

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 1078

By: Thompson and Hall of the
Senate

and

Wallace and Hilbert of the
House

COMMITTEE SUBSTITUTE

An Act relating to tobacco products tax; amending 68 O.S. 2011, Section 401, as amended by Section 9 of Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma Legislature, which relates to definitions; modifying and adding definitions; amending 68 O.S. 2011, Section 402, as amended by Section 3, Chapter 8, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2020, Section 402), which relates to amount of tax and apportionment; conforming language; amending 68 O.S. 2011, Section 402-1, as last amended by Section 10 of Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma Legislature, which relates to rates and apportionment; conforming language; amending 68 O.S. 2011, Section 402-3, as amended by Section 5, Chapter 8, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2020, Section 402-3), which relates to amount of tax and apportionment; conforming language; amending 68 O.S. 2011, Sections 412 and 413, as last amended by Sections 15 and 16 of Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma Legislature, which relate to penalties and untaxed products; conforming language; amending 68 O.S. 2011, Section 414, as amended by Section 17 of Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma Legislature, which relates to trucks and vehicles carrying untaxed merchandise; conforming

1 language; amending 68 O.S. 2011, Section 418, as last
2 amended by Section 20 of Enrolled House Bill No. 2292
3 of the 1st Session of the 58th Oklahoma Legislature,
4 which relates to transportation or possession of
5 untaxed products; conforming language; providing an
6 effective date; and declaring an emergency.

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

8 SECTION 1. AMENDATORY 68 O.S. 2011, Section 401, as
9 amended by Section 9 of Enrolled House Bill No. 2292 of the 1st
10 Session of the 58th Oklahoma Legislature, is amended to read as
11 follows:

12 Section 401. For the purpose of this article:

13 1. The word "person" shall mean any individual, company,
14 limited liability company, corporation, partnership, association,
15 joint adventure, estate, trust or any other group, or combination
16 acting as a unit, and the plural as well as the singular, unless the
17 intention to give a more limited meaning is disclosed by the
18 context-;

19 2. The term "Tax Commission" shall mean the Oklahoma Tax
20 Commission-;

21 3. The word "wholesaler" shall include dealers whose principal
22 business is that of a wholesale dealer, and who is known to the
23 trade as such, who shall sell any ~~cigars or~~ tobacco products to
24 licensed retail dealers only for the purpose of resale-;

1 4. The word "retailer" shall include every dealer, other than a
2 wholesaler as defined above, whose principal business is that of
3 selling merchandise at retail, who shall sell, or offer for sale,
4 ~~cigars or tobacco products.~~;

5 5. The word "consumer" shall mean a person who comes into
6 possession of tobacco for the purpose of consuming it.;

7 6. The words "first sale" shall mean and include the first
8 sale, or distribution, of ~~cigars or~~ tobacco products in intrastate
9 commerce, or the first use or consumption of ~~cigars, or~~ tobacco
10 products within this state.;

11 7. The words "tobacco products" shall mean any cigars,
12 ~~cheroots, stogies, smoking tobacco (including granulated, plug cut,~~
13 ~~crimp cut, ready rubbed and any other kinds and forms of tobacco~~
14 ~~suitable for smoking in a pipe or cigarette), chewing tobacco~~
15 ~~(including cavendish, twist, plug, scrap and any other kinds and~~
16 ~~forms of tobacco suitable for chewing), however prepared; and shall~~
17 ~~include any other articles or products made of tobacco or any~~
18 ~~substitute therefor.~~ and smokeless tobacco;

19 8. The term "cigars" shall include any roll of tobacco for
20 smoking, irrespective of size or shape and irrespective of the
21 tobacco being flavored, adulterated or mixed with any other
22 ingredients, where such roll has a wrapper made chiefly of tobacco.;

23 9. The term "smokeless tobacco" shall mean all smokeless
24 tobacco including snuff and chewing tobacco;

1 10. The term "snuff" shall mean any finely cut, ground or
2 powdered tobacco that is not intended to be smoked;

3 11. The term "chewing tobacco" means any leaf tobacco that is
4 not intended to be smoked;

5 12. The term "smoking tobacco" shall mean any pipe tobacco or
6 roll-your-own tobacco;

7 13. The term "pipe tobacco" means any tobacco which, because of
8 its appearance, type, packaging or labeling, is suitable for use and
9 likely to be offered to, or purchased by, consumers as tobacco to be
10 smoked in a pipe;

11 14. The term "roll-your-own tobacco" means any tobacco which,
12 because of its appearance, type, packaging or labeling, is suitable
13 for use and likely to be offered to, or purchased by, consumers as
14 tobacco for making cigarettes or cigars, or for use as wrappers
15 therof; and

16 15. The term "untaxed" means that the full amount of tax has
17 not been paid as required by Section 400 et seq. of this title.

18 SECTION 2. AMENDATORY 68 O.S. 2011, Section 402, as
19 amended by Section 3, Chapter 8, 2nd Extraordinary Session, O.S.L.
20 2018 (68 O.S. Supp. 2020, Section 402), is amended to read as
21 follows:

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

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

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

13 3. 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, Twenty Dollars (\$20.00) per thousand. For
16 the purpose of computing the tax, cheroots, stogies, etc., are
17 hereby classed as cigars;

18 4. 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 twenty-five percent
22 (25%) of the factory list price exclusive of any trade discount,
23 special discount or deals; and
24

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

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

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

13 SECTION 3. AMENDATORY 68 O.S. 2011, Section 402-1, as
14 last amended by Section 10 of Enrolled House Bill No. 2292 of the
15 1st Session of the 58th Oklahoma Legislature, is amended to read as
16 follows:

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

21 1. Upon cigars of all descriptions made of tobacco, or any
22 substitute therefor, and weighing more than three (3) pounds per
23 thousand, and having a manufacturer's recommended retail selling
24 price, under the Federal Code, of more than four cents (\$0.04) for

1 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
2 computing the tax, cheroots, stogies, etc., are hereby classed as
3 cigars;

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

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

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

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

21 SECTION 4. AMENDATORY 68 O.S. 2011, Section 402-3, as
22 amended by Section 5, Chapter 8, 2nd Extraordinary Session, O.S.L.
23 2018 (68 O.S. Supp. 2020, Section 402-3), is amended to read as
24 follows:

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

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

11 2. 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 forty percent (40%)
15 of the factory list price exclusive of any trade discount, special
16 discount or deals; and

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

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

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

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

8 3. Before July 1, 2008, seven and fifty-hundredths percent
9 (7.50%) shall be placed to the credit of the Trauma Care Assistance
10 Revolving Fund created in Section 1-2530.9 of Title 63 of the
11 Oklahoma Statutes. On and after July 1, 2008, seven and fifty-
12 hundredths percent (7.50%) shall be allocated as follows:

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

18 b. every month, any amount over and above the amount
19 placed to the credit of the Trauma Care Assistance
20 Revolving Fund pursuant to subparagraph a of this
21 paragraph shall be credited to the Oklahoma Emergency
22 Response Systems Stabilization and Improvement
23 Revolving Fund as created in Section 1-2512.1 of Title
24 63 of the Oklahoma Statutes until the combined amount

1 credited to the Oklahoma Emergency Response Systems
2 Stabilization and Improvement Revolving Fund pursuant
3 to this section and Section 302-5 of this title is
4 equal to Two Million Five Hundred Thousand Dollars
5 (\$2,500,000.00) each year, and

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

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

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

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

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

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

8 9. Two and seven-hundredths percent (2.07%) shall be placed to
9 the credit of the Education Reform Revolving Fund created in Section
10 34.89 of Title 62 of the Oklahoma Statutes;

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

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

16 12. For fiscal years beginning July 1, 2004, and ending June
17 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)
18 shall be apportioned to municipalities and counties that levy a
19 sales tax, in the proportions which total municipal and county sales
20 tax revenue was apportioned by the Tax Commission in the preceding
21 month.

22 For fiscal years beginning July 1, 2006, and thereafter, the
23 apportionment percentage specified in paragraph 12 of this
24 subsection will be adjusted by dividing the total municipal and

1 county sales tax revenue collected in the calendar year immediately
2 preceding the commencement of the fiscal year by the sum of the
3 state sales tax revenue and total municipal and county sales tax
4 revenue collected in the same year. This ratio shall be divided by
5 the ratio of the total municipal and county sales tax revenue
6 collected in the calendar year beginning January 1, 2004, and ending
7 December 31, 2004, divided by the sum of the state sales tax revenue
8 and total municipal and county sales tax revenue collected in the
9 same year. The resulting quotient shall be multiplied by fourteen
10 and twenty-three-hundredths percent (14.23%) to determine the
11 apportionment percentage for the fiscal year.

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

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

23 1. Thirty-three and forty-nine-hundredths percent (33.49%)
24 shall be placed to the credit of the Health Employee and Economy

1 Improvement Act Revolving Fund created in Section 1010.1 of Title 56
2 of the Oklahoma Statutes;

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

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

- 13 a. every month, an amount equal to the actual amount
14 placed to the credit of the Trauma Care Assistance
15 Revolving Fund pursuant to this paragraph for the same
16 month of the 2008 fiscal year shall be credited to the
17 Trauma Care Assistance Revolving Fund,
- 18 b. every month, any amount over and above the amount
19 placed to the credit of the Trauma Care Assistance
20 Revolving Fund pursuant to subparagraph a of this
21 paragraph shall be credited to the Oklahoma Emergency
22 Response Systems Stabilization and Improvement
23 Revolving Fund as created in Section 1-2512.1 of Title
24 63 of the Oklahoma Statutes until the combined amount

1 credited to the Oklahoma Emergency Response Systems
2 Stabilization and Improvement Revolving Fund pursuant
3 to this section and Section 302-5 of this title is
4 equal to Two Million Five Hundred Thousand Dollars
5 (\$2,500,000.00) each year, and

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

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

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

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

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

5 8. One percent (1%) shall be placed to the credit of the
6 Tobacco Prevention and Cessation Revolving Fund created in Section
7 1-105d of Title 63 of the Oklahoma Statutes.

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

11 SECTION 5. AMENDATORY 68 O.S. 2011, Section 412, as last
12 amended by Section 15 of Enrolled House Bill No. 2292 of the 1st
13 Session of the 58th Oklahoma Legislature, is amended to read as
14 follows:

15 Section 412. A. Every wholesaler who purchases or allows to
16 come into his or her possession any untaxed merchandise coming under
17 the scope of this article shall file with the Oklahoma Tax
18 Commission a surety or collateral or cash bond in the amount of
19 Twenty-five Thousand Dollars (\$25,000.00), payable to the State of
20 Oklahoma and conditioned upon compliance with the provisions of this
21 article and the rules of the Tax Commission.

22 B. Any consumer who purchases or brings into this state untaxed
23 ~~cigars or~~ tobacco products whereon the tax would be more than
24 twenty-five cents (\$0.25) is subject to the tax thereon. Upon

1 failure to pay the tax levied in this article, the consumer shall be
2 subject to a fine of not more than Five Hundred Dollars (\$500.00) or
3 not less than Twenty-five Dollars (\$25.00) to be deposited in the
4 Tobacco Products Tax Enforcement Unit Revolving Fund created in
5 Section 7 of ~~this act~~ Enrolled House Bill No. 2292 of the 1st
6 Session of the 58th Oklahoma Legislature. Provided, any person in
7 possession of more than one thousand small or large cigars or two
8 hundred sixteen (216) ounces of ~~chewing or smoking tobacco products~~
9 smokeless or smoking tobacco in packages or containers for which the
10 tax required by law has not been paid shall be punished by
11 administrative fines in the manner and amounts provided in
12 subsection D of Section 418 of this title.

13 SECTION 6. AMENDATORY 68 O.S. 2011, Section 413, as last
14 amended by Section 16 of Enrolled House Bill No. 2292 of the 1st
15 Session of the 58th Oklahoma Legislature, is amended to read as
16 follows:

17 Section 413. The right of a carrier in this state to carry
18 untaxed ~~cigars and~~ tobacco products shall not be affected hereby;
19 provided, that carriers delivering untaxed tobacco products to any
20 person in this state other than an Oklahoma-licensed wholesaler for
21 the purpose of selling or consuming untaxed tobacco products in this
22 state in violation of this article shall be subject to seizure of
23 the shipments and forfeiture of the inventory pursuant to the
24 provisions of Section 417 of this title. Provided further, that

1 should any such carrier sell any ~~cigars and~~ tobacco products in this
2 state, such sale shall be subject to the tax and other provisions of
3 this article and to the rules of the Tax Commission. The carrier
4 transporting tobacco products ~~and cigars~~ to a point within this
5 state, or a bonded warehouseman or bailee having in its possession
6 tobacco products ~~and cigars~~, shall transmit to the Tax Commission a
7 statement of such consignment of tobacco products ~~and cigars~~,
8 showing the date, point of origin, point of delivery and to whom
9 delivered. All carriers or bailees or warehousemen shall permit an
10 examination by the Tax Commission, or its agents or legally
11 authorized representatives, of their records relating to the
12 shipment or receipt of tobacco products ~~and cigars~~. Any person who
13 fails or refuses to transmit to the Tax Commission the aforesaid
14 statement, or who refuses to permit the examination of his or her
15 records by the Tax Commission or its legally authorized agents or
16 representatives, shall be guilty of a misdemeanor and shall be
17 subject to an administrative fine of not to exceed Two Thousand
18 Dollars (\$2,000.00) and not less than One Thousand Dollars
19 (\$1,000.00) to be deposited in the Tobacco Products Tax Enforcement
20 Unit Revolving Fund created in Section 7 of ~~this act~~ Enrolled House
21 Bill No. 2292 of the 1st Session of the 58th Oklahoma Legislature.

22 SECTION 7. AMENDATORY 68 O.S. 2011, Section 414, as
23 amended by Section 17 of Enrolled House Bill No. 2292 of the 1st
24

1 Session of the 58th Oklahoma Legislature, is amended to read as
2 follows:

3 Section 414. A. Each truck or vehicle wherefrom ~~cigars or~~
4 tobacco products are sold shall be considered as a place of business
5 and required to have a wholesale license and a bond of not less than
6 Five Hundred Dollars (\$500.00).

7 B. Any person operating a truck or vehicle by selling,
8 exchanging or giving away untaxed merchandise covered by this
9 article shall be deemed guilty of violation of same and shall be
10 penalized as hereinbefore set forth, and untaxed merchandise handled
11 by this person as well as the vehicle used to transport the untaxed
12 tobacco products shall be subject to confiscation by authorized
13 agents of the Tax Commission or duly authorized peace officers.

14 C. After seizure or confiscation by such agent or officer, the
15 merchandise and property shall be held until all taxes, interest and
16 penalties due have been paid. If not paid within five (5) days
17 after date of seizure, it shall be sold at public sale by the
18 sheriff of the county where confiscated, after being advertised by
19 posting of notice of such sale in five public places in the county
20 where the sale is to occur. The proceeds of the sale shall be
21 applied to taxes, interest and penalties due and to the cost of the
22 sale, and the remainder, if any, shall be paid to the State
23 Treasurer, by the sheriff conducting such sale, to be deposited to
24 the credit of the General Revenue Fund.

1 SECTION 8. AMENDATORY 68 O.S. 2011, Section 418, as last
2 amended by Section 20 of Enrolled House Bill No. 2292 of the 1st
3 Session of the 58th Oklahoma Legislature, is amended to read as
4 follows:

5 Section 418. A. It shall be unlawful for any person to
6 transport or possess tobacco products where the tax on such tobacco
7 products has not been paid and exceeds the sum of One Hundred
8 Dollars (\$100.00).

9 B. Except as otherwise provided in subsections C and D of this
10 section, any person found guilty of violating the provisions of
11 Section 400 et seq. of this title shall be punished by an
12 administrative fine of not more than One Thousand Dollars
13 (\$1,000.00) for a first offense or not more than Four Thousand
14 Dollars (\$4,000.00) for a second or subsequent offense. Provided,
15 any person in possession of more than one thousand small or large
16 cigars or two hundred sixteen (216) ounces of ~~chewing or smoking~~
17 ~~tobacco products~~ smokeless tobacco or smoking tobacco in packages or
18 containers for which the tax required by law has not been paid shall
19 be punished by administrative fines in the manner and amounts
20 provided in subsection D of this section.

21 C. Any retailer violating the provisions of Section 403.2 of
22 this title shall:

23 1. For a first offense, be punished by an administrative fine
24 of not more than Two Thousand Dollars (\$2,000.00);

1 2. For a second offense, be punished by an administrative fine
2 of not more than Ten Thousand Dollars (\$10,000.00); and

3 3. For a third or subsequent offense, be punished by an
4 administrative fine of not more than Twenty Thousand Dollars
5 (\$20,000.00).

6 D. Any wholesaler violating the provisions of Section 403.2 of
7 this title shall:

8 1. For a first offense, be punished by an administrative fine
9 of not more than Ten Thousand Dollars (\$10,000.00); and

10 2. For a second or subsequent offense, be punished by an
11 administrative fine of not more than Twenty Thousand Dollars
12 (\$20,000.00).

13 Administrative fines collected pursuant to the provisions of
14 this subsection shall be deposited to the revolving fund created in
15 Section 305.2 of this title.

16 E. The Oklahoma Tax Commission shall immediately revoke the
17 license of a person punished for a violation pursuant to the
18 provisions of paragraph 3 of subsection C of this section or a
19 person punished for a violation pursuant to the provisions of
20 subsection D of this section. A person whose license is so revoked
21 shall not be eligible to receive another license pursuant to the
22 provisions of Section 301 et seq. of this title for a period of ten
23 (10) years.

1 F. Fines collected pursuant to the provisions of subsections B,
2 C and D of this section shall be deposited in the Tobacco Products
3 Tax Enforcement Unit Revolving Fund created in Section 7 of ~~this act~~
4 Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma
5 Legislature.

6 SECTION 9. This act shall become effective July 1, 2021.

7 SECTION 10. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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