

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Subchapter 2. Cigarette Stamp Tax

710:70-2-11 [AMENDED]

710:70-2-12 [REVOKED]

710:70-2-13 [REVOKED]

Subchapter 5. Excise on Tobacco Products

710:70-5-12 [AMENDED]

710:70-5-13 [AMENDED]

SUMMARY:

Sections 710:70-2-11 and 710:70-5-13 were amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

Sections 710:70-2-12 and 710:70-2-13 have been revoked because they are no longer necessary as a compliance tool due to the new compacts signed by the Governor.

Section 710:70-5-12 has been amended consistent with statutory provisions relating to tax rates imposed on Class B cigars and Commission policy regarding classification of little cigars.

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203 and 322

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., March 6, 2009, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 521-3133.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing are as follows: March 9, 2009, 10:00 a.m. in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors' building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs

expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at www.oktax.state.ok.us or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after February 17, 2009, at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-11. Requirements placed on distributors and retailers to maintain copies of invoices

(a) Distributors shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation must show the name, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction. [68 O.S. § 312.1(E)].

(b) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number. [68 O.S. § 312.1(F)].

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Audit Compliance Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450. [68 O.S. § 312.1(H)].

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction. [68 O.S. § 312.1(I)].

710:70-2-12. Limitation on sale of number of packs of cigarettes at a reduced tax rate [REVOKED]

~~(a) Sales of cigarettes by a wholesaler licensed by the Oklahoma Tax Commission (hereafter, "Wholesaler") to a tribal retailer shall be limited as set forth herein to the number of packs of cigarettes sold at a "reduced tax rate".~~

~~(b) For purposes of this Rule,~~

~~(1) "Pack" means a sealed, original package, containing twenty or twenty five cigarettes, to which the required tax stamp is affixed; and~~

~~(2) "Reduced tax rate" means the tax rate provided by Section 349 of Title 68 and the fees in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:~~

~~(A) \$0.0575 for pack of twenty cigarettes or \$0.071875 for pack of twenty five cigarettes;~~

~~(B) \$0.6075 for pack of twenty cigarettes or \$0.759375 for pack of twenty five cigarettes;~~

~~(C) \$0.3075 for pack of twenty cigarettes or \$0.384375 for pack of twenty five~~

cigarettes; or

(D) ~~\$0.2575 for pack of twenty cigarettes or \$0.321875 for pack of twenty five cigarettes.~~

(3) ~~"Tribal retailer" means a store or place of business which is duly licensed by a federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation.~~

~~(c) No Wholesaler may sell packs of cigarettes at a reduced tax rate to any tribal retailer, unless the name of the tribal retailer appearing on the order and/or invoice to be issued on the transaction also appears on the list of tribal retailers compiled and furnished by the Oklahoma Tax Commission (hereafter, "OTC") to licensed wholesalers. For purposes of compliance with this Rule, wholesalers are entitled to rely on the accuracy of the list of tribal retailers compiled and furnished by the OTC.~~

~~(d) No Wholesaler may sell to any tribal retailer, in any one calendar month, packs of cigarettes at a reduced tax rate in a quantity which exceeds one twelfth (1/12th) of a sum equal to the total amount of packs of cigarettes sold by the Wholesaler to that tribal retailer in calendar 2004, plus 10%; provided, however, that upon request to the OTC, proposed sales in excess of the allowance may be permitted upon a showing of good cause, which must include documented proof that the tribal retailer attempting the purchase has or will offer the packs of cigarettes for sale to consumers at the location of the tribal retailer.~~

~~(e) The OTC shall furnish each Wholesaler, from reports filed by that wholesaler with the OTC for calendar 2004, a computation of the amount of packs of cigarettes which may be sold at a reduced tax rate to each tribal retailer to which Wholesaler sold cigarettes in calendar 2004, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.~~

~~(f) In the event that a Wholesaler desires to sell to a tribal retailer that it did not sell to in calendar 2004, the Wholesaler shall request from the OTC a computation of the amount of packs of cigarettes purchased by the tribal retailer in calendar 2004. The request shall be accompanied by the written consent of the tribal retailer to disclose the statistical information furnished by Wholesalers concerning the tribal retailer (the original of which shall be retained in Wholesaler's records, and a copy of which shall be faxed to the OTC at 405 521-2146). The OTC will furnish the Wholesaler with a computation of the amount of packs of cigarettes that may be sold to such tribal retailer at a reduced tax rate, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.~~

~~(g) In the event that a Wholesaler desires to sell to a tribal retailer that was not in business in calendar 2004, before selling any packs of cigarettes to such tribal retailer, the Wholesaler shall contact the OTC, which will provide a statement of the number of packs of cigarettes which may be sold at a reduced rate, based upon the average, per Wholesaler, per tribal retailer in calendar 2004, plus 10%; in the event the tribal retailer claims such amount to be insufficient, an increased allowance may be requested under the procedures specified by paragraph (d) hereof.~~

~~(h) Wholesalers shall telephonically report and confirm in writing to the OTC, on the same day as received, any request of a tribal retailer for purchase of packs of cigarettes at a reduced tax rate, in a quantity which exceeds one twelfth (1/12th) of a sum equal to the total amount of cigarettes sold to that tribal retailer by the Wholesaler in calendar 2004, plus 10%.~~

~~(i) Wholesalers are subject to revocation of their cigarette and/or tobacco products licenses, sales tax permits and any other licenses or permits issued to such wholesalers by the OTC, upon the determination that such wholesalers have violated any of the provisions of this Section, and/or any other State Tax Law and/or Commission Rule applicable to such wholesalers. Such licensure revocation is in addition to, and not to the exclusion of any other remedies of the OTC,~~

including, by way of example and not limitation, liability for the cigarette stamp tax or compact payment in lieu thereof upon sales of cigarettes to tribal retailers at rates which are in violation of this Section.

~~(j) If any Wholesaler files a Cigarette Stamp Tax Report, which evidences a sale of packs of cigarettes to a tribal retailer not included on the list of tribal retailers provided the Wholesaler by the OTC, such sale shall be presumed not to constitute a sale to a tribal retailer, as defined herein, and Wholesaler shall be responsible and liable for payment of tax at the non-tribal statutory rate for all packs of cigarettes reported sold. In addition, Wholesaler is subject to imposition of an administrative penalty not exceeding 500% of the unpaid tax or payment in lieu of tax as to each pack sold. [68 O.S. § 350(A), § 324, and § 346(C)(1); 68 O.S. § 316(I)].~~

**710:70-2-13. Stamps required, applicable compact and non-compact tax rates, and refund procedures relating to sales of packs of cigarettes to tribal retailers
[REVOKED]**

~~(a) A compact tax stamp or a non-compact tax stamp must be affixed on each pack of cigarettes sold to tribal retailers in the rates and in the manner as set forth herein.~~

~~(b) For purposes of this Rule,~~

~~(1) "Pack" means a sealed, original package, containing twenty or twenty five cigarettes, to which the required tax stamp is affixed; and~~

~~(2) "Compact tax rate" means the rate of payment in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:~~

~~(A) \$0.8575 for pack of twenty cigarettes or \$1.071875 for pack of twenty five cigarettes;~~

~~(B) \$0.6075 for pack of twenty cigarettes or \$0.759375 for pack of twenty five cigarettes;~~

~~(C) \$0.3075 for pack of twenty cigarettes or \$0.384375 for pack of twenty five cigarettes;~~

~~(D) \$0.2575 for pack of twenty cigarettes or \$0.321875 for pack of twenty five cigarettes; or~~

~~(E) \$0.0575 for pack of twenty cigarettes or \$0.071875 for pack of twenty five cigarettes.~~

~~(3) "Non-compact tax rate" means that tax rate provided by Section 349 of Title 68 at the following rate of \$0.7725 for pack of twenty cigarettes or \$0.965625 for pack of twenty five cigarettes.~~

~~(4) "Tribal retailer" means a store or place of business which is duly licensed by a federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation.~~

~~(c) The compact tax stamp provided in Rule 710:70-7-4(1) shall only be sold at the rate of \$0.8575 for pack of twenty cigarettes or the rate of \$1.071875 for pack of twenty five cigarettes. The rates shall be applicable for all sales to retailers licensed by a federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma.~~

~~(d) The non-compact tax stamp provided in Rule 710:70-7-4(2) shall only be sold at the rate of \$0.7725 for pack of twenty cigarettes or the rate of \$0.965625 for pack of twenty five cigarettes. The rate shall be applicable for all sales to tribal retailers owned and operated or licensed by a federally recognized Indian tribe or nation that has not entered into a compact with the State of Oklahoma.~~

~~(e) A federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma may receive a refund for a portion of the rate paid pursuant to paragraph (c) of this rule. The amount of refund shall equal the rate paid less the compact tax rate applicable to the location of the tribal retailer provided in the tribal state compact.~~

~~(f) All tribal retailers of a compacting tribe or nation shall keep the following documentation to claim a refund as provided herein. These records shall be submitted on behalf of the tribe or nation as its claim for refund. Such documentation may be submitted at any time to the Tax Commission in order to substantiate the refund claim for purchases made within one year of the filing of the claim. Such documentation shall include copies of invoices detailing the:~~

- ~~(1) Date of purchase;~~
- ~~(2) Name of the tribal retailer that purchased the packs of cigarettes;~~
- ~~(3) Name of wholesaler from whom the packs of cigarettes were purchased;~~
- ~~(4) Quantity of each denomination purchased; and~~
- ~~(5) The amount of compact tax rate paid by the tribal retailer.~~

~~(g) All documentation shall be sent to the Excise Tax Section/Audit Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd, Oklahoma City, OK 73194. Upon review by the Audit Division, a refund will be remitted based on verifiable purchases qualifying for refund.~~

~~(h) Refunds shall be paid to the compacting tribe or nation on a monthly basis.~~

~~(i) Any refunds for packs of cigarettes purchased by a tribal retailer in excess of one hundred twenty percent (120%) of the total amount of packs of cigarettes purchased by the tribal retailer during the calendar year of 2004 shall only be paid if the tribal retailer provides documentation to the satisfaction of the Audit Division that the amount of packs of cigarettes purchased are or were offered for sale to consumers at the location of the tribal retailer.~~

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-12. Oklahoma tobacco products tax rates

(a) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories acquired on or after January 1, 2005.

(b) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rates are:

- (1) For little (Class A) cigars: \$0.036 each.
- (2) For Class B cigars: ~~\$0.11~~ \$0.10 each.
- (3) For all other (Class C) cigars: \$0.12 each.
- (4) For smoking tobacco: Eighty percent (80%) of the Factory List Price.
- (5) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

(c) **Classification of little (Class A) cigars.** The term "little cigar" shall mean cigars of all descriptions made of tobacco, or any substitute therefore, and weighing not more than three (3) pounds per thousand. Absent evidence to the contrary cigars with a ring size of 20 or less shall be considered little cigars.

710:70-5-13. Requirements placed on distributors and retailers to maintain copies of invoices with certain information that must be shown on each invoice

(a) Distributors of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the distributor's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction. [68 O.S. Section 420.1(A)]

(b) Retailers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco

products at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, and the retail cigarette license number or sales tax license number. [68 O.S. § 420.1(B)]

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the ~~Audit~~ Compliance Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.