STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3357 By: Terrill

COMMITTEE SUBSTITUTE

(Revenue and taxation - amending 47 O.S. 2001, Sections 1121 and 1128 - motor vehicle licensing and registration - amending various Sections in 68 O.S. Supp. 2007 - state tax administration - codification - effective date - emergency)

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 1121, is amended to read as follows:

Section 1121. A. When, at the time of registration of any vehicle, payment is made by check for fees and taxes and the check is not paid by the bank on which drawn for any reason, after said check has been presented for payment a second time, such certificate of registration and other such instruments issued at the time of registration of such vehicle shall be invalid. The motor license

agent shall transmit all documents and the dishonored check to the Oklahoma Tax Commission for credit to the motor license agent's account. The Commission may enter into a contract for the collection of dishonored checks and canceled instruments. In all such cases, such vehicles shall be subject to the license fees and penalties provided in this act as though no attempt to register the vehicle had been made and the motor license agent shall charge the person issuing the check a fee of Twenty-five Dollars ($25.00) for each check to cover the costs of processing each returned check. An individual who subsequently purchases any such vehicle shall not be required, as a condition for registration of the vehicle, to pay any ~~penalties imposed by this section~~ tax, fee or penalty due resulting from the dishonored check.

A mortgagee who repossesses any such vehicle shall not be required, as a condition for registration of said vehicle, to pay the dishonored check penalties which had accrued as of the date of such repossession.

B. Whenever payment is made by check for any Oklahoma driver's license and the check is not paid by the bank on which drawn for any reason, after said check has been presented for payment a second time, such driver's license shall be invalid and all driving privileges of the holder of the driver's license shall be canceled. The motor license agent shall transmit the dishonored check to the Oklahoma Tax Commission for credit to the motor license agents

account. The Commission may enter into a contract for the collection of dishonored checks. The motor license agent shall charge the person issuing the check a fee of Twenty-five Dollars ($25.00) for each check to cover the cost of processing each returned check. The motor license agent shall transmit a copy of all documents associated with the application and issuance of the driver's license and a copy of the dishonored check to the Department of Public Safety.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 1128, is amended to read as follows:

Section 1128. A. Every person manufacturing or having a contract to sell new vehicles in this state shall file a verified application for a general distinctive number for all new vehicles owned or controlled by the manufacturer or dealer; provided, the Oklahoma Tax Commission shall issue a license to sell such new motor vehicles only for those types of new vehicles for which the applicant has a sales contract or franchise; provided, further, that no license shall be issued to any applicant that has not complied with the provisions of Sections 561 through 568 of this title and does not hold a current license issued by the Oklahoma Motor Vehicle Commission pursuant thereto. A separate manufacturer's or dealer's license shall be required for each separate county within which such manufacturer or dealer has an established place of business and upon payment of a license fee of Ten Dollars ($10.00) there shall be

assigned and issued to such manufacturer or dealer a Certificate of Registration and one license plate which shall be displayed upon each vehicle of such manufacturer or dealer when same is operated, driven, or displayed on any street, road, or highway, in the same manner as hereinbefore provided for vehicles owned by other persons. Such a manufacturer or dealer in new vehicles may obtain as many additional license plates as may be desired, upon the payment of the sum of Ten Dollars ($10.00) for each additional plate; provided that no such license plate issued to any manufacturer or dealer shall be used or displayed upon any secondhand or used vehicle, or upon any new vehicle which is used for a service car, or private use, or for hire. Any person, with consent of the dealer, may operate a motor vehicle, with the dealer's tag affixed, while contemplating purchase, so long as this intent is limited to a consecutive seventy-two-hour period, or a weekend. An individual holding a valid salesman's license issued by the Oklahoma Motor Vehicle Commission shall not be subject to this limitation. If such person also buys and sells used vehicles, he shall, after obtaining his new motor vehicle dealer's license from the Oklahoma Motor Vehicle Commission, also obtain a used motor vehicle dealer's license, from the Used Motor Vehicle and Parts Commission, the cost of which shall be as prescribed in Section 1101 et seq. of this title.

B. Each dealer and used motor vehicle dealer shall keep a record of the purchase and sale of each motor vehicle he buys or

sells, which shall show the name of the seller or buyer as the case may be, and a complete description of the vehicle purchased or sold, and such other information as the Commission may prescribe.

C. Application for manufacturer's or dealer's license must show that such dealer or manufacturer has not violated any of the provisions of this section; and such license shall be nonassignable; and any such license may be suspended temporarily or revoked by the Commission for violation or failure to comply with this section, provided, the holder of such license shall be given ten (10) days' notice of hearing to suspend or cancel such license. If any such person subject to any of the licenses required in this section fails to obtain it when due, a penalty of twenty-five cents ($0.25) per day on each such license shall be charged in the same manner as is now provided on delinquent motor vehicle registrations, and after a period of thirty (30) days such penalty shall be equal to the license fee. It shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. Each used motor vehicle must display a proper Oklahoma license plate or a used dealer's license plate. Dealers failing to comply with provisions of this section shall be responsible for all taxes due on such sales or on such vehicles.

D. Every person engaged in the business of transporting and delivering new or used vehicles by driving, either singly or by

towbar, saddle mount or full mount method, engaging in drive-away operations as defined in Section 3 of Title 85 of the Oklahoma Statutes, or any combination thereof, from the manufacturer or shipper to the dealer or consignee and using the public highways of this state shall file with the Commission a verified application for in-transit license plates to identify such vehicles. The application shall provide for a general distinctive number for all vehicles so transported. Upon payment of a license fee of Ten Dollars ($10.00) there shall be assigned and issued to such person one in-transit plate. Such in-transit plate shall be used by such person only on vehicles when so transported. Such person may obtain as many additional in-transit plates as desired upon payment of a fee of Ten Dollars ($10.00) for each additional plate. Provided, a used motor vehicle dealer shall use a used dealer license plate in lieu of the in-transit license plate for transporting a used motor vehicle and, in such cases, shall be exempt from making application for an in-transit license plate. Provided further, only a person who possesses a ~~certificate issued by the Interstate Commerce Commission or the Corporation Commission to engage in the business of transporting and delivering manufactured homes for hire~~ motor carrier number issued by the Federal Motor Carrier Safety Administration, or a united carrier registration issued by the Oklahoma Corporation Commission may use the in-transit license plates obtained by them as herein authorized for transporting new or

used manufactured homes from one location to another location within Oklahoma or from a point in another state to a point in this state. Nothing contained in this section shall relieve any person from the payment of license fees otherwise provided by law. When the Commission deems it advisable and in the public interest, it may require the holder of any in-transit license, or any person making application therefor, to file a proper surety bond in any amount it deems proper, not to exceed Ten Thousand Dollars ($10,000.00).

E. The Oklahoma Tax Commission shall issue dealer licenses to new and used manufactured home dealers, new and used travel trailer dealers and new and used commercial trailer dealers.

F. All licenses provided for in this section shall expire on December 31 of each year.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1133.3 of Title 47, unless there is created a duplication in numbering, reads as follows:

At the option of the owner, the Oklahoma Tax Commission is authorized to register boat trailers and utility-type trailers, which are not being utilized in a commercial capacity, on an annual basis for a fee of One Dollar ($1.00).

SECTION 4. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007, 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;

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;

27. The disclosure of information, as prescribed by this paragraph, which is related to the proposed or actual usage of tax credits pursuant to Section 2357.7 of this title, the Small Business Capital Formation Incentive Act or the Rural Venture Capital Formation Incentive Act. Unless the context clearly requires otherwise, the terms used in this paragraph shall have the same meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this title. The disclosure of information authorized by this paragraph shall include:

a. the legal name of any qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,

b. the identity or legal name of any person or entity that is a shareholder or partner of a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,

c. the identity or legal name of any Oklahoma business venture, Oklahoma small business venture, or Oklahoma rural small business venture in which a qualified investment has been made by a capital company, or

d. the amount of funds invested in a qualified venture capital company, the amount of qualified investments in a qualified small business capital company or qualified rural small business capital company and the amount of investments made by a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company; or

28. The disclosure of specific information as required by Section ~~1~~ 46 of ~~this act~~ Title 62 of the Oklahoma Statutes.

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 5. AMENDATORY Section 4, Chapter 475, O.S.L. 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2007, Section 312.1), is amended to read as follows:

Section 312.1 A. The Oklahoma Tax Commission, if in its discretion it deems practical and reasonable, may establish procedures for maintaining records and filing reports containing the information required by this section. The exercise by the Tax Commission of the authority granted in this subsection shall be by adoption of rules necessary to establish procedures that increase compliance with the requirements of this article. If the Tax Commission determines to utilize its discretion, the provisions of subsections B through J of this section shall apply.

B. Every wholesaler and distributor receiving cigarettes shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the wholesaler and distributor and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another distributor or to a retailer within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same distributor within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to Indian tribal entities or instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

C. Manufacturers shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a distributor within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same manufacturer within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

D. The Tax Commission shall establish the reporting period, which shall be no longer than three (3) calendar months and no shorter than one (1) calendar month. Reports shall be submitted electronically as prescribed by the Tax Commission.

E. Each distributor shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation shall show the name, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

F. Each retailer shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.

G. Each manufacturer shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the manufacturer is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or

documentation shall show the name and address of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

H. Records required under subsections E through G of this section shall be preserved on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission.

I. The records required by subsections E through G of this section shall be retained for a period of three (3) years from the date of the transaction.

J. The Tax Commission, upon request, shall have access to reports and records required under this act. The Tax Commission at its sole discretion may share the records and reports required by such sections with law enforcement officials of the federal government, the State of Oklahoma, other states, or international authorities.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007, Section 316), is amended to read as follows:

Section 316. A. Any person 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), where specific penalties are not otherwise provided.

B. 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), where specific penalties are not otherwise provided.

C. Any distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsections A and B 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).

D. Any retailer violating the provisions of Section ~~305.1~~ 301 et seq. 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. 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. 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 of this section or a person punished for a violation pursuant to the provisions of subsection E 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. 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. 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. 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. 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. 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) 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), 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) 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 with counterfeit tax stamps or a combination thereof. Any counterfeit cigarette seized by the Tax Commission shall be destroyed.

SECTION 7. AMENDATORY Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

Section 1354.27 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated

by instructions for delivery to the purchaser or donee, known to the seller. Provided, this subsection shall not apply to florists until January 1, ~~2009~~ 2010. Prior to that date, all sales by florists shall be sourced to its business location;

3. When the provisions of paragraphs 1 and 2 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

4. When the provisions of paragraphs 1, 2 and 3 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

5. When none of the previous rules of paragraphs 1, 2, 3 and 4 of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that

merely provided the digital transfer of the product sold. In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location will be that which is associated with the mobile telephone number.

B. The lease or rental of tangible personal property, other than property identified in subsection C or D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection A of this section,

notwithstanding the exclusion of lease or rental in subsection A of this section. “Transportation equipment” means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

a. registered through the International Registration Plan, and

b. operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

3. Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

4. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs 1, 2 and 3 of this subsection.

E. For the purposes of this section, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;

2. Making first use of services; or

3. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

SECTION 8. This act shall become effective July 1, 2008.

SECTION 9. 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.

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