RULEMAKING ACTION:
Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:
Chapter 70. Tobacco, Tobacco Products, and Cigarettes [AMENDED]

SUMMARY:
Section 710:70-5-13 has been amended to include the new invoice information required to be maintained by wholesalers and retailers of tobacco products while Section 710:70-5-8 has been amended and Section 710:70-5-9 has been revoked to remove all references to drop shipments. All proposed amendments are a result of the passage of HB 2292 [2021].

The proposed amendment to Section 710:70-2-11, along with other sections which may be amended, is to clarify policy, improve readability, correct scrivener’s errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references.

AUTHORITY:
68 O.S. §§ 203, 403, 403.1 and 415; Oklahoma Tax Commission

COMMENT PERIOD:
Persons wishing to present their views in writing may do so by 4:30 p.m., February 22, 2022, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:
A public hearing is scheduled for 1:30 p.m., on Wednesday, February 23, 2022, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. 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 Lakesha Mackie at (405) 521-3133. 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.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:
Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), 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:**
Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at http://www.tax.ok.gov.

**RULE IMPACT STATEMENT:**
Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at http://www.tax.ok.gov.

**CONTACT PERSON:**
Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

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

(a) Wholesalers shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the wholesaler 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 wholesaler 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, wholesalers, 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 by mail to the Business Tax Services Division of the Oklahoma Tax Commission by mail at 123 Robert S. Kerr Ave, Oklahoma City, Ok 73102-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)].

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-8. Reports on tobacco products by persons, retailers, consumers, carriers or bailees other than those required to report and pay tax

(a) Every person or entity, listed below, who possesses, controls, transports, uses or in any manner deals with tobacco products within this State subject to the tobacco products excise tax, upon which the tax has not been paid, even though not the party required to pay the tax, shall file a monthly report to the Oklahoma
Tax Commission on prescribed forms as follows:

1. Every retailer or consumer purchasing tobacco products subject to tax in drop shipments shall report those purchases to the Oklahoma Tax Commission on the Monthly Tobacco Products Tax Reports in accordance with 710:70-5-3 through 710:70-5-5, as required of licensed manufacturers, wholesalers, retailers or consumers.

2. Every carrier transporting tobacco products, subject to tax, to a point within this State shall monthly report to the Oklahoma Tax Commission the following information:

   A. Name and business address of the carrier;
   B. The date of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;
   C. The point of origin and the point of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;
   D. The name of the person or entity to whom said tobacco products were delivered in this State in the previous calendar month; and
   E. Copies of all invoices, bills of lading or instruments of consignment of said tobacco products transported and delivered into this State in the previous calendar month, attached to said report.

3. Every bailee having possession, custody, control, use or in any manner dealing with tobacco products within this State subject to the tax, shall report monthly to the Oklahoma Tax Commission as is required of carriers.

   b. All required monthly reports shall be due on or before the twentieth (20th) day of the calendar month immediately following the calendar month in which the tobacco products subject to the tax are possessed, controlled, transported, used or in any manner dealt with in this State, in accordance with 710:70-5-5.

   c. Copies of invoices, bills of lading or other instruments of consignment submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions and to permit inspection and examination thereof by the Commission.  [See: 68 O.S. § 201; 68 O.S. §§ 401 et seq.]

710:70-5-9. Reports and payment of taxes on drop shipments of tobacco products [REVOKED]

   It shall be the duty of every licensed wholesaler to report and pay the tobacco products excise tax, levied upon all drop shipments of tobacco products subject to such tax, purchased by any wholesaler, retailer or consumer receiving and paying for such drop shipment through the licensed wholesaler. The tax on such drop shipments shall be reported and paid in the same manner as if the drop shipment had first been received or delivered to the licensed wholesaler through whom the drop shipment was purchased.
710:70-5-13. Requirements placed on wholesalers and retailers to maintain copies of invoices with certain information that must be shown on each invoice

(a) Wholesalers 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 wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the wholesaler's tobacco license number and the retailer’s tobacco license number if the sale is to a retailer 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 and tobacco license number of the wholesaler 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, the date the tobacco products were received and the retail tobacco 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, wholesalers, 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 Business Tax Services Division, at the Oklahoma Tax Commission by mail at 123 Robert S. Kerr Ave, Oklahoma City, Ok 73102 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.
Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 70 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: Section 710:70-5-13 has been amended to include the new invoice information required to be maintained by wholesalers and retailers of tobacco products while Section 710:70-5-8 has been amended and Section 710:70-5-9 has been revoked to remove all references to drop shipments. All proposed amendments are a result of the passage of HB 2292 [2021]. The proposed amendment to Section 710:70-2-11 is to update contact information.

CLASSES AFFECTED: All taxpayers, including but not limited to wholesalers and retailers of tobacco products.

PERSONS BENEFITED: All taxpayers and tax preparers will benefit from increased clarity of Oklahoma tax laws and Tax Commission procedures.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the
purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: December 15, 2021