

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1014

By: Anderson of the Senate

and

(Jackson) of the House

6
7
8
9 COMMITTEE SUBSTITUTE

10 [revenue and taxation - cigarette and tobacco
11 products tax - repealing - effective date]
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last
16 amended by Section 1, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,
17 Section 205), is amended to read as follows:

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

1 information from the Tax Commission shall disclose any information
2 obtained from the records or files or from any examination or
3 inspection of the premises or property of any person.

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

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

23 1. The delivery to a taxpayer or a duly authorized
24 representative of the taxpayer of a copy of any report or any other

1 paper filed by the taxpayer pursuant to the provisions of the
2 Uniform Tax Procedure Code or of any state tax law;

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

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

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

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

1 violation of the tax laws of this state or except as specifically
2 authorized by law, and a violation by the Oklahoma State Bureau of
3 Investigation, Attorney General, Oklahoma State Bureau of Narcotics
4 and Dangerous Drugs Control, district attorney, or agent of any
5 federal law enforcement agency by otherwise releasing the
6 information shall be a felony;

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

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

1 title. The provisions of this paragraph shall also include the
2 furnishing of information to the State Treasurer for the purpose of
3 administration of the Uniform Unclaimed Property Act;

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

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

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

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

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

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

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

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

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

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

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

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

16 19. The disclosure to an employer, as defined in Sections
17 2385.1 and 2385.3 of this title, of information required in order to
18 collect the tax imposed by Section 2385.2 of this title;

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

23 21. The disclosure of information directly involved in the
24 resolution of the protest by a taxpayer to an assessment of tax or

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

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

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

20 24. The furnishing to a prospective purchaser of any business,
21 or his or her authorized representative, of information relating to
22 any liabilities, delinquencies, assessments or warrants of the
23 prospective seller of the business which have not been filed of
24 record, established, or become final and which relate solely to the

1 seller's business. Any disclosure under this paragraph shall only
2 be allowed upon the presentment by the prospective buyer, or the
3 buyer's authorized representative, of the purchase contract and a
4 written authorization between the parties;

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

18 26. The examination of records and files of a person or entity
19 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs
20 Control pursuant to a court order by a magistrate in whose
21 territorial jurisdiction the person or entity resides, or where the
22 Tax Commission records and files are physically located. Such an
23 order may only be issued upon a sworn application by an agent of the
24 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,

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

19 27. The disclosure of information, as prescribed by this
20 paragraph, which is related to the proposed or actual usage of tax
21 credits pursuant to Section 2357.7 of this title, the Small Business
22 Capital Formation Incentive Act or the Rural Venture Capital
23 Formation Incentive Act. Unless the context clearly requires
24 otherwise, the terms used in this paragraph shall have the same

1 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this
2 title. The disclosure of information authorized by this paragraph
3 shall include:

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

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

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

16 d. the amount of funds invested in a qualified venture
17 capital company, the amount of qualified investments
18 in a qualified small business capital company or
19 qualified rural small business capital company and the
20 amount of investments made by a qualified venture
21 capital company, qualified small business capital
22 company, or qualified rural small business capital
23 company; or

24

1 28. The furnishing of information requested by the Attorney
2 General or district attorneys having specific authority for the
3 enforcement of laws governing the taxation of cigarettes or tobacco
4 products or a state agency for purposes of enforcing a compact
5 entered into pursuant to Section 346 of this title or any tobacco
6 tax laws and by the Governor for purposes of negotiating a compact
7 entered into pursuant to Section 346 of this title.

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

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

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

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

21 F. It is further provided that the provisions of this section
22 shall be strictly interpreted and shall not be construed as
23 permitting the disclosure of any other information contained in the
24

1 records and files of the Tax Commission relating to income tax or to
2 any other taxes.

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

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

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 300.1 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 As used in this title, the term "Cigarette and Tobacco Products
22 Tax Codes" shall mean and refer to Section 301 et seq., Section 326
23 et seq., Section 346 et seq., Section 401 et seq., and Section 424
24 et seq. of this title.

1 SECTION 3. AMENDATORY 68 O.S. 2001, Section 301, as
2 amended by Section 1, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006,
3 Section 301), is amended to read as follows:

4 Section 301. For purposes of ~~Section 301 et seq. of this title~~
5 the Cigarette and Tobacco Products Tax Codes:

6 1. The term "cigarette" is defined to mean and include all
7 rolled tobacco or any substitute therefor, wrapped in paper or any
8 substitute therefor and weighing not to exceed three (3) pounds per
9 thousand cigarettes;

10 2. The term "person" is defined to mean and include any
11 individual, company, partnership, joint venture, joint agreement,
12 association (mutual or otherwise), limited liability company,
13 corporation, estate, trust, business trust receiver, or trustee
14 appointed by any state or federal court, or otherwise, syndicate, or
15 any political subdivision of the state or combination acting as a
16 unit, in the plural or singular number;

17 3. The term "wholesaler", ~~"distributor" and/or "jobber"~~ is
18 defined to mean and include a person, firm or corporation organized
19 and existing, or doing business, primarily to sell cigarettes or
20 tobacco products to, and render service to retailers in the
21 territory such person, firm or corporation chooses to serve, and
22 that:

23 a. purchases cigarettes or tobacco products directly from
24 the manufacturer,

- 1 b. at least seventy-five percent (75%) of whose gross
2 sales are made at wholesale,
3 c. handles goods in wholesale quantities and sells
4 through salespersons, advertising and/or sales
5 promotion devices,
6 d. carries at all times at its principal place of
7 business a representative stock of cigarettes or
8 tobacco products for sale, and
9 e. comes into the possession of cigarettes or tobacco
10 products for the purpose of selling them to retailers
11 or to persons outside or within the state who might
12 resell or retail such cigarettes or tobacco products
13 to consumers.

14 In addition to the foregoing, and irrespective of the percentage
15 or type of sales, the term "wholesaler", "~~distributor~~" and/or
16 "~~jobber~~" shall also include all purchasers of cigarettes or tobacco
17 products making purchases directly from the manufacturer for
18 distribution at wholesale or retail sale and this shall not affect
19 the requirements relating to retail licenses and shall also include
20 all manufacturers licensed pursuant to Section 304 of this title;

21 4. The term "retailer" is defined to be:

- 22 a. a person who comes into the possession of cigarettes
23 or tobacco products for the purpose of selling, or who
24 sells them at retail, or

1 b. a person, not coming within the classification of
2 wholesaler, ~~distributor and/or jobber~~ as herein
3 defined, having possession of more than one thousand
4 cigarettes;

5 5. The term "consumer" is defined to be a person who receives
6 or who in any way comes into possession of cigarettes or tobacco
7 products for the purpose of consuming them, giving them away, or
8 disposing of them in a way other than by sale, barter or exchange;

9 6. The term "Tax Commission" is defined to mean the Oklahoma
10 Tax Commission;

11 7. The term "sale" and/or "sales" is hereby defined to be and
12 declared to include sales, barter, exchanges and every other
13 manner, method and form of transferring the ownership of personal
14 property from one person to another, and is also declared to be the
15 use or consumption in this state in the first instance of cigarettes
16 or tobacco products received from without the state or of any other
17 cigarettes or tobacco products upon which the tax has not been paid.
18 The term "first sale" shall mean and include the first sale or
19 distribution of cigarettes or tobacco products in intrastate
20 commerce or the first use or consumption of cigarettes or tobacco
21 products within this state;

22 8. The term "stamp" as herein used shall mean the stamp or
23 stamps by use of which:

1 a. the tax levied pursuant to the provisions of Section
2 301 et seq. or Section 401 et. seq. of this title is
3 paid,

4 b. the tax levied pursuant to the provisions of Section
5 349 or 426 of this title is paid, or

6 c. the payment in lieu of taxes authorized pursuant to a
7 compact entered into by the State of Oklahoma and a
8 federally recognized Indian tribe or nation pursuant
9 to the provisions of subsection C of Section 346 of
10 this title is paid;

11 9. The term "drop shipment" shall mean and include any delivery
12 of cigarettes or tobacco products received by any person within this
13 state when payment for such cigarettes or tobacco products is made
14 to the shipper or seller by or through a person other than the
15 consignee;

16 10. The term "distributing agent" shall mean and include every
17 person in this state who acts as an agent of any person outside the
18 state by receiving cigarettes or tobacco products in interstate
19 commerce and storing such cigarettes or tobacco products subject to
20 distribution or delivery upon order from the person outside the
21 state to ~~distributors, wholesale dealers and retail dealers~~
22 wholesalers and retailers, or to consumers. The term "distributing
23 agent" shall also mean and include any person who solicits or takes
24 orders for cigarettes or tobacco products to be shipped in

1 interstate commerce to a person in this state by a person residing
2 outside of Oklahoma, the tax not having been paid on such cigarettes
3 or tobacco products;

4 11. The term "vending machine" shall mean and include any coin
5 operating machine, contrivance, or device, by means of which
6 cigarettes are sold or dispensed in their original container;

7 12. The term "use" means and includes the exercise of any right
8 or power over cigarettes or tobacco products incident to the
9 ownership or possession thereof, except that it shall not include
10 the sale of cigarettes or tobacco products in the regular course of
11 business;

12 13. a. The term "delivery sale" means any sale of cigarettes
13 or tobacco products to a consumer in Oklahoma where
14 either:

15 (1) the purchaser submits the order for such sale by
16 means of a telephonic or other method of voice
17 transmission, the mails or any other delivery
18 service, or the Internet or other online service,
19 or

20 (2) the cigarettes or tobacco products are delivered
21 by use of the mails or other delivery service to
22 the purchaser.

23 b. A sale of cigarettes or tobacco products which
24 satisfies the criteria in subparagraph a of this

1 paragraph shall be a delivery sale regardless of
2 whether the seller is located within or outside of
3 Oklahoma.

4 c. A sale of cigarettes or tobacco products not for
5 personal consumption to a person who is a wholesale
6 dealer or a retail dealer shall not be a delivery
7 sale.

8 d. For purposes of this paragraph, any sale of cigarettes
9 or tobacco products to an individual in Oklahoma shall
10 be treated as a sale to a consumer unless such
11 individual is licensed as a ~~distributor~~ wholesaler or
12 retailer of cigarettes or tobacco products by the Tax
13 Commission;

14 14. The term "delivery service" means any person, including but
15 not limited to the United States Postal Service, that is engaged in
16 the commercial delivery of letters, packages, or other containers;

17 15. The term "manufacturer" means any person who manufactures,
18 fabricates, assembles, processes, or labels a finished cigarette or
19 tobacco product; or imports, either directly or indirectly, a
20 finished cigarette or tobacco product for sale or distribution in
21 this state;

22 16. The term "mails" or "mailing" means the shipment of
23 cigarettes through the United States Postal Service;

1 17. The term "shipping container" means a container in which
2 cigarettes are shipped in connection with a delivery sale; and

3 18. The term "shipping documents" means bills of lading,
4 airbills, or any other documents used to evidence the undertaking by
5 a delivery service to deliver letters, packages, or other
6 containers.

7 SECTION 4. AMENDATORY Section 3, Chapter 322, O.S.L.
8 2004 (68 O.S. Supp. 2006, Section 302-6), is amended to read as
9 follows:

10 Section 302-6. A. There is hereby created the Cigarette and
11 Tobacco Tax Advisory Committee. The Committee shall consist of nine
12 (9) members. Three members shall be appointed by the Governor,
13 three members shall be appointed by the President Pro Tempore of the
14 Senate and three members shall be appointed by the Speaker of the
15 House of Representatives. The initial appointments of each
16 appointing authority shall be made for progressive terms of one (1)
17 through three (3) years so that the term of only one member
18 appointed by each appointing authority expires each calendar year;
19 subsequent appointments shall be for three-year terms. Members
20 shall continue to serve until their successors are appointed. Any
21 vacancy shall be filled in the same manner as the original
22 appointments. Five members shall constitute a quorum. The
23 Committee shall be composed as follows:

24 1. The Governor shall appoint three members as follows:

- a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,
- b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and
- c. one member who shall be a wholesaler of cigarettes and tobacco products;

2. The President Pro Tempore of the Senate shall appoint three members as follows:

- a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,
- b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and
- c. one member who shall be primarily engaged in the retail sales of groceries in this state;

3. The Speaker of the House of Representatives shall appoint three members as follows:

- a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,
- b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

1 c. one member who shall be primarily engaged in the
2 practice of law or financial services.

3 B. The Committee shall annually elect a chair and a vice-chair
4 from among its members. The Committee shall meet as desired to
5 review proposed rules of the Oklahoma Tax Commission and discuss
6 other issues relating to the implementation and enforcement of the
7 levy, collections and remittance of taxes on cigarettes and tobacco
8 products in this state.

9 C. The Committee may recommend to the Oklahoma Tax Commission
10 rules to implement and enforce the provisions of this act and other
11 provisions of law relating to the levy, collection and remittance of
12 taxes on cigarettes and tobacco products in this state. The Tax
13 Commission shall consider comments submitted by the Committee prior
14 to the adoption of a proposed rule. Prior to the adoption of any
15 rule or amendment or revocation of a rule relating to the
16 administration of taxes levied on cigarettes and tobacco products,
17 the Tax Commission shall send notice of any intended action to the
18 members of the Committee. If the intended action relates to
19 permanent rulemaking, such notice shall be given ~~at least thirty~~
20 ~~(30) days prior to publication of notice of intended rulemaking~~
21 ~~action required under~~ in the same manner as other notices are given
22 pursuant to the provisions of Section 303 of Title 75 of the
23 Oklahoma Statutes. If the intended action relates to emergency
24 rulemaking, the Tax Commission will provide the Committee as much

1 notice as practicable prior to the rulemaking action. The Committee
2 may submit comments on issues related to the intended rulemaking
3 action including, but not limited to, identifying portions of the
4 industry affected, probable economic impact, and any costs or
5 benefits to the industry.

6 D. In addition to making recommendations, the Committee may
7 represent the industry in communicating concerns to the Tax
8 Commission about issues related to the levy and remittance of taxes
9 pursuant to ~~Section 301 et seq. of Title 68 of the Oklahoma Statutes~~
10 ~~and Section 401 et seq. of Title 68 of the Oklahoma Statutes~~ the
11 Cigarette and Tobacco Products Tax Codes.

12 E. Members of the Committee shall serve without compensation
13 but may be reimbursed expenses incurred in the performance of their
14 duties by their respective appointing authorities, as provided in
15 the State Travel Reimbursement Act.

16 SECTION 5. AMENDATORY 68 O.S. 2001, Section 304, as last
17 amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006,
18 Section 304), is amended to read as follows:

19 Section 304. A. Every manufacturer, and wholesaler,
20 ~~warehouseman, jobber or distributor~~ of cigarettes in this state, as
21 a condition of carrying on such business, shall annually secure from
22 the Oklahoma Tax Commission a written license, and shall pay
23 therefor an annual fee of ~~Twenty five Dollars (\$25.00)~~ Two Hundred
24 Fifty Dollars (\$250.00). Application for such license shall be made

1 upon such forms as prescribed by the Oklahoma Tax Commission, which
2 shall include, as a required part of the application, the
3 applicant's agreement to the jurisdiction of the Tax Commission and
4 the courts of this state for the purpose of enforcement of the
5 provisions of the Cigarette and Tobacco Products Tax Code. The
6 applicant, by submitting the application, further agrees to abide by
7 the provisions of the Cigarette and Tobacco Products Tax Code and
8 the rules promulgated by the Tax Commission with reference thereto.
9 Further, the applicant agrees that it shall only sell cigarettes or
10 tobacco products to a licensed retailer or a tribally owned or
11 licensed store. This license, which will be for the ensuing year,
12 must at all times be displayed in a conspicuous place so that it can
13 be seen. Persons operating more than one place of business must
14 secure a license for each place of business. "Place of business"
15 shall be construed to include the place where orders are received,
16 or where cigarettes are sold. If cigarettes are sold on or from any
17 vehicle, the vehicle shall constitute a place of business and the
18 regular license fee of ~~Twenty five Dollars (\$25.00)~~ shall be paid
19 with respect thereto. However, if the vehicle is owned or operated
20 by a place of business for which the regular ~~Twenty five Dollars~~
21 ~~(\$25.00)~~ fee is paid, the annual fee for the license with respect to
22 such vehicle shall be only Ten Dollars (\$10.00). The expiration for
23 such vehicle license shall expire on the same date as the current
24 license of the place of business.

1 Provided, that the Tax Commission shall not authorize the use of a
2 stamp-metering device by any manufacturer, or wholesaler,
3 ~~warehouseman, jobber or distributor~~ who does not maintain a
4 warehouse or wholesale establishment or place of business within the
5 State of Oklahoma from which cigarettes are received, stocked and
6 sold and where such metering device is kept and used; but the Tax
7 Commission may, in its discretion, permit the use of such metering
8 device by manufacturers, and wholesalers, ~~warehousemen, jobbers or~~
9 ~~distributors~~ of cigarettes residing wholly within another state
10 where such state permits a licensed Oklahoma resident, manufacturer,
11 or wholesaler, ~~warehouseman, jobber or distributor~~ of cigarettes the
12 use of the metering device of such state without first requiring
13 that such manufacturer, or wholesaler, ~~warehouseman, jobber or~~
14 ~~distributor~~ establish a place of business in such other state. The
15 provisions of this subsection relating to metering devices shall not
16 apply to states which do not require the affixing of tax stamps to
17 packages of cigarettes before same are offered for sale in such
18 states.

19 B. Every retailer of cigarettes or tobacco products in this
20 state, as a condition of carrying on such business, shall secure
21 from the Tax Commission a license and shall pay therefor a fee of
22 Thirty Dollars (\$30.00). Application for such license shall be made
23 upon such forms as prescribed by the Tax Commission, which shall
24 include, as a required part of the application, the applicant's

1 agreement to the jurisdiction of the Tax Commission and the courts
2 of this state for the purpose of enforcement of the provisions of
3 the Cigarette and Tobacco Products Tax Codes. The applicant, by
4 submitting the application, further agrees to abide by the
5 provisions of the Cigarette and Tobacco Products Tax Codes and the
6 rules promulgated by the Tax Commission with reference thereto.
7 Further, the applicant agrees that it shall not purchase any
8 cigarettes or tobacco products for resale from a supplier that does
9 not hold a current wholesaler's license issued pursuant to this
10 section, and the applicant agrees to sell cigarettes and tobacco
11 products only to consumers. Such license, which will be for the
12 ensuing three (3) years, must at all times be displayed in a
13 conspicuous place so that it can be seen. Upon expiration of such
14 license, the retailer to whom such license was issued may obtain a
15 renewal license which shall be valid for three (3) years ~~or until~~
16 ~~expiration of the retailer's sales tax permit, whichever is earlier,~~
17 ~~after which a renewal license shall be valid for three (3) years.~~
18 The manner and prorated fee for renewals shall be prescribed by the
19 Tax Commission. Every person operating under such license as a
20 retailer and who owns or operates more than one place of business
21 must secure a license for each place of business. "Place of
22 business" shall be construed to include places where orders are
23 received or where cigarettes or tobacco products are sold.

24

1 C. Every distributing agent shall, as a condition of carrying
2 on such business, pursuant to written application on a form
3 prescribed by and in such detailed form as the Tax Commission may
4 require, annually secure from the Tax Commission a license, and
5 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
6 An application shall be filed and a license obtained for each place
7 of business owned or operated by a distributing agent. The license,
8 which will be for the ensuing year, shall be consecutively numbered,
9 nonassignable and nontransferable, and shall authorize the storing
10 and distribution of unstamped cigarettes within this state when such
11 distribution is made upon interstate orders only.

12 D. 1. All wholesale, retail, and distributing agent's licenses
13 shall be nonassignable and nontransferable from one person to
14 another person. Such licenses may be transferred from one location
15 to another location after an application has been filed with the Tax
16 Commission requesting such transfer and after the approval of the
17 Tax Commission.

18 2. Wholesale, retail, and distributing agent's licenses shall
19 be applied for on a form prescribed by the Tax Commission. Any
20 person operating as a wholesaler, retailer, or distributing agent
21 must at all times have an effective unexpired license which has been
22 issued by the Tax Commission. If any such person or licensee
23 continues to operate as such on a license issued by the Tax
24 Commission which has expired, or operates without ever having

1 obtained from the Tax Commission such license, such person or
2 licensee shall, after becoming delinquent for a period in excess of
3 fifteen (15) days, pay to the Tax Commission, in addition to the
4 annual license fee, a penalty of twenty-five cents (\$0.25) per day
5 on each delinquent license for each day so operated in excess of
6 fifteen (15) days. The penalty provided for herein shall not exceed
7 the annual license fee for such license.

8 E. No license may be granted, maintained or renewed if any of
9 the following conditions applies to the applicant. For purposes of
10 this section, "applicant" includes any combination of persons owning
11 directly or indirectly, in the aggregate, more than ten percent
12 (10%) of the ownership interests in the applicant:

13 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
14 delinquent cigarette or tobacco product taxes;

15 2. The applicant had a cigarette manufacturer, wholesaler,
16 retailer or distributor license revoked by the Tax Commission within
17 the past two (2) years;

18 3. The applicant has been convicted of a crime relating to
19 stolen or counterfeit cigarettes or tobacco products, or receiving
20 stolen or counterfeit cigarettes or tobacco products or has been
21 convicted of or has entered a plea of guilty or of nolo contendere
22 to any felony;

23 4. If the applicant is a cigarette manufacturer, the applicant
24 is neither:

1 a. a participating manufacturer as defined in Section II
2 (jj) of the Master Settlement Agreement as defined in
3 Section 600.22 of Title 37 of the Oklahoma Statutes,
4 nor

5 b. in full compliance with the provisions of paragraph 2
6 of subsection A of Section 600.23 of Title 37 of the
7 Oklahoma Statutes;

8 5. If the applicant is a cigarette manufacturer, if any
9 cigarette imported by such applicant is imported into the United
10 States in violation of 19 U.S.C., Section 1681a; or

11 6. If the applicant is a cigarette manufacturer, if any
12 cigarette imported or manufactured by the applicant does not fully
13 comply with the Federal Cigarette Labeling and Advertising Act, 15
14 U.S.C., Section 1331 et seq.

15 F. No person or entity licensed pursuant to the provisions of
16 this section shall purchase cigarettes or tobacco products from or
17 sell cigarettes or tobacco products to a person or entity required
18 to obtain a license unless such person or entity has obtained such
19 license. Further, no person or entity licensed pursuant to the
20 provisions of this section shall sell cigarettes or tobacco products
21 to any tribally owned or licensed store unless it is on the list of
22 tribally owned and licensed stores maintained and supplied by the
23 Tax Commission.

24 G. No person licensed as a retailer in this state shall:

1 1. Sell any cigarettes or tobacco products to any other person
2 licensed as a retailer in this state unless such sale is for the
3 purpose of moving inventory between stores which are part of the
4 same company; or

5 2. Purchase any cigarettes or tobacco products from any person
6 or entity other than a wholesaler licensed pursuant to the Cigarette
7 and Tobacco Products Tax Codes.

8 H. In addition to any civil or criminal penalty provided by
9 law, upon a finding that a licensee has violated any provision of
10 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
11 Tax Codes, the Tax Commission may revoke or suspend the license or
12 licenses of the licensee pursuant to the procedures applicable to
13 revocation of a license set forth in Section 316 of this title.

14 ~~H.~~ I. The Tax Commission shall create and maintain a web site
15 setting forth all current valid licenses and the identity of
16 licensees holding such licenses, and shall update the site no less
17 frequently than once per month.

18 SECTION 6. AMENDATORY 68 O.S. 2001, Section 305, as
19 amended by Section 3, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006,
20 Section 305), is amended to read as follows:

21 Section 305. A. 1. Every wholesaler, ~~jobber, distributor, or~~
22 ~~warehouseman~~ doing business within this state and required to secure
23 a license as provided under Section 304 of this title shall, upon
24 withdrawal from storage, and before making any sale or distribution

1 of cigarettes for consumption thereof, affix or cause the same to
2 have affixed thereto the stamp or stamps applicable to the location
3 of the retailer or tribally owned or licensed retailer to which the
4 cigarettes are shipped, consigned or delivered as required by
5 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
6 Tax Codes. It shall be the duty of the wholesaler, ~~jobber,~~
7 ~~distributor, or warehouseman~~ to supply and ~~charge to the retailer~~
8 the necessary stamps applicable to the location of the retailer or
9 tribally owned or licensed retailer to which the cigarettes are
10 shipped, consigned or delivered to cover any and all drop shipments
11 of cigarettes billed to the retailer or consumer by the wholesaler,
12 ~~jobber, distributor, or warehouseman~~; and the wholesaler, ~~jobber,~~
13 ~~distributor, or warehouseman~~ shall be liable to the Oklahoma Tax
14 Commission to perform this service. ~~Distributors~~ Wholesalers may
15 apply stamps only to cigarette packages that they have received
16 directly from a manufacturer or importer of cigarettes who possesses
17 a valid and current permit under Section 5712 of Title 26 of the
18 United States Code.

19 2. If a wholesaler in good faith relies on information
20 contained in the list of tribally owned and licensed stores
21 maintained and supplied by the Tax Commission when affixing the
22 stamp or stamps applicable to the location of the tribally owned or
23 licensed retailer to which the cigarettes are shipped, consigned or
24 delivered and is in compliance with all rules promulgated by the Tax

1 Commission, the wholesaler shall be relieved of any liability for
2 payment of any additional tax which might later be determined to be
3 due on the sale or delivery of such cigarettes by the wholesaler.

4 B. Every retailer who has received cigarettes from a
5 manufacturer, or wholesaler, ~~jobber, warehouseman or distributor~~ not
6 required to secure a license as provided for under Section 304 of
7 this title, or to affix stamps as required under subsection A of
8 this section, shall, within seventy-two (72) hours, excluding
9 Sundays and holidays, from the time such cigarettes come into the
10 retailer's possession, and before making any sale or distribution
11 for consumption thereof, affix stamps upon all cigarette packages in
12 the proper denomination and amount, as required by Section 302 of
13 this title.

14 C. ~~Any unlicensed consumer who buys direct from any~~
15 ~~distributor, jobber, manufacturer, warehouseman, or wholesaler, or~~
16 ~~other person, within or without this state, any cigarettes in excess~~
17 ~~of forty (40), at any one time to which are not affixed the stamps~~
18 ~~required by Section 301 et seq. of this title shall, before~~
19 ~~purchasing such cigarettes, secure from the Tax Commission a written~~
20 ~~license and shall pay therefor an annual fee of Twenty five Dollars~~
21 ~~(\$25.00), and shall immediately, upon the receipt of any unstamped~~
22 ~~cigarettes, report the same to the Tax Commission on such forms as~~
23 ~~the Tax Commission may prescribe, and immediately purchase from the~~
24 ~~Tax Commission proper stamps and attach the same to all such~~

1 ~~cigarettes received.~~ It shall be unlawful for any person to sell or
2 consume cigarettes on which the tax, as levied by Section 301 et
3 seq. of this title, has not been paid, and which are not contained
4 in packages to which are securely affixed the stamps evidencing
5 payment of the tax imposed by Section 301 et seq. of this title.

6 D. If, upon examination of invoices or from other
7 investigations, the Tax Commission finds that cigarettes have been
8 sold without stamps affixed as required by ~~Section 301 et seq. of~~
9 ~~this title~~ the Cigarette and Tobacco Products Tax Codes, the Tax
10 Commission shall have the power to require such person to pay to the
11 Tax Commission a sum equal to twice the amount of the tax due. If,
12 under the same circumstances, a person is unable to furnish evidence
13 to the Tax Commission of sufficient stamp purchases to cover
14 unstamped cigarettes purchased, the prima facie presumption shall
15 arise that such cigarettes were sold without proper stamps being
16 affixed thereto.

17 E. 1. All ~~unstamped~~ contraband cigarettes upon which taxes are
18 imposed by ~~Section 301 et seq. of this title~~ the Cigarette and
19 Tobacco Products Tax Codes and all cigarettes stamped, sold, offered
20 for sale, or imported into this state in violation of the provisions
21 of Section 305.1 of this title which shall be found in the
22 possession, custody, or control of any person, for the purpose of
23 being consumed, sold or transported from one place to another in
24 this state, for the purpose of evading or violating the provisions

1 of ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco
2 Products Tax Codes, or with intent to avoid payment of the tax
3 imposed hereunder, and any automobile, truck, conveyance, or other
4 vehicle whatsoever used in the transportation of such cigarettes,
5 and all paraphernalia, equipment or other tangible personal property
6 incident to the use of such purposes, found in the place, building,
7 vehicle or vehicles, where such cigarettes are found, may be seized
8 by any authorized agent of the Tax Commission, or any sheriff,
9 deputy sheriff, constable or other peace officer within the state,
10 without process. The same shall be, from the time of such seizure,
11 forfeited to the State of Oklahoma, and a proper proceeding filed in
12 a court of competent jurisdiction in the county of seizure, to
13 maintain such seizure and prosecute the forfeiture as herein
14 provided.

15 2. All such cigarettes, vehicles and property so seized shall
16 first be listed and appraised by the officer making such seizure and
17 turned over to the county sheriff of the county in which the seizure
18 is made and a receipt therefor taken. The person making such
19 seizure shall immediately make and file a written report thereof,
20 showing the name of the person making such seizure, the place, and
21 the person where, and from whom such property was seized, and an
22 inventory and appraisal thereof, at the usual and ordinary retail
23 price of such articles received, to the Tax Commission, or the
24 Attorney General, in the case of cigarettes stamped, sold, offered

1 for sale, or imported into this state in violation of the provisions
2 of Section 305.1 of this title. The district attorney of the county
3 in which the seizures are made shall, at the request of the Tax
4 Commission or Attorney General, file in the district court
5 forfeiture proceedings in the name of the State of Oklahoma, as
6 plaintiff, and in the name of the owner or person in possession, as
7 defendant, if known, and if unknown in the name of the property
8 seized. The clerk of the court shall issue summons to the owner or
9 person in whose possession such property was found, directing the
10 owner or person to answer within ten (10) days. If the property is
11 declared forfeited and ordered sold, notice of the sale shall be
12 posted in five public places in the county not less than ten (10)
13 days before the date of sale; provided, cigarette packages or
14 containers as described in Section 305.1 of this title shall only be
15 sold for export outside the United States or as otherwise permitted
16 by federal law. The proceeds of the sale shall be deposited with
17 the clerk of the court, who shall after deducting costs, including
18 the costs of sale, ~~pay the balance to the Tax Commission as~~
19 ~~cigarette tax collected, or in the case of cigarettes seized as~~
20 ~~being in violation of the provisions of Section 305.1 of this title,~~
21 ~~to the Attorney General. The Attorney General shall remit the~~
22 ~~amount of cigarette tax, if any be due, including all penalties and~~
23 ~~interest due, to the Tax Commission as cigarette tax collected and~~
24 ~~shall deposit the remainder to the revolving fund created in Section~~

1 ~~305.2 of this title~~ distribute cash and the proceeds of the sale of
2 such cigarettes, vehicles and other property as follows, in the
3 order indicated:

4 a. to the bona fide or innocent owner, conditional sales
5 vendor, or mortgagee of the property, if any, up to
6 the amount of such person's interest in the property,
7 when the court declaring the forfeiture orders a
8 distribution to such person,

9 b. to the payment of the actual reasonable expenses of
10 preserving the property, and

11 c. the balance to a revolving fund in the office of the
12 county treasurer of the county wherein the property
13 was seized, to be distributed as follows: one-third
14 (1/3) to the investigating law enforcement agency;
15 one-third (1/3) of such fund to be used and maintained
16 as a revolving fund by the district attorney for the
17 victim-witness fund, a reward fund or the evidence
18 fund; and one-third (1/3) to go to the jail
19 maintenance fund, with a yearly accounting to the
20 board of county commissioners in whose county the fund
21 is established. If the petitioner is not the district
22 attorney, then the one-third (1/3) which would have
23 been designated to that office shall be distributed to
24 the petitioner. Monies distributed to the jail

1 maintenance fund shall be used to pay costs for the
2 storage of such property if such property is ordered
3 released to a bona fide or innocent owner, lien
4 holder, mortgagee, or vendor and if such funds are
5 available in such fund.

6 3. The seizure and sale of cigarettes shall not relieve the
7 person from whom such cigarettes were seized from any prosecution or
8 the payment of any penalties provided for under ~~Section 301 et seq.~~
9 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes; nor
10 shall it relieve the purchaser thereof from any payment of the
11 regular cigarette tax and the placing of proper stamps thereon
12 before making any sale of the cigarettes or the personal consumption
13 of the same.

14 4. The forfeiture provisions of ~~Section 301 et seq. of this~~
15 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall only apply
16 to persons having possession of or transporting cigarettes with
17 intent to barter, sell or give away the same; provided, that such
18 possession of cigarettes in any quantity of five or more cartons of
19 ten packages each shall be prima facie evidence of intent to barter,
20 sell or give away such cigarettes in violation of the provisions of
21 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
22 Tax Codes.

23 F. The Tax Commission shall exchange new stamps for any stamps
24 which are damaged, or for stamps which have been affixed to packages

1 of cigarettes returned to factories, or shipped to other states, or
2 sold to government agencies or state institutions, or for stamps
3 purchased in excess of floor stocks. Application to the Tax
4 Commission for such exchanges must be accompanied by affidavit,
5 damaged stamps, bill of lading covering shipment to factory or other
6 states, or other proof required by the Tax Commission. Any person
7 to whom stamps shall be issued under this paragraph may, upon
8 approval of the Tax Commission, sell such stamps to any wholesaler
9 as defined in Section ~~301 et seq.~~ 302 of this title.

10 G. Any person, including distributing agents, wholesalers,
11 ~~jobbers,~~ carriers, ~~warehousemen,~~ retailers and consumers, having
12 possession of unstamped cigarettes in this state shall be liable for
13 the tax on such cigarettes in case the same are lost, stolen or
14 unaccounted for, in transit, storage or otherwise, and in such event
15 a presumption shall exist for the purposes of taxation, that such
16 cigarettes were used and consumed in Oklahoma.

17 SECTION 7. AMENDATORY 68 O.S. 2001, Section 306, is
18 amended to read as follows:

19 Section 306. It shall be unlawful for any person to sell, or
20 display for sale, or have in his possession for consumption in this
21 state, cigarettes or tobacco products on which the tax levied by
22 ~~this article~~ the Cigarette and Tobacco Products Tax Codes has not
23 been paid, and which are not contained in packages to which are
24 securely affixed the stamps evidencing payment of the tax as

1 required by the Cigarette and Tobacco Products Tax Codes. Any
2 cigarettes or tobacco products so held shall be subject to seizure
3 and sale as provided by law for sale of property under execution,
4 and the proceeds derived from the sale thereof shall be paid to the
5 State Treasurer and placed in the State General Revenue Fund.

6 SECTION 8. AMENDATORY 68 O.S. 2001, Section 308, is
7 amended to read as follows:

8 Section 308. (a) The stamps placed upon packages of cigarettes
9 shall be purchased by the Oklahoma Tax Commission in proper
10 denominations, shall contain the words "Oklahoma Tax Commission₇",
11 and shall be of such design, character, color combinations, color
12 changes, sizes and material as the Tax Commission may, by its rules
13 ~~and regulations~~, determine to afford the best security to the state.
14 The Tax Commission may require of the manufacturer from whom it
15 purchases such stamps a bond in an amount to be determined by the
16 Tax Commission, containing such conditions as the Tax Commission may
17 deem necessary in order to protect the state against loss. The Tax
18 Commission shall be responsible for the custody and sale of the
19 stamps, and for the disposition of the proceeds thereof. It shall
20 be the duty of the Tax Commission to manufacture or contract for
21 revenue stamps required by this article; provided, that if such
22 stamps are contracted for, the manufacture thereof shall be within
23 the jurisdiction of the criminal and civil courts of this state,
24 unless such stamps cannot be obtained in this state at a fair price

1 or of acceptable quality. If stamps are manufactured outside of the
2 state, then the Tax Commission shall keep a reliable agent at the
3 place of manufacture during the period of manufacture and such agent
4 shall be authorized and instructed to take any and all precautions
5 necessary to safeguard the state against forgery and misdelivery of
6 any stamps. The Tax Commission shall, in contracting for
7 manufacture, consider the safeguarding of stamps to be of paramount
8 importance and shall provide therefor in a manner commensurate with
9 the monetary value of such stamps.

10 (b) The Tax Commission shall, under rules and regulations
11 promulgated by the Tax Commission, exchange new stamps or give
12 credit for any stamps affixed to any cigarettes which stamps have
13 become unfit for use or consumption or unsalable.

14 (c) Any person to whom stamps shall be issued hereunder may,
15 upon notice and approval of the Tax Commission, sell such stamps to
16 any licensed manufacturer, or wholesaler, ~~warehouseman, jobber~~
17 ~~and/or retailer.~~

18 (d) The Commission shall sell the stamps to all licensed
19 manufacturers, wholesalers, ~~warehousemen and/or jobbers,~~ retailers,
20 or consumers, who have purchased cigarettes from wholesalers ~~or~~
21 ~~jobbers~~ within or without the State of Oklahoma, doing business
22 within the State of Oklahoma. All orders for stamps must be
23 accompanied by cash, cashier's check or money order, made payable to
24 the Oklahoma Tax Commission; provided, however, that the Tax

1 Commission may accept personal checks in payment for such stamps
2 upon a determination by the Tax Commission that the purchaser
3 thereof is financially responsible.

4 SECTION 9. AMENDATORY 68 O.S. 2001, Section 309, is
5 amended to read as follows:

6 Section 309. (a) The right of a ~~common~~ carrier in this state
7 to carry unstamped cigarettes, as defined in this article, shall not
8 be affected by this article; provided that ~~common~~ carriers
9 delivering unstamped cigarettes to any person in this state for the
10 purpose of selling or consuming unstamped cigarettes in this state
11 in violation of Section 301 et seq. of this title or this act shall
12 be subject to seizure of the shipments and forfeiture of the
13 inventory pursuant to the provisions of Section 305 of this title.
14 Should any ~~common~~ carrier sell cigarettes to its passengers while
15 being carried in this state, the sale shall be subject to the stamp
16 tax and other provisions of this article, and to the rules and
17 regulations of the Tax Commission.

18 (b) ~~Common carriers~~ Carriers transporting cigarettes to a point
19 within the state, or a bonded warehouseman or bailee having
20 possession of cigarettes, are required, under this article and the
21 rules and regulations to be prescribed by the Tax Commission, to
22 transmit to the Tax Commission a statement of such consignment of
23 cigarettes, showing the date, point of origin, point of delivery,
24 and to whom delivered, and such other information as the Tax

1 Commission may require. All ~~common~~ carriers, bailees or
2 warehousemen shall permit an examination by the Tax Commission, or
3 its agents or legally authorized representatives, of their records
4 relating to the shipment or receipt of cigarettes. Any person who
5 fails or refuses to transmit to the Tax Commission the statements
6 above provided for, or whoever refuses to permit the examination of
7 the records by the Tax Commission, shall be guilty of a misdemeanor.

8 SECTION 10. AMENDATORY 68 O.S. 2001, Section 312, is
9 amended to read as follows:

10 Section 312. ~~(a)~~ A. Every person subject to the payment of a
11 tax hereunder shall keep in Oklahoma accurate records covering the
12 business carried on and shall for three (3) years, and more if
13 required by the rules and regulations of the Oklahoma Tax
14 Commission, keep and preserve all invoices, showing all purchases
15 and sales of cigarettes; and such invoices and stock of cigarettes
16 shall at all times be subject to the examination and inspection of
17 any member or legally authorized agent or representative of the Tax
18 Commission, in the enforcement of this article. Every wholesaler,
19 ~~jobber, warehouseman~~ or retailer operating in the State of Oklahoma,
20 whose main warehouse or headquarters is in another state shall keep
21 all records of all cigarette transactions made by him or her at his
22 or her place of business in Oklahoma, or at a designated place in
23 the State of Oklahoma.

24

1 ~~(b)~~ B. Every wholesaler and retailer receiving unstamped
2 cigarettes shall file a report with the Tax Commission on or before
3 the ~~10th~~ tenth day of each month covering the previous calendar
4 month, on forms prescribed and furnished by the Tax Commission,
5 disclosing the beginning and closing inventory of unstamped
6 cigarettes, the beginning and closing inventory of stamped
7 cigarettes, the beginning and closing inventory of cigarette stamps,
8 the number and denomination of cigarette stamps affixed to packages
9 of cigarettes, and all purchases of cigarettes by showing the
10 invoice number, name and address of the consignee or seller, the
11 date, and the number of cigarettes purchased, and such other
12 information as may be required by the Tax Commission. Retailers or
13 consumers purchasing cigarettes in drop shipments shall be required
14 to make monthly reports to the Commission as are required of
15 wholesale dealers.

16 ~~(c)~~ C. Every distributing agent shall, except as otherwise
17 provided herein, keep at each place of business in Oklahoma for a
18 period of three (3) years for inspection by the Tax Commission a
19 complete record of all cigarettes received by him, including all
20 orders, invoices, bills of lading, waybills, freight bills, express
21 receipts, and all other shipping records which are furnished to the
22 distributing agent by the carrier and the shipper of said
23 cigarettes, or copies thereof, and, in addition thereto, a complete
24 record of each and every distribution or delivery made by said

1 distributing agent. Such records of distribution or delivery shall
2 include all orders, invoices or copies thereof, all other shipping
3 records furnished by the carrier, and the person ordering
4 distribution or delivery of the cigarettes.

5 ~~(d)~~ D. Upon a form to be prescribed by the Tax Commission,
6 every distributing agent in Oklahoma shall report each day, except
7 Sundays and holidays, to the Tax Commission all deliveries of
8 cigarettes made on the preceding day or days. The reports shall
9 show the name of the person ordering the delivery, date of delivery,
10 name and address of the person to whom delivered, the invoice
11 number, bill of lading or waybill number, the number and kind of
12 cigarettes delivered, the means of delivery and/or the
13 transportation agent and the destination of drop shipment, if a drop
14 shipment. However, if the invoice furnished the distributing agent
15 by the manufacturer or other person ordering such delivery, or the
16 bill of lading prepared by said distributing agent to cover the
17 shipment under said invoice, contains all the information required
18 to be reported, it will be sufficient to send a copy of said invoice
19 or invoices, or a copy of said bill of lading or bills of lading, to
20 the Tax Commission.

21 E. Every wholesaler or manufacturer required to make any report
22 required by this section shall submit such report electronically as
23 prescribed by the Tax Commission pursuant to Section 312.1 of this
24 title.

1 SECTION 11. AMENDATORY Section 4, Chapter 475, O.S.L.
2 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.
3 Supp. 2006, Section 312.1), is amended to read as follows:

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

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

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

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

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

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

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

21 2. The quantity of cigarette packages that were distributed or
22 shipped to another facility of the same manufacturer 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 instrumentalities of the
3 federal government during the reporting period and the name and
4 address of each person to whom those products were distributed or
5 shipped.

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

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

18 F. Each retailer shall maintain copies of invoices or
19 equivalent documentation for every transaction in which the retailer
20 receives or purchases cigarettes at each of its facilities. The
21 invoices or documentation shall show the name and address of the
22 ~~distributor~~ wholesaler from whom, ~~or the address of another facility~~
23 ~~of the same retailer from which,~~ the cigarettes were received, the

24

1 quantity of each brand style received in such transaction and the
2 retail cigarette license number or sales tax license number.

3 ~~G.~~ F. Each manufacturer shall maintain copies of invoices or
4 equivalent documentation for each of its facilities for every
5 transaction in which the manufacturer is the seller, purchaser,
6 consignor, consignee, or recipient of cigarettes. The invoices or
7 documentation shall show the name and address of the consignor,
8 seller, purchaser, or consignee, and the quantity by brand style of
9 the cigarettes involved in the transaction.

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

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

23 ~~J.~~ I. The Tax Commission, upon request, shall have access to
24 reports and records required under ~~this act~~ the Cigarette and

1 Tobacco Products Tax Codes. The Tax Commission at its sole
2 discretion may share the records and reports required by such
3 sections with law enforcement officials of the federal government,
4 other states, or international authorities and shall upon request
5 share the records and reports with state and local law enforcement
6 officials.

7 SECTION 12. AMENDATORY 68 O.S. 2001, Section 315, is
8 amended to read as follows:

9 Section 315. For the purpose of enabling the Oklahoma Tax
10 Commission to determine the tax liability of a ~~distributor,~~
11 ~~wholesale dealer, retail dealer~~ wholesaler, retailer, distributing
12 agent or any other person dealing in cigarettes, or to determine
13 whether a tax liability has been incurred, it shall have the right
14 to inspect any premises where cigarettes are manufactured, produced,
15 made, stored, transported, sold, or offered for sale or exchange,
16 and to examine all of the records required herein to be kept or any
17 other records that may be kept incident to the conduct of the
18 cigarette business of such ~~distributor, wholesale dealer, retail~~
19 ~~dealer~~ wholesaler, retailer, distributing agent, or any other person
20 dealing in cigarettes. The authorized agent of the ~~Oklahoma~~ Tax
21 Commission shall also have the right, as an incident, to determine
22 the said tax liability, or whether a tax liability has been
23 incurred, to examine all stocks of cigarette stamps, and for the
24 foregoing purpose such authorized agent shall also have the right to

1 remain upon the premises for such length of time as may be necessary
2 to fully determine such tax liability, or whether a tax liability
3 has been incurred; and it shall be unlawful for any of the foregoing
4 persons to fail to produce upon demand by the Tax Commission, or any
5 of its authorized agents, any records ~~herein~~ required to be kept
6 pursuant to the provisions of the Cigarette and Tobacco Products Tax
7 Codes, or to hinder or prevent in any manner the inspection of said
8 records, or the examination of said premises.

9 SECTION 13. AMENDATORY 68 O.S. 2001, Section 316, as
10 amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006,
11 Section 316), is amended to read as follows:

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

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

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

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

21 4. ~~Knowingly cancel or mutilate any stamp affixed to any~~
22 ~~individual package of cigarettes for the purpose of concealing any~~
23 ~~violation of Section 301 et seq. of this title~~ the Cigarette and
24 Tobacco Products Tax Codes or with any other fraudulent intent;

1 ~~5.~~ 4. Use any artful device or deceptive practice to conceal
2 any violation of ~~Section 301 et seq. of this title~~ the Cigarette and
3 Tobacco Products Tax Codes;

4 ~~6.~~ 5. Refuse to surrender to the Oklahoma Tax Commission upon
5 demand any cigarettes possessed in violation of any provision of
6 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
7 Tax Codes; or

8 ~~7.~~ 6. Knowingly or intentionally make a first sale of
9 cigarettes without a stamp being then and there affixed to each
10 individual package;
11 shall be guilty of a misdemeanor, and upon conviction thereof shall
12 be fined not more than ~~Two Hundred Dollars (\$200.00)~~ Ten Thousand
13 Dollars (\$10,000.00) for the first offense and not more than Twenty-
14 five Thousand Dollars (\$25,000.00) for the second offense, where
15 specific penalties are not otherwise provided.

16 B. Any consumer, who shall:

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

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

23 3. Knowingly cancel or mutilate any stamp affixed to any
24 individual package of cigarettes for the purpose of concealing any

1 violation of the Cigarette and Tobacco Products Tax Codes or with
2 any other fraudulent intent;

3 4. Use any artful device or deceptive practice to conceal any
4 violation of the Cigarette and Tobacco Products Tax Codes; or

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

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

10 C. Any distributor, wholesale dealer, retail dealer wholesaler,
11 retailer, or distributing agent who shall intentionally:

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

14 2. Sell any cigarettes upon which tax is required to be paid by
15 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
16 Tax Codes without at the time of making such sale having a valid
17 license;

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

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

23 shall be guilty of a misdemeanor, and upon conviction thereof shall
24 be punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~

1 Ten Thousand Dollars (\$10,000.00) for the first offense, and not
2 more than Twenty-five Thousand Dollars (\$25,000.00) for the second
3 offense, where specific penalties are not otherwise provided.

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

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

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

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

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

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

21 2. For a second offense, be punished by an administrative fine
22 of not more than One Thousand Dollars (\$1,000.00); and
23
24

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

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

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

8 2. For a second or subsequent offense, be punished by an
9 administrative fine of not more than Twenty Thousand Dollars
10 (\$20,000.00).

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

14 ~~F.~~ G. The Tax Commission shall immediately revoke the license of
15 a person punished for a violation pursuant to the provisions of
16 paragraph 3 of subsection ~~D~~ E of this section or a person punished
17 for a violation pursuant to the provisions of subsection ~~E~~ F of this
18 section. A person whose license is so revoked shall not be eligible
19 to receive another license pursuant to the provisions of ~~Section 301~~
20 ~~et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes
21 for a period of ten (10) years.

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

23 1. Fails to keep or make any record, return, report, or
24 inventory, or keeps or makes any false or fraudulent record, return,

1 report, or inventory, required by ~~Section 301 et seq. of this title~~
2 the Cigarette and Tobacco Products Tax Codes or rules promulgated
3 thereunder;

4 2. Refuses to pay any tax imposed by ~~Section 301 et seq. of~~
5 ~~this title~~ the Cigarette and Tobacco Products Tax Codes, or attempts
6 in any manner to evade or defeat the tax or the payment thereof; or

7 3. Fails to comply with any requirement of ~~Section 301 et seq.~~
8 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes;

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

12 ~~H. I.~~ I. Whoever knowingly omits, neglects, or refuses to comply
13 with any duty imposed upon the person by ~~Section 301 et seq. of this~~
14 ~~title~~ the Cigarette and Tobacco Products Tax Codes, or to do, or
15 cause to be done, any of the things required by ~~Section 301 et seq.~~
16 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes, or does
17 anything prohibited by ~~Section 301 et seq. of this title~~ the
18 Cigarette and Tobacco Products Tax Codes, shall, in addition to any
19 other penalty provided in ~~Section 301 et seq. of this title~~ the
20 Cigarette and Tobacco Products Tax Codes, pay an administrative
21 penalty of One Thousand Dollars (\$1,000.00).

22 ~~F. J.~~ J. Whoever fails to pay any tax imposed by ~~Section 301 et~~
23 ~~seq. of this title~~ the Cigarette and Tobacco Products Tax Codes at
24 the time prescribed by law or rules, shall, in addition to any other

1 penalty provided in ~~Section 301 et seq. of this title~~ the Cigarette
2 and Tobacco Products Tax Codes, be liable to a penalty of five
3 hundred percent (500%) of the tax due but unpaid.

4 ~~J.~~ K. 1. All cigarettes which are held for sale or distribution
5 within the borders of Oklahoma, in violation of the requirements of
6 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
7 Tax Codes, and the machinery used to manufacture counterfeit
8 cigarettes shall be forfeited to Oklahoma. All cigarettes and
9 machinery forfeited to Oklahoma under this paragraph shall be
10 destroyed.

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

22 ~~K.~~ L. Notwithstanding any other provision of law, the sale or
23 possession for sale of counterfeit cigarettes, or the sale or
24 possession for sale of counterfeit cigarettes by a manufacturer,

1 ~~distributor,~~ or retailer shall result in the seizure of the product
2 and related machinery by the Tax Commission or any law enforcement
3 agency and shall be punishable as follows:

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

9 2. A subsequent violation with a total quantity of less than two
10 cartons of cigarettes, or the equivalent amount of other cigarettes
11 shall be punishable by a fine not to exceed ~~Five Thousand Dollars~~
12 ~~(\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or
13 imprisonment not to exceed five (5) years, or both the fine and the
14 imprisonment, and shall also result in the revocation by the Tax
15 Commission of the manufacturer, ~~distributor~~ wholesaler, or retailer
16 license;

17 3. A first violation with a total quantity of more than two
18 cartons of cigarettes, or the equivalent amount of other cigarettes,
19 shall be punishable by a fine not to exceed ~~Two Thousand Dollars~~
20 ~~(\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or
21 imprisonment not to exceed five (5) years, or both the fine and
22 imprisonment; and

23 4. A subsequent violation with a quantity of two cartons of
24 cigarettes or more, or the equivalent amount of other cigarettes

1 shall be punishable by a fine not to exceed Fifty Thousand Dollars
2 (\$50,000.00) or imprisonment not to exceed five (5) years, or both
3 the fine and imprisonment, and shall also result in the revocation
4 by the Tax Commission of the manufacturer, ~~distributor~~ wholesaler,
5 or retailer license.

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

11 M. The Tax Commission shall immediately revoke the license of a
12 person punished for a violation pursuant to the provisions of
13 subsection H of this section. A person whose license is so revoked
14 shall not be eligible to receive another license for a period of
15 five (5) years.

16 SECTION 14. AMENDATORY Section 6, Chapter 475, O.S.L.
17 2003 (68 O.S. Supp. 2006, Section 317.1), is amended to read as
18 follows:

19 Section 317.1 ~~A.~~ No person shall make a delivery sale of
20 cigarettes or tobacco products to ~~any individual who is under the~~
21 ~~legal minimum purchase age~~ a consumer in this state.

22 ~~B. Each person taking a delivery sale order shall comply with:~~
23 ~~1. The age verification requirements set forth in Section 7 of~~
24 ~~this act;~~

1 ~~2. The disclosure requirements set forth in Section 8 of this~~
2 ~~act;~~

3 ~~3. The shipping requirements set forth in Section 9 of this~~
4 ~~act;~~

5 ~~4. The registration and reporting requirements set forth in~~
6 ~~Section 10 of this act;~~

7 ~~5. The tax collection requirements set forth in Section 11 of~~
8 ~~this act; and~~

9 ~~6. All other laws of Oklahoma generally applicable to sales of~~
10 ~~cigarettes that occur entirely within Oklahoma, including, but not~~
11 ~~limited to, those laws imposing:~~

12 ~~a. excise taxes,~~

13 ~~b. sales taxes,~~

14 ~~c. licensing and tax stamping requirements, and~~

15 ~~d. escrow or other payment obligations~~

16 The first time a person makes a delivery sale of cigarettes or
17 tobacco products to a consumer in this state, such person shall be
18 guilty of a misdemeanor, and upon conviction thereof shall be fined
19 not more than Ten Thousand Dollars (\$10,000.00) for the first
20 offense and not more than Twenty-five Thousand Dollars (\$25,000.00)
21 for a second or subsequent offense.

22 SECTION 15. AMENDATORY 68 O.S. 2001, Section 320, as
23 amended by Section 8, Chapter 272, O.S.L. 2006 (68 O.S. Supp. 2006,
24 Section 320), is amended to read as follows:

1 Section 320. A. Every person making application for a
2 distributing agent's license under ~~this article or the following~~
3 ~~article containing the tobacco Products Tax Code~~ the Cigarette and
4 Tobacco Products Tax Codes shall, before being issued such license
5 and as a condition of carrying on such business, file with the
6 Oklahoma Tax Commission a surety or collateral or cash bond in the
7 amount of Twenty-five Thousand Dollars (\$25,000.00) payable to the
8 State of Oklahoma, and conditioned upon compliance with the
9 provisions of ~~this article or the following article of this Code~~ the
10 Cigarette and Tobacco Products Tax Codes, and the rules of the
11 Oklahoma Tax Commission.

12 B. Every person making application for a wholesaler's ~~or~~
13 ~~jobber's~~ license under ~~this article~~ the Cigarette and Tobacco
14 Products Tax Codes shall, before being issued such license and as a
15 condition of carrying on such business, file with the Tax Commission
16 a surety or collateral or cash bond in the amount of Twenty-five
17 Thousand Dollars (\$25,000.00) payable to the State of Oklahoma and
18 conditioned upon compliance with the provisions of ~~this article~~ the
19 Cigarette and Tobacco Products Tax Codes and the rules of the
20 Oklahoma Tax Commission.

21 C. 1. Sixty (60) days after making a written request for
22 release to the Tax Commission, the surety of a bond furnished by a
23 licensee shall be released from any liability to the state accruing
24 on the bond after the sixty-day period. The release does not affect

1 any liability accruing before the expiration of the sixty-day
2 period.

3 2. The Tax Commission shall promptly notify the licensee
4 furnishing the bond that a release has been requested. Unless the
5 licensee obtains a new bond that meets the requirements of ~~this act~~
6 Section 301 et seq. of this title and files with the Tax Commission
7 the new bond within the sixty-day period, the Tax Commission shall
8 cancel the license.

9 3. Sixty (60) days after making a written request for release
10 to the Tax Commission, the cash deposit provided by a licensee shall
11 be canceled as security for any obligation accruing after the
12 expiration of the sixty-day period. However, the Tax Commission may
13 retain all or part of the cash deposit for up to three (3) years and
14 one (1) day as security for any obligations accruing before the
15 effective date of the cancellation. Any part of the deposit not
16 retained by the Tax Commission shall be released to the licensee.
17 Before the expiration of the sixty-day period, the licensee shall
18 provide the Tax Commission with a bond that satisfies the
19 requirements of ~~this act~~ Section 301 et seq. of this title, or the
20 Tax Commission shall cancel the license.

21 4. Any licensee who has filed a bond or other security is
22 entitled, on request, to have the Tax Commission return, refund, or
23 release the bond or security if, in the judgment of the Tax
24 Commission, the licensee has continuously complied with the

1 provisions of ~~this article and Article 4 containing the tobacco~~
2 ~~products tax code~~ the Cigarette and Tobacco Products Tax Codes for
3 the previous three (3) consecutive years. However, if the Tax
4 Commission determines that the revenues of the state would be
5 jeopardized by the return, refund or release of bond or security,
6 the Tax Commission may elect to retain the bond or security, or
7 having released such, may reimpose a requirement for bond or
8 security to protect the revenues of this state. The decision of the
9 Tax Commission to not release a bond or security may be reviewed,
10 after application by the licensee, pursuant to the Administrative
11 Procedures Act.

12 D. In the event any applicant for a license applies for more
13 than one license pursuant to ~~this article or Article 4 containing~~
14 ~~the tobacco products tax code~~ the Cigarette and Tobacco Products Tax
15 Codes, the applicant shall not be required to post a bond for each
16 license, but shall be required to post a bond for the license which
17 requires the greatest amount of bond.

18 SECTION 16. AMENDATORY 68 O.S. 2001, Section 324, is
19 amended to read as follows:

20 Section 324. All manufacturers, wholesalers, ~~jobbers~~, retailers
21 or other persons selling or distributing ~~such~~ cigarettes are hereby
22 required to comply with the provisions of the ~~three preceding~~
23 ~~sections~~ Cigarette and Tobacco Products Tax Codes, and the rules and
24 regulations of the Oklahoma Tax Commission as to such sales or

1 distributions, and failure or refusal to so comply shall constitute
2 grounds for revocation of any license issued to such manufacturer,
3 wholesaler, ~~jobber~~, retailer or other person, by the ~~Oklahoma~~ Tax
4 Commission.

5 SECTION 17. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 326.1 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 On or before November 1 of each year, after the year of the
9 effective date of this act, the Oklahoma Tax Commission shall file a
10 report with the Governor, President Pro Tempore of the Senate and
11 Speaker of the House of Representatives. The report shall contain a
12 description of the progress made during the past year to stop the
13 flow of contraband, counterfeit and gray-market cigarettes and
14 tobacco products into and within the state. It shall also provide a
15 report of all revenue received from all enforcement efforts relating
16 to the taxation of cigarette and tobacco products.

17 SECTION 18. AMENDATORY 68 O.S. 2001, Section 346, as
18 amended by Section 8, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2006,
19 Section 346), is amended to read as follows:

20 Section 346. A. The Legislature finds that:

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

24

1 2. The doctrine of tribal sovereign immunity prohibits the
2 State of Oklahoma from bringing a lawsuit against an Indian tribe or
3 nation to compel the tribe or nation to collect state taxes on sales
4 made in Indian country to either members or nonmembers of the tribe
5 or nation without a waiver of immunity by the tribe or nation or
6 congressional abrogation of the doctrine; and

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

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

24

1 C. The Governor is authorized by this enactment to enter into
2 cigarette and tobacco products tax compacts on behalf of the State
3 of Oklahoma with the federally recognized Indian tribes or nations
4 of this state. The compacts shall set forth the terms of agreement
5 between the sovereign parties regulating sale of cigarettes and
6 tobacco products by the tribes or nations or their licensees in
7 Indian country. All sales in Indian country by those compacting
8 tribes or nations and their licensees shall be exempt from the taxes
9 levied pursuant to the provisions of Section 301 et seq., Section
10 401 et seq. and Section 1350 et seq. of ~~Title 68 of the Oklahoma~~
11 ~~Statutes~~ this title and Sections 349 and 425 of this title, subject
12 to the following terms and conditions:

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

18 2. All cigarettes and tobacco products sold or held for sale to
19 the public, without distinction between member and nonmember sales,
20 shall bear a payment in lieu of tax stamp evidencing that payment in
21 lieu of state taxes has been paid to the state. State and tribal
22 officials may provide for use of a single joint stamp evidencing
23 payment of both the payment in lieu of tax as specified in a compact
24

1 pursuant to the provisions of this section and any tax levied by a
2 tribe or nation;

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

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

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

- 20 a. members of the tribe or nation, and
- 21 b. business entities in which the tribe or nation or
22 tribal members have a majority ownership interest.

23 D. In addition to any other authority granted by law, the Tax
24 Commission shall regularly conduct an audit of wholesalers;

1 ~~distributors, jobbers and warehousemen~~ selling cigarettes or tobacco
2 products to a federally recognized Indian tribe or nation or a
3 tribally owned or licensed store to determine if the correct amount
4 of tax payable under ~~this act~~ the Cigarette and Tobacco Products Tax
5 Codes has been collected and to determine compliance with any and
6 all compacts.

7 SECTION 19. AMENDATORY 68 O.S. 2001, Section 347, is
8 amended to read as follows:

9 Section 347. The provisions of ~~Sections 3 through 6~~ Section 349
10 of this ~~act~~ title shall not apply to a federally recognized Indian
11 tribe or nation which has entered into a compact with the State of
12 Oklahoma pursuant to the provisions of subsection C of Section ~~1 of~~
13 ~~this act~~ 346 of this title or to a licensee of such a tribe or
14 nation during the period that such compact is effective.

15 SECTION 20. AMENDATORY 68 O.S. 2001, Section 348, is
16 amended to read as follows:

17 Section 348. As used in ~~Sections 346 through 352 of this title~~
18 the Cigarette and Tobacco Products Tax Codes:

19 1. "Tribally owned or licensed store" means a store or place of
20 business which is owned and operated by a federally recognized
21 Indian tribe or nation, other than a federally recognized Indian
22 tribe or nation which has entered into a compact with the State of
23 Oklahoma pursuant to the provisions of subsection C of Section 346
24 of this title during the period that such compact is effective, on

1 Indian country within the territorial jurisdiction of that tribe or
2 nation or which is duly licensed by such tribe or nation pursuant to
3 tribal laws or ordinances to conduct business located on Indian
4 country within the territorial jurisdiction of that tribe or nation;

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

9 3. "Indian country" means:

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

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

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

22 d. all Indian allotments, the Indian titles to which have
23 not been extinguished, including individual allotments
24 held in trust by the United States or allotments owned

1 in fee by individual Indians subject to federal law
2 restrictions regarding disposition of said allotments
3 and including rights-of-way running through the same;

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

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

12 6. "Unstamped cigarettes" means packages of cigarettes which
13 bear no evidence of a the tax stamp required by state law and
14 includes cigarettes bearing an improper tax stamp applicable to the
15 retail establishment at which the cigarette is sold, regardless of
16 the identity of the establishment which the cigarette has been sold,
17 shipped, consigned or delivered;

18 7. "Contraband cigarettes" means unstamped cigarettes which are
19 required by the provisions of ~~Sections 348 through 351 of this title~~
20 ~~or Section 301 et seq. of this title~~ the Cigarette and Tobacco
21 Products Tax Codes to bear stamps and which are in the possession,
22 custody or control of any person, for the purpose of being consumed,
23 sold, offered for sale or consumption or transported to any person
24 in this state other than a wholesaler licensed under Section 304 of

1 this title; provided, contraband cigarettes shall not include
2 unstamped cigarettes sold to veterans' hospitals, to state-operated
3 domiciliary homes for veterans or to the United States for sale or
4 distribution by said entities in accordance with Sections 321
5 through 324 of this title;

6 8. "Stamped cigarettes" means packages of cigarettes which bear
7 ~~a~~ the proper tax stamp required by state law;

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

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

15 SECTION 21. AMENDATORY 68 O.S. 2001, Section 349, is
16 amended to read as follows:

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

24

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

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

16 D. It shall be unlawful for any person knowingly to ship,
17 transport, receive, possess, sell, distribute or purchase contraband
18 cigarettes. Any person who engages in shipping, transporting,
19 receiving, possessing, selling, distributing or purchasing
20 contraband cigarettes shall, upon conviction, be guilty of a
21 misdemeanor punishable by a fine of not more than One Thousand
22 Dollars (\$1,000.00). Any person convicted of a second or subsequent
23 violation hereof shall be guilty of a felony and shall be punishable
24 by a fine of not more than Five Thousand Dollars (\$5,000.00), by a

1 term of imprisonment in the State Penitentiary for not more than two
2 (2) years, or by both such fine and imprisonment.

3 E. Any person who knowingly engages in shipping, transporting,
4 receiving, possessing, selling, distributing or purchasing
5 contraband cigarettes shall be subject to the forfeiture of property
6 as is provided by ~~Section 305 of Title 68 of the Oklahoma Statutes~~
7 the Cigarette and Tobacco Products Tax Codes and assessment of
8 penalty as provided thereby and assessment for any delinquent taxes
9 found to be owing.

10 SECTION 22. AMENDATORY 68 O.S. 2001, Section 350, is
11 amended to read as follows:

12 Section 350. A. Every wholesaler, ~~jobber or warehouseman~~ doing
13 business within this state and required to secure a license as
14 provided in ~~Section 304 of Title 68 of the Oklahoma Statutes~~ the
15 Cigarette and Tobacco Products Tax Codes may sell cigarettes to
16 tribally owned or licensed stores in this state. Provided,
17 wholesalers shall only sell cigarettes or tobacco products to
18 tribally owned or licensed stores that are on the list of tribally
19 owned and licensed stores maintained and supplied by the Oklahoma
20 Tax Commission. It shall be the duty of the wholesaler, ~~jobber or~~
21 ~~warehouseman~~ to affix the applicable tax stamp required by Section 4
22 ~~of this act~~ 349 of the Cigarette and Tobacco Products Tax Codes to
23 cigarette inventory sold to a tribally owned or licensed store.

24

1 B. Tribally owned or licensed stores may only purchase,
2 receive, stock, possess, sell or distribute stamped cigarettes.

3 SECTION 23. AMENDATORY 68 O.S. 2001, Section 350.1, is
4 amended to read as follows:

5 Section 350.1 If a wholesaler, ~~jobber or warehouseman~~ timely
6 accepts documentation ~~which shall require identification by drivers~~
7 ~~license and social security number~~ as prescribed by the Oklahoma Tax
8 Commission from a person claiming that the cigarettes will be sold
9 at a tribally owned or licensed store, the wholesaler, ~~jobber or~~
10 ~~warehouseman~~ shall be relieved of any liability for any additional
11 tax due or required to be collected should it later be determined
12 that the cigarettes were not purchased for sale at a tribally owned
13 or licensed store.

14 SECTION 24. AMENDATORY 68 O.S. 2001, Section 351, is
15 amended to read as follows:

16 Section 351. A. All unstamped cigarettes sold or shipped to
17 tribally owned or licensed stores in this state by wholesalers,
18 ~~jobbers or warehousemen~~ not licensed by this state pursuant to the
19 provisions of Section 304 of ~~Title 68 of the Oklahoma Statutes~~ this
20 title for the purpose of selling or consuming unstamped cigarettes
21 in this state in violation of ~~this act~~ the Cigarette and Tobacco
22 Products Tax Codes shall be subject to seizure of the shipments and
23 forfeiture of the inventory pursuant to the provisions of Section
24 305 of ~~Title 68 of the Oklahoma Statutes~~ this title.

1 B. Any peace officer of this state, including, but not limited
2 to, officers of the Department of Public Safety or the Oklahoma
3 State Bureau of Investigation, any sheriff, any salaried deputy
4 sheriff or any municipal police officer is authorized to stop any
5 vehicle upon any road or highway of this state in order to inspect
6 the bill of lading or to take such action as may be necessary to
7 determine if unstamped cigarettes are being sold or shipped in
8 violation of the provisions of this section. Such officers shall
9 also have the duty to cooperate with the Oklahoma Tax Commission to
10 enforce the provisions of ~~this act~~ the Cigarette and Tobacco
11 Products Tax Codes.

12 SECTION 25. AMENDATORY Section 7, Chapter 266, O.S.L.
13 2004 (68 O.S. Supp. 2006, Section 360.7), is amended to read as
14 follows:

15 Section 360.7 A. In addition to or in lieu of any other civil
16 or criminal remedy provided by law, upon a determination that a
17 stamping agent has violated Section ~~6~~ 360.6 of this ~~act~~ title or any
18 rule promulgated pursuant to the Master Settlement Agreement
19 Complementary Act, the Oklahoma Tax Commission may revoke or suspend
20 the license of the stamping agent. Each stamp affixed and each sale
21 or offer to sell cigarettes in violation of the Master Settlement
22 Agreement Complementary Act shall constitute a separate violation.
23 For each violation, the Oklahoma Tax Commission may also impose a
24 civil penalty in an amount not to exceed the greater of five hundred

1 percent (500%) of the retail value of the cigarettes or Five
2 Thousand Dollars (\$5,000.00) upon a determination of violation of
3 the Master Settlement Agreement Complementary Act or any rules
4 promulgated pursuant thereto.

5 B. Any cigarettes that have been sold, offered for sale, or
6 possessed for sale in this state or imported for personal
7 consumption in this state, in violation of the Master Settlement
8 Agreement Complementary Act, shall be deemed contraband pursuant to
9 the Master Settlement Agreement Complementary Act. Those cigarettes
10 shall be subject to seizure and forfeiture as provided by this
11 section and all cigarettes so seized and forfeited shall be
12 destroyed as provided by this section and not resold.

13 C. 1. Cigarettes or roll-your-own tobacco product distributors
14 and wholesalers licensed by the Oklahoma Tax Commission, pursuant to
15 Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title,
16 who also distribute cigarettes in a state bordering Oklahoma may
17 store in their Oklahoma warehouse cigarettes made contraband under
18 this section if, and only if, they have the tax stamp of another
19 state affixed to each package of cigarettes and the cigarette or
20 roll-your-own tobacco product distributor or wholesaler does not
21 intend to sell the cigarettes in Oklahoma.

22 2. Cigarettes or roll-your-own tobacco products made contraband
23 pursuant to this section, without being subject to seizure or
24 forfeiture, may be transported in, into, or through the state if the

1 cigarettes or roll-your-own tobacco products are not intended for
2 sale in Oklahoma, and either:

- 3 a. are on a commercial carrier with a proper bill of
4 lading with an out-of-state destination,
- 5 b. when the tax stamp of another state is affixed to each
6 pack of cigarettes or tobacco product transported, or
- 7 c. are on a commercial carrier with a proper bill of
8 lading to a tobacco product distributor or wholesaler
9 licensed by the Oklahoma Tax Commission, pursuant to
10 Section 304 or 415 of ~~Title 68 of the Oklahoma~~
11 ~~Statutes~~ this title, who also distributes cigarettes
12 in a state bordering Oklahoma if, and only if, the
13 packing slip accompanying the shipment indicates the
14 shipment is for sale in another state and indicates
15 which state, and the invoice for the shipment also
16 indicates the shipment is for sale in a state other
17 than Oklahoma and identifies the state in which the
18 shipment is to be sold. The time of delivery of the
19 shipments shall be indicated on the bill of lading of
20 the common carrier when delivery is completed. The
21 receiving Oklahoma distributor or wholesaler must,
22 within twenty-four (24) hours of receiving the
23 delivery, affix or cause to be affixed to each package

1 of cigarettes the stamp of the state in which they are
2 to be sold.

3 3. All cigarettes, tobacco products, vehicles, and property so
4 seized shall be listed and appraised by the officer making the
5 seizure and turned over to the county sheriff of the county in which
6 the seizure is made and a receipt therefor taken. The person making
7 the seizure shall immediately make a written report of the seizure,
8 showing the name of the person making the seizure, the location of
9 the seizure, the person from whom the property was seized, and an
10 inventory and appraisal of the property at the usual and ordinary
11 retail price of the articles received. The report shall be filed
12 with the Oklahoma Tax Commission and the Attorney General. The
13 district attorney of the county in which the seizures are made, at
14 the request of the Oklahoma Tax Commission or Attorney General,
15 shall file in the district court forfeiture proceedings in the name
16 of the State of Oklahoma, as plaintiff, and in the name of the owner
17 or person in possession, as defendant, if known, and if unknown or
18 not susceptible to the jurisdiction of the court, in the name of the
19 property seized. The clerk of the court shall issue a summons to
20 the owner or person in whose possession the property was found
21 directing the owner or person to answer within ten (10) days. At
22 the forfeiture proceeding, if a distributor or wholesaler
23 demonstrates through clear and convincing evidence that the
24 possession of contraband by the distributor or wholesaler was

1 accidental, the vehicle in which the contraband was being
2 transported shall not be forfeited. In no case, however, shall
3 possession of more than twenty (20) cartons of contraband product be
4 considered by the courts as being possessed accidentally. If the
5 property is declared forfeited and ordered sold, notice of the sale
6 shall be posted not less than ten (10) days before the date of sale
7 in five public places in the county in which the seizures are made.
8 However, any cigarettes or tobacco products forfeited pursuant to
9 this section shall be destroyed by the county sheriff. Proceeds of
10 the sale shall be deposited with the clerk of the court, who shall,
11 after deducting costs including the costs of prosecution, storage,
12 and sale, pay the balance to the Oklahoma Tax Commission for deposit
13 in the Tobacco Settlement Endowment Trust Fund.

14 D. The Attorney General may seek an injunction to restrain a
15 threatened or actual violation of the Master Settlement Agreement
16 Complementary Act by a stamping agent and to compel the stamping
17 agent to comply with those provisions. In any action brought
18 pursuant to this section, the state shall be entitled to recover the
19 costs of investigation, costs of the action, and reasonable attorney
20 fees.

21 E. 1. It shall be unlawful for a person to:

22 a. sell or distribute cigarettes, or

23 b. acquire, hold, own, possess, transport, import, or

24 cause to be imported cigarettes that the person knows

1 or should know are intended for distribution or sale
2 in the state in violation of the Master Settlement
3 Agreement Complementary Act. A violation of the act
4 shall be a misdemeanor.

5 2. A person who violates subsection C of Section 4 360.4 of
6 this ~~act~~ title engages in an unfair and deceptive trade practice in
7 violation of the provisions of the Oklahoma Consumer Protection Act.

8 SECTION 26. AMENDATORY 68 O.S. 2001, Section 401, is
9 amended to read as follows:

10 Section 401. ~~For the purpose of this article:~~

11 ~~(a) The word "person" shall mean any individual, company,~~
12 ~~limited liability company, corporation, partnership, association,~~
13 ~~joint adventure, estate, trust, or any other group, or combination~~
14 ~~acting as a unit, and the plural as well as the singular, unless the~~
15 ~~intention to give a more limited meaning is disclosed by the~~
16 ~~context.~~

17 ~~(b) The term "Tax Commission" shall mean the Oklahoma Tax~~
18 ~~Commission.~~

19 ~~(c) The word "wholesaler" shall include dealers whose principal~~
20 ~~business is that of a wholesale dealer or jobber, and who is known~~
21 ~~to the trade as such, who shall sell any cigars or tobacco products~~
22 ~~to licensed retail dealers only for the purpose of resale, or giving~~
23 ~~them away, or exposing the same where they may be taken or~~
24 ~~purchased, or otherwise acquired by the retailer.~~

1 ~~(d) The word "retailer" shall include every dealer, other than~~
2 ~~a wholesale dealer as defined above, whose principal business is~~
3 ~~that of selling merchandise at retail, who shall sell, or offer for~~
4 ~~sale, cigars or tobacco products, irrespective of quantity, number~~
5 ~~of sales, giving the same away or exposing the same where they may~~
6 ~~be taken, or purchased, or otherwise acquired by the consumer.~~

7 ~~(e) The word "consumer" shall mean a person who comes into~~
8 ~~possession of tobacco for the purpose of consuming it, giving it~~
9 ~~away, or disposing of it in any way by sale, barter or exchange.~~

10 ~~(f) The words "first sale" shall mean and include the first~~
11 ~~sale, or distribution, of cigars or tobacco products in intrastate~~
12 ~~commerce, or the first use or consumption of cigars, or tobacco~~
13 ~~products within this state.~~

14 ~~(g) The words "tobacco~~ For purposes of the Cigarette and
15 Tobacco Products Tax Codes:

16 1. "Tobacco products" shall mean any cigars, cheroots, stogies,
17 smoking tobacco (including granulated, plug cut, crimp cut, ready
18 rubbed and any other kinds and forms of tobacco suitable for smoking
19 in a pipe or cigarette), chewing tobacco (including cavendish,
20 twist, plug, scrap and any other kinds and forms of tobacco suitable
21 for chewing), however prepared; and shall include any other articles
22 or products made of tobacco or any substitute therefor.

23 ~~(h) The term "distributing agent" shall mean and include every~~
24 ~~person in this state who acts as an agent of any person outside the~~

1 ~~state by receiving cigars and tobacco products in interstate~~
2 ~~commerce and storing such items subject to distribution or delivery,~~
3 ~~upon order from said person outside the state, to distributors,~~
4 ~~wholesale dealers and retail dealers, or to consumers. The term~~
5 ~~"distributing agent" shall also mean and include any person who~~
6 ~~solicits or takes orders for cigars and tobacco products to be~~
7 ~~shipped in interstate commerce to a person in this state by a person~~
8 ~~residing outside of Oklahoma, the tax not having been paid on such~~
9 ~~cigars and tobacco products.~~

10 ~~(i) The term "stamp" shall mean the stamp or stamps by use of~~
11 ~~which:~~

12 ~~1. The tax levied pursuant to the provisions of Section 401 et~~
13 ~~seq. of this title is paid;~~

14 ~~2. The tax levied pursuant to the provisions of Section 426 of~~
15 ~~this title is paid; or~~

16 ~~3. The payment in lieu of taxes authorized pursuant to a~~
17 ~~compact entered into by the State of Oklahoma and a federally~~
18 ~~recognized Indian tribe or nation pursuant to the provisions of~~
19 ~~subsection C of Section 346 of this title is paid.~~

20 ~~(j) The term "drop shipment" shall mean and include any~~
21 ~~delivery of cigars or tobacco products received by any person within~~
22 ~~the state when payment for such cigars or tobacco products is made~~
23 ~~to the shipper or seller by or through a person other than the~~
24 ~~consignee.~~

1 ~~(k) The term "cigars"~~

2 2. "Cigars" shall include any roll of tobacco for smoking,
3 irrespective of size or shape and irrespective of the tobacco being
4 flavored, adulterated or mixed with any other ingredients, where
5 such roll has a wrapper made chiefly of tobacco.

6 ~~(l) The word "dealer"~~

7 3. "Dealer" shall include every person, firm, corporation, or
8 association of persons, who manufactures cigars or tobacco products
9 for distribution, sale, use or consumption in the State of Oklahoma.
10 The word "dealer" is also further defined to mean any person, firm,
11 corporation or association of persons, who imports cigars or tobacco
12 products from any state or foreign country, for distribution, sale,
13 use or consumption in the State of Oklahoma.

14 SECTION 27. AMENDATORY 68 O.S. 2001, Section 410, is
15 amended to read as follows:

16 Section 410. The Tax Commission shall administer and enforce
17 all provisions of ~~this article~~ the Cigarette and Tobacco Products
18 Tax Codes. It shall have the power to enter upon the premises of
19 any taxpayer and to examine, or cause to be examined by an agent or
20 representative designated by it for such purpose, any books,
21 invoices, papers, records or memoranda bearing upon the amount of
22 taxes payable, and to secure other information directly concerned in
23 the enforcement of ~~this article~~ the Cigarette and Tobacco Products
24 Tax Codes.

1 SECTION 28. AMENDATORY 68 O.S. 2001, Section 412, as
2 amended by Section 9, Chapter 272, O.S.L. 2006 (68 O.S. Supp. 2006,
3 Section 412), is amended to read as follows:

4 Section 412. (a) Every wholesaler, ~~jobber~~, retailer or
5 consumer who purchases or allows to come into his or her possession
6 any unstamped merchandise coming under the scope of ~~this article~~ the
7 Cigarette and Tobacco Products Tax Codes shall file with the
8 Oklahoma Tax Commission a surety or collateral or cash bond in the
9 amount of Twenty-five Thousand Dollars (\$25,000.00), payable to the
10 State of Oklahoma and conditioned upon compliance with the
11 provisions of ~~this article~~ the Cigarette and Tobacco Products Tax
12 Codes and the rules of the Tax Commission.

13 (b) Any consumer who purchases or brings into this state
14 unstamped cigars or tobacco products whereon the tax would be more
15 than twenty-five cents (\$0.25) is subject to the tax thereon. Upon
16 failure to pay the tax levied in ~~this article~~ the Cigarette and
17 Tobacco Products Tax Codes, the consumer shall be subject to a fine
18 of not more than Five Hundred Dollars (\$500.00) or not less than
19 Twenty-five Dollars (\$25.00).

20 SECTION 29. AMENDATORY 68 O.S. 2001, Section 413, is
21 amended to read as follows:

22 Section 413. (a) The right of a ~~common~~ carrier in this state
23 to carry unstamped cigars and tobacco products shall not be affected
24 hereby; provided, that ~~common~~ carriers delivering untaxed tobacco

1 products to any person in this state for the purpose of selling or
2 consuming untaxed tobacco products in this state in violation of
3 ~~this article~~ the Cigarette and Tobacco Products Tax Codes shall be
4 subject to seizure of the shipments and forfeiture of the inventory
5 pursuant to the provisions of Section 417 of this title. Provided
6 further, that should any such carrier sell any cigars and tobacco
7 products in this state, such sale shall be subject to the stamp tax
8 and other provisions of ~~this article~~ the Cigarette and Tobacco
9 Products Tax Codes and to the rules and regulations of the Tax
10 Commission. The ~~common~~ carrier transporting tobacco products and
11 cigars to a point within this state, or a bonded warehouseman or
12 bailee having in its possession tobacco products and cigars, shall
13 transmit to the Tax Commission a statement of such consignment of
14 tobacco products and cigars, showing the date, point of origin,
15 point of delivery, and to whom delivered. All ~~common~~ carriers or
16 bailees or warehousemen shall permit an examination by the Tax
17 Commission, or its agents or legally authorized representatives, of
18 their records relating to the shipment or receipt of tobacco
19 products and cigars. Any person who fails or refuses to transmit to
20 the Tax Commission the aforesaid statement, or who refuses to permit
21 the examination of his or her records by the Tax Commission or its
22 legally authorized agents or representatives, shall be guilty of a
23 misdemeanor and shall be subject to a fine of not to exceed Five
24

1 Hundred Dollars (\$500.00) and not less than Twenty-five Dollars
2 (\$25.00).

3 (b) ~~Wholesalers, jobbers, and/or warehousemen~~ shall make a
4 monthly report to the Tax Commission. Such report must be received
5 in the office of the Tax Commission not later than the fifteenth day
6 of each month, showing purchases and invoices of all merchandise
7 coming under ~~this article~~ the Cigarette and Tobacco Products Tax
8 Codes, for the previous month; and the report shall also show the
9 invoice number, the name and address of the consignee and consignor,
10 the date, and such other information as may be requested by the Tax
11 Commission. Retailers or consumers purchasing tobacco products and
12 cigars in drop shipments shall be required to make monthly reports
13 to the ~~Oklahoma~~ Tax Commission, as are required of ~~wholesale dealers~~
14 wholesalers.

15 SECTION 30. AMENDATORY 68 O.S. 2001, Section 415, is
16 amended to read as follows:

17 Section 415. ~~All wholesalers, jobbers, retailers and consumers~~
18 ~~who purchase unstamped cigars and~~

19 A. Every dealer and wholesaler of tobacco products covered in
20 this article state, as a condition of carrying on such business,
21 shall be required to purchase a tobacco annually secure from the
22 Oklahoma Tax Commission a written license annually, the cost of
23 which and shall be Five Dollars (\$5.00) pay an annual fee of Two
24 Hundred Fifty Dollars (\$250.00); provided, such fee shall not be

1 applicable if paid pursuant to Section 304 of this title. The Tax
2 Commission shall promulgate rules which provide a procedure for the
3 issuance of a joint license for any wholesaler making application
4 pursuant to this section and Section 304 of this title. Application
5 for such license shall be made upon such forms as prescribed by the
6 Tax Commission, which shall include as a required part of the
7 application, the applicant's agreement to the jurisdiction of the
8 Tax Commission and the courts of this state for purposes of
9 enforcement of the provisions of the Cigarette and Tobacco Products
10 Tax Codes. The applicant, by submitting the application, further
11 agrees to abide by the provisions of the Cigarette and Tobacco
12 Products Tax Codes and the rules promulgated by the Tax Commission.
13 This license, which will be for the ensuing year, must at all times
14 be displayed in a conspicuous place so that it can be seen. Persons
15 operating more than one place of business must secure a license for
16 each place of business. "Place of business" shall be construed to
17 include the place where orders are received, or where tobacco
18 products are sold. If tobacco products are sold on or from any
19 vehicle, the vehicle shall constitute a place of business, and the
20 license fee of Two Hundred Fifty Dollars (\$250.00) shall be paid
21 with respect thereto. However, if the vehicle is owned or operated
22 by a place of business for which the regular license fee is paid,
23 the annual fee for the license with respect to such vehicle shall be
24 only Ten Dollars (\$10.00). The expiration for such vehicle license

1 shall expire on the same date as the current license of the place of
2 business.

3 B. Every retailer in this state, as a condition of carrying on
4 such business, shall secure from the Tax Commission a license and
5 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
6 for such license shall be made upon such forms as prescribed by the
7 Tax Commission, which shall include, as a required part of the
8 application, the applicant's agreement to the jurisdiction of the
9 Tax Commission and the courts of this state for purposes of
10 enforcement of the provisions of the Cigarette and Tobacco Products
11 Tax Codes. The applicant, by submitting the application, further
12 agrees to abide by the provisions of the Cigarette and Tobacco
13 Products Tax Codes and the rules and regulations promulgated by the
14 Tax Commission with reference thereto. Further, the applicant
15 agrees that it shall not purchase any tobacco products for resale
16 from a supplier that does not hold a current wholesaler's license
17 issued pursuant to this section, and the applicant agrees to only
18 sell cigarettes and tobacco products to consumers. Such license,
19 which will be for the ensuing three (3) years, must at all times be
20 displayed in a conspicuous place so that it can be seen. Upon
21 expiration of such license, the retailer to whom such license was
22 issued may obtain a renewal license which shall be valid for three
23 (3) years or until expiration of the retailer's sales tax permit,
24 whichever is earlier, after which a renewal license shall be valid

1 for three (3) years. The manner and prorated fee for renewals shall
2 be prescribed by the Tax Commission. Every person operating under
3 such license as a retailer and who owns or operates more than one
4 place of business must secure a license for each place of business.
5 "Place of business" shall be construed to include places where
6 orders are received or where tobacco products are sold.

7 C. Every distributing agent shall, as a condition of carrying
8 on such business, pursuant to written application on a form
9 prescribed by and in such detailed form as the Tax Commission may
10 require, annually secure from the Tax Commission a license, and
11 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).

12 An application shall be filed and a license obtained for each place
13 of business owned or operated by a distributing agent. The license,
14 which will be for the ensuing year, shall be consecutively numbered,
15 nonassignable and nontransferable, and shall authorize the storing
16 and distribution of unstamped tobacco products within this state
17 when such distribution is made upon interstate orders only.

18 D. 1. All wholesale, retail, and distributing agent's licenses
19 shall be nonassignable and nontransferable from one person to
20 another person. Such licenses may be transferred from one location
21 to another location after an application has been filed with the Tax
22 Commission requesting such transfer and after the approval of the
23 Tax Commission.

1 2. Wholesale, retail, and distributing agent's licenses shall
2 be applied for on a form prescribed by the Tax Commission. Any
3 person operating as a wholesaler, retailer, or distributing agent
4 must at all times have an effective unexpired license which has been
5 issued by the Tax Commission. If any such person or licensee
6 continues to operate as such on a license issued by the Tax
7 Commission which has expired, or operates without ever having
8 obtained from the Tax Commission such license, such person or
9 licensee shall, after becoming delinquent for a period in excess of
10 fifteen (15) days, pay to the Tax Commission, in addition to the
11 annual license fee, a penalty of twenty-five cents (\$0.25) per day
12 on each delinquent license for each day so operated in excess of
13 fifteen (15) days. The penalty provided for herein shall not exceed
14 the annual license fee for such license.

15 E. No license may be granted, maintained or renewed if any of
16 the following conditions apply to the applicant. For purposes of
17 this section, "applicant" includes any combination of persons owning
18 directly or indirectly, in the aggregate, more than ten percent
19 (10%) of the ownership interests in the applicant:

20 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
21 delinquent tobacco products taxes;

22 2. The applicant had a dealer, wholesaler, or retailer license
23 revoked by the Tax Commission within the past two (2) years; or
24

1 3. The applicant has been convicted of a crime relating to
2 stolen or counterfeit tobacco products, or receiving stolen or
3 counterfeit tobacco products.

4 F. No person or entity licensed pursuant to the provisions of
5 this section shall purchase tobacco products from or sell tobacco
6 products to a person or entity required to obtain a license unless
7 such person or entity has obtained such license. Further, no person
8 or entity licensed pursuant to the provisions of this section shall
9 sell cigarettes or tobacco products to any tribally owned or
10 licensed store unless it is on the list of tribally owned and
11 licensed stores maintained and supplied by the Tax Commission.

12 G. In addition to any civil or criminal penalty provided by
13 law, upon a finding that a licensee has violated any provision of
14 the Cigarette and Tobacco Products Tax Codes, the Tax Commission may
15 revoke or suspend the license or licenses of the licensee pursuant
16 to the procedures applicable to revocation of a license set forth in
17 Section 418 of this title.

18 SECTION 31. AMENDATORY 68 O.S. 2001, Section 417, is
19 amended to read as follows:

20 Section 417. A. All unstamped tobacco products upon which a
21 tax is levied by ~~Section 401 et seq. of this title~~ the Cigarette and
22 Tobacco Products Tax Codes and all tobacco products stamped, sold,
23 offered for sale, or imported into this state in violation of the
24 provisions of Section ~~4 of this act~~ 403.1 of this title, found in

1 the possession, custody or control of any person for the purpose of
2 being consumed, sold or transported from one place to another in
3 this state, for the purpose of evading or violating the provisions
4 of ~~Section 401 et seq. of this title~~ the Cigarette and Tobacco
5 Products Tax Codes, or with intent to avoid payment of the tax
6 imposed thereunder, may be seized by any authorized agent of the
7 Oklahoma Tax Commission or any sheriff, deputy sheriff or police
8 within the state. Tobacco products from the time of seizure shall
9 be forfeited to the State of Oklahoma. A proper proceeding shall be
10 filed in the district court of the county of seizure, to maintain
11 such seizure and prosecute the forfeiture as herein provided; the
12 provisions of this section shall not apply, however, where the tax
13 on such unstamped tobacco products does not exceed One Dollar
14 (\$1.00).

15 B. All such tobacco products so seized shall first be listed
16 and appraised by the officer making such seizure and turned over to
17 the sheriff of the county in which the seizure is made, and a
18 receipt taken therefor.

19 C. The person making such seizure shall immediately make and
20 file a written report thereof to the Tax Commission, showing the
21 name of the person making such seizure, the place where seized, the
22 person from whom seized, the property seized and an inventory and
23 appraisement thereof, which inventory shall be based on the usual
24 and ordinary retail price or value of the articles seized, or the

1 Attorney General, in the case of tobacco products stamped, sold,
2 offered for sale, or imported into this state in violation of the
3 provisions of Section ~~4 of this act~~ 403.1 of this title. The
4 district attorney of the county in which such seizure is made shall,
5 at the request of the Tax Commission or Attorney General, file in
6 the district court forfeiture proceedings in the name of the State
7 of Oklahoma against the owner or person in possession of the
8 property seized, if known, and if unknown, against the property
9 seized. The clerk of the court shall issue summons to the owner or
10 person in whose possession such property was found. Summons so
11 issued and all procedure thereafter shall be governed by statutes
12 relating to procedure in civil actions. If personal service cannot
13 be had, or if suit be filed against the property seized, service may
14 be obtained by the posting of notices in five public places within
15 the county. The notice shall direct the owner, or if the owner be
16 unknown, the person in possession of the property seized, to answer
17 the petition filed within twenty (20) days from the date of the
18 posting of such notices. The district attorney shall within three
19 (3) days after the posting of the notices cause a copy of the same
20 to be mailed to any defendant on whom personal service was not had,
21 addressed to the defendant's last-known address. If, after a full
22 hearing upon the petition, the court finds that the property seized
23 is forfeited to the State of Oklahoma, the court shall direct to the
24 sheriff to sell the property at public auction ten (10) days after

1 the posting of notices of sale in five public places within the
2 county; provided, tobacco products as described in Section ~~4 of this~~
3 ~~act~~ 403.1 of this title shall only be sold for export outside the
4 United States or as otherwise permitted by federal law. The
5 proceeds of the sale shall be deposited with the clerk of the court
6 who shall, after deducting costs including the cost of the sale, ~~pay~~
7 ~~same to the Tax Commission as tobacco products tax collected, or in~~
8 ~~the case of tobacco products seized as being in violation of the~~
9 ~~provisions of Section 4 of this act, to the Attorney General. The~~
10 ~~Attorney General shall remit the amount of tobacco products tax, if~~
11 ~~any be due, including all penalties and interest due, to the Tax~~
12 ~~Commission as tobacco products tax collected and shall deposit the~~
13 ~~remainder to the revolving fund created in Section 7 of this act~~
14 distribute cash and the proceeds of the sale of such cigarettes,
15 vehicles and other property as follows, in the order indicated:

- 16 a. to the bona fide or innocent owner, conditional sales
17 vendor, or mortgagee of the property, if any, up to
18 the amount of such person's interest in the property,
19 when the court declaring the forfeiture orders a
20 distribution to such person,
- 21 b. to the payment of the actual reasonable expenses of
22 preserving the property, and
- 23 c. the balance to a revolving fund in the office of the
24 county treasurer of the county wherein the property

1 was seized, to be distributed as follows: one-third
2 (1/3) to the investigating law enforcement agency;
3 one-third (1/3) of such fund to be used and maintained
4 as a revolving fund by the district attorney for the
5 victim-witness fund, a reward fund or the evidence
6 fund; and one-third (1/3) to go to the jail
7 maintenance fund, with a yearly accounting to the
8 board of county commissioners in whose county the fund
9 is established. If the petitioner is not the district
10 attorney, then the one-third (1/3) which would have
11 been designated to that office shall be distributed to
12 the petitioner. Monies distributed to the jail
13 maintenance fund shall be used to pay costs for the
14 storage of such property if such property is ordered
15 released to a bona fide or innocent owner, lien
16 holder, mortgagee, or vendor and if such funds are
17 available in such fund.

18 D. The seizure and sale of such tobacco products shall not
19 relieve the person from whom such tobacco products were seized from
20 prosecution or the payment of penalties. The purchaser of forfeited
21 tobacco products shall pay the regular tobacco products tax and
22 shall place proper stamps thereon before any of such tobacco
23 products are sold or consumed.

1 E. The forfeiture provisions of ~~Section 401 et seq. of this~~
2 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall only apply
3 to persons having possession of or transporting tobacco products
4 with intent to barter, sell or give away the same.

5 SECTION 32. AMENDATORY 68 O.S. 2001, Section 418, is
6 amended to read as follows:

7 Section 418. A. It shall be unlawful for any person to
8 transport or possess unstamped tobacco products where the tax on
9 such unstamped tobacco products exceeds the sum of One Dollar
10 (\$1.00).

11 B. Except as otherwise provided in subsections C and D of this
12 section, any person found guilty of violating the provisions of
13 Section 401 et seq. of this title shall be deemed guilty of a
14 misdemeanor, and shall upon conviction be punished by a fine of not
15 more than Five Hundred Dollars (\$500.00) or by confinement in the
16 county jail for not to exceed thirty (30) days, or by both such fine
17 and imprisonment.

18 C. Any retailer violating the provisions of Section ~~4 of this~~
19 ~~act~~ 403.1 of this title shall:

20 1. For a first offense, be punished by an administrative fine
21 of not more than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars
22 (\$1,000.00);

23
24

1 2. For a second offense, punished by an administrative fine of
2 not more than ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars
3 (\$5,000.00); and

4 3. For a third or subsequent offense, be punished by an
5 administrative fine of not more than ~~Five Thousand Dollars~~
6 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00).

7 D. Any wholesaler, distributing agent or dealer violating the
8 provisions of Section ~~4 of this act~~ 403.1 of this title shall:

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

11 2. For a second or subsequent offense, be punished by an
12 administrative fine of not more than Twenty Thousand Dollars
13 (\$20,000.00).

14 Administrative fines collected pursuant to the provisions of this
15 subsection shall be deposited to the revolving fund created in
16 Section ~~7 of this act~~ 305.2 of this title.

17 E. The Oklahoma Tax Commission shall immediately revoke the
18 license of a person punished for a violation pursuant to the
19 provisions of paragraph 3 of subsection C of this section or a
20 person punished for a violation pursuant to the provisions of
21 subsection D of this section. A person whose license is so revoked
22 shall not be eligible to receive another license pursuant to the
23 provisions of Section ~~301 et seq. of this title~~ the Cigarette and
24 Tobacco Products Tax Codes for a period of ten (10) years.

1 SECTION 33. AMENDATORY Section 8, Chapter 479, O.S.L.
2 2005 (68 O.S. Supp. 2006, Section 420.1), is amended to read as
3 follows:

4 Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco
5 products, as defined in ~~Section 401 of Title 68 of the Oklahoma~~
6 ~~Statutes~~ the Cigarette and Tobacco Products Tax Codes, shall
7 maintain copies of invoices or equivalent documentation for each of
8 its facilities for every transaction in which the ~~distributor~~
9 wholesaler is the seller, purchaser, consignor, consignee, or
10 recipient of tobacco products. The invoices or documentation shall
11 contain the ~~distributor's~~ wholesaler's tobacco license number and
12 the quantity by brand style of the tobacco products involved in the
13 transaction.

14 B. Each retailer of tobacco products, as defined in ~~Section 401~~
15 ~~of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco
16 Products Tax Codes, shall maintain copies of invoices or equivalent
17 documentation for every transaction in which the retailer receives
18 or purchases tobacco products at each of its facilities. The
19 invoices or documentation shall show the name and address of the
20 ~~distributor~~ wholesaler from whom, ~~or the address of another facility~~
21 ~~of the same retailer from which,~~ the tobacco products were received,
22 the quantity of each brand style received in such transaction and
23 the retail cigarette license number or sales tax license number.

24

1 SECTION 34. AMENDATORY 68 O.S. 2001, Section 421, is
2 amended to read as follows:

3 Section 421. The sale of such tobacco products under ~~the two~~
4 ~~preceding sections~~ Sections 419 and 420 of this title shall be
5 restricted to sales or distribution to inmates of such veterans
6 hospitals, or residents of such state operated domiciliary homes for
7 veterans, as shown by the records thereof, for their own personal
8 use and consumption. Possession of tobacco products taxed under
9 this article, which have been purchased or received from any such
10 veterans hospital or any such home by any person other than an
11 inmate or resident thereof, shall be deemed a misdemeanor and
12 punishable by a fine of Two Hundred Dollars (\$200.00) for each
13 offense.

14 SECTION 35. AMENDATORY 68 O.S. 2001, Section 422, is
15 amended to read as follows:

16 Section 422. All ~~manufacturers~~ dealers, wholesalers, ~~jobbers~~,
17 retailers, or other person, selling or distributing such tobacco
18 products under ~~the three preceding sections~~ the Cigarette and
19 Tobacco Products Tax Codes shall comply with the provisions of such
20 sections, and the rules and regulations of the Oklahoma Tax
21 Commission as to such sale or distribution, and failure to so comply
22 shall constitute grounds for revocation of any license issued to
23 said ~~manufacturer~~ dealer, wholesaler, ~~jobber~~, retailer or other
24 person, by the Tax Commission.

1 SECTION 36. AMENDATORY 68 O.S. 2001, Section 424, is
2 amended to read as follows:

3 Section 424. The provisions of ~~Sections 9 through 12 of this~~
4 ~~act~~ Section 426 of this title shall not apply to a federally
5 recognized Indian tribe or nation which has entered into a compact
6 with the State of Oklahoma pursuant to the provisions of subsection
7 C of Section ~~1 of this act~~ 346 of this title or to a licensee of
8 such a tribe or nation during the period that such compact is
9 effective.

10 SECTION 37. AMENDATORY 68 O.S. 2001, Section 425, is
11 amended to read as follows:

12 Section 425. As used in ~~Sections 9 through 13 of this act~~ the
13 Cigarette and Tobacco Products Tax Codes:

14 1. ~~"Tribeally owned or licensed store" means a store or place of~~
15 ~~business which is owned and operated by a federally recognized~~
16 ~~Indian tribe or nation, other than a federally recognized Indian~~
17 ~~tribe or nation which has entered into a compact with the State of~~
18 ~~Oklahoma pursuant to the provisions of subsection C of Section 1 of~~
19 ~~this act during the period that such compact is effective, on Indian~~
20 ~~country within the territorial jurisdiction of that tribe or nation~~
21 ~~or which is duly licensed by such tribe or nation pursuant to tribal~~
22 ~~laws or ordinances to conduct business located on Indian country~~
23 ~~within the territorial jurisdiction of that tribe or nation;~~

24

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

5 ~~3. "Indian country" means:~~

6 ~~a. land held in trust by the United States of America for~~
7 ~~the benefit of a federally recognized Indian tribe or~~
8 ~~nation;~~

9 ~~b. all land within the limits of any Indian reservation~~
10 ~~under the jurisdiction of the United States~~
11 ~~Government, notwithstanding the issuance of any~~
12 ~~patent, and including rights of way running through~~
13 ~~the reservation;~~

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

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

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

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

9 6. "Untaxed tobacco products" means packages of tobacco
10 products upon which taxes required by state law have not been paid
11 and includes tobacco products upon which the incorrect rate of tax
12 applicable to the retail establishment at which the tobacco product
13 is sold has been paid, regardless of the identity of the
14 establishment which the tobacco product has been sold, shipped,
15 consigned or delivered;

16 7. 2. "Contraband tobacco products" means untaxed tobacco
17 products for which taxes are required to be paid pursuant to the
18 provisions of ~~Sections 9 through 12 of this act or Section 401 et~~
19 ~~seq. of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco
20 Products Tax Codes and which are in the possession, custody or
21 control of any person, for the purpose of being consumed, sold,
22 offered for sale or consumption or transported to any person in this
23 state other than a wholesaler licensed under Section 415 of Title 68
24 of the Oklahoma Statutes; provided, contraband tobacco products

1 shall not include untaxed tobacco products sold to veterans'
2 hospitals, to state-operated domiciliary homes for veterans or to
3 the United States for sale or distribution by said entities in
4 accordance with ~~Sections 419 through 421 of Title 68 of the Oklahoma~~
5 ~~Statutes~~ the Cigarette and Tobacco Products Tax Codes; and

6 ~~8.~~ 3. "Taxed tobacco products" means packages of tobacco
7 products upon which taxes required by law have been paid;

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

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

14 SECTION 38. AMENDATORY 68 O.S. 2001, Section 426, is
15 amended to read as follows:

16 Section 426. A. There is hereby levied upon the sale of
17 tobacco products at a tribally owned or licensed store a tax in the
18 amount of ~~seventy five percent (75%)~~ one hundred percent (100%) of
19 the tobacco products excise taxes imposed by Section 401 et seq. of
20 ~~Title 68 of the Oklahoma Statutes~~ this title, which tax shall be in
21 lieu of all sales and excise taxes on said tobacco products.

22 B. A federally recognized Indian tribe or nation may receive a
23 refund for a portion of the tax imposed pursuant to the provisions
24 of this section ~~if~~ to the extent it can provide sufficient

1 documentation ~~that~~ of sales of tobacco products to its tribal
2 members ~~exceed twenty five percent (25%) of its total sales of~~
3 ~~tobacco products.~~ The amount of the refund shall be the amount of
4 tax paid which is attributable to sales of tobacco products made to
5 tribal members ~~which is in excess of twenty five percent (25%) of~~
6 ~~the tribe's or nation's total sales of tobacco products.~~ Refunds
7 shall be paid quarterly. The Oklahoma Tax Commission shall
8 promulgate rules and regulations to administer the provisions of
9 this subsection.

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

21 D. Any person who knowingly engages in shipping, transporting,
22 receiving, possessing, selling, distributing or purchasing
23 contraband tobacco products shall be subject to the forfeiture of
24 property as is provided by Section 417 of ~~Title 68 of the Oklahoma~~

1 ~~Statutes~~ this title and assessment of penalty as provided thereby
2 and assessment for any delinquent taxes found to be owing.

3 SECTION 39. AMENDATORY 68 O.S. 2001, Section 427, is
4 amended to read as follows:

5 Section 427. Every wholesaler, ~~jobber or warehouseman~~ doing
6 business within this state and required to secure a license as
7 provided in Section 415 of ~~Title 68 of the Oklahoma Statutes~~ this
8 title may sell tobacco products to tribally owned or licensed stores
9 in this state; provided, wholesalers shall only sell cigarettes or
10 tobacco products to tribally owned or licensed stores that are on
11 the list of tribally owned and licensed stores maintained and
12 supplied by the Oklahoma Tax Commission. It shall be the duty of
13 the wholesaler, ~~jobber or warehouseman~~ to collect, report and remit
14 the tax imposed by Section ~~10 of this act~~ 426 of this title on the
15 tobacco products inventory sold to a tribally owned or licensed
16 store.

17 SECTION 40. AMENDATORY 68 O.S. 2001, Section 427.1, is
18 amended to read as follows:

19 Section 427.1 If a wholesaler, ~~jobber or warehouseman~~ timely
20 accepts documentation as prescribed by the Oklahoma Tax Commission
21 from a person claiming that the tobacco products will be sold at a
22 tribally owned or licensed store, the wholesaler, ~~jobber or~~
23 ~~warehouseman~~ shall be relieved of any liability for any additional
24 tax due or required to be collected should it later be determined

1 that the tobacco products were not purchased for sale at a tribally
2 owned or licensed store.

3 SECTION 41. AMENDATORY 68 O.S. 2001, Section 427.2, is
4 amended to read as follows:

5 Section 427.2 Any person determined to have violated the
6 provisions of ~~Section 13 or 14 of this act shall~~ the Cigarette and
7 Tobacco Products Tax Codes may have their the person's license
8 suspended for a period of up to six (6) months ~~and a~~ or cancelled.

9 A subsequent violation by said any person whose license has
10 previously been suspended shall be grounds to permanently cancel the
11 license.

12 SECTION 42. AMENDATORY 68 O.S. 2001, Section 428, is
13 amended to read as follows:

14 Section 428. A. All untaxed tobacco products sold or shipped
15 to tribally owned or licensed stores in this state by wholesalers,
16 ~~jobbers or warehousemen~~ not licensed by this state pursuant to the
17 provisions of Section 415 of ~~Title 68 of the Oklahoma Statutes~~ this
18 title for the purpose of selling or consuming untaxed tobacco
19 products in this state in violation of ~~this act~~ the Cigarette and
20 Tobacco Products Tax Codes shall be subject to seizure of the
21 shipments and forfeiture of the inventory pursuant to the provisions
22 of Section 417 of ~~Title 68 of the Oklahoma Statutes~~ this title.

23 B. Any peace officer of this state, including, but not limited
24 to, officers of the Department of Public Safety or the Oklahoma

1 State Bureau of Investigation, any sheriff, any salaried deputy
2 sheriff or any municipal police officer is authorized to stop any
3 vehicle upon any road or highway of this state in order to inspect
4 the bill of lading or to take such action as may be necessary to
5 determine if untaxed tobacco products are being sold or shipped in
6 violation of the provisions of this section. Such officers shall
7 also have the duty to cooperate with the Oklahoma Tax Commission to
8 enforce the provisions of this act.

9 SECTION 43. REPEALER 68 O.S. 2001, Sections 317.2,
10 317.3, 317.4, 317.5, 317.6, 317.7 and 317.8, are hereby repealed.

11 SECTION 44. This act shall become effective November 1, 2007.

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