



## Legislation Text

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### **A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX; ADDING DEFINITIONS, AND ALLOWING FOR REPEAL OF SECTIONS OF THE TOBACCO TAX COMPACT ACT BE IT ENACTED BY THE CHEROKEE NATION:**

#### **Section 1. Title and Codification**

This act shall be known as the "Tobacco Wholesaler Act of 2008" and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated (CNCA).

#### **Section 2. Purpose**

The purpose of this Act is to establish qualifications for wholesalers of tobacco products licensed by the Cherokee Nation Tax Commission. This enactment will increase the ability of the Cherokee Nation to control the sale, distribution and possession of cigarettes and tobacco in Indian Country. This Act also allows for the repeal of sections of Title 68, Chapter 5, and Legislative Act 7-04 "Cherokee Nation/State Tobacco Tax Compact Act of 2003," which contain language from the Cherokee Nation-State of Oklahoma Tobacco Tax Compact which is currently being renegotiated. The repealing of these sections would be necessary in order to avoid conflicts with the language in a renegotiated compact.

#### **Section 3. Substantive provisions**

##### **A. The following sections of CNCA Title 68 shall be amended as follows:**

##### **§ 41. Definitions**

B. "Wholesaler" means any jobber or person who is organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who makes such sales or renders such services to retailers located in Cherokee country, or who is located on Cherokee country regardless of the location of the retailers to whom said wholesaler sells product; provided, that at least 75% of the entire amount of gross sales occurring in Cherokee country are made at wholesale. Irrespective of the foregoing requirements, any jobber or person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principal place of business shall be a wholesaler as defined by this Chapter, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this Chapter. The Cherokee Nation shall be the exclusive wholesaler located on Cherokee Country for tribally-licensed tobacco retailers, provided that the Cherokee Nation may contract another entity to operate its wholesale business without obtaining an additional license.

##### **§ 42. Tax on cigarettes**

There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes occurring in Cherokee country a tax, without reference to the citizenship or non-citizenship status of the purchasing public, in the amount of sixty-five percent (65%) of all applicable taxes and/or contributions imposed by the State of Oklahoma upon the sale, use, gift, possession, or consumption of cigarettes whether under the name of tax, surtax, levy, toll, tribute, tallage, gabel, impost, duty, custom, subsidy, aid, assessment, tariff and/or other name, including, but not limited to, sales and excise taxes, less any PILT payment made on said cigarettes; provided that where the wholesaler is outside of Cherokee Country, the tax shall be in the amount designated by statutes of the State of Oklahoma for non-compacting tribes plus a tax to the Nation of five cents (\$0.05) for each package of cigarettes regardless of the number of cigarettes in the package. 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. The tax on cigarettes shall be assessed and paid as follows: beginning;

	25 cigarettes/package	25 or more per package
July 1, 1990	\$0.01/package	\$0.02/package
August 1, 1990	0.02/package	0.04/package
September 1, 1990	0.03/package	0.06/package
October 1, 1990	0.04/package	0.08/package
November 1, 1990	0.05/package	0.10/package

**§ 43. Tax on tobacco products**

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco product occurring in Cherokee country a tax, without reference to the citizenship or non-citizenship status of the purchasing public, in the amount of sixty-five percent (65%) of all applicable taxes and/or contributions imposed by the State of Oklahoma upon the sale, use, gift, possession, or consumption of tobacco products whether under the name of tax, surtax, levy, toll, tribute, tallage, gabel, impost, duty, custom, subsidy, aid, assessment, tariff and/or other name, including, but not limited to, sales and excise taxes, less any PILT payment made on said products; provided that where the wholesaler is outside of Cherokee Country, the tax shall be in the amount designated by statutes of the State of Oklahoma for non-compacting tribes plus a tax to the Nation of five per cent (5%) of the factory list wholesale price exclusive of any trade discount, special discounts, or deals.

~~tax of five per cent (05%) of the factory list wholesale price exclusive of any trade discount, special discounts, or deals. The tax on tobacco products shall be assessed and paid as follows: beginning;~~

July 1, 1990	1%
August 1, 1990	2%
September 1, 1990	3%
October 1, 1990	4%
November 1, 1990	5%

**§ 55. Wholesaler Licensing**

- A. Every wholesaler of cigarettes or tobacco products must apply and receive from the Commission a "Tobacco Wholesaler License" prior to establishing any place of business, warehouse, or wholesale outlet for the sale of cigarettes or tobacco products in Cherokee country. Forms for such application and license shall be provided by the Commission. Wholesalers of cigarettes or tobacco products operating in Cherokee country as of the effective date as defined in Section 5 of this title shall apply for a tobacco Wholesaler License within one (1) month of such effective date.
- B. The Cherokee Nation or one of its wholly owned businesses may become a tribally licensed wholesaler by the Cherokee Nation Tax Commission without obtaining or holding a wholesale license from the State of Oklahoma.
- C. The Tax Commission is hereby authorized to develop rules and regulations, reports or other documentation required of licensees.

## **§ 59. Other Unlawful Acts**

It shall be unlawful for any retailer or wholesaler to sell cigarettes and tobacco products in Cherokee country without first applying for and receiving a tobacco retailer or wholesaler license at any location constituting Cherokee country. It shall further be unlawful for any retailer to sell cigarettes and tobacco products within the fourteen (14) county area of the Cherokee Nation at any location which does not constitute "Indian country" as defined by federal law, without first affixing tax stamps or paying tax as required by ~~the State of Oklahoma~~ the Cherokee Nation Tax Commission and/or without first applying for and receiving a tobacco retailer or wholesaler license from the ~~State of Oklahoma~~ Cherokee Nation Tax Commission. Failure to conspicuously post a valid Cherokee Nation Tax Commission, ~~or state~~ tobacco retailer or wholesaler license at the location establishes a presumption of violation of this section. The Tax Commission is hereby authorized to develop rules and regulations, reports or other documentation required of licensees in order to implement and enforce this title.

### **B. The following section shall be added to CNCA Title 68:**

#### **§ 62 Buyout of Licensed Retailers**

Upon the effective date of this act, or when a compact with the state of Oklahoma that establishes a single tax rate is approved, the Cherokee Nation will offer to purchase licensed tobacco retail operations that currently conduct business in a \$0.58 per carton tax zone or a \$3.58 per carton tax zone. The offer, in the amount of three (3) times the average yearly net profit as reported on a Schedule C to the Internal Revenue Service for the years 2001, 2002, 2003, and 2004, will be effective for one (1) year following the effective date of this act and will be paid out over a three (3) year time period. For retail licensees which commenced operations after December 31, 2004, an offer will be made in the amount of three (3) times of the annual net profit, as reported on Schedule C to the Internal Revenue Service, since commencement of operations minus any profits made from conducting product transfers or sales to another retailer or to another establishment owned by the retailer. Any terms not specified in this Act shall be determined at the discretion of the Cherokee Nation Tax Commission Administrator. In cases where the retail operation conducts business on Cherokee country by virtue of a lease with another individual(s) who owns the restricted property, the Cherokee Nation shall ensure payment of the lease or may negotiate an agreement with said land owner(s) to extinguish said lease where permitted by law."

**C. Title 68 of the Cherokee Nation Code Annotated, Sections 73 and 74 and all sections of Legislative Act 7-04 enacting the "Cherokee Nation/State Tobacco Tax Compact Act of 2003," shall be repealed in their entirety upon termination of the currently existing Tobacco Compact with the State of Oklahoma as executed on February 9, 2004.**

#### **Section 4. Provisions as cumulative**

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

#### **Section 5. Severability**

The provisions of this act are severable and if any part of a 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 6. Effective Date**

The provisions of this Act shall become effective as determined by the Principal Chief of the Cherokee Nation. This authority may be exercised upon the termination of the existing compact, failure to compact with the state of Oklahoma, after an adverse ruling by a tribunal, or other circumstances in which it becomes necessary for the Cherokee Nation to supply tribally-licensed

tobacco retailers with product in order for said retailers to remain in business.