

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1686

By: Wright

AS INTRODUCED

An Act relating to alcoholic beverages; amending Sections 104 and 107, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Sections 5-101 and 5-104), which relate to excise tax on alcoholic beverages; increasing excise tax rate on spirits and beer to reflect exemption from sales tax; providing for apportionment; amending 68 O.S. 2011, Section 1355, as amended by Section 2, Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016, Section 1355), which relates to sales tax; exempting spirits and beer on which certain excise taxes have been paid; and providing an effective date.

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

SECTION 1. AMENDATORY Section 104, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 5-101), is amended to read as follows:

Section 5-101. A. Except as provided in this subsection, an excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state at the following rates:

1 1. ~~One Dollar and forty-seven cents (\$1.47)~~ Three Dollars and
2 fifty cents (\$3.50) per liter, and a proportionate rate on fractions
3 thereof, on each liter of spirits;

4 2. Nineteen cents (\$0.19) per liter, and a proportionate rate
5 on fractions thereof, on each liter of wine;

6 3. Fifty-five cents (\$0.55) per liter, and a proportionate rate
7 on fractions thereof, on each liter of sparkling wine; ~~and~~

8 4. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-
9 one (31) wine gallons) and a proportionate rate on portions
10 thereof; and

11 5. Forty-five Dollars (\$45.00) on each barrel of beer
12 containing not more than thirty-one (31) gallons, and at a like rate
13 of tax for any other quantities or for a fractional part of a
14 barrel; provided, beer manufactured in this state for export shall
15 not be taxed.

16 B. The excise tax levied on alcoholic beverages except beer
17 under subsection A of this section shall be paid as follows:

18 1. Payment of the excise tax levied by this section with
19 respect to all alcoholic beverages, other than beer, shall be made
20 by the person shipping the same into Oklahoma, or in the case of
21 direct imports from foreign countries by the importer, or in the
22 case of alcoholic beverages manufactured in Oklahoma by the first
23 seller thereof;

1 2. The due and payable excise tax levied by this section shall
2 be remitted electronically with tax returns electronically filed
3 with the Oklahoma Tax Commission using procedures prescribed by the
4 Tax Commission. The tax returns shall be made under oath by the
5 person liable for the tax on forms prescribed and provided by the
6 Tax Commission and shall be accompanied by payment of the taxes due
7 and any additional sums due as provided by this section. Invoices
8 describing all alcoholic beverages as described in this section
9 which are shipped into this state or which are first sold in this
10 state shall be delivered to the Tax Commission immediately following
11 shipment of liquors into the state or delivery to the first
12 purchaser. Tax returns and payment of excise tax and other sums due
13 shall be electronically filed with the Tax Commission no later than
14 the twentieth day of the month immediately succeeding the month of
15 shipment, importation or first sale of the alcoholic beverages as
16 provided in paragraph 1 of this subsection; and

17 3. Each person required to file a tax return pursuant to this
18 section shall remit the excise tax due. Up to ten percent (10%) of
19 each tax payment made under this subsection may be made in the form
20 of revenue stamps previously purchased pursuant to Section ~~411~~ 5-108
21 of this ~~act~~ title.

22 C. For the purpose of collecting and remitting the excise tax
23 imposed under this section, the person liable for such tax is hereby
24 declared to be the agent of the state for such purposes.

1 D. Nothing herein shall be construed to impose an additional
2 excise tax on alcoholic beverages held in inventory by wholesalers
3 and retailers upon which the excise tax was paid prior to the
4 effective date of any excise tax increase.

5 E. The retail sale of alcoholic beverages shall be subject to
6 the sales tax statutes enacted by the Legislature.

7 SECTION 2. AMENDATORY Section 107, Chapter 366, O.S.L.
8 2016 (37A O.S. Supp. 2016, Section 5-104), is amended to read as
9 follows:

10 Section 5-104. ~~All~~ A. Except as provided in subsection B of
11 this section, all revenue accruing from the excise tax levied by
12 Section ~~104~~ 5-101 of this ~~act~~ title shall be collected by the
13 Oklahoma Tax Commission and distributed as follows:

14 1. Two-thirds of ninety-seven percent (2/3 of 97%) of such tax
15 revenue shall be paid to the State Treasurer and placed to the
16 credit of the General Revenue Fund of the state; provided, any
17 amounts derived from the tax levied pursuant to paragraphs 2 and 3
18 of subsection A of Section ~~104~~ 5-101 of this ~~act~~ title that exceed
19 an amount equal to the total amount collected from such tax levy for
20 the fiscal year ending on June 30, 2010, shall be distributed to the
21 Oklahoma Viticulture and Enology Center Development Revolving Fund
22 created pursuant to Section ~~132~~ 5-129 of this ~~act~~ title, but in no
23 event shall the distribution to the Oklahoma Viticulture and Enology
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Center Development Revolving Fund in any fiscal year exceed Three Hundred Fifty Thousand Dollars (\$350,000.00);

2. One-third of ninety-seven percent (1/3 of 97%) of such revenue is hereby allocated to the counties of this state and shall be paid to the county treasurers on the basis of area and population (giving equal weight to area and population) wherein the sale of alcoholic beverages is lawful, and all of such funds shall be appropriated by the county commissioners of each county and apportioned by the county treasurer to all incorporated cities and towns in the county on the basis of population within each city and town on a per capita basis based on the last preceding Federal Decennial Census. For the purpose of appropriating and paying the excise taxes collected under the Oklahoma Alcoholic Beverage Control Act, or any act which is amendatory thereof or supplemental thereto, to the incorporated cities and towns in any county, city or town, the corporate limits of which include territory within more than one county, shall be considered and treated as being a city or town in only the county within which more than fifty percent (50%) of the entire population of such city or town, as shown by the last preceding Federal Decennial Census, reside, and, for such purpose, shall not be considered or treated as being a city or town in any other county. In the event that the last preceding Federal Decennial Census fails to disclose information from which such fact may be determined by the board of county commissioners which is

1 appropriating the tax money then involved to the cities and towns in
2 its county, the board of county commissioners shall make an
3 estimate, from the best information then available to it, as to the
4 percentage of the entire population of such city or town then
5 residing in the county. If such board of county commissioners
6 determines, either from information disclosed by the last preceding
7 Federal Decennial Census, or from the best information then
8 available to the ABLE Commission (when such information is not
9 disclosed by the last preceding Federal Decennial Census), that more
10 than fifty percent (50%) of the population of such a city or town
11 resides in that county, such city or town shall receive its pro rata
12 share of such tax money on the basis of its entire population
13 according to the last preceding Federal Decennial Census; but if
14 such board of county commissioners so determines that more than
15 fifty percent (50%) of the population of such city or town does not
16 reside in that county, no part of such tax money shall be
17 appropriated or paid to such city or town; and

18 3. The remaining three percent (3%) of such excise tax revenue
19 shall be paid to the State Treasurer and placed to the credit of the
20 Oklahoma Tax Commission Fund to be paid out of the fund pursuant to
21 appropriations made by the State Legislature.

22 B. The tax collected pursuant to paragraph 1 of subsection A of
23 Section 5-101 of this title shall be apportioned as follows:
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1 1. One Dollar and forty-seven cents (\$1.47) of the tax shall be
2 deposited according to the provisions of subsection A of this
3 section; and

4 2. The remaining Two Dollars and three cents (\$2.03) of the tax
5 shall be apportioned to the state, municipalities and counties that
6 levy a sales tax, in the proportions which each entity received in
7 sales tax in the preceding month. The amount allocated to the state
8 shall be apportioned pursuant to the provisions of Section 1353 of
9 Title 68 of the Oklahoma Statutes.

10 C. The tax collected pursuant to paragraph 5 of subsection A of
11 Section 5-101 of this title shall be apportioned as follows:

12 1. Eleven Dollars and twenty-five cents (\$11.25) of the tax
13 shall be deposited according to the provisions of subsection A of
14 this section; and

15 2. The remaining Thirty-three Dollars and seventy-five cents
16 (\$33.75) of the tax shall be apportioned to the state,
17 municipalities and counties that levy a sales tax, in the
18 proportions which each entity received in sales tax in the preceding
19 month. The amount allocated to the state shall be apportioned
20 pursuant to the provisions of Section 1353 of Title 68 of the
21 Oklahoma Statutes.

22 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1355, as
23 amended by Section 2, Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016,
24 Section 1355), is amended to read as follows:

1 Section 1355. There are hereby specifically exempted from the
2 tax levied pursuant to the provisions of Section 1350 et seq. of
3 this title:

4 1. Sale of gasoline, motor fuel, methanol, "M-85" which is a
5 mixture of methanol and gasoline containing at least eighty-five
6 percent (85%) methanol, compressed natural gas, liquefied natural
7 gas, or liquefied petroleum gas on which the Motor Fuel Tax,
8 Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special
9 Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or
10 Section 701 et seq. of this title has been, or will be paid;

11 2. Sale of motor vehicles or any optional equipment or
12 accessories attached to motor vehicles on which the Oklahoma Motor
13 Vehicle Excise Tax levied in Section 2101 et seq. of this title has
14 been, or will be paid;

15 3. Sale of crude petroleum or natural or casinghead gas and
16 other products subject to gross production tax pursuant to the
17 provisions of Section 1001 et seq. and Section 1101 et seq. of this
18 title. This exemption shall not apply when such products are sold
19 to a consumer or user for consumption or use, except when used for
20 injection into the earth for the purpose of promoting or
21 facilitating the production of oil or gas. This paragraph shall not
22 operate to increase or repeal the gross production tax levied by the
23 laws of this state;

1 4. Sale of aircraft on which the tax levied pursuant to the
2 provisions of Sections 6001 through 6007 of this title has been, or
3 will be paid or which are specifically exempt from such tax pursuant
4 to the provisions of Section 6003 of this title;

5 5. Sales from coin-operated devices on which the fee imposed by
6 Sections 1501 through 1512 of this title has been paid;

7 6. Leases of twelve (12) months or more of motor vehicles in
8 which the owners of the vehicles have paid the vehicle excise tax
9 levied by Section 2103 of this title;

10 7. Sales of charity game equipment on which a tax is levied
11 pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of
12 Title 3A of the Oklahoma Statutes, or which is sold to an
13 organization that is:

14 a. a veterans' organization exempt from taxation pursuant
15 to the provisions of paragraph (4), (7), (8), (10) or
16 (19) of subsection (c) of Section 501 of the United
17 States Internal Revenue Code of 1986, as amended, 26
18 U.S.C., Section 501(c) et seq.,

19 b. a group home for mentally disabled individuals exempt
20 from taxation pursuant to the provisions of paragraph
21 (3) of subsection (c) of Section 501 of the United
22 States Internal Revenue Code of 1986, as amended, 26
23 U.S.C., Section 501(c) et seq., or
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1 c. a charitable healthcare organization which is exempt
2 from taxation pursuant to the provisions of paragraph
3 (3) of subsection (c) of Section 501 of the United
4 States Internal Revenue Code of 1986, as amended, 26
5 U.S.C., Section 501(c) et seq.;

6 8. Sales of cigarettes or tobacco products to:

7 a. a federally recognized Indian tribe or nation which
8 has entered into a compact with the State of Oklahoma
9 pursuant to the provisions of subsection C of Section
10 346 of this title or to a licensee of such a tribe or
11 nation, upon which the payment in lieu of taxes
12 required by the compact has been paid, or

13 b. a federally recognized Indian tribe or nation or to a
14 licensee of such a tribe or nation upon which the tax
15 levied pursuant to the provisions of Section 349 or
16 Section 426 of this title has been paid;

17 9. Leases of aircraft upon which the owners have paid the
18 aircraft excise tax levied by Section 6001 et seq. of this title or
19 which are specifically exempt from such tax pursuant to the
20 provisions of Section 6003 of this title;

21 10. The sale of low-speed or medium speed electrical vehicles
22 on which the Oklahoma Motor Vehicle Excise Tax levied in Section
23 2101 et seq. of this title has been or will be paid; ~~and~~

1 11. Effective January 1, 2005, sales of cigarettes on which the
2 tax levied in Section 301 et seq. of this title or tobacco products
3 on which the tax levied in Section 401 et seq. of this title has
4 been paid;

5 12. Sale of spirits on which the tax levied in Section 5-101 of
6 Title 37A of the Oklahoma Statutes has been paid; and

7 13. Sale of beer on which the tax levied in Section 5-101 of
8 Title 37A of the Oklahoma Statutes has been paid.

9 SECTION 4. This act shall become effective October 1, 2018.

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