

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 248

By: Mazzei

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5  
6 AS INTRODUCED

7 An Act relating to cigarette stamp tax; amending 68  
8 O.S. 2011, Sections 305 and 308, which relate to  
9 procedures for use of stamps; deleting requirement  
10 and procedures related to exchange of certain stamps;  
11 deleting authority for sale of certain stamps;  
12 modifying procedures related to credit for certain  
13 stamps; deleting authority for certain persons to  
14 sell certain stamps; and providing an effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 305, is  
17 amended to read as follows:

18 Section 305. A. Every wholesaler doing business within this  
19 state and required to secure a license as provided under Section 304  
20 of this title shall, upon withdrawal from storage, and before making  
21 any sale or distribution of cigarettes for consumption thereof,  
22 affix or cause the same to have affixed thereto the stamp or stamps  
23 as required by Section 301 et seq. of this title. It shall be the  
24 duty of the wholesaler to supply the necessary stamps to cover any  
and all drop shipments of cigarettes billed to the retailer or  
consumer by the wholesaler; and the wholesaler shall be liable to

1 the Oklahoma Tax Commission to perform this service. Wholesalers  
2 may apply stamps only to cigarette packages that they have received  
3 directly from a manufacturer or importer of cigarettes who possesses  
4 a valid and current permit under Section 5712 of Title 26 of the  
5 United States Code.

6 B. Every retailer who has received unstamped cigarettes from a  
7 manufacturer or wholesaler not required to secure a license as  
8 provided for under Section 304 of this title, or to affix stamps as  
9 required under subsection A of this section, shall, within seventy-  
10 two (72) hours, excluding Sundays and holidays, from the time such  
11 cigarettes come into the retailer's possession, and before making  
12 any sale or distribution for consumption thereof, affix stamps upon  
13 all cigarette packages in the proper denomination and amount, as  
14 required by Section 302 of this title.

15 C. It shall be unlawful for any person to sell or consume  
16 cigarettes on which the tax, as levied by Section 301 et seq. of  
17 this title, has not been paid, and which are not contained in  
18 packages to which are securely affixed the stamps evidencing payment  
19 of the tax imposed by Section 301 et seq. of this title.

20 D. If, upon examination of invoices or from other  
21 investigations, the Tax Commission finds that cigarettes have been  
22 sold without stamps affixed as required by Section 301 et seq. of  
23 this title, the Tax Commission shall have the power to require such  
24 person to pay to the Tax Commission a sum equal to twice the amount

1 of the tax due. If, under the same circumstances, a person is  
2 unable to furnish evidence to the Tax Commission of sufficient stamp  
3 purchases to cover unstamped cigarettes purchased, the prima facie  
4 presumption shall arise that such cigarettes were sold without  
5 proper stamps being affixed thereto.

6 E. 1. All contraband cigarettes upon which taxes are imposed  
7 by Section 301 et seq. of this title and all cigarettes stamped,  
8 sold, offered for sale, or imported into this state in violation of  
9 the provisions of Section 305.1 of this title which shall be found  
10 in the possession, custody, or control of any person, for the  
11 purpose of being consumed, sold or transported from one place to  
12 another in this state, for the purpose of evading or violating the  
13 provisions of Section 301 et seq. of this title, or with intent to  
14 avoid payment of the tax imposed hereunder, and any automobile,  
15 truck, conveyance, or other vehicle whatsoever used in the  
16 transportation of such cigarettes, and all paraphernalia, equipment  
17 or other tangible personal property incident to the use of such  
18 purposes, found in the place, building, vehicle or vehicles, where  
19 such cigarettes are found, may be seized by any authorized agent of  
20 the Tax Commission, or any sheriff, deputy sheriff, constable or  
21 other peace officer within the state, without process. The same  
22 shall be, from the time of such seizure, forfeited to the State of  
23 Oklahoma, and a proper proceeding filed to maintain such seizure and  
24 prosecute the forfeiture as herein provided.

1           2. All such cigarettes so seized shall first be listed and  
2 appraised by the officer making such seizure and turned over to the  
3 Tax Commission and a receipt therefor taken. The person making such  
4 seizure shall immediately make and file a written report thereof,  
5 showing the name of the person making such seizure, the place where  
6 and the person from whom such property was seized, and an inventory  
7 and appraisal thereof, at the usual and ordinary retail price of  
8 such articles received, to the Tax Commission, and the Attorney  
9 General, in the case of cigarettes stamped, sold, offered for sale,  
10 or imported into this state in violation of the provisions of  
11 Section 305.1 of this title. The Tax Commission shall then proceed  
12 to hear and determine the matter of whether or not the cigarettes  
13 should, in fact, be forfeited to the State of Oklahoma. The owner  
14 of the cigarettes shall be given at least ten (10) days' notice of  
15 the hearing. In the event the Commission finds that the cigarettes  
16 should be forfeited to the State of Oklahoma, it shall make an order  
17 forfeiting the cigarettes to the State of Oklahoma and directing the  
18 destruction of such cigarettes.

19           3. Any and all such vehicles and property so seized shall first  
20 be listed and appraised by the officer making such seizure and  
21 turned over to the county sheriff of the county in which the seizure  
22 is made and a receipt therefor taken. The person making such  
23 seizure shall immediately make and file a written report thereof,  
24 showing the name of the person making such seizure, the place where

1 and the person from whom such property was seized, and an inventory  
2 and appraisal thereof, at the usual and ordinary retail price of  
3 such articles received, to the Tax Commission. The district  
4 attorney of the county in which the seizures are made shall, at the  
5 request of the Tax Commission or Attorney General, file in the  
6 district court forfeiture proceedings in the name of the State of  
7 Oklahoma, as plaintiff, and in the name of the owner or person in  
8 possession, as defendant, if known, and if unknown in the name of  
9 the property seized. The clerk of the court shall issue summons to  
10 the owner or person in whose possession such property was found,  
11 directing the owner or person to answer within ten (10) days. If  
12 the property is declared forfeited and ordered sold, notice of the  
13 sale shall be posted in five public places in the county not less  
14 than ten (10) days before the date of sale. The proceeds of the  
15 sale shall be deposited with the clerk of the court, who shall after  
16 deducting costs, including the costs of sale, pay the balance to the  
17 Tax Commission as cigarette tax collected, or in the case of  
18 vehicles and property seized in connection with cigarettes seized as  
19 being in violation of the provisions of Section 305.1 of this title,  
20 to the Attorney General. The Attorney General shall remit the  
21 amount of cigarette tax, if any be due, including all penalties and  
22 interest due, to the Tax Commission as cigarette tax collected and  
23 shall deposit the remainder to the revolving fund created in Section  
24 305.2 of this title.

1 4. The seizure of cigarettes shall not relieve the person from  
2 whom such cigarettes were seized from any prosecution or the payment  
3 of any penalties provided for under Section 301 et seq. of this  
4 title.

5 5. The forfeiture provisions of Section 301 et seq. of this  
6 title shall only apply to persons having possession of or  
7 transporting cigarettes with intent to barter, sell or give away the  
8 same; provided, that such possession of cigarettes in any quantity  
9 of five or more cartons of ten packages each shall be prima facie  
10 evidence of intent to barter, sell or give away such cigarettes in  
11 violation of the provisions of Section 301 et seq. of this title.

12 ~~F. The Tax Commission shall exchange new stamps for any stamps~~  
13 ~~which are damaged, or for stamps which have been affixed to packages~~  
14 ~~of cigarettes returned to factories, or shipped to other states, or~~  
15 ~~sold to government agencies or state institutions, or for stamps~~  
16 ~~purchased in excess of floor stocks. Application to the Tax~~  
17 ~~Commission for such exchanges must be accompanied by affidavit,~~  
18 ~~damaged stamps, bill of lading covering shipment to factory or other~~  
19 ~~states, or other proof required by the Tax Commission. Any person~~  
20 ~~to whom stamps shall be issued under this paragraph may, upon~~  
21 ~~approval of the Tax Commission, sell such stamps to any wholesaler~~  
22 ~~as defined in Section 301 et seq. of this title.~~

23 ~~G.~~ Any person, including distributing agents, wholesalers,  
24 carriers, retailers and consumers, having possession of unstamped

1 cigarettes in this state shall be liable for the tax on such  
2 cigarettes in case the same are lost, stolen or unaccounted for, in  
3 transit, storage or otherwise, and in such event a presumption shall  
4 exist for the purposes of taxation, that such cigarettes were used  
5 and consumed in Oklahoma.

6 SECTION 2. AMENDATORY 68 O.S. 2011, Section 308, is  
7 amended to read as follows:

8 Section 308. (a) The stamps placed upon packages of cigarettes  
9 shall be purchased by the Commission in proper denominations, shall  
10 contain the words "Oklahoma Tax Commission," and shall be of such  
11 design, character, color combinations, color changes, sizes, and  
12 material as the Commission may, by its rules and regulations,  
13 determine to afford the best security to the state. The Commission  
14 may require of the manufacturer from whom it purchases such stamps a  
15 bond in an amount to be determined by the Commission, containing  
16 such conditions as the Commission may deem necessary in order to  
17 protect the state against loss. The Commission shall be responsible  
18 for the custody and sale of the stamps, and for the disposition of  
19 the proceeds thereof. It shall be the duty of the Tax Commission to  
20 manufacture or contract for revenue stamps required by this article;  
21 provided, that if such stamps are contracted for, the manufacture  
22 thereof shall be within the jurisdiction of the criminal and civil  
23 courts of this state, unless such stamps cannot be obtained in this  
24 state at a fair price or of acceptable quality. If stamps are

1 manufactured outside of the state, then the Commission shall keep a  
2 reliable agent at the place of manufacture during the period of  
3 manufacture and such agent shall be authorized and instructed to  
4 take any and all precautions necessary to safeguard the state  
5 against forgery and misdelivery of any stamps. The Commission  
6 shall, in contracting for manufacture, consider the safeguarding of  
7 stamps to be of paramount importance and shall provide therefor in a  
8 manner commensurate with the monetary value of such stamps.

9 (b) The Tax Commission shall, under rules ~~and regulations~~  
10 promulgated by the Commission, ~~exchange new stamps or give credit to~~  
11 a wholesaler for any stamps affixed to any packages of cigarettes  
12 ~~which stamps have become unfit for use or consumption or unsalable~~  
13 returned to a manufacturer. Application to the Tax Commission for  
14 credit must be accompanied by affidavit, copy of bill of lading for  
15 shipment to the manufacturer, and other proof required by the Tax  
16 Commission.

17 (c) ~~Any person to whom stamps shall be issued hereunder may,~~  
18 ~~upon notice and approval of the Tax Commission, sell such stamps to~~  
19 ~~any licensed manufacturer, wholesaler, warehouseman, jobber and/or~~  
20 ~~retailer.~~

21 ~~(d)~~ The Commission shall sell the stamps to all licensed  
22 manufacturers, wholesalers, warehousemen and/or jobbers, retailers,  
23 or consumers, who have purchased cigarettes from wholesalers or  
24 jobbers within or without the State of Oklahoma, doing business



1 within the State of Oklahoma. All orders for stamps must be  
2 accompanied by cash, cashier's check or money order, made payable to  
3 the Oklahoma Tax Commission; provided, however, that the Tax  
4 Commission may accept personal checks in payment for such stamps  
5 upon a determination by the Commission that the purchaser thereof is  
6 financially responsible.

7 SECTION 3. This act shall become effective November 1, 2015.

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