

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 4061

6 By: Wallace

7 COMMITTEE SUBSTITUTE

8 An Act relating to heated tobacco products; amending  
9 68 O.S. 2021, Sections 301, 401, and 402-3, which  
10 relate to taxes on cigarettes and tobacco products;  
11 modifying and clarifying definitions; excluding  
12 heated tobacco products from certain definitions;  
13 providing definition for heated tobacco products;  
14 clarifying taxability of products; establishing levy;  
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY 68 O.S. 2021, Section 301, is  
18 amended to read as follows:

19 Section 301. For purposes of Section 301 et seq. of this title:

20 1. The term "cigarette" is defined to mean and include all  
21 rolled tobacco ~~or any substitute therefor~~ for smoking, wrapped in  
22 paper or any substitute therefor and weighing not to exceed three  
23 (3) pounds per thousand cigarettes. The term shall not include a  
24 heated tobacco product as defined in Section 401 of this title;

2. The term "person" is defined to mean and include any  
individual, company, partnership, joint venture, joint agreement,

1 association (mutual or otherwise), limited liability company,  
2 corporation, estate, trust, business trust receiver, or trustee  
3 appointed by any state or federal court, or otherwise, syndicate, or  
4 any political subdivision of the state or combination acting as a  
5 unit, in the plural or singular number;

6 3. The term "wholesaler", "distributor" and/or "jobber" is  
7 defined to mean and include a person, firm or corporation organized  
8 and existing, or doing business, primarily to sell cigarettes to,  
9 and render service to retailers in the territory such person, firm  
10 or corporation chooses to serve, and that:

- 11 a. purchases cigarettes directly from the manufacturer,
- 12 b. at least seventy-five percent (75%) of whose gross  
13 sales are made at wholesale,
- 14 c. handles goods in wholesale quantities and sells  
15 through salespersons, advertising and/or sales  
16 promotion devices,
- 17 d. carries at all times at its principal place of  
18 business a representative stock of cigarettes for  
19 sale, and
- 20 e. comes into the possession of cigarettes for the  
21 purpose of selling them to retailers or to persons  
22 outside or within the state who might resell or retail  
23 such cigarettes to consumers.

24

1 In addition to the foregoing, and irrespective of the percentage  
2 or type of sales, the term "wholesaler", "distributor" and/or  
3 "jobber" shall also include all purchasers of cigarettes making  
4 purchases directly from the manufacturer for distribution at  
5 wholesale or retail sale and this shall not affect the requirements  
6 relating to retail licenses;

7 4. The term "retailer" is defined to be:

8 a. a person who comes into the possession of cigarettes  
9 for the purpose of selling, or who sells them at  
10 retail, or

11 b. a person, not coming within the classification of  
12 wholesaler, distributor and/or jobber as herein  
13 defined, having possession of more than one thousand  
14 cigarettes;

15 5. The term "consumer" is defined to be a person who receives  
16 or who in any way comes into possession of cigarettes for the  
17 purpose of consuming them, giving them away, or disposing of them in  
18 a way other than by sale, barter or exchange;

19 6. The term "Tax Commission" is defined to mean the Oklahoma  
20 Tax Commission;

21 7. The term "sale" and/or "sales" is hereby defined to be and  
22 declared to include sales, barter, exchanges and every other  
23 manner, method and form of transferring the ownership of personal  
24 property from one person to another, and is also declared to be the

1 use or consumption in this state in the first instance of cigarettes  
2 received from without the state or of any other cigarettes upon  
3 which the tax has not been paid. The term "first sale" shall mean  
4 and include the first sale or distribution of cigarettes in  
5 intrastate commerce or the first use or consumption of cigarettes  
6 within this state;

7 8. The term "stamp" as herein used shall mean the stamp or  
8 stamps by use of which:

9 a. the tax levied pursuant to the provisions of Section  
10 301 et seq. of this title is paid,

11 b. the tax levied pursuant to the provisions of Section  
12 349 of this title is paid, or

13 c. the payment in lieu of taxes authorized pursuant to a  
14 compact entered into by the State of Oklahoma and a  
15 federally recognized Indian tribe or nation pursuant  
16 to the provisions of subsection C of Section 346 of  
17 this title is paid;

18 9. The term "drop shipment" shall mean and include any delivery  
19 of cigarettes received by any person within this state when payment  
20 for such cigarettes is made to the shipper or seller by or through a  
21 person other than the consignee;

22 10. The term "distributing agent" shall mean and include every  
23 person in this state who acts as an agent of any person outside the  
24 state by receiving cigarettes in interstate commerce and storing

1 such cigarettes subject to distribution or delivery upon order from  
2 the person outside the state to distributors, wholesale dealers and  
3 retail dealers, or to consumers. The term "distributing agent"  
4 shall also mean and include any person who solicits or takes orders  
5 for cigarettes to be shipped in interstate commerce to a person in  
6 this state by a person residing outside of Oklahoma, the tax not  
7 having been paid on such cigarettes;

8 11. The term "vending machine" shall mean and include any coin  
9 operating machine, contrivance, or device, by means of which  
10 cigarettes are sold or dispensed in their original container;

11 12. The term "use" means and includes the exercise of any right  
12 or power over cigarettes incident to the ownership or possession  
13 thereof, except that it shall not include the sale of cigarettes in  
14 the regular course of business;

15 13. a. The term "delivery sale" means any sale of cigarettes  
16 to a consumer in Oklahoma where either:

17 (1) the purchaser submits the order for such sale by  
18 means of a telephonic or other method of voice  
19 transmission, the mails or any other delivery  
20 service, or the Internet or other online service,  
21 or

22 (2) the cigarettes are delivered by use of the mails  
23 or other delivery service.  
24

1           b. A sale of cigarettes which satisfies the criteria in  
2           subparagraph a of this paragraph shall be a delivery  
3           sale regardless of whether the seller is located  
4           within or outside of Oklahoma.

5           c. A sale of cigarettes not for personal consumption to a  
6           person who is a wholesale dealer or a retail dealer  
7           shall not be a delivery sale.

8           d. For purposes of this paragraph, any sale of cigarettes  
9           to an individual in Oklahoma shall be treated as a  
10          sale to a consumer unless such individual is licensed  
11          as a distributor or retailer of cigarettes by the Tax  
12          Commission;

13          14. The term "delivery service" means any person, including but  
14          not limited to the United States Postal Service, that is engaged in  
15          the commercial delivery of letters, packages, or other containers;

16          15. The term "manufacturer" means any person who manufactures,  
17          fabricates, assembles, processes, or labels a finished cigarette; or  
18          imports, either directly or indirectly, a finished cigarette for  
19          sale or distribution in this state;

20          16. The term "mails" or "mailing" means the shipment of  
21          cigarettes through the United States Postal Service;

22          17. The term "shipping container" means a container in which  
23          cigarettes are shipped in connection with a delivery sale; and  
24

1 18. The term "shipping documents" means bills of lading,  
2 airbills, or any other documents used to evidence the undertaking by  
3 a delivery service to deliver letters, packages, or other  
4 containers.

5 SECTION 2. AMENDATORY 68 O.S. 2021, Section 401, is  
6 amended to read as follows:

7 Section 401. For the purpose of this article:

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

14 2. The term "Tax Commission" shall mean the Oklahoma Tax  
15 Commission;

16 3. The word "wholesaler" shall include dealers whose principal  
17 business is that of a wholesale dealer, and who is known to the  
18 trade as such, who shall sell any tobacco products to licensed  
19 retail dealers only for the purpose of resale;

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

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

3           6. The words "first sale" shall mean and include the first  
4 sale, or distribution, of tobacco products in intrastate commerce,  
5 or the first use or consumption of tobacco products within this  
6 state;

7           7. The words "tobacco products" shall mean any cigars, smoking  
8 tobacco ~~and~~, smokeless tobacco, and heated tobacco products;

9           8. The term "cigars" shall include any roll of tobacco for  
10 smoking, irrespective of size or shape and irrespective of the  
11 tobacco being flavored, adulterated or mixed with any other  
12 ingredients, where such roll has a wrapper made chiefly of tobacco.  
13 The term shall not include any roll of tobacco which is a cigarette  
14 as defined in Section 301 of this title or a heated tobacco product  
15 as defined in this section;

16           9. The term "smokeless tobacco" shall mean all smokeless  
17 tobacco including snuff and chewing tobacco. The term shall not  
18 include any roll of tobacco which is a cigarette as defined in  
19 Section 301 of this title or a heated tobacco product as defined in  
20 this section;

21           10. The term "snuff" shall mean any finely cut, ground or  
22 powdered tobacco that is not intended to be smoked. The term shall  
23 not include any roll of tobacco which is a cigarette as defined in  
24



1 Section 301 of this title or a heated tobacco product as defined in  
2 this section;

3 11. The term "chewing tobacco" means any leaf tobacco that is  
4 not intended to be smoked. The term shall not include any roll of  
5 tobacco which is a cigarette as defined in Section 301 of this title  
6 or a heated tobacco product as defined in this section;

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

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

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

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

20 16. The term "heated tobacco product" means a single use  
21 consumable unit containing tobacco that produces an inhalable  
22 aerosol: (i) by heating the tobacco by means of a device without  
23 combustion of the tobacco, or (ii) by heat generated from a

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1 combustion source that only or primarily heats rather than burns the  
2 tobacco.

3 SECTION 3. AMENDATORY 68 O.S. 2021, Section 402-3, is  
4 amended to read as follows:

5 Section 402-3. A. In addition to the tax levied in Sections  
6 402 and 402-1 of this title, effective January 1, 2005, there shall  
7 be levied, assessed, collected, and paid in respect to the articles  
8 containing tobacco enumerated in Section 401 et seq. of this title,  
9 a tax in the following amounts:

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

15 2. Smoking Tobacco. Upon all smoking tobacco, the tax shall be  
16 forty percent (40%) of the factory list price exclusive of any trade  
17 discount, special discount or deals; ~~and~~

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

21 4. Heated Tobacco Products. Upon all heated tobacco products,  
22 the tax shall be fifty (50) mills per single use consumable unit,  
23 equating to One Dollar (\$1.00) per package of twenty units or  
24 equivalent.

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

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

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

12 3. Before July 1, 2008, seven and fifty-hundredths percent  
13 (7.50%) shall be placed to the credit of the Trauma Care Assistance  
14 Revolving Fund created in Section 1-2530.9 of Title 63 of the  
15 Oklahoma Statutes. On and after July 1, 2008, seven and fifty-  
16 hundredths percent (7.50%) shall be allocated as follows:

17 a. every month, an amount equal to the actual amount  
18 placed to the credit of the Trauma Care Assistance  
19 Revolving Fund pursuant to this paragraph for the same  
20 month of the 2008 fiscal year shall be credited to the  
21 Trauma Care Assistance Revolving Fund,

22 b. every month, any amount over and above the amount  
23 placed to the credit of the Trauma Care Assistance  
24 Revolving Fund pursuant to subparagraph a of this

1 paragraph shall be credited to the Oklahoma Emergency  
2 Response Systems Stabilization and Improvement  
3 Revolving Fund as created in Section 1-2512.1 of Title  
4 63 of the Oklahoma Statutes until the combined amount  
5 credited to the Oklahoma Emergency Response Systems  
6 Stabilization and Improvement Revolving Fund pursuant  
7 to this section and Section 302-5 of this title is  
8 equal to Two Million Five Hundred Thousand Dollars  
9 (\$2,500,000.00) each year, and

10 c. any additional revenue allocated pursuant to this  
11 paragraph shall be placed to the credit of the Trauma  
12 Care Assistance Revolving Fund;

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

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

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

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

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

12       9. Two and seven-hundredths percent (2.07%) shall be placed to  
13 the credit of the Education Reform Revolving Fund created in Section  
14 34.89 of Title 62 of the Oklahoma Statutes;

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

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

20       12. For fiscal years beginning July 1, 2004, and ending June  
21 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)  
22 shall be apportioned to municipalities and counties that levy a  
23 sales tax, in the proportions which total municipal and county sales  
24

1 tax revenue was apportioned by the Tax Commission in the preceding  
2 month.

3 For fiscal years beginning July 1, 2006, and thereafter, the  
4 apportionment percentage specified in paragraph 12 of this  
5 subsection will be adjusted by dividing the total municipal and  
6 county sales tax revenue collected in the calendar year immediately  
7 preceding the commencement of the fiscal year by the sum of the  
8 state sales tax revenue and total municipal and county sales tax  
9 revenue collected in the same year. This ratio shall be divided by  
10 the ratio of the total municipal and county sales tax revenue  
11 collected in the calendar year beginning January 1, 2004, and ending  
12 December 31, 2004, divided by the sum of the state sales tax revenue  
13 and total municipal and county sales tax revenue collected in the  
14 same year. The resulting quotient shall be multiplied by fourteen  
15 and twenty-three-hundredths percent (14.23%) to determine the  
16 apportionment percentage for the fiscal year.

17 For fiscal years beginning July 1, 2006, and thereafter, any  
18 adjustment to the percentage of revenues apportioned to  
19 municipalities and counties shall be reflected in the percent of  
20 revenues apportioned to the General Revenue Fund.

21 C. The net amount of any revenue resulting from a payment in  
22 lieu of excise taxes on little cigars, cigars, smoking tobacco ~~and,~~  
23 smokeless tobacco, and heated tobacco products levied by this  
24 section, pursuant to a compact with a federally recognized Indian

1 | tribe or nation after deductions for deposits into trust accounts  
2 | pursuant to such compacts, shall be apportioned by the Tax  
3 | Commission and transmitted to the State Treasurer as follows:

4 |       1. Thirty-three and forty-nine-hundredths percent (33.49%)  
5 | shall be placed to the credit of the Health Employee and Economy  
6 | Improvement Act Revolving Fund created in Section 1010.1 of Title 56  
7 | of the Oklahoma Statutes;

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

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

18 |           a. every month, an amount equal to the actual amount  
19 |           placed to the credit of the Trauma Care Assistance  
20 |           Revolving Fund pursuant to this paragraph for the same  
21 |           month of the 2008 fiscal year shall be credited to the  
22 |           Trauma Care Assistance Revolving Fund,

23 |           b. every month, any amount over and above the amount  
24 |           placed to the credit of the Trauma Care Assistance

1 Revolving Fund pursuant to subparagraph a of this  
2 paragraph shall be credited to the Oklahoma Emergency  
3 Response Systems Stabilization and Improvement  
4 Revolving Fund as created in Section 1-2512.1 of Title  
5 63 of the Oklahoma Statutes until the combined amount  
6 credited to the Oklahoma Emergency Response Systems  
7 Stabilization and Improvement Revolving Fund pursuant  
8 to this section and Section 302-5 of this title is  
9 equal to Two Million Five Hundred Thousand Dollars  
10 (\$2,500,000.00) each year, and

11 c. any additional revenue allocated pursuant to this  
12 paragraph shall be placed to the credit of the Trauma  
13 Care Assistance Revolving Fund;

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

18 5. Forty and six-hundredths percent (40.06%) shall be placed to  
19 the credit of the Oklahoma Health Care Authority Medicaid Program  
20 Fund created in Section 5020 of Title 63 of the Oklahoma Statutes  
21 for the purposes of maintaining programs and services funded under  
22 the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003",  
23 reimbursing city/county-owned hospitals, increasing emergency room  
24



1 physician rates, and providing TEFRA 134, also known as "Katie  
2 Beckett" services;

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

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

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

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

17 SECTION 4. This act shall become effective November 1, 2024.

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