

CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-2. Definitions

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Cigarette" means all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes. [68 O.S. § 301(†)]

"Delivery sale" means:

(A) Any sale of cigarettes to a consumer in Oklahoma where either:

- (i) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, by use of the mails, or by any other delivery service, including the Internet or other online service; or,
- (ii) The cigarettes are delivered by use of the mails or other delivery service.

(B) A sale of cigarettes which satisfies the criteria in subparagraph (A) of this paragraph shall be a **"delivery sale"** regardless of whether the seller is located within or outside of Oklahoma.

"Delivery sale" shall include any sale of cigarettes to an individual in Oklahoma and shall be treated as a sale to a consumer unless such individual is licensed as a distributor or retailer of cigarettes by the Tax Commission; but shall not include a sale of cigarettes, not for personal consumption, to a person who is a wholesale dealer or a retail dealer. [68 O.S. § 301(13)]

"Place of business" shall include places where orders of cigarettes are received or where cigarettes are sold.

"Vending machine" shall mean and include any coin operating machine, contrivance, or device, by means of which cigarettes are sold or dispensed in their original container. [68 O.S. § 301]

710:70-2-9.1. Vehicle and Vending Machine Cigarette Licenses

—(a) Vehicles and vending machines from which cigarettes are sold constitute a "place of business" and are required to be permitted. If the vehicle or vending machine is owned or operated by a place of business for which the regular Two Hundred Fifty Dollar (\$250.00) fee has been paid, or if the owner or operator has obtained a retail or wholesale cigarette license, the fee for the vehicle or vending machine is to be \$10.00 and the expiration date of the vehicle or vending machine license permit is to be the expiration date of the permit issued to the other place of business.

(b) A separate cigarette license permit must be obtained for each vehicle or vending machine. If a vending machine sells both cigarette and tobacco products, only one license is necessary as long as both license types are listed. A copy of the license must be displayed on the inside of the glass, visible from the outside. The physical location address of the vending machine must be provided on the application, and if the vending machine location changes before the license expires, the new address must be provided to the Tax Commission using Form BT-115-C.

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-14. Wholesale, retail, and distributing agent licenses required

(a) Effective January 1, 2010, every dealer or wholesaler of tobacco products must annually obtain a license from the Tax Commission.

(b) The license fee shall not be paid if the applicant has paid the fee for a cigarette wholesaler license to the Tax Commission.

(c) A retailer of tobacco products must obtain a retail tobacco license prior to purchasing or selling tobacco products after January 1, 2010.

(d) Effective January 1, 2010, retailers of tobacco products shall purchase tobacco products only from a supplier who holds a current tobacco wholesaler license.

(e) Effective January 1, 2010, wholesalers of tobacco products are prohibited from purchasing tobacco products from a person required to obtain an Oklahoma license. A wholesaler shall sell only to a retailer holding an Oklahoma tobacco retailer license.

(f) A licensed retailer is prohibited from selling tobacco products to another licensed tobacco products retailer unless the purpose of the sale is to move inventory between stores which are owned by the same legal entity.

(g) Vending machines from which tobacco is sold constitute a "place of business" and are required to be permitted in the same manner as vending machines from which cigarettes are sold, as set forth in OAC 710:70-2-9.1. If a vending machine sells both cigarette and tobacco products, only one license is necessary as long as both license types are listed. A copy of the license must be displayed on the inside of the glass, visible from the outside.

SUBCHAPTER 10. TOBACCO INDUSTRY ADVISORY COMMITTEE

710:70-10-1. Purpose

The Tobacco Industry Advisory Committee is a statutorily created Committee made up of licensed wholesalers and retailers who may represent the entity related to tobacco products enforcement concerns and suggestions.

710:70-10-2. Members

The five (5) members of the Tobacco Industry Advisory Committee are as follows:

- (1) Two licensed wholesalers who are appointed by the Governor;
- (2) One licensed retailer appointed by the Speaker of the Oklahoma House of Representatives;
- (3) One licensed retailer appointed by the President Pro Tempore of the Oklahoma Senate;
- (4) One licensed wholesaler appointed by the four members appointed by the Governor and Legislature.

710:70-10-3. Meetings

- (a) The Tobacco Industry Advisory Committee shall meet at least quarterly at the offices of the Oklahoma Tax Commission.
- (b) An agenda shall be distributed to the members prior to the meeting. Any member may suggest items to be included on the agenda for discussion.
- (c) Written minutes of each meeting shall be recorded and distributed to the members following the meeting.
- (d) A quorum shall consist of three (3) members of the Commission. A quorum is required to record a do pass on any vote taken during a meeting.
- (e) The members shall not receive reimbursement for travel or per diem related to Committee membership.

710:70-10-4. Officers

- (a) The Tobacco Industry Advisory Committee shall annually elect from the membership a Chairman and a Vice-Chairman.
- (b) Officers shall be elected at the first meeting of each fiscal year. In the event a position becomes vacant, a replacement shall be elected to complete the term at the next meeting of the Committee.
- (c) The Chairman shall preside over the meetings.
- (d) The Vice-Chairman shall assume the duties of the Chairman in the event the Chairman is absent or unavailable.