

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2876

By: Wallace

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7 COMMITTEE SUBSTITUTE

8 An Act relating to revenue and taxation; creating the  
9 Vapor Products Tax Code; defining terms; declaring  
10 purpose of tax; levying an excise tax on e-liquids;  
11 establishing amount of tax per unit of e-liquid;  
12 providing duties, process, and timing for remittance;  
13 making declaration as to person liable for tax;  
14 requiring certain presumption; providing that e-  
15 liquids continue to be subject to sales tax; making  
16 declaration as to nature of tax; requiring retention  
17 of certain documents by certain entities for certain  
18 period of time; requiring certain documents be made  
19 available for inspection during certain periods;  
20 providing for apportionment of revenues; creating the  
21 Vapor Products Regulation Revolving Fund; providing  
22 revolving fund characteristics; declaring funds  
23 accruing to the fund appropriated; authorizing  
24 expenditure of funds by the Alcoholic Beverage Laws  
Enforcement Commission for certain purpose; providing  
process for expenditure; providing for codification;  
and providing an effective date.

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 1551 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 "Vapor Products Tax Code".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1552 of Title 68, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Vapor Products Tax Code:

7 1. "Act" or "this act" means the Vapor Products Tax Code;

8 2. "Commission" means the Oklahoma Tax Commission;

9 3. "E-liquid" means a liquid that may contain nicotine,

10 flavorings or other ingredients that are intended for use in a vapor  
11 product.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1553 of Title 68, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. For the purpose of providing revenue for the support of the  
16 functions of state government, there is hereby levied an excise tax  
17 of ten cents (\$0.10) per milliliter on all e-liquid imported or  
18 manufactured, for sale, use or distribution, or used or possessed in  
19 this state.

20 B. The excise tax levied under subsection A of this section  
21 shall be paid as follows:

22 1. Payment of such tax shall be made by the person shipping the  
23 product into Oklahoma, or in the case of direct imports from foreign  
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1 countries by the importer, or in the case of e-liquids manufactured  
2 in Oklahoma by the first seller thereof; and

3 2. Due and payable excise taxes levied by this section shall be  
4 remitted electronically simultaneously with tax returns  
5 electronically filed with the Commission using procedures prescribed  
6 by the Commission. The tax returns shall be made under oath by the  
7 person liable for the tax on forms prescribed and provided by the  
8 Commission and shall be accompanied by payment of the taxes due and  
9 any additional sums due as provided by this section. Tax returns  
10 and payment of excise tax and other sums due shall be electronically  
11 filed with the Commission no later than the fifteenth day of the  
12 month immediately succeeding the month of shipment, importation or  
13 first sale of the e-liquids as provided in paragraph 1 of this  
14 section.

15 C. For the purpose of collecting and remitting the excise tax  
16 imposed under this section, the person liable for such tax is hereby  
17 declared to be the agent of the state for such purposes.

18 D. The Commission shall consider it a presumption that all e-  
19 liquids delivered to a retailer in this state shall be used and  
20 consumed within this state.

21 E. The retail sale of e-liquids shall continue to be subject to  
22 the sales tax statutes enacted by the Legislature.

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1           SECTION 4.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1504 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4           The excise tax levied by the Vapor Products Tax Code is hereby  
5 declared and intended to be a direct tax upon the ultimate retail  
6 consumer of e-liquids in this state, and when such tax is paid by,  
7 or collected from, any other person, as herein provided for, such  
8 payment shall be considered as an advance payment for convenience  
9 and facility only, and such tax shall thereafter be added to the  
10 price of such e-liquid and recovered from the ultimate retail  
11 consumer thereof.

12           SECTION 5.           NEW LAW           A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1505 of Title 68, unless there  
14 is created a duplication in numbering, reads as follows:

15           Copies of all invoices for the purchase or sale of any e-liquids  
16 shall be retained by each manufacturer, distributor, and retailer  
17 for a period of not less than three (3) years from the date of such  
18 transaction. Upon the request of the Commission such documents, in  
19 physical or electronic form, shall be made available to the  
20 Commission for inspection by the Commission and their authorized  
21 agents, provided such requests occur during the normal business  
22 hours of the manufacturer, distributor, or retailer.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1506 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 All revenue accruing from the excise tax levied by Section 3 of  
5 this act shall be collected by the Commission and distributed as  
6 follows:

- 7 1. For fiscal years ending on or prior to June 30, 2023:
  - 8 a. fifty percent (50%) to the Vapor Products Regulation  
9 Revolving Fund created pursuant to Section 7 of this  
10 act, and
  - 11 b. fifty percent (50%) to the General Revenue Fund;
- 12 2. For fiscal years beginning on or after July 1, 2023:
  - 13 a. seventy-five percent (75%) to the General Revenue  
14 Fund; and
  - 15 b. twenty-five percent (25%) to the Vapor Products  
16 Regulation Revolving Fund created pursuant to Section  
17 7 of this act.

18 SECTION 7. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 5-128.1 of Title 37A, unless  
20 there is created a duplication in numbering, reads as follows:

21 There is hereby created in the State Treasury a revolving fund  
22 for the Alcoholic Beverage Laws Enforcement Commission to be  
23 designated the "Vapor Products Regulation Revolving Fund". The fund  
24 shall be a continuing fund, not subject to fiscal year limitations,

1 and shall consist of all monies designated for deposit in the fund  
2 by law. All monies accruing to the credit of said fund are hereby  
3 appropriated and may be budgeted and expended by the Alcoholic  
4 Beverage Laws Enforcement Commission for the purpose of regulating  
5 vapor products as required by law. Expenditures from said fund  
6 shall be made upon warrants issued by the State Treasurer against  
7 claims filed as prescribed by law with the Director of the Office of  
8 Management and Enterprise Services for approval and payment.

9 SECTION 8. This act shall become effective January 1, 2022.

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