

# OKLAHOMA TAX COMMISSION

## REVENUE IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT FIRST REGULAR SESSION, FIFTY-EIGHTH OKLAHOMA LEGISLATURE

**DATE OF IMPACT STATEMENT:** April 16, 2021

**BILL NUMBER:** HB 2292 **STATUS AND DATE OF BILL:** Committee Substitute 04/07/2021

**AUTHORS:** House Roberts (Dustin) et al. Senate Bullard & Pederson

**TAX TYPE (S):** Tobacco Products Excise **SUBJECT:** Administration

**PROPOSAL:** Amendatory, New Law & Repealer

The measure provides amendments to the Tobacco Products Tax Act by striking definitions, tobacco product stamping requirements, and other terminology inconsistent with the current procedures for which tobacco products excise tax is collected. It also adds language which supports current tax collection practices. It also increases fines for selling untaxed products, operating without the required license and for knowingly shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband tobacco products. Further, the proposal provides that retailers must purchase tobacco products from wholesalers licensed as such in Oklahoma and that no wholesaler may sell tobacco products to any entity not holding a current Oklahoma retailer tobacco products license. Also, the measure proposes repeal of statutory provisions relating to tobacco product stamps. (See Attached for Detailed Description)

**EFFECTIVE DATE:** Emergency - July 1, 2021

### REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 22: {See Attached}

### ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 22: {See Attached}

April 19, 2021  
DATE

Rick Miller  
DIVISION DIRECTOR

msm

4/19/2021  
DATE

Huan Gong  
HUAN GONG, ECONOMIST

4/19/21  
DATE

[Signature]  
FOR THE COMMISSION

*The revenue impact provided herein is an estimate of the potential impact on the collection or apportionment of tax revenues affected by the proposed legislation. It is not intended to be an estimate of the overall fiscal impact on the state budget if the proposed legislation is enacted.*

**Attachment to Revenue Impact - HB 2292 - [Committee Substitute] - Prepared 04/16/2021**

*Section 1 cites the "Tobacco Products Tax Enforcement Act of 2021".*

Section 2 (A) authorizes the Oklahoma Tax Commission, contingent upon availability of funds, 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; provided, no entity, individual or those who report violations on behalf of a licensed wholesaler or retailer, shall be required to disclose their identity.
- Auditing licensed wholesalers and retailers to ensure all tobacco product taxes are paid;
- Issuing fines for violations as provided in Section 400 et seq. of Title 68.
- Conducting wholesale and retail tobacco inspections to find and confiscate untaxed tobacco products;
- Establishing data sharing programs with tax department in surrounding states related to tobacco product taxes;
- 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.

Section 2 requires the OTC to annually submit a report to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives listing the number of wholesale and retail tobacco inspections conducted, the amount of untaxed tobacco products confiscated, the number of tobacco products tax audits conducted, the amount of taxes assessed and the amount of taxes 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.

Section 3 requires the excise tax on tobacco products to be due and payable on the first day of each month by the wholesaler and requires the wholesaler to report and remit the tax electronically with the OTC, on or before the twentieth day of each month upon a form prescribed and furnished by the OTC and signed by the wholesaler under oath. If the report is not timely filed, interest shall be charged from the date the report should have been filed until the date the report is actually filed. In addition, the language provides that if the reporting and payment due date falls on a Saturday, Sunday, or holiday recognized by the executive department of the state or a date when the Federal Reserve Banks are closed the report and payment may be filed and made on the next succeeding business day.

The form provided by the OTC shall include the following:

- All purchases and deliveries including invoices detailing purchases and shipments from manufacturers to the wholesaler and from the wholesaler to the licensed retailer for the previous calendar month;

- The taxes due under Section 400 et seq. of Title 68 of the Oklahoma Statutes during the preceding calendar month; and
- Any other information required by the OTC for the purposes of correctly computing and collecting the tax and any information deemed necessary to enforce the provisions of Section 400 et seq. of title 68

Section 4 and 5 requires the retailer or end-user to remit the excise tax when the products were received from a source outside of Oklahoma or upon first sale or use when the product is manufactured in this state. In addition, the ultimate vendor of tobacco products shall be jointly and severally liable for the tax if the ultimate vendor knows or has reason to know that the tax has not been paid and the payment of such tax shall not absolve any person from payment of fines assessed under this article.

The payment of the tax is due and payable by the retailer or consumer on forms furnished by the OTC, on the first day of each month for the preceding calendar month, and if not paid on or before the 20<sup>th</sup> day of the following month, shall be delinquent. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the date the report is actually filled.

The forms are required to report the following:

- A return verified by affidavit showing in detail the total purchase price of the tobacco products;
- The location of the purchase of the tobacco products, and;
- Any other information required by the OTC.

Section 6 requires retailers to purchase tobacco products from an Oklahoma-licensed tobacco wholesaler evidenced by a current listing provided by the OTC or maintained on the OTC's website with updates made no less than every thirty days. All purchase invoices are to contain the license number of the wholesaler and shall be made available for inspection by the OTC.

It imposes a fine of the greater of One Thousand Dollars (\$1,000) or five times the unpaid tax on any purchases of tobacco products from persons not currently holding an Oklahoma wholesale tobacco license. A second or subsequent offense shall be punishable by revocation of the retail license. Failure by the retailer to pay the fine within thirty (30) days results in suspension of the retail license until the fine is paid. Revenues relating to fines imposed pursuant to Sections 400.5 of Title 68 are to be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of the measure.

Section 7 creates the "Tobacco Products Tax Enforcement Unit Revolving Fund" for the Oklahoma Tax Commission. Any amount in excess of \$2,000,000 at the end of the fiscal year shall be transferred to the General Revenue Fund.

Section 8 directs the OTC to provide sufficient staff to comply with the measure and authorizes employment of unclassified personnel to staff the Tobacco Products Tax Enforcement Unit. This Section also requires the OTC to enhance agency efforts to discover and reduce tobacco products tax evasion. The efforts may include increased inspections of tobacco products retailers, enhanced tobacco products tax auditing; the acquisition and use of technology designed to identify underreporting of tobacco products taxes; and analysis of data from the electronic reporting of invoices by tobacco products wholesalers.

Section 9 proposes amendment to Section 401 of Title 68 by removing obsolete or unnecessary language including definitions of stamp, distributing agent, dealer, drop shipment, and providing a definition of untaxed.<sup>1</sup>

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<sup>1</sup> The term "untaxed" is defined to mean that the full amount of tax has not been paid as required by Section 400 et seq. of Title 68.

Sections 10, 11, & 12 propose amendments to Sections 402-1, 403, and 403.1 of Title 68 to remove obsolete language regarding tax stamps.

Sections 13 & 14 propose amendments to Sections 403.2 & 407 of Title 68 to clarify the prohibition regarding the unlawful sale of tobacco products and raises the penalty from Two Hundred Dollars (\$200.00) to Two Thousand Dollars (\$2,000.00) for any person refusing to allow full inspection of the premises or any part thereof, or hinder or in anywise delay or prevent such inspection when demanded by the OTC.

Section 15 proposes amendment to Section 412 of Title 68 to update language to reflect untaxed instead of unstamped terminology. Revenues relating to fines imposed pursuant to Sections 412(B) of Title 68 are to be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund.

Section 16 proposes amendments to Sections 413 to increase fines for failure to allow examination of records. Revenues relating to fines imposed pursuant to Sections 413 of Title 68 are to be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund.

Sections 17 & 18 propose amendment to Sections 414 & 415 to update language regarding the violation for selling, exchanging or giving away untaxed merchandise and to increase the penalty imposed for operating without the required wholesaler and retailer licenses. The measure also requires that such penalties to be deposited into the “Tobacco Products Tax Enforcement Unit Revolving Fund” instead of the “Tax Commission Reimbursement Fund”, resulting in an unknown impact.

Section 18 proposes amendments to Section 417 to update language.

Section 20 proposes amendments to Section 418 to update language and increase fines for transporting or possessing tobacco products on which the excise tax has not been paid. The measure also requires that such penalties to be deposited into the “Tobacco Products Tax Enforcement Unit Revolving Fund” instead of the “Tax Commission Reimbursement Fund”, resulting in an unknown impact.

Section 21 proposes amendments to Section 420.1 to update language and sets a three year period for which invoices and/or other documentation as required by this section must be maintained by wholesalers and retailers.

Section 22 proposes amendments to Section 421 to update language and increase fines for possession of tobacco products which have been purchased or received from a veteran’s hospital or any such home by any person other than an inmate or resident thereof.

Section 23 proposes amendments to Section 422 to update language.

Section 24 proposes amendments to Section 426 to update language and increase fines for contraband tobacco products.

Sections 25 repeals Sections 406, 408, 409, and 411 of Title 68.

The OTC pursuant to § 403.1 of the Tobacco Products Tax Code abolished the payment of excise tax through the practice of purchasing and affixing stamps to tobacco products. Instead the payment of the required excise tax is paid through monthly tobacco product tax reports [OTC TOB 50001-nontribal sales & TOB 50003 for tribal sales]<sup>2</sup> generally by licensed wholesalers, first possessing, selling, using, distributing, exchanging, bartering, or in any manner dealing with such tobacco products in this State. OAC § 710:70-5-2. Tobacco Products wholesalers are allowed a 2% discount for timely filed reports.

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<sup>2</sup> A deduction recap schedule is also required to be filed to document sales exempted from tax. [TOB 50002]

Oklahoma levies a tax on the tobacco products listed below at the following rates:

Little Cigars<sup>3</sup>: \$2.03 per pack of 20.<sup>4</sup>

(Class C) cigars<sup>5</sup>: \$0.12 each.

Smoking Tobacco - Eighty percent (80%) of the Factory List Price.<sup>6</sup>

Chewing Tobacco<sup>7</sup> - Sixty percent (60%) of the Factory List Price.

#### 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 68 licensed tobacco wholesalers and 4,567 licensed tobacco retailers that are currently registered with the OTC as of January 2021. Initially, if funding is available, the OTC anticipates fully dedicating 10 new Compliance Division employees<sup>8</sup> 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

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<sup>3</sup> Cigars weighing not more than three (3) pounds per thousand.

<sup>4</sup> The tax is equal to the tax that is reported and paid on cigarettes.

<sup>5</sup> Cigars weighing more than three (3) pounds per thousand.

<sup>6</sup> “Factory list price” means the price the tobacco products manufacturer sells the product to a wholesaler before allowance of any trade or other discounts.

<sup>7</sup> Includes moist tobacco, loose leaf chewing tobacco and snuff.

<sup>8</sup> Two field auditors and eight field agents.

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

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