

THE HOUSE OF REPRESENTATIVES
Tuesday, April 15, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 1956

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1956 - By:
MAZZEI AND WILSON of the Senate and TERRILL AND JONES of the House.

An Act relating to revenue and taxation; amending 47 O.S. 2001, Section 1121, which relates to payment for vehicle registrations; providing exemption from certain costs or charges related to dishonored checks; amending 47 O.S. 2001, Section 1128, which relates to motor vehicles; modifying provisions related to in-transit license plates; authorizing certain registration fee for boat trailers and utility-type trailers; amending 47 O.S. 2001, Section 1140, as last amended by Section 77, Chapter 1, O.S.L. 2005 (47 O.S. Supp. 2007, Section 1140), which relates to motor license agencies; providing exemption from certain prohibition on locations of motor license agencies; amending 68 O.S. 2001, Section 118, as last amended by Section 3, Chapter 335, O.S.L. 2007 (68 O.S. Supp. 2007, Section 118), which relates to revenue estimation; making certain date certain; amending 68 O.S. 2001, Section 205, as last amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007, Section 205), which relates to tax records; allowing the providing of information to certain groups; amending Section 4, Chapter 475, O.S.L. 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2007, Section 312.1), which relates to records and procedures; modifying provision related to disclosure of information to law enforcement officials; amending 68 O.S. 2001, Section 316, as amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007, Section 316), which relates to certain offenses related to cigarette taxation; modifying statutory reference; imposing limitation upon sales of cigarettes by wholesalers to tribal retailers; defining terms; prohibiting sales of cigarettes at reduced tax rates; providing exception; imposing limitations with respect to quantity; authorizing requests for allowances by Tax Commission; requiring certain information to be provided regarding cigarette sales for certain period of time; providing for certain computations; prescribing procedures; requiring communications by wholesalers to Tax Commission; providing for revocation of

license; imposing liability for sales of certain cigarettes; imposing presumption; authorizing administrative penalties; amending Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1354.27), which relates to sourcing; modifying time period during which sourcing rule applies; amending Section 3, Chapter 503, O.S.L. 2002 (68 O.S. Supp. 2007, Section 2358.6), which relates to certain bonus depreciation adjustments; providing for increase of federal taxable income of certain entities for purposes of Economic Stimulus Act of 2008; requiring filing of amended returns; amending Section 4, Chapter 42, 2nd Extraordinary Session, O.S.L. 2006, as amended by Section 2, Chapter 346, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A), which relates to certain determinations by State Board of Equalization; modifying method and timing of revenue determinations; providing for codification; providing an effective date; and declaring an emergency.

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

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

3 Section 1121. A. When, at the time of registration of any vehicle, payment is made
4 by check for fees and taxes and the check is not paid by the bank on which drawn for any
5 reason, after said check has been presented for payment a second time, such certificate of
6 registration and other such instruments issued at the time of registration of such vehicle
7 shall be invalid. The motor license agent shall transmit all documents and the
8 dishonored check to the Oklahoma Tax Commission for credit to the motor license agent's
9 account. The Commission may enter into a contract for the collection of dishonored
10 checks and canceled instruments. In all such cases, such vehicles shall be subject to the
11 license fees and penalties provided in this act as though no attempt to register the

1 vehicle had been made and the motor license agent shall charge the person issuing the
2 check a fee of Twenty-five Dollars (\$25.00) for each check to cover the costs of processing
3 each returned check. An individual who subsequently purchases any such vehicle shall
4 not be required, as a condition for registration of the vehicle, to pay any ~~penalties~~
5 ~~imposed by this section~~ tax, fee or penalty due resulting from the dishonored check.

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

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

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

1 Section 1128. A. Every person manufacturing or having a contract to sell new
2 vehicles in this state shall file a verified application for a general distinctive number for
3 all new vehicles owned or controlled by the manufacturer or dealer; provided, the
4 Oklahoma Tax Commission shall issue a license to sell such new motor vehicles only for
5 those types of new vehicles for which the applicant has a sales contract or franchise;
6 provided, further, that no license shall be issued to any applicant that has not complied
7 with the provisions of Sections 561 through 568 of this title and does not hold a current
8 license issued by the Oklahoma Motor Vehicle Commission pursuant thereto. A separate
9 manufacturer's or dealer's license shall be required for each separate county within
10 which such manufacturer or dealer has an established place of business and upon
11 payment of a license fee of Ten Dollars (\$10.00) there shall be assigned and issued to
12 such manufacturer or dealer a Certificate of Registration and one license plate which
13 shall be displayed upon each vehicle of such manufacturer or dealer when same is
14 operated, driven, or displayed on any street, road, or highway, in the same manner as
15 hereinbefore provided for vehicles owned by other persons. Such a manufacturer or
16 dealer in new vehicles may obtain as many additional license plates as may be desired,
17 upon the payment of the sum of Ten Dollars (\$10.00) for each additional plate; provided
18 that no such license plate issued to any manufacturer or dealer shall be used or displayed
19 upon any secondhand or used vehicle, or upon any new vehicle which is used for a service
20 car, or private use, or for hire. Any person, with consent of the dealer, may operate a
21 motor vehicle, with the dealer's tag affixed, while contemplating purchase, so long as this
22 intent is limited to a consecutive seventy-two-hour period, or a weekend. An individual

1 holding a valid salesman's license issued by the Oklahoma Motor Vehicle Commission
2 shall not be subject to this limitation. If such person also buys and sells used vehicles, he
3 shall, after obtaining his new motor vehicle dealer's license from the Oklahoma Motor
4 Vehicle Commission, also obtain a used motor vehicle dealer's license, from the Used
5 Motor Vehicle and Parts Commission, the cost of which shall be as prescribed in Section
6 1101 et seq. of this title.

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

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

1 a used dealer's license plate. Dealers failing to comply with provisions of this section
2 shall be responsible for all taxes due on such sales or on such vehicles.

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

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

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

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

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

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

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

20 Section 1140. A. In municipalities having a population in excess of eight thousand
21 five hundred (8,500) located in a county having a population in excess of one hundred
22 thirty thousand (130,000), according to the latest Federal Decennial Census, the

1 Oklahoma Tax Commission shall adopt rules prescribing minimum qualifications and
2 requirements for locating motor license agencies and for persons applying for
3 appointment as a motor license agent. Such qualifications and requirements shall
4 include, but not be limited to, the following:

- 5 1. Necessary job skills and experience;
- 6 2. Minimum office hours;
- 7 3. Provision for sufficient staffing, equipment, office space and parking to provide
8 maximum efficiency and maximum convenience to the public;
- 9 4. Obtainment of a faithful performance surety bond as provided for by law;
- 10 5. A requirement that operation of a motor license agency be the primary source of
11 income for said agent;
- 12 6. That the applicant has not been convicted of a felony and that no felony charges
13 are pending against the applicant;
- 14 7. That a complete financial statement be submitted by the applicant on forms
15 provided by the Tax Commission;
- 16 8. That a report of the applicant's credit history be obtained through the
17 appropriate credit bureau; and
- 18 9. That the location specified in the application for appointment as a motor license
19 agent not be owned by a member of the Oklahoma Legislature or any person related to a
20 member of the Oklahoma Legislature within the third degree by consanguinity or affinity
21 and that the location not be within a three-mile radius of an existing motor license
22 agency unless the applicant is assuming the location of an operating agency. The Tax

1 Commission may, at its discretion, approve the relocation of an existing agency within a
2 three-mile radius of another existing agency only if a naturally intervening geographic
3 barrier within that radius causes the locations to be separated by not less than three (3)
4 miles of roadway by the most direct route.

5 After the necessary information has been forwarded to the Tax Commission, each
6 applicant shall be interviewed by the Tax Commission or its designees and each item of
7 information shall be reviewed.

8 The qualifications and requirements specified in this subsection shall apply only to
9 persons making application to be appointed as motor license agents on or after June 25,
10 1987.

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

15 Upon application by a person to serve as a motor license agent, in such counties, the
16 Tax Commission shall make a determination whether such person and such location
17 meets the qualifications and requirements prescribed herein and, if such be the case,
18 shall appoint such person to serve as a motor license agent.

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

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

4 B. In all other counties of this state and in municipalities having a population of
5 less than eight thousand five hundred (8,500) located in a county having a population in
6 excess of one hundred thirty thousand (130,000), according to the latest Federal
7 Decennial Census, the Tax Commission shall appoint as many motor license agents as it
8 deems necessary to carry out the provisions of the Motor Vehicle License and
9 Registration Act. Provided, that in counties with a population in excess of twenty-five
10 thousand (25,000) persons, according to the latest Federal Decennial Census, having only
11 one motor license agent serving the county, the Tax Commission shall establish at least
12 one additional agency to serve the county.

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

1 Provided, the Tax Commission may operate a motor license agency in any county where a
2 vacancy occurs.

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

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

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

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

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

4 1. Any member of the Oklahoma Legislature;

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

7 3. Any employee of the Tax Commission.

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

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

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

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

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

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

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

17 C. For the purpose of providing an annual forecast of gross production tax revenues
18 from the production of natural and casinghead gas to the Office of State Finance, the Tax
19 Commission shall subscribe to appropriate reference materials which provide economic
20 outlook of future gas prices that have most closely followed the historical trend of
21 Oklahoma gas prices. To determine the average differential between the published
22 forecasted prices and Oklahoma gas prices, the Tax Commission shall compare prices in

1 at least twenty-four (24) of the immediate thirty-six (36) previous months of production.
2 The Tax Commission shall utilize the procedures provided herein to forecast the
3 collection of gross production tax revenues from the production of natural and casinghead
4 gas for the fiscal year beginning July 1, 2005, and each fiscal year thereafter.

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

8 Section 205. A. The records and files of the Oklahoma Tax Commission concerning
9 the administration of the Uniform Tax Procedure Code or of any state tax law shall be
10 considered confidential and privileged, except as otherwise provided for by law, and
11 neither the Tax Commission nor any employee engaged in the administration of the Tax
12 Commission or charged with the custody of any such records or files nor any person who
13 may have secured information from the Tax Commission shall disclose any information
14 obtained from the records or files or from any examination or inspection of the premises
15 or property of any person.

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

1 proceeding will affect the validity or the amount of the claim of the state pursuant to any
2 state tax law, or when the information contained in the records or files constitutes
3 evidence of violation of the provisions of the Uniform Tax Procedure Code or of any state
4 tax law.

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

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

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

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

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

20 5. The disclosing of information or evidence to the Oklahoma State Bureau of
21 Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous
22 Drugs Control, any district attorney, or agent of any federal law enforcement agency

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

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

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

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

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

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

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

20 11. The furnishing of information to an Oklahoma wholesaler of low-point beer,
21 licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma
22 Statutes, or an association or organization whose membership is comprised of such

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

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

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

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

20 15. After the filing of a tax warrant pursuant to law, the furnishing of information
21 upon written request by any member of the general public as to any agreement entered

1 into by the Tax Commission concerning a compromise of tax liability for an amount less
2 than the amount of tax liability stated on such warrant;

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

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

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

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

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

17 21. The disclosure of information directly involved in the resolution of the protest
18 by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for
19 refund filed by a taxpayer, including the disclosure of the pendency of an administrative
20 proceeding involving such protest or claim, to a person called by the Tax Commission as
21 an expert witness or as a witness whose area of knowledge or expertise specifically
22 addresses the issue addressed in the protest or claim for refund. Such disclosure to a

1 witness shall be limited to information pertaining to the specific knowledge of that
2 witness as to the transaction or relationship between taxpayer and witness;

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

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

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

18 25. The furnishing of information as to the amount of state revenue affected by the
19 issuance or granting of any tax permit, license, exemption, deduction, credit or other tax
20 preference by the Tax Commission as provided for by law. Such information shall be
21 limited to the type of permit, license, exemption, deduction, credit or other tax preference
22 issued or granted, the date and duration of such permit, license, exemption, deduction,

1 credit or other tax preference and the amount of such revenue. The provisions of this
2 paragraph shall not authorize the disclosure of the name of the person issued such
3 permit, license, exemption, deduction, credit or other tax preference, or the name of the
4 business entity authorized to engage in business pursuant to the permit, license,
5 exemption, deduction, credit or other tax preference;

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

1 and order shall be served upon the person or entity whose records were examined, along
2 with a copy of the records or information actually provided by the Tax Commission;

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

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

1 the amount of investments made by a qualified venture capital
2 company, qualified small business capital company, or qualified rural
3 small business capital company; or

4 28. The disclosure of specific information as required by Section ~~4~~ 46 of ~~this act~~
5 Title 62 of the Oklahoma Statutes.

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

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

14 E. The Tax Commission shall prepare or cause to be prepared a report on all
15 provisions of state tax law that reduce state revenue through exclusions, deductions,
16 credits, exemptions, deferrals or other preferential tax treatments. The report shall be
17 prepared not later than October 1 of each even-numbered year and shall be submitted to
18 the Governor, the President Pro Tempore of the Senate and the Speaker of the House of
19 Representatives. The Tax Commission may prepare and submit supplements to the
20 report at other times of the year if additional or updated information relevant to the
21 report becomes available. The report shall include, for the previous fiscal year, the Tax
22 Commission's best estimate of the amount of state revenue that would have been

1 collected but for the existence of each such exclusion, deduction, credit, exemption,
2 deferral or other preferential tax treatment allowed by law. The Tax Commission may
3 request the assistance of other state agencies as may be needed to prepare the report.
4 The Tax Commission is authorized to require any recipient of a tax incentive or tax
5 expenditure to report to the Tax Commission such information as requested so that the
6 Tax Commission may provide the information to the Incentive Review Committee or
7 fulfill its obligations as required by this subsection. The Tax Commission may require
8 this information to be submitted in an electronic format. The Tax Commission may
9 disallow any claim of a person for a tax incentive due to its failure to file a report as
10 required under the authority of this subsection. The Tax Commission may consult with
11 the Incentive Review Committee to develop a reporting system to obtain the information
12 requested in a manner that is the least burdensome on the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Section 316. A. Any person who shall:

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

- 1 2. Sell cigarettes in quantities less than an individual package;
- 2 3. Knowingly consume, use or smoke any cigarettes upon which a tax is required to
- 3 be paid without a stamp being affixed upon each individual package;
- 4 4. Knowingly cancel or mutilate any stamp affixed to any individual package of
- 5 cigarettes for the purpose of concealing any violation of Section 301 et seq. of this title or
- 6 with any other fraudulent intent;
- 7 5. Use any artful device or deceptive practice to conceal any violation of Section 301
- 8 et seq. of this title;
- 9 6. Refuse to surrender to the Oklahoma Tax Commission upon demand any
- 10 cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or
- 11 7. Make a first sale of cigarettes without a stamp being then and there affixed to
- 12 each individual package;
- 13 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more
- 14 than Two Hundred Dollars (\$200.00), where specific penalties are not otherwise
- 15 provided.
- 16 B. Any distributor, wholesale dealer, retail dealer or distributing agent who shall:
- 17 1. Commit any of the acts specifically enumerated in subsection A of this section,
- 18 where such acts are applicable to such person;
- 19 2. Sell any cigarettes upon which tax is required to be paid by Section 301 et seq. of
- 20 this title without at the time of making such sale having a valid license;
- 21 3. Make a first sale of cigarettes without at the time of first sale having a license
- 22 posted so as to be easily seen by the public; or

1 4. Fail to deliver an invoice required by law to a purchaser of cigarettes;
2 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine
3 of not more than Two Hundred Dollars (\$200.00), where specific penalties are not
4 otherwise provided.

5 C. Any distributing agent who shall:

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

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

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

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

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

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

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

21 E. Any wholesaler, jobber or warehouseman violating the provisions of Section
22 305.1 of this title shall:

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

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

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

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

13 G. Whoever, with intent to defraud Oklahoma:

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

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

19 3. Fails to comply with any requirement of Section 301 et seq. of this title;
20 shall, for each such offense, be fined not more than Ten Thousand Dollars (\$10,000.00),
21 or imprisoned not more than five (5) years, or both.

1 H. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed
2 upon the person by Section 301 et seq. of this title, or to do, or cause to be done, any of
3 the things required by Section 301 et seq. of this title, or does anything prohibited by
4 Section 301 et seq. of this title, shall, in addition to any other penalty provided in Section
5 301 et seq. of this title, pay an administrative penalty of One Thousand Dollars
6 (\$1,000.00).

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

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

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

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~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

19 4. A subsequent violation with a quantity of two cartons of cigarettes or more, or
20 the equivalent amount of other cigarettes shall be punishable by a fine not to exceed
21 Fifty Thousand Dollars (\$50,000.00) or imprisonment not to exceed five (5) years, or both

1 the fine and imprisonment, and shall also result in the revocation by the Tax
2 Commission of the manufacturer, distributor, or retailer license.

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

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

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

13 B. For purposes of this section:

14 1. “Pack” means a sealed, original package, containing twenty or twenty-five
15 cigarettes, to which the required tax stamp is affixed;

16 2. “Reduced tax rate” means the tax rate provided by Section 349 of Title 68 of the
17 Oklahoma Statutes and the fees in lieu of tax provided by compacts entered into between
18 the State of Oklahoma and a federally recognized Indian tribe or nation that are less
19 than the highest rate provided by the compacts; and

20 3. “Tribal retailer” means a store or place of business which is duly licensed by a
21 federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to

1 conduct business located on Indian country within the territorial jurisdiction of that tribe
2 or nation.

3 C. No wholesaler may sell packs of cigarettes at a reduced tax rate to any tribal
4 retailer, unless the name of the tribal retailer appearing on the order and/or invoice to be
5 issued on the transaction also appears on the list of tribal retailers compiled and
6 furnished by the Oklahoma Tax Commission to licensed wholesalers. For purposes of
7 compliance with this section, wholesalers are entitled to rely on the accuracy of the list of
8 tribal retailers compiled and furnished by the Tax Commission.

9 D. No wholesaler may sell to any tribal retailer, in any one (1) calendar month,
10 packs of cigarettes at a reduced tax rate in a quantity which exceeds one-twelfth (1/12) of
11 a sum equal to the total amount of packs of cigarettes sold by the wholesaler to that
12 tribal retailer in calendar year 2004, plus ten percent (10%); provided, however, that
13 upon request to the Tax Commission, proposed sales in excess of the allowance may be
14 permitted upon a showing of good cause, which must include documented proof that the
15 tribal retailer attempting the purchase has offered or will offer the packs of cigarettes for
16 sale to consumers at the location of the tribal retailer.

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

1 F. In the event that a wholesaler desires to sell to a tribal retailer that it did not
2 sell to in calendar year 2004, the wholesaler shall request from the Tax Commission a
3 computation of the amount of packs of cigarettes purchased by the tribal retailer in
4 calendar year 2004. The request shall be accompanied by the written consent of the
5 tribal retailer to disclose the statistical information furnished by wholesalers concerning
6 the tribal retailer. The Tax Commission shall furnish the wholesaler with a computation
7 of the amount of packs of cigarettes that may be sold to such tribal retailer at a reduced
8 tax rate, unless an increased allowance is requested and granted under the procedures
9 specified by subsection D of this section.

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

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

1 I. Wholesalers are subject to revocation of their cigarette and/or tobacco products
2 licenses, sales tax permits and any other licenses or permits issued to such wholesalers
3 by the Tax Commission, upon the determination that such wholesalers have violated any
4 of the provisions of this section, and/or any other state tax law and/or rule of the Tax
5 Commission applicable to such wholesalers. Such licensure revocation is in addition to,
6 and not to the exclusion of, any other remedies of the Tax Commission including, but not
7 limited to, liability for the cigarette stamp tax or compact payment in lieu thereof upon
8 sales of cigarettes to tribal retailers at rates which are in violation of this section.

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

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

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

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

3 2. When the product is not received by the purchaser at a business location of the
4 seller, the sale is sourced to the location where receipt by the purchaser, or the
5 purchaser's donee, designated as such by the purchaser, occurs, including the location
6 indicated by instructions for delivery to the purchaser or donee, known to the seller.

7 Provided, this subsection shall not apply to florists until January 1, ~~2009~~ 2011. Prior to
8 that date, all sales by florists shall be sourced to its business location;

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

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

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

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

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

7 1. For a lease or rental that requires recurring periodic payments, the first
8 periodic payment is sourced the same as a retail sale in accordance with the provisions of
9 subsection A of this section. Periodic payments made subsequent to the first payment
10 are sourced to the primary property location for each period covered by the payment.

11 The primary property location shall be as indicated by an address for the property
12 provided by the lessee that is available to the lessor from its records maintained in the
13 ordinary course of business, when use of this address does not constitute bad faith. The
14 property location shall not be altered by intermittent use at different locations, such as
15 use of business property that accompanies employees on business trips and service calls;
16 and

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

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

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

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

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

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

16 D. The retail sale, including lease or rental, of transportation equipment shall be
17 sourced the same as a retail sale in accordance with the provisions of subsection A of this
18 section, notwithstanding the exclusion of lease or rental in subsection A of this section.

19 “Transportation equipment” means any of the following:

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

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

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

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

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

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

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

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

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

1 Section 2358.6 A. For income tax returns filed after September 10, 2001, by
2 corporations and fiduciaries, federal taxable income shall be increased by eighty percent
3 (80%) of any amount of bonus depreciation received under the federal Job Creation and
4 Worker Assistance Act of 2002, under Section 168(k) or Section 1400L of the Internal
5 Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001,
6 and before September 11, 2004.

7 B. For income tax returns filed after December 31, 2007, by corporations and
8 fiduciaries, federal taxable income shall be increased by eighty percent (80%) of any
9 amount of bonus depreciation received under the federal Economic Stimulus Act of 2008,
10 under Section 168(k) or Section 1400L of the Internal Revenue Code of 1986, as
11 amended, for assets placed in service after December 31, 2007, and before January 1,
12 2009.

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

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

1 ~~D.~~ E. A corporation or fiduciary filing a return for which federal taxable income is
2 not increased as provided in subsection A of this section prior to October 1, 2002, shall
3 file an amended return reflecting such increase not later than June 30, 2003. The
4 Oklahoma Tax Commission shall not assess penalties or interest with respect to the
5 failure to reflect such increase if a correct amended return is filed as required herein. A
6 corporation or fiduciary filing a return for which federal taxable income is not increased
7 as provided for in subsection B of this section prior to October 1, 2008, shall file an
8 amended return reflecting such increase not later than June 30, 2009. The Oklahoma
9 Tax Commission shall not assess penalties or interest with respect to the failure to
10 reflect such increase if a correct amended return is filed as required herein.

11 SECTION 12. AMENDATORY Section 4, Chapter 42, 2nd Extraordinary
12 Session, O.S.L. 2006, as amended by Section 2, Chapter 346, O.S.L. 2007 (68 O.S. Supp.
13 2007, Section 2355.1A), is amended to read as follows:

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

21 B. In addition to any other duties prescribed by law, at the meeting required by
22 paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in

1 December ~~2007~~ 2008, and for any subsequent December meeting of the State Board of
2 Equalization if the top marginal income tax rate prescribed by subparagraph (h) of
3 paragraphs 1 and 2 of subsection B of Section 2355 of this title has not become effective,
4 the State Board of Equalization shall determine:

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

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

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

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

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

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

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

21 2. The amount by which the income tax revenue for the tax year ~~2009~~ which will
22 begin on the January 1 date immediately following such February meeting is estimated

1 to be reduced by the increase in the standard deduction provided in paragraph 2 of
2 subsection E of Section 2358 of this title plus an amount equal to four percent (4%) of the
3 revised General Revenue Fund estimate for the then current fiscal year 2008 in order for
4 a top marginal income tax rate of five and twenty-five hundredths percent (5.25%) to be
5 effective.

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

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

18 ~~C. D.~~ If the Board makes a finding that applicable revenue growth in the state does
19 not authorize the implementation of the provisions of subparagraph (h) of paragraphs 1
20 and 2 of subsection B of Section 2355 of this title beginning with calendar year ~~2009~~ 2010
21 pursuant to the provisions of subsection ~~B~~ C of this section, the procedures prescribed by
22 subsection A ~~and~~, subsection B, and subsection C of this section shall be repeated by the

1 State Board of Equalization for each successive two-year comparison. Once the income
2 tax rate otherwise authorized pursuant to subparagraph (h) of paragraphs 1 and 2 of
3 subsection B of Section 2355 of this title has been implemented as a result of the analysis
4 of the General Revenue Fund estimates together with the fiscal impact of the standard
5 deduction as authorized pursuant to paragraph 2 of subsection E of Section 2358 of this
6 title, such income tax rate shall be in effect for ~~all subsequent~~ the tax years as prescribed
7 by subparagraph (h) of paragraphs 1 and 2 of subsection B of Section 2355 of this title.

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
17 dated 04-14-08 - 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.