

1 ENGROSSED HOUSE
2 BILL NO. 3357

By: Terrill of the House

and

Mazzei of the Senate

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7 (revenue and taxation - amending 47 O.S., Sections
8 1121 and 1128 - motor vehicle licensing and
9 registration - amending various sections in Title
10 68 - state tax administration - codification -
11 effective date -
12 emergency)

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

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

18 Section 1121. A. When, at the time of registration of any
19 vehicle, payment is made by check for fees and taxes and the check
20 is not paid by the bank on which drawn for any reason, after said
21 check has been presented for payment a second time, such certificate
22 of registration and other such instruments issued at the time of
23 registration of such vehicle shall be invalid. The motor license
24 agent shall transmit all documents and the dishonored check to the

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

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

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

1 collection of dishonored checks. The motor license agent shall
2 charge the person issuing the check a fee of Twenty-five Dollars
3 (\$25.00) for each check to cover the cost of processing each
4 returned check. The motor license agent shall transmit a copy of
5 all documents associated with the application and issuance of the
6 driver's license and a copy of the dishonored check to the
7 Department of Public Safety.

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

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

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

22 B. Each dealer and used motor vehicle dealer shall keep a
23 record of the purchase and sale of each motor vehicle he buys or
24 sells, which shall show the name of the seller or buyer as the case

1 may be, and a complete description of the vehicle purchased or sold,
2 and such other information as the Commission may prescribe.

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

22 D. Every person engaged in the business of transporting and
23 delivering new or used vehicles by driving, either singly or by
24 towbar, saddle mount or full mount method, engaging in drive-away

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

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

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

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

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

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

20 SECTION 4. AMENDATORY 68 O.S. 2001, Section 205, as last
21 amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007,
22 Section 205), is amended to read as follows:

23 Section 205. A. The records and files of the Oklahoma Tax
24 Commission concerning the administration of the Uniform Tax

1 Procedure Code or of any state tax law shall be considered
2 confidential and privileged, except as otherwise provided for by
3 law, and neither the Tax Commission nor any employee engaged in the
4 administration of the Tax Commission or charged with the custody of
5 any such records or files nor any person who may have secured
6 information from the Tax Commission shall disclose any information
7 obtained from the records or files or from any examination or
8 inspection of the premises or property of any person.

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

23 C. The provisions of this section shall not prevent the Tax
24 Commission from disclosing the following information and no

1 liability whatsoever, civil or criminal, shall attach to any member
2 of the Tax Commission or any employee thereof for any error or
3 omission in the disclosure of such information:

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

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

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

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

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

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

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

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

1 or Section 2890 of this title. The Tax Commission shall promulgate
2 rules to give guidance to the county assessors regarding the type of
3 information which may be used by the county assessors in determining
4 the amount of gross household income pursuant to Section 8C of
5 Article X of the Oklahoma Constitution or Section 2890 of this
6 title. The provisions of this paragraph shall also include the
7 furnishing of information to the State Treasurer for the purpose of
8 administration of the Uniform Unclaimed Property Act;

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

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

21 10. The furnishing of information requested by any member of
22 the general public and stated in the findings of the Tax Commission
23 as to the adjustment and equalization of the valuation of real and
24 personal property of the counties of the state, which are submitted

1 to and certified by the State Board of Equalization pursuant to the
2 provisions of Section 2865 of this title and Section 21 of Article X
3 of the Oklahoma Constitution;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 SECTION 5. AMENDATORY Section 4, Chapter 475, O.S.L.
22 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.
23 Supp. 2007, Section 312.1), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23

24

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

4 Section 316. A. Any person who shall:

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

19 C. Any distributing agent who shall:

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

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

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

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

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

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

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

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

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

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

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

24

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

8 G. Whoever, with intent to defraud Oklahoma:

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

13 SECTION 7. AMENDATORY Section 20, Chapter 413, O.S.L.
14 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68
15 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

23

24

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

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

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

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

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

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

1 notwithstanding the exclusion of lease or rental in subsection A of
2 this section. "Transportation equipment" means any of the following:

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

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

8 a. registered through the International Registration
9 Plan, and

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

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

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

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

24 1. Taking possession of tangible personal property;

1 2. Making first use of services; or

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

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

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

7 SECTION 9. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11 Passed the House of Representatives the 12th day of March, 2008.

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Presiding Officer of the House of
Representatives

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16 Passed the Senate the ____ day of _____, 2008.

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Presiding Officer of the Senate

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