

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4061

By: Wallace of the House

and

Paxton of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

23 1. The term "cigarette" is defined to mean and include all
24 rolled tobacco ~~or any substitute therefor~~ for smoking, wrapped in
paper or any substitute therefor and weighing not to exceed three

1 (3) pounds per thousand cigarettes. The term shall not include a
2 heated tobacco product as defined in Section 401 of this title;

3 2. The term "person" is defined to mean and include any
4 individual, company, partnership, joint venture, joint agreement,
5 association (mutual or otherwise), limited liability company,
6 corporation, estate, trust, business trust receiver, or trustee
7 appointed by any state or federal court, or otherwise, syndicate, or
8 any political subdivision of the state or combination acting as a
9 unit, in the plural or singular number;

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

- 15 a. purchases cigarettes directly from the manufacturer,
- 16 b. at least seventy-five percent (75%) of whose gross
17 sales are made at wholesale,
- 18 c. handles goods in wholesale quantities and sells
19 through salespersons, advertising and/or sales
20 promotion devices,
- 21 d. carries at all times at its principal place of
22 business a representative stock of cigarettes for
23 sale, and

1 e. comes into the possession of cigarettes for the
2 purpose of selling them to retailers or to persons
3 outside or within the state who might resell or retail
4 such cigarettes to consumers.

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

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

12 a. a person who comes into the possession of cigarettes
13 for the purpose of selling, or who sells them at
14 retail, or

15 b. a person, not coming within the classification of
16 wholesaler, distributor and/or jobber as herein
17 defined, having possession of more than one thousand
18 cigarettes;

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

23 6. The term "Tax Commission" is defined to mean the Oklahoma
24 Tax Commission;

1 7. The term "sale" and/or "sales" is hereby defined to be and
2 declared to include sales, barter, exchanges and every other
3 manner, method and form of transferring the ownership of personal
4 property from one person to another, and is also declared to be the
5 use or consumption in this state in the first instance of cigarettes
6 received from without the state or of any other cigarettes upon
7 which the tax has not been paid. The term "first sale" shall mean
8 and include the first sale or distribution of cigarettes in
9 intrastate commerce or the first use or consumption of cigarettes
10 within this state;

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

13 a. the tax levied pursuant to the provisions of Section
14 301 et seq. of this title is paid,

15 b. the tax levied pursuant to the provisions of Section
16 349 of this title is paid, or

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

22 9. The term "drop shipment" shall mean and include any delivery
23 of cigarettes received by any person within this state when payment
24

1 for such cigarettes is made to the shipper or seller by or through a
2 person other than the consignee;

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

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

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

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

22 (1) the purchaser submits the order for such sale by
23 means of a telephonic or other method of voice
24 transmission, the mails or any other delivery

1 service, or the Internet or other online service,
2 or

3 (2) the cigarettes are delivered by use of the mails
4 or other delivery service.

5 b. A sale of cigarettes which satisfies the criteria in
6 subparagraph a of this paragraph shall be a delivery
7 sale regardless of whether the seller is located
8 within or outside of Oklahoma.

9 c. A sale of cigarettes not for personal consumption to a
10 person who is a wholesale dealer or a retail dealer
11 shall not be a delivery sale.

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

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

20 15. The term "manufacturer" means any person who manufactures,
21 fabricates, assembles, processes, or labels a finished cigarette; or
22 imports, either directly or indirectly, a finished cigarette for
23 sale or distribution in this state;

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

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

5 18. The term "shipping documents" means bills of lading,
6 airbills, or any other documents used to evidence the undertaking by
7 a delivery service to deliver letters, packages, or other
8 containers.

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

11 Section 401. For the purpose of this article:

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

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

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

24

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 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 tobacco products in intrastate commerce,
9 or the first use or consumption of tobacco products within this
10 state;

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

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

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

1 10. The term "snuff" shall mean any finely cut, ground or
2 powdered tobacco that is not intended to be smoked. The term shall
3 not include any roll of tobacco which is a cigarette as defined in
4 Section 301 of this title or a heated tobacco product as defined in
5 this section;

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

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

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

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

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

23 16. The term "heated tobacco product" means a single use
24 consumable unit containing tobacco that produces an inhalable

1 aerosol: (i) by heating the tobacco by means of a device without
2 combustion of the tobacco, or (ii) by heat generated from a
3 combustion source that only or primarily heats rather than burns the
4 tobacco.

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

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

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

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

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

23 4. Heated Tobacco Products. Upon all heated tobacco products,
24 the tax shall be fifty (50) mills per single use consumable unit,

1 equating to One Dollar (\$1.00) per package of twenty units or
2 equivalent.

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

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

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

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

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

24

1 b. every month, any amount over and above the amount
2 placed to the credit of the Trauma Care Assistance
3 Revolving Fund pursuant to subparagraph a of this
4 paragraph shall be credited to the Oklahoma Emergency
5 Response Systems Stabilization and Improvement
6 Revolving Fund as created in Section 1-2512.1 of Title
7 63 of the Oklahoma Statutes until the combined amount
8 credited to the Oklahoma Emergency Response Systems
9 Stabilization and Improvement Revolving Fund pursuant
10 to this section and Section 302-5 of this title is
11 equal to Two Million Five Hundred Thousand Dollars
12 (\$2,500,000.00) each year, and

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

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

20 5. Twenty-six and thirty-eight-hundredths percent (26.38%)
21 shall be placed to the credit of the Oklahoma Health Care Authority
22 Medicaid Program Fund created in Section 5020 of Title 63 of the
23 Oklahoma Statutes for the purposes of maintaining programs and
24 services funded under the federal "Jobs and Growth Tax Relief

1 Reconciliation Act of 2003", reimbursing city/county-owned
2 hospitals, increasing emergency room physician rates, and providing
3 TEFRA 134, also known as "Katie Beckett" services;

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

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

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

15 9. Two and seven-hundredths percent (2.07%) shall be placed to
16 the credit of the Education Reform Revolving Fund created in Section
17 34.89 of Title 62 of the Oklahoma Statutes;

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

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

23 12. For fiscal years beginning July 1, 2004, and ending June
24 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)

1 shall be apportioned to municipalities and counties that levy a
2 sales tax, in the proportions which total municipal and county sales
3 tax revenue was apportioned by the Tax Commission in the preceding
4 month.

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

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

23 C. The net amount of any revenue resulting from a payment in
24 lieu of excise taxes on little cigars, cigars, smoking tobacco ~~and,~~

1 smokeless tobacco, and heated tobacco products levied by this
2 section, pursuant to a compact with a federally recognized Indian
3 tribe or nation after deductions for deposits into trust accounts
4 pursuant to such compacts, shall be apportioned by the Tax
5 Commission and transmitted to the State Treasurer as follows:

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

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

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

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

1 b. every month, any amount over and above the amount
2 placed to the credit of the Trauma Care Assistance
3 Revolving Fund pursuant to subparagraph a of this
4 paragraph shall be credited to the Oklahoma Emergency
5 Response Systems Stabilization and Improvement
6 Revolving Fund as created in Section 1-2512.1 of Title
7 63 of the Oklahoma Statutes until the combined amount
8 credited to the Oklahoma Emergency Response Systems
9 Stabilization and Improvement Revolving Fund pursuant
10 to this section and Section 302-5 of this title is
11 equal to Two Million Five Hundred Thousand Dollars
12 (\$2,500,000.00) each year, and

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

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

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

1 reimbursing city/county-owned hospitals, increasing emergency room
2 physician rates, and providing TEFRA 134, also known as "Katie
3 Beckett" services;

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

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

12 8. One percent (1%) shall be placed to the credit of the
13 Tobacco Prevention and Cessation Revolving Fund created in Section
14 1-105d of Title 63 of the Oklahoma Statutes.

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

18 SECTION 4. This act shall become effective November 1, 2024.
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20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
21 02/26/2024 - DO PASS, As Amended and Coauthored.
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