

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2370

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to tobacco products taxes; amending
13 68 O.S. 2011, Sections 402, 402-1 and 402-3, which
14 relate to tax levies on tobacco products; providing
15 that little cigars be taxed in the same rate and
16 manner as cigarettes; clarifying language; providing
17 additional tax levy for cigars; apportioning
18 revenues; repealing 68 O.S. 2011, Section 402-2,
19 which relates to additional tax on tobacco products;
20 providing an effective date; and declaring an
21 emergency.

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

23 SECTION 1. AMENDATORY 68 O.S. 2011, Section 402, is
24 amended to read as follows:

1 Section 402. There shall be levied, assessed, collected, and
2 paid in respect to the articles containing tobacco enumerated in
3 Section 401 et seq. of this title, a tax in the following amounts:

4 1. Little Cigars. Upon cigars of all descriptions made of
5 tobacco, or any substitute therefor, and weighing not more than
6 three (3) pounds per thousand, ~~four (4) mills for each cigar.~~

7 ~~Provided, that~~ the tax levied on the products coming under this
8 paragraph shall ~~not apply if~~ be equal to the tax on such products
9 that is reported and paid as cigarette tax under Sections 301

10 through 325 of this title. Further, the tax levied herein shall be
11 paid in the same manner as required in Sections 301 through 325 of
12 this title;

13 2. Cigars. Upon cigars of all descriptions made of tobacco, or
14 any substitute therefor, weighing more than three (3) pounds per
15 thousand and having a manufacturer's recommended retail selling
16 price, under the Federal Code, of not exceeding four cents (\$0.04)
17 per cigar, one cent (\$0.01) for each cigar;

18 3. Cigars. Upon all other cigars of all descriptions made of
19 tobacco, or any substitute therefor, and weighing more than three
20 (3) pounds per thousand, Twenty Dollars (\$20.00) per thousand. For
21 the purpose of computing the tax, cheroots, stogies, etc., are
22 hereby classed as cigars;

23 4. Smoking Tobacco. Upon all smoking tobacco including
24 granulated, plug cut, crimp cut, ready rubbed and other kinds and

1 forms of tobacco prepared in such manner as to be suitable for
2 smoking in a pipe or cigarette, the tax shall be twenty-five percent
3 (25%) of the factory list price exclusive of any trade discount,
4 special discount or deals; and

5 5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco,
6 and snuff, the tax shall be twenty percent (20%) of the factory list
7 price exclusive of any trade discount, special discount or deals.

8 It shall not be permissible for a retailer to advertise that the
9 retailer will absorb the tax due on the taxable merchandise
10 described herein. Such tax shall be paid by the consumer.

11 Notwithstanding any other provision of law, the tax levied pursuant
12 to the provisions of Section 401 et seq. of this title shall be part
13 of the gross proceeds or gross receipts from the sale of cigars or
14 tobacco products, or both, as those terms are defined in paragraph 7
15 of Section 1352 of this title.

16 SECTION 2. AMENDATORY 68 O.S. 2011, Section 402-1, is
17 amended to read as follows:

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

22 (a) ~~Upon little cigars of all descriptions made of tobacco, or~~
23 ~~any substitute therefor, and weighing not more than three (3) pounds~~
24 ~~per thousand, two and one-half (2 1/2) mills for each cigar.~~

1 ~~Provided, that the tax levied on the products coming under this~~
2 ~~paragraph shall not apply if the tax on such products is reported~~
3 ~~and paid as cigarette tax under Sections 301 through 325 of this~~
4 ~~title.~~

5 ~~(b)~~ Upon cigars of all descriptions made of tobacco, or any
6 substitute therefor, and weighing more than three (3) pounds per
7 thousand, and having a manufacturer's recommended retail selling
8 price, under the Federal Code, of more than four cents (\$0.04) for
9 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
10 computing the tax, cheroots, stogies, etc., are hereby classed as
11 cigars;

12 ~~(e)~~ (b) Upon all smoking tobacco including granulated, plug cut,
13 crimp cut, ready rubbed and other kinds and forms of tobacco
14 prepared in such manner as to be suitable for smoking in a pipe or
15 cigarette, the tax shall be fifteen percent (15%) of the factory
16 list price exclusive of any trade discount, special discount or
17 deals; and

18 ~~(d)~~ (c) Upon chewing tobacco, smokeless tobacco, and snuff, the
19 tax shall be ten percent (10%) of the factory list price exclusive
20 of any trade discount, special discount or deals.

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

23 ~~(e)~~ (d) The tax herein levied on tobacco products shall be
24 evidenced by stamps and collected on the same basis and in the same

1 manner and in all respects as the tax levied by the Tobacco Products
2 Tax Law. The revenue from this additional tax shall be apportioned
3 by the Oklahoma Tax Commission in the same manner as provided in
4 Section 404 of this title, for the apportionment of other tobacco
5 products tax revenue.

6 SECTION 3. AMENDATORY 68 O.S. 2011, Section 402-3, is
7 amended to read as follows:

8 Section 402-3. A. In addition to the tax levied in Sections
9 402, and 402-1 ~~and 402-2~~ of this title, effective January 1, 2005,
10 there shall be levied, assessed, collected, and paid in respect to
11 the articles containing tobacco enumerated in Section 401 et seq. of
12 this title, a tax in the following amounts:

13 1. ~~Little Cigars. Upon cigars of all descriptions made of~~
14 ~~tobacco, or any substitute therefor, and weighing not more than~~
15 ~~three (3) pounds per thousand, twenty-seven (27) mills for each~~
16 ~~cigar. Provided, that the tax levied on the products coming under~~
17 ~~this paragraph shall not apply if the tax on such products is~~
18 ~~reported and paid as cigarette tax under Sections 301 through 325 of~~
19 ~~this title;~~

20 2. Cigars. Upon all ~~other~~ cigars of all descriptions made of
21 tobacco, or any substitute therefor, and weighing more than three
22 (3) pounds per thousand, Ninety Dollars (\$90.00) per thousand. For
23 the purpose of computing the tax, cheroots, stogies, etc., are
24 hereby classed as cigars;

1 ~~3.~~ 2. Smoking Tobacco. Upon all smoking tobacco including
2 granulated, plug cut, crimp cut, ready rubbed and other kinds and
3 forms of tobacco prepared in such manner as to be suitable for
4 smoking in a pipe or cigarette, the tax shall be forty percent (40%)
5 of the factory list price exclusive of any trade discount, special
6 discount or deals; and

7 ~~4.~~ 3. Chewing Tobacco. Upon chewing tobacco, smokeless
8 tobacco, and snuff, the tax shall be thirty percent (30%) of the
9 factory list price exclusive of any trade discount, special discount
10 or deals.

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

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

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

22 3. Before July 1, 2008, seven and fifty-hundredths percent
23 (7.50%) shall be placed to the credit of the Trauma Care Assistance
24 Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the

1 Oklahoma Statutes. On and after July 1, 2008, seven and fifty-
2 hundredths percent (7.50%) shall be allocated as follows:

3 a. every month, an amount equal to the actual amount
4 placed to the credit of the Trauma Care Assistance
5 Revolving Fund pursuant to this paragraph for the same
6 month of the 2008 fiscal year shall be credited to the
7 Trauma Care Assistance Revolving Fund,

8 b. every month, any amount over and above the amount
9 placed to the credit of the Trauma Care Assistance
10 Revolving Fund pursuant to subparagraph a of this
11 paragraph shall be credited to the Oklahoma Emergency
12 Response Systems Stabilization and Improvement
13 Revolving Fund as created in Section 8 of this act
14 until the combined amount credited to the Oklahoma
15 Emergency Response Systems Stabilization and
16 Improvement Revolving Fund pursuant to this section
17 and Section 302-5 of this title is equal to Two
18 Million Five Hundred Thousand Dollars (\$2,500,000.00)
19 each year, and

20 c. any additional revenue allocated pursuant to this
21 paragraph shall be placed to the credit of the Trauma
22 Care Assistance Revolving Fund;

23 4. Three and nine-hundredths percent (3.09%) shall be placed to
24 the credit of the Oklahoma State University College of Osteopathic

1 Medicine Revolving Fund created in Section 160.2 of Title 62 of the
2 Oklahoma Statutes;

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

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

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

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

22 9. Two and seven-hundredths percent (2.07%) shall be placed to
23 the credit of the Education Reform Revolving Fund created in Section
24 ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes;

1 10. Sixty-six-hundredths percent (.66%) shall be placed to the
2 credit of the Tobacco Prevention and Cessation Revolving Fund
3 created in Section 1-105d of Title 63 of the Oklahoma Statutes;

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

6 12. For fiscal years beginning July 1, 2004, and ending June
7 30, 2006, fourteen and twenty-three-hundredths percent (14.23%)
8 shall be apportioned to municipalities and counties that levy a
9 sales tax, in the proportions which total municipal and county sales
10 tax revenue was apportioned by the Tax Commission in the preceding
11 month.

12 For fiscal years beginning July 1, 2006, and thereafter, the
13 apportionment percentage specified in paragraph 12 of this
14 subsection will be adjusted by dividing the total municipal and
15 county sales tax revenue collected in the calendar year immediately
16 preceding the commencement of the fiscal year by the sum of the
17 state sales tax revenue and total municipal and county sales tax
18 revenue collected in the same year. This ratio shall be divided by
19 the ratio of the total municipal and county sales tax revenue
20 collected in the calendar year beginning January 1, 2004, and ending
21 December 31, 2004, divided by the sum of the state sales tax revenue
22 and total municipal and county sales tax revenue collected in the
23 same year. The resulting quotient shall be multiplied by fourteen
24

1 and twenty-three-hundredths percent (14.23%) to determine the
2 apportionment percentage for the fiscal year.

3 For fiscal years beginning July 1, 2006, and thereafter, any
4 adjustment to the percentage of revenues apportioned to
5 municipalities and counties shall be reflected in the percent of
6 revenues apportioned to the General Revenue Fund.

7 C. The net amount of any revenue resulting from a payment in
8 lieu of excise taxes on little cigars, cigars, smoking tobacco and
9 chewing tobacco levied by this section, pursuant to a compact with a
10 federally recognized Indian tribe or nation after deductions for
11 deposits into trust accounts pursuant to such compacts, shall be
12 apportioned by the Tax Commission and transmitted to the State
13 Treasurer as follows:

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

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

22 3. Before July 1, 2008, eleven and thirty-nine-hundredths
23 percent (11.39%) shall be placed to the credit of the Trauma Care
24 Assistance Revolving Fund created in Section ~~1-2522~~ 1-2530.9 of

1 Title 63 of the Oklahoma Statutes. On and after July 1, 2008,
2 eleven and thirty-nine-hundredths percent (11.39%) shall be
3 allocated as follows:

4 a. every month, an amount equal to the actual amount
5 placed to the credit of the Trauma Care Assistance
6 Revolving Fund pursuant to this paragraph for the same
7 month of the 2008 fiscal year shall be credited to the
8 Trauma Care Assistance Revolving Fund,

9 b. every month, any amount over and above the amount
10 placed to the credit of the Trauma Care Assistance
11 Revolving Fund pursuant to subparagraph a of this
12 paragraph shall be credited to the Oklahoma Emergency
13 Response Systems Stabilization and Improvement
14 Revolving Fund as created in Section & 1-2512.1 of
15 ~~this act~~ Title 63 of the Oklahoma Statutes until the
16 combined amount credited to the Oklahoma Emergency
17 Response Systems Stabilization and Improvement
18 Revolving Fund pursuant to this section and Section
19 302-5 of this title is equal to Two Million Five
20 Hundred Thousand Dollars (\$2,500,000.00) each year,
21 and

22 c. any additional revenue allocated pursuant to this
23 paragraph shall be placed to the credit of the Trauma
24 Care Assistance Revolving Fund;

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

5 5. Forty and six-hundredths percent (40.06%) shall be placed to
6 the credit of the Oklahoma Health Care Authority Medicaid Program
7 Fund created in Section 5020 of Title 63 of the Oklahoma Statutes
8 for the purposes of maintaining programs and services funded under
9 the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003",
10 reimbursing city/county-owned hospitals, increasing emergency room
11 physician rates, and providing TEFRA 134, also known as "Katie
12 Beckett" services;

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

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

21 8. One percent (1%) shall be placed to the credit of the
22 Tobacco Prevention and Cessation Revolving Fund created in Section
23 1-105d of Title 63 of the Oklahoma Statutes.

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

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 402-4 of Title 68, unless there
6 is created a duplication in numbering, reads as follows:

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

11 Cigars. Upon all cigars of all descriptions made of tobacco, or
12 any substitute therefor, and weighing more than three (3) pounds per
13 thousand, Fifty Dollars (\$50.00) per thousand. For the purpose of
14 computing the tax, cheroots, stogies, etc., are hereby classed as
15 cigars.

16 B. The revenue from the additional tax herein levied shall be
17 apportioned by the Oklahoma Tax Commission and transmitted to the
18 State Treasurer who shall deposit such revenue in the General
19 Revenue Fund.

20 SECTION 5. REPEALER 68 O.S. 2011, Section 402-2, is
21 hereby repealed.

22 SECTION 6. This act shall become effective July 1, 2017.

23 SECTION 7. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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4 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
5 AND BUDGET, dated 04/27/2017 - DO PASS, As Amended.

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