

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2292

By: Roberts (Dustin)

4
5
6 AS INTRODUCED

7 An Act relating to tobacco products enforcement;
8 creating the Tobacco Products Tax Enforcement Act of
9 2021; authorizing establishment of Tobacco Products
10 Tax Enforcement Unit by Oklahoma Tax Commission and
11 enumerating duties; requiring submission of annual
12 report containing specified information; establishing
13 specified requirements and procedures for remittance
14 and reporting of tobacco products tax by a
15 wholesaler; providing for collection of tobacco
16 products tax by specified parties other than
17 wholesaler when tax is not remitted by wholesaler;
18 establishing liability of certain vendors under
19 specified circumstances; clarifying status of certain
20 vendors with respect to assessment of fines;
21 establishing specified requirements and procedures
22 for remittance and reporting of tobacco products tax
23 by a retailer or consumer under specified
24 circumstances; requiring retailers to purchase
products from licensed wholesalers and providing
penalty for noncompliance; requiring Tax Commission
to make list of licensed wholesalers available in
certain manner; directing Tax Commission to make
administrative changes for specified purpose;
amending 68 O.S. 2011, Sections 401, 402-1, as
amended by Section 4, Chapter 8, 2nd Extraordinary
Session, O.S.L. 2018, 403, 403.1, 403.2, 407, 412, as
amended by Section 1, Chapter 334, O.S.L. 2013, 413,
as amended by Section 7, Chapter 357, O.S.L. 2012,
414, 415, 417, as amended by Section 6, Chapter 66,
O.S.L. 2018, 418, as amended by Section 2, Chapter
334, O.S.L. 2013, 420.1, 421, 422 and 426 (68 O.S.
Supp. 2020, Sections 402-1, 412, 413, 417 and 418),
which relate to tobacco products excise tax
compliance and enforcement; modifying definitions;
deleting definitions; defining term; deleting

1 requirement for stamps as evidence of tax; modifying
2 manner in which tobacco products tax is levied with
3 respect to use of stamps and deleting associated
4 procedures and penalties; imposing requirements on
5 wholesalers in sales transactions involving tobacco
6 products and deleting requirements on certain other
7 parties; modifying specified terms and procedures
8 related to taxation of certain sales subject to
9 tribal compacts; deleting reference to tax stamps for
10 certain products imported into the state; increasing
11 penalty for certain practices to deter enforcement by
12 inspection; conforming language; increasing penalty
13 for certain noncompliant carriers and specifying that
14 certain penalty is administrative; deleting
15 requirement for certain monthly reports; authorizing
16 Tax Commission or peace officer to confiscate certain
17 vehicles used to transport untaxed products; deleting
18 certain application requirement and procedures
19 related to distributing agents; increasing penalty
20 for wholesaler and retailer operating without a
21 license; authorizing Tax Commission, sheriff or
22 police to seize vehicle used in avoidance of tax;
23 increasing penalties for specified licensees for
24 transporting or possessing untaxed product; modifying
requirements related to maintenance of invoices or
other documentation; clarifying reference; increasing
penalty for sale of product subject to certain
exemption; providing for applicability of certain
compliance requirement; increasing penalty for
certain acts related to contraband products;
repealing 68 O.S. 2011, Sections 406, 408, 409 and
411, which relate to tobacco products excise tax
procedures; providing for codification; providing for
noncodification; providing an effective date; and
declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 400 of Title 68, unless there is
created a duplication in numbering, reads as follows:

1 Sections 1 through 7 of this act shall be known and may be cited
2 as the "Tobacco Products Tax Enforcement Act of 2021".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 400.1 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 A. For the purpose of enforcing the tobacco tax laws of this
7 state, the Oklahoma Tax Commission is authorized to establish and
8 maintain a unit to be known as the "Tobacco Products Tax Enforcement
9 Unit". The unit shall enforce the tobacco tax laws of this state
10 and ensure that all taxes are paid on tobacco products by:

11 1. Confirming that all entities selling tobacco products in
12 this state are properly licensed as provided in Section 400 et seq.
13 of Title 68 of the Oklahoma Statutes;

14 2. Verifying that all retailers are only purchasing tobacco
15 products from wholesalers licensed by the Tax Commission;

16 3. Providing a dedicated telephone line and email address for
17 licensed wholesalers, licensed retailers and the general public to
18 report suspected violations of tobacco tax laws; provided, no
19 entity, individual or those who report violations on behalf of a
20 licensed wholesaler or retailer, shall be required to disclose their
21 identity;

22 4. Auditing licensed wholesalers and retailers to ensure all
23 tobacco product taxes are paid;

24

1 5. Issuing fines for violations as provided in Section 400 et
2 seq. of this title;

3 6. Conducting wholesale and retail tobacco inspections to find
4 and confiscate untaxed tobacco products;

5 7. Establishing data sharing programs with tax departments in
6 surrounding states related to tobacco product taxes;

7 8. Creating an industry advisory committee including licensed
8 wholesalers and retailers who may represent the entity related to
9 tobacco products tax enforcement concerns and suggestions. The
10 Oklahoma Tax Commission shall promulgate rules establishing the
11 membership and minimum requirements as may be deemed necessary to
12 carry out the purposes of the committee; and

13 9. Working with law enforcement and conducting investigations
14 to stop illegal acquisition and shipment of tobacco products by
15 persons not licensed to sell tobacco products in this state.

16 B. The Tax Commission shall annually submit a report to the
17 Governor, President Pro Tempore of the Senate and Speaker of the
18 House of Representatives listing the number of wholesale and retail
19 tobacco inspections conducted, the amount of untaxed tobacco
20 products confiscated, the number of tobacco products tax audits
21 conducted, the amount of taxes assessed and the amount of taxes
22 collected as the result of audits and confiscations, the number of
23 suspected violations reported and the actions taken in response, and
24 the number of fines issued and the amount of fines collected.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 400.2 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The excise tax imposed pursuant to the provisions of Section
5 400 et seq. of Title 68 of the Oklahoma Statutes upon the sale,
6 distribution, use, exchange, barter or possession of tobacco
7 products within the state shall be due and payable on the first day
8 of each month by the wholesaler. For the purpose of ascertaining
9 the amount of the tax payable by the wholesaler, the wholesaler
10 shall file electronically with the Oklahoma Tax Commission, on or
11 before the twentieth day of each month and upon a form prescribed
12 and furnished by the Commission, a tobacco products tax report
13 signed by the wholesaler under oath. The report shall include:

14 1. All purchases and deliveries including invoices detailing
15 purchases and shipments from manufacturers to the wholesaler and
16 from the wholesaler to the licensed retailer for the previous
17 calendar month;

18 2. The taxes due under Section 400 et seq. of Title 68 of the
19 Oklahoma Statutes during the preceding calendar month; and

20 3. Any other information required by the Commission for the
21 purposes of correctly computing and collecting the tax levied
22 herein. In addition to the information required on reports, the Tax
23 Commission may request, and the taxpayer must furnish, any
24 information deemed necessary to enforce the provisions of Section

1 400 et seq. of title 68 of the Oklahoma Statutes. Such tax remitter
2 shall compute and remit to the Tax Commission the required tax due
3 for the preceding calendar month, the remittance or remittances of
4 the tax to accompany the reports herein required. If not filed or
5 paid on or before the twentieth day of such month, the tax shall be
6 delinquent from such date. If a report is not timely filed,
7 interest shall be charged from the date the report should have been
8 filed until the date the report is actually filed.

9 B. It shall not be necessary for any person or entity to
10 purchase stamps or affix stamps to tobacco products in order to
11 comply with the requirements of Section 400 et seq. of Title 68 of
12 the Oklahoma Statutes or the provisions of this act.

13 C. If the tobacco products tax report or payment of taxes is
14 due on any day specified in Section 82.1 of Title 25 of the Oklahoma
15 Statutes or on a date when the Federal Reserve Banks are closed,
16 such requirements may be performed on the next succeeding business
17 day and no liability shall result from the delay.

18 D. The monthly reports shall be filed electronically in the
19 format prescribed by the Tax Commission and the tax shall be
20 remitted to the Tax Commission by electronic funds transfer.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 400.3 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. In the event the tax imposed by Section 400 et seq. of Title
2 68 of the Oklahoma Statutes is not otherwise paid by the wholesaler
3 as provided in Section 3 of this act, the tax shall be collected as
4 a backup tax upon the first receipt of tobacco products by any
5 retailer or end user when received from a source outside of the
6 state or upon the first sale or use when the product is manufactured
7 in this state. Such tax is imposed upon, and shall be the liability
8 of, any such retailer or consumer who first received the tobacco
9 products in the state.

10 B. The ultimate vendor of tobacco products shall be jointly and
11 severally liable for the backup tax levied by subsection A of this
12 section if the ultimate vendor knows or has reason to know that the
13 tobacco products tax imposed by Section 400 et seq. of Title 68 of
14 the Oklahoma Statutes has not been paid.

15 C. The payment of the tax as provided in this section shall not
16 absolve any person from payment of fines assessed under this
17 article.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 400.4 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 In the event the tax imposed by this act is not paid by the
22 wholesaler as provided in Section 3 of this act and must be
23 collected as a backup tax from the retailer or consumer in
24 accordance with Section 4 of this act, the tax is due and payable by

1 the retailer or consumer on the first day of each month for the
2 preceding calendar month, and if not paid on or before the twentieth
3 day of the following month, shall be delinquent. The retailer or
4 consumer shall file with the Oklahoma Tax Commission, on forms
5 furnished by the Tax Commission, a return verified by affidavit
6 showing in detail the total purchase price of the tobacco products,
7 the location of the purchase of the tobacco products and any other
8 information the Tax Commission may deem reasonably necessary. With
9 each return, the retailer or consumer shall remit to the Tax
10 Commission the amount of tax shown on the return to be due. Reports
11 timely mailed shall be considered timely filed. If a report is not
12 timely filed, interest shall be charged from the date the report
13 should have been filed until the date the report is actually filed.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 400.5 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Retailers shall only purchase tobacco products from an
18 Oklahoma-licensed tobacco wholesaler evidenced by a current listing
19 provided by the Oklahoma Tax Commission. All purchase invoices
20 shall contain the license number of the wholesaler and shall be made
21 available for inspection by the Tax Commission. Any purchases of
22 tobacco products from a person who is not holding a current Oklahoma
23 wholesale tobacco license shall be punishable by a fine of the
24 greater of One Thousand Dollars (\$1,000.00) or five times the unpaid

1 tax on such products. The fine shall be in addition to payment of
2 any unpaid tobacco products tax. A second or subsequent offense
3 shall be punishable by revocation of the license. If the retailer
4 fails to pay a fine within thirty (30) days, the retailer's license
5 shall be suspended until the fine is paid in full.

6 B. The Oklahoma Tax Commission shall make available for all
7 licensed retailers a list of currently licensed wholesalers at least
8 monthly or through the use of a website maintained by or on behalf
9 of the Oklahoma Tax Commission with updates made as often as
10 practical but no less than every thirty (30) days.

11 SECTION 7. NEW LAW A new section of law not to be
12 codified in the Oklahoma Statutes reads as follows:

13 The Oklahoma Tax Commission is hereby directed to increase its
14 staff to comply with the Tobacco Products Tax Enforcement Act of
15 2021. The Tax Commission may employ unclassified personnel to staff
16 the Tobacco Products Tax Enforcement Unit provided for in Section 2
17 of this act, compensate the employees of the unit for working
18 overtime, develop alternative work schedules for members of the
19 Enforcement Unit to investigate reported tobacco products tax
20 evasion and expend funds for employees to participate in tobacco
21 products tax enforcement training provided by the Federation of Tax
22 Administrators.

23 The Tax Commission is also directed to enhance agency efforts to
24 discover and reduce tobacco products tax evasion. Such efforts may

1 include increased inspections of tobacco products retailers,
2 including inspections after normal business hours; enhanced tobacco
3 products tax auditing, including the auditing of out-of-state
4 licensed wholesalers; the acquisition and use of technology systems
5 designed to identify underreporting of tobacco products taxes; and
6 analysis of data from the electronic reporting of invoices by
7 tobacco products wholesalers.

8 SECTION 8. AMENDATORY 68 O.S. 2011, Section 401, is
9 amended to read as follows:

10 Section 401. For the purpose of this article:

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

17 (b) The term "Tax Commission" shall mean the Oklahoma Tax
18 Commission.

19 (c) The word "wholesaler" shall include dealers whose principal
20 business is that of a wholesale dealer ~~or jobber~~, and who is known
21 to the trade as such, who shall sell any cigars or tobacco products
22 to licensed retail dealers only for the purpose of resale, ~~or giving~~
23 ~~them away, or exposing the same where they may be taken or~~
24 ~~purchased, or otherwise acquired by the retailer.~~

1 (d) The word "retailer" shall include every dealer, other than
2 a ~~wholesale dealer~~ wholesaler as defined above, whose principal
3 business is that of selling merchandise at retail, who shall sell,
4 or offer for sale, cigars or tobacco products, ~~irrespective of~~
5 ~~quantity, number of sales, giving the same away or exposing the same~~
6 ~~where they may be taken, or purchased, or otherwise acquired by the~~
7 ~~consumer.~~

8 (e) The word "consumer" shall mean a person who comes into
9 possession of tobacco for the purpose of consuming it, ~~giving it~~
10 ~~away, or disposing of it in any way by sale, barter or exchange.~~

11 (f) The words "first sale" shall mean and include the first
12 sale, or distribution, of cigars or tobacco products in intrastate
13 commerce, or the first use or consumption of cigars, or tobacco
14 products within this state.

15 (g) The words "tobacco products" shall mean any cigars,
16 cheroots, stogies, smoking tobacco (including granulated, plug cut,
17 crimp cut, ready rubbed and any other kinds and forms of tobacco
18 suitable for smoking in a pipe or cigarette), chewing tobacco
19 (including cavendish, twist, plug, scrap and any other kinds and
20 forms of tobacco suitable for chewing), however prepared; and shall
21 include any other articles or products made of tobacco or any
22 substitute therefor.

23 (h) ~~The term "distributing agent" shall mean and include every~~
24 ~~person in this state who acts as an agent of any person outside the~~

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

10 ~~(i) The term "stamp" shall mean the stamp or stamps by use of~~
11 ~~which:~~

12 ~~1. The tax levied pursuant to the provisions of Section 401 et~~
13 ~~seq. of this title is paid;~~

14 ~~2. The tax levied pursuant to the provisions of Section 426 of~~
15 ~~this title is paid; or~~

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

20 ~~(j) The term "drop shipment" shall mean and include any~~
21 ~~delivery of cigars or tobacco products received by any person within~~
22 ~~the state when payment for such cigars or tobacco products is made~~
23 ~~to the shipper or seller by or through a person other than the~~
24 ~~consignee.~~

1 ~~(k)~~ The term "cigars" shall include any roll of tobacco for
2 smoking, irrespective of size or shape and irrespective of the
3 tobacco being flavored, adulterated or mixed with any other
4 ingredients, where such roll has a wrapper made chiefly of tobacco.

5 ~~(l)~~ The word "dealer" shall include every person, firm,
6 corporation, or association of persons, who manufactures cigars or
7 tobacco products for distribution, sale, use or consumption in the
8 State of Oklahoma. The word "dealer" is also further defined to
9 mean any person, firm, corporation or association of persons, who
10 imports cigars or tobacco products from any state or foreign
11 country, for distribution, sale, use or consumption in the State of
12 Oklahoma.

13 (i) The term "untaxed" means that the full amount of tax has
14 not been paid as required by Section 400 et seq. of this title.

15 SECTION 9. AMENDATORY 68 O.S. 2011, Section 402-1, as
16 amended by Section 4, Chapter 8, 2nd Extraordinary Session, O.S.L.
17 2018 (68 O.S. Supp. 2020, Section 402-1), is amended to read as
18 follows:

19 Section 402-1. In addition to the tax levied by Section 402 of
20 this title, there is hereby levied upon the sale, use, exchange or
21 possession of articles containing tobacco as defined in said Section
22 402, a tax in the following amounts:

23 (a) Upon cigars of all descriptions made of tobacco, or any
24 substitute therefor, and weighing more than three (3) pounds per

1 thousand, and having a manufacturer's recommended retail selling
2 price, under the Federal Code, of more than four cents (\$0.04) for
3 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
4 computing the tax, cheroots, stogies, etc., are hereby classed as
5 cigars;

6 (b) Upon all smoking tobacco including granulated, plug cut,
7 crimp cut, ready rubbed and other kinds and forms of tobacco
8 prepared in such manner as to be suitable for smoking in a pipe or
9 cigarette, the tax shall be fifteen percent (15%) of the factory
10 list price exclusive of any trade discount, special discount or
11 deals; and

12 (c) Upon chewing tobacco, smokeless tobacco, and snuff, the tax
13 shall be ten percent (10%) of the factory list price exclusive of
14 any trade discount, special discount or deals.

15 This tax shall be paid by the consumer and no retailer may
16 advertise that he will pay or absorb this tax.

17 The tax herein levied on tobacco products shall be ~~evidenced by~~
18 ~~stamps and~~ collected on the same basis and in the same manner and in
19 all respects as the tax levied by the Tobacco Products Tax Law. The
20 revenue from this additional tax shall be apportioned by the
21 Oklahoma Tax Commission in the same manner as provided in Section
22 404 of this title, for the apportionment of other tobacco products
23 tax revenue.

24

1 SECTION 10. AMENDATORY 68 O.S. 2011, Section 403, is

2 amended to read as follows:

3 Section 403. (a) The excise taxes levied by this article shall
4 be paid by ~~affixing stamps in the manner and at the time herein set~~
5 ~~forth. In the case of cigars, including five-pack and other small~~
6 ~~packs, stogies and cheroots, the stamps shall be affixed to the box,~~
7 ~~or container, in which or from which normally sold at wholesale.~~
8 ~~Wholesalers and jobbers shall affix the required stamps within~~
9 ~~seventy two (72) hours after such tobacco products are received by~~
10 ~~them. Any retailer shall have twenty-four (24) hours within which~~
11 ~~to affix the stamps after such tobacco products are received by him,~~
12 ~~or them~~ the wholesaler liable for payment of the tax. Provided that
13 the Tax Commission may, in its discretion, where it is practical and
14 reasonable for the enforcement of the collection of taxes provided
15 hereunder, promulgate such rules ~~and regulations~~ as to permit
16 cigars, stogies, cheroots, and tobacco products, to remain ~~unstamped~~
17 untaxed in the hands of the wholesalers ~~and jobbers~~ until the
18 original case or crate is broken, unpacked or sold.

19 (b) ~~In the case of tobacco products wrapped in packages of two~~
20 ~~(2) pounds or less, the stamps shall be affixed to the containers in~~
21 ~~which or from which the individual packages are normally sold at~~
22 ~~wholesale and the stamps shall be affixed by wholesalers and jobbers~~
23 ~~within seventy two (72) hours after such products are received by~~
24 ~~them, and by any retailer within the twenty-four (24) hours of~~

1 ~~receipt by him or them of any such products. Such goods must be~~
2 ~~stamped before being sold. All retail dealers in manufactured~~
3 ~~tobacco products, purchasing or receiving such commodities from~~
4 ~~without the state, whether the same shall have been ordered through~~
5 ~~a wholesaler or jobber in this state and/or by drop shipment and/or~~
6 ~~otherwise, shall within five (5) days after receipt of same, mail a~~
7 ~~duplicate invoice of all such purchases or receipts to the Tax~~
8 ~~Commission. Failure to furnish duplicate invoices as required shall~~
9 ~~be deemed a misdemeanor, and, upon conviction, be punishable by a~~
10 ~~fine of not more than One Hundred Dollars (\$100.00) for each~~
11 ~~offense, or imprisonment in the county jail for a period not~~
12 ~~exceeding thirty (30) days.~~

13 ~~(e) It is the intent and purpose of this section to require all~~
14 ~~manufacturers within this state, wholesale dealers, jobbers,~~
15 ~~distributors and retail dealers, wholesalers to affix the stamps pay~~
16 ~~applicable tax provided for in this section to article upon the~~
17 ~~sale, use, exchange or possession of taxable commodities, but when~~
18 ~~the stamps have been affixed as required herein, no further or other~~
19 ~~stamp shall be required regardless of how often such articles may be~~
20 ~~sold or resold within this state.~~

21 SECTION 11. AMENDATORY 68 O.S. 2011, Section 403.1, is
22 amended to read as follows:

23 Section 403.1 The Oklahoma Tax Commission is hereby authorized
24 and empowered, if in its discretion it deems practical and

1 reasonable, to establish procedures for payment of excise taxes
2 levied in Section ~~401~~ 400 et seq. of this title, for the collection
3 from a wholesaler of payments in lieu of excise taxes authorized
4 pursuant to a compact entered into by the State of Oklahoma and a
5 federally recognized Indian tribe or nation pursuant to the
6 provisions of subsection C of Section 346 of this title, in respect
7 to articles containing tobacco, pursuant to monthly tobacco products
8 tax reports ~~in lieu of payment by purchasing and affixing stamps,~~
9 ~~notwithstanding the provisions of Section 403 et seq. of this title.~~
10 Provided, exercise by the Tax Commission of the authority granted
11 herein shall be by adoption of rules ~~and regulations~~ necessary to
12 establish procedures for collection of such tax through monthly
13 reporting procedures consistent with the provisions of Section ~~401~~
14 400 et seq. of this title, ~~other than those provisions relating~~
15 ~~directly to payment of such tax by purchasing and affixing stamps.~~

16 In the event the Tax Commission shall determine to collect such
17 tax through monthly reporting procedures and adopt rules and
18 regulations therefor:

19 1. All provisions of Section ~~401~~ 400 et seq. of this title
20 relating to ~~unstamped~~ untaxed tobacco products shall be interpreted
21 to include and shall be applicable to all tobacco products for which
22 the tax required by law has not been paid;

23 2. No person, ~~dealer, distributing agent~~ retailer or
24 wholesaler, as defined in Section ~~401~~ 400 of this title, shall

1 possess, sell, use, exchange, barter, give away or in any manner
2 deal with any tobacco products within this state upon which such tax
3 is levied and unpaid, ~~unless such person, dealer, retailer,~~
4 ~~distributing agent or wholesaler holds a valid tobacco license~~
5 ~~issued pursuant to Section 415 of this title;~~ and

6 3. Any ~~person~~ wholesaler required to report and remit such
7 taxes or payments in lieu of taxes required pursuant to a compact
8 authorized by subsection C of Section 346 of this title to the Tax
9 Commission shall be allowed a discount of two percent (2%) of the
10 tax due for maintaining and collecting such tax or payments for the
11 benefit of the state, if such tax or payment is timely reported and
12 remitted.

13 SECTION 12. AMENDATORY 68 O.S. 2011, Section 403.2, is
14 amended to read as follows:

15 Section 403.2 A. It shall be unlawful ~~to affix a stamp to any~~
16 ~~package or container of tobacco products or~~ for any person to sell,
17 offer for sale, or import into this state any package or container
18 of tobacco products:

19 1. Which bears any label or notice prescribed by the United
20 States Department of Treasury to identify tobacco products intended
21 for export and exempt from tax by the United States pursuant to
22 Section 5704(b) of Title 26 of the United States Code or any notice
23 or label described in Section 290.185 of Title 27 of the United
24 States Code of Federal Regulations;

1 2. Which is not labeled in conformity with the provisions of
2 the Federal Cigarette Labeling and Advertising Act, or any other
3 federal requirement for the placement of labels, warnings or other
4 information applicable to packages or containers of tobacco products
5 intended for domestic consumption;

6 3. Upon which all federal taxes due have not been paid or which
7 is not in compliance with all federal trademark and copyright laws;
8 or

9 4. The packaging of which has been modified or altered by a
10 person other than the manufacturer or person specifically authorized
11 by the manufacturer, including, but not limited to, the placement of
12 a sticker or label to cover information on the package or container.

13 Possession of more than thirty (30) ounces of tobacco products
14 ~~in packages or containers bearing Oklahoma stamps~~ in violation of
15 this subsection by a person other than an employee of this state or
16 the federal government performing official duties relating to
17 enforcement of the provisions of Section ~~401~~ 400 et seq. of this
18 title shall constitute prima facie evidence of a violation of the
19 provisions of this subsection.

20 B. Except as otherwise provided by law, the Attorney General
21 shall enforce the provisions of this section.

22 SECTION 13. AMENDATORY 68 O.S. 2011, Section 407, is
23 amended to read as follows:

24

1 Section 407. It shall be provided by regulations of the Tax
2 Commission the methods of breaking packages, forms and kinds of
3 containers, ~~and methods of affixing stamps,~~ that shall be employed
4 by persons subject to the tax levied by this article which will make
5 possible the enforcement of payment by inspection; and any such
6 person engaging in or permitting such practices as are prohibited by
7 this article, or in any other practice which makes it difficult to
8 enforce the provisions of this article by inspection, and any person
9 or agent thereof who shall upon demand of any officer or agent of
10 the Tax Commission refuse to allow full inspection of the premises
11 or any part thereof, or who shall hinder or in anywise delay or
12 prevent such inspection when demand is made therefor, shall be
13 guilty of a misdemeanor and shall, upon conviction, be fined not
14 more than ~~Two Hundred Dollars (\$200.00)~~ Two Thousand Dollars
15 (\$2,000.00) for each offense, or imprisonment in the county jail for
16 a period not exceeding sixty (60) days or both.

17 SECTION 14. AMENDATORY 68 O.S. 2011, Section 412, as
18 amended by Section 1, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2020,
19 Section 412), is amended to read as follows:

20 Section 412. (a) Every wholesaler, ~~jobber, retailer or~~
21 ~~consumer~~ who purchases or allows to come into his or her possession
22 any ~~unstamped~~ untaxed merchandise coming under the scope of this
23 article shall file with the Oklahoma Tax Commission a surety or
24 collateral or cash bond in the amount of Twenty-five Thousand

1 Dollars (\$25,000.00), payable to the State of Oklahoma and
2 conditioned upon compliance with the provisions of this article and
3 the rules of the Tax Commission.

4 (b) Any consumer who purchases or brings into this state
5 ~~unstamped~~ untaxed cigars or tobacco products whereon the tax would
6 be more than twenty-five cents (\$0.25) is subject to the tax
7 thereon. Upon failure to pay the tax levied in this article, the
8 consumer shall be subject to a fine of not more than Five Hundred
9 Dollars (\$500.00) or not less than Twenty-five Dollars (\$25.00).
10 Provided, any person in possession of more than one thousand small
11 or large cigars or two hundred sixteen (216) ounces of chewing or
12 smoking tobacco products in packages or containers for which the tax
13 required by law has not been paid shall be punished by
14 administrative fines in the manner and amounts provided in
15 subsection D of Section 418 of this title.

16 SECTION 15. AMENDATORY 68 O.S. 2011, Section 413, as
17 amended by Section 7, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2020,
18 Section 413), is amended to read as follows:

19 Section 413. ~~A.~~ The right of a carrier in this state to carry
20 ~~unstamped~~ untaxed cigars and tobacco products shall not be affected
21 hereby; provided, that carriers delivering untaxed tobacco products
22 to any person in this state other than an Oklahoma-licensed
23 wholesaler for the purpose of selling or consuming untaxed tobacco
24 products in this state in violation of this article shall be subject

1 to seizure of the shipments and forfeiture of the inventory pursuant
2 to the provisions of Section 417 of this title. Provided further,
3 that should any such carrier sell any cigars and tobacco products in
4 this state, such sale shall be subject to the ~~stamp~~ tax and other
5 provisions of this article and to the rules of the Tax Commission.
6 The carrier transporting tobacco products and cigars to a point
7 within this state, or a bonded warehouseman or bailee having in its
8 possession tobacco products and cigars, shall transmit to the Tax
9 Commission a statement of such consignment of tobacco products and
10 cigars, showing the date, point of origin, point of delivery, and to
11 whom delivered. All carriers or bailees or warehousemen shall
12 permit an examination by the Tax Commission, or its agents or
13 legally authorized representatives, of their records relating to the
14 shipment or receipt of tobacco products and cigars. Any person who
15 fails or refuses to transmit to the Tax Commission the aforesaid
16 statement, or who refuses to permit the examination of his or her
17 records by the Tax Commission or its legally authorized agents or
18 representatives, shall be guilty of a misdemeanor and shall be
19 subject to a an administrative fine of not to exceed ~~Five Hundred~~
20 ~~Dollars (\$500.00)~~ Two Thousand Dollars (\$2,000.00) and not less than
21 ~~Twenty five Dollars (\$25.00)~~ One Thousand Dollars (\$1,000.00).

22 B. ~~Wholesalers shall make a monthly report to the Tax~~
23 ~~Commission. Such report must be received in the office of the Tax~~
24 ~~Commission not later than the twentieth day of each month, showing~~

1 ~~purchases and invoices of all merchandise coming under this article,~~
2 ~~for the previous month; and the report shall also show the invoice~~
3 ~~number, the name and address of the consignee and consignor, the~~
4 ~~date, and such other information as may be requested by the Tax~~
5 ~~Commission. Retailers or consumers purchasing tobacco products and~~
6 ~~cigars in drop shipments shall be required to make monthly reports~~
7 ~~to the Tax Commission, as are required of wholesalers.~~

8 SECTION 16. AMENDATORY 68 O.S. 2011, Section 414, is
9 amended to read as follows:

10 Section 414. (a) Each truck or vehicle wherefrom cigars or
11 tobacco products are sold shall be considered as a place of business
12 and required to have a wholesale license and a bond of not less than
13 Five Hundred Dollars (\$500.00).

14 (b) Any person operating a truck or vehicle by selling,
15 exchanging, or giving away ~~unstamped~~ untaxed merchandise covered by
16 this article shall be deemed guilty of violation of same and shall
17 be penalized as hereinbefore set forth, and ~~unstamped~~ untaxed
18 merchandise handled by ~~him~~ this person as well as the vehicle used
19 to transport the untaxed tobacco products shall be subject to
20 confiscation by authorized agents of the Tax Commission or duly
21 authorized peace officers.

22 (c) After seizure or confiscation by such agent or officer, the
23 merchandise and property shall be held until all taxes, interest and
24 penalties due have been paid. If not paid within five (5) days

1 after date of seizure, it shall be sold at public sale by the
2 sheriff of the county where confiscated, after being advertised by
3 posting of notice of such sale in five public places in the county
4 where the sale is to occur. The proceeds of the sale shall be
5 applied to taxes, interest and penalties due and to the cost of the
6 sale, and the remainder, if any, shall be paid to the State
7 Treasurer, by the sheriff conducting such sale, to be deposited to
8 the credit of the General Revenue Fund.

9 SECTION 17. AMENDATORY 68 O.S. 2011, Section 415, is
10 amended to read as follows:

11 Section 415. A. Every ~~dealer and~~ wholesaler of tobacco
12 products in this state, as a condition of carrying on such business,
13 shall annually secure from the Oklahoma Tax Commission a written
14 license and shall pay an annual fee of Two Hundred Fifty Dollars
15 (\$250.00); provided, such fee shall not be applicable if paid
16 pursuant to Section 304 of this title. The Tax Commission shall
17 promulgate rules which provide a procedure for the issuance of a
18 joint license for any wholesaler making application pursuant to this
19 section and Section 304 of this title. Application for such
20 license, which shall be made upon such forms as prescribed by the
21 Tax Commission, shall include the following:

22 1. The applicant's agreement to the jurisdiction of the Tax
23 Commission and the courts of this state for purposes of enforcement
24 of the provisions of Section 301 et seq. of this title; and

1 2. The applicant's agreement to abide by the provisions of
2 Section 301 et seq. of this title and the rules promulgated by the
3 Tax Commission with reference thereto. This license, which will be
4 for the ensuing year, must at all times be displayed in a
5 conspicuous place so that it can be seen. Persons operating more
6 than one place of business must secure a license for each place of
7 business. "Place of business" shall be construed to include the
8 place where orders are received, or where tobacco products are sold.
9 If tobacco products are sold on or from any vehicle, the vehicle
10 shall constitute a place of business, and the license fee of Two
11 Hundred Fifty Dollars (\$250.00) shall be paid with respect thereto.
12 However, if the vehicle is owned or operated by a place of business
13 for which the regular license fee is paid, the annual fee for the
14 license with respect to such vehicle shall be only Ten Dollars
15 (\$10.00). The expiration for such vehicle license shall expire on
16 the same date as the current license of the place of business.

17 B. Every retailer in this state, as a condition of carrying on
18 such business, shall secure from the Tax Commission a license and
19 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
20 for such license, which shall be made upon such forms as prescribed
21 by the Tax Commission, shall include the following:

22 1. The applicant's agreement to the jurisdiction of the Tax
23 Commission and the courts of this state for purposes of enforcement
24 of the provisions of Section 301 et seq. of this title; ~~and~~

1 2. The applicant's agreement to abide by the provisions of
2 Section 301 et seq. of this title and the rules promulgated by the
3 Tax Commission with reference thereto;

4 3. The applicant's agreement that it shall not purchase any
5 tobacco products for resale from a supplier that does not hold a
6 current wholesaler's license issued pursuant to this section; and

7 4. The applicant's agreement to sell tobacco products only to
8 consumers.

9 Such license, which will be for the ensuing three (3) years,
10 must at all times be displayed in a conspicuous place so that it can
11 be seen. Upon expiration of such license, the retailer to whom such
12 license was issued may obtain a renewal license which shall be valid
13 for three (3) years or until expiration of the retailer's sales tax
14 permit, whichever is earlier, after which a renewal license shall be
15 valid for three (3) years. The manner and prorated fee for renewals
16 shall be prescribed by the Tax Commission. Every person operating
17 under such license as a retailer and who owns or operates more than
18 one place of business must secure a license for each place of
19 business. "Place of business" shall be construed to include places
20 where orders are received or where tobacco products are sold.

21 C. Nothing in this section shall be construed to prohibit any
22 person holding a retail license from also holding a wholesaler
23 license.

24

1 D. ~~Every distributing agent shall, as a condition of carrying~~
2 ~~on such business, pursuant to written application on a form~~
3 ~~prescribed by and in such detailed form as the Tax Commission may~~
4 ~~require, annually secure from the Tax Commission a license, and~~
5 ~~shall pay therefor an annual fee of One Hundred Dollars (\$100.00).~~
6 ~~An application shall be filed and a license obtained for each place~~
7 ~~of business owned or operated by a distributing agent. The license,~~
8 ~~which will be for the ensuing year, shall be consecutively numbered,~~
9 ~~nonassignable and nontransferable, and shall authorize the storing~~
10 ~~and distribution of unstamped tobacco products within this state~~
11 ~~when such distribution is made upon interstate orders only.~~

12 ~~E.~~ 1. All wholesale, or retail, ~~and distributing agents'~~
13 licenses shall be nonassignable and nontransferable from one person
14 to another person. Such licenses may be transferred from one
15 location to another location after an application has been filed
16 with the Tax Commission requesting such transfer and after the
17 approval of the Tax Commission.

18 2. Wholesale, and retail, ~~and distributing agent's~~ licenses
19 shall be applied for on a form prescribed by the Tax Commission.
20 Any person operating as a wholesaler, or retailer, ~~or distributing~~
21 ~~agent~~ must at all times have an effective unexpired license which
22 has been issued by the Tax Commission. If any such person or
23 licensee continues to operate as such on a license issued by the Tax
24 Commission which has expired, or operates without ever having

1 obtained from the Tax Commission such license, such person or
2 licensee shall, after becoming delinquent for a period in excess of
3 fifteen (15) days, pay to the Tax Commission, in addition to the
4 annual license fee, a penalty of ~~twenty-five cents (\$0.25)~~ Ten
5 Dollars (\$10.00) per day on each delinquent license for each day so
6 operated in excess of fifteen (15) days. The penalty provided for
7 herein shall not exceed the annual license fee for such license.

8 ~~F.~~ E. No license may be granted, maintained or renewed if any
9 of the following conditions apply to the applicant. For purposes of
10 this section, "applicant" includes any combination of persons owning
11 directly or indirectly, in the aggregate, more than ten percent
12 (10%) of the ownership interests in the applicant:

13 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
14 delinquent tobacco products taxes;

15 2. The applicant had a ~~dealer,~~ wholesaler, or retailer license
16 revoked by the Tax Commission within the past two (2) years; or

17 3. The applicant has been convicted of a crime relating to
18 stolen or counterfeit tobacco products, or receiving stolen or
19 counterfeit tobacco products.

20 ~~G.~~ F. No person or entity licensed pursuant to the provisions
21 of this section shall purchase tobacco products from or sell tobacco
22 products to a person or entity required to obtain a license unless
23 such person or entity has obtained such license.

24

1 ~~H.~~ G. In addition to any civil or criminal penalty provided by
2 law, upon a finding that a licensee has violated any provision of
3 Section 301 et seq. of this title, the Tax Commission may revoke or
4 suspend the license or licenses of the licensee pursuant to the
5 procedures applicable to revocation of a license set forth in
6 Section 418 of this title.

7 SECTION 18. AMENDATORY 68 O.S. 2011, Section 417, as
8 amended by Section 6, Chapter 66, O.S.L. 2018 (68 O.S. Supp. 2020,
9 Section 417), is amended to read as follows:

10 Section 417. A. All ~~unstamped~~ tobacco products upon which a
11 tax is levied by Section ~~401~~ 400 et seq. of this title and all
12 tobacco products ~~stamped~~, sold, offered for sale, or imported into
13 this state in violation of the provisions of Section 403.2 of this
14 title, found in the possession, custody or control of any person for
15 the purpose of being consumed, sold or transported from one place to
16 another in this state, for the purpose of evading or violating the
17 provisions of Section ~~401~~ 400 et seq. of this title, or with intent
18 to avoid payment of the tax imposed thereunder, and any vehicle
19 being used in avoidance of such tax may be seized by any authorized
20 agent of the Oklahoma Tax Commission or any sheriff, deputy sheriff
21 or police within the state. Tobacco products from the time of
22 seizure shall be forfeited to the State of Oklahoma. A proper
23 proceeding shall be filed to maintain such seizure and prosecute the
24 forfeiture as herein provided; the provisions of this section shall

1 not apply, however, where the tax on such ~~unstamped~~ tobacco products
2 does not exceed One Dollar (\$1.00).

3 B. All such tobacco products so seized shall first be listed
4 and appraised by the officer making such seizure and turned over to
5 the Tax Commission and a receipt taken therefor.

6 C. The person making such seizure shall immediately make and
7 file a written report thereof to the Tax Commission, showing the
8 name of the person making such seizure, the place where seized, the
9 person from whom seized, the property seized and an inventory and
10 appraisement thereof, which inventory shall be based on the usual
11 and ordinary retail price or value of the articles seized, and the
12 Attorney General, in the case of tobacco products ~~stamped,~~ sold,
13 offered for sale, or imported into this state in violation of the
14 provisions of Section 403.2 of this title. Within sixty (60) days
15 of seizure, the person from whom the property was seized may file a
16 request for hearing with the Tax Commission or the Attorney General
17 to show why the seized property should not be forfeited and
18 destroyed. If a hearing is requested, the owner of the tobacco
19 products shall be given at least ten (10) days' notice of the
20 hearing. If no request for hearing is filed within the time
21 provided, the property seized will be forfeited and destroyed.

22 D. The seizure of such tobacco products shall not relieve the
23 person from whom such tobacco products were seized from prosecution
24 or the payment of penalties.

1 E. The forfeiture provisions of Section ~~401~~ 400 et seq. of this
2 title shall only apply to persons having possession of or
3 transporting tobacco products with intent to barter, sell or give
4 away the same.

5 SECTION 19. AMENDATORY 68 O.S. 2011, Section 418, as
6 amended by Section 2, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2020,
7 Section 418), is amended to read as follows:

8 Section 418. A. It shall be unlawful for any person to
9 transport or possess ~~unstamped~~ tobacco products where the tax on
10 such ~~unstamped~~ tobacco products has not been paid and exceeds the
11 sum of One Dollar (\$1.00).

12 B. Except as otherwise provided in subsections C and D of this
13 section, any person found guilty of violating the provisions of
14 Section ~~401~~ 400 et seq. of this title shall be punished by an
15 administrative fine of not more than ~~Five Hundred Dollars (\$500.00)~~
16 One Thousand Dollars (\$1,000.00) for a first offense or not more
17 than Four Thousand Dollars (\$4,000.00) for a second or subsequent
18 offense. Provided, any person in possession of more than one
19 thousand small or large cigars or two hundred sixteen (216) ounces
20 of chewing or smoking tobacco products in packages or containers for
21 which the tax required by law has not been paid shall be punished by
22 administrative fines in the manner and amounts provided in
23 subsection D of this section.

24

1 C. Any retailer violating the provisions of Section 403.2 of
2 this title shall:

3 1. For a first offense, be punished by an administrative fine
4 of not more than ~~One Thousand Dollars (\$1,000.00)~~ Two Thousand
5 Dollars (\$2,000.00);

6 2. For a second offense, be punished by an administrative fine
7 of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand
8 Dollars (\$10,000.00); and

9 3. For a third or subsequent offense, be punished by an
10 administrative fine of not more than ~~Ten Thousand Dollars~~
11 ~~(\$10,000.00)~~ Twenty Thousand Dollars (\$20,000.00).

12 D. Any wholesaler, ~~distributing agent or dealer~~ violating the
13 provisions of Section 403.2 of this title shall:

14 1. For a first offense, be punished by an administrative fine
15 of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand
16 Dollars (\$10,000.00); and

17 2. For a second or subsequent offense, be punished by an
18 administrative fine of not more than Twenty Thousand Dollars
19 (\$20,000.00).

20 Administrative fines collected pursuant to the provisions of
21 this subsection shall be deposited to the revolving fund created in
22 Section 305.2 of this title.

23 E. The Oklahoma Tax Commission shall immediately revoke the
24 license of a person punished for a violation pursuant to the

1 provisions of paragraph 3 of subsection C of this section or a
2 person punished for a violation pursuant to the provisions of
3 subsection D of this section. A person whose license is so revoked
4 shall not be eligible to receive another license pursuant to the
5 provisions of Section 301 et seq. of this title for a period of ten
6 (10) years.

7 SECTION 20. AMENDATORY 68 O.S. 2011, Section 420.1, is
8 amended to read as follows:

9 Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco
10 products, as defined in Section ~~401~~ 400 of ~~Title 68 of the Oklahoma~~
11 ~~Statutes~~ this title, shall maintain copies of invoices or equivalent
12 documentation for each of its facilities for every transaction in
13 which the ~~distributor~~ wholesaler is the seller, purchaser,
14 consignor, consignee, or recipient of tobacco products. The
15 invoices or documentation shall contain the ~~distributor's~~
16 wholesaler's tobacco license number and the retailer's tobacco
17 license number if the sale is to a retailer and the quantity by
18 brand style of the tobacco products involved in the transaction.

19 B. Each retailer of tobacco products, as defined in Section ~~401~~
20 400 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain
21 copies of invoices or equivalent documentation for every transaction
22 in which the retailer receives or purchases tobacco products at each
23 of its facilities. The invoices or documentation shall show the
24 name ~~and~~, address and tobacco license number of the ~~distributor~~

1 wholesaler from whom, or the address of another facility of the same
2 retailer from which, the tobacco products were received, the
3 quantity of each brand style received in such transaction, the date
4 the tobacco products were received and the retail cigarette license
5 number or sales tax license number.

6 SECTION 21. AMENDATORY 68 O.S. 2011, Section 421, is
7 amended to read as follows:

8 Section 421. The sale of such tobacco products under ~~the two~~
9 ~~preceding sections~~ paragraph 1 of Section 419 and Section 420 of
10 this title shall be restricted to sales or distribution to inmates
11 of such veterans hospitals, or residents of such state operated
12 domiciliary homes for veterans, as shown by the records thereof, for
13 their own personal use and consumption. Possession of tobacco
14 products taxed under this article, which have been purchased or
15 received from any such veterans hospital or any such home by any
16 person other than an inmate or resident thereof, shall be deemed a
17 misdemeanor and punishable by a fine of ~~Two Hundred Dollars~~
18 ~~(\$200.00)~~ Five Hundred Dollars (\$500.00) for each offense.

19 SECTION 22. AMENDATORY 68 O.S. 2011, Section 422, is
20 amended to read as follows:

21 Section 422. All ~~manufacturers,~~ wholesalers, ~~jobbers,~~ or
22 ~~retailers, or other person,~~ selling or distributing such tobacco
23 products under ~~the three preceding sections~~ the provisions of this
24 act shall comply with the provisions of such sections, and the rules

1 and regulations of the Oklahoma Tax Commission as to such sale or
2 distribution, and failure to so comply shall constitute grounds for
3 revocation of any license issued to ~~said manufacturer,~~ the
4 ~~wholesaler, jobber, or~~ retailer or other person, by the Tax
5 Commission.

6 SECTION 23. AMENDATORY 68 O.S. 2011, Section 426, is
7 amended to read as follows:

8 Section 426. A. It shall be unlawful for any person knowingly
9 to ship, transport, receive, possess, sell, distribute or purchase
10 contraband tobacco products. Any person who engages in shipping,
11 transporting, receiving, possessing, selling, distributing or
12 purchasing contraband tobacco products shall, upon conviction, be
13 guilty of a misdemeanor punishable by a fine of not more than ~~One~~
14 ~~Thousand Dollars (\$1,000.00)~~ Two Thousand Dollars (\$2,000.00). Any
15 person convicted of a second or subsequent violation hereof shall be
16 guilty of a felony and shall be punishable by a fine of not more
17 than Five Thousand Dollars (\$5,000.00), by a term of imprisonment in
18 the ~~State Penitentiary~~ custody of the Department of Corrections for
19 not more than two (2) years, or by both such fine and imprisonment.

20 B. Any person who knowingly engages in shipping, transporting,
21 receiving, possessing, selling, distributing or purchasing
22 contraband tobacco products shall be subject to the forfeiture of
23 property as is provided by Section 417 of this title and assessment
24

1 of penalty as provided thereby and assessment for any delinquent
2 taxes found to be owing.

3 SECTION 24. REPEALER 68 O.S. 2011, Sections 406, 408,
4 409, and 411 are hereby repealed.

5 SECTION 25. This act shall become effective July 1, 2021.

6 SECTION 26. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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