

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Extraordinary Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1035

By: Wallace and Casey of the
House

and

David and Fields of the
Senate

11
12 COMMITTEE SUBSTITUTE

13 An Act relating to revenue and taxation; stating
14 purpose; imposing additional tax levy upon
15 cigarettes; specifying amount of additional levy;
16 providing for apportionment of revenues; exempting
17 levy from inclusion in determination of certain
18 amounts; requiring certain collections and
19 administration of levy; prohibiting sale of cigarette
20 excise tax stamps to wholesalers in excess of certain
21 amount; providing exception; creating the State
22 Health Care Enhancement Fund; exempting fund from
23 fiscal year limitations; identifying funding source;
24 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

1 purpose; imposing tax on gasoline and diesel fuel;
2 establishing amount of tax per gallon; requiring
3 deposit of certain revenue, penalties and interest in
4 certain fund; amending 68 O.S. 2011, Section 500.10,
5 which relates to exemption from motor fuels tax;
6 extending exemptions to additional tax levy; amending
7 69 O.S. 2011, Section 1521, as last amended by
8 Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp.
9 2017, Section 1521), which relates to the Rebuilding
10 Oklahoma Access and Driver Safety Fund; modifying
11 calculation of certain annual apportionments;
12 amending 37 O.S. 2011, Section 576, as last amended
13 by Section 18, Chapter 298, O.S.L. 2014 (37 O.S.
14 Supp. 2017, Section 576), which relates to gross
15 receipts taxes on products sold by certain licensees;
16 making applicable to low-point beer; defining term;
17 providing that tax be in addition to other taxes;
18 repealing 37 O.S. 2011, Section 576, as last amended
19 by Section 11 of this act, which relates to gross
20 receipts taxes on products sold by certain licensees;
21 repealing 68 O.S. 2011, Section 402-2, which relates
22 to additional tax on tobacco products; providing for
23 codification; providing for noncodification; and
24 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,

1 gift, possession or consumption of cigarettes, as defined in
2 Sections 301 through 325 of Title 68 of the Oklahoma Statutes,
3 within this state, a tax at the rate of seventy-five (75) mills per
4 cigarette.

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

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

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

20 b. Beginning July 1, 2018, the resulting revenues as
21 described by paragraphs 1 and 2 of this subsection
22 shall be apportioned by the Oklahoma Tax Commission
23 and transmitted to the State Treasurer, who shall
24 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

1 provisions of Sections 301 through 325 of Title 68 of the Oklahoma
2 Statutes.

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

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

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

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

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

3 Section 311. For the purpose of allowing compensation for the
4 costs necessarily incurred in affixing the proper tax stamp to each
5 package of cigarettes and tobacco before making a sale of such
6 cigarettes and tobacco, each person purchasing cigarette or tobacco
7 tax stamps from the Oklahoma Tax Commission as required by law may
8 purchase stamps from the Tax Commission at a reduction of ~~one and~~
9 ~~one-half cents (\$0.015)~~ one cent (\$0.01) per stamp⁷; provided, that
10 such discount or reduction shall not be applicable on purchases of
11 less than One Hundred Dollars (\$100.00) at any one time; and
12 provided⁷ further, that no discount shall be allowed to out-of-state
13 purchasers which reside in the states that do not give discounts on
14 cigarette stamps purchased from State of Oklahoma cigarette dealers.
15 The discount herein provided shall be the only discount allowed to
16 purchasers from the Tax Commission; provided, that if a purchaser
17 refuses to comply with the laws of the State of Oklahoma, the Tax
18 Commission shall require the full face value for stamps purchased
19 until such time as the person has complied with the provisions of
20 the law. The Tax Commission may authorize the use of a metering
21 device for the impress of the tax stamp.

22 SECTION 5. AMENDATORY 68 O.S. 2011, Section 402, is
23 amended to read as follows:
24

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

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

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

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

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

1 forms of tobacco prepared in such manner as to be suitable for
2 smoking in a pipe or cigarette, the tax shall be twenty-five percent
3 (25%) of the factory list price exclusive of any trade discount,
4 special discount or deals; and

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

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

11 Notwithstanding any other provision of law, the tax levied pursuant
12 to the provisions of Section 401 et seq. of this title shall be part
13 of the gross proceeds or gross receipts from the sale of cigars or
14 tobacco products, or both, as those terms are defined in paragraph 7
15 of Section 1352 of this title.

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

18 Section 402-1. In addition to the tax levied by Section 402 of
19 this title, there is hereby levied upon the sale, use, exchange or
20 possession of articles containing tobacco as defined in said Section
21 402, a tax in the following amounts:

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

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

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

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

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

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

23 ~~(e)~~ The tax herein levied on tobacco products shall be evidenced
24 by stamps and collected on the same basis and in the same manner and

1 in all respects as the tax levied by the Tobacco Products Tax Law.
2 The revenue from this additional tax shall be apportioned by the
3 Oklahoma Tax Commission in the same manner as provided in Section
4 404 of this title, for the apportionment of other tobacco products
5 tax revenue.

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

8 Section 402-3. A. In addition to the tax levied in Sections
9 402, and 402-1 ~~and 402-2~~ of this title, effective January 1, 2005,
10 there shall be levied, assessed, collected, and paid in respect to
11 the articles containing tobacco enumerated in Section 401 et seq. of
12 this title, a tax in the following amounts:

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

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

1 ~~3.~~ 2. Smoking Tobacco. Upon all smoking tobacco including
2 granulated, plug cut, crimp cut, ready rubbed and other kinds and
3 forms of tobacco prepared in such manner as to be suitable for
4 smoking in a pipe or cigarette, the tax shall be forty percent (40%)
5 of the factory list price exclusive of any trade discount, special
6 discount or deals; and

7 ~~4.~~ 3. Chewing Tobacco. Upon chewing tobacco, smokeless
8 tobacco, and snuff, the tax shall be thirty percent (30%) of the
9 factory list price exclusive of any trade discount, special discount
10 or deals.

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

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

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

22 3. Before July 1, 2008, seven and fifty-hundredths percent
23 (7.50%) shall be placed to the credit of the Trauma Care Assistance
24 Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the

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

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

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

21 c. any additional revenue allocated pursuant to this
22 paragraph shall be placed to the credit of the Trauma
23 Care Assistance Revolving Fund;
24

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

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

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

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

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

1 9. Two and seven-hundredths percent (2.07%) shall be placed to
2 the credit of the Education Reform Revolving Fund created in Section
3 ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes;

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

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

9 12. For fiscal years beginning July 1, 2004, and ending June
10 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)
11 shall be apportioned to municipalities and counties that levy a
12 sales tax, in the proportions which total municipal and county sales
13 tax revenue was apportioned by the Tax Commission in the preceding
14 month.

15 For fiscal years beginning July 1, 2006, and thereafter, the
16 apportionment percentage specified in paragraph 12 of this
17 subsection will be adjusted by dividing the total municipal and
18 county sales tax revenue collected in the calendar year immediately
19 preceding the commencement of the fiscal year by the sum of the
20 state sales tax revenue and total municipal and county sales tax
21 revenue collected in the same year. This ratio shall be divided by
22 the ratio of the total municipal and county sales tax revenue
23 collected in the calendar year beginning January 1, 2004, and ending
24 December 31, 2004, divided by the sum of the state sales tax revenue

1 and total municipal and county sales tax revenue collected in the
2 same year. The resulting quotient shall be multiplied by fourteen
3 and twenty-three-hundredths percent (14.23%) to determine the
4 apportionment percentage for the fiscal year.

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

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

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

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

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

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

12 b. every month, any amount over and above the amount
13 placed to the credit of the Trauma Care Assistance
14 Revolving Fund pursuant to subparagraph a of this
15 paragraph shall be credited to the Oklahoma Emergency
16 Response Systems Stabilization and Improvement
17 Revolving Fund as created in Section ~~&~~ 1-2512.1 of
18 ~~this act~~ Title 63 of the Oklahoma Statutes until the
19 combined amount credited to the Oklahoma Emergency
20 Response Systems Stabilization and Improvement
21 Revolving Fund pursuant to this section and Section
22 302-5 of this title is equal to Two Million Five
23 Hundred Thousand Dollars (\$2,500,000.00) each year,
24 and

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

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

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

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

20 7. Sixty-seven-hundredths percent (0.67%) shall be placed to
21 the credit of the Belle Maxine Hilliard Breast and Cervical Cancer
22 Treatment Revolving Fund created in Section 1-559 of Title 63 of the
23 Oklahoma Statutes; and
24

1 8. One percent (1%) shall be placed to the credit of the
2 Tobacco Prevention and Cessation Revolving Fund created in Section
3 1-105d of Title 63 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 1. Gasoline used or consumed in this state; and

4 2. Diesel fuel used or consumed in this state.

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

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

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

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

20 Section 500.10 Subject to the procedural requirements and
21 conditions set out in this section and Sections 500.11 through
22 500.17 of this title, the following are exempt from the ~~tax~~ taxes on
23 motor fuel imposed by Section 500.4 of this title ~~on motor fuel and~~
24 Section 9 of this act:

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

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

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

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

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

19 4. K-1 kerosene sold at retail through dispensers which have
20 been designed and constructed to prevent delivery directly from the
21 dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at
22 retail through nonbarricaded dispensers in quantities of not more
23 than twenty-one (21) gallons for use other than for highway
24

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

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

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

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

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

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

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

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

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

- 17 a. used to operate equipment attached to a motor vehicle,
18 if the diesel fuel was placed into the fuel supply
19 tank of a motor vehicle that has a common fuel
20 reservoir for travel on a highway and for the
21 operation of equipment, or
22 b. consumed by the vehicle while the vehicle is parked
23 off the highways of this state;

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

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

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

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

13 16. Dyed diesel fuel;

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

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

21 SECTION 11. AMENDATORY 69 O.S. 2011, Section 1521, as
22 last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp.
23 2017, Section 1521), is amended to read as follows:

1 Section 1521. A. There is hereby created in the State Treasury
2 a fund to be known as the "Rebuilding Oklahoma Access and Driver
3 Safety Fund". The fund shall be a continuing fund, not subject to
4 fiscal year limitations, and shall consist of all appropriations and
5 transfers made by the Legislature. All monies accruing to the
6 credit of the fund are hereby appropriated and may be budgeted and
7 expended each fiscal year by the Department of Transportation for
8 the purposes authorized by subsection G of this section.

9 Expenditures from the fund shall be made upon warrants issued by the
10 State Treasurer against claims filed as prescribed by law with the
11 Director of the Office of Management and Enterprise Services for
12 approval and payment.

13 B. ~~There~~ Beginning July 1, 2018, except for an amount
14 equivalent to the amount of revenue apportioned pursuant to Section
15 9 of this act, there shall be apportioned to the funds specified in
16 this subsection from the monies that would otherwise be apportioned
17 to the General Revenue Fund by Section 2352 of Title 68 of the
18 Oklahoma Statutes from the revenues derived pursuant to subsections
19 A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes
20 amounts as follows:

21 1. For each fiscal year, subject to the provisions of paragraph
22 3 of this subsection, and, except for the amount prescribed by
23 subparagraph a of this paragraph, subject to any reductions required
24

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

3 a. for the fiscal year beginning July 1, 2011, the first
4 Thirty-five Million Seven Hundred Thousand Dollars
5 (\$35,700,000.00), for the fiscal year beginning July
6 1, 2012, the first Forty-one Million Seven Hundred
7 Thousand Dollars (\$41,700,000.00) and for the fiscal
8 year beginning July 1, 2013, and for each fiscal year
9 thereafter, Fifty-nine Million Seven Hundred Thousand
10 Dollars (\$59,700,000.00), which shall be allocated and
11 used by the Department of Transportation first for the
12 purpose of making any required payments for principal,
13 interest or other costs of borrowing with respect to
14 the obligations issued pursuant to Section 341 of
15 Title 73 of the Oklahoma Statutes and after any such
16 required payment has been made then for the purposes
17 otherwise authorized by this section, plus

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

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

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

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

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

22 b. the next Three Million Dollars (\$3,000,000.00) shall
23 be apportioned to the Public Transit Revolving Fund
24 created pursuant to Section 4031 of this title to be

1 used for purposes authorized by law other than the
2 purpose described by subparagraph a of this paragraph.

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

6 3. For each fiscal year after the first fiscal year in which
7 the total apportionment to the Rebuilding Oklahoma Access and Driver
8 Safety Fund as provided by paragraph 1 of this subsection and from
9 other sources equals Five Hundred Seventy-five Million Dollars
10 (\$575,000,000.00), except for an amount equivalent to the amount of
11 revenue apportioned pursuant to Section 9 of this act, the first
12 Five Hundred Seventy-five Million Dollars (\$575,000,000.00)
13 collected pursuant to subsections A, B and E of Section 2355 of
14 Title 68 of the Oklahoma Statutes and apportioned pursuant to
15 Section 2352 of Title 68 of the Oklahoma Statutes that would
16 otherwise be apportioned to the General Revenue Fund shall be
17 apportioned to the Rebuilding Oklahoma Access and Driver Safety
18 Fund. With the exception of the amount prescribed by subparagraph a
19 of paragraph 1 of this subsection, all amounts apportioned pursuant
20 to this paragraph shall be divided into twelve equal amounts to be
21 apportioned each month during the fiscal year.

22 C. The apportionments of revenues required by subparagraphs a,
23 b and c of paragraph 1 of subsection B of this section shall be made
24 until the total annual apportionment from such sources in addition

1 to the apportionment made pursuant to Section 9 of this act to the
2 Rebuilding Oklahoma Access and Driver Safety Fund equals Five
3 Hundred Seventy-five Million Dollars (\$575,000,000.00). After such
4 annual apportionment level is reached, the apportionment to the fund
5 shall be governed by the provisions of paragraph 3 of subsection B
6 of this section.

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

10 E. In order to ensure that the funds from the ROADS Fund are
11 used to enhance and not supplant state funding for the Department of
12 Transportation, the State Board of Equalization shall examine and
13 investigate expenditures from the fund each year. For purposes of
14 this examination, monies used to retire outstanding debt obligations
15 for which the Department of Transportation is responsible shall be
16 excluded. At the meeting of the State Board of Equalization held
17 within five (5) days after the monthly apportionment in February of
18 each year, the State Board of Equalization shall issue a finding and
19 report which shall state whether expenditures from the ROADS Fund
20 were used to enhance or supplant state funding for the Department of
21 Transportation. If the State Board of Equalization finds that state
22 funding for the Department of Transportation was supplanted by funds
23 from the ROADS Fund, the Board shall specify the amount by which
24 such funding was supplanted. In this event, the Legislature shall

1 not make any appropriations for the ensuing fiscal year until an
2 appropriation in that amount is made to replenish state funding for
3 the Department of Transportation.

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

11 1. Subparagraph a of paragraph 1 of subsection B of this
12 section, only to the extent that the amount is not required for debt
13 service related to the obligations authorized pursuant to Section
14 341 of Title 73 of the Oklahoma Statutes;

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

17 3. Subparagraphs a and b of paragraph 2 of subsection B of this
18 section,
19 shall be reduced by a percentage equal to that required of the
20 General Revenue Fund appropriations to state agencies and such
21 reductions shall occur during the entire fiscal year and for any
22 month during which such reductions are required by the Office of
23 Management and Enterprise Services and by the same percentage as
24

1 that required of the agencies for such General Revenue Fund
2 appropriations.

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

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

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

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

12 4. Matching federal funds;

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

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

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

22 H. From the monies allocated pursuant to the provisions of
23 subparagraph a of paragraph 1 of subsection B of this section each
24 fiscal year, the Department of Transportation shall make payments

1 required for the payment of principal, interest and other costs
2 related to the obligations issued by the Oklahoma Capitol
3 Improvement Authority as authorized by Section 341 of Title 73 of
4 the Oklahoma Statutes and such payments shall be made by the
5 Department each fiscal year before such monies are used for any
6 other purpose.

7 SECTION 12. AMENDATORY 37 O.S. 2011, Section 576, as
8 last amended by Section 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp.
9 2017, Section 576), is amended to read as follows:

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

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

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

20 3. Ice or nonalcoholic beverages that are sold, prepared or
21 served for the purpose of being mixed with alcoholic beverages and
22 low-point beer and consumed on the premises where the sale,
23 preparation or service occurs; and
24

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

6 B. For purposes of this section:

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

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

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

21 4. "Low-point beer" means low-point beer as defined by Section
22 163.2 of this title.

23 C. The gross receipts tax levied by this section shall be in
24 addition to the excise tax levied in Section 163.3 of this title,

1 the excise tax levied in Section 553 of this title, the sales tax
2 levied in the Oklahoma Sales Tax Code and to any municipal or county
3 sales taxes.

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

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

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

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

22 SECTION 15. Section 11 of this act shall become effective July
23 1, 2018.

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

COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
AND BUDGET, dated 10/24/2017 - DO PASS, As Amended.