

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3315

By: Blancett

AS INTRODUCED

An Act relating to taxation; amending 68 O.S. 2011, Sections 401 and 402, as amended by Section 3, Chapter 8, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2019, Section 402), which relate to tobacco products; modifying definition of term tobacco products to include electronic smoking devices; defining electronic smoking device; taxing electronic smoking devices; setting rates; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 401, is amended to read as follows:

Section 401. For the purpose of this article:

(a) The word "person" shall mean any individual, company, limited liability company, corporation, partnership, association, joint adventure, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

1 (b) The term "Tax Commission" shall mean the Oklahoma Tax
2 Commission.

3 (c) The word "wholesaler" shall include dealers whose principal
4 business is that of a wholesale dealer or jobber, and who is known
5 to the trade as such, who shall sell any cigars or tobacco products
6 to licensed retail dealers only for the purpose of resale, or giving
7 them away, or exposing the same where they may be taken or
8 purchased, or otherwise acquired by the retailer.

9 (d) The word "retailer" shall include every dealer, other than
10 a wholesale dealer as defined above, whose principal business is
11 that of selling merchandise at retail, who shall sell, or offer for
12 sale, cigars or tobacco products, irrespective of quantity, number
13 of sales, giving the same away or exposing the same where they may
14 be taken, or purchased, or otherwise acquired by the consumer.

15 (e) The word "consumer" shall mean a person who comes into
16 possession of tobacco for the purpose of consuming it, giving it
17 away, or disposing of it in any way by sale, barter or exchange.

18 (f) The words "first sale" shall mean and include the first
19 sale, or distribution, of cigars or tobacco products in intrastate
20 commerce, or the first use or consumption of cigars, or tobacco
21 products within this state.

22 (g) The words "tobacco products" shall mean any cigars,
23 cheroots, stogies, smoking tobacco (including granulated, plug cut,
24 crimp cut, ready rubbed and any other kinds and forms of tobacco

1 suitable for smoking in a pipe or cigarette), chewing tobacco
2 (including cavendish, twist, plug, scrap and any other kinds and
3 forms of tobacco suitable for chewing), however prepared; and shall
4 include any other articles or products made of tobacco or any
5 substitute therefor and electronic smoking devices.

6 (h) The term "distributing agent" shall mean and include every
7 person in this state who acts as an agent of any person outside the
8 state by receiving cigars and tobacco products in interstate
9 commerce and storing such items subject to distribution or delivery,
10 upon order from said person outside the state, to distributors,
11 wholesale dealers and retail dealers, or to consumers. The term
12 "distributing agent" shall also mean and include any person who
13 solicits or takes orders for cigars and tobacco products to be
14 shipped in interstate commerce to a person in this state by a person
15 residing outside of Oklahoma, the tax not having been paid on such
16 cigars and tobacco products.

17 (i) The term "stamp" shall mean the stamp or stamps by use of
18 which:

19 1. The tax levied pursuant to the provisions of Section 401 et
20 seq. of this title is paid;

21 2. The tax levied pursuant to the provisions of Section 426 of
22 this title is paid; or

23 3. The payment in lieu of taxes authorized pursuant to a
24 compact entered into by the State of Oklahoma and a federally

1 recognized Indian tribe or nation pursuant to the provisions of
2 subsection C of Section 346 of this title is paid.

3 (j) The term "drop shipment" shall mean and include any
4 delivery of cigars or tobacco products received by any person within
5 the state when payment for such cigars or tobacco products is made
6 to the shipper or seller by or through a person other than the
7 consignee.

8 (k) The term "cigars" shall include any roll of tobacco for
9 smoking, irrespective of size or shape and irrespective of the
10 tobacco being flavored, adulterated or mixed with any other
11 ingredients, where such roll has a wrapper made chiefly of tobacco.

12 (l) The word "dealer" shall include every person, firm,
13 corporation, or association of persons, who manufactures cigars or
14 tobacco products for distribution, sale, use or consumption in the
15 State of Oklahoma. The word "dealer" is also further defined to
16 mean any person, firm, corporation or association of persons, who
17 imports cigars or tobacco products from any state or foreign
18 country, for distribution, sale, use or consumption in the State of
19 Oklahoma.

20 (m) The term "electronic smoking device" means any device that
21 may be used to deliver any aerosolized or vaporized substance to the
22 person inhaling from the device, including, but not limited to, e-
23 cigarettes, e-cigars, e-pipes, vape pens or e-hookas. The term
24 "electronic smoking device" is further defined to include any

substance intended to be aerosolized or vaporized during the use of
such device, whether or not the substance contains nicotine. The
term "electronic smoking device" does not include drugs, devices or
combination products authorized for sale by the United States Food
and Drug Administration, as those terms are defined in the Federal
Food, Drug and Cosmetic Act. The term "electronic smoking device"
also does not include any product that is taxed and regulated as
medical marijuana under Sections 420 through 427 of Title 63 of the
Oklahoma Statutes.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 402, as
amended by Section 3, Chapter 8, 2nd Extraordinary Session, O.S.L.
2018 (68 O.S. Supp. 2019, Section 402), is amended to read as
follows:

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

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

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

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

11 4. Smoking Tobacco. Upon all smoking tobacco including
12 granulated, plug cut, crimp cut, ready rubbed and other kinds and
13 forms of tobacco prepared in such manner as to be suitable for
14 smoking in a pipe or cigarette, the tax shall be twenty-five percent
15 (25%) of the factory list price exclusive of any trade discount,
16 special discount or deals; and

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

20 6. Electronic Smoking Device. Upon electronic smoking devices,
21 the tax shall be forty-four percent (44%) of the wholesale price.

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

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

6 SECTION 3. This act shall become effective January 1, 2021.

7
8 57-2-10340 JW 01/10/20
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24