STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 608 By: Anderson

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 113, as amended by Section 16, Chapter 504, O.S.L. 2004, 304, as last amended by Section 6, Chapter 479, O.S.L. 2005, 305, as last amended by Section 8, Chapter 378, O.S.L. 2008, 309, 312, Section 4, Chapter 475, O.S.L. 2003, as last amended by Section 6, Chapter 378, O.S.L. 2008, 316, as last amended by Section 7, Chapter 378, O.S.L. 2008, 348, 350.1, 413, 415, 418, 425 and 428 (68 O.S. Supp. 2008, Sections 113, 304, 305, 312.1 and 316), which relate to cigarette and tobacco product taxes; providing for apportionment of specified revenue to Tax Commission Reimbursement Fund for certain purpose; updating and clarifying language; modifying specified license fees and contents of applications for license; providing for certain agreement by applicant; modifying conditions for which a license may be denied; prohibiting specified acts by a licensed retailer of cigarettes; providing for construction of certain reference; deleting certain licensing requirement; conforming language; broadening application of certain provision; requiring certain reports to be submitted electronically; making mandatory the requirement that Oklahoma Tax Commission establish certain procedures; modifying required contents of certain reports and certain records maintenance requirements; authorizing Tax Commission to share certain records with specified entities and establishing certain requirements thereto; modifying applicability of certain penalties; deleting and modifying certain prohibited acts; increasing certain penalties and making them administrative; providing for specified acts by consumer subject to certain penalty; making penalty administrative; modifying applicability of certain penalties for wholesaler, retailer or distributing agent; increasing penalty amount for specified acts and making them administrative; requiring Oklahoma Tax Commission to revoke a license under specified circumstances; modifying definition; modifying types of documentation accepted by wholesaler for relief of certain liability; broadening application of certain provision; modifying license fees for dealer and wholesaler of tobacco products; authorizing Tax Commission to provide for issuance of joint license under specified circumstances and establishing related procedures; defining term; providing for specified license fee if products are sold on or from a vehicle; providing for license for certain retailer of tobacco products and establishing amount and related procedures; providing for license for distributing agent of tobacco products and establishing amount and related procedures; prohibiting certain licenses from being assigned or transferred except under certain circumstances; requiring certain persons or licensees to operate with effective unexpired license and providing penalty for violation; limiting penalty; establishing conditions under which no license may be granted, maintained or renewed; prohibiting purchases or sales of tobacco products under certain circumstances; authorizing revocation of certain license under specified circumstances; providing for construction of certain reference; modifying penalties relating to sale of tobacco products; modifying definition; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 113, as amended by Section 16, Chapter 504, O.S.L. 2004 (68 O.S. Supp. 2007, Section 113), is amended to read as follows:

Section 113. A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be known as the "Tax Commission Reimbursement Fund". Said revolving fund shall consist of any funds received by the Tax Commission for data processing services or equipment rental and any funds received by the Tax Commission from any incorporated city, town, or county pursuant to a contractual agreement for the augmentation of the enforcement and collection of municipal or county taxes entered into pursuant to the provisions of Sections 1371 or 2702 of this title. The Tax Commission is authorized to hire full-time-equivalent employees as necessary to perform such duties as to fulfill contractual agreements authorized pursuant to Sections 1371 and 2702 of this title, however, such employees hired to perform such contractual duties shall be supported solely by funds in the Tax Commission Reimbursement Fund which are collected by the Tax Commission from incorporated cities, towns, and counties pursuant to such contractual agreements and such employees shall be terminated upon the discontinuation of such funds or inadequate funds to support such positions. Such full-time-equivalent employees shall be in the unclassified service and shall not be subject to any provisions of the Oklahoma Personnel Act or to any of the rules or regulations promulgated by the Office of Personnel Management except leave regulations. All fees collected and apportioned to this fund under the Oklahoma Vehicle License and Registration Act, Section

1101 et seq. of Title 47 of the Oklahoma Statutes, may be used by the Motor Vehicle Division of the Oklahoma Tax Commission to pay all costs incurred in the issuance of certificates of title and inspection of vehicles, including, but not limited to, additional computer costs for the Tax Commission and motor license agents and the check verification system authorized pursuant to the provisions of paragraph 1 of subsection A of Section 1144 of Title 47 of the Oklahoma Statutes or be used for capital expenditures as authorized by the Oklahoma State Legislature. For the fiscal year beginning July 1, 2004, disbursements from the fund shall be exempt from all agency budget limits.

B. Notwithstanding any other provision in the Oklahoma Statutes except subsection F of Section 316 and subsection D of Section 418 of this title, beginning July 1, 2009, all revenue from fees and penalties collected pursuant to Sections 304, 316, 415 and 418 of this title shall be apportioned to the Tax Commission Reimbursement Fund for administrative and data processing expenses incurred in connection with electronic reporting requirements pursuant to the provisions of Section 301 et seq., Section 346 et seq., Section 401 et seq. and Section 424 et seq. of this title.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 304, as last amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006, Section 304), is amended to read as follows:

Section 304. A. Every manufacturer~~,~~ and wholesaler~~, warehouseman, jobber or distributor~~ of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Oklahoma Tax Commission a written license, and shall pay therefor an annual fee of ~~Twenty-five Dollars ($25.00)~~ Two Hundred Fifty Dollars ($250.00). Application for such license, which shall be made upon such forms as prescribed by the Oklahoma Tax Commission, shall include the following:

1. The applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for the purpose of enforcement of the provisions of Section 301 et seq. of this title;

2. The applicant's agreement to abide by the provisions of Section 301 et seq. of this title and the rules promulgated by the Tax Commission with reference thereto;

3. The wholesaler applicant's agreement to sell cigarettes only to a licensed retailer or Indian tribal entities or licensees of Indian tribal entities; and

4. The manufacturer applicant's agreement to sell cigarettes only to a licensed wholesaler.

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

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

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars ($30.00). Application for such license, which shall be made upon such forms as prescribed by the Tax Commission, shall include the following:

1. The applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for the purpose of enforcement of the provisions of Section 301 et seq. of this title;

2. The applicant's agreement to abide by the provisions of Section 301 et seq. of this title and the rules promulgated by the Tax Commission with reference thereto;

3. The applicant's agreement that it shall not purchase any cigarettes for resale from a supplier that does not hold a current wholesaler's license issued pursuant to this section; and

4. The applicant's agreement to sell cigarettes only to consumers.

Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years ~~or until expiration of the retailer's sales tax~~

~~permit, whichever is earlier, after which a renewal license shall be valid for three (3) years~~. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where cigarettes are sold.

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

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

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

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

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

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

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

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

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

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

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

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

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

G. <u>No person licensed as a retailer in this state shall:</u>

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

<u>2. Purchase any cigarettes from any person or entity other than a wholesaler licensed pursuant to Section 301 et seq. of this title.</u>

<u>H.</u> In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of Section 301 et seq. of this title, the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in Section 316 of this title.

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 304.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any reference to a licensing requirement pursuant to Section 301 et seq. of this title shall not be construed to apply to any Indian tribal entity or licensees of Indian tribal entities.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 305, as last amended by Section 8, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2008, Section 378), is amended to read as follows:

Section 378. A. Every wholesaler~~, jobber, distributor, or warehouseman~~ doing business within this state and required to secure a license as provided under Section 304 of this title shall, upon withdrawal from storage, and before making any sale or distribution of cigarettes for consumption thereof, affix or cause the same to have affixed thereto the stamp or stamps as required by Section 301 et seq. of this title. It shall be the duty of the wholesaler~~, jobber, distributor, or warehouseman~~ to supply ~~and charge to the retailer~~ the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or consumer by the wholesaler~~, jobber, distributor, or warehouseman~~; and the wholesaler~~, jobber, distributor, or warehouseman~~ shall be liable to the Oklahoma Tax Commission to perform this service. ~~Distributors~~ <u>Wholesalers</u> may apply stamps only to cigarette packages that they have received directly from a manufacturer or importer of cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.

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

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

D. If, upon examination of invoices or from other investigations, the Tax Commission finds that cigarettes have been sold without stamps affixed as required by Section 301 et seq. of this title, the Tax Commission shall have the power to require such person to pay to the Tax Commission a sum equal to twice the amount of the tax due. If, under the same circumstances, a person is unable to furnish evidence to the Tax Commission of sufficient stamp purchases to cover unstamped cigarettes purchased, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

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

The same shall be, from the time of such seizure, forfeited to the State of Oklahoma, and a proper proceeding filed to maintain such seizure and prosecute the forfeiture as herein provided.

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

3. Any and all such vehicles and property so seized shall first be listed and appraised by the officer making such seizure and turned over to the county sheriff of the county in which the seizure

is made and a receipt therefor taken. The person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place where and the person from whom such property was seized, and an inventory and appraisement thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission. The district attorney of the county in which the seizures are made shall, at the request of the Tax Commission or Attorney General, file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale. The proceeds of the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected, or in the case of vehicles and property seized in connection with cigarettes seized as being in violation of the provisions of Section 305.1 of this title, to the Attorney General. The Attorney General shall remit the amount of cigarette tax, if any be due, including all penalties and interest due, to the Tax Commission as cigarette tax collected and shall deposit the remainder to the revolving fund created in Section 305.2 of this title.

4. The seizure of cigarettes shall not relieve the person from whom such cigarettes were seized from any prosecution or the payment of any penalties provided for under Section 301 et seq. of this title.

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

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

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

SECTION 5. AMENDATORY 68 O.S. 2001, Section 309, is amended to read as follows:

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

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

SECTION 6. AMENDATORY 68 O.S. 2001, Section 312, is amended to read as follows:

Section 312. ~~(a)~~ A. Every person subject to the payment of a tax hereunder shall keep in Oklahoma accurate records covering the business carried on and shall for three (3) years, and more if required by the rules ~~and regulations~~ of the Oklahoma Tax Commission, keep and preserve all invoices, showing all purchases and sales of cigarettes; and such invoices and stock of cigarettes shall at all times be subject to the examination and inspection of any member or legally authorized agent or representative of the Tax

Commission, in the enforcement of this article. Every wholesaler~~,~~ ~~jobber, warehouseman~~ or retailer operating in the State of Oklahoma, whose main warehouse or headquarters is in another state shall keep all records of all cigarette transactions made by him or her at his or her place of business in Oklahoma, or at a designated place in the State of Oklahoma.

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

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

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

E. Beginning July 1, 2009, every wholesaler or manufacturer required to make any report required by this section shall submit such report electronically as prescribed by the Tax Commission pursuant to Section 312.1 of this title.

SECTION 7. AMENDATORY Section 4, Chapter 475, O.S.L. 2003, as last amended by Section 6, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2008, Section 312.1), is amended to read as follows:

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

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

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

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

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

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

1. The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a ~~distributor~~ wholesaler

within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

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

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

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

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

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

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

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

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

J. The Tax Commission, upon request, shall have access to reports and records required under this act. The Tax Commission at its sole discretion may share the records and reports required by such sections with law enforcement officials of the federal government, the State of Oklahoma, other states, or international authorities <u>and shall upon request share the records and reports with state and local law enforcement officials; provided, in the event a request is made to share records and reports pertaining to any Indian tribal entity or licensees of Indian tribal entities, the appropriate tribal Attorney General's office shall be notified prior to the disclosure of such records</u>.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 316, as last amended by Section 7, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2008, Section 316), is amended to read as follows:

Section 316. A. Any person<u>, other than a consumer,</u> who shall:

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

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

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

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

~~5.~~ 4. Use any artful device or deceptive practice to conceal any violation of Section 301 et seq. of this title;

~~6.~~ 5. Refuse to surrender to the Oklahoma Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or

~~7. Make~~ 6. Knowingly or intentionally make a first sale of cigarettes without a stamp being then and there affixed to each individual package; shall be ~~guilty of a misdemeanor, and upon conviction thereof shall be fined~~ not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

B. Any consumer, who shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall be ~~guilty of a misdemeanor, and upon conviction shall be~~ punished by ~~a~~ an administrative fine of not more than ~~Two Hundred Dollars ($200.00)~~ Ten Thousand Dollars ($10,000.00) for the first offense, and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

shall, for each such offense, be ~~fined~~ punished with an administrative fine of not more than Ten Thousand Dollars ($10,000.00)~~, or imprisoned not more than five (5) years, or both~~.

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

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

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

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

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

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

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

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

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

~~years, or both the fine and imprisonment~~, and shall also result in the revocation by the Tax Commission of the manufacturer, ~~distributor~~ wholesaler, or retailer license.

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

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

SECTION 9.   AMENDATORY   68 O.S. 2001, Section 348, is amended to read as follows:

Section 348. As used in Sections 346 through 352 of this title:

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

tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

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

3. "Indian country" means:

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

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

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

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

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

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

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

7. "Contraband cigarettes" means unstamped cigarettes which are required by the provisions of Sections 348 through 351 of this title or Section 301 et seq. of this title to bear stamps and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 304 of this title; provided, contraband cigarettes shall not include unstamped cigarettes sold to veterans' hospitals, to state-

operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 321 through 324 of this title;

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

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

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

SECTION 10. AMENDATORY 68 O.S. 2001, Section 350.1, is amended to read as follows:

Section 350.1 If a wholesaler~~, jobber or warehouseman~~ timely accepts documentation ~~which shall require identification by drivers license and social security number~~ as prescribed by the Oklahoma Tax Commission from a person claiming that the cigarettes will be sold at a tribally owned or licensed store, the wholesaler~~, jobber or warehouseman~~ shall be relieved of any liability for any additional tax due or required to be collected should it later be determined that the cigarettes were not purchased for sale at a tribally owned or licensed store.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 413, is amended to read as follows:

Section 413. ~~(a)~~ A. The right of a ~~common~~ carrier in this state to carry unstamped cigars and tobacco products shall not be affected hereby; provided, that ~~common~~ carriers delivering untaxed tobacco products to any person in this state for the purpose of selling or consuming untaxed tobacco products in this state in violation of this article shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 417 of this title. Provided further, that should any such carrier sell any cigars and tobacco products in this state, such sale shall be subject to the stamp tax and other provisions of this article and to the rules ~~and regulations~~ of the Tax Commission. The ~~common~~ carrier transporting tobacco products and cigars to a point within this state, or a bonded warehouseman or bailee having in its possession tobacco products and cigars, shall transmit to the Tax Commission a statement of such consignment of tobacco products and cigars, showing the date, point of origin, point of delivery, and to whom delivered. All ~~common~~ carriers or bailees or warehousemen shall permit an examination by the Tax Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of tobacco products and cigars. Any person who fails or refuses to transmit to the Tax Commission the aforesaid statement, or who refuses to permit the examination of his or her records by the Tax Commission or its legally authorized agents or representatives, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars ($500.00) and not less than Twenty-five Dollars ($25.00).

~~(b)~~ B. Wholesalers~~, jobbers, and/or warehousemen~~ shall make a monthly report to the Tax Commission. Such report must be received in the office of the Tax Commission not later than the fifteenth day of each month, showing purchases and invoices of all merchandise coming under this article, for the previous month; and the report shall also show the invoice number, the name and address of the consignee and consignor, the date, and such other information as may be requested by the Tax Commission. Retailers or consumers purchasing tobacco products and cigars in drop shipments shall be required to make monthly reports to the ~~Oklahoma~~ Tax Commission, as are required of ~~wholesale dealers~~ wholesalers.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 415, is amended to read as follows:

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

A. Every dealer and wholesaler of tobacco products ~~covered~~ in this ~~article~~ state, as a condition of carrying on such business, shall ~~be required to purchase a tobacco~~ annually secure from the Oklahoma Tax Commission a written license ~~annually, the cost of which~~ and shall ~~be Five Dollars ($5.00)~~ pay an annual fee of Two

Hundred Fifty Dollars ($250.00); provided, such fee shall not be applicable if paid pursuant to Section 304 of this title. The Tax Commission shall promulgate rules which provide a procedure for the issuance of a joint license for any wholesaler making application pursuant to this section and Section 304 of this title. Application for such license, which shall be made upon such forms as prescribed by the Tax Commission, shall include the following:

1. The applicant's agreement to the jurisdiction of the Tax Commission and the courts of this state for purposes of enforcement of the provisions of Section 301 et seq. of this title; and

2. The applicant's agreement to abide by the provisions of Section 301 et seq. of this title and the rules promulgated by the Tax Commission with reference thereto. This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where tobacco products are sold. If tobacco products are sold on or from any vehicle, the vehicle shall constitute a place of business, and the license fee of Two Hundred Fifty Dollars ($250.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular license fee is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars

($10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars ($30.00). Application for such license, which shall be made upon such forms as prescribed by the Tax Commission, shall include the following:

1. The applicant’s agreement to the jurisdiction of the Tax Commission and the courts of this state for purposes of enforcement of the provisions of Section 301 et seq. of this title; and

2. The applicant's agreement to abide by the provisions of Section 301 et seq. of this title and the rules promulgated by the Tax Commission with reference thereto;

3. The applicant's agreement that it shall not purchase any tobacco products for resale from a supplier that does not hold a current wholesaler’s license issued pursuant to this section; and

4. The applicant's agreement to sell tobacco products only to consumers.

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

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

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

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

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

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

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

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

F. No person or entity licensed pursuant to the provisions of this section shall purchase tobacco products from or sell tobacco products to a person or entity required to obtain a license unless such person or entity has obtained such license.

G. In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of Section 301 et seq. of this title, the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in Section 418 of this title.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 415.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any reference to a licensing requirement pursuant to Section 401 et seq. of Title 68 of the Oklahoma Statutes shall not be construed to apply to any Indian tribal entity or licensees of Indian tribal entitiesq.

SECTION 14. AMENDATORY 68 O.S. 2001, Section 418, is amended to read as follows:

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

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

C. Any retailer violating the provisions of Section ~~4 of this act~~ 403.1 of this title shall:

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

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

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

D. Any wholesaler, distributing agent or dealer violating the provisions of Section ~~4 of this act~~ 403.1 of this title shall:

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

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

Administrative fines collected pursuant to the provisions of this subsection shall be deposited to the revolving fund created in Section ~~7 of this act~~ 305.2 of this title.

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

SECTION 15. AMENDATORY 68 O.S. 2001, Section 425, is amended to read as follows:

Section 425. As used in Sections ~~9 through 13 of this act~~ 425 through 429 of this title:

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section ~~1~~ 346 of this ~~act~~ title during the period that such compact is effective,

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

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

3. "Indian country" means:

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

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

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

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

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

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

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

7. "Contraband tobacco products" means untaxed tobacco products for which taxes are required to be paid pursuant to the provisions of Sections ~~9 through 12 of this act~~ 425 through 428 of this title or Section 401 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or

consumption or transported to any person in this state other than a wholesaler licensed under Section 415 of ~~Title 68 of the Oklahoma Statutes~~ this title; provided, contraband tobacco products shall not include untaxed tobacco products sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with Sections 419 through 421 of ~~Title 68 of the Oklahoma Statutes~~ this title;

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

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

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

SECTION 16. AMENDATORY 68 O.S. 2001, Section 428, is amended to read as follows:

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

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

SECTION 17. This act shall become effective July 1, 2009.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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