

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2016

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending  
8 Section 4, Chapter 475, O.S.L. 2003, as amended by  
9 Section 7, Chapter 479, O.S.L. 2005 and 68 O.S. 2001,  
10 Section 316, as amended by Section 5, Chapter 475,  
11 O.S.L. 2003 (68 O.S. Supp. 2007, Sections 312.1 and  
12 316), which relate to cigarette stamp tax; expanding  
13 entities with which the Oklahoma Tax Commission may  
14 share records; expanding applicability of certain  
15 penalties; and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 4, Chapter 475, O.S.L.  
18 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.  
19 Supp. 2007, Section 312.1), is amended to read as follows:

20 Section 312.1 A. The Oklahoma Tax Commission, if in its  
21 discretion it deems practical and reasonable, may establish  
22 procedures for maintaining records and filing reports containing the  
23 information required by this section. The exercise by the Tax  
24 Commission of the authority granted in this subsection shall be by  
adoption of rules necessary to establish procedures that increase  
compliance with the requirements of this article. If the Tax

1 Commission determines to utilize its discretion, the provisions of  
2 subsections B through J of this section shall apply.

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

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

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

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

22 C. Manufacturers shall submit periodic reports containing the  
23 information required by this subsection. In each case, the  
24 information required shall be itemized so as to disclose clearly the

1 brand style of the product. The reports shall be provided  
2 separately with respect to each of the facilities operated by the  
3 manufacturer and shall include:

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

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

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

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

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

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

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

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

20 H. Records required under subsections E through G of this  
21 section shall be preserved on the premises described in the license  
22 in such a manner as to ensure permanency and accessibility for  
23 inspection at reasonable hours by authorized personnel of the  
24 Oklahoma Tax Commission. With the permission of the Tax Commission,

1 manufacturers, distributors, and retailers with multiple places of  
2 business may retain centralized records, but shall transmit  
3 duplicates of the invoices or the equivalent documentation to each  
4 place of business within twenty-four (24) hours upon the request of  
5 the Tax Commission.

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

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

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 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 or with any other  
7 fraudulent intent;

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

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

13          7. Make a first sale of cigarettes without a stamp being then  
14 and there affixed to each individual package;  
15 shall be guilty of a misdemeanor, and upon conviction thereof shall  
16 be fined not more than Two Hundred Dollars (\$200.00), where specific  
17 penalties are not otherwise provided.

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

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 without at the time of making such  
24 sale having a valid license;

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

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

6 shall be guilty of a misdemeanor, and upon conviction thereof shall  
7 be punished by a fine of not more than Two Hundred Dollars  
8 (\$200.00), where specific penalties are not otherwise provided.

9           C. Any distributing agent who shall:

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

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

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

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

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

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

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

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

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

8           2. For a second or subsequent offense, be punished by an  
9 administrative fine of not more than Twenty Thousand Dollars  
10 (\$20,000.00).

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

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

21           G. Whoever, with intent to defraud Oklahoma:

22           1. Fails to keep or make any record, return, report, or  
23 inventory, or keeps or makes any false or fraudulent record, return,  
24

1 report, or inventory, required by Section 301 et seq. of this title  
2 or rules promulgated thereunder;

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

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

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

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

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

23 J. 1. All cigarettes which are held for sale or distribution  
24 within the borders of Oklahoma, in violation of the requirements of

1 Section 301 et seq. of this title, and the machinery used to  
2 manufacture counterfeit cigarettes shall be forfeited to Oklahoma.  
3 All cigarettes and machinery forfeited to Oklahoma under this  
4 paragraph shall be destroyed.

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

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

20 1. A first violation with a total quantity of less than two  
21 cartons of cigarettes or the equivalent amount of other cigarettes  
22 shall be punishable by a fine not to exceed One Thousand Dollars  
23 (\$1,000.00) or imprisonment not to exceed five (5) years, or both  
24 fine and imprisonment;

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

8        3. A first violation with a total quantity of more than two  
9 cartons of cigarettes, or the equivalent amount of other cigarettes,  
10 shall be punishable by a fine not to exceed Two Thousand Dollars  
11 (\$2,000.00) or imprisonment not to exceed five (5) years, or both  
12 the fine and imprisonment; and

13        4. A subsequent violation with a quantity of two cartons of  
14 cigarettes or more, or the equivalent amount of other cigarettes  
15 shall be punishable by a fine not to exceed Fifty Thousand Dollars  
16 (\$50,000.00) or imprisonment not to exceed five (5) years, or both  
17 the fine and imprisonment, and shall also result in the revocation  
18 by the Tax Commission of the manufacturer, distributor, or retailer  
19 license.

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

1 SECTION 3. This act shall become effective November 1, 2008.

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