

1 (1ST EXTRAORDINARY SESSION)

ENGROSSED HOUSE

2 BILL NO. 1035

By: Wallace and Casey of the
House

3
4 and

5 David and Fields of the
Senate

6
7
8 An Act relating to revenue and taxation; stating
9 purpose; imposing additional tax levy upon
10 cigarettes; specifying amount of additional levy;
11 providing for apportionment of revenues; exempting
12 levy from inclusion in determination of certain
13 amounts; requiring certain collections and
14 administration of levy; prohibiting sale of cigarette
15 excise tax stamps to wholesalers in excess of certain
16 amount; providing exception; creating the State
17 Health Care Enhancement Fund; exempting fund from
18 fiscal year limitations; identifying funding source;
19 authorizing appropriations from fund for certain
20 purpose; amending 68 O.S. 2011, Section 311, which
21 relates to discount sales of tax stamps on cigarettes
22 and tobacco; decreasing amount of discount; amending
23 68 O.S. 2011, Sections 402, 402-1 and 402-3, which
24 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;

1 amending 37 O.S. 2011, Section 576, as last amended
2 by Section 18, Chapter 298, O.S.L. 2014 (37 O.S.
3 Supp. 2017, Section 576), which relates to gross
4 receipts taxes on products sold by certain licensees;
5 making applicable to low-point beer; defining term;
6 providing that tax be in addition to other taxes;
7 repealing 37 O.S. 2011, Section 576, as last amended
8 by Section 11 of this act, which relates to gross
9 receipts taxes on products sold by certain licensees;
10 repealing 68 O.S. 2011, Section 402-2, which relates
11 to additional tax on tobacco products; ordering a
12 legislative referendum pursuant to the Oklahoma
13 Constitution; providing for codification; providing
14 for noncodification; and providing effective dates.

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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

1 of this section shall be apportioned as provided in paragraph 3 of
2 this subsection.

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

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

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

21 C. No part of the revenues resulting from the additional taxes
22 levied in this section shall be used in determining the amount of
23 cigarette tax collections to be paid into:
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1 1. The State of Oklahoma Building Bonds of 1961 Sinking Fund
2 pursuant to the provisions of Sections 57.31 through 57.43 of Title
3 62 of the Oklahoma Statutes;

4 2. The State of Oklahoma Institutional Building Bonds of 1965
5 Sinking Fund pursuant to the provisions of Sections 57.61 through
6 57.73 of Title 62 of the Oklahoma Statutes;

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

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

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

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

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

23 The Oklahoma Tax Commission shall not sell cigarette excise tax
24 stamps to any wholesaler in excess of the amount of the monthly

1 average amount of such excise tax stamps sold to such wholesaler
2 during the preceding calendar year prior to the effective date of
3 Sections 1 and 2 of this act. Provided, the wholesaler may purchase
4 in excess of the monthly average purchased during the preceding
5 calendar year upon documentation, to the Tax Commission's
6 satisfaction, of probable sales greater than the wholesaler's sales
7 in the preceding calendar year.

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

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

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

21 Section 311. For the purpose of allowing compensation for the
22 costs necessarily incurred in affixing the proper tax stamp to each
23 package of cigarettes and tobacco before making a sale of such
24 cigarettes and tobacco, each person purchasing cigarette or tobacco

1 tax stamps from the Oklahoma Tax Commission as required by law may
2 purchase stamps from the Tax Commission at a reduction of ~~one and~~
3 ~~one-half cents (\$0.015)~~ one cent (\$0.01) per stamp~~;~~; provided~~,~~, that
4 such discount or reduction shall not be applicable on purchases of
5 less than One Hundred Dollars (\$100.00) at any one time; and
6 provided~~,~~ further, that no discount shall be allowed to out-of-state
7 purchasers which reside in the states that do not give discounts on
8 cigarette stamps purchased from State of Oklahoma cigarette dealers.
9 The discount herein provided shall be the only discount allowed to
10 purchasers from the Tax Commission; provided, that if a purchaser
11 refuses to comply with the laws of the State of Oklahoma, the Tax
12 Commission shall require the full face value for stamps purchased
13 until such time as the person has complied with the provisions of
14 the law. The Tax Commission may authorize the use of a metering
15 device for the impress of the tax stamp.

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

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

21 1. Little Cigars. Upon cigars of all descriptions made of
22 tobacco, or any substitute therefor, and weighing not more than
23 three (3) pounds per thousand, ~~four (4) mills for each cigar.~~
24 ~~Provided, that~~ the tax levied on the products coming under this

1 paragraph shall ~~not apply if~~ be equal to the tax on such products
2 that is reported and paid as cigarette tax under Sections 301
3 through 325 of this title. Further, the tax levied herein shall be
4 paid in the same manner as required in Sections 301 through 325 of
5 this title;

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

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

16 4. Smoking Tobacco. Upon all smoking tobacco including
17 granulated, plug cut, crimp cut, ready rubbed and other kinds and
18 forms of tobacco prepared in such manner as to be suitable for
19 smoking in a pipe or cigarette, the tax shall be twenty-five percent
20 (25%) of the factory list price exclusive of any trade discount,
21 special discount or deals; and

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

1 It shall not be permissible for a retailer to advertise that the
2 retailer will absorb the tax due on the taxable merchandise
3 described herein. Such tax shall be paid by the consumer.
4 Notwithstanding any other provision of law, the tax levied pursuant
5 to the provisions of Section 401 et seq. of this title shall be part
6 of the gross proceeds or gross receipts from the sale of cigars or
7 tobacco products, or both, as those terms are defined in paragraph 7
8 12 of Section 1352 of this title.

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

11 Section 402-1. In addition to the tax levied by Section 402 of
12 this title, there is hereby levied upon the sale, use, exchange or
13 possession of articles containing tobacco as defined in said Section
14 402, a tax in the following amounts:

15 ~~(a) Upon little cigars of all descriptions made of tobacco, or~~
16 ~~any substitute therefor, and weighing not more than three (3) pounds~~
17 ~~per thousand, two and one-half (2 1/2) mills for each cigar.~~
18 ~~Provided, that the tax levied on the products coming under this~~
19 ~~paragraph shall not apply if the tax on such products is reported~~
20 ~~and paid as cigarette tax under Sections 301 through 325 of this~~
21 ~~title.~~

22 ~~(b)~~ Upon cigars of all descriptions made of tobacco, or any
23 substitute therefor, and weighing more than three (3) pounds per
24 thousand, and having a manufacturer's recommended retail selling

1 price, under the Federal Code, of more than four cents (\$0.04) for
2 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
3 computing the tax, cheroots, stogies, etc., are hereby classed as
4 cigars-;

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

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

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

16 ~~(e)~~ The tax herein levied on tobacco products shall be evidenced
17 by stamps and collected on the same basis and in the same manner and
18 in all respects as the tax levied by the Tobacco Products Tax Law.
19 The revenue from this additional tax shall be apportioned by the
20 Oklahoma Tax Commission in the same manner as provided in Section
21 404 of this title, for the apportionment of other tobacco products
22 tax revenue.

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

1 Section 402-3. A. In addition to the tax levied in Sections
2 402~~7~~, and 402-1 ~~and 402-2~~ of this title, effective January 1, 2005,
3 there shall be levied, assessed, collected, and paid in respect to
4 the articles containing tobacco enumerated in Section 401 et seq. of
5 this title, a tax in the following amounts:

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

13 2~~.~~ Cigars. Upon all ~~other~~ cigars of all descriptions made of
14 tobacco, or any substitute therefor, and weighing more than three
15 (3) pounds per thousand, Ninety Dollars (\$90.00) per thousand. For
16 the purpose of computing the tax, cheroots, stogies, etc., are
17 hereby classed as cigars;

18 3~~.~~ 2. Smoking Tobacco. Upon all smoking tobacco including
19 granulated, plug cut, crimp cut, ready rubbed and other kinds and
20 forms of tobacco prepared in such manner as to be suitable for
21 smoking in a pipe or cigarette, the tax shall be forty percent (40%)
22 of the factory list price exclusive of any trade discount, special
23 discount or deals; and

1 ~~4.~~ 3. Chewing Tobacco. Upon chewing tobacco, smokeless
2 tobacco, and snuff, the tax shall be thirty percent (30%) of the
3 factory list price exclusive of any trade discount, special discount
4 or deals.

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

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

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

16 3. Before July 1, 2008, seven and fifty-hundredths percent
17 (7.50%) shall be placed to the credit of the Trauma Care Assistance
18 Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the
19 Oklahoma Statutes. On and after July 1, 2008, seven and fifty-
20 hundredths percent (7.50%) shall be allocated as follows:

21 a. every month, an amount equal to the actual amount
22 placed to the credit of the Trauma Care Assistance
23 Revolving Fund pursuant to this paragraph for the same
24

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. 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

1 Medicaid Program Fund created in Section 5020 of Title 63 of the
2 Oklahoma Statutes for the purposes of maintaining programs and
3 services funded under the federal "Jobs and Growth Tax Relief
4 Reconciliation Act of 2003", reimbursing city/county-owned
5 hospitals, increasing emergency room physician rates, and providing
6 TEFRA 134, also known as "Katie Beckett" services;

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

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

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

18 9. Two and seven-hundredths percent (2.07%) shall be placed to
19 the credit of the Education Reform Revolving Fund created in Section
20 ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes;

21 10. Sixty-six-hundredths percent (0.66%) shall be placed to the
22 credit of the Tobacco Prevention and Cessation Revolving Fund
23 created in Section 1-105d of Title 63 of the Oklahoma Statutes;
24

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

3 12. For fiscal years beginning July 1, 2004, and ending June
4 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)
5 shall be apportioned to municipalities and counties that levy a
6 sales tax, in the proportions which total municipal and county sales
7 tax revenue was apportioned by the Tax Commission in the preceding
8 month.

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

23 For fiscal years beginning July 1, 2006, and thereafter, any
24 adjustment to the percentage of revenues apportioned to

1 municipalities and counties shall be reflected in the percent of
2 revenues apportioned to the General Revenue Fund.

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

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

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

18 3. Before July 1, 2008, eleven and thirty-nine-hundredths
19 percent (11.39%) shall be placed to the credit of the Trauma Care
20 Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of
21 Title 63 of the Oklahoma Statutes. On and after July 1, 2008,
22 eleven and thirty-nine-hundredths percent (11.39%) shall be
23 allocated as follows:
24

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

6 b. every month, any amount over and above the amount
7 placed to the credit of the Trauma Care Assistance
8 Revolving Fund pursuant to subparagraph a of this
9 paragraph shall be credited to the Oklahoma Emergency
10 Response Systems Stabilization and Improvement
11 Revolving Fund as created in Section ~~8~~ 1-2512.1 of
12 ~~this act~~ Title 63 of the Oklahoma Statutes until the
13 combined amount credited to the Oklahoma Emergency
14 Response Systems Stabilization and Improvement
15 Revolving Fund pursuant to this section and Section
16 302-5 of this title is equal to Two Million Five
17 Hundred Thousand Dollars (\$2,500,000.00) each year,
18 and

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

22 4. Four and sixty-nine-hundredths percent (4.69%) shall be
23 placed to the credit of the Oklahoma State University College of
24

1 Osteopathic Medicine Revolving Fund created in Section 160.2 of
2 Title 62 of the Oklahoma Statutes;

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

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

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

19 8. One percent (1%) shall be placed to the credit of the
20 Tobacco Prevention and Cessation Revolving Fund created in Section
21 1-105d of Title 63 of the Oklahoma Statutes.

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

1 SECTION 8. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 402-4 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

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

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

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

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

23 3. a. Prior to July 1, 2018, the resulting revenues as
24 described by paragraphs 1 and 2 of this subsection

1 shall be apportioned by the Oklahoma Tax Commission
2 and transmitted to the State Treasurer who shall
3 deposit such revenue in the General Revenue Fund.

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

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

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

17 A. For the purpose of providing revenue for the support of the
18 functions of state government, in addition to the tax imposed by
19 Section 500.4 of Title 68 of the Oklahoma Statutes, there is hereby
20 imposed a tax of six cents (\$0.06) per gallon on all:

- 21 1. Gasoline used or consumed in this state; and
- 22 2. Diesel fuel used or consumed in this state.

23 B. All remaining revenue from the tax imposed by subsection A
24 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;

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

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

13 4. K-1 kerosene sold at retail through dispensers which have
14 been designed and constructed to prevent delivery directly from the
15 dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at
16 retail through nonbarricaded dispensers in quantities of not more
17 than twenty-one (21) gallons for use other than for highway
18 purposes, under such rules as the Tax Commission shall reasonably
19 require;

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

22 6. Motor fuel used solely and exclusively in district-owned
23 public school vehicles or FFA and 4-H Club trucks for the purpose of
24 legally transporting public school children, and motor fuel

1 purchased by any school district for use exclusively in school buses
2 leased or hired for the purpose of legally transporting public
3 school children, or in the operation of vehicles used in driver
4 training;

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

15 8. Motor fuel used as fuel for farm tractors or stationary
16 engines owned or leased and operated by any person and used
17 exclusively for agricultural purposes, except as to two and eight
18 one-hundredths cents (\$0.0208) per gallon of gasoline as provided in
19 subsection C of Section 500.4 of this title;

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

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

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

- 10 a. used to operate equipment attached to a motor vehicle,
11 if the diesel fuel was placed into the fuel supply
12 tank of a motor vehicle that has a common fuel
13 reservoir for travel on a highway and for the
14 operation of equipment, or
15 b. consumed by the vehicle while the vehicle is parked
16 off the highways of this state;

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

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

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

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

6 16. Dyed diesel fuel;

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

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

14 SECTION 11. AMENDATORY 69 O.S. 2011, Section 1521, as
15 last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp.
16 2017, Section 1521), is amended to read as follows:

17 Section 1521. A. There is hereby created in the State Treasury
18 a fund to be known as the "Rebuilding Oklahoma Access and Driver
19 Safety Fund". The fund shall be a continuing fund, not subject to
20 fiscal year limitations, and shall consist of all appropriations and
21 transfers made by the Legislature. All monies accruing to the
22 credit of the fund are hereby appropriated and may be budgeted and
23 expended each fiscal year by the Department of Transportation for
24 the purposes authorized by subsection G of this section.

1 Expenditures from the fund shall be made upon warrants issued by the
2 State Treasurer against claims filed as prescribed by law with the
3 Director of the Office of Management and Enterprise Services for
4 approval and payment.

5 B. ~~There~~ Beginning July 1, 2018, except for an amount
6 equivalent to the amount of revenue apportioned pursuant to Section
7 9 of this act, there shall be apportioned to the funds specified in
8 this subsection from the monies that would otherwise be apportioned
9 to the General Revenue Fund by Section 2352 of Title 68 of the
10 Oklahoma Statutes from the revenues derived pursuant to subsections
11 A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes
12 amounts as follows:

13 1. For each fiscal year, subject to the provisions of paragraph
14 3 of this subsection, and, except for the amount prescribed by
15 subparagraph a of this paragraph, subject to any reductions required
16 by subsection F of this section, there shall be apportioned to the
17 Rebuilding Oklahoma Access and Driver Safety Fund:

18 a. for the fiscal year beginning July 1, 2011, the first
19 Thirty-five Million Seven Hundred Thousand Dollars
20 (\$35,700,000.00), for the fiscal year beginning July
21 1, 2012, the first Forty-one Million Seven Hundred
22 Thousand Dollars (\$41,700,000.00) and for the fiscal
23 year beginning July 1, 2013, and for each fiscal year
24 thereafter, Fifty-nine Million Seven Hundred Thousand

1 Dollars (\$59,700,000.00), which shall be allocated and
2 used by the Department of Transportation first for the
3 purpose of making any required payments for principal,
4 interest or other costs of borrowing with respect to
5 the obligations issued pursuant to Section 341 of
6 Title 73 of the Oklahoma Statutes and after any such
7 required payment has been made then for the purposes
8 otherwise authorized by this section, plus

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

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

23 All amounts apportioned pursuant to this paragraph shall be
24 divided into twelve equal amounts to be apportioned each month

1 during the fiscal year except the amount specified in subparagraph a
2 of this paragraph which amount shall be allocated in its full amount
3 in cash not later than July 30 each year or such later date as may
4 be required in order for the amount to be allocated in cash;

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

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

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

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

21 3. For each fiscal year after the first fiscal year in which
22 the total apportionment to the Rebuilding Oklahoma Access and Driver
23 Safety Fund as provided by paragraph 1 of this subsection and from
24 other sources equals Five Hundred Seventy-five Million Dollars

1 (\$575,000,000.00), except for an amount equivalent to the amount of
2 revenue apportioned pursuant to Section 9 of this act, the first
3 Five Hundred Seventy-five Million Dollars (\$575,000,000.00)
4 collected pursuant to subsections A, B and E of Section 2355 of
5 Title 68 of the Oklahoma Statutes and apportioned pursuant to
6 Section 2352 of Title 68 of the Oklahoma Statutes that would
7 otherwise be apportioned to the General Revenue Fund shall be
8 apportioned to the Rebuilding Oklahoma Access and Driver Safety
9 Fund. With the exception of the amount prescribed by subparagraph a
10 of paragraph 1 of this subsection, all amounts apportioned pursuant
11 to this paragraph shall be divided into twelve equal amounts to be
12 apportioned each month during the fiscal year.

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

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

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

19 F. In the event that the Director of the Office of Management
20 and Enterprise Services declares a General Revenue Fund revenue
21 failure pursuant to Section 34.49 of Title 62 of the Oklahoma
22 Statutes, and agency allocations are reduced pursuant to the
23 provisions of Section 34.49 of Title 62 of the Oklahoma Statutes,
24

1 the amounts that would otherwise be apportioned to the ROADS Fund
2 by:

3 1. Subparagraph a of paragraph 1 of subsection B of this
4 section, only to the extent that the amount is not required for debt
5 service related to the obligations authorized pursuant to Section
6 341 of Title 73 of the Oklahoma Statutes;

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

9 3. Subparagraphs a and b of paragraph 2 of subsection B of this
10 section,
11 shall be reduced by a percentage equal to that required of the
12 General Revenue Fund appropriations to state agencies and such
13 reductions shall occur during the entire fiscal year and for any
14 month during which such reductions are required by the Office of
15 Management and Enterprise Services and by the same percentage as
16 that required of the agencies for such General Revenue Fund
17 appropriations.

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

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

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

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

4 4. Matching federal funds;

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

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

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

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

1 SECTION 12. AMENDATORY 37 O.S. 2011, Section 576, as
2 last amended by Section 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp.
3 2017, Section 576), is amended to read as follows:

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

10 1. The sale, preparation or service of mixed beverages and low-
11 point beer;

12 2. The total retail value of complimentary or discounted mixed
13 beverages and low-point beer;

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

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

23 B. For purposes of this section:
24

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

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

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

15 4. "Low-point beer" means low-point beer as defined by Section
16 163.2 of this title.

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

22 D. The gross receipts tax levied by this section is hereby
23 declared to be a direct tax upon the receipt of consideration for
24 any charges for admission to a mixed beverage establishment or

1 retail dealer establishment as provided in paragraph 4 of subsection
2 A of this section, for the sale, preparation or service of mixed
3 beverages, low-point beer, ice, and nonalcoholic beverages to be
4 mixed with alcoholic beverages and low-point beer, and the total
5 retail value of complimentary or discounted mixed beverages and low-
6 point beer.

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

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

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

16 SECTION 15. While considered in the Legislature as a revenue-
17 raising measure, on final passage this measure received a majority
18 vote of those elected to and constituting the Oklahoma House of
19 Representatives, but failed to receive three-fourths (3/4) majority
20 approval of the membership of the Oklahoma House of Representatives
21 as required by Article V, Section 33 of the Oklahoma Constitution
22 for presentation to the Governor rather than referral to a vote of
23 the people at the next General Election. Pursuant to Article V,
24 Section 33 of the Oklahoma Constitution there is hereby ordered a

1 referendum which shall be filed with the Secretary of State and
2 addressed to the Governor of the State, who shall submit the same to
3 the people for their approval or rejection at the next General
4 Election.

5 Passed the House of Representatives the 25th day of October,
6 2017.

7

8 Presiding Officer of the House
9 of Representatives

10 Passed the Senate the ____ day of _____, 2017.

11

12 Presiding Officer of the Senate

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