

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 1956

By: Mazzei and Wilson of the  
Senate

6 and

7 Terrill and Jones of the  
8 House

9 COMMITTEE SUBSTITUTE

10 An Act relating to revenue and taxation; amending 47  
11 O.S. 2001, Section 1121, which relates to payment for  
12 vehicle registrations; providing exemption from  
13 certain costs or charges related to dishonored  
14 checks; amending 47 O.S. 2001, Section 1128, which  
15 relates to motor vehicles; modifying provisions  
16 related to in-transit license plates; authorizing  
17 certain registration fee for boat trailers and  
18 utility-type trailers; amending 47 O.S. 2001, Section  
19 1140, as last amended by Section 77, Chapter 1,  
20 O.S.L. 2005 (47 O.S. Supp. 2007, Section 1140), which  
21 relates to motor license agencies; providing  
22 exemption from certain prohibition on locations of  
23 motor license agencies; amending 68 O.S. 2001,  
24 Section 118, as last amended by Section 3, Chapter  
335, O.S.L. 2007 (68 O.S. Supp. 2007, Section 118),  
which relates to revenue estimation; making certain  
date certain; amending 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), which relates to  
tax records; allowing the providing of information to  
certain groups; amending 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),  
which relates to records and procedures; modifying  
provision related to disclosure of information to law  
enforcement officials; amending 68 O.S. 2001, Section  
316, as amended by Section 5, Chapter 475, O.S.L.

1 2003 (68 O.S. Supp. 2007, Section 316), which relates  
2 to certain offenses related to cigarette taxation;  
3 modifying statutory reference; imposing limitation  
4 upon sales of cigarettes by wholesalers to tribal  
5 retailers; defining terms; prohibiting sales of  
6 cigarettes at reduced tax rates; providing exception;  
7 imposing limitations with respect to quantity;  
8 authorizing requests for allowances by Tax  
9 Commission; requiring certain information to be  
10 provided regarding cigarette sales for certain period  
11 of time; providing for certain computations;  
12 prescribing procedures; requiring communications by  
13 wholesalers to Tax Commission; providing for  
14 revocation of license; imposing liability for sales  
15 of certain cigarettes; imposing presumption;  
16 authorizing administrative penalties; amending  
17 Section 20, Chapter 413, O.S.L. 2003, as last amended  
18 by Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp.  
19 2007, Section 1354.27), which relates to sourcing;  
20 modifying time period during which sourcing rule  
21 applies; amending Section 3, Chapter 503, O.S.L. 2002  
22 (68 O.S. Supp. 2007, Section 2358.6), which relates  
23 to certain bonus depreciation adjustments; providing  
24 for increase of federal taxable income of certain  
entities for purposes of Economic Stimulus Act of  
2008; requiring filing of amended returns; amending  
Section 4, Chapter 42, 2nd Extraordinary Session,  
O.S.L. 2006, as amended by Section 2, Chapter 346,  
O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A),  
which relates to certain determinations by State  
Board of Equalization; modifying method and timing of  
revenue determinations; providing for codification;  
providing an effective date; and declaring an  
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

1 is not paid by the bank on which drawn for any reason, after said  
2 check has been presented for payment a second time, such certificate  
3 of registration and other such instruments issued at the time of  
4 registration of such vehicle shall be invalid. The motor license  
5 agent shall transmit all documents and the dishonored check to the  
6 Oklahoma Tax Commission for credit to the motor license agent's  
7 account. The Commission may enter into a contract for the  
8 collection of dishonored checks and canceled instruments. In all  
9 such cases, such vehicles shall be subject to the license fees and  
10 penalties provided in this act as though no attempt to register the  
11 vehicle had been made and the motor license agent shall charge the  
12 person issuing the check a fee of Twenty-five Dollars (\$25.00) for  
13 each check to cover the costs of processing each returned check. An  
14 individual who subsequently purchases any such vehicle shall not be  
15 required, as a condition for registration of the vehicle, to pay any  
16 ~~penalties imposed by this section~~ tax, fee or penalty due resulting  
17 from the dishonored check.

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

22 B. Whenever payment is made by check for any Oklahoma ~~driver's~~  
23 driver license and the check is not paid by the bank on which drawn  
24 for any reason, after said check has been presented for payment a

1 second time, such ~~driver's~~ driver license shall be invalid and all  
2 driving privileges of the holder of the ~~driver's~~ driver license  
3 shall be canceled. The motor license agent shall transmit the  
4 dishonored check to the Oklahoma Tax Commission for credit to the  
5 motor license agents account. The Commission may enter into a  
6 contract for the collection of dishonored checks. The motor license  
7 agent shall charge the person issuing the check a fee of Twenty-five  
8 Dollars (\$25.00) for each check to cover the cost of processing each  
9 returned check. The motor license agent shall transmit a copy of  
10 all documents associated with the application and issuance of the  
11 ~~driver's~~ driver license and a copy of the dishonored check to the  
12 Department of Public Safety.

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

15 Section 1128. A. Every person manufacturing or having a  
16 contract to sell new vehicles in this state shall file a verified  
17 application for a general distinctive number for all new vehicles  
18 owned or controlled by the manufacturer or dealer; provided, the  
19 Oklahoma Tax Commission shall issue a license to sell such new motor  
20 vehicles only for those types of new vehicles for which the  
21 applicant has a sales contract or franchise; provided, further, that  
22 no license shall be issued to any applicant that has not complied  
23 with the provisions of Sections 561 through 568 of this title and  
24 does not hold a current license issued by the Oklahoma Motor Vehicle

1 Commission pursuant thereto. A separate manufacturer's or dealer's  
2 license shall be required for each separate county within which such  
3 manufacturer or dealer has an established place of business and upon  
4 payment of a license fee of Ten Dollars (\$10.00) there shall be  
5 assigned and issued to such manufacturer or dealer a Certificate of  
6 Registration and one license plate which shall be displayed upon  
7 each vehicle of such manufacturer or dealer when same is operated,  
8 driven, or displayed on any street, road, or highway, in the same  
9 manner as hereinbefore provided for vehicles owned by other persons.  
10 Such a manufacturer or dealer in new vehicles may obtain as many  
11 additional license plates as may be desired, upon the payment of the  
12 sum of Ten Dollars (\$10.00) for each additional plate; provided that  
13 no such license plate issued to any manufacturer or dealer shall be  
14 used or displayed upon any secondhand or used vehicle, or upon any  
15 new vehicle which is used for a service car, or private use, or for  
16 hire. Any person, with consent of the dealer, may operate a motor  
17 vehicle, with the dealer's tag affixed, while contemplating  
18 purchase, so long as this intent is limited to a consecutive  
19 seventy-two-hour period, or a weekend. An individual holding a  
20 valid salesman's license issued by the Oklahoma Motor Vehicle  
21 Commission shall not be subject to this limitation. If such person  
22 also buys and sells used vehicles, he shall, after obtaining his new  
23 motor vehicle dealer's license from the Oklahoma Motor Vehicle  
24 Commission, also obtain a used motor vehicle dealer's license, from

1 the Used Motor Vehicle and Parts Commission, the cost of which shall  
2 be as prescribed in Section 1101 et seq. of this title.

3 B. Each dealer and used motor vehicle dealer shall keep a  
4 record of the purchase and sale of each motor vehicle he buys or  
5 sells, which shall show the name of the seller or buyer as the case  
6 may be, and a complete description of the vehicle purchased or sold,  
7 and such other information as the Commission may prescribe.

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

1 of this section shall be responsible for all taxes due on such sales  
2 or on such vehicles.

3 D. Every person engaged in the business of transporting and  
4 delivering new or used vehicles by driving, either singly or by  
5 towbar, saddle mount or full mount method, engaging in drive-away  
6 operations as defined in Section 3 of Title 85 of the Oklahoma  
7 Statutes, or any combination thereof, from the manufacturer or  
8 shipper to the dealer or consignee and using the public highways of  
9 this state shall file with the Commission a verified application for  
10 in-transit license plates to identify such vehicles. The  
11 application shall provide for a general distinctive number for all  
12 vehicles so transported. Upon payment of a license fee of Ten  
13 Dollars (\$10.00) there shall be assigned and issued to such person  
14 one in-transit plate. Such in-transit plate shall be used by such  
15 person only on vehicles when so transported. Such person may obtain  
16 as many additional in-transit plates as desired upon payment of a  
17 fee of Ten Dollars (\$10.00) for each additional plate. Provided, a  
18 used motor vehicle dealer shall use a used dealer license plate in  
19 lieu of the in-transit license plate for transporting a used motor  
20 vehicle and, in such cases, shall be exempt from making application  
21 for an in-transit license plate. Provided further, only a person  
22 who possesses a ~~certificate issued by the Interstate Commerce~~  
23 ~~Commission or the Corporation Commission to engage in the business~~  
24 ~~of transporting and delivering manufactured homes for hire~~ valid

1 motor carrier authority issued by the Federal Motor Carrier Safety  
2 Administration, or a valid for-hire authority issued by the  
3 Corporation Commission may use the in-transit license plates  
4 obtained by them as herein authorized for transporting new or used  
5 manufactured homes from one location to another location within  
6 Oklahoma or from a point in another state to a point in this state.  
7 Nothing contained in this section shall relieve any person from the  
8 payment of license fees otherwise provided by law. When the  
9 Commission deems it advisable and in the public interest, it may  
10 require the holder of any in-transit license, or any person making  
11 application therefor, to file a proper surety bond in any amount it  
12 deems proper, not to exceed Ten Thousand Dollars (\$10,000.00).

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

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

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

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



1 SECTION 4. AMENDATORY 47 O.S. 2001, Section 1140, as  
2 last amended by Section 77, Chapter 1, O.S.L. 2005 (47 O.S. Supp.  
3 2007, Section 1140), is amended to read as follows:

4 Section 1140. A. In municipalities having a population in  
5 excess of eight thousand five hundred (8,500) located in a county  
6 having a population in excess of one hundred thirty thousand  
7 (130,000), according to the latest Federal Decennial Census, the  
8 Oklahoma Tax Commission shall adopt rules prescribing minimum  
9 qualifications and requirements for locating motor license agencies  
10 and for persons applying for appointment as a motor license agent.  
11 Such qualifications and requirements shall include, but not be  
12 limited to, the following:

- 13 1. Necessary job skills and experience;
- 14 2. Minimum office hours;
- 15 3. Provision for sufficient staffing, equipment, office space  
16 and parking to provide maximum efficiency and maximum convenience to  
17 the public;
- 18 4. Obtainment of a faithful performance surety bond as provided  
19 for by law;
- 20 5. A requirement that operation of a motor license agency be  
21 the primary source of income for said agent;
- 22 6. That the applicant has not been convicted of a felony and  
23 that no felony charges are pending against the applicant;

24

1           7. That a complete financial statement be submitted by the  
2 applicant on forms provided by the Tax Commission;

3           8. That a report of the applicant's credit history be obtained  
4 through the appropriate credit bureau; and

5           9. That the location specified in the application for  
6 appointment as a motor license agent not be owned by a member of the  
7 Oklahoma Legislature or any person related to a member of the  
8 Oklahoma Legislature within the third degree by consanguinity or  
9 affinity and that the location not be within a three-mile radius of  
10 an existing motor license agency unless the applicant is assuming  
11 the location of an operating agency. The Tax Commission may, at its  
12 discretion, approve the relocation of an existing agency within a  
13 three-mile radius of another existing agency only if a naturally  
14 intervening geographic barrier within that radius causes the  
15 locations to be separated by not less than three (3) miles of  
16 roadway by the most direct route.

17           After the necessary information has been forwarded to the Tax  
18 Commission, each applicant shall be interviewed by the Tax  
19 Commission or its designees and each item of information shall be  
20 reviewed.

21           The qualifications and requirements specified in this subsection  
22 shall apply only to persons making application to be appointed as  
23 motor license agents on or after June 25, 1987.

24

1 Any person making application to the Tax Commission for the  
2 purpose of becoming a motor license agent shall pay when submitting  
3 the application, a nonrefundable application fee of One Hundred  
4 Dollars (\$100.00). All such application fees shall be deposited in  
5 the Oklahoma Tax Commission Revolving Fund.

6 Upon application by a person to serve as a motor license agent,  
7 in such counties, the Tax Commission shall make a determination  
8 whether such person and such location meets the qualifications and  
9 requirements prescribed herein and, if such be the case, shall  
10 appoint such person to serve as a motor license agent.

11 A motor license agent, appointed pursuant to this subsection  
12 shall be permitted to operate a motor license agency at a single  
13 location and shall be prohibited from operating subagencies or  
14 branch agencies, unless such subagencies or branch agencies were  
15 established prior to June 1, 1985.

16 Unless otherwise specifically provided, motor license agents  
17 appointed pursuant to this subsection shall be subject to all laws  
18 relating to motor license agents and shall be subject to removal at  
19 the will of the Tax Commission.

20 B. In all other counties of this state and in municipalities  
21 having a population of less than eight thousand five hundred (8,500)  
22 located in a county having a population in excess of one hundred  
23 thirty thousand (130,000), according to the latest Federal Decennial  
24 Census, the Tax Commission shall appoint as many motor license

1 agents as it deems necessary to carry out the provisions of the  
2 Motor Vehicle License and Registration Act. Provided, that in  
3 counties with a population in excess of twenty-five thousand  
4 (25,000) persons, according to the latest Federal Decennial Census,  
5 having only one motor license agent serving the county, the Tax  
6 Commission shall establish at least one additional agency to serve  
7 the county.

8 Such agents shall be self-employed independent contractors, and  
9 all agents shall be under the supervision of the Tax Commission;  
10 provided, any agent authorized to issue registrations pursuant to  
11 the International Registration Plan shall also be under the  
12 supervision of the Corporation Commission, subject to rules  
13 promulgated by the Corporation Commission pursuant to the provisions  
14 of subsection E of Section ~~2~~ 1166 of this ~~act~~ title. Any such  
15 agent, upon being appointed, shall furnish and file with the Tax  
16 Commission a bond in such amount as may be fixed by the Tax  
17 Commission. Such agent shall be removable at the will of the Tax  
18 Commission. Such agent shall perform all duties and do such things  
19 in the administration of the laws of this state as shall be enjoined  
20 upon and required by the Tax Commission or the Corporation  
21 Commission. Provided, the Tax Commission may operate a motor  
22 license agency in any county where a vacancy occurs.

23 C. In the event of a vacancy existing by reason of resignation,  
24 removal, death or otherwise, in the position of any motor license

1 agent, the Tax Commission is hereby empowered and authorized to take  
2 any and all actions it deems appropriate in order to provide for the  
3 orderly transition and for the maintenance of operations of the  
4 motor license agency including but not limited to the designation of  
5 one of its regular employees to serve as "acting agent" without  
6 bond, and to receive and expend all fees or charges authorized or  
7 provided by law and exercise the same powers and authority as a  
8 regularly appointed motor license agent. An acting agent may be  
9 authorized by the Tax Commission equally as the preceding agent to  
10 make disbursements from any balances in the preceding motor license  
11 agent's operating account and the agent's operating funds for the  
12 payment of expenses of operations and salaries and other overhead.  
13 If such funds are insufficient, the Tax Commission is authorized to  
14 expend from funds appropriated for the operation of the Tax  
15 Commission such amounts as are necessary to maintain and continue  
16 the operation of any such motor license agency until a successor  
17 agent is appointed and qualified. The Tax Commission may require a  
18 blanket fiduciary bond of the agency employees.

19 D. Any motor license agency operated by a motor license agent  
20 who has been charged with a felony shall be closed immediately. The  
21 State Auditor and Inspector shall immediately conduct an audit of  
22 such motor license agency and forward the report of the audit to the  
23 Tax Commission for review. The Tax Commission shall determine  
24 whether the motor license agency shall be reopened and operated by

1 the motor license agent or whether the agency shall be reopened and  
2 operated by the Tax Commission. The review of the audit and the Tax  
3 Commission determination shall be effected as soon as possible to  
4 prevent additional inconvenience to the public.

5 E. When an application for registration is made with the Tax  
6 Commission, Corporation Commission or a motor license agent, a  
7 registration fee of One Dollar and seventy-five cents (\$1.75) shall  
8 be collected for each license plate or decal issued. Such fees  
9 shall be in addition to the registration fees on motor vehicles and  
10 when an application for registration is made to the motor license  
11 agent such motor license agent shall retain a fee as provided in  
12 Section 1141.1 of this title. When the fee is paid by a person  
13 making application directly with the Tax Commission or Corporation  
14 Commission, as applicable, the registration fees shall be in the  
15 same amount as provided for motor license agents and the fee  
16 provided by Section 1141.1 of this title shall be deposited in the  
17 Oklahoma Tax Commission Revolving Fund or as provided in Section ~~3~~  
18 1167 of this ~~act~~ title, as applicable. The Tax Commission shall  
19 prepare schedules of registration fees and charges for titles which  
20 shall include the fees for such agents and all fees and charges paid  
21 by a person shall be listed separately on the application and  
22 registration and totaled on the application and registration. The  
23 motor license agents shall charge only such fees as are specifically  
24 provided for by law, and all such authorized fees shall be posted in

1 such a manner that any person shall have notice of all fees that are  
2 imposed by law.

3 F. No person shall be appointed as a motor license agent unless  
4 the person has attested under oath that the person is not related by  
5 affinity or consanguinity within the third degree to:

6 1. Any member of the Oklahoma Legislature;

7 2. Any person who has served as a member of the Oklahoma  
8 Legislature within the two-year period preceding the date of  
9 appointment as motor license agent; or

10 3. Any employee of the Tax Commission.

11 G. Any motor license agent appointed under the provisions of  
12 this title shall be responsible for all costs incurred by the Tax  
13 Commission when relocating an existing motor license agency. The  
14 Tax Commission may waive payment of such costs in case of unforeseen  
15 business or emergency conditions beyond the control of the agent.

16 SECTION 5. AMENDATORY 68 O.S. 2001, Section 118, as last  
17 amended by Section 3, Chapter 335, O.S.L. 2007 (68 O.S. Supp. 2007,  
18 Section 118), is amended to read as follows:

19 Section 118. A. Upon receipt of a written request from a  
20 member or employee of the Legislature, the Oklahoma Tax Commission  
21 shall provide:

22 1. A written estimate of the revenue gain or loss to the state  
23 as a result of an actual or proposed change to a state tax law; and  
24

1           2. A written statement of the Tax Commission's recommendation  
2 to the State Board of Equalization as to the change in the amount  
3 certified as available for appropriation by the Legislature as a  
4 result of an actual or proposed change to a state tax law.

5           The Tax Commission shall provide such estimate and statement  
6 within two (2) weeks of the date the request was received unless the  
7 member or employee of the Legislature specifies an earlier date. If  
8 the Tax Commission determines that it is unable to provide such  
9 estimate and statement within the time period required by this  
10 section, it shall provide a written explanation and date by which  
11 the estimate and statement will be provided to the member or  
12 employee.

13           B. ~~As soon as is practicable~~ On or after December 31, ~~2008~~  
14 2009, and subject to the availability of funds, the Tax Commission  
15 shall develop the estimates and statements required by subsection A  
16 of this section utilizing a dynamic revenue estimating model. Such  
17 model shall take into consideration changes in economic activity as  
18 a result of the proposed legislation and consequent revenue gains or  
19 losses due to factors such as taxpayer behavior, employment and  
20 business investment. The Tax Commission may, subject to the laws of  
21 this state relating to confidentiality of information, contract with  
22 institutions of higher education in this state or other entities to  
23 perform its duties as set forth in this subsection. The Tax

24



1 Commission is authorized to promulgate rules to carry out the  
2 implementation of this section.

3 C. For the purpose of providing an annual forecast of gross  
4 production tax revenues from the production of natural and  
5 casinghead gas to the Office of State Finance, the Tax Commission  
6 shall subscribe to appropriate reference materials which provide  
7 economic outlook of future gas prices that have most closely  
8 followed the historical trend of Oklahoma gas prices. To determine  
9 the average differential between the published forecasted prices and  
10 Oklahoma gas prices, the Tax Commission shall compare prices in at  
11 least twenty-four (24) of the immediate thirty-six (36) previous  
12 months of production. The Tax Commission shall utilize the  
13 procedures provided herein to forecast the collection of gross  
14 production tax revenues from the production of natural and  
15 casinghead gas for the fiscal year beginning July 1, 2005, and each  
16 fiscal year thereafter.

17 SECTION 6. AMENDATORY 68 O.S. 2001, Section 205, as last  
18 amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007,  
19 Section 205), is amended to read as follows:

20 Section 205. A. The records and files of the Oklahoma Tax  
21 Commission concerning the administration of the Uniform Tax  
22 Procedure Code or of any state tax law shall be considered  
23 confidential and privileged, except as otherwise provided for by  
24 law, and 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 nor any person who may have secured  
3 information from the Tax Commission shall disclose any information  
4 obtained from the records or files or from any examination or  
5 inspection of the premises or property of any person.

6 B. Except as provided in paragraph 26 of subsection C of this  
7 section, neither the Tax Commission nor any employee engaged in the  
8 administration of the Tax Commission or charged with the custody of  
9 any such records or files shall be required by any court of this  
10 state to produce any of the records or files for the inspection of  
11 any person or for use in any action or proceeding, except when the  
12 records or files or the facts shown thereby are directly involved in  
13 an action or proceeding pursuant to the provisions of the Uniform  
14 Tax Procedure Code or of the state tax law, or when the  
15 determination of the action or proceeding will affect the validity  
16 or the amount of the claim of the state pursuant to any state tax  
17 law, or when the information contained in the records or files  
18 constitutes evidence of violation of the provisions of the Uniform  
19 Tax Procedure Code or of any state tax law.

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

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

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

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

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

14       5. The disclosing of information or evidence to the Oklahoma  
15 State Bureau of Investigation, Attorney General, Oklahoma State  
16 Bureau of Narcotics and Dangerous Drugs Control, any district  
17 attorney, or agent of any federal law enforcement agency when the  
18 information or evidence is to be used by such officials to  
19 investigate or prosecute violations of the criminal provisions of  
20 the Uniform Tax Procedure Code or of any state tax law or of any  
21 federal crime committed against this state. Any information  
22 disclosed to the Oklahoma State Bureau of Investigation, Attorney  
23 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs  
24 Control, any district attorney, or agent of any federal law

1 enforcement agency shall be kept confidential by such person and not  
2 be disclosed except when presented to a court in a prosecution for  
3 violation of the tax laws of this state or except as specifically  
4 authorized by law, and a violation by the Oklahoma State Bureau of  
5 Investigation, Attorney General, Oklahoma State Bureau of Narcotics  
6 and Dangerous Drugs Control, district attorney, or agent of any  
7 federal law enforcement agency by otherwise releasing the  
8 information shall be a felony;

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

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

1 the amount of gross household income pursuant to Section 8C of  
2 Article X of the Oklahoma Constitution or Section 2890 of this  
3 title. The provisions of this paragraph shall also include the  
4 furnishing of information to the State Treasurer for the purpose of  
5 administration of the Uniform Unclaimed Property Act;

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

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

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

1           11. The furnishing of information to an Oklahoma wholesaler of  
2 low-point beer, licensed under the provisions of Section 163.1 et  
3 seq. of Title 37 of the Oklahoma Statutes, or an association or  
4 organization whose membership is comprised of such wholesalers, of  
5 the licensed retailers authorized by law to purchase low-point beer  
6 in this state or the furnishing of information to a licensed  
7 Oklahoma wholesaler of low-point beer of shipments by licensed  
8 manufacturers into this state;

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

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

24

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

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

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

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

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

21       19. The disclosure to an employer, as defined in Sections  
22 2385.1 and 2385.3 of this title, of information required in order to  
23 collect the tax imposed by Section 2385.2 of this title;

24

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

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

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

22        23. The furnishing of information regarding incentive payments  
23 made pursuant to the provisions of Sections 3601 through 3609 of  
24



1 this title or incentive payments made pursuant to the provisions of  
2 Sections 3501 through 3508 of this title;

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

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

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  
24

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

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

- 12 a. the legal name of any qualified venture capital  
13 company, qualified small business capital company, or  
14 qualified rural small business capital company,
- 15 b. the identity or legal name of any person or entity  
16 that is a shareholder or partner of a qualified  
17 venture capital company, qualified small business  
18 capital company, or qualified rural small business  
19 capital company,
- 20 c. the identity or legal name of any Oklahoma business  
21 venture, Oklahoma small business venture, or Oklahoma  
22 rural small business venture in which a qualified  
23 investment has been made by a capital company, or

24

1           d.    the amount of funds invested in a qualified venture  
2                capital company, the amount of qualified investments  
3                in a qualified small business capital company or  
4                qualified rural small business capital company and the  
5                amount of investments made by a qualified venture  
6                capital company, qualified small business capital  
7                company, or qualified rural small business capital  
8                company; or

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

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

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

21           E.    The Tax Commission shall prepare or cause to be prepared a  
22           report on all provisions of state tax law that reduce state revenue  
23           through exclusions, deductions, credits, exemptions, deferrals or  
24           other preferential tax treatments. The report shall be prepared not

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

24

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

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

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

21 SECTION 7. AMENDATORY Section 4, Chapter 475, O.S.L.  
22 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.  
23 Supp. 2007, Section 312.1), is amended to read as follows:

24

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

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

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

21 2. The quantity of cigarette packages that were distributed or  
22 shipped to another facility of the same distributor within the  
23 borders of Oklahoma during the reporting period; and  
24

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

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

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

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

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



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

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

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

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

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

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

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

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

23

24

1 SECTION 8. AMENDATORY 68 O.S. 2001, Section 316, as  
2 amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007,  
3 Section 316), is amended to read as follows:

4 Section 316. A. Any person 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;

24

1 shall be guilty of a misdemeanor, and upon conviction thereof shall  
2 be fined not more than Two Hundred Dollars (\$200.00), where specific  
3 penalties are not otherwise provided.

4 B. Any distributor, wholesale dealer, retail dealer or  
5 distributing agent who shall:

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

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

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

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

16 shall be guilty of a misdemeanor, and upon conviction thereof shall  
17 be punished by a fine of not more than Two Hundred Dollars  
18 (\$200.00), where specific penalties are not otherwise provided.

19 C. Any distributing agent who shall:

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

23 2. Store any unstamped cigarettes in the state or deliver or  
24 distribute any unstamped cigarettes within this state, without at

1 the time of storage or delivery having a valid license posted so as  
2 to be easily seen by the public;  
3 shall be guilty of a misdemeanor, and upon conviction shall be  
4 punished by a fine of not more than Two Hundred Dollars (\$200.00).

5 D. Any retailer violating the provisions of Section ~~305.1~~ 301  
6 et seq. of this title shall:

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

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

11 3. For a third or subsequent offense, be punished by an  
12 administrative fine of not more than Five Thousand Dollars  
13 (\$5,000.00).

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

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

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

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

24

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

8 G. Whoever, with intent to defraud Oklahoma:

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

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

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

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

21 H. Whoever knowingly omits, neglects, or refuses to comply with  
22 any duty imposed upon the person by Section 301 et seq. of this  
23 title, or to do, or cause to be done, any of the things required by  
24 Section 301 et seq. of this title, or does anything prohibited by

1 Section 301 et seq. of this title, shall, in addition to any other  
2 penalty provided in Section 301 et seq. of this title, pay an  
3 administrative penalty of One Thousand Dollars (\$1,000.00).

4 I. Whoever fails to pay any tax imposed by Section 301 et seq.  
5 of this title at the time prescribed by law or rules, shall, in  
6 addition to any other penalty provided in Section 301 et seq. of  
7 this title, be liable to a penalty of five hundred percent (500%) of  
8 the tax due but unpaid.

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

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

24

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

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

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

19 3. A first violation with a total quantity of more than two  
20 cartons of cigarettes, or the equivalent amount of other cigarettes,  
21 shall be punishable by a fine not to exceed Two Thousand Dollars  
22 (\$2,000.00) or imprisonment not to exceed five (5) years, or both  
23 the fine and imprisonment; and  
24



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

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

13 SECTION 9. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 312.2 of Title 68, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. Sales of cigarettes by a wholesaler licensed by the Oklahoma  
17 Tax Commission to a tribal retailer shall be limited as set forth  
18 herein to the number of packs of cigarettes sold at a reduced tax  
19 rate.

20 B. For purposes of this section:

21 1. "Pack" means a sealed, original package, containing twenty  
22 or twenty-five cigarettes, to which the required tax stamp is  
23 affixed;

24

1           2. "Reduced tax rate" means the tax rate provided by Section  
2 349 of Title 68 of the Oklahoma Statutes and the fees in lieu of tax  
3 provided by compacts entered into between the State of Oklahoma and  
4 a federally recognized Indian tribe or nation that are less than the  
5 highest rate provided by the compacts; and

6           3. "Tribal retailer" means a store or place of business which  
7 is duly licensed by a federally recognized Indian tribe or nation  
8 pursuant to tribal laws or ordinances to conduct business located on  
9 Indian country within the territorial jurisdiction of that tribe or  
10 nation.

11           C. No wholesaler may sell packs of cigarettes at a reduced tax  
12 rate to any tribal retailer, unless the name of the tribal retailer  
13 appearing on the order and/or invoice to be issued on the  
14 transaction also appears on the list of tribal retailers compiled  
15 and furnished by the Oklahoma Tax Commission to licensed  
16 wholesalers. For purposes of compliance with this section,  
17 wholesalers are entitled to rely on the accuracy of the list of  
18 tribal retailers compiled and furnished by the Tax Commission.

19           D. No wholesaler may sell to any tribal retailer, in any one  
20 (1) calendar month, packs of cigarettes at a reduced tax rate in a  
21 quantity which exceeds one-twelfth (1/12) of a sum equal to the  
22 total amount of packs of cigarettes sold by the wholesaler to that  
23 tribal retailer in calendar year 2004, plus ten percent (10%);  
24 provided, however, that upon request to the Tax Commission, proposed

1 sales in excess of the allowance may be permitted upon a showing of  
2 good cause, which must include documented proof that the tribal  
3 retailer attempting the purchase has offered or will offer the packs  
4 of cigarettes for sale to consumers at the location of the tribal  
5 retailer.

6 E. The Tax Commission shall furnish each wholesaler, from  
7 reports filed by that wholesaler with the Tax Commission for  
8 calendar year 2004, a computation of the amount of packs of  
9 cigarettes which may be sold at a reduced tax rate to each tribal  
10 retailer to which the wholesaler sold cigarettes in calendar year  
11 2004, unless an increased allowance is requested and granted under  
12 the procedures specified by subsection D of this section.

13 F. In the event that a wholesaler desires to sell to a tribal  
14 retailer that it did not sell to in calendar year 2004, the  
15 wholesaler shall request from the Tax Commission a computation of  
16 the amount of packs of cigarettes purchased by the tribal retailer  
17 in calendar year 2004. The request shall be accompanied by the  
18 written consent of the tribal retailer to disclose the statistical  
19 information furnished by wholesalers concerning the tribal retailer.  
20 The Tax Commission shall furnish the wholesaler with a computation  
21 of the amount of packs of cigarettes that may be sold to such tribal  
22 retailer at a reduced tax rate, unless an increased allowance is  
23 requested and granted under the procedures specified by subsection D  
24 of this section.

1 G. In the event that a wholesaler desires to sell to a tribal  
2 retailer that was not in business in calendar year 2004, before  
3 selling any packs of cigarettes to such tribal retailer, the  
4 wholesaler shall contact the Tax Commission, which shall provide a  
5 statement of the number of packs of cigarettes which may be sold at  
6 a reduced rate, based upon the average, per wholesaler, per tribal  
7 retailer in calendar year 2004, plus ten percent (10%); in the event  
8 the tribal retailer claims such amount to be insufficient, an  
9 increased allowance may be requested under the procedures specified  
10 by subsection D of this section.

11 H. Wholesalers shall telephonically report and confirm in  
12 writing to the Tax Commission, on the same day as received, any  
13 request of a tribal retailer for purchase of packs of cigarettes at  
14 a reduced tax rate, in a quantity which exceeds one-twelfth (1/12)  
15 of a sum equal to the total amount of cigarettes sold to that tribal  
16 retailer by the wholesaler in calendar year 2004, plus ten percent  
17 (10%).

18 I. Wholesalers are subject to revocation of their cigarette  
19 and/or tobacco products licenses, sales tax permits and any other  
20 licenses or permits issued to such wholesalers by the Tax  
21 Commission, upon the determination that such wholesalers have  
22 violated any of the provisions of this section, and/or any other  
23 state tax law and/or rule of the Tax Commission applicable to such  
24 wholesalers. Such licensure revocation is in addition to, and not

1 to the exclusion of, any other remedies of the Tax Commission  
2 including, but not limited to, liability for the cigarette stamp tax  
3 or compact payment in lieu thereof upon sales of cigarettes to  
4 tribal retailers at rates which are in violation of this section.

5 J. If any wholesaler files a cigarette stamp tax report which  
6 evidences a sale of packs of cigarettes to a tribal retailer not  
7 included on the list of tribal retailers provided the wholesaler by  
8 the Tax Commission, such sale shall be presumed not to constitute a  
9 sale to a tribal retailer, as defined herein, and the wholesaler  
10 shall be responsible and liable for payment of tax at the nontribal  
11 statutory rate for all packs of cigarettes reported sold. In  
12 addition, the wholesaler is subject to imposition of an  
13 administrative penalty not exceeding five hundred percent (500%) of  
14 the unpaid tax or payment in lieu of tax as to each pack sold as  
15 provided in Section 316 of this title.

16 SECTION 10. AMENDATORY Section 20, Chapter 413, O.S.L.  
17 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68  
18 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

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

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

24

1           2. When the product is not received by the purchaser at a  
2 business location of the seller, the sale is sourced to the location  
3 where receipt by the purchaser, or the purchaser's donee, designated  
4 as such by the purchaser, occurs, including the location indicated  
5 by instructions for delivery to the purchaser or donee, known to the  
6 seller. Provided, this subsection shall not apply to florists until  
7 January 1, ~~2009~~ 2011. Prior to that date, all sales by florists  
8 shall be sourced to its business location;

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

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

21           5. When none of the previous rules of paragraphs 1, 2, 3 and 4  
22 of this subsection apply, including the circumstance in which the  
23 seller is without sufficient information to apply the previous  
24 rules, then the location will be determined by the address from

1 which tangible personal property was shipped, from which the digital  
2 good or the computer software delivered electronically was first  
3 available for transmission by the seller, or from which the service  
4 was provided, disregarding for these purposes any location that  
5 merely provided the digital transfer of the product sold. In the  
6 case of a sale of mobile telecommunications service that is a  
7 prepaid telecommunications service, the location will be that which  
8 is associated with the mobile telephone number.

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

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

24

1           2. For a lease or rental that does not require recurring  
2 periodic payments, the payment is sourced the same as a retail sale  
3 in accordance with the provisions of subsection A of this section.  
4 This subsection does not affect the imposition or computation of  
5 sales or use tax on leases or rentals based on a lump sum or  
6 accelerated basis, or on the acquisition of property for lease.

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

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

19           2. For a lease or rental that does not require recurring  
20 periodic payments, the payment is sourced the same as a retail sale  
21 in accordance with the provisions of subsection A of this section.  
22 This subsection does not affect the imposition or computation of  
23 sales or use tax on leases or rentals based on a lump sum or  
24 accelerated basis, or on the acquisition of property for lease.



1 D. The retail sale, including lease or rental, of  
2 transportation equipment shall be sourced the same as a retail sale  
3 in accordance with the provisions of subsection A of this section,  
4 notwithstanding the exclusion of lease or rental in subsection A of  
5 this section. "Transportation equipment" means any of the  
6 following:

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

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

12 a. registered through the International Registration  
13 Plan, and

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

19 3. Aircraft that are operated by air carriers authorized and  
20 certificated by the United States Department of Transportation or  
21 another federal or a foreign authority to engage in the carriage of  
22 persons or property in interstate or foreign commerce; and  
23  
24

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

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

- 6 1. Taking possession of tangible personal property;
- 7 2. Making first use of services; or
- 8 3. Taking possession or making first use of digital goods,  
9 whichever comes first.

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

12 SECTION 11. AMENDATORY Section 3, Chapter 503, O.S.L.  
13 2002 (68 O.S. Supp. 2007, Section 2358.6), is amended to read as  
14 follows:

15 Section 2358.6 A. For income tax returns filed after September  
16 10, 2001, by corporations and fiduciaries, federal taxable income  
17 shall be increased by eighty percent (80%) of any amount of bonus  
18 depreciation received under the federal Job Creation and Worker  
19 Assistance Act of 2002, under Section 168(k) or Section 1400L of the  
20 Internal Revenue Code of 1986, as amended, for assets placed in  
21 service after September 10, 2001, and before September 11, 2004.

22 B. For income tax returns filed after December 31, 2007, by  
23 corporations and fiduciaries, federal taxable income shall be  
24 increased by eighty percent (80%) of any amount of bonus

1 depreciation received under the federal Economic Stimulus Act of  
2 2008, under Section 168(k) or Section 1400L of the Internal Revenue  
3 Code of 1986, as amended, for assets placed in service after  
4 December 31, 2007, and before January 1, 2009.

5 C. For a corporation with a unitary business having activity  
6 both inside and outside the state, the increase shall be apportioned  
7 to Oklahoma in the same manner as income is apportioned to the state  
8 under Section 2358 and Section 2362 of ~~Title 68 of the Oklahoma~~  
9 ~~Statutes~~ this title.

10 ~~C.~~ D. The amount of bonus depreciation added to federal taxable  
11 income by this section shall be subtracted in a later taxable year  
12 as herein provided. Twenty-five percent (25%) of the total amount  
13 of bonus depreciation added back may be subtracted in the first  
14 taxable year following the year of the addition and twenty-five  
15 percent (25%) may be subtracted in each of the next three following  
16 taxable years.

17 ~~D.~~ E. A corporation or fiduciary filing a return for which  
18 federal taxable income is not increased as provided in subsection A  
19 of this section prior to October 1, 2002, shall file an amended  
20 return reflecting such increase not later than June 30, 2003. The  
21 Oklahoma Tax Commission shall not assess penalties or interest with  
22 respect to the failure to reflect such increase if a correct amended  
23 return is filed as required herein. A corporation or fiduciary  
24 filing a return for which federal taxable income is not increased as

1 provided for in subsection B of this section prior to October 1,  
2 2008, shall file an amended return reflecting such increase not  
3 later than June 30, 2009. The Oklahoma Tax Commission shall not  
4 assess penalties or interest with respect to the failure to reflect  
5 such increase if a correct amended return is filed as required  
6 herein.

7 SECTION 12. AMENDATORY Section 4, Chapter 42, 2nd  
8 Extraordinary Session, O.S.L. 2006, as amended by Section 2, Chapter  
9 346, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A), is amended  
10 to read as follows:

11 Section 2355.1A A. The provisions of this section shall be  
12 applicable with respect to the implementation of the decreases in  
13 the top marginal rate of individual income tax otherwise authorized  
14 pursuant to the provisions of subparagraph (h) of paragraphs 1 and 2  
15 of subsection B of Section 2355 of this title which shall be  
16 contingent upon a determination by the State Board of Equalization  
17 made by a comparison of the revenue computations described by this  
18 section which shall be conducted until the income tax rate of five  
19 and twenty-five hundredths percent (5.25%) is effective.

20 B. In addition to any other duties prescribed by law, at the  
21 meeting required by paragraph 1 of Section 23 of Article X of the  
22 Oklahoma Constitution to be held in December ~~2007~~ 2008, and for any  
23 subsequent December meeting of the State Board of Equalization if  
24 the top marginal income tax rate prescribed by subparagraph (h) of

1 paragraphs 1 and 2 of subsection B of Section 2355 of this title has  
2 not become effective, the State Board of Equalization shall  
3 determine:

4 1. The amount of revenue growth in the General Revenue Fund of  
5 the State Treasury by comparing the fiscal year ~~2009~~ General Revenue  
6 Fund estimate for the fiscal year beginning on the next ensuing July  
7 1 date to the revised General Revenue Fund estimate for the then  
8 current fiscal year ~~2008~~; and

9 2. The amount by which the income tax revenue for the tax year  
10 ~~2009~~ which will begin on the second January 1 date following such  
11 December meeting is estimated to be reduced by the increase in the  
12 standard deduction provided in paragraph 2 of subsection E of  
13 Section 2358 of this title, plus an amount equal to four percent  
14 (4%) of the revised General Revenue Fund estimate for the then  
15 current fiscal year ~~2008~~ in order for a top marginal income tax rate  
16 of five and twenty-five hundredths percent (5.25%) to be effective.

17 If the amount determined pursuant to the provisions of paragraph  
18 1 of this subsection is equal to or greater than the amount  
19 determined pursuant to the provisions of paragraph 2 of this  
20 subsection, the Board shall make a preliminary finding that the  
21 Board anticipates that a finding will be made at the February ~~2008~~  
22 meeting immediately subsequent to the December meeting that  
23 applicable revenue growth in the state will authorize the  
24 implementation of the provisions of subparagraph (h) of paragraphs 1

1 and 2 of subsection B of Section 2355 of this title beginning ~~with~~  
2 ~~calendar year 2009~~ on the second January 1 following such December  
3 meeting.

4 If the amount determined pursuant to the provisions of paragraph  
5 1 of this subsection is less than the amount determined pursuant to  
6 the provisions of paragraph 2 of this subsection, the Board shall  
7 make a preliminary finding that the Board anticipates that a finding  
8 will be made at the February ~~2008~~ meeting immediately subsequent to  
9 the December meeting that applicable revenue growth in the state  
10 will not authorize the implementation of the provisions of  
11 subparagraph (h) of paragraphs 1 and 2 of subsection B of Section  
12 2355 of this title beginning ~~with calendar year 2009~~ on the second  
13 January 1 following such December meeting.

14 ~~B.~~ C. In addition to any other duties prescribed by law, at the  
15 meeting required by paragraph 3 of Section 23 of Article X of the  
16 Oklahoma Constitution to be held in February ~~2008~~ 2009, and for any  
17 subsequent February meeting of the State Board of Equalization if  
18 the top marginal income tax rate prescribed by subparagraph (h) of  
19 paragraphs 1 and 2 of subsection B of Section 2355 of this title has  
20 not become effective the State Board of Equalization shall  
21 determine:

22 1. The amount of revenue growth in the General Revenue Fund of  
23 the State Treasury by comparing the fiscal year ~~2009~~ General Revenue  
24 Fund estimate for the fiscal year beginning on the next ensuing July

1 1 date to the revised General Revenue Fund estimate for the then  
2 current fiscal year ~~2008~~; and

3 2. The amount by which the income tax revenue for the tax year  
4 ~~2009~~ which will begin on the January 1 date immediately following  
5 such February meeting is estimated to be reduced by the increase in  
6 the standard deduction provided in paragraph 2 of subsection E of  
7 Section 2358 of this title plus an amount equal to four percent (4%)  
8 of the revised General Revenue Fund estimate for the then current  
9 fiscal year ~~2008~~ in order for a top marginal income tax rate of five  
10 and twenty-five hundredths percent (5.25%) to be effective.

11 If the amount determined pursuant to the provisions of paragraph  
12 1 of this subsection is equal to or greater than the amount  
13 determined pursuant to the provisions of paragraph 2 of this  
14 subsection, the Board shall make a finding that applicable revenue  
15 growth in the state will authorize the implementation of the  
16 provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B  
17 of Section 2355 of this title beginning ~~with calendar year 2009~~ on  
18 the January 1 date immediately following such February meeting.

19 If the amount determined pursuant to the provisions of paragraph  
20 1 of this subsection is less than the amount determined pursuant to  
21 the provisions of paragraph 2 of this subsection, the Board shall  
22 make a finding that applicable revenue growth in the state does not  
23 authorize the implementation of the provisions of subparagraph (h)  
24 of paragraphs 1 and 2 of subsection B of Section 2355 of this title

1 beginning with ~~calendar year 2009~~ the January 1 date immediately  
2 following such February meeting.

3 ~~C.~~ D. If the Board makes a finding that applicable revenue  
4 growth in the state does not authorize the implementation of the  
5 provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B  
6 of Section 2355 of this title beginning with calendar year ~~2009~~ 2010  
7 pursuant to the provisions of subsection ~~B~~ C of this section, the  
8 procedures prescribed by subsection A ~~and~~, subsection B, and  
9 subsection C of this section shall be repeated by the State Board of  
10 Equalization for each successive two-year comparison. Once the  
11 income tax rate otherwise authorized pursuant to subparagraph (h) of  
12 paragraphs 1 and 2 of subsection B of Section 2355 of this title has  
13 been implemented as a result of the analysis of the General Revenue  
14 Fund estimates together with the fiscal impact of the standard  
15 deduction as authorized pursuant to paragraph 2 of subsection E of  
16 Section 2358 of this title, such income tax rate shall be in effect  
17 for ~~all subsequent~~ the tax years as prescribed by subparagraph (h)  
18 of paragraphs 1 and 2 of subsection B of Section 2355 of this title.

19 ~~D.~~ ~~For purposes of this section, the estimate of the revenue~~  
20 ~~for appropriations authority for fiscal year 2009 shall be made~~  
21 ~~assuming a top individual income tax rate of five and twenty-five~~  
22 ~~hundredths percent (5.25%) as provided in subparagraph (h) of~~  
23 ~~paragraphs 1 and 2 of subsection B of Section 2355 of this title.~~

24



1 SECTION 13. Sections 1, 2, 3 and 5 of this act shall become  
2 effective July 1, 2008.

3 SECTION 14. It being immediately necessary for the preservation  
4 of the public peace, health and safety, an emergency is hereby  
5 declared to exist, by reason whereof this act shall take effect and  
6 be in full force from and after its passage and approval.

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