ENGROSSED HOUSE
BILL NO. 3116

By: Peterson (Ron) and Nance of the House

and

Fisher of the Senate

( revenue and taxation - amending seven sections in Title 68 - cigarette and tobacco tax - Joint Committee on State-Tribal Relations - codification -

emergency )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 1, Chapter 375, O.S.L. 2005 (68 O.S. Supp. 2005, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from the records or files or from any examination or inspection of the premises or property of any person.

B. Except as provided in paragraph 26 of subsection C of this section, neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this

state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of the Uniform Tax Procedure Code or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of the Uniform Tax Procedure Code or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or a duly authorized representative of the taxpayer of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of the Uniform Tax Procedure Code or of any state tax law;

2. The exchange of information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq., pursuant to reciprocal agreements entered into by the Tax Commission and other state agencies or agencies of the federal government;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of records and files by the State Auditor and Inspector or the duly authorized agents of the State Auditor and Inspector;

5. The disclosing of information or evidence to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency when the

information or evidence is to be used by such officials to investigate or prosecute violations of the criminal provisions of the Uniform Tax Procedure Code or of any state tax law or of any federal crime committed against this state. Any information disclosed to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency shall be kept confidential by such person and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state or except as specifically authorized by law, and a violation by the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, district attorney, or agent of any federal law enforcement agency by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by its records or files to any official person or body of this state, any other state, the United States, or foreign country who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States. The provisions of this paragraph shall include the furnishing of information by the Tax Commission to a county assessor to determine the amount of gross household income pursuant to the provisions of Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The Tax Commission shall promulgate rules to give guidance to the county assessors regarding the type of information which may be used by the county assessors in determining the amount of gross household income pursuant to Section 8C of

Article X of the Oklahoma Constitution or Section 2890 of this title. The provisions of this paragraph shall also include the furnishing of information to the State Treasurer for the purpose of administration of the Uniform Unclaimed Property Act;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to such requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2838 and 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be

limited to the name of the person issued the permit, license or exemption, the name of the business entity authorized to engage in business pursuant to the permit, license or exemption, the address of the business entity, and the grounds for revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued the permit or license, the name of the business entity authorized to engage in business pursuant to the permit or license, the address of the business entity, and the grounds for revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Tax Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Tax Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Such disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

22. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Such disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

23. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

24. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of

record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or the buyer's authorized representative, of the purchase contract and a written authorization between the parties;

25. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to the permit, license, exemption, deduction, credit or other tax preference; ~~or~~

26. The examination of records and files of a person or entity by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control pursuant to a court order by a magistrate in whose territorial jurisdiction the person or entity resides, or where the Tax Commission records and files are physically located. Such an order may only be issued upon a sworn application by an agent of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, certifying that the person or entity whose records and files are to be examined is the target of an ongoing investigation of a felony violation of the Uniform Controlled Dangerous Substances Act and that information resulting from such an examination would likely be relevant to that investigation. Any records or information obtained pursuant to such an order may only be used by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in the investigation

and prosecution of a felony violation of the Uniform Controlled Dangerous Substances Act. Any such order issued pursuant to this paragraph, along with the underlying application, shall be sealed and not disclosed to the person or entity whose records were examined, for a period of ninety (90) days. The issuing magistrate may grant extensions of such period upon a showing of good cause in furtherance of the investigation. Upon the expiration of ninety (90) days and any extensions granted by the magistrate, a copy of the application and order shall be served upon the person or entity whose records were examined, along with a copy of the records or information actually provided by the Tax Commission; or

27. The furnishing of information requested by law enforcement officials, the media and any member of the general public relating to the tax stamp records of cigarette wholesalers and tribal cigarette retailers reported under the provisions of Article 3 of this title.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of the list.

E. The Tax Commission shall prepare or cause to be prepared a report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than October 1 of each even-numbered year and shall be submitted to the Governor, the President Pro Tempore of the Senate

and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report. The Tax Commission is authorized to require any recipient of a tax incentive or tax expenditure to report to the Tax Commission such information as requested so that the Tax Commission may provide the information to the Incentive Review Committee or fulfill its obligations as required by this subsection. The Tax Commission may require this information to be submitted in an electronic format. The Tax Commission may disallow any claim of a person for a tax incentive due to its failure to file a report as required under the authority of this subsection. The Tax Commission may consult with the Incentive Review Committee to develop a reporting system to obtain the information requested in a manner that is the least burdensome on the taxpayer.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and

imprisonment, and the offender shall be removed or dismissed from office.

H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as the offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of the district attorney its records and files pertinent to prosecutions, and such records and files shall be fully admissible as evidence for the purpose of such prosecutions.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 302, is amended to read as follows:

Section 302. There is hereby levied upon the sale, use, gift, possession, or consumption of cigarettes within the State of Oklahoma a tax at the rate of four (4) mills per cigarette. Beginning November 3, 1992, the revenue resulting from the tax levied pursuant to this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer, who shall deposit the same in the Oklahoma Building Bonds of 1992 Sinking Fund. No part of the cigarette tax receipts derived from the increase in the cigarette tax rate shall be used in determining the amount of cigarette tax collections to be paid into the State of Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the provisions of Sections 57.31 through 57.43 of Title 62 of the Oklahoma Statutes.

The tax hereby levied shall be paid only once <u>by the wholesaler</u> on any cigarettes sold, used, received, possessed, or consumed in this state. The tax shall be evidenced by stamps which shall be furnished by and purchased from the Tax Commission or by an impression of such tax by the use of a metering device when authorized by the Tax Commission as provided for in Section 301 et seq. of this title, and the stamps or impression shall be securely

affixed to one end of each package in which cigarettes are contained or from which consumed.

The ~~impact of the tax levied by the provisions of Section 301 et seq. of this title is hereby declared to be on the vendee, user, consumer, or possessor~~ incidence of the tax is imposed on the wholesaler of cigarettes in this state~~, and, when the tax is paid by any other person, such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user~~ and such tax shall be paid but once. In making a sale of cigarettes in this state, a wholesaler or jobber may separately state and show upon the invoice covering the sale the amount of tax paid on the cigarettes sold. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold. Every retailer who makes sales of cigarettes within this state to persons for use or consumption shall separately show the amount of tax paid as evidenced by appropriate stamps on each package of cigarettes sold~~, and the tax shall be collected by the retailer from the user or consumer~~. The provisions of this section shall in no way affect the method of collection of tax on cigarettes as now provided for by existing law. As to cigarettes packed in quantities of less than ten, for distribution as samples, payment of the tax may be made to the Tax Commission in a lump sum without affixing stamps on such packages.

Notwithstanding any other provision of law, the tax levied pursuant to the provisions of Section 301 et seq. of this title shall be part of the gross proceeds or gross receipts from the sale of cigarettes, as those terms are defined in paragraph ~~7~~ 11 of Section 1352 of this title.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2005, Section 316), is amended to read as follows:

Section 316. A. Any person, other than a consumer, who shall:

1. Sell, offer for sale or present as a prize or gift cigarettes without a stamp being then and there affixed to each individual package;

2. Sell cigarettes in quantities less than an individual package;

3. Knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package;

4. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of Section 301 et seq. of this title or with any other fraudulent intent;

5. Use any artful device or deceptive practice to conceal any violation of Section 301 et seq. of this title;

6. Refuse to surrender to the Oklahoma Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or

7. Make a first sale of cigarettes without a stamp being then and there affixed to each individual package;

shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than ~~Two Hundred Dollars ($200.00)~~ Ten Thousand Dollars ($10,000.00) for the first offense and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense, where specific penalties are not otherwise provided.

B. Any consumer, who shall:

1. Sell, offer for sale or present as a prize or gift cigarettes without a stamp being then and there affixed to each individual package;

2. Sell cigarettes in quantities less than an individual package;

3. Knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package;

4. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of Section 301 et seq. of this title or with any other fraudulent intent;

5. Use any artful device or deceptive practice to conceal any violation of Section 301 et seq. of this title;

6. Refuse to surrender to the Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or

7. Make a first sale of cigarettes without a stamp being then and there affixed to each individual package;

shall be fined not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

C. Any distributor, wholesale dealer, retail dealer or distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsection A of this section, where such acts are applicable to such person;

2. Sell any cigarettes upon which tax is required to be paid by Section 301 et seq. of this title without at the time of making such sale having a valid license;

3. Make a first sale of cigarettes without at the time of first sale having a license posted so as to be easily seen by the public; or

4. Fail to deliver an invoice required by law to a purchaser of cigarettes;

shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than ~~Two Hundred Dollars ($200.00)~~ Ten Thousand Dollars ($10,000.00) for the first offense, and not

more than Twenty-five Thousand Dollars ($25,000.00) for the second offense, where specific penalties are not otherwise provided.

~~C.~~ D. Any distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsections A and ~~B~~ C of this section where such provisions are applicable to such distributing agent; or

2. Store any unstamped cigarettes in the state or deliver or distribute any unstamped cigarettes within this state, without at the time of storage or delivery having a valid license posted so as to be easily seen by the public;

shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than ~~Two Hundred Dollars ($200.00)~~ Ten Thousand Dollars ($10,000.00) for the first offense, and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense.

~~D.~~ E. Any retailer violating the provisions of Section 305.1 of this title shall:

1. For a first offense, be punished by an administrative fine of not more than One Hundred Dollars ($100.00);

2. For a second offense, be punished by an administrative fine of not more than One Thousand Dollars ($1,000.00); and

3. For a third or subsequent offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00).

~~E.~~ F. Any wholesaler, jobber or warehouseman violating the provisions of Section 305.1 of this title shall:

1. For a first offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00); and

2. For a second or subsequent offense, be punished by an administrative fine of not more than Twenty Thousand Dollars ($20,000.00).

Administrative fines collected pursuant to the provisions of this subsection shall be deposited to the revolving fund created in Section 305.2 of this title.

~~F.~~ G. The Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of paragraph 3 of subsection ~~D~~ E of this section or a person punished for a violation pursuant to the provisions of subsection ~~E~~ F of this section. A person whose license is so revoked shall not be eligible to receive another license pursuant to the provisions of Section 301 et seq. of this title for a period of ten (10) years.

~~G.~~ H. Whoever, with intent to defraud Oklahoma:

1. Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by Section 301 et seq. of this title or rules promulgated thereunder;

2. Refuses to pay any tax imposed by Section 301 et seq. of this title, or attempts in any manner to evade or defeat the tax or the payment thereof; or

3. Fails to comply with any requirement of Section 301 et seq. of this title;

shall, for each such offense, be fined not more than Ten Thousand Dollars ($10,000.00), or imprisoned not more than five (5) years, or both.

~~H.~~ I. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon the person by Section 301 et seq. of this title, or to do, or cause to be done, any of the things required by Section 301 et seq. of this title, or does anything prohibited by Section 301 et seq. of this title, shall, in addition to any other penalty provided in Section 301 et seq. of this title, pay an administrative penalty of One Thousand Dollars ($1,000.00).

~~I.~~ J. Whoever fails to pay any tax imposed by Section 301 et seq. of this title at the time prescribed by law or rules, shall, in

addition to any other penalty provided in Section 301 et seq. of this title, be liable to a penalty of five hundred percent (500%) of the tax due but unpaid.

~~J.~~ K. 1. All cigarettes which are held for sale or distribution within the borders of Oklahoma, in violation of the requirements of Section 301 et seq. of this title, and the machinery used to manufacture counterfeit cigarettes shall be forfeited to Oklahoma. All cigarettes and machinery forfeited to Oklahoma under this paragraph shall be destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any distributor or retailer who, with intent to defraud the state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by Section 301 et seq. of this title; refuses to pay any tax imposed by Section 301 et seq. of this title; or attempts in any manner to evade or defeat the requirements of Section 301 et seq. of this title shall be forfeited to Oklahoma.

~~K.~~ L. Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, distributor, or retailer shall result in the seizure of the product and related machinery by the Tax Commission or any law enforcement agency and shall be punishable as follows:

1. A first violation with a total quantity of less than two cartons of cigarettes or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed ~~One Thousand Dollars ($1,000.00)~~ Ten Thousand Dollars ($10,000.00) or imprisonment not to exceed five (5) years, or both fine and imprisonment;

2. A subsequent violation with a total quantity of less than two cartons of cigarettes, or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed ~~Five Thousand Dollars~~

~~($5,000.00)~~ Twenty-five Thousand Dollars ($25,000.00), or imprisonment not to exceed five (5) years, or both the fine and the imprisonment, and shall also result in the revocation by the Tax Commission of the manufacturer, distributor, or retailer license;

3. A first violation with a total quantity of more than two cartons of cigarettes, or the equivalent amount of other cigarettes, shall be punishable by a fine not to exceed ~~Two Thousand Dollars ($2,000.00)~~ Twenty-five Thousand Dollars ($25,000.00) or imprisonment not to exceed five (5) years, or both the fine and imprisonment; and

4. A subsequent violation with a quantity of two cartons of cigarettes or more, or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00) or imprisonment not to exceed five (5) years, or both the fine and imprisonment, and shall also result in the revocation by the Tax Commission of the manufacturer, distributor, or retailer license.

For the purposes of this section, "counterfeit cigarettes" includes cigarettes that have false manufacturing labels or tobacco product packs without tax stamps or the applicable tax stamp or with counterfeit tax stamps or a combination thereof. Any counterfeit cigarette seized by the Tax Commission shall be destroyed.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 346, as amended by Section 8, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2005, Section 346), is amended to read as follows:

Section 346. A. The Legislature finds that:

1. Federal law recognizes the right of Indian tribes or nations to engage in sales of cigarettes and tobacco products to their members free of state taxation;

2. The doctrine of tribal sovereign immunity prohibits the State of Oklahoma from bringing a lawsuit against an Indian tribe or nation to compel the tribe or nation to collect state taxes on sales

made in Indian country to either members or nonmembers of the tribe or nation without a waiver of immunity by the tribe or nation or congressional abrogation of the doctrine; and

3. The Supreme Court of the United States, in "Oklahoma Tax Commission v. Citizen Band Pottawatomie Indian Tribe of Oklahoma", suggested that a state may provide other methods of collection of state taxes on sales of cigarettes and tobacco products made by Indian tribes or nations to persons who are not members of the tribe or nation, such as entering into mutually satisfactory agreements with Indian tribes or nations.

B. It is the intent of the Legislature to establish a system of state taxation of sales of cigarettes and tobacco products made by federally recognized Indian tribes or nations or their licensees, other than such tribes or nations which have entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of this section, under which the rate of payments in lieu of state taxes is less than the rate of state taxes on other sales of cigarettes and tobacco products in order to allow such tribes or nations or their licensees to make sales of cigarettes and tobacco products to tribal members free of state taxation.

C. The Governor is authorized by this enactment to enter into cigarette and tobacco products tax compacts on behalf of the State of Oklahoma with the federally recognized Indian tribes or nations of this state. The compacts shall set forth the terms of agreement between the sovereign parties regulating sale of cigarettes and tobacco products by the tribes or nations or their licensees in Indian country. <u>On and after the effective date of this act, any cigarette or tobacco products tax compact entered into between the Governor and a federally recognized Indian tribe or nation shall be subject to the final approval of the Joint Committee on State-Tribal Relations. A compact approved by the Governor and the Indian tribe or nation shall be presented to the Joint Committee and shall not</u>

become effective unless approved by the Joint Committee in the manner and subject to the same requirements for other agreements pursuant to Section 1222 of Title 74 of the Oklahoma Statutes. The final compact shall indicate the approval of the Governor, the Indian nation or tribe and the Joint Committee prior to its filing with the Secretary of State. All sales in Indian country by those compacting tribes or nations and their licensees shall be exempt from the taxes levied pursuant to the provisions of Section 301 et seq., Section 401 et seq. and Section 1350 et seq. of Title 68 of the Oklahoma Statutes and Sections 349 and 425 of this title, subject to the following terms and conditions:

1. A payment in lieu of state sales and excise taxes, as provided for in said compact, shall be paid to the State of Oklahoma by the tribes or nations, their licensees or their wholesalers upon purchase of all cigarettes and tobacco products intended for resale in Indian country by the tribes or nations or their licensees;

2. All cigarettes and tobacco products sold or held for sale to the public, without distinction between member and nonmember sales, shall bear a payment in lieu of tax stamp evidencing that payment in lieu of state taxes has been paid to the state. State and tribal officials may provide for use of a single joint stamp evidencing payment of both the payment in lieu of tax as specified in a compact pursuant to the provisions of this section and any tax levied by a tribe or nation;

3. In the event that a compacting tribe or nation fails to comply with all terms and conditions of the compact including, but not limited to, requirements to include all state taxes required by the terms of the compact to be collected by the tribe or nation in the price of its cigarettes or tobacco products, the tribe or nation shall not be eligible to receive any payment due from the state pursuant to the terms of the compact for the tax-reporting period during which the noncompliance occurred;

4. Records of all sales of cigarettes and tobacco products to the tribes or nations and their licensees shall be kept by all wholesalers doing business in the State of Oklahoma and shall be made available for inspection by state officials on a timely basis. Copies of all invoices of wholesale sales of cigarettes or tobacco products to tribally owned or licensed retail stores shall be forwarded by the wholesaler to the Oklahoma Tax Commission; and

5. For purposes of a compact pursuant to the provisions of this section, the term "tribal licensee" shall only extend to:

a. members of the tribe or nation, and

b. business entities in which the tribe or nation or tribal members have a majority ownership interest.

D. In addition to any other authority granted by law, the Tax Commission shall regularly conduct an audit of wholesalers, distributors, jobbers and warehousemen selling cigarettes or tobacco products to a federally recognized Indian tribe or nation or a tribally owned or licensed store to determine if the correct amount of tax payable under this act has been collected and to determine compliance with any and all compacts.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 348, is amended to read as follows:

Section 348. As used in Sections 346 through 352 of this title:

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

2. "Federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States;

3. "Indian country" means:

a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,

b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation,

c. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same;

4. "Member of the tribe" or "tribal member" means a person who is duly enrolled within the membership of the federally recognized Indian tribe or nation which owns or licenses the store;

5. "Nonmember of the tribe" or "nontribal member" means, with respect to a particular Indian tribe or nation, any person who is not a duly enrolled member of that tribe or nation, and shall include any person who is a member of another Indian tribe or nation but not a member of that tribe or nation;

6. "Unstamped cigarettes" means packages of cigarettes which bear no evidence of ~~a~~ the tax stamp required by state law and includes cigarettes bearing an improper tax stamp;

7. "Contraband cigarettes" means unstamped cigarettes which are required by the provisions of Sections 348 through 351 of this title or Section 301 et seq. of this title to bear stamps and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 304 of this title; provided, contraband cigarettes shall not include unstamped cigarettes sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 321 through 324 of this title;

8. "Stamped cigarettes" means packages of cigarettes which bear a tax stamp required by state law;

9. "Commission" means the Oklahoma Tax Commission; and

10. "Person" shall include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, trust, estate, business trust receiver or trustee appointed by any state or federal court, syndicates or any combination acting as a unit, in the plural or singular number.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 349, is amended to read as follows:

Section 349. A. There is hereby levied upon the sale of cigarettes at a tribally owned or licensed store a tax in the amount of ~~seventy-five percent (75%)~~ one hundred percent (100%) of the cigarette excise taxes imposed by Section 301 et seq. of Title 68 of the Oklahoma Statutes, which tax shall be in lieu of all sales and excise taxes on such cigarettes.

B. A federally recognized Indian tribe or nation may receive a refund for a portion of the tax imposed pursuant to the provisions of this section ~~if~~ to the extent it can provide sufficient documentation ~~that~~ of sales of cigarettes to its tribal members ~~exceed twenty-five percent (25%) of its total sales of cigarettes~~. The amount of the refund shall be the amount of tax paid which is attributable to sales of cigarettes made to tribal members ~~which is in excess of twenty-five percent (25%) of the tribe's or nation's total sales of cigarettes~~. Refunds shall be paid quarterly. The Tax Commission shall promulgate rules and regulations to administer the provisions of this subsection.

C. All cigarettes which are sold or held for sale at a tribally owned or licensed store shall have affixed thereto a stamp or stamps evidencing payment of the in lieu tax required by subsection A of this section.

D. It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute or purchase contraband cigarettes. Any person who engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband cigarettes shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00), by a term of imprisonment in the State Penitentiary for not more than two (2) years, or by both such fine and imprisonment.

E. Any person who knowingly engages in shipping, transporting, receiving, possessing, selling, distributing or purchasing contraband cigarettes shall be subject to the forfeiture of property as is provided by Section 305 of Title 68 of the Oklahoma Statutes and assessment of penalty as provided thereby and assessment for any delinquent taxes found to be owing.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Nontribal retail vendor" means a business entity making sales of cigarettes or tobacco products, or both, which is not owned, operated or licensed by a federally recognized Native American tribe and which is located within a twenty-five-mile radius of a tribal retail vendor; and

2. "Tribal retail vendor" means a person or entity making sales of cigarettes or tobacco products, or both, which is owned, operated or licensed by a federally recognized Native American tribe and which is located within a twenty-five-mile radius of a nontribal retail vendor.

B. Notwithstanding any other provision of law to the contrary, a nontribal retail vendor shall not be required to pay a cigarette excise tax or a tobacco products excise tax in excess of the lesser of:

1. Ten cents ($0.10) per pack more than the lowest cigarette excise tax rate imposed upon cigarettes sold by a tribal retail vendor; or

2. Ten cents ($0.10) per product type more than the lowest excise tax rate imposed upon tobacco products sold by a tribal retail vendor; or

3. Ten percent (10%) per pack more than the lowest cigarette excise tax rate imposed upon cigarettes sold by a tribal retail vendor; or

4. Ten percent (10%) per product type more than the lowest excise tax rate imposed upon tobacco products sold by a tribal retail vendor.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 15th day of March, 2006.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

_____
Presiding Officer of the Senate