have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more than twenty-one (21) gallons for use other than for highway

purposes, under such rules as the Tax Commission shall reasonably require;

5. Motor fuel sold to the United States or any agency or instrumentality thereof;

6. Motor fuel used solely and exclusively in district-owned public school vehicles or FFA and 4-H Club trucks for the purpose of legally transporting public school children, and motor fuel purchased by any school district for use exclusively in school buses leased or hired for the purpose of legally transporting public school children, or in the operation of vehicles used in driver training;

7. Motor fuel used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of this state, when leased or owned and being operated for the sole benefit of a county, city, town, a volunteer fire department with a state certification and rating, rural electric cooperatives, rural water and sewer districts, rural irrigation districts organized under the Oklahoma Irrigation District Act, conservancy districts and master conservancy districts organized under the Conservancy Act of Oklahoma, rural ambulance service districts, or federally recognized Indian tribes;

8. Motor fuel used as fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes, except as to two and eight

one-hundredths cents ($0.0208) per gallon of gasoline as provided in subsection C of Section 500.4 of this title;

9. Gasoline, diesel fuel and kerosene sold for use as fuel to generate power in aircraft engines, whether in aircraft or for training, testing or research purposes of aircraft engines, except as to eight one-hundredths of one cent ($0.0008) per gallon as provided in subsection B of Section 500.4 of this title;

10. Motor fuel sold within an Indian reservation or within Indian country by a federally recognized Indian tribe to a member of that tribe and used in motor vehicles owned by that member of the tribe. This exemption does not apply to sales within an Indian reservation or within Indian country by a federally recognized Indian tribe to non-Indian consumers or to Indian consumers who are not members of the tribe selling the motor fuel;

11. Subject to determination by the Tax Commission, that portion of diesel fuel:

a. used to operate equipment attached to a motor vehicle, if the diesel fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment, or

b. consumed by the vehicle while the vehicle is parked off the highways of this state;

12. Motor fuel acquired by a consumer out of state and carried into this state, retained within and consumed from the same vehicle fuel supply tank within which it was imported;

13. Diesel fuel used as heating oil, or in railroad locomotives or any other motorized flanged-wheel rail equipment, or used for other nonhighway purposes other than as expressly exempted under another provision;

14. Motor fuel which was lost or destroyed as a direct result of a sudden and unexpected casualty;

15. Taxable diesel which had been accidentally contaminated by dye so as to be unsaleable as highway fuel as proved by proper documentation;

16. Dyed diesel fuel;

17. Motor fuel sold to the Oklahoma Space Industry Development Authority or any spaceport user as defined in the Oklahoma Space Industry Development Act; and

18. Biofuels or biodiesel produced by an individual with crops grown on property owned by the same individual and used in a vehicle owned by the same individual on the public roads and highways of this state.

SECTION 11. AMENDATORY 69 O.S. 2011, Section 1521, as last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp. 2017, Section 1521), is amended to read as follows:

Section 1521. A. There is hereby created in the State Treasury a fund to be known as the "Rebuilding Oklahoma Access and Driver Safety Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all appropriations and transfers made by the Legislature. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended each fiscal year by the Department of Transportation for the purposes authorized by subsection G of this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

B. ~~There~~ Beginning July 1, 2018, except for an amount equivalent to the amount of revenue apportioned pursuant to Section 9 of this act, there shall be apportioned to the funds specified in this subsection from the monies that would otherwise be apportioned to the General Revenue Fund by Section 2352 of Title 68 of the Oklahoma Statutes from the revenues derived pursuant to subsections A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes amounts as follows:

1. For each fiscal year, subject to the provisions of paragraph 3 of this subsection, and, except for the amount prescribed by subparagraph a of this paragraph, subject to any reductions required

by subsection F of this section, there shall be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund:

a. for the fiscal year beginning July 1, 2011, the first Thirty-five Million Seven Hundred Thousand Dollars ($35,700,000.00), for the fiscal year beginning July 1, 2012, the first Forty-one Million Seven Hundred Thousand Dollars ($41,700,000.00) and for the fiscal year beginning July 1, 2013, and for each fiscal year thereafter, Fifty-nine Million Seven Hundred Thousand Dollars ($59,700,000.00), which shall be allocated and used by the Department of Transportation first for the purpose of making any required payments for principal, interest or other costs of borrowing with respect to the obligations issued pursuant to Section 341 of Title 73 of the Oklahoma Statutes and after any such required payment has been made then for the purposes otherwise authorized by this section, plus

b. the total amount apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund for the preceding fiscal year which, except for the amount prescribed by subparagraph a of this paragraph, shall be apportioned before any other amount is apportioned pursuant to Section 2352 of Title 68 of the Oklahoma Statutes, plus

c. an additional incremental amount which shall not be in excess of the amount prescribed by subparagraph a of this paragraph and that is required in order for the total apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund from all sources for such fiscal year to equal Five Hundred Seventy-five Million Dollars ($575,000,000.00).

All amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year except the amount specified in subparagraph a of this paragraph which amount shall be allocated in its full amount in cash not later than July 30 each year or such later date as may be required in order for the amount to be allocated in cash;

2. For each fiscal year after the apportionments required by paragraph 1 of this subsection have been made:

a. the next Two Million Dollars ($2,000,000.00) shall be apportioned to the Oklahoma Tourism and Passenger Rail Revolving Fund created pursuant to Section 325 of Title 66 of the Oklahoma Statutes to be used for capital and operating costs for the "Heartland Flyer" rail project, and

b. the next Three Million Dollars ($3,000,000.00) shall be apportioned to the Public Transit Revolving Fund created pursuant to Section 4031 of this title to be used for purposes authorized by law other than the purpose described by subparagraph a of this paragraph.

All amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year; and

3. For each fiscal year after the first fiscal year in which the total apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund as provided by paragraph 1 of this subsection and from other sources equals Five Hundred Seventy-five Million Dollars ($575,000,000.00), except for an amount equivalent to the amount of revenue apportioned pursuant to Section 9 of this act, the first Five Hundred Seventy-five Million Dollars ($575,000,000.00) collected pursuant to subsections A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes and apportioned pursuant to Section 2352 of Title 68 of the Oklahoma Statutes that would otherwise be apportioned to the General Revenue Fund shall be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund. With the exception of the amount prescribed by subparagraph a of paragraph 1 of this subsection, all amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year.

C. The apportionments of revenues required by subparagraphs a, b and c of paragraph 1 of subsection B of this section shall be made until the total annual apportionment from such sources in addition to the apportionment made pursuant to Section 9 of this act to the Rebuilding Oklahoma Access and Driver Safety Fund equals Five Hundred Seventy-five Million Dollars ($575,000,000.00). After such annual apportionment level is reached, the apportionment to the fund shall be governed by the provisions of paragraph 3 of subsection B of this section.

D. The monies apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund shall not be used to supplant or replace existing state funds used for transportation purposes.

E. In order to ensure that the funds from the ROADS Fund are used to enhance and not supplant state funding for the Department of Transportation, the State Board of Equalization shall examine and investigate expenditures from the fund each year. For purposes of this examination, monies used to retire outstanding debt obligations for which the Department of Transportation is responsible shall be excluded. At the meeting of the State Board of Equalization held within five (5) days after the monthly apportionment in February of each year, the State Board of Equalization shall issue a finding and report which shall state whether expenditures from the ROADS Fund were used to enhance or supplant state funding for the Department of Transportation. If the State Board of Equalization finds that state funding for the Department of Transportation was supplanted by funds from the ROADS Fund, the Board shall specify the amount by which such funding was supplanted. In this event, the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish state funding for the Department of Transportation.

F. In the event that the Director of the Office of Management and Enterprise Services declares a General Revenue Fund revenue failure pursuant to Section 34.49 of Title 62 of the Oklahoma Statutes, and agency allocations are reduced pursuant to the provisions of Section 34.49 of Title 62 of the Oklahoma Statutes, the amounts that would otherwise be apportioned to the ROADS Fund by:

1. Subparagraph a of paragraph 1 of subsection B of this section, only to the extent that the amount is not required for debt service related to the obligations authorized pursuant to Section 341 of Title 73 of the Oklahoma Statutes;

2. Subparagraphs b and c of paragraph 1 of subsection B of this section; and

3. Subparagraphs a and b of paragraph 2 of subsection B of this section,

shall be reduced by a percentage equal to that required of the General Revenue Fund appropriations to state agencies and such reductions shall occur during the entire fiscal year and for any month during which such reductions are required by the Office of Management and Enterprise Services and by the same percentage as that required of the agencies for such General Revenue Fund appropriations.

G. The Department of Transportation shall use the monies in the Rebuilding Oklahoma Access and Driver Safety Fund for:

1. The construction and maintenance of state roads, bridges and highways;

2. The direct expenses of operating and maintaining the state highway system, including bridges;

3. Direct expenses incurred in constructing, repairing, and maintaining state highways, farm-to-market roads, county highways and bridges as authorized by law;

4. Matching federal funds;

5. The purchase of materials, tools, machinery, motor vehicles, and equipment necessary or convenient for the construction and maintenance of the state highway system and bridges;

6. Debt service incurred prior to January 1, 2006, for Capital Improvement Program bonds sold pursuant to Section 2001 of this title; and

7. Debt service incurred on or after July 1, 2009, with respect to obligations authorized to be issued pursuant to Section 341 of Title 73 of the Oklahoma Statutes.

H. From the monies allocated pursuant to the provisions of subparagraph a of paragraph 1 of subsection B of this section each fiscal year, the Department of Transportation shall make payments required for the payment of principal, interest and other costs related to the obligations issued by the Oklahoma Capitol Improvement Authority as authorized by Section 341 of Title 73 of the Oklahoma Statutes and such payments shall be made by the Department each fiscal year before such monies are used for any other purpose.

SECTION 12. AMENDATORY 37 O.S. 2011, Section 576, as last amended by Section 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2017, Section 576), is amended to read as follows:

Section 576. A. A tax at the rate of thirteen and one-half percent (13.5%) is hereby levied and imposed on the total gross receipts of a holder of a mixed beverage, caterer, public event or special event license, issued by the ABLE Commission, <u>and a retail dealer licensed under Section 163.7 of this title to sell low-point beer for consumption on premises,</u> from:

1. The sale, preparation or service of mixed beverages <u>and low-point beer</u>;

2. The total retail value of complimentary or discounted mixed beverages <u>and low-point beer</u>;

3. Ice or nonalcoholic beverages that are sold, prepared or served for the purpose of being mixed with alcoholic beverages <u>and low-point beer</u> and consumed on the premises where the sale, preparation or service occurs; and

4. Any charges for the privilege of admission to a mixed beverage establishment or retail dealer establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages, or complimentary low-point beer or discounted prices for low-point beer.

B. For purposes of this section:

1. "Mixed beverages" means mixed beverages as defined by Section 506 of this title;

2. "Total gross receipts" means the total amount of consideration received as charges for admission to a mixed beverage establishment or retail dealer establishment as provided in paragraph 4 of subsection A of this section and the total retail sale price received for the sale, preparation or service of mixed beverages, low-point beer, ice, and nonalcoholic beverages to be mixed with alcoholic beverages and low-point beer. The advertised price of a mixed beverage may be the sum of the total retail sale price and the gross receipts tax levied thereon; ~~and~~

3. "Total retail value" means the total amount of consideration that would be required for the sale, preparation or service of mixed beverages; and

4. "Low-point beer" means low-point beer as defined by Section 163.2 of this title.

C. The gross receipts tax levied by this section shall be in addition to the excise tax levied in Section 163.3 of this title, the excise tax levied in Section 553 of this title, the sales tax levied in the Oklahoma Sales Tax Code and to any municipal or county sales taxes.

D. The gross receipts tax levied by this section is hereby declared to be a direct tax upon the receipt of consideration for any charges for admission to a mixed beverage establishment or retail dealer establishment as provided in paragraph 4 of subsection A of this section, for the sale, preparation or service of mixed beverages, low-point beer, ice, and nonalcoholic beverages to be mixed with alcoholic beverages and low-point beer, and the total retail value of complimentary or discounted mixed beverages and low-point beer.

E. The total of the retail sale price received for the sale, preparation or service of mixed beverages, low-point beer, ice, and nonalcoholic beverages to be mixed with alcoholic beverages and low-point beer shall be the total gross receipts for purposes of calculating the sales tax levied in the Oklahoma Sales Tax Code.

SECTION 13. REPEALER 37 O.S. 2011, Section 576, as last amended by Section 12 of this act, is hereby repealed.

SECTION 14. REPEALER 68 O.S. 2011, Section 402-2, is hereby repealed.

SECTION 15. Section 11 of this act shall become effective July 1, 2018.

SECTION 16. Section 13 of this act shall become effective October 1, 2018.

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