CS for ESB 1014

THE HOUSE OF REPRESENTATIVES
Thursday, April 19, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 1014

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1014 - By: ANDERSON AND GUMM of the Senate and JACKSON AND CAREY of the House.

(revenue and taxation - cigarette and tobacco products tax - codification - effective date)

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this title, the term "Cigarette and Tobacco Products Tax Codes" shall mean and refer to Section 301 et seq., Section 326 et seq., Section 346 et seq., Section 401 et seq., and Section 424 et seq. of Title 68 of the Oklahoma Statutes.

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

Section 301. For purposes of ~~Section 301 et seq. of this title~~ <u>the Cigarette and Tobacco Products Tax Codes</u>:

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

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

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

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

b. at least seventy-five percent (75%) of whose gross sales are made at wholesale,

c. handles goods in wholesale quantities and sells through salespersons, advertising and/or sales promotion devices,

d. carries at all times at its principal place of business a representative stock of cigarettes or tobacco products for sale, and

e. comes into the possession of cigarettes or tobacco products for the purpose of selling them to retailers or to persons outside or within the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

state who might resell or retail such cigarettes or tobacco products to consumers.

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

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

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

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

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

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

7. The term "sale" and/or "sales" is hereby defined to be and declared to include sales, barters, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another, and is also declared to be the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

use or consumption in this state in the first instance of cigarettes or tobacco products received from without the state or of any other cigarettes or tobacco products upon which the tax has not been paid. The term "first sale" shall mean and include the first sale or distribution of cigarettes or tobacco products in intrastate commerce or the first use or consumption of cigarettes or tobacco products within this state;

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

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

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

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

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

10. The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigarettes or tobacco products in interstate commerce and storing such cigarettes or tobacco products subject

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

to distribution or delivery upon order from the person outside the state to ~~distributors, wholesale dealers and retail dealers~~ wholesalers and retailers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigarettes or tobacco products to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on such cigarettes or tobacco products;

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

b. A sale of cigarettes or tobacco products which satisfies the criteria in subparagraph a of this paragraph shall be a delivery sale regardless of whether the seller is located within or outside of Oklahoma.

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

1. The Governor shall appoint three members as follows:

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

b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

c. one member who shall be a wholesaler of cigarettes and tobacco products;

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

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

b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

c. one member who shall be primarily engaged in the retail sales of groceries in this state;

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

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

b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

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

B. The Committee shall annually elect a chair and a vice-chair from among its members. The Committee shall meet as desired to review proposed rules of the Oklahoma Tax Commission and discuss other issues relating to the implementation and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

enforcement of the levy, collections and remittance of taxes on cigarettes and tobacco products in this state.

C. The Committee may recommend to the Oklahoma Tax Commission rules to implement and enforce the provisions of this act and other provisions of law relating to the levy, collection and remittance of taxes on cigarettes and tobacco products in this state. The Tax Commission shall consider comments submitted by the Committee prior to the adoption of a proposed rule. Prior to the adoption of any rule or amendment or revocation of a rule relating to the administration of taxes levied on cigarettes and tobacco products, the Tax Commission shall send notice of any intended action to the members of the Committee. If the intended action relates to permanent rulemaking, such notice shall be given ~~at least thirty (30) days prior to publication of notice of intended rulemaking action required under~~ <u>in the same manner as other notices are given pursuant to the provisions of</u> Section 303 of Title 75 of the Oklahoma Statutes. If the intended action relates to emergency rulemaking, the Tax Commission will provide the Committee as much notice as practicable prior to the rulemaking action. The Committee may submit comments on issues related to the intended rulemaking action including, but not limited to, identifying portions of the industry affected, probable economic impact, and any costs or benefits to the industry.

D. In addition to making recommendations, the Committee may represent the industry in communicating concerns to the Tax Commission about issues related to the levy and remittance of taxes pursuant to ~~Section 301 et seq. of Title 68 of the Oklahoma~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~Statutes and Section 401 et seq. of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco Products Tax Codes.

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

SECTION 4. AMENDATORY 68 O.S. 2001, Section 304, as last amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006, Section 304), is amended to read as follows:

Section 304. A. Every manufacturer~~,~~ and wholesaler~~, warehouseman, jobber or distributor~~ of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Oklahoma Tax Commission a written license, and shall pay therefor an annual fee of ~~Twenty-five Dollars ($25.00)~~ Two Hundred Fifty Dollars ($250.00). Application for such license shall be made upon such forms as prescribed by the Oklahoma Tax Commission, which shall include, as a required part of the application, the applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for the purpose of enforcement of the provisions of the Cigarette and Tobacco Products Tax Codes. The applicant, by submitting the application, further agrees to abide by the provisions of the Cigarette and Tobacco Products Tax Codes and the rules promulgated by the Tax Commission with reference thereto. Further, the applicant agrees that it shall only sell cigarettes or tobacco products to a licensed retailer or a tribally owned or licensed store. This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee ~~of Twenty-five Dollars ($25.00)~~ shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular ~~Twenty-five Dollars ($25.00)~~ fee is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars ($10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

Provided, that the Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer~~,~~ or wholesaler~~, warehouseman, jobber or distributor~~ who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers~~,~~ and wholesalers~~, warehousemen, jobbers or distributors~~ of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer~~,~~ or wholesaler~~, warehouseman, jobber or distributor~~ of cigarettes the use of the metering device of such state without first requiring that such manufacturer~~,~~ or wholesaler~~, warehouseman, jobber or distributor~~ establish a place of business in such other state. The provisions of this subsection relating to metering devices shall not apply to states which do not require

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

B. Every nontribal retailer of cigarettes or tobacco products in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars ($30.00). Application for such license shall be made upon such forms as prescribed by the Tax Commission, which shall include, as a required part of the application, the applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for the purpose of enforcement of the provisions of the Cigarette and Tobacco Products Tax Codes. The applicant, by submitting the application, further agrees to abide by the provisions of the Cigarette and Tobacco Products Tax Codes and the rules promulgated by the Tax Commission with reference thereto. Further, the applicant agrees that it shall not purchase any cigarettes or tobacco products for resale from a supplier that does not hold a current wholesaler's license issued pursuant to this section, and the applicant agrees to sell cigarettes and tobacco products only to consumers. Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years ~~or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years~~. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

"Place of business" shall be construed to include places where orders are received or where cigarettes <u>or tobacco products</u> are sold.

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

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

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

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

shall, after becoming delinquent for a period in excess of fifteen (15) days, pay to the Tax Commission, in addition to the annual license fee, a penalty of twenty-five cents ($0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license.

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

1. The applicant owes Five Hundred Dollars ($500.00) or more in delinquent cigarette <u>or tobacco product</u> taxes;

2. The applicant had a cigarette manufacturer, <u>wholesaler,</u> retailer or distributor license revoked by the Tax Commission within the past two (2) years;

3. The applicant has been convicted of a crime relating to stolen or counterfeit cigarettes <u>or tobacco products</u>, or receiving stolen or counterfeit cigarettes <u>or tobacco products or has been convicted of or has entered a plea of guilty or of nolo contendere to any felony</u>;

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

H. In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes, the Tax Commission may revoke or suspend the license or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in Section 316 of this title.

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

SECTION 5. AMENDATORY 68 O.S. 2001, Section 305, as amended by Section 3, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006, Section 305), is amended to read as follows:

Section 305. A. 1. 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 applicable to the location of the retailer or tribally owned or licensed retailer to which the cigarettes are shipped, consigned or delivered as required by ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes. It shall be the duty of the wholesaler~~, jobber, distributor, or warehouseman~~ to supply ~~and charge to the retailer~~ the necessary stamps applicable to the location of the retailer or tribally owned or licensed retailer to which the cigarettes are shipped, consigned or delivered 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~~ Wholesalers may apply stamps only to cigarette packages that they

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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.

2. If a wholesaler in good faith relies on information contained in the list of tribally owned and licensed stores maintained and supplied by the Tax Commission when affixing the stamp or stamps applicable to the location of the tribally owned or licensed retailer to which the cigarettes are shipped, consigned or delivered and is in compliance with all rules promulgated by the Tax Commission, the wholesaler shall be relieved of any liability for payment of any additional tax which might later be determined to be due on the sale or delivery of such cigarettes by the wholesaler.

B. Every retailer who has received cigarettes from a manufacturer~~,~~ or 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 (40), 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~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~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 Cigarette and Tobacco Products Tax Codes, 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~~ contraband cigarettes upon which taxes are imposed by ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes 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~~ the Cigarette and Tobacco Products Tax Codes, or with

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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, 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, and the person where, and from whom such property was seized, and an inventory and appraisement 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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 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~~ distribute cash and the proceeds of the sale of such cigarettes, vehicles and other property as follows, in the order indicated:

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

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

c. the balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

3. 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~~ the Cigarette and Tobacco Products Tax Codes; 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. The forfeiture provisions of ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ the Cigarette and Tobacco Products Tax Codes.

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.~~ 302 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 6. AMENDATORY 68 O.S. 2001, Section 306, is amended to read as follows:

Section 306. It shall be unlawful for any person to sell, or display for sale, or have in his possession for consumption in this state, cigarettes or tobacco products on which

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

the tax levied by ~~this article~~ the Cigarette and Tobacco Products Tax Codes has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax as required by the Cigarette and Tobacco Products Tax Codes. Any cigarettes or tobacco products so held shall be subject to seizure and sale as provided by law for sale of property under execution, and the proceeds derived from the sale thereof shall be paid to the State Treasurer and placed in the State General Revenue Fund.

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

(d) The Commission shall sell the stamps to all licensed manufacturers, wholesalers, ~~warehousemen and/or jobbers,~~ retailers, or consumers, who have purchased cigarettes from wholesalers ~~or jobbers~~ within or without the State of Oklahoma, doing business within the State of Oklahoma. All orders for stamps must be accompanied by cash, cashier's check or money order, made payable to the Oklahoma Tax Commission; provided, however, that the Tax Commission may accept personal checks in payment for such stamps upon a determination by the Tax Commission that the purchaser thereof is financially responsible.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 309, is amended to read as follows:

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

(b) ~~Common carriers~~ Carriers transporting cigarettes to a point within the state, or a bonded warehouseman or bailee having possession of cigarettes, are required, under this article and the rules and regulations to be prescribed by the Tax Commission, to transmit to the Tax Commission a statement of such consignment of cigarettes, showing the date, point of origin, point of delivery, and to whom delivered, and such other information as the Tax Commission may require. All ~~common~~ carriers, bailees or warehousemen shall permit an examination by the Tax Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of cigarettes. Any person who fails or refuses to transmit to the Tax Commission the statements above provided for, or whoever refuses to permit the examination of the records by the Tax Commission, shall be guilty of a misdemeanor.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

~~(b)~~ B. Every wholesaler and retailer receiving unstamped cigarettes shall file a report with the Tax Commission on or before the ~~10th~~ tenth day of each month covering the previous calendar month, on forms prescribed and furnished by the Tax Commission, disclosing the beginning and closing inventory of unstamped cigarettes, the beginning and closing inventory of stamped cigarettes, the beginning and closing inventory of cigarette stamps, the number and denomination of cigarette stamps affixed to packages of cigarettes, and all purchases of cigarettes by showing the invoice number, name and address of the consignee or seller, the date, and the number of cigarettes purchased, and such other information as may be required by the Tax Commission. Retailers or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

consumers purchasing cigarettes in drop shipments shall be required to make monthly reports to the Commission as are required of wholesale dealers.

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

~~(d)~~ D. Upon a form to be prescribed by the Tax Commission, every distributing agent in Oklahoma shall report each day, except Sundays and holidays, to the Tax Commission all deliveries of cigarettes made on the preceding day or days. The reports shall show the name of the person ordering the delivery, date of delivery, name and address of the person to whom delivered, the invoice number, bill of lading or waybill number, the number and kind of cigarettes delivered, the means of delivery and/or the transportation agent and the destination of drop shipment, if a drop shipment. However, if the invoice furnished the distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading or bills of lading, to the Tax Commission.

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

SECTION 10. AMENDATORY Section 4, Chapter 475, O.S.L. 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006, 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~~ shall 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~~ wholesaler or to a retailer within the borders of Oklahoma during the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

reporting period and the name and address of each person to whom those products were ultimately distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same ~~distributor~~ wholesaler 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 licensees of 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~~ wholesaler 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ wholesaler 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.~~ F. 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.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~H.~~ G. Records required under subsections E through ~~G~~ F 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~~ wholesalers, and retailers ~~with multiple places of business~~ may retain ~~centralized~~ records off premises, 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.~~ H. The records required by subsections E through ~~G~~ F of this section shall be retained for a period of three (3) years from the date of the transaction.

~~J.~~ I. The Tax Commission, upon request, shall have access to reports and records required under ~~this act~~ the Cigarette and Tobacco Products Tax Codes. 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, other states, or international authorities and shall upon request share the records and reports with state and local law enforcement officials.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 315, is amended to read as follows:

Section 315. For the purpose of enabling the Oklahoma Tax Commission to determine the tax liability of a ~~distributor, wholesale dealer, retail dealer~~ wholesaler, retailer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, it shall have the right to inspect any premises

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the cigarette business of such ~~distributor, wholesale dealer, retail dealer~~ wholesaler, retailer, distributing agent, or any other person dealing in cigarettes. The authorized agent of the ~~Oklahoma~~ Tax Commission shall also have the right, as an incident, to determine the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarette stamps, and for the foregoing purpose such authorized agent shall also have the right to remain upon the premises for such length of time as may be necessary to fully determine such tax liability, or whether a tax liability has been incurred; and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Tax Commission, or any of its authorized agents, any records ~~herein~~ required to be kept pursuant to the provisions of the Cigarette and Tobacco Products Tax Codes, or to hinder or prevent in any manner the inspection of said records, or the examination of said premises.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006, Section 316), is amended to read as follows:

Section 316. A. Any person, other than a consumer, 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;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ the Cigarette and Tobacco Products Tax Codes or with any other fraudulent intent;

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

~~6.~~ 5. 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~~ the Cigarette and Tobacco Products Tax Codes; or

~~7. Make~~ 6. Knowingly or intentionally 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)~~ Ten Thousand Dollars ($10,000.00) for the first offense and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense, where specific penalties are not otherwise provided.

B. Any consumer, 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. 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;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

3. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of the Cigarette and Tobacco Products Tax Codes or with any other fraudulent intent;

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

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

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

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

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~~ the Cigarette and Tobacco Products Tax Codes 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)~~ Ten Thousand Dollars ($10,000.00) for

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

1. Commit any of the acts specifically enumerated in subsections A and ~~B~~ C 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)~~ Ten Thousand Dollars ($10,000.00) for the first offense, and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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.~~ G. 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~~ E of this section or a person punished for a violation pursuant to the provisions of subsection ~~E~~ F 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~~ the Cigarette and Tobacco Products Tax Codes for a period of ten (10) years.

~~G.~~ H. 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~~ the Cigarette and Tobacco Products Tax Codes or rules promulgated thereunder;

2. Refuses to pay any tax imposed by ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes, 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~~ the Cigarette and Tobacco Products Tax Codes;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

~~J.~~ K. 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~~ the Cigarette and Tobacco Products Tax Codes, 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ the Cigarette and Tobacco Products Tax Codes; refuses to pay any tax imposed by ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes; or attempts in any manner to evade or defeat the requirements of ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes shall be forfeited to Oklahoma.

~~K.~~ L. 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)~~ Ten Thousand Dollars ($10,000.00) or imprisonment not to exceed five (5) years, or both the 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)~~ Twenty-five Thousand Dollars ($25,000.00), 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~~ wholesaler, or retailer license;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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)~~ Twenty-five Thousand Dollars ($25,000.00) 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~~ wholesaler, 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 the applicable tax stamp or with counterfeit tax stamps or a combination thereof. Any counterfeit cigarette seized by the Tax Commission shall be destroyed.

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

SECTION 13. AMENDATORY 68 O.S. 2001, Section 320, as amended by Section 8, Chapter 272, O.S.L. 2006 (68 O.S. Supp. 2006, Section 320), is amended to read as follows:

Section 320. A. Every person making application for a distributing agent's license under ~~this article or the following article containing the tobacco Products Tax Code~~ the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Cigarette and Tobacco Products Tax Codes shall, before being issued such license and as a condition of carrying on such business, file with the Oklahoma Tax Commission a surety or collateral or cash bond in the amount of Twenty-five Thousand Dollars ($25,000.00) payable to the State of Oklahoma, and conditioned upon compliance with the provisions of ~~this article or the following article of this Code~~ the Cigarette and Tobacco Products Tax Codes, and the rules of the Oklahoma Tax Commission.

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

4. Any licensee who has filed a bond or other security is entitled, on request, to have the Tax Commission return, refund, or release the bond or security if, in the judgment of the Tax Commission, the licensee has continuously complied with the provisions of ~~this article and Article 4 containing the tobacco products tax code~~ the Cigarette and Tobacco Products Tax Codes for the previous three (3) consecutive years. However, if the Tax Commission determines that the revenues of the state would be jeopardized by the return, refund or release of bond or security, the Tax Commission may elect to retain the bond or security, or having released such, may reimpose a requirement for bond or security to protect the revenues of this state. The decision of the Tax Commission to not release a bond or security may be reviewed, after application by the licensee, pursuant to the Administrative Procedures Act.

D. In the event any applicant for a license applies for more than one license pursuant to ~~this article or Article 4 containing the tobacco products tax code~~ the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Cigarette and Tobacco Products Tax Codes, the applicant shall not be required to post a bond for each license, but shall be required to post a bond for the license which requires the greatest amount of bond.

SECTION 14. AMENDATORY 68 O.S. 2001, Section 324, is amended to read as follows:

Section 324. All manufacturers, wholesalers, ~~jobbers,~~ retailers or other persons selling or distributing ~~such~~ cigarettes are hereby required to comply with the provisions of the ~~three preceding sections~~ Cigarette and Tobacco Products Tax Codes, and the rules and regulations of the Oklahoma Tax Commission as to such sales or distributions, and failure or refusal to so comply shall constitute grounds for revocation of any license issued to such manufacturer, wholesaler, ~~jobber,~~ retailer or other person, by the ~~Oklahoma~~ Tax Commission.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 326.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

SECTION 16. AMENDATORY 68 O.S. 2001, Section 346, as amended by Section 8, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2006, Section 346), is amended to read as follows:

Section 346. A. The Legislature finds that:

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

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

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

B. It is the intent of the Legislature to establish a system of state taxation of sales of cigarettes and tobacco products made by federally recognized Indian tribes or nations or their licensees, other than such tribes or nations which have entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of this section, under which the rate of payments in lieu of state taxes is less than the rate of state taxes

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

on other sales of cigarettes and tobacco products in order to allow such tribes or nations or their licensees to make sales of cigarettes and tobacco products to tribal members free of state taxation.

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

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

2. All cigarettes and tobacco products sold or held for sale to the public, without distinction between member and nonmember sales, shall bear a payment in lieu of tax stamp evidencing that payment in lieu of state taxes has been paid to the state. State and tribal officials may provide for use of a single joint stamp evidencing payment of both the payment in lieu of tax as specified in a compact pursuant to the provisions of this section and any tax levied by a tribe or nation;

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

a. members of the tribe or nation, and

b. business entities in which the tribe or nation or tribal members have a majority ownership interest.

D. In addition to any other authority granted by law, the Tax Commission shall regularly conduct an audit of wholesalers~~, distributors, jobbers and warehousemen~~ selling cigarettes or tobacco products to a federally recognized Indian tribe or nation or a tribally owned or licensed store to determine if the correct amount of tax payable under

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~this act~~ the Cigarette and Tobacco Products Tax Codes has been collected and to determine compliance with any and all compacts.

SECTION 17. AMENDATORY 68 O.S. 2001, Section 347, is amended to read as follows:

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

SECTION 18. AMENDATORY 68 O.S. 2001, Section 348, is amended to read as follows:

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

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

3. "Indian country" means:

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

7. "Contraband cigarettes" means unstamped cigarettes which are required by the provisions of ~~Sections 348 through 351 of this title or Section 301 et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes to bear stamps and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 304 of this title; provided, contraband cigarettes shall not include unstamped cigarettes sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 321 through 324 of this title;

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 349.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A compact tax stamp or a noncompact tax stamp shall be affixed on each pack of cigarettes sold to tribal retailers in the rates and in the manner as set forth by this section.

B. As used in this section:

1. "Pack" means a sealed, original package, containing twenty (20) or twenty-five (25) cigarettes, to which the required tax stamp is affixed; and

2. "Compact tax rate" means the rate of payment in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:

a. $0.8575 for a pack of twenty cigarettes or $1.071875 for a pack of twenty-five cigarettes,

b. $0.6075 for a pack of twenty cigarettes or $0.759375 for a pack of twenty-five cigarettes,

c. $0.3075 for a pack of twenty cigarettes or $0.384375 for a pack of twenty-five cigarettes;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

d. $0.2575 for a pack of twenty cigarettes or $0.321875 for a pack of twenty-five cigarettes;

e. $O.0575 for a pack of twenty cigarettes or $0.071875 for a pack of twenty-five cigarettes;

3. "Noncompact tax rate" means that tax rate provided by Section 349 of Title 68 of the Oklahoma Statutes rate of:

a. $0.7725 for a pack of twenty cigarettes, or

b. $0.965625 for a pack of twenty-five cigarette;

4. "Tribal retailer" means a store or place of business which is duly licensed by a federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation; and

5. "Tribal retailer to tribal retailer transaction" means any sale or other transfer of cigarettes from one tribal retailer whose retail location qualifies for a different compact tax rate than the tribal retailer to whom the cigarettes are transferred.

C. The compact tax stamp provided in Rule 710:70-7-4(1) of the Oklahoma Administrative Code shall only be sold at the rate of $0.8575 for a pack of twenty (20) cigarettes or the rate of $1.071875 for a pack of twenty-five (25) cigarettes. The rates shall be applicable for all sales to tribal retailers licensed by a federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma.

D. The noncompact tax stamp provided in Rule 710:70-7-4(2) of the Oklahoma Administrative Code shall only be sold at the rate of $0.7725 for a pack of twenty (20)

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

cigarettes or the rate of $0.965625 for a pack of twenty-five (25) cigarettes. The rate shall be applicable for all sales to tribal retailers owned and operated or licensed by a federally recognized Indian tribe or nation that has not entered into a compact with the State of Oklahoma.

E. A federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma may receive a refund for a portion of the rate paid pursuant to subsection C of this section. The amount of refund shall equal the rate paid less the compact tax rate applicable to the location of the tribal retailer provided in the tribal-state compact.

F. All tribal retailers of a compacting tribe or nation shall keep the following documentation to claim a refund as provided by this section. These records shall be submitted on behalf of the tribe or nation as its claim for refund. Such documentation may be submitted at any time to the Tax Commission in order to substantiate the refund claim for purchases made within one (1) year of the filing of the claim. Such documentation shall include copies of invoices detailing the:

1. Date of purchase;
2. Name of the tribal retailer that purchased the packs of cigarettes;
3. Name of wholesaler from whom the packs of cigarettes were purchased;
4. Quantity of each denomination purchased; and
5. The amount of compact tax rate paid by the tribal retailer.

G. Upon review by the Oklahoma Tax Commission, a refund will be remitted based on verifiable purchases qualifying for refund.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

H. Refunds shall be paid to the compacting tribe or nation on a monthly basis.

SECTION 20. AMENDATORY 68 O.S. 2001, Section 350, is amended to read as follows:

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

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

SECTION 21. AMENDATORY 68 O.S. 2001, Section 350.1, is amended to read as follows:

Section 350.1 If a wholesaler~~, jobber or warehouseman~~ timely accepts documentation ~~which shall require identification by drivers license and social security number~~ as prescribed by the Oklahoma Tax Commission from a person claiming that the cigarettes will be sold at a tribally owned or licensed store, the wholesaler~~, jobber or warehouseman~~ shall be relieved of any liability for any additional tax due or required to

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

be collected should it later be determined that the cigarettes were not purchased for sale at a tribally owned or licensed store.

SECTION 22. AMENDATORY 68 O.S. 2001, Section 351, is amended to read as follows:

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

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

SECTION 23. AMENDATORY Section 7, Chapter 266, O.S.L. 2004 (68 O.S. Supp. 2006, Section 360.7), is amended to read as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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, 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.~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~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, 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.~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~3.~~ All cigarettes, tobacco products, 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 appraisement 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ <u>360.4</u> of this ~~act~~ <u>title</u> engages in an unfair and deceptive trade practice in violation of the provisions of the Oklahoma Consumer Protection Act.

SECTION 24. AMENDATORY 68 O.S. 2001, Section 401, is amended to read as follows:

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

~~(h) The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery, upon order from said person outside the state, to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigars and tobacco products to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on such cigars and tobacco products.~~

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

SECTION 25. AMENDATORY 68 O.S. 2001, Section 410, is amended to read as follows:

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

information directly concerned in the enforcement of ~~this article~~ the Cigarette and Tobacco Products Tax Codes.

SECTION 26. AMENDATORY 68 O.S. 2001, Section 412, as amended by Section 9, Chapter 272, O.S.L. 2006 (68 O.S. Supp. 2006, Section 412), is amended to read as follows:

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

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

SECTION 27. AMENDATORY 68 O.S. 2001, Section 413, is amended to read as follows:

Section 413. (a) The right of a ~~common~~ carrier in this state to carry unstamped cigars and tobacco products shall not be affected hereby; provided, that ~~common~~ carriers delivering untaxed tobacco products to any person in this state for the purpose of selling

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

or consuming untaxed tobacco products in this state in violation of ~~this article~~ the Cigarette and Tobacco Products Tax Codes shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 417 of this title. Provided further, that should any such carrier sell any cigars and tobacco products in this state, such sale shall be subject to the stamp tax and other provisions of ~~this article~~ the Cigarette and Tobacco Products Tax Codes and to the rules and regulations of the Tax Commission. The ~~common~~ carrier transporting tobacco products and cigars to a point within this state, or a bonded warehouseman or bailee having in its possession tobacco products and cigars, shall transmit to the Tax Commission a statement of such consignment of tobacco products and cigars, showing the date, point of origin, point of delivery, and to whom delivered. All ~~common~~ carriers or bailees or warehousemen shall permit an examination by the Tax Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of tobacco products and cigars. Any person who fails or refuses to transmit to the Tax Commission the aforesaid statement, or who refuses to permit the examination of his or her records by the Tax Commission or its legally authorized agents or representatives, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars ($500.00) and not less than Twenty-five Dollars ($25.00).

(b) Wholesalers~~, jobbers, and/or warehousemen~~ shall make a monthly report to the Tax Commission. Such report must be received in the office of the Tax Commission not later than the fifteenth day of each month, showing purchases and invoices of all merchandise coming under ~~this article~~ the Cigarette and Tobacco Products Tax Codes,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

for the previous month; and the report shall also show the invoice number, the name and address of the consignee and consignor, the date, and such other information as may be requested by the Tax Commission. Retailers or consumers purchasing tobacco products and cigars in drop shipments shall be required to make monthly reports to the ~~Oklahoma~~ Tax Commission, as are required of ~~wholesale dealers~~ wholesalers.

SECTION 28. AMENDATORY 68 O.S. 2001, Section 415, is amended to read as follows:

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

A. Every dealer and wholesaler of tobacco products ~~covered~~ in this ~~article~~ state, as a condition of carrying on such business, shall ~~be required to purchase a tobacco~~ annually secure from the Oklahoma Tax Commission a written license ~~annually, the cost of which~~ and shall ~~be Five Dollars ($5.00)~~ pay an annual fee of Two Hundred Fifty Dollars ($250.00); provided, such fee shall not be applicable if paid pursuant to Section 304 of this title. The Tax Commission shall promulgate rules which provide a procedure for the issuance of a joint license for any wholesaler making application pursuant to this section and Section 304 of this title. Application for such license shall be made upon such forms as prescribed by the Tax Commission, which shall include as a required part of the application, the applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for purposes of enforcement of the provisions of the Cigarette and Tobacco Products Tax Codes. The applicant, by submitting the application, further agrees to abide by the provisions of the Cigarette and Tobacco Products Tax Codes and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

the rules promulgated by the Tax Commission. This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where tobacco products are sold. If tobacco products are sold on or from any vehicle, the vehicle shall constitute a place of business, and the license fee of Two Hundred Fifty Dollars ($250.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular license fee is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars ($10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars ($30.00). Application for such license shall be made upon such forms as prescribed by the Tax Commission, which shall include, as a required part of the application, the applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for purposes of enforcement of the provisions of the Cigarette and Tobacco Products Tax Codes. The applicant, by submitting the application, further agrees to abide by the provisions of the Cigarette and Tobacco Products Tax Codes and the rules and regulations promulgated by the Tax Commission with reference thereto. Further, the applicant agrees that it shall not purchase any tobacco products for resale from a supplier that does not hold a current wholesaler's license issued pursuant to this section,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

and the applicant agrees to only sell cigarettes and tobacco products to consumers. Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where tobacco products are sold.

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

D. 1. All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to another person. Such licenses may be transferred from one location to another location after an application has been filed with

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

the Tax Commission requesting such transfer and after the approval of the Tax Commission.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

SECTION 29. 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~~ the Cigarette and Tobacco Products Tax Codes 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~~ the Cigarette and Tobacco Products Tax Codes, 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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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, 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 appraisement thereof, which inventory shall be based on the usual and ordinary retail price or value of the articles seized, or 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~~ <u>403.2</u> of this ~~act~~ <u>title</u>. 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,

<u>UNDERLINED</u> language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ 403.2 of this ~~act~~ 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 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~~ distribute cash and the proceeds of the sale of such cigarettes, vehicles and other property as follows, in the order indicated:

a. to the bona fide or innocent owner, conditional sales vendor, or mortgagee of the property, if any, up to the amount of such person's

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

interest in the property, when the court declaring the forfeiture orders a distribution to such person,

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

c. the balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the investigating law enforcement agency; one-third (1/3) of such fund to be used and maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. If the petitioner is not the district attorney, then the one-third (1/3) which would have been designated to that office shall be distributed to the petitioner. Monies distributed to the jail maintenance fund shall be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lienholder, mortgagee, or vendor and if such funds are available in such fund.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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~~ the Cigarette and Tobacco Products Tax Codes shall only apply to persons having possession of or transporting tobacco products with intent to barter, sell or give away the same.

SECTION 30. AMENDATORY 68 O.S. 2001, Section 418, is amended to read as follows:

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

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

C. Any retailer violating the provisions of Section ~~4~~ 403.2 of this ~~act~~ title shall:

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

D. Any wholesaler, distributing agent or dealer violating the provisions of Section ~~4~~ 403.2 of this ~~act~~ 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 ~~7~~ 305.2 of this ~~act~~ title.

E. The Oklahoma Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of paragraph 3 of subsection C of this section or a person punished for a violation pursuant to the provisions of subsection D 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~~ the Cigarette and Tobacco Products Tax Codes for a period of ten (10) years.

SECTION 31. AMENDATORY Section 8, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006, Section 420.1), is amended to read as follows:

Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco products, as defined in ~~Section 401 of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco Products Tax Codes, shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the ~~distributor~~ wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

documentation shall contain the ~~distributor's~~ wholesaler's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction.

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

SECTION 32. AMENDATORY 68 O.S. 2001, Section 421, is amended to read as follows:

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

SECTION 33. AMENDATORY 68 O.S. 2001, Section 422, is amended to read as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

SECTION 34. AMENDATORY 68 O.S. 2001, Section 424, is amended to read as follows:

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

SECTION 35. AMENDATORY 68 O.S. 2001, Section 425, is amended to read as follows:

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

1. ~~"Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 1 of this act~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

~~during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;~~

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

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

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

~~b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation,~~

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

~~7.~~ 2. "Contraband tobacco products" means untaxed tobacco products for which taxes are required to be paid pursuant to the provisions of ~~Sections 9 through 12 of this act or Section 401 et seq. of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco Products Tax Codes and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 415 of Title 68 of the Oklahoma Statutes; provided, contraband tobacco products shall not include untaxed tobacco products sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

with ~~Sections 419 through 421 of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco Products Tax Codes; and

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

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

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

SECTION 36. AMENDATORY 68 O.S. 2001, Section 427, is amended to read as follows:

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

SECTION 37. AMENDATORY 68 O.S. 2001, Section 427.1, is amended to read as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Section 427.1 If a wholesaler~~, jobber or warehouseman~~ timely accepts documentation as prescribed by the Oklahoma Tax Commission from a person claiming that the tobacco products will be sold at a tribally owned or licensed store, the wholesaler~~, jobber or warehouseman~~ shall be relieved of any liability for any additional tax due or required to be collected should it later be determined that the tobacco products were not purchased for sale at a tribally owned or licensed store.

SECTION 38. AMENDATORY 68 O.S. 2001, Section 427.2, is amended to read as follows:

Section 427.2 Any person determined to have violated the provisions of ~~Section 13 or 14 of this act shall~~ the Cigarette and Tobacco Products Tax Codes may have ~~their~~ the person's license suspended for a period of up to six (6) months ~~and a~~ or cancelled. A subsequent violation by ~~said~~ any person whose license has previously been suspended shall be grounds to permanently cancel the license.

SECTION 39. AMENDATORY 68 O.S. 2001, Section 428, is amended to read as follows:

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

B. Any peace officer of this state, including, but not limited to, officers of the Department of Public Safety or the Oklahoma State Bureau of Investigation, any sheriff, any salaried deputy sheriff or any municipal police officer is authorized to stop any vehicle upon any road or highway of this state in order to inspect the bill of lading or to take such action as may be necessary to determine if untaxed tobacco products are being sold or shipped in violation of the provisions of this section. Such officers shall also have the duty to cooperate with the Oklahoma Tax Commission to enforce the provisions of this act.

SECTION 40. This act shall become effective November 1, 2007.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 04-18-07 - DO PASS, As Amended.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.