

Committee: Full Council  
Date: 3-06-06 Committee Date: 3-13-06

Author: Melanie Knight  
Sponsor: Meredith Frailey

## An Act

### Legislative Act 5-06

### A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED – TOBACCO TAX; AND ADDING DEFINITIONS

#### BE IT ENACTED BY THE CHEROKEE NATION:

##### Section 1. Title and Codification

This act shall be known as the "Tobacco Tax Act of 2005" and codified as \_\_\_\_\_  
(Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated (CNCA).

##### Section 2. Purpose

This Act is to establish a surtax on certain tobacco sales, intended to further reduce the smoking rate within the Cherokee Nation, thus lowering health care costs. Revenues generated under this Act will be utilized to extend and enhance governmental services to the Cherokee people, specifically earmarked for prevention and treatment of diabetes and cancer.

##### Section 3. Legislative History

68 CNCA Chapter 4 contains existing Tobacco Tax provisions. The Tobacco Compact between the Cherokee Nation and the State of Oklahoma was filed with the Oklahoma Secretary of State on February 10, 2004.

##### Section 4. Definitions

The definition of "Contraband" is hereby added to 68 CNCA § 41 as:

"Contraband" means any cigarette, tobacco or related products upon which all applicable Cherokee Nation taxes have not been paid.

##### Section 5. Substantive provisions

1. The following sections of CNCA Title 68 shall be amended as follows:

##### § 5. Distribution of tax revenue

- A. At least seventy-five percent (75%) of all future-tax appropriations, except as provided in part B. of this section, shall be dedicated for the purpose of Education, Health and Human Services, Housing Programs/Projects and Economic Development.
- B. One hundred percent (100%) of the surtax collected by the Commission under 68 CNCA §42 B. shall be allocated and made available until expended for initiatives administered by the Nation to prevent and treat diabetes and cancer.

##### § 42. Tax on cigarettes

- A. There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes occurring in Cherokee country a tax of five cents (\$0.05) for each package of cigarettes containing twenty-five (25) cigarettes or less. On any individual package containing more than twenty-five (25) cigarettes there is hereby levied an additional tax of five cents (\$0.05) for each additional twenty (20) cigarettes or fraction thereof.

B. There is hereby levied a surtax on any cigarette transaction occurring between retailers, if the retailer selling tobacco to any other tribal retailer is within the boundaries of the Nation. The surtax is applied upon the sale, use, gift, possession or consumption of cigarettes occurring in Cherokee country of fifteen cents (\$0.15) for each package of cigarettes containing twenty-five (25) cigarettes or less. On any individual package containing more than twenty-five (25) cigarettes there is hereby levied an additional tax of fifteen cents (\$0.15) for each additional twenty (20) cigarettes or fraction thereof.

C. The wholesaler is responsible for collecting and remitting the base tax in paragraph 1 of this section. The retailer selling tobacco to any other tribal retailer shall be responsible for collecting and remitting the surtax in paragraph 2 of this section.

§ 53 of Title 68 is hereby repealed.

**§ 54. Wholesaler to eCollection of tax**

Wholesalers may only sell cigarettes and tobacco products to retailers licensed by the Commission and retailers may only buy cigarettes and tobacco products from entities licensed by the Commission. The Commission may require the wholesaler or retailer to collect and remit tax to the Commission. Such tax collected and remitted shall be deemed an advance payment of the tax for the credit of the retailer. There is hereby created a fund not to exceed One Million Dollars (\$1,000,000), to make loans available to tobacco retailers that are adversely and wrongfully affected by the Oklahoma Tax Commission emergency rules passed on February 22, 2006. The Nation will be repaid for such loans through the rebate amount that the Oklahoma Tax Commission sends to the Nation. The appropriate staff of the Legislative and Executive branches are hereby directed to produce procedures for the fair and equitable allocation of these funds.

1. In addition, the following provisions are hereby enacted:

**a. Criminal Penalties**

It is a crime to possess contraband cigarettes as defined in 68 CNCA § 49 A.

**b. Sunset Provision**

This Act will automatically terminate upon effective date of a new or amended compact between the Cherokee Nation and the State of Oklahoma.

**c. Implementation**

The Tax Commission is hereby authorized to implement this Act, including developing rules and regulations, reports or other documentation required of licensees.

**Section 6. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

**Section 7. Severability**

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

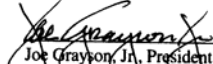
**Section 8. Effective Date**

This Act shall become effective April 1, 2006.

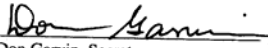
**Section 9. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the 13<sup>th</sup> day of March, 2006.

  
Joe Grayson, Jr., President  
Council of the Cherokee Nation

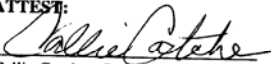
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 17<sup>th</sup> day of MARCH, 2006.

  
Chad Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Callie Catcher, Secretary/Treasurer  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Conner	<u>YEA</u>	Melvina Shotpouch	<u>Absent</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>NAY</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan Watts	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>NAY</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>Absent</u>		

**ADMINISTRATIVE CLEARANCE:**

Program/Project Manager:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Department Director:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Executive Director:

*Paula Ragsdale*  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Controller (if needed):

Signature \_\_\_\_\_ Date \_\_\_\_\_

Government Resources Group:

*Lita May 2/13/06*  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Administration Approval:

*Melani King*  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**LEGISLATIVE CLEARANCE**

Legislative Aide:

*Jo* 2-13-06  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Standing Committee:

*Rules*  
2-23-06

Next Meeting Date

Chairperson:

*Travis*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Returned to Presenter: \_\_\_\_\_

Date

**Cherokee Nation  
Act/Resolution Proposal Form**

Act

Resolution

**TITLE:** A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX; AND ADDING DEFINITIONS

Department Contact: Paula Ragsdale Acting Tax Administrator

Resolution Presenter: Paula Ragsdale

Sponsor: \_\_\_\_\_

**NARRATIVE:**

(See Attached Outline for Information Needed)

This Act is to establish a surtax on certain tobacco sales, intended to further reduce the smoking rate within the Cherokee Nation, thus lowering health care costs. Revenues generated under this Act will be utilized to extend and enhance governmental services to the Cherokee people, specifically earmarked for prevention and treatment of diabetes and cancer.



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