

ENROLLED SENATE
BILL NO. 1511

By: Wilson of the Senate

and

Terrill and Dorman of the
House

An Act relating to revenue and taxation; amending 47 O.S. 2001, Section 1121, which relates to payment for vehicle registrations; providing exemption from certain costs or charges related to dishonored checks; amending 47 O.S. 2001, Section 1128, which relates to motor vehicles; modifying provisions related to in-transit license plates; authorizing certain registration fee for boat trailers and utility-type trailers; amending 68 O.S. 2001, Section 118, as last amended by Section 3, Chapter 335, O.S.L. 2007 (68 O.S. Supp. 2007, Section 118), which relates to revenue estimation; making certain date certain; amending 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007, Section 205), which relates to tax records; allowing the providing of information to certain groups; amending Section 4, Chapter 475, O.S.L. 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2007, Section 312.1), which relates to records and procedures; modifying provision related to disclosure of information to law enforcement officials; amending 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007, Section 316), which relates to certain offenses related to cigarette taxation; modifying punishment; amending 68 O.S. 2001, Section 305, as amended by Section 3, Chapter 475, O.S.L. 2003 and Section 7, Chapter 266, O.S.L. 2004 (68 O.S. Supp. 2007, Sections 305 and 360.7), which relate to

cigarettes; providing procedure for seizure and forfeiture of certain cigarettes; amending 68 O.S. 2001, Section 417, which relates to tobacco products; deleting certain tobacco products forfeiture and seizure procedures; providing procedure for seizure and forfeiture of certain tobacco products; amending Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1354.27), which relates to sourcing; modifying time period during which sourcing rule applies; amending 68 O.S. 2001, Section 1356, as last amended by Section 5, Chapter 353, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1356), which relates to sales tax; expanding certain sales tax exemption; amending Section 4, Chapter 42, 2nd Extraordinary Session, O.S.L. 2006, as amended by Section 2, Chapter 346, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A), which relates to certain determinations by State Board of Equalization; modifying method and timing of revenue determinations; providing for codification; providing effective dates; and declaring an emergency.

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

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

Section 1121. A. When, at the time of registration of any vehicle, payment is made by check for fees and taxes and the check is not paid by the bank on which drawn for any reason, after said check has been presented for payment a second time, such certificate of registration and other such instruments issued at the time of registration of such vehicle shall be invalid. The motor license agent shall transmit all documents and the dishonored check to the Oklahoma Tax Commission for credit to the motor license agent's account. The Commission may enter into a contract for the collection of dishonored checks and canceled instruments. In all such cases, such vehicles shall be subject to the license fees and

penalties provided in this act as though no attempt to register the vehicle had been made and the motor license agent shall charge the person issuing the check a fee of Twenty-five Dollars (\$25.00) for each check to cover the costs of processing each returned check. An individual who subsequently purchases any such vehicle shall not be required, as a condition for registration of the vehicle, to pay any penalties imposed by this section tax, fee or penalty due resulting from the dishonored check.

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

B. Whenever payment is made by check for any Oklahoma ~~driver's~~ driver license and the check is not paid by the bank on which drawn for any reason, after said check has been presented for payment a second time, such ~~driver's~~ driver license shall be invalid and all driving privileges of the holder of the ~~driver's~~ driver license shall be canceled. The motor license agent shall transmit the dishonored check to the Oklahoma Tax Commission for credit to the motor license agents account. The Commission may enter into a contract for the collection of dishonored checks. The motor license agent shall charge the person issuing the check a fee of Twenty-five Dollars (\$25.00) for each check to cover the cost of processing each returned check. The motor license agent shall transmit a copy of all documents associated with the application and issuance of the ~~driver's~~ driver license and a copy of the dishonored check to the Department of Public Safety.

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

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

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

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

C. Application for manufacturer's or dealer's license must show that such dealer or manufacturer has not violated any of the provisions of this section; and such license shall be nonassignable; and any such license may be suspended temporarily or revoked by the Commission for violation or failure to comply with this section, provided, the holder of such license shall be given ten (10) days' notice of hearing to suspend or cancel such license. If any such person subject to any of the licenses required in this section fails

to obtain it when due, a penalty of twenty-five cents (\$0.25) per day on each such license shall be charged in the same manner as is now provided on delinquent motor vehicle registrations, and after a period of thirty (30) days such penalty shall be equal to the license fee. It shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. Each used motor vehicle must display a proper Oklahoma license plate or a used dealer's license plate. Dealers failing to comply with provisions of this section shall be responsible for all taxes due on such sales or on such vehicles.

D. Every person engaged in the business of transporting and delivering new or used vehicles by driving, either singly or by towbar, saddle mount or full mount method, engaging in drive-away operations as defined in Section 3 of Title 85 of the Oklahoma Statutes, or any combination thereof, from the manufacturer or shipper to the dealer or consignee and using the public highways of this state shall file with the Commission a verified application for in-transit license plates to identify such vehicles. The application shall provide for a general distinctive number for all vehicles so transported. Upon payment of a license fee of Ten Dollars (\$10.00) there shall be assigned and issued to such person one in-transit plate. Such in-transit plate shall be used by such person only on vehicles when so transported. Such person may obtain as many additional in-transit plates as desired upon payment of a fee of Ten Dollars (\$10.00) for each additional plate. Provided, a used motor vehicle dealer shall use a used dealer license plate in lieu of the in-transit license plate for transporting a used motor vehicle and, in such cases, shall be exempt from making application for an in-transit license plate. Provided further, only a person who possesses a ~~certificate issued by the Interstate Commerce Commission or the Corporation Commission to engage in the business of transporting and delivering manufactured homes for hire~~ valid motor carrier authority issued by the Federal Motor Carrier Safety Administration, or a valid for-hire authority issued by the Corporation Commission may use the in-transit license plates obtained by them as herein authorized for transporting new or used manufactured homes from one location to another location within Oklahoma or from a point in another state to a point in this state. Nothing contained in this section shall relieve any person from the payment of license fees otherwise provided by law. When the

Commission deems it advisable and in the public interest, it may require the holder of any in-transit license, or any person making application therefor, to file a proper surety bond in any amount it deems proper, not to exceed Ten Thousand Dollars (\$10,000.00).

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

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

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

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

SECTION 4. AMENDATORY 68 O.S. 2001, Section 118, as last amended by Section 3, Chapter 335, O.S.L. 2007 (68 O.S. Supp. 2007, Section 118), is amended to read as follows:

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

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

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

The Tax Commission shall provide such estimate and statement within two (2) weeks of the date the request was received unless the member or employee of the Legislature specifies an earlier date. If the Tax Commission determines that it is unable to provide such estimate and statement within the time period required by this

section, it shall provide a written explanation and date by which the estimate and statement will be provided to the member or employee.

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

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

SECTION 5. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the

administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from the records or files or from any examination or inspection of the premises or property of any person.

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

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

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

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

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

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

5. The disclosing of information or evidence to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency when the information or evidence is to be used by such officials to investigate or prosecute violations of the criminal provisions of the Uniform Tax Procedure Code or of any state tax law or of any federal crime committed against this state. Any information disclosed to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency shall be kept confidential by such person and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state or except as specifically authorized by law, and a violation by the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, district attorney, or agent of any federal law enforcement agency by otherwise releasing the information shall be a felony;

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

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

Article X of the Oklahoma Constitution or Section 2890 of this title. The provisions of this paragraph shall also include the furnishing of information to the State Treasurer for the purpose of administration of the Uniform Unclaimed Property Act;

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

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

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

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

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued the permit, license or exemption, the name of the business entity authorized to engage in

business pursuant to the permit, license or exemption, the address of the business entity, and the grounds for revocation;

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

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

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

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

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

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

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

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

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

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

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

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

25. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the

Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to the permit, license, exemption, deduction, credit or other tax preference;

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

27. The disclosure of information, as prescribed by this paragraph, which is related to the proposed or actual usage of tax credits pursuant to Section 2357.7 of this title, the Small Business Capital Formation Incentive Act or the Rural Venture Capital Formation Incentive Act. Unless the context clearly requires

otherwise, the terms used in this paragraph shall have the same meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this title. The disclosure of information authorized by this paragraph shall include:

- a. the legal name of any qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- b. the identity or legal name of any person or entity that is a shareholder or partner of a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- c. the identity or legal name of any Oklahoma business venture, Oklahoma small business venture, or Oklahoma rural small business venture in which a qualified investment has been made by a capital company, or
- d. the amount of funds invested in a qualified venture capital company, the amount of qualified investments in a qualified small business capital company or qualified rural small business capital company and the amount of investments made by a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company; or

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

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

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any

employee thereof for any error or omission of any name or address in the preparation and publication of the list.

E. The Tax Commission shall prepare or cause to be prepared a report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than October 1 of each even-numbered year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report. The Tax Commission is authorized to require any recipient of a tax incentive or tax expenditure to report to the Tax Commission such information as requested so that the Tax Commission may provide the information to the Incentive Review Committee or fulfill its obligations as required by this subsection. The Tax Commission may require this information to be submitted in an electronic format. The Tax Commission may disallow any claim of a person for a tax incentive due to its failure to file a report as required under the authority of this subsection. The Tax Commission may consult with the Incentive Review Committee to develop a reporting system to obtain the information requested in a manner that is the least burdensome on the taxpayer.

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

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and

imprisonment, and the offender shall be removed or dismissed from office.

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

SECTION 6. AMENDATORY Section 4, Chapter 475, O.S.L. 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2007, Section 312.1), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

consignee, and the quantity by brand style of the cigarettes involved in the transaction.

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

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

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

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

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

SECTION 7. AMENDATORY 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007, Section 316), is amended to read as follows:

Section 316. A. Any person who shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Any distributing agent who shall:

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

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

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

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

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

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

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

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

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

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

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

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

G. Whoever, with intent to defraud Oklahoma:

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

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

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

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

H. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon the person by Section 301 et seq. of this

title, or to do, or cause to be done, any of the things required by Section 301 et seq. of this title, or does anything prohibited by Section 301 et seq. of this title, shall, in addition to any other penalty provided in Section 301 et seq. of this title, pay an administrative penalty of One Thousand Dollars (\$1,000.00).

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

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

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

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

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

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

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

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

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

SECTION 8. AMENDATORY 68 O.S. 2001, Section 305, as amended by Section 3, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007, Section 305), is amended to read as follows:

Section 305. A. Every wholesaler, jobber, distributor, or warehouseman doing business within this state and required to secure a license as provided under Section 304 of this title shall, upon withdrawal from storage, and before making any sale or distribution of cigarettes for consumption thereof, affix or cause the same to have affixed thereto the stamp or stamps as required by Section 301 et seq. of this title. It shall be the duty of the wholesaler, jobber, distributor, or warehouseman to supply and charge to the retailer the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or consumer by the wholesaler,

jobber, distributor, or warehouseman; and the wholesaler, jobber, distributor, or warehouseman shall be liable to the Oklahoma Tax Commission to perform this service. Distributors may apply stamps only to cigarette packages that they have received directly from a manufacturer or importer of cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.

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

C. Any unlicensed consumer who buys direct from any distributor, jobber, manufacturer, warehouseman, or wholesaler, or other person, within or without this state, any cigarettes in excess of forty, at any one time to which are not affixed the stamps required by Section 301 et seq. of this title shall, before purchasing such cigarettes, secure from the Tax Commission a written license and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00), and shall immediately, upon the receipt of any unstamped cigarettes, report the same to the Tax Commission on such forms as the Tax Commission may prescribe, and immediately purchase from the Tax Commission proper stamps and attach the same to all such cigarettes received. It shall be unlawful for any person to sell or consume cigarettes on which the tax, as levied by Section 301 et seq. of this title, has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by Section 301 et seq. of this title.

D. If, upon examination of invoices or from other investigations, the Tax Commission finds that cigarettes have been sold without stamps affixed as required by Section 301 et seq. of this title, the Tax Commission shall have the power to require such person to pay to the Tax Commission a sum equal to twice the amount of the tax due. If, under the same circumstances, a person is

unable to furnish evidence to the Tax Commission of sufficient stamp purchases to cover unstamped cigarettes purchased, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

E. 1. All unstamped cigarettes upon which taxes are imposed by Section 301 et seq. of this title and all cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 305.1 of this title which shall be found in the possession, custody, or control of any person, for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of Section 301 et seq. of this title, or with intent to avoid payment of the tax imposed hereunder, and any automobile, truck, conveyance, or other vehicle whatsoever used in the transportation of such cigarettes, and all paraphernalia, equipment or other tangible personal property incident to the use of such purposes, found in the place, building, vehicle or vehicles, where such cigarettes are found, may be seized by any authorized agent of the Tax Commission, or any sheriff, deputy sheriff, constable or other peace officer within the state, without process. The same shall be, from the time of such seizure, forfeited to the State of Oklahoma, and a proper proceeding filed ~~in a court of competent jurisdiction in the county of seizure,~~ to maintain such seizure and prosecute the forfeiture as herein provided.

2. All such cigarettes so seized shall first be listed and appraised by the officer making such seizure and turned over to the Tax Commission and a receipt therefor taken. The person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place where and the person from whom such property was seized, and an inventory and appraisal thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission, and the Attorney General, in the case of cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 305.1 of this title. The Tax Commission shall then proceed to hear and determine the matter of whether or not the cigarettes should, in fact, be forfeited to the State of Oklahoma. The owner of the cigarettes shall be given at least ten (10) days' notice of the hearing. In the event the Commission finds that the cigarettes should be forfeited to the State of Oklahoma, it shall make an order

forfeiting the cigarettes to the State of Oklahoma and directing the destruction of such cigarettes.

3. Any and all such ~~cigarettes,~~ vehicles and property so seized shall first be listed and appraised by the officer making such seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place, where and the person ~~where,~~ and from whom such property was seized, and an inventory and appraisal thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission, ~~or the Attorney General, in the case of cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 305.1 of this title.~~ The district attorney of the county in which the seizures are made shall, at the request of the Tax Commission or Attorney General, file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale; ~~provided, cigarette packages or containers as described in Section 305.1 of this title shall only be sold for export outside the United States or as otherwise permitted by federal law.~~ The proceeds of the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected, or in the case of vehicles and property seized in connection with cigarettes seized as being in violation of the provisions of Section 305.1 of this title, to the Attorney General. The Attorney General shall remit the amount of cigarette tax, if any be due, including all penalties and interest due, to the Tax Commission as cigarette tax collected and shall deposit the remainder to the revolving fund created in Section 305.2 of this title.

~~3-~~ 4. The seizure ~~and sale~~ of cigarettes shall not relieve the person from whom such cigarettes were seized from any prosecution or

~~the payment of any penalties provided for under Section 301 et seq. of this title; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of the cigarettes or the personal consumption of the same.~~

~~4.~~ 5. The forfeiture provisions of Section 301 et seq. of this title shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same; provided, that such possession of cigarettes in any quantity of five or more cartons of ten packages each shall be prima facie evidence of intent to barter, sell or give away such cigarettes in violation of the provisions of Section 301 et seq. of this title.

F. The Tax Commission shall exchange new stamps for any stamps which are damaged, or for stamps which have been affixed to packages of cigarettes returned to factories, or shipped to other states, or sold to government agencies or state institutions, or for stamps purchased in excess of floor stocks. Application to the Tax Commission for such exchanges must be accompanied by affidavit, damaged stamps, bill of lading covering shipment to factory or other states, or other proof required by the Tax Commission. Any person to whom stamps shall be issued under this paragraph may, upon approval of the Tax Commission, sell such stamps to any wholesaler as defined in Section 301 et seq. of this title.

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

SECTION 9. AMENDATORY Section 7, Chapter 266, O.S.L. 2004 (68 O.S. Supp. 2007, Section 360.7), is amended to read as follows:

Section 360.7 A. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated Section ~~6~~ 360.6 of this ~~act~~ title or any rule promulgated pursuant to the Master Settlement Agreement

Complementary Act, the Oklahoma Tax Commission may revoke or suspend the license of the stamping agent. Each stamp affixed and each sale or offer to sell cigarettes in violation of the Master Settlement Agreement Complementary Act shall constitute a separate violation. For each violation, the Oklahoma Tax Commission may also impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or Five Thousand Dollars (\$5,000.00) upon a determination of violation of the Master Settlement Agreement Complementary Act or any rules promulgated pursuant thereto.

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

C. 1. Cigarettes or tobacco product distributors and wholesalers licensed by the Oklahoma Tax Commission, pursuant to Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title, who also distribute cigarettes in a state bordering Oklahoma may store in their Oklahoma warehouse cigarettes made contraband under this section if, and only if, they have the tax stamp of another state affixed to each package of cigarettes.

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

- a. on a commercial carrier with a proper bill of lading with an out-of-state destination,
- b. when the tax stamp of another state is affixed to each pack of cigarettes or tobacco product transported, or
- c. on a commercial carrier with a proper bill of lading to a tobacco product distributor or wholesaler licensed by the Oklahoma Tax Commission, pursuant to

Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title, who also distributes cigarettes in a state bordering Oklahoma if, and only if, the packing slip accompanying the shipment indicates the shipment is for sale in another state and indicates which state, and the invoice for the shipment also indicates the shipment is for sale in a state other than Oklahoma and identifies the state in which the shipment is to be sold. The time of delivery of the shipments shall be indicated on the bill of lading of the common carrier when delivery is completed. The receiving Oklahoma distributor or wholesaler must, within twenty-four (24) hours of receiving the delivery, affix or cause to be affixed to each package of cigarettes the stamp of the state in which they are to be sold.

3. All such cigarettes and tobacco products so seized shall first be listed and appraised by the officer making such seizure and turned over to the Tax Commission and a receipt therefor taken. The person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place where and the person from whom such property was seized, and an inventory and appraisal thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission, and the Attorney General, in the case of cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 305.1 of this title and tobacco made contraband by this section. The Tax Commission shall then proceed to hear and determine the matter of whether or not the cigarettes and tobacco products should, in fact be forfeited to the State of Oklahoma. The owner of the cigarettes and tobacco products shall be given at least ten (10) days' notice of the hearing. In the event the Commission finds that the cigarettes and tobacco products should be forfeited to the State of Oklahoma, it shall make an order forfeiting the cigarettes and tobacco products to the State of Oklahoma and directing the destruction of such cigarettes and tobacco products.

4. All cigarettes, tobacco products, Any and all vehicles, and property so seized shall be listed and appraised by the officer making the seizure and turned over to the county sheriff of the

county in which the seizure is made and a receipt therefor taken. The person making the seizure shall immediately make a written report of the seizure, showing the name of the person making the seizure, the location of the seizure, the person from whom the property was seized, and an inventory and appraisal of the property at the usual and ordinary retail price of the articles received. The report shall be filed with the Oklahoma Tax Commission and the Attorney General. The district attorney of the county in which the seizures are made, at the request of the Oklahoma Tax Commission or Attorney General, shall file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown or not susceptible to the jurisdiction of the court, in the name of the property seized. The clerk of the court shall issue a summons to the owner or person in whose possession the property was found directing the owner or person to answer within ten (10) days. At the forfeiture proceeding, if a distributor or wholesaler demonstrates through clear and convincing evidence that the possession of contraband by the distributor or wholesaler was accidental, the vehicle in which the contraband was being transported shall not be forfeited. In no case, however, shall possession of more than twenty (20) cartons of contraband product be considered by the courts as being possessed accidentally. If the property is declared forfeited and ordered sold, notice of the sale shall be posted not less than ten (10) days before the date of sale in five public places in the county in which the seizures are made. ~~However, any cigarettes or tobacco products forfeited pursuant to this section shall be destroyed by the county sheriff.~~ Proceeds of the sale shall be deposited with the clerk of the court, who shall, after deducting costs including the costs of prosecution, storage, and sale, pay the balance to the Oklahoma Tax Commission for deposit in the Tobacco Settlement Endowment Trust Fund.

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

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

- a. sell or distribute cigarettes, or
- b. acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of the Master Settlement Agreement Complementary Act. A violation of the act shall be a misdemeanor.

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

SECTION 10. AMENDATORY 68 O.S. 2001, Section 417, is amended to read as follows:

Section 417. A. All unstamped tobacco products upon which a tax is levied by Section 401 et seq. of this title and all tobacco products stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 4 403.2 of this ~~act~~ title, found in the possession, custody or control of any person for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of Section 401 et seq. of this title, or with intent to avoid payment of the tax imposed thereunder, may be seized by any authorized agent of the Oklahoma Tax Commission or any sheriff, deputy sheriff or police within the state. Tobacco products from the time of seizure shall be forfeited to the State of Oklahoma. A proper proceeding shall be filed ~~in the district court of the county of seizure,~~ to maintain such seizure and prosecute the forfeiture as herein provided; the provisions of this section shall not apply, however, where the tax on such unstamped tobacco products does not exceed One Dollar (\$1.00).

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

C. The person making such seizure shall immediately make and file a written report thereof to the Tax Commission, showing the name of the person making such seizure, the place where seized, the person from whom seized, the property seized and an inventory and appraisal thereof, which inventory shall be based on the usual and ordinary retail price or value of the articles seized, ~~or~~ and the Attorney General, in the case of tobacco products stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section 4 403.2 of this act title. ~~The district attorney of the county in which such seizure is made shall, at the request of the Tax Commission or Attorney General, file in the district court forfeiture proceedings in the name of the State of Oklahoma against the owner or person in possession of the property seized, if known, and if unknown, against the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found. Summons so issued and all procedure thereafter shall be governed by statutes relating to procedure in civil actions. If personal service cannot be had, or if suit be filed against the property seized, service may be obtained by the posting of notices in five public places within the county. The notice shall direct the owner, or if the owner be unknown, the person in possession of the property seized, to answer the petition filed within twenty (20) days from the date of the posting of such notices. The district attorney shall within three (3) days after the posting of the notices cause a copy of the same to be mailed to any defendant on whom personal service was not had, addressed to the defendant's last known address. If, after a full hearing upon the petition, the court finds that the property seized is forfeited to the State of Oklahoma, the court shall direct to the sheriff to sell the property at public auction ten (10) days after the posting of notices of sale in five public places within the county; provided, tobacco products as described in Section 4 of this act shall only be sold for export outside the United States or as otherwise permitted by federal law. The proceeds of the sale shall be deposited with the clerk of the court who shall, after deducting costs including the cost of the sale, pay same to the Tax Commission as tobacco products tax collected, or in the case of tobacco products seized as being in violation of the provisions of Section 4 of this act, to the Attorney General. The Attorney General shall remit the amount of tobacco products tax, if any be due, including all penalties and interest due, to the Tax Commission as tobacco products tax collected and shall deposit the remainder to the~~

~~revolving fund created in Section 7 of this act. The Tax Commission shall then proceed to hear and determine the matter of whether or not the tobacco products should, in fact be forfeited to the State of Oklahoma. The owner of the tobacco products shall be given at least ten (10) days' notice of the hearing. In the event the Commission finds that the tobacco products should be forfeited to the State of Oklahoma, it shall make an order forfeiting the tobacco products to the State of Oklahoma and directing the destruction of such tobacco products.~~

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

E. The forfeiture provisions of Section 401 et seq. of this title shall only apply to persons having possession of or transporting tobacco products with intent to barter, sell or give away the same.

SECTION 11. AMENDATORY Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

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

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

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

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

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

5. When none of the previous rules of paragraphs 1, 2, 3 and 4 of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location will be that which is associated with the mobile telephone number.

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

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

different locations, such as use of business property that accompanies employees on business trips and service calls; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. AMENDATORY 68 O.S. 2001, Section 1356, as last amended by Section 5, Chapter 353, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by Section 1350 et seq. of this title, except as hereinafter provided;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority or sales of admission tickets to such fairs or fair events at any location in the state authorized by county, district or state fair authorities; provided, the exemption provided by this paragraph for admission tickets to fair events shall apply only to any portion of the admission price that is retained by or distributed to the fair authority. As used in this paragraph, "fair event" shall be limited to an event held on the premises of the fair authority in conjunction with and during the time period of a county, district or state fair;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business or sale of tangible personal property or services by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, made on behalf of or at the request of a church or churches if the sale of such property is conducted not more than once each calendar year for a period not to exceed three (3) days by the organization and proceeds from the sale of such property are used by the church or churches or by the organization for charitable purposes;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university or any public trust of which a county in this state is the beneficiary, for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the council organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Boys and Girls;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, City of Tulsa-Rogers County Port Authority, Muskogee City-County Port Authority, the Oklahoma Department of Veterans Affairs, the Broken Bow Economic Development Authority, Ardmore Development Authority, Durant Industrial Authority, Oklahoma Ordnance Works Authority, Central Oklahoma Master Conservancy District or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by the institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this paragraph shall be a misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

13. a. Sales of tangible personal property made by:

- (1) a public school,
- (2) a private school offering instruction for grade levels kindergarten through twelfth grade,
- (3) a public school district,
- (4) a public or private school board,
- (5) a public or private school student group or organization,
- (6) a parent-teacher association or organization other than as specified in subparagraph b of this paragraph, or
- (7) public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization, or

b. Sales of tangible personal property made by or to nonprofit parent-teacher associations or organizations

exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

- a. local 4-H clubs,
- b. county, regional or state 4-H councils,
- c. county, regional or state 4-H committees,
- d. 4-H leader associations,
- e. county, regional or state 4-H foundations, and
- f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Tourism and Recreation Department as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes and the sale of advertising in travel brochures and other promotional materials produced at the direction of the Department;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph;

20. Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in this state which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

21. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the

organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization;

22. Sales of tangible personal property or services to:

- a. any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code,
- b. any migrant health center as defined in Section 254b of Title 42 of the United States Code,
- c. any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statutes,
- d. any community based health center which meets all of the following criteria:
 - (1) provides primary care services at no cost to the recipient, and
 - (2) is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and
- e. any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes;

23. Dues or fees, including free or complimentary dues or fees which have a value equivalent to the charge that could have otherwise been made, to YMCAs, YWCAs or municipally-owned recreation centers for the use of facilities and programs;

24. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property or services to or by a cultural organization established to sponsor and promote educational, charitable and cultural events for disadvantaged children, and which organization is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

25. Sales of tangible personal property or services to museums or other entities which have been accredited by the American Association of Museums. Any person making purchases on behalf of any such museum or other entity shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such museum or other entity and set out the name of such museum or other entity. Any person who wrongfully or erroneously certifies that the purchases are for any such museum or other entity or who otherwise violates the provisions of this paragraph shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or by both such fine and incarceration;

26. Sales of tickets for admission by any museum accredited by the American Association of Museums. In order to be eligible for the exemption provided by this paragraph, an amount equivalent to the amount of the tax which would otherwise be required to be collected pursuant to the provisions of Section 1350 et seq. of this title shall be separately stated on the admission ticket and shall be collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the museum to effect the construction, enlarging or renovation of any facility to be used for entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket;

27. Sales of tangible personal property or services occurring on or after June 1, 1995, to children's homes which are supported or sponsored by one or more churches, members of which serve as trustees of the home;

28. Sales of tangible personal property or services to the organization known as the Disabled American Veterans, Department of Oklahoma, Inc., and subordinate chapters thereof;

29. Sales of tangible personal property or services to youth camps which are supported or sponsored by one or more churches, members of which serve as trustees of the organization;

30. Transfer of tangible personal property made pursuant to Section 3226 of Title 63 of the Oklahoma Statutes by the University Hospitals Trust;

31. Sales of tangible personal property or services to a municipality, county or school district pursuant to a lease or lease-purchase agreement executed between the vendor and a municipality, county or school district. A copy of the lease or lease-purchase agreement shall be retained by the vendor;

32. Sales of tangible personal property or services to any spaceport user, as defined in the Oklahoma Space Industry Development Act;

33. The sale, use, storage, consumption, or distribution in this state, whether by the importer, exporter, or another person, of any satellite or any associated launch vehicle, including components of, and parts and motors for, any such satellite or launch vehicle, imported or caused to be imported into this state for the purpose of export by means of launching into space. This exemption provided by this paragraph shall not be affected by:

- a. the destruction in whole or in part of the satellite or launch vehicle,
- b. the failure of a launch to occur or be successful, or
- c. the absence of any transfer or title to, or possession of, the satellite or launch vehicle after launch;

34. The sale, lease, use, storage, consumption, or distribution in this state of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity, including components thereof;

35. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property, placed on or used aboard any space facility, space propulsion system or space vehicle, satellite, or station possessing space flight capacity, which is launched into space, irrespective of whether such tangible property is returned to this state for subsequent use, storage, or consumption in any manner;

36. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property meeting the definition of "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, that is an integral part of and used primarily in support of space flight; however, section 38 property used in support of space flight shall not include general office equipment, any boat, mobile home, motor vehicle, or other vehicle of a class or type required to be registered, licensed, titled, or documented in this state or by the United States government, or any other property not specifically suited to supporting space activity. The term "in support of space flight", for purposes of this paragraph, means the altering, monitoring, controlling, regulating, adjusting, servicing, or repairing of any space facility, space propulsion systems or space vehicle, satellite, or station possessing space flight capacity, including the components thereof;

37. The purchase or lease of machinery and equipment for use at a fixed location in this state, which is used exclusively in the manufacturing, processing, compounding, or producing of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity. Provided, the exemption provided for in this paragraph shall not be allowed unless the purchaser or lessee signs an affidavit stating that the item or items to be exempted are for the exclusive use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed by Section 1354 of this title shall be subject to the penalties provided by law. As used in this paragraph, "machinery and equipment" means "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, which is used as an integral part of the manufacturing, processing, compounding, or producing of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph;

38. The amount of a surcharge or any other amount which is separately stated on an admission ticket which is imposed, collected and used for the sole purpose of constructing, remodeling or enlarging facilities of a public trust having a municipality or county as its sole beneficiary;

39. Sales of tangible personal property or services which are directly used in or for the benefit of a state park in this state, which are made to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and which is organized primarily for the purpose of supporting one or more state parks located in this state;

40. The sale, lease or use of parking privileges by an institution of The Oklahoma State System of Higher Education;

41. Sales of tangible personal property or services for use on campus or school construction projects for the benefit of institutions of The Oklahoma State System of Higher Education, private institutions of higher education accredited by the Oklahoma State Regents for Higher Education or any public school or school district when such projects are financed by or through the use of nonprofit entities which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

42. Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a national championship sports event, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i). Sales exempted pursuant to this paragraph shall be exempt from all Oklahoma sales, use, excise and gross receipts taxes;

43. Sales of tangible personal property or services to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
- b. is affiliated with a comprehensive university within The Oklahoma State System of Higher Education, and

- c. has been organized primarily for the purpose of providing education and teacher training and conducting events relating to robotics;

44. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property to or by youth athletic teams which are part of an athletic organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4), for the purposes of raising funds for the benefit of the team;

45. Sales of tickets for admission to a collegiate athletic event that is held in a facility owned or operated by a municipality or a public trust of which the municipality is the sole beneficiary and that actually determines or is part of a tournament or tournament process for determining a conference tournament championship, a conference championship, or a national championship;

46. Sales of tangible personal property or services to or by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and is operating the Oklahoma City National Memorial and Museum, an affiliate of the National Park System;

47. Sales of tangible personal property or services to organizations which are exempt from federal taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), the memberships of which are limited to honorably discharged veterans, and which furnish financial support to area veterans' organizations to be used for the purpose of constructing a memorial or museum;

48. Sales of tangible personal property or services on or after January 1, 2003, to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) that is expending monies received from a private foundation grant in conjunction with expenditures of local sales tax revenue to construct a local public library;

49. Sales of tangible personal property or services to a state that borders this state or any political subdivision of that state, but only to the extent that the other state or political subdivision

exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state;

50. Effective July 1, 2005, sales of tangible personal property or services to the Career Technology Student Organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education;

51. Sales of tangible personal property to a public trust having either a single city, town or county or multiple cities, towns or counties or combination thereof as beneficiary or beneficiaries or a nonprofit organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) for the purpose of constructing improvements to or expanding a hospital or nursing home owned and operated by any such public trust or nonprofit entity prior to the effective date of this act in counties with a population of less than one hundred thousand (100,000) persons, according to the most recent Federal Decennial Census. As used in this paragraph, "constructing improvements to or expanding" shall not mean any expense for routine maintenance or general repairs and shall require a project cost of at least One Hundred Thousand Dollars (\$100,000.00). For purposes of this paragraph, sales made to a contractor or subcontractor that enters into a contractual relationship with a public trust or nonprofit entity as described by this paragraph shall be considered sales made to the public trust or nonprofit entity. The exemption authorized by this paragraph shall be administered in the form of a refund from the sales tax revenues apportioned pursuant to Section 1353 of this title and the vendor shall be required to collect the sales tax otherwise applicable to the transaction. The purchaser may apply for a refund of the sales tax paid in the manner prescribed by this paragraph. Within thirty (30) days after the end of each fiscal year, any purchaser that is entitled to make application for a refund based upon the exempt treatment authorized by this paragraph may file an application for refund of the sales taxes paid during such preceding fiscal year. The Tax Commission shall prescribe a form for purposes of making the application for refund. The Tax Commission shall determine whether or not the total amount of sales tax exemptions claimed by all purchasers is equal to or less than Six Hundred Fifty Thousand Dollars (\$650,000.00). If such claims are less than or equal to that amount, the Tax Commission shall make refunds to the purchasers

in the full amount of the documented and verified sales tax amounts. If such claims by all purchasers are in excess of Six Hundred Fifty Thousand Dollars (\$650,000.00), the Tax Commission shall determine the amount of each purchaser's claim, the total amount of all claims by all purchasers, and the percentage each purchaser's claim amount bears to the total. The resulting percentage determined for each purchaser shall be multiplied by Six Hundred Fifty Thousand Dollars (\$650,000.00) to determine the amount of refundable sales tax to be paid to each purchaser. The pro rata refund amount shall be the only method to recover sales taxes paid during the preceding fiscal year and no balance of any sales taxes paid on a pro rata basis shall be the subject of any subsequent refund claim pursuant to this paragraph;

52. Effective July 1, 2006, sales of tangible personal property or services to any organization which assists, trains, educates, and provides housing for physically and mentally handicapped persons and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and that receives at least eighty-five percent (85%) of its annual budget from state or federal funds. In order to receive the benefit of the exemption authorized by this paragraph, the taxpayer shall be required to make payment of the applicable sales tax at the time of sale to the vendor in the manner otherwise required by law. Notwithstanding any other provision of the Oklahoma Uniform Tax Procedure Code to the contrary, the taxpayer shall be authorized to file a claim for refund of sales taxes paid that qualify for the exemption authorized by this paragraph for a period of one (1) year after the date of the sale transaction. The taxpayer shall be required to provide documentation as may be prescribed by the Oklahoma Tax Commission in support of the refund claim. The total amount of sales tax qualifying for exempt treatment pursuant to this paragraph shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000.00) each fiscal year. Claims for refund shall be processed in the order in which such claims are received by the Oklahoma Tax Commission. If a claim otherwise timely filed exceeds the total amount of refunds payable for a fiscal year, such claim shall be barred;

53. The first Two Thousand Dollars (\$2,000.00) each year of sales of tangible personal property or services to, by, or for the benefit of a qualified neighborhood watch organization that is

endorsed or supported by or working directly with a law enforcement agency with jurisdiction in the area in which the neighborhood watch organization is located. As used in this paragraph, "qualified neighborhood watch organization" means an organization that is a not-for-profit corporation under the laws of the State of Oklahoma that was created to help prevent criminal activity in an area through community involvement and interaction with local law enforcement and which is one of the first two thousand organizations which makes application to the Oklahoma Tax Commission for the exemption after the effective date of this act;

54. Sales of tangible personal property to a nonprofit organization, exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), organized primarily for the purpose of providing services to homeless persons during the day and located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census. The exemption authorized by this paragraph shall be applicable to sales of tangible personal property to a qualified entity occurring on or after January 1, 2005;

55. Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) made during auction events the principal purpose of which is to provide funding for the preservation of wetlands and habitat for wild ducks;

56. Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) made during auction events the principal purpose of which is to provide funding for the preservation and conservation of wild turkeys;

57. Sales of tangible personal property or services to an organization which:

- a. is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and

b. is part of a network of community-based, autonomous member organizations that meets the following criteria:

- (1) serves people with workplace disadvantages and disabilities by providing job training and employment services, as well as job placement opportunities and post-employment support,
- (2) has locations in the United States and at least twenty other countries,
- (3) collects donated clothing and household goods to sell in retail stores and provides contract labor services to business and government, and
- (4) provides documentation to the Oklahoma Tax Commission that over seventy-five percent (75%) of its revenues are channeled into employment, job training and placement programs and other critical community services;

58. Sales of tickets made on or after September 21, 2005, and complimentary or free tickets for admission issued on or after September 21, 2005, which have a value equivalent to the charge that would have otherwise been made, for admission to a professional athletic event in which a team in the National Basketball Association is a participant, which is held in a facility owned or operated by a municipality, a county or a public trust of which a municipality or a county is the sole beneficiary, and sales of tickets made on or after the effective date of this act, and complimentary or free tickets for admission issued on or after the effective date of this act, which have a value equivalent to the charge that would have otherwise been made, for admission to a professional athletic event in which a team in the National Hockey League is a participant, which is held in a facility owned or operated by a municipality, a county or a public trust of which a municipality or a county is the sole beneficiary;

59. Sales of tickets for admission and complimentary or free tickets for admission which have a value equivalent to the charge

that would have otherwise been made to a professional sporting event involving ice hockey, baseball, basketball, football or arena football, or soccer. As used in this paragraph, "professional sporting event" means an organized athletic competition between teams that are members of an organized league or association with centralized management, other than a national league or national association, that imposes requirements for participation in the league upon the teams, the individual athletes or both, and which uses a salary structure to compensate the athletes;

60. Sales of tickets for admission to an annual event sponsored by an educational and charitable organization of women which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and has as its mission promoting volunteerism, developing the potential of women and improving the community through the effective action and leadership of trained volunteers;

61. Sales of tangible personal property or services to an organization, which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which is itself a member of an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), if the membership organization is primarily engaged in advancing the purposes of its member organizations through fundraising, public awareness or other efforts for the benefit of its member organizations, and if the member organization is primarily engaged either in providing educational services and programs concerning health-related diseases and conditions to individuals suffering from such health-related diseases and conditions or their caregivers and family members or support to such individuals, or in health-related research as to such diseases and conditions, or both. In order to qualify for the exemption authorized by this paragraph, the member nonprofit organization shall be required to provide proof to the Oklahoma Tax Commission of its membership status in the membership organization;

62. Sales of tangible personal property or services to or by an organization which is part of a national volunteer women's service organization dedicated to promoting patriotism, preserving American history and securing better education for children and which has at least 168,000 members in 3,000 chapters across the United States;

63. Sales of tangible personal property or services to or by a YWCA or YMCA organization which is part of a national nonprofit community service organization working to meet the health and social service needs of its members across the United States;

64. Sales of tangible personal property or services to or by a veteran's organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501 (c)(19) and which is known as the Veterans of Foreign Wars of the United States, Oklahoma Chapters;

65. Sales of boxes of food by a church or by an organization, which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). To qualify under the provisions of this paragraph, the organization must be organized for the primary purpose of feeding needy individuals or to encourage volunteer service by requiring such service in order to purchase food. These boxes shall only contain edible staple food items;

66. Sales of tangible personal property or services to any person with whom a church has duly entered into a construction contract, necessary for carrying out such contract or to any subcontractor to such a construction contract;

67. Sales of tangible personal property or services used exclusively for charitable or educational purposes, to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
- b. has filed a Not-for-Profit Certificate of Incorporation in this state, and
- c. is organized for the purpose of:
 - (1) providing training and education to developmentally disabled individuals,

- (2) educating the community about the rights, abilities and strengths of developmentally disabled individuals, and
- (3) promoting unity among developmentally disabled individuals in their community and geographic area;

68. Sales of tangible personal property or services to any organization which is a shelter for abused, neglected, or abandoned children and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3); provided, until July 1, 2008, such exemption shall apply only to eligible shelters for children from birth to age twelve (12) and after July 1, 2008, such exemption shall apply to eligible shelters for children from birth to age eighteen (18);

69. Sales of tangible personal property or services to a child care center which is licensed pursuant to the Oklahoma Child Care Facilities Licensing Act and which:

- a. possesses a 3-star rating from the Department of Human Services Reaching for the Stars Program or a national accreditation, and
- b. allows on site universal pre-kindergarten education to be provided to four-year-old children through a contractual agreement with any public school or school district.

For the purposes of this paragraph, sales made to any person, firm, agency or entity that has entered previously into a contractual relationship with a child care center for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes shall be considered sales made to a child care center. Any such person, firm, agency or entity making purchases on behalf of a child care center shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchase. Any such person, or person acting on behalf of a firm, agency or entity making purchases on behalf of a child care center in violation of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be

fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both; and

70. a. Sales of tangible personal property to a service organization of mothers who have children who are serving or who have served in the military, which service organization is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(19) and which is known as the Blue Star Mothers of America, Inc. The exemption provided by this paragraph shall only apply to the purchase of tangible personal property actually sent to United States military personnel overseas who are serving in a combat zone and not to any other tangible personal property purchased by the organization. Provided, this exemption shall not apply to any sales tax levied by a city, town, county, or any other jurisdiction in this state.
- b. The exemption authorized by this paragraph shall be administered in the form of a refund from the sales tax revenues apportioned pursuant to Section 1353 of this title, and the vendor shall be required to collect the sales tax otherwise applicable to the transaction. The purchaser may apply for a refund of the state sales tax paid in the manner prescribed by this paragraph. Within sixty (60) days after the end of each calendar quarter, any purchaser that is entitled to make application for a refund based upon the exempt treatment authorized by this paragraph may file an application for refund of the state sales taxes paid during such preceding calendar quarter. The Tax Commission shall prescribe a form for purposes of making the application for refund.
- c. A purchaser who applies for a refund pursuant to this paragraph shall certify that the items were actually sent to military personnel overseas in a combat zone. Any purchaser that applies for a refund for the purchase of items that are not authorized for exemption under this paragraph shall be subject to a

penalty in the amount of Five Hundred Dollars (\$500.00).

SECTION 13. AMENDATORY Section 4, Chapter 42, 2nd Extraordinary Session, O.S.L. 2006, as amended by Section 2, Chapter 346, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A), is amended to read as follows:

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

B. In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December ~~2007~~ 2008, and for any subsequent December meeting of the State Board of Equalization if the top marginal income tax rate prescribed by subparagraph (h) of paragraphs 1 and 2 of subsection B of Section 2355 of this title has not become effective, the State Board of Equalization shall determine:

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

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

If the amount determined pursuant to the provisions of paragraph 1 of this subsection is equal to or greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a preliminary finding that the Board anticipates that a finding will be made at the February ~~2008~~ meeting immediately subsequent to the December meeting that applicable revenue growth in the state will authorize the implementation of the provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B of Section 2355 of this title beginning with calendar year 2009 on the second January 1 following such December meeting.

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

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

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

2. The amount by which the income tax revenue for the tax year 2009 which will begin on the January 1 date immediately following such February meeting is estimated to be reduced by the increase in the standard deduction provided in paragraph 2 of subsection E of

Section 2358 of this title plus an amount equal to four percent (4%) of the revised General Revenue Fund estimate for the then current fiscal year 2008 in order for a top marginal income tax rate of five and twenty-five hundredths percent (5.25%) to be effective.

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

If the amount determined pursuant to the provisions of paragraph 1 of this subsection is less than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that applicable revenue growth in the state does not authorize the implementation of the provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B of Section 2355 of this title beginning with calendar year 2009 the January 1 date immediately following such February meeting.

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

~~D. For purposes of this section, the estimate of the revenue for appropriations authority for fiscal year 2009 shall be made~~

~~assuming a top individual income tax rate of five and twenty five hundredths percent (5.25%) as provided in subparagraph (h) of paragraphs 1 and 2 of subsection B of Section 2355 of this title.~~

SECTION 14. Section 1 of this act shall become effective July 1, 2009.

SECTION 15. Sections 2, 3 and 5 of this act shall become effective July 1, 2008.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 23rd day of May, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2008.

Presiding Officer of the House
of Representatives