

PART 8

TOBACCO TAX

Section 801 – Definitions

(a) The term “cigarette” is defined to mean and include all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore and weighing not to exceed three (3) pounds per thousand (1000) cigarettes.

(b) The term “person” is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Title can be applied.

(c) The term “wholesaler” is defined to mean and include any jobber or person organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who renders such services to retailers within the jurisdiction of the Comanche Nation; that at least 75% of the whole gross sales within the jurisdiction of the Tribe are made at wholesale.[◇] Irrespective of the foregoing requirements, any jobber or a person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principle place of business shall be a wholesaler as defined by this Title, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this Title.

(d) The term “retailer” is defined to mean and include any person who comes into possession of cigarettes or tobacco products for the purpose of selling or who sells them at retail, any person not coming within the definition of a wholesaler having possession of more than one thousand (1000) cigarettes, and any person operating one or more vending machines.[◇]

(e) The term “consumer” is defined to mean and include any person who receives or comes into possession of cigarettes or tobacco products for the purpose of consuming or otherwise disposing of them in anyway except by an exchange for value; provided that, because it is a violation of Section 538 of the Comanche Nation Code of Criminal Offenses to purchase, obtain, possess, smoke, chew, inhale, or ingest any product made from or with tobacco if under the age of eighteen years, and to sell to, or otherwise obtain for or arrange for the obtaining of tobacco or a tobacco product for a person under the age of eighteen, or to knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation, “consumer” shall not include persons who are under the age of eighteen.**

(f) The term “Tax Commission” is defined to mean and include the Tax Commission of the Comanche Nation.[◇]

(g) The term “sale” or “sales” is defined to mean and include all sales, barter, exchanges, or other transfers of ownership of cigarettes or tobacco products from one person to another, or the use or consumption within the Tribal jurisdiction.

(h) The term “tobacco product” or “other tobacco product” is defined to mean any product of any species of the tobacco plant, including any smokeless tobacco for dipping, sniffing or chewing, smoking tobacco suitable for smoking in pipes or rolling into cigarettes, any roll of tobacco for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute thereof not included within the definition of cigarette.◊

(i) The term “vending machines” is defined to mean and include any coin operated machine by means of which cigarettes, or tobacco products, are sold or dispensed.

(j) The term “use” is defined to mean and include the exercise of any right or power or power over cigarettes or tobacco products incident to the ownership thereof except sales of cigarettes or tobacco products in the regular course of business.

(k) The term “tribal jurisdiction” means those areas over which the Comanche Nation has jurisdiction, including all tribal lands, dependent Indian communities and trust allotments, as defined in 18 U.S.C. Section 1151. The tribal jurisdiction of the Comanche Nation is concurrent with the Kiowa Indian Tribe and the Apache Indian Tribe with respect to the commonly held lands of the Kiowa, Comanche, and Apache Indian Tribes, such lands referred to as the KCA lands.◊

[History: Added by PUBLIC LAW #03-96, January 06, 1996 ;as amended by PUBLIC LAW #60-04, July 10, 2004**; as amended by PUBLIC LAW # 106-08, July 12, 2008◊.]

Section 802 – Tax on Cigarettes

(a) There is hereby levied upon the retail sale, use, gift, possession, or consumption of cigarettes **within** the tribal jurisdiction a tax of fifteen cents (\$0.15) for each package of cigarettes containing twenty (20) cigarettes or less. On any individual package containing twenty-five (25) cigarettes there is hereby levied a tax of eighteen and 8/10s cents (\$0.188) for each package.◊

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW # 032-98, February 25, 1998; as amended by PUBLIC LAW # 70-01, October 6, 2001 as amended by PUBLIC LAW # 22-02, April 6, 2002;as amended by PUBLIC LAW #40-02, July17, 2002; as amended by PUBLIC LAW # 106-08, July 12, 2008◊.]

(b) There is hereby levied upon the wholesale sale of cigarettes **to a retailer not within the tribal jurisdiction** by a tribally licensed wholesaler whose place of business, warehouse, or wholesale outlet is within the tribal jurisdiction, a tax of one percent (1%) of invoice amount for each package of cigarettes containing twenty (20) cigarettes or less. On any individual package containing more than twenty (20) cigarettes there is hereby levied a tax of one percent (1%) of invoice amount.

[History, added by PUBLIC LAW #70-01, October 6, 2001.]

Section 803 – Tax on Other Tobacco Products

(a) There is hereby levied upon the sale, use, gift, possession, or consumption of Tobacco products, other than cigarettes taxed pursuant to Section 802, **within** the Tribal Jurisdiction a tax of fourteen and 6/10s percent (14.6%) of the current State of Oklahoma tax exclusive of any trade discount, special discounts, or deals.[◇]

(b) There is hereby levied upon the wholesale sale of tobacco products **to a retailer not within the tribal jurisdiction** by a tribally licensed wholesaler whose place of business, warehouse, or wholesale outlet is within the tribal jurisdiction, a tax of one percent (1%) of invoice amount for each package of tobacco products.

[History: Added by PUBLIC LAW #03-96, January 06, 1996;as amended by PUBLIC LAW # 032-98, February 25, 1998; as amended by PUBLIC LAW # 70-01, October 6, 2001 as amended by PUBLIC LAW # 22-02, April 6, 2002;as amended by PUBLIC LAW #40-02, July 17, 2002; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 804 – Tax in Lieu of Other Taxes

The taxes levied by Sections 802 and 803 of this Title on cigarettes, and tobacco products respectively shall be in lieu of all other forms of tax including sales and other general taxes imposed by law.

[History: Added by PUBLIC LAW #03-96, January 06, 1996.]

Section 805 – Tax Paid Once

Such Taxes pursuant to Sections 802 and 803 shall be paid only once on any cigarettes or tobacco products sold, used, received, or possessed with the Tribal jurisdiction.

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW #70-01, October 6, 2001.]

Section 806 – Impact of Tax

The impact of the taxes imposed by this chapter is declared to be on the consumer, user, or possessor and when such tax is paid by any other person that payment shall be considered an advance payment and shall be added to the price to be recovered from the ultimate user, possessor, or consumer. Every wholesaler who has collected such taxes shall, and every retailer who has paid such taxes may, show the amount of such taxes as a separate item on any invoices which they issue.[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996. as amended by PUBLIC LAW #70-01, October 6, 2001; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 807 – Payment of Tax

(a) Every wholesaler who operates within the Tribal jurisdiction a warehouse, supply house, storage house, truck or other point from which distribution of cigarettes, or tobacco products to retailers or vending machines is made shall upon withdrawal from storage, and prior to placing in a vending machine or making any sale, distribution or transfer of possession or ownership of any such cigarettes, or tobacco products, cause the same to have affixed thereto such stamp or stamps as are required by this Title.

(b) Every retailer who comes into possession or ownership of any cigarettes, or tobacco products from any source which does not have affixed thereto the proper stamps or for which the taxes levied by Sections 802 and 803 have not been paid shall, within seventy-two (72) hours of receipt thereof excluding Sundays and legal holidays and prior to making any sale or distribution for consumption, cause the same to have affixed thereto such stamp or stamps and/or pay said taxes as are required by this Title.◊

(c) Every consumer who shall come into possession or ownership of cigarettes, or tobacco products from any source which does not have affixed thereto the proper stamp or stamps or for which the taxes levied by Sections 802 and 803 have not been paid shall, within seventy-two (72) hours and prior to the consumption, gift, or other use thereof, cause the same to have affixed thereto such stamp or stamps and/or pay said taxes as are required by this Title.**◊

(d) Every wholesaler shall remit to the Tax Commission total taxes due as provided in Section 802 herein on or before the tenth (10th) day of every month for sales of cigarettes to licensed retailers of the Tax Commission occurring during the preceding calendar month.◊

(e) Every wholesaler shall remit to the Tax Commission total taxes due as provided in Section 803 herein on or before the fifteenth (15th) day of every month for sales of other tobacco products to licensed retailers of the Tax Commission occurring during the preceding calendar month.◊

[History: Added by PUBLIC LAW #03-96, January 06, 1996;as amended by PUBLIC LAW # 058-98, July 11, 1998. as amended by PUBLIC LAW # 25-01, March 22, 2001.** as amended by PUBLIC LAW # 80-01, December 1, 2001 **; as amended by PUBLIC LAW # 106-08, July 12, 2008◊.]

Section 808 – Exclusions from Taxation

(a) Notwithstanding any other provision, if any natural person who shall come into possession or ownership of cigarettes or tobacco products outside the territorial jurisdiction of the Tribe for personal use and consumption only, and upon which is affixed evidence showing that any taxes imposed by the jurisdiction from which said cigarettes or tobacco products were acquired to have been paid shall have exempted from payment of taxes pursuant to this Title the following amount of each of the following possession and/or ownership at any one time:

- (1) Cigarettes – one thousand (1000) individual cigarettes;

(2) Cigars – five hundred (500) individual cigars; and

(3) Other tobacco products – no more than two (2) pounds total.[◇]

Possession, gift, or use of noncommercial privately produced tobacco for religious or ceremonial use shall be exempt from taxation.; provided, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 809 – Tobacco Contraband

(a) Any unstamped or improperly stamped cigarettes or tobacco products, or any cigarettes or tobacco products from a manufacturer which does **not** appear on the then-current Oklahoma Attorney General’s list of manufacturers complying with the Master Settlement Agreement, found in the custody or control of any person and any vehicles or tangible personal property including vending machines used in their transportation, storage, consumption, or concealment, are hereby declared to be contraband and subject to seizure, forfeiture, and sale.[◇]

(b) The forfeiture provisions of this Section with regard to vehicles and other personal property shall apply only to persons in possession of cigarettes or tobacco products with the intent to sell, barter, give away, or exchange the same for value, provided, that possession of more than one thousand (1000) cigarettes or five hundred (500) cigars, or two (2) pounds of tobacco products shall create a rebuttable presumption and prima facie evidence that such cigars, cigarettes, or tobacco products are possessed with the intent to sell, barter, give away, or exchange the same for value.[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 810 – Records

The Tax Commission shall promulgate rules requiring that all wholesalers and retailers of tobacco within the Tribal jurisdiction shall maintain for not less than three years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of. The Tax Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold otherwise disposed of by said wholesaler or retailer.

[History: Added by PUBLIC LAW #03-96, January 06, 1996.]

Section 811 – Reports

Every wholesaler or retailer of tobacco shall submit monthly reports to the Tax Commission on forms prescribed and furnished by the Tax Commission, as follows:

(a) Wholesalers shall report the quantity of **cigarettes sold** to each retailer during the preceding calendar month on or before the **tenth (10th) day** of every month;[◇]

(b) Retailers shall report the quantity of **cigarettes purchased** from each wholesaler during the preceding calendar month on or before the **tenth (10th) day** of every month;[◇]

(c) Wholesalers shall report the quantity of **other tobacco products sold** to each retailer during the preceding calendar month on or before the **fifteenth (15th) day** of every month; and[◇]

(d) Retailers shall report the quantity of **other tobacco products purchased** from each wholesaler during the preceding calendar month on or before the **fifteenth (15th) day** of every month.[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 812 – Wholesale and Retail Stocks to be Separate

Every person who is both a wholesaler and retailer of cigarettes and/or tobacco shall keep separate records, make separate reports, and keep all stock of cigarettes and/or tobacco separated and identifiable for the wholesale and retail portions of his business.

[History: Added by PUBLIC LAW #03-96, January 06, 1996; as amended by PUBLIC LAW #70-01, October 6, 2001.]

Section 813 – Wholesaler Licensing

Every wholesaler of cigarettes and/or tobacco must apply for and receive from the Tax Commission a “Tobacco Wholesaler License” prior to establishing any place of business, warehouse, or wholesale outlet for the sale of cigarettes and/or tobacco within the Tribal jurisdiction or commencing the sale of cigarettes and/or tobacco products to retailers within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

[History: Added by PUBLIC LAW #03-96, January 06, 1996. as amended by PUBLIC LAW #70-01, October 6, 2001]

Section 814 – Tobacco Wholesaler License

The “Tobacco Wholesaler License” shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a wholesaler may establish a place of business, warehouse, or warehouse outlet. The license shall be conspicuously posted in a public area in each such place of business, warehouse, or wholesale outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

[History: Added by PUBLIC LAW #03-96, January 06, 1996.]

Section 815 – Wholesaler Agreement

(a) Wholesalers licensed or regarded to be licensed by the Tax Commission pursuant to Section 813 of this Part are prohibited from selling cigarettes and/or tobacco products to retailers within the Tribal jurisdiction that are not licensed by the Tax Commission pursuant to Section 816.**[◇]

(b) Every licensed wholesaler of tobacco must comply with provisions of the Comanche Nation/Oklahoma State Tobacco Tax Compact.**[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996;
as amended by PUBLIC LAW # 058-98, July 11, 1998.** as amended by PUBLIC LAW #70-01, October 6, 2001**; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 816 – Retailer Licensing

Every retailer of tobacco must apply for and receive from the Tax Commission a “Tobacco Retailer License” prior to establishing any place of business or retail outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

[History: Added by PUBLIC LAW #03-96, January 06, 1996.]

Section 817 – Tobacco Retailer License

The “Tobacco Retailer License” shall be valid for one calendar year from the date of issue and shall be non-transferable and non-assignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of one hundred dollars (\$100.00) shall be paid for each new or renewal license issued.**

[History: Added by PUBLIC LAW #03-96, January 06, 1996;
as amended by PUBLIC LAW #030-99, April 3, 1999**.]

Section 818 – Retailer Agreement

(a) Every licensed retailer of tobacco must purchase cigarettes and tobacco products from a wholesaler who is licensed by the Tax Commission.**[◇]

(b) Every licensed retailer must comply with provisions of the Comanche Nation/Oklahoma State Tobacco Tax Compact.**[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996;as amended by PUBLIC LAW #058-98, July 11, 1998.**,**; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 819 – Penalties

(a) Every retailer or wholesaler who shall fail to pay over the taxes imposed by this Part, shall be liable for the full amount of the taxes owed plus interest at the statutory rate until paid, plus any penalties levied by the Tax Commission pursuant to its regulations.**[◇]

(b) Willful failure by retailer or wholesaler to pay over the taxes imposed by this Part, shall be just cause for retail or wholesale tobacco license to be revoked.**

(c) Any licensed retailer who knowingly purchases cigarettes and tobacco products from wholesaler not licensed by the Tax Commission shall be just cause for retail tobacco license to be revoked.**[◇]

(d) Any licensed wholesaler who knowingly sells cigarettes and tobacco products to retailers within the Tribal jurisdiction that are not licensed by the Tax Commission shall be just cause for wholesaler tobacco licensees to be revoked.**[◇]

[History: Added by PUBLIC LAW #03-96, January 06, 1996;as amended by PUBLIC LAW #058-98, July 11, 1998 ** as amended by PUBLIC LAW #70-01, October 6, 2001**; as amended by PUBLIC LAW #21-02, April 6, 2002; as amended by PUBLIC LAW # 106-08, July 12, 2008[◇].]

Section 820 – Vending Machine Permits

(a) Every wholesaler or retailer of tobacco must apply for and receive from the Tax Commission a “Tobacco Vending Machine Permit” prior to operating any vending machine within the Tribal jurisdiction. Forms for such applications and permits shall be provided by the Tax Commission.

(b) The “Tobacco Vending Machine Permit” shall be valid for one calendar year from the date of issue and shall be non-transferable and non-assignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing tobacco there from. A fee of ten dollars (\$10.00) shall be paid for each new or renewal permit issued.

(c) Any operating vending machine from which tobacco may be purchased not having a “Tobacco Vending Machine Permit” attached thereto is contraband and within the Tribal jurisdiction and is subject to seizure and sale as is provided by law.

[History: Added by PUBLIC LAW #03-96, January 06, 1996.]