

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2876

By: Wallace

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5
6 AS INTRODUCED

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

Sections 1 through 7 of this act shall be known and may be cited
as the "Vapor Products Tax Code".

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

4 As used in the Vapor Products Tax Code:

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

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

7 3. "E-liquid" means a liquid that may contain nicotine,
8 flavorings or other ingredients that are intended for use in a vapor
9 product.

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

13 A. For the purpose of providing revenue for the support of the
14 functions of state government, there is hereby levied an excise tax
15 of \$0.05 per milliliter on all e-liquid imported or manufactured,
16 for sale, use or distribution, or used or possessed in this state.

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

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

23 2. Due and payable excise taxes levied by this section shall be
24 remitted electronically simultaneously with tax returns

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

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

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

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

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

22 The excise tax levied by the Vapor Products Tax Code is hereby
23 declared and intended to be a direct tax upon the ultimate retail
24 consumer of e-liquids in this state, and when such tax is paid by,

1 or collected from, any other person, as herein provided for, such
2 payment shall be considered as an advance payment for convenience
3 and facility only, and such tax shall thereafter be added to the
4 price of such e-liquid and recovered from the ultimate retail
5 consumer thereof.

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

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

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

20 All revenue accruing from the excise tax levied by Section 3 of
21 this act shall be collected by the Commission and distributed as
22 follows:

- 23 1. For fiscal years ending on or prior to June 30, 2023:

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1 a. fifty percent (50%) to the Vapor Products Regulation
2 Revolving Fund created pursuant to Section 7 of this
3 act, and

4 b. fifty percent (50%) to the General Revenue Fund;

5 2. For fiscal years beginning on or after July 1, 2023:

6 a. seventy-five percent (75%) to the General Revenue
7 Fund; and

8 b. twenty-five percent (25%) to the Vapor Products
9 Regulation Revolving Fund created pursuant to Section
10 7 of this act.

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

14 There is hereby created in the State Treasury a revolving fund
15 for the Alcoholic Beverage Laws Enforcement Commission to be
16 designated the "Vapor Products Regulation Revolving Fund". The fund
17 shall be a continuing fund, not subject to fiscal year limitations,
18 and shall consist of all monies designated for deposit in the fund
19 by law. All monies accruing to the credit of said fund are hereby
20 appropriated and may be budgeted and expended by the Alcoholic
21 Beverage Laws Enforcement Commission for the purpose of regulating
22 vapor products as required by law. Expenditures from said fund
23 shall be made upon warrants issued by the State Treasurer against
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1 claims filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

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

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