

3 **Senate Bill No. 1950**
4 **As Amended**

5 SENATE BILL NO. 1950 - By: HOBSON and ADELSON of the Senate and
6 NATIONS of the House.

7 [revenue and taxation - modifying - provisions - cigarette
8 and tobacco products tax - modifying incidence of tax -
9 increasing penalties - modifying tax rate - effective date]

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

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

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

24 B. Except as provided in paragraph 26 of subsection C of this
25 section, neither the Tax Commission nor any employee engaged in the

1 administration of the Tax Commission or charged with the custody of
2 any such records or files shall be required by any court of this
3 state to produce any of the records or files for the inspection of
4 any person or for use in any action or proceeding, except when the
5 records or files or the facts shown thereby are directly involved in
6 an action or proceeding pursuant to the provisions of the Uniform
7 Tax Procedure Code or of the state tax law, or when the
8 determination of the action or proceeding will affect the validity
9 or the amount of the claim of the state pursuant to any state tax
10 law, or when the information contained in the records or files
11 constitutes evidence of violation of the provisions of the Uniform
12 Tax Procedure Code or of any state tax law.

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

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

22 2. The exchange of information that is not protected by the
23 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,

1 pursuant to reciprocal agreements entered into by the Tax Commission
2 and other state agencies or agencies of the federal government;

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

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

8 5. The disclosing of information or evidence to the Oklahoma
9 State Bureau of Investigation, Attorney General, Oklahoma State
10 Bureau of Narcotics and Dangerous Drugs Control, any district
11 attorney, or agent of any federal law enforcement agency when the
12 information or evidence is to be used by such officials to
13 investigate or prosecute violations of the criminal provisions of
14 the Uniform Tax Procedure Code or of any state tax law or of any
15 federal crime committed against this state. Any information
16 disclosed to the Oklahoma State Bureau of Investigation, Attorney
17 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs
18 Control, any district attorney, or agent of any federal law
19 enforcement agency shall be kept confidential by such person and not
20 be disclosed except when presented to a court in a prosecution for
21 violation of the tax laws of this state or except as specifically
22 authorized by law, and a violation by the Oklahoma State Bureau of
23 Investigation, Attorney General, Oklahoma State Bureau of Narcotics

1 and Dangerous Drugs Control, district attorney, or agent of any
2 federal law enforcement agency by otherwise releasing the
3 information shall be a felony;

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

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

1 furnishing of information to the State Treasurer for the purpose of
2 administration of the Uniform Unclaimed Property Act;

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

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

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

22 11. The furnishing of information to an Oklahoma wholesaler of
23 low-point beer, licensed under the provisions of Section 163.1 et

1 seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers
2 authorized by law to purchase low-point beer in this state or the
3 furnishing of information to a licensed Oklahoma wholesaler of
4 shipments by licensed manufacturers into this state;

5 12. The furnishing of information as to the issuance or
6 revocation of any tax permit, license or exemption by the Tax
7 Commission as provided for by law. Such information shall be
8 limited to the name of the person issued the permit, license or
9 exemption, the name of the business entity authorized to engage in
10 business pursuant to the permit, license or exemption, the address
11 of the business entity, and the grounds for revocation;

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

20 14. The furnishing of information upon written request by any
21 member of the general public as to the outstanding and unpaid amount
22 due and owing by any taxpayer of this state for any delinquent tax,

1 together with penalty and interest, for which a tax warrant or a
2 certificate of indebtedness has been filed pursuant to law;

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

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

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

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

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

21 20. The disclosure to a plaintiff of a corporation's last-known
22 address shown on the records of the Franchise Tax Division of the

1 Tax Commission in order for such plaintiff to comply with the
2 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

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

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

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

1 24. The furnishing to a prospective purchaser of any business,
2 or his or her authorized representative, of information relating to
3 any liabilities, delinquencies, assessments or warrants of the
4 prospective seller of the business which have not been filed of
5 record, established, or become final and which relate solely to the
6 seller's business. Any disclosure under this paragraph shall only
7 be allowed upon the presentment by the prospective buyer, or the
8 buyer's authorized representative, of the purchase contract and a
9 written authorization between the parties;

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

1 26. The examination of records and files of a person or entity
2 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs
3 Control pursuant to a court order by a magistrate in whose
4 territorial jurisdiction the person or entity resides, or where the
5 Tax Commission records and files are physically located. Such an
6 order may only be issued upon a sworn application by an agent of the
7 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
8 certifying that the person or entity whose records and files are to
9 be examined is the target of an ongoing investigation of a felony
10 violation of the Uniform Controlled Dangerous Substances Act and
11 that information resulting from such an examination would likely be
12 relevant to that investigation. Any records or information obtained
13 pursuant to such an order may only be used by the Oklahoma State
14 Bureau of Narcotics and Dangerous Drugs Control in the investigation
15 and prosecution of a felony violation of the Uniform Controlled
16 Dangerous Substances Act. Any such order issued pursuant to this
17 paragraph, along with the underlying application, shall be sealed
18 and not disclosed to the person or entity whose records were
19 examined, for a period of ninety (90) days. The issuing magistrate
20 may grant extensions of such period upon a showing of good cause in
21 furtherance of the investigation. Upon the expiration of ninety
22 (90) days and any extensions granted by the magistrate, a copy of
23 the application and order shall be served upon the person or entity

1 whose records were examined, along with a copy of the records or
2 information actually provided by the Tax Commission; or

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

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

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

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

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

22 F. It is further provided that the provisions of this section
23 shall be strictly interpreted and shall not be construed as

1 permitting the disclosure of any other information contained in the
2 records and files of the Tax Commission relating to income tax or to
3 any other taxes.

4 G. Unless otherwise provided for in this section, any violation
5 of the provisions of this section shall constitute a misdemeanor and
6 shall be punishable by the imposition of a fine not exceeding One
7 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail
8 for a term not exceeding one (1) year, or by both such fine and
9 imprisonment, and the offender shall be removed or dismissed from
10 office.

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

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

21 Section 302. There is hereby levied upon the sale, use, gift,
22 possession, or consumption of cigarettes within the State of
23 Oklahoma a tax at the rate of four (4) mills per cigarette.

1 Beginning November 3, 1992, the revenue resulting from the tax
2 levied pursuant to this section shall be apportioned by the Oklahoma
3 Tax Commission and transmitted to the State Treasurer, who shall
4 deposit the same in the Oklahoma Building Bonds of 1992 Sinking
5 Fund. No part of the cigarette tax receipts derived from the
6 increase in the cigarette tax rate shall be used in determining the
7 amount of cigarette tax collections to be paid into the State of
8 Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the
9 provisions of Sections 57.31 through 57.43 of Title 62 of the
10 Oklahoma Statutes.

11 The tax hereby levied shall be paid only once by the wholesaler
12 on any cigarettes sold, used, received, possessed, or consumed in
13 this state. The tax shall be evidenced by stamps which shall be
14 furnished by and purchased from the Tax Commission or by an
15 impression of such tax by the use of a metering device when
16 authorized by the Tax Commission as provided for in Section 301 et
17 seq. of this title, and the stamps or impression shall be securely
18 affixed to one end of each package in which cigarettes are contained
19 or from which consumed.

20 ~~The impact of the tax levied by the provisions of Section 301 et~~
21 ~~seq. of this title is hereby declared to be on the vendee, user,~~
22 ~~consumer, or possessor~~ incidence of the tax is imposed on the
23 wholesaler of cigarettes in this state, ~~and, when the tax is paid by~~

1 ~~any other person, such payment shall be considered as an advance~~
2 ~~payment and shall thereafter be added to the price of the cigarettes~~
3 ~~and recovered from the ultimate consumer or user~~ and such tax shall
4 be paid but once. In making a sale of cigarettes in this state, a
5 wholesaler or jobber may separately state and show upon the invoice
6 covering the sale the amount of tax paid on the cigarettes sold.
7 The tax shall be evidenced by appropriate stamps attached to each
8 package of cigarettes sold. Every retailer who makes sales of
9 cigarettes within this state to persons for use or consumption shall
10 separately show the amount of tax paid as evidenced by appropriate
11 stamps on each package of cigarettes sold, ~~and the tax shall be~~
12 ~~collected by the retailer from the user or consumer.~~ The provisions
13 of this section shall in no way affect the method of collection of
14 tax on cigarettes as now provided for by existing law. As to
15 cigarettes packed in quantities of less than ten, for distribution
16 as samples, payment of the tax may be made to the Tax Commission in
17 a lump sum without affixing stamps on such packages.

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

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

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

- 5 1. Sell, offer for sale or present as a prize or gift
6 cigarettes without a stamp being then and there affixed to each
7 individual package;
- 8 2. Sell cigarettes in quantities less than an individual
9 package;
- 10 3. Knowingly consume, use or smoke any cigarettes upon which a
11 tax is required to be paid without a stamp being affixed upon each
12 individual package;
- 13 4. Knowingly cancel or mutilate any stamp affixed to any
14 individual package of cigarettes for the purpose of concealing any
15 violation of Section 301 et seq. of this title or with any other
16 fraudulent intent;
- 17 5. Use any artful device or deceptive practice to conceal any
18 violation of Section 301 et seq. of this title;
- 19 6. Refuse to surrender to the Oklahoma Tax Commission upon
20 demand any cigarettes possessed in violation of any provision of
21 Section 301 et seq. of this title; or
- 22 7. Make a first sale of cigarettes without a stamp being then
23 and there affixed to each individual package;

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

6 B. Any consumer, who shall:

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

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

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

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

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

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

1 7. Make a first sale of cigarettes without a stamp being then
2 and there affixed to each individual package;
3 shall be fined not more than Two Hundred Dollars (\$200.00), where
4 specific penalties are not otherwise provided.

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

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

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

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

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

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

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

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

4 2. Store any unstamped cigarettes in the state or deliver or
5 distribute any unstamped cigarettes within this state, without at
6 the time of storage or delivery having a valid license posted so as
7 to be easily seen by the public;
8 shall be guilty of a misdemeanor, and upon conviction shall be
9 punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~
10 Ten Thousand Dollars (\$10,000.00) for the first offense, and not
11 more than Twenty-five Thousand Dollars (\$25,000.00) for the second
12 offense.

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

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

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

19 3. For a third or subsequent offense, be punished by an
20 administrative fine of not more than Five Thousand Dollars
21 (\$5,000.00).

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

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

3 2. For a second or subsequent offense, be punished by an
4 administrative fine of not more than Twenty Thousand Dollars
5 (\$20,000.00).

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

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

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

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

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

1 3. Fails to comply with any requirement of Section 301 et seq.
2 of this title;
3 shall, for each such offense, be fined not more than Ten Thousand
4 Dollars (\$10,000.00), or imprisoned not more than five (5) years, or
5 both.

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

13 ~~F.~~ J. Whoever fails to pay any tax imposed by Section 301 et
14 seq. of this title at the time prescribed by law or rules, shall, in
15 addition to any other penalty provided in Section 301 et seq. of
16 this title, be liable to a penalty of five hundred percent (500%) of
17 the tax due but unpaid.

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

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

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

16 1. A first violation with a total quantity of less than two
17 cartons of cigarettes or the equivalent amount of other cigarettes
18 shall be punishable by a fine not to exceed ~~One Thousand Dollars~~
19 ~~(\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) or imprisonment not to
20 exceed five (5) years, or both fine and imprisonment;

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

1 ~~(\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or
2 imprisonment not to exceed five (5) years, or both the fine and the
3 imprisonment, and shall also result in the revocation by the Tax
4 Commission of the manufacturer, distributor, or retailer license;

5 3. A first violation with a total quantity of more than two
6 cartons of cigarettes, or the equivalent amount of other cigarettes,
7 shall be punishable by a fine not to exceed ~~Two Thousand Dollars~~
8 ~~(\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or
9 imprisonment not to exceed five (5) years, or both the fine and
10 imprisonment; and

11 4. A subsequent violation with a quantity of two cartons of
12 cigarettes or more, or the equivalent amount of other cigarettes
13 shall be punishable by a fine not to exceed Fifty Thousand Dollars
14 (\$50,000.00) or imprisonment not to exceed five (5) years, or both
15 the fine and imprisonment, and shall also result in the revocation
16 by the Tax Commission of the manufacturer, distributor, or retailer
17 license.

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

1 SECTION 4. AMENDATORY 68 O.S. 2001, Section 348, is
2 amended to read as follows:

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

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

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

18 3. "Indian country" means:

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

22 b. all land within the limits of any Indian reservation
23 under the jurisdiction of the United States

1 Government, notwithstanding the issuance of any
2 patent, including rights-of-way running through the
3 reservation,

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

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

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

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

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

4 7. "Contraband cigarettes" means unstamped cigarettes which are
5 required by the provisions of Sections 348 through 351 of this title
6 or Section 301 et seq. of this title to bear stamps and which are in
7 the possession, custody or control of any person, for the purpose of
8 being consumed, sold, offered for sale or consumption or transported
9 to any person in this state other than a wholesaler licensed under
10 Section 304 of this title; provided, contraband cigarettes shall not
11 include unstamped cigarettes sold to veterans' hospitals, to state-
12 operated domiciliary homes for veterans or to the United States for
13 sale or distribution by said entities in accordance with Sections
14 321 through 324 of this title;

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

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

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

1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 349, is
2 amended to read as follows:

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

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

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

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

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

18 SECTION 6. This act shall become effective November 1, 2006.

19 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,
20 As Amended and Coauthored.