

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 HOUSE BILL 2742

By: Caldwell (Trey)

6 AS INTRODUCED

7 An Act relating to cigarettes; amending 68 O.S. 2021,
8 Sections 301, 321, and 322, which relate to the
9 administration of cigarette excise taxes; modifying
10 definition of cigarette; providing partial exemption
11 to cigarette excise taxes for certain types of
12 products; requiring certain stamps be made available
13 on certain timeline; clarifying reference; and
14 providing an effective date.

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

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

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

19 1. The term "cigarette" is defined to mean and include all
20 rolled tobacco ~~or any substitute therefor,~~ wrapped in paper or any
21 substitute therefor, intended to be heated or burned, and weighing
22 not to exceed three (3) pounds per thousand cigarettes;

23 2. The term "person" is defined to mean and include any
24 individual, company, partnership, joint venture, joint agreement,
association (mutual or otherwise), limited liability company,
corporation, estate, trust, business trust receiver, or trustee

1 appointed by any state or federal court, or otherwise, syndicate, or
2 any political subdivision of the state or combination acting as a
3 unit, in the plural or singular number;

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

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

22 In addition to the foregoing, and irrespective of the percentage
23 or type of sales, the term "wholesaler", "distributor" and/or
24 "jobber" shall also include all purchasers of cigarettes making

1 purchases directly from the manufacturer for distribution at
2 wholesale or retail sale and this shall not affect the requirements
3 relating to retail licenses;

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

- 5 a. a person who comes into the possession of cigarettes
6 for the purpose of selling, or who sells them at
7 retail, or
- 8 b. a person, not coming within the classification of
9 wholesaler, distributor and/or jobber as herein
10 defined, having possession of more than one thousand
11 cigarettes;

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

16 6. The term "Tax Commission" is defined to mean the Oklahoma
17 Tax Commission;

18 7. The term "sale" and/or "sales" is hereby defined to be and
19 declared to include sales, barters, exchanges and every other
20 manner, method and form of transferring the ownership of personal
21 property from one person to another, and is also declared to be the
22 use or consumption in this state in the first instance of cigarettes
23 received from without the state or of any other cigarettes upon
24 which the tax has not been paid. The term "first sale" shall mean

1 and include the first sale or distribution of cigarettes in
2 intrastate commerce or the first use or consumption of cigarettes
3 within this state;

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

- 6 a. the tax levied pursuant to the provisions of Section
7 301 et seq. of this title is paid,
- 8 b. the tax levied pursuant to the provisions of Section
9 349 of this title is paid, or
- 10 c. the payment in lieu of taxes authorized pursuant to a
11 compact entered into by the State of Oklahoma and a
12 federally recognized Indian tribe or nation pursuant
13 to the provisions of subsection C of Section 346 of
14 this title is paid;

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

19 10. The term "distributing agent" shall mean and include every
20 person in this state who acts as an agent of any person outside the
21 state by receiving cigarettes in interstate commerce and storing
22 such cigarettes subject to distribution or delivery upon order from
23 the person outside the state to distributors, wholesale dealers and
24 retail dealers, or to consumers. The term "distributing agent"

1 shall also mean and include any person who solicits or takes orders
2 for cigarettes to be shipped in interstate commerce to a person in
3 this state by a person residing outside of Oklahoma, the tax not
4 having been paid on such cigarettes;

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

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

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

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

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

21 b. A sale of cigarettes which satisfies the criteria in
22 subparagraph a of this paragraph shall be a delivery
23 sale regardless of whether the seller is located
24 within or outside of Oklahoma.

1 c. A sale of cigarettes not for personal consumption to a
2 person who is a wholesale dealer or a retail dealer
3 shall not be a delivery sale.

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

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

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

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

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

20 18. The term "shipping documents" means bills of lading,
21 airbills, or any other documents used to evidence the undertaking by
22 a delivery service to deliver letters, packages, or other
23 containers.

1 SECTION 2. AMENDATORY 68 O.S. 2021, Section 321, is
2 amended to read as follows:

3 Section 321. The A. Except as provided in subsection B of this
4 section, the following sales are hereby exempted from the stamp
5 excise tax levied pursuant to the provisions of Section 301 et seq.
6 of this title:

7 1. All cigarettes sold to veterans hospitals and state operated
8 domiciliary homes for veterans located in the State of Oklahoma, for
9 distribution or sale to disabled ex-servicemen or disabled ex-
10 servicewomen interned in, or inmates of, such hospitals, or
11 residents of such homes;

12 2. All sales to the United States;

13 3. All sales to a federally recognized Indian tribe or nation
14 which has entered into a compact with the State of Oklahoma pursuant
15 to the provisions of subsection C of Section 1 of this act or to a
16 licensee of such a tribe or nation, upon which the payment in lieu
17 of taxes required by the compact has been paid; and

18 4. All sales to a federally recognized Indian tribe or nation
19 or to a licensee of such a tribe or nation upon which the tax levied
20 pursuant to the provisions of Section 4 of this act has been paid.

21 B. To the sale of cigarettes that are intended to be heated
22 rather than burned shall be applied a tax exemption equal to fifty
23 percent (50%) of the tax levied pursuant to subsection A of this
24 section.

1 SECTION 3. AMENDATORY 68 O.S. 2021, Section 322, is
2 amended to read as follows:

3 Section 322. The Oklahoma Tax Commission shall prescribe such
4 rules and make such regulations as to the sale or distribution of
5 cigarettes, and the exemption from the stamp excise tax thereof, as
6 shall be deemed necessary to comply with the provisions of ~~the~~
7 ~~preceding section~~ Section 301 et seq of this title, including the
8 creation of distinct stamps to affix to packages of cigarettes that
9 are intended to be heated rather than burned, and provide that such
10 stamps be made available on or before the effective date of this
11 act.

12 SECTION 4. This act shall become effective November 1, 2025.

14 60-1-10892 JM 01/07/25