

BILL SUMMARY
1st Session of the 58th Legislature

Bill No.:	HB 2292
Version:	CS
Request Number:	7509
Author:	Rep. D. Roberts
Date:	2/19/2021
Impact:	Tax Commission:

Revenue Increase:
\$2,461,395

Administrative Costs:
\$687,482

Research Analysis

The committee substitute for HB 2292 creates the Tobacco Products Tax Enforcement Act of 2021 and authorizes the Oklahoma Tax Commission (OTC) to establish a Tobacco Products Tax Enforcement Unit for the purpose of enforcing tobacco tax laws through investigations, audits and inspections. OTC is required to submit an annual report containing specified information about the Unit's activity, as well as provide sufficient staff to comply with the Act and enhance agency efforts to find and reduce tobacco products tax evasion.

The measure establishes requirements and procedures for paying and reporting the tobacco products tax by the wholesaler, or the retailer or consumer if the wholesaler doesn't pay the tax. If the tax isn't paid by the wholesaler, a backup tax shall be collected from the retailer or end user upon first sale or use. If the ultimate vendor knows the tax has not been paid, they are liable for the backup tax. Payment of the tax does not absolve an individual from any assessed fines. Additionally, the measure deletes the requirement that stamps act as evidence of a tax on tobacco products.

The measure requires retailers to purchase tobacco products from Oklahoma-licensed wholesalers and requires OTC to make a list of licensed wholesalers available to all licensed retailers. Further, the measure modifies procedures for taxation of certain tobacco product sales subject to tribal compacts.

The measure authorizes OTC or a peace officer to confiscate any vehicle used for the transport of untaxed tobacco products or used for the purpose of evading the tax.

The measure also increases penalties for certain violations of the Act, including attempting to defer enforcement of the tobacco products tax, transporting or possessing untaxed tobacco products, and operating without a license.

Finally, the measure requires that invoices kept by a wholesaler for sales made to a retailer must include the retailer's tobacco license number and be maintained for three years. Any retailer must keep invoices including the wholesaler's tobacco license number and the date the tobacco was received from the wholesaler for a period of one year.

The measure repeals 68 O.S. 2011, Sections [406](#), [408](#), [409](#), and [411](#).

Fiscal Analysis

From the Tax Commission:

HB 2292 creates the “Tobacco Products Tax Enforcement Act of 2020” authorizes the Oklahoma Tax Commission to establish and maintain a unit to be known as the “Tobacco Products Tax Enforcement Unit”, to enforce the tobacco tax laws and ensure that all taxes are paid on tobacco products by:

- Confirming that all entities selling tobacco products in Oklahoma are properly licensed;
- Verifying that all retailers are only purchasing tobacco products from licensed wholesalers;
- Providing a dedicated telephone line and email address for licensed wholesalers, licensed retailers and the general public to report suspected violations of tobacco tax laws;
- Auditing licensed wholesalers and retailers to ensure all tobacco product taxes are paid;
- Conducting wholesale and retail tobacco inspections to find and confiscate untaxed tobacco products;
- Creating an industry advisory committee including licensed wholesalers and retailers who may represent the entity related to tobacco products tax enforcement concerns and suggestions. The Tax Commission (“OTC”) shall promulgate the rules establishing the membership and minimum requirements as may be deemed necessary to carry out the purposes of the committee; and
- Working with law enforcement and conducting investigations to stop illegal acquisition and shipment of tobacco products by persons not licensed to sell tobacco products in Oklahoma.

Revenue Impact:

Based on previous collection enhancement data, it is estimated that for every dollar expended for new field personnel including associated travel costs, five dollars in tax revenues will be realized. Consequently, for the two additional field auditors and eight new field agents added at the costs outlined below and assuming funding is available, an additional estimated \$2,461,395 in tobacco products tax collections would be anticipated.

Administrative costs associated with implementation are as follows for FY 22:

- Establishing and maintaining a unit to be known as the “Tobacco Products Tax Enforcement Unit”, to perform the inspection, auditing and enforcement tasks for 77 licensed tobacco wholesalers and 4,458 licensed tobacco retailers that are currently registered with the OTC as of January 2020. Initially, if funding is available, the OTC anticipates fully dedicating 10 new Compliance Division employees [1] to the duties of the Unit. The costs to hire additional field personnel are outlined as follows:
 - ☐ Employment of two additional field auditors with average annual salaries of \$60,487 to perform in-state and out-of-state audits of wholesalers/retailers to ensure proper tax payments at a combined annual cost of \$120,974
 - ☐ Employment of eight additional field representatives/agents with average annual salaries of \$33,288 to conduct inspections of wholesaler/retailers to find and confiscate untaxed tobacco products at a combined annual cost of \$266,304

- Travel and other miscellaneous costs at an average estimated annual cost of \$10,500 per additional field auditor/field representative for a combined annual cost of \$105,000.
- Providing a dedicated telephone line and email address for licensed wholesalers, licensed retailers and the general public to report suspected violations of tobacco tax laws will require an annual administrative cost of \$204.
- Developing an electronic reporting system will require an increase in administrative costs of \$195,000 and a minimum of 4-5 months to develop and test.
- Tracking the number of wholesale/retail tobacco inspections and tobacco products tax audits conducted, the amount of untaxed tobacco products confiscated, the amount of taxes assessed and collected as the result of audits and confiscations, the number of suspected violations reported and the actions taken in response, and the number of fines issued and the amount of fines collected for purposes of compilation of an annual report for submission to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives. A system to track, record, and compile similar enforcement, inspection, audit, and collection data is currently maintained by the Compliance Division. Consequently, minimal to no additional costs are estimated to be incurred as a result of this added reporting responsibility.

Net Administrative Costs

- \$687,482 increase in OTC administrative costs is estimated for FY 22.

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Other Considerations

None.