

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 3110

By: Peterson (Ron)

4  
5 AS INTRODUCED

6  
7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Sections 304, as last amended by Section  
9 6, Chapter 479, O.S.L. 2005, 316, as amended by  
10 Section 5, Chapter 475, O.S.L. 2003, Section 7,  
11 Chapter 266, O.S.L. 2004, and 418 (68 O.S. Supp.  
12 2007, Sections 304, 316 and 360.7), which relate to  
13 sale of cigarettes; increasing certain fee; providing  
14 for application forms; requiring applicants to submit  
15 to certain jurisdiction codes and rules; restricting  
16 sale of cigarettes to certain entities; modifying and  
17 expanding prohibited acts; providing penalty;  
18 increasing certain penalties; requiring license  
19 revocation under certain circumstances; removing  
20 authorization for certain actions relating to  
21 contraband products; increasing certain penalties;  
22 and providing an effective date.

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

24 SECTION 1. AMENDATORY 68 O.S. 2001, Section 304, as last  
amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2007,  
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

1 therefor an annual fee of ~~Twenty five Dollars (\$25.00)~~ Two Hundred  
2 Fifty Dollars (\$250.00). Application for such license shall be made  
3 upon such forms as prescribed by the Oklahoma Tax Commission, which  
4 shall include, as a required part of the application, the agreement  
5 of the applicant to the jurisdiction of the Tax Commission and the  
6 courts of this state for the purpose of enforcement of the  
7 provisions of the Cigarette and Tobacco Products Tax Codes. The  
8 applicant, by submitting the application, further agrees to abide by  
9 the provisions of the Cigarette and Tobacco Products Tax Codes, and  
10 the rules promulgated by the Tax Commission with reference thereto.  
11 Further, the applicant agrees that it shall only sell cigarettes or  
12 tobacco products to a licensed retailer or a tribally owned or  
13 licensed store. This license, which will be for the ensuing year,  
14 must at all times be displayed in a conspicuous place so that it can  
15 be seen. Persons operating more than one place of business must  
16 secure a license for each place of business. "Place of business"  
17 shall be construed to include the place where orders are received,  
18 or where cigarettes are sold. If cigarettes are sold on or from any  
19 vehicle, the vehicle shall constitute a place of business and the  
20 regular license fee of ~~Twenty five Dollars (\$25.00)~~ shall be paid  
21 with respect thereto. However, if the vehicle is owned or operated  
22 by a place of business for which the regular ~~Twenty five Dollars~~  
23 ~~(\$25.00)~~ fee is paid, the annual fee for the license with respect to  
24 such vehicle shall be only Ten Dollars (\$10.00). The expiration for

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

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

21        B. Every retailer in this state, as a condition of carrying on  
22 such business, shall secure from the Tax Commission a license and  
23 shall pay therefor a fee of Thirty Dollars (\$30.00). Such license,  
24 which will be for the ensuing three (3) years, must at all times be

1 displayed in a conspicuous place so that it can be seen. Upon  
2 expiration of such license, the retailer to whom such license was  
3 issued may obtain a renewal license which shall be valid for three  
4 (3) years or until expiration of the retailer's sales tax permit,  
5 whichever is earlier, after which a renewal license shall be valid  
6 for three (3) years. The manner and prorated fee for renewals shall  
7 be prescribed by the Tax Commission. Every person operating under  
8 such license as a retailer and who owns or operates more than one  
9 place of business must secure a license for each place of business.  
10 "Place of business" shall be construed to include places where  
11 orders are received or where cigarettes are sold.

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

23 D. 1. All wholesale, retail, and distributing agent's licenses  
24 shall be nonassignable and nontransferable from one person to

1 another person. Such licenses may be transferred from one location  
2 to another location after an application has been filed with the Tax  
3 Commission requesting such transfer and after the approval of the  
4 Tax Commission.

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

19 E. No license may be granted, maintained or renewed if any of  
20 the following conditions applies to the applicant. For purposes of  
21 this section, "applicant" includes any combination of persons owning  
22 directly or indirectly, in the aggregate, more than ten percent  
23 (10%) of the ownership interests in the applicant:  
24

- 1           1. The applicant owes Five Hundred Dollars (\$500.00) or more in  
2 delinquent cigarette taxes;
- 3           2. The applicant had a cigarette manufacturer, retailer or  
4 distributor license revoked by the Tax Commission within the past  
5 two (2) years;
- 6           3. The applicant has been convicted of a crime relating to  
7 stolen or counterfeit cigarettes, or receiving stolen or counterfeit  
8 cigarettes;
- 9           4. If the applicant is a cigarette manufacturer, the applicant  
10 is neither:
- 11           a. a participating manufacturer as defined in Section II  
12           (jj) of the Master Settlement Agreement as defined in  
13           Section 600.22 of Title 37 of the Oklahoma Statutes,  
14           nor
- 15           b. in full compliance with the provisions of paragraph 2  
16           of subsection A of Section 600.23 of Title 37 of the  
17           Oklahoma Statutes;
- 18           5. If the applicant is a cigarette manufacturer, if any  
19 cigarette imported by such applicant is imported into the United  
20 States in violation of 19 U.S.C., Section 1681a; or
- 21           6. If the applicant is a cigarette manufacturer, if any  
22 cigarette imported or manufactured by the applicant does not fully  
23 comply with the Federal Cigarette Labeling and Advertising Act, 15  
24 U.S.C., Section 1331 et seq.

1 F. No person or entity licensed pursuant to the provisions of  
2 this section shall purchase cigarettes from or sell cigarettes to a  
3 person or entity required to obtain a license unless such person or  
4 entity has obtained such license.

5 G. In addition to any civil or criminal penalty provided by  
6 law, upon a finding that a licensee has violated any provision of  
7 Section 301 et seq. of this title, the Tax Commission may revoke or  
8 suspend the license or licenses of the licensee pursuant to the  
9 procedures applicable to revocation of a license set forth in  
10 Section 316 of this title.

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

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

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

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

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

24

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

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

8       ~~5.~~ 4. Use any artful device or deceptive practice to conceal  
9 any violation of ~~Section 301 et seq. of this title~~ the Cigarette and  
10 Tobacco Products Tax Codes;

11       ~~6.~~ 5. Refuse to surrender to the Oklahoma Tax Commission upon  
12 demand any cigarettes possessed in violation of any provision of  
13 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
14 Tax Codes; or

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

23       B. Any consumer, who shall:  
24

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

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

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

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

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

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

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

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

22        2. Sell any cigarettes upon which tax is required to be paid by  
23 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
24

1 Tax Codes without at the time of making such sale having a valid  
2 license;

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

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

8 shall be guilty of a misdemeanor, and upon conviction thereof shall  
9 be punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~  
10 Ten Thousand Dollars (\$10,000.00) for the first offense, and not  
11 more than Twenty-five Thousand Dollars (\$25,000.00) for the second  
12 offense, where specific penalties are not otherwise provided.

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

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

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

21 shall be guilty of a misdemeanor, and upon conviction shall be  
22 punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~  
23 Ten Thousand Dollars (\$10,000.00) for the first offense, and not

24

1 more than Twenty-five Thousand Dollars (\$25,000.00) for the second  
2 offense.

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

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

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

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

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

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

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

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

22 ~~F.~~ G. The Tax Commission shall immediately revoke the license of  
23 a person punished for a violation pursuant to the provisions of  
24 paragraph 3 of subsection ~~D~~ E of this section or a person punished

1 for a violation pursuant to the provisions of subsection ~~E~~ F of this  
2 section. A person whose license is so revoked shall not be eligible  
3 to receive another license pursuant to the provisions of ~~Section 301~~  
4 ~~et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes  
5 for a period of ten (10) years.

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

7 1. Fails to keep or make any record, return, report, or  
8 inventory, or keeps or makes any false or fraudulent record, return,  
9 report, or inventory, required by ~~Section 301 et seq. of this title~~  
10 the Cigarette and Tobacco Products Tax Codes or rules promulgated  
11 thereunder;

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

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

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

20 ~~H.~~ I. Whoever knowingly omits, neglects, or refuses to comply  
21 with any duty imposed upon the person by ~~Section 301 et seq. of this~~  
22 ~~title~~ the Cigarette and Tobacco Products Tax Codes, or to do, or  
23 cause to be done, any of the things required by ~~Section 301 et seq.~~  
24 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes, or does

1 anything prohibited by ~~Section 301 et seq. of this title~~ the  
2 Cigarette and Tobacco Products Tax Codes, shall, in addition to any  
3 other penalty provided in ~~Section 301 et seq. of this title~~ the  
4 Cigarette and Tobacco Products Tax Codes, pay an administrative  
5 penalty of One Thousand Dollars (\$1,000.00).

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

12 ~~J.~~ K. 1. All cigarettes which are held for sale or distribution  
13 within the borders of Oklahoma, in violation of the requirements of  
14 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
15 Tax Codes, and the machinery used to manufacture counterfeit  
16 cigarettes shall be forfeited to Oklahoma. All cigarettes and  
17 machinery forfeited to Oklahoma under this paragraph shall be  
18 destroyed.

19 2. All fixtures, equipment, and all other materials and personal  
20 property on the premises of any distributor or retailer who, with  
21 intent to defraud the state, fails to keep or make any record,  
22 return, report, or inventory; keeps or makes any false or fraudulent  
23 record, return, report, or inventory required by ~~Section 301 et seq.~~  
24 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes; refuses

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

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

12 1. A first violation with a total quantity of less than two  
13 cartons of cigarettes or the equivalent amount of other cigarettes  
14 shall be punishable by a fine not to exceed ~~One Thousand Dollars~~  
15 ~~(\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) or imprisonment not to  
16 exceed five (5) years, or both the fine and imprisonment;

17 2. A subsequent violation with a total quantity of less than two  
18 cartons of cigarettes, or the equivalent amount of other cigarettes  
19 shall be punishable by a fine not to exceed ~~Five Thousand Dollars~~  
20 ~~(\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or  
21 imprisonment not to exceed five (5) years, or both the fine and the  
22 imprisonment, and shall also result in the revocation by the Tax  
23 Commission of the manufacturer, ~~distributor~~ wholesaler, or retailer  
24 license;

1           3. A first violation with a total quantity of more than two  
2 cartons of cigarettes, or the equivalent amount of other cigarettes,  
3 shall be punishable by a fine not to exceed ~~Two Thousand Dollars~~  
4 ~~(\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or  
5 imprisonment not to exceed five (5) years, or both the fine and  
6 imprisonment; and

7           4. A subsequent violation with a quantity of two cartons of  
8 cigarettes or more, or the equivalent amount of other cigarettes  
9 shall be punishable by a fine not to exceed Fifty Thousand Dollars  
10 (\$50,000.00) or imprisonment not to exceed five (5) years, or both  
11 the fine and imprisonment, and shall also result in the revocation  
12 by the Tax Commission of the manufacturer, ~~distributor~~ wholesaler,  
13 or retailer license.

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

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

1 SECTION 3. AMENDATORY Section 7, Chapter 266, O.S.L.  
2 2004 (68 O.S. Supp. 2007, Section 360.7), is amended to read as  
3 follows:

4 Section 360.7 A. In addition to or in lieu of any other civil  
5 or criminal remedy provided by law, upon a determination that a  
6 stamping agent has violated Section ~~6~~ 360.6 of this ~~act~~ title or any  
7 rule promulgated pursuant to the Master Settlement Agreement  
8 Complementary Act, the Oklahoma Tax Commission may revoke or suspend  
9 the license of the stamping agent. Each stamp affixed and each sale  
10 or offer to sell cigarettes in violation of the Master Settlement  
11 Agreement Complementary Act shall constitute a separate violation.  
12 For each violation, the Oklahoma Tax Commission may also impose a  
13 civil penalty in an amount not to exceed the greater of five hundred  
14 percent (500%) of the retail value of the cigarettes or Five  
15 Thousand Dollars (\$5,000.00) upon a determination of violation of  
16 the Master Settlement Agreement Complementary Act or any rules  
17 promulgated pursuant thereto.

18 B. Any cigarettes that have been sold, offered for sale, or  
19 possessed for sale in this state or imported for personal  
20 consumption in this state, in violation of the Master Settlement  
21 Agreement Complementary Act, shall be deemed contraband pursuant to  
22 the Master Settlement Agreement Complementary Act. Those cigarettes  
23 shall be subject to seizure and forfeiture as provided by this  
24

1 section and all cigarettes so seized and forfeited shall be  
2 destroyed as provided by this section and not resold.

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

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

- 14 a. ~~on a commercial carrier with a proper bill of lading~~  
15 ~~with an out of state destination,~~
- 16 b. ~~when the tax stamp of another state is affixed to each~~  
17 ~~pack of cigarettes or tobacco product transported, or~~
- 18 c. ~~on a commercial carrier with a proper bill of lading~~  
19 ~~to a tobacco product distributor or wholesaler~~  
20 ~~licensed by the Oklahoma Tax Commission, pursuant to~~  
21 ~~Section 304 or 415 of Title 68 of the Oklahoma~~  
22 ~~Statutes, who also distributes cigarettes in a state~~  
23 ~~bordering Oklahoma if, and only if, the packing slip~~  
24 ~~accompanying the shipment indicates the shipment is~~

1           ~~for sale in another state and indicates which state,~~  
2           ~~and the invoice for the shipment also indicates the~~  
3           ~~shipment is for sale in a state other than Oklahoma~~  
4           ~~and identifies the state in which the shipment is to~~  
5           ~~be sold. The time of delivery of the shipments shall~~  
6           ~~be indicated on the bill of lading of the common~~  
7           ~~carrier when delivery is completed. The receiving~~  
8           ~~Oklahoma distributor or wholesaler must, within~~  
9           ~~twenty-four (24) hours of receiving the delivery,~~  
10           ~~affix or cause to be affixed to each package of~~  
11           ~~cigarettes the stamp of the state in which they are to~~  
12           ~~be sold.~~

13           3. All cigarettes, tobacco products, vehicles, and property so  
14 seized shall be listed and appraised by the officer making the  
15 seizure and turned over to the county sheriff of the county in which  
16 the seizure is made and a receipt therefor taken. The person making  
17 the seizure shall immediately make a written report of the seizure,  
18 showing the name of the person making the seizure, the location of  
19 the seizure, the person from whom the property was seized, and an  
20 inventory and appraisal of the property at the usual and ordinary  
21 retail price of the articles received. The report shall be filed  
22 with the Oklahoma Tax Commission and the Attorney General. The  
23 district attorney of the county in which the seizures are made, at  
24 the request of the Oklahoma Tax Commission or Attorney General,

1 shall file in the district court forfeiture proceedings in the name  
2 of the State of Oklahoma, as plaintiff, and in the name of the owner  
3 or person in possession, as defendant, if known, and if unknown or  
4 not susceptible to the jurisdiction of the court, in the name of the  
5 property seized. The clerk of the court shall issue a summons to  
6 the owner or person in whose possession the property was found  
7 directing the owner or person to answer within ten (10) days. At  
8 the forfeiture proceeding, if a distributor or wholesaler  
9 demonstrates through clear and convincing evidence that the  
10 possession of contraband by the distributor or wholesaler was  
11 accidental, the vehicle in which the contraband was being  
12 transported shall not be forfeited. In no case, however, shall  
13 possession of more than twenty (20) cartons of contraband product be  
14 considered by the courts as being possessed accidentally. If the  
15 property is declared forfeited and ordered sold, notice of the sale  
16 shall be posted not less than ten (10) days before the date of sale  
17 in five public places in the county in which the seizures are made.  
18 However, any cigarettes or tobacco products forfeited pursuant to  
19 this section shall be destroyed by the county sheriff. Proceeds of  
20 the sale shall be deposited with the clerk of the court, who shall,  
21 after deducting costs including the costs of prosecution, storage,  
22 and sale, pay the balance to the Oklahoma Tax Commission for deposit  
23 in the Tobacco Settlement Endowment Trust Fund.

24

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

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

9 a. sell or distribute cigarettes, or

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

11 cause to be imported cigarettes that the person knows

12 or should know are intended for distribution or sale

13 in the state in violation of the Master Settlement

14 Agreement Complementary Act. A violation of the act

15 shall be a misdemeanor.

16 2. A person who violates subsection C of Section 4 360.4 of

17 this ~~act~~ title engages in an unfair and deceptive trade practice in

18 violation of the provisions of the Oklahoma Consumer Protection Act.

19 SECTION 4. AMENDATORY 68 O.S. 2001, Section 418, is

20 amended to read as follows:

21 Section 418. A. It shall be unlawful for any person to

22 transport or possess unstamped tobacco products where the tax on

23 such unstamped tobacco products exceeds the sum of One Dollar

24 (\$1.00).

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

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

10 1. For a first offense, be punished by an administrative fine  
11 of not more than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars  
12 (\$1,000.00);

13 2. For a second offense, punished by an administrative fine of  
14 not more than ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars  
15 (\$5,000.00); and

16 3. For a third or subsequent offense, be punished by an  
17 administrative fine of not more than ~~Five Thousand Dollars~~  
18 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00).

19 D. Any wholesaler, distributing agent or dealer violating the  
20 provisions of Section 4 403.2 of this ~~act~~ title shall:

21 1. For a first offense, be punished by an administrative fine  
22 of not more than Five Thousand Dollars (\$5,000.00); and  
23  
24

1           2. For a second or subsequent offense, be punished by an  
2 administrative fine of not more than Twenty Thousand Dollars  
3 (\$20,000.00).  
4 Administrative fines collected pursuant to the provisions of this  
5 subsection shall be deposited to the revolving fund created in  
6 Section 7 305.2 of this ~~act~~ title.

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

15           SECTION 5. This act shall become effective November 1, 2008.

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17           51-2-9293           CJB           01/07/08  
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