

CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

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CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

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CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

SUBCHAPTER 1. GENERAL PROVISIONS

710:70-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to tobacco and tobacco products.

710:70-1-2. Definitions (Reserved)

SUBCHAPTER 2. CIGARETTE STAMP TAX

710:70-2-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq, and to facilitate the administration, enforcement, and collection of the levies enacted by the Oklahoma Legislature with respect to cigarettes. [68 O.S. § 301 et seq.]

[Source: Added at 21 Ok Reg 1145; eff 5-13-04]

710:70-2-2. Definitions

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Cigarette" means all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes. [68 O.S. § 301(1)]

"Delivery sale" means:

(A) Any sale of cigarettes to a consumer in Oklahoma where either:

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

(ii) The cigarettes are delivered by use of the mails or other delivery service.

(B) A sale of cigarettes which satisfies the criteria in subparagraph (A) of this paragraph shall be a *"delivery sale"* regardless of whether the seller is located within or outside of Oklahoma.

"Delivery sale" shall include any sale of cigarettes to an individual in Oklahoma and shall be treated as a sale to a consumer unless such individual is licensed as a distributor or retailer of cigarettes by the Tax Commission; but shall not include a sale of cigarettes, not for personal consumption, to a person who is a wholesale dealer or a retail dealer. [68 O.S. § 301(13)]

[Source: Added at 21 Ok Reg 1145; eff 5-13-04]

710:70-2-3. When stamps must be applied

Oklahoma cigarette stamps and Oklahoma Tribal stamps may be applied only to cigarette

packages that the wholesaler, jobber, distributor, or wholesaler has received directly from either a manufacturer or importer of cigarettes, providing that manufacturer or importer possesses a valid permit under 26 U.S.C. § 5712.

[Source: Added at 21 Ok Reg 1145; eff 5-13-04]

710:70-2-4. Conditions under which a cigarette license may be granted, maintained, or renewed

(a) *No cigarette license shall be granted, maintained, or renewed pursuant to this Subchapter and Article 3 of Title 68 of the Oklahoma Statutes, if any owner of an interest of ten (10) percent in the applicant, or holder of a license, meets any of the following conditions:*

- (1) *Applicant owes Five Hundred Dollars (\$500.00) or greater in cigarette taxes that are delinquent;*
- (2) *Applicant has been convicted of a crime relating to or for receiving stolen or counterfeit cigarettes;*
- (3) *Applicant is a manufacturer, and is not a participating manufacturer as defined in 37 O.S. § 600.22;*
- (4) *Applicant is not a participating manufacturer as defined 37 O.S. § 600.22 and is not in full compliance with 37 O.S. §600.23(A).*
- (5) *Applicant is a manufacturer, and cigarettes have been imported into the United States by the applicant in violation of 19 U.S.C. § 1681a; or,*
- (6) *Applicant is a manufacturer and has manufactured or imported into the United States, cigarettes that do not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq. [68 O.S. § 304(E)]*

(b) *In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provisions of 68 O.S. §301 et seq., 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 68 O.S. § 316. [68 O.S. § 304(G)]*

[Source: Added at 21 Ok Reg 1145; eff 5-13-04]

710:70-2-5. Filing requirements for persons making "delivery sales of cigarettes"
[RENUMBERED TO 710:70-2-50]

[Source: Added at 21 Ok Reg 1145; eff 5-13-04; Amended and renumbered to 710:70-2-50 at 22 Ok Reg 2244, eff 6-25-05]

710:70-2-6. Requirements placed on vendors making delivery sales of cigarettes
[RENUMBERED TO 710:70-2-51]

[Source: Added at 21 Ok Reg 1145; eff 5-13-04; Amended and renumbered to 710:70-2-51 at 22 Ok Reg 2244, eff 6-25-05]

710:70-2-7. Payment of taxes due on delivery sales of cigarettes [RENUMBERED TO 710:70-2-52]

[Source: Added at 21 Ok Reg 1145; eff 5-13-04; Amended and renumbered to 710:70-2-52 at 22 Ok Reg 2245, eff 6-25-05]

710:70-2-8. Penalties for failure to comply with statutory provisions

Section 316 of Title 68 of the Oklahoma Statutes provides for both administrative and criminal penalties for failure to comply with the laws concerning the sale of cigarettes, including the

possession, distribution, manufacture or sale of counterfeit cigarettes.

[Source: Added at 21 Ok Reg 1145; eff 5-13-04]

710:70-2-9. Cigarette stamp tax rates

- (a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are One Hundred Twenty-five percent (125%) greater than the rates for the twenty-unit packages.
- (b) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories of cigarettes acquired on or after January 1, 2005.
- (c) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rate is \$1.03 per pack and is applicable to all non-tribal sales.

[Source: Added at 22 Ok Reg 2245, eff 6-25-05]

710:70-2-9.1. Vehicle Cigarette Licenses

Vehicles from which cigarettes are sold constitute a "place of business" and are required to be permitted. If the vehicle is owned or operated by a place of business for which the regular Twenty-Five dollar fee has been paid the fee for the vehicle is to be \$10.00 and the expiration date of the vehicle license permit is to be the expiration date of the permit issued to the other place of business.

[Source: Added at 23 Ok Reg 2868, eff 6-25-06]

710:70-2-10. Discount on cigarette tax stamps purchased

- (a) **Allowable discount.** Every person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission may do so at a reduction of one and one-half cents (\$0.015) per stamp. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission.
- (b) **Exceptions and limitations.** The discount described in this Section shall not be applicable or available:
- (1) On purchases of less than One Hundred Dollars (\$100.00) at any one time;
 - (2) To out-of-state purchasers who reside in states that do not give discounts on cigarette stamps purchased by State of Oklahoma cigarette dealers; or,
 - (3) To a purchaser who refuses to comply with the laws of the State of Oklahoma. [See: 68 O.S.Supp.2004, §311]

[Source: Added at 22 Ok Reg 2245, eff 6-25-05]

710:70-2-11. Requirements placed on distributors and retailers to maintain copies of invoices

- (a) Distributors shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation must 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. [68 O.S. § 312.1(E)].

(b) Retailers shall keep 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 must show the name and address of the distributor 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. [68 O.S. § 312.1(F)].

(c) The invoices or equivalent documentation must be kept 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, and retailers with multiple places of business may retain centralized records, but must 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. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450. [68 O.S. § 312.1(H)].

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction. [68 O.S. § 312.1(I)].

[Source: Added at 23 Ok Reg 2868, eff 6-25-06]

710:70-2-12. Limitation on sale of number of packs of cigarettes at a reduced tax rate

(a) Sales of cigarettes by a wholesaler licensed by the Oklahoma Tax Commission (hereafter, "Wholesaler") to a tribal retailer shall be limited as set forth herein to the number of packs of cigarettes sold at a "reduced tax rate".

(b) For purposes of this Rule,

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

(2) "Reduced tax rate" means the tax rate provided by Section 349 of Title 68 and the fees in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:

(A) \$0.0575 for pack of twenty cigarettes or \$0.071875 for pack of twenty-five cigarettes;

(B) \$0.6075 for pack of twenty cigarettes or \$0.759375 for pack of twenty-five cigarettes;

(C) \$0.3075 for pack of twenty cigarettes or \$0.384375 for pack of twenty-five cigarettes; or

(D) \$0.2575 for pack of twenty cigarettes or \$0.321875 for pack of twenty-five cigarettes.

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

(c) No Wholesaler may sell packs of cigarettes at a reduced tax rate to any tribal retailer, unless the name of the tribal retailer appearing on the order and/or invoice to be issued on the transaction also appears on the list of tribal retailers compiled and furnished by the Oklahoma Tax Commission (hereafter, "OTC") to licensed wholesalers. For purposes of compliance with this Rule, wholesalers are entitled to rely on the accuracy of the list of tribal retailers compiled

and furnished by the OTC.

(d) No Wholesaler may sell to any tribal retailer, in any one calendar month, packs of cigarettes at a reduced tax rate in a quantity which exceeds one-twelfth (1/12th) of a sum equal to the total amount of packs of cigarettes sold by the Wholesaler to that tribal retailer in calendar 2004, plus 10%; provided, however, that upon request to the OTC, proposed sales in excess of the allowance may be permitted upon a showing of good cause, which must include documented proof that the tribal retailer attempting the purchase has or will offer the packs of cigarettes for sale to consumers at the location of the tribal retailer.

(e) The OTC shall furnish each Wholesaler, from reports filed by that wholesaler with the OTC for calendar 2004, a computation of the amount of packs of cigarettes which may be sold at a reduced tax rate to each tribal retailer to which Wholesaler sold cigarettes in calendar 2004, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.

(f) In the event that a Wholesaler desires to sell to a tribal retailer that it did not sell to in calendar 2004, the Wholesaler shall request from the OTC a computation of the amount of packs of cigarettes purchased by the tribal retailer in calendar 2004. The request shall be accompanied by the written consent of the tribal retailer to disclose the statistical information furnished by Wholesalers concerning the tribal retailer (the original of which shall be retained in Wholesaler's records, and a copy of which shall be faxed to the OTC at 405-521-2146). The OTC will furnish the Wholesaler with a computation of the amount of packs of cigarettes that may be sold to such tribal retailer at a reduced tax rate, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.

(g) In the event that a Wholesaler desires to sell to a tribal retailer that was not in business in calendar 2004, before selling any packs of cigarettes to such tribal retailer, the Wholesaler shall contact the OTC, which will provide a statement of the number of packs of cigarettes which may be sold at a reduced rate, based upon the average, per Wholesaler, per tribal retailer in calendar 2004, plus 10%; in the event the tribal retailer claims such amount to be insufficient, an increased allowance may be requested under the procedures specified by paragraph (d) hereof.

(h) Wholesalers shall telephonically report and confirm in writing to the OTC, on the same day as received, any request of a tribal retailer for purchase of packs of cigarettes at a reduced tax rate, in a quantity which exceeds one-twelfth (1/12th) of a sum equal to the total amount of cigarettes sold to that tribal retailer by the Wholesaler in calendar 2004, plus 10%.

(i) Wholesalers are subject to revocation of their cigarette and/or tobacco products licenses, sales tax permits and any other licenses or permits issued to such wholesalers by the OTC, upon the determination that such wholesalers have violated any of the provisions of this Section, and/or any other State Tax Law and/or Commission Rule applicable to such wholesalers. Such licensure revocation is in addition to, and not to the exclusion of any other remedies of the OTC, including, by way of example and not limitation, liability for the cigarette stamp tax or compact payment in lieu thereof upon sales of cigarettes to tribal retailers at rates which are in violation of this Section.

(j) If any Wholesaler files a Cigarette Stamp Tax Report, which evidences a sale of packs of cigarettes to a tribal retailer not included on the list of tribal retailers provided the Wholesaler by the OTC, such sale shall be presumed not to constitute a sale to a tribal retailer, as defined herein, and Wholesaler shall be responsible and liable for payment of tax at the non-tribal statutory rate for all packs of cigarettes reported sold. In addition, Wholesaler is subject to imposition of an administrative penalty not exceeding 500% of the unpaid tax or payment in lieu

of tax as to each pack sold. [68 O.S. § 350(A), § 324, and § 346(C)(1); 68 O.S. § 316(I)].

[Source: Added at 23 Ok Reg 2868, eff 6-25-06]

710:70-2-13: Stamps required, applicable compact and non-compact tax rates, and refund procedures relating to sales of packs of cigarettes to tribal retailers

(a) A compact tax stamp or a non-compact tax stamp must be affixed on each pack of cigarettes sold to tribal retailers in the rates and in the manner as set forth herein.

(b) For purposes of this Rule,

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

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

(A) \$0.8575 for pack of twenty cigarettes or \$1.071875 for pack of twenty-five cigarettes;

(B) \$0.6075 for pack of twenty cigarettes or \$0.759375 for pack of twenty-five cigarettes;

(C) \$0.3075 for pack of twenty cigarettes or \$0.384375 for pack of twenty-five cigarettes;

(D) \$0.2575 for pack of twenty cigarettes or \$0.321875 for pack of twenty-five cigarettes; or

(E) \$0.0575 for pack of twenty cigarettes or \$0.071875 for pack of twenty-five cigarettes.

(3) "Non-compact tax rate" means that tax rate provided by Section 349 of Title 68 at the following rate of \$0.7725 for pack of twenty cigarettes or \$0.965625 for pack of twenty-five cigarettes.

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

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

(d) The non-compact tax stamp provided in Rule 710:70-7-4(2) shall only be sold at the rate of \$0.7725 for pack of twenty cigarettes or the rate of \$0.965625 for pack of twenty-five cigarettes. The rate shall be applicable for all sales to tribal retailers owned and operated or licensed by a federally recognized Indian tribe or nation that has not entered into a compact with the State of Oklahoma.

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

(f) All tribal retailers of a compacting tribe or nation shall keep the following documentation to claim a refund as provided herein. These records shall be submitted on behalf of the tribe or nation as its claim for refund. Such documentation may be submitted at any time to the Tax

Commission in order to substantiate the refund claim for purchases made within one year of the filing of the claim. Such documentation shall include copies of invoices detailing the:

- (1) Date of purchase;
 - (2) Name of the tribal retailer that purchased the packs of cigarettes;
 - (3) Name of wholesaler from whom the packs of cigarettes were purchased;
 - (4) Quantity of each denomination purchased; and
 - (5) The amount of compact tax rate paid by the tribal retailer.
- (g) All documentation shall be sent to the Excise Tax Section/Audit Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd, Oklahoma City, OK 73194. Upon review by the Audit Division, a refund will be remitted based on verifiable purchases qualifying for refund.
- (h) Refunds shall be paid to the compacting tribe or nation on a monthly basis.
- (i) Any refunds for packs of cigarettes purchased by a tribal retailer in excess of one hundred twenty percent (120%) of the total amount of packs of cigarettes purchased by the tribal retailer during the calendar year of 2004 shall only be paid if the tribal retailer provides documentation to the satisfaction of the Audit Division that the amount of packs of cigarettes purchased are or were offered for sale to consumers at the location of the tribal retailer.

[Source: Added at 23 Ok Reg 2866, eff 6-25-06]

PART 3. DELIVERY SALES

710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes"

(a) **General.** Before delivering any cigarettes to purchasers, every person making delivery sales into Oklahoma, or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, must provide to the Oklahoma Tax Commission a written statement containing the following information:

- (1) The name of the seller;
- (2) The trade name of the seller;
- (3) The address of the principal place of business of the seller; and,
- (4) The address of any other place of business of the seller. [68 O.S. § 317.5(A)]

(b) **Monthly report of delivery sales required.** No later than the tenth day of each calendar month, each person who has made a delivery sale, or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous month, must make a memorandum report to the Oklahoma Tax Commission of the following information:

- (1) The name of the purchaser;
- (2) The brands of cigarettes sold; and,
- (3) The quantity of cigarettes sold. [68 O.S. § 317.5(B)]

(c) **Alternative method of compliance with reporting requirement.** Any person who satisfies the requirements set out in 15 U.S.C. § 376 shall be deemed to have met the reporting requirements set out in (b) of this Section. [68 O.S. § 317.5(C)]

[Source: Amended and renumbered from 710:70-2-5 at 22 Ok Reg 2245, eff 6-25-05]

710:70-2-51. Requirements placed on vendors making delivery sales of cigarettes

(a) *No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless, prior to the first delivery sale to such consumer, the person:*

- (1) *Obtains from the prospective customer a certification which includes:*
 - (A) *Reliable confirmation that the purchaser is at least the legal minimum purchase age; and,*
 - (B) *A statement signed by the prospective purchaser, in writing and under penalty of perjury, which:*
 - (i) *Certifies the prospective purchaser's address and date of birth; and,*
 - (ii) *Confirms that the prospective purchaser understands:*
 - (I) *That signing another person's name to such certification is illegal;*
 - (II) *That sales of cigarettes to individuals under the legal minimum purchase age are illegal;*
 - (III) *That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma; and,*
 - (IV) *That the prospective consumer wants to receive mailings from a tobacco company;*
- (2) *Makes a good-faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to (a)(1) of this Section against a commercially available database or obtains a photocopy or other image of the valid, government-issued identification, stating the date of birth or age of the individual placing the order;*
- (3) *Provides to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of (c) of this Section and requests confirmation that the delivery sale order was placed by the prospective purchaser; and,*
- (4) *In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name or by check.*
- (b) *Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses. [68 O.S. § 317.2]*
- (c) *The notice required under (a)(3) of this Section shall include:*
 - (1) *A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;*
 - (2) *A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;*
 - (3) *A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with (a)(1) of this Section; and,*
 - (4) *A prominent and clearly legible statement that cigarette sales are taxable under Section 301 et seq. of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale. [68 O.S. § 317.3]*
- (d) *Each person who mails, ships or otherwise delivers cigarettes in connection with a delivery sale:*
 - (1) *Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";*
 - (2) *Shall use a method of mailing or shipping that obligates the delivery service to require:*
 - (A) *The purchaser placing the delivery sale, or another adult of legal minimum purchase*

age residing at the purchaser's address, to sign to accept delivery of the shipping container; and,

(B) Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that such person is either the addressee or another adult of legal minimum purchase age residing at the purchaser's address, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and

(3) Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with 710:70-2-7.

(e) If the person taking a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement. [68 O.S. § 317.4]

[Source: Amended and renumbered from 710:70-2-6 at 22 Ok Reg 2245, eff 6-25-05]

710:70-2-52. Payment of taxes due on delivery sales of cigarettes

Any person accepting a purchase order for a delivery sale of cigarettes in Oklahoma shall collect and remit all taxes due on the cigarettes sold, except that cigarette excise tax need not be collected and remitted if proof has been obtained that the cigarette packages sold already bear the correct Oklahoma Cigarette Excise Tax Stamps, showing that the correct tax has previously been paid. [68 O.S. § 317.6]

[Source: Amended and renumbered from 710:70-2-5 at 22 Ok Reg 2246, eff 6-25-05]

SUBCHAPTER 3. UNFAIR CIGARETTE AND TOBACCO PRODUCTS SALES

710:70-3-1. Procedures relating to enforcement of the Unfair Cigarette and Tobacco Products Sales Act

Pursuant to the authority and power granted by statute, the Oklahoma Tax Commission hereby directs that enforcement of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.) within this state shall be established and implemented through the procedures set out in this Subchapter. [See: 68 O.S. §344]

710:70-3-2. Filing of a complaint

Any person or entity who has been injured or who would suffer injury from any violation or threatened violation of the provisions of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.) (the Act) shall file a written signed complaint of the complaining party with the Alcohol and Tobacco Section, Business Tax Division of the Oklahoma Tax Commission setting forth details and all evidence then available, together with the name and address of the person or entity that has allegedly violated and/or failed to comply with the provisions of the Act. [See: 68 O.S. §§340, 343]

710:70-3-3. Investigation and referral procedure

The Business Tax Division of the Oklahoma Tax Commission, upon receipt of the complaint described in 710:70-3-2, shall make a determination as to whether or not a probable violation of the provisions of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.) (the Act) appears to have occurred and shall forward such to the office of the General Counsel of the Oklahoma Tax Commission together with evidence of the relevant basic cost of cigarette and tobacco products and other relevant information in its possession. The General Counsel shall review the complaint and determine whether there exists a prima facie case of violation or failure to comply and, if so, shall issue a notice to the alleged violator to attend a hearing where the alleged violator's license may be cancelled or suspended. A hearing shall be set after giving the complaining party and the person or entity who has allegedly violated the Act at least ten (10) days notice and a copy of this Subchapter shall be available at the Oklahoma Tax Commission for all affected parties and may be mailed to such parties with the notice. If the General Counsel determines that the violation warrants additional action, an action may be instituted in any court of competent jurisdiction and the rules of the court shall apply. [See: 68 O.S. §344]

710:70-3-4. Complaining party must appear

When an administrative hearing is set, the Business Tax Division of the Oklahoma Tax Commission and the complaining party shall be notified of the show cause hearing and it shall be mandatory for the complaining party to appear and submit evidence and/or testimony at the hearing to substantiate the alleged violation and/or failure by the alleged violating party to comply with the provisions of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.).

710:70-3-5 Evidence admissible to establish cost

The Business Tax Division shall appear at the hearing on an alleged violation of the Act and give testimony and evidence establishing the relevant basic cost of cigarettes and tobacco products and the minimum wholesale/retail price of such products based upon the provisions of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.), and such other evidence as may relate to the complaint. It shall be a rebuttable presumption that the basic cost to the wholesaler and to the retailer is that defined in the Act, unless a lesser cost can be established by competent evidence, as set out in the Act. [See: 68 O.S. §§329, 330, 335, 337]

710:70-3-6. Burden of production of evidence on permit holder

The person or entity allegedly violating the provision of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.) shall produce at the hearing sufficient evidence including books, business records and invoices to establish that the alleged violation is without merit. [See: 68 O.S. §103]

710:70-3-7. Hearing procedure

An Administrative Law Judge of the Oklahoma Tax Commission shall hear testimony and take evidence from the parties at a hearing on an alleged violation of the Act and shall then submit to the Commission findings, recommendations and conclusions, concerning the alleged violation of the Unfair Cigarette and Tobacco Products Sales Act (68 O.S. §§326 et seq.) and whether or not the license of the alleged violator should be revoked or suspended. [See: 68 O.S. §207]

710:70-3-8. Final ruling by Commission

The Commission shall review the findings, recommendations and conclusions of the Administrative Law Judge, make its determination and enter its Order in the matter.

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-1. Authority to direct procedures for payment of excise tax levied on tobacco products

(a) Pursuant to the authority and power granted by statute, the Oklahoma Tax Commission hereby directs that excise tax levied upon the sale, distribution, use, exchange, barter or possession of tobacco products within this State shall be paid through monthly tobacco products tax reporting procedures as established by rules of this Commission and shall be administered in accordance with the laws of this State and the provisions of this Subchapter establishing procedures for monthly tobacco tax reporting system. [See: 68 O.S. §§401 et seq.]

(b) The purchasing of stamps to pay the excise tax levied and the affixing of stamps as evidence of payment of the excise tax are hereby abolished. [See: 68 O.S. §§403, 408]

710:70-5-2. Payment of tax on tobacco products

The excise tax levied upon the sale, use, distribution, exchange, barter or possession of tobacco products in this State shall be paid on a monthly basis by the licensed manufacturer, wholesaler, warehouseman, distributor, or jobber, (except a distributor bonded in accordance with 68 O.S. §405) first possessing, selling, using, distributing, exchanging, bartering, or in any manner dealing with such tobacco products in this State. No other person, wholesaler, warehouseman, distributor, jobber or retailer shall first possess, use, sell, exchange, distribute, barter or in any manner deal with such tobacco products in this State upon which the excise tax has not been paid.

710:70-5-3. Minimum requirements of monthly tobacco products tax reports of licensed manufacturers, wholesalers, warehousemen, distributors or jobbers

Every licensed manufacturer, and every wholesaler, jobber, distributor, retailer and consumer, licensed by the Oklahoma Tax Commission, to possess, use or in any manner deal with tobacco products subject to the excise tax, upon which such tax has not been paid, shall report, to the Oklahoma Tax Commission, all purchases and invoices of all such tobacco products and merchandise subject to such excise tax monthly, on the Monthly Tobacco Products Tax Report form prescribed by the Commission. Each monthly report shall include the following information:

- (1) Name, business address and Tobacco License Number of the tax reporter;
- (2) All purchases or deliveries, stated separately according to the dates of delivery in the State, of all tobacco products received, possessed, used or in any manner dealt with in the previous calendar month;
- (3) Invoice numbers of all purchases or deliveries of such products for the previous calendar month;
- (4) Name and business address of each consignee and consignor; and
- (5) Copy of each invoice of all purchases or deliveries of such products for the previous month attached to the monthly report form. Copies of invoices submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions. [See: 68 O.S. §201; 68 O.S. §401 et seq.]

710:70-5-4. Incomplete monthly tobacco tax reports of licensed manufacturers, wholesalers, warehousemen, distributors or jobbers; forfeiture of discount

Any Monthly Tobacco Products Tax Report form filed with the Business Tax Division of the Oklahoma Tax Commission shall include, and have attached thereto, the minimum information specified in 68 O.S. §413 and 710:70-5-3. Any such monthly report form that does not include these minimum requirements shall not constitute the mandatory report. And, in the event a proper, complete monthly report is not filed on or before the due dates in accordance with 710:70-5-5, the discount of two percent (2%) of the tax due for maintaining and collecting such tax, shall not be allowed, and the report shall be delinquent.

710:70-5-5. Due dates for timely filing of monthly tobacco products tax reports and paying tax

(a) On or before the fifteenth (15th) day of the calendar month immediately following the calendar month in which the tobacco products subject to taxation were first received, delivered, possessed, used or in any manner dealt with in this State, the Monthly Tobacco Products Tax Reports and payment of the tax due shall be submitted to the Oklahoma Tax Commission. If such due date is a Saturday, Sunday or a holiday recognized by the executive department of this State, then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday or holiday.

(b) Any report or payment mailed and postmarked by the United States Postal Service on or prior to the due date shall be considered to have been filed or paid on the due date.

(c) All excise tax or monthly reports due and not paid or submitted to the Commission on or before the due date shall be delinquent.

710:70-5-6. Discount for timely filing of monthly tobacco products tax reports and paying taxes

(a) Every licensed manufacturer and every wholesaler, jobber, distributor, retailer or consumer, required to report and pay the tobacco products excise tax shall be allowed a discount of two percent (2%) of the tax due under each monthly report and shall, at the time of filing each monthly report, pay to the Oklahoma Tax Commission, ninety-eight percent (98%) of the tax due.

(b) The two percent (2%) discount shall not be allowed to any taxpayer who fails to timely file the required monthly report or who fails to timely pay the tax due in accordance with 710:70-5-5.

710:70-5-7. Penalty and interest for failure to timely pay tax

(a) If any amount of the tobacco products excise tax is not paid, before the tax becomes delinquent, as set out in 710:70-5-5, interest, at the rate of one and one-fourth percent (1 3%) per month from the date due until payment of the tax, shall be calculated and collected as part of the delinquent tax.

[See: 68 O.S. §217(a)]

(b) If any amount of the tobacco products excise tax is not paid within thirty (30) calendar days after the tax becomes delinquent, as set out in 710:70-5-5, a penalty, at the rate of ten percent (10%) of the total amount of such delinquent tax, shall be calculated and collected as part of the delinquent tax.

[See: 68 O.S. §217(c)]

710:70-5-8. Reports on tobacco products by persons, retailers, consumers, common carriers, bonded warehousemen or bailees other than those required to report

and pay tax

(a) Every person or entity, listed below, who possesses, controls, transports, uses or in any manner deals with tobacco products within this State subject to the tobacco products excise tax, upon which the tax has not been paid, even though not the party required to pay the tax, shall file a monthly report to the Oklahoma Tax Commission on prescribed forms as follows:

(1) Every retailer or consumer purchasing tobacco products subject to tax in drop shipments shall report those purchases to the Oklahoma Tax Commission on the Monthly Tobacco Products Tax Reports in accordance with 710:70-5-3 through 710:70-5-5, as required of licensed manufacturers, wholesalers, jobbers, distributors, retailers or consumers.

(2) Every common carrier transporting tobacco products, subject to tax, to a point within this State shall monthly report to the Oklahoma Tax Commission the following information:

(A) Name and business address of the common carrier;

(B) The date of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(C) The point of origin and the point of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(D) The name of the person or entity to whom said tobacco products were delivered in this State in the previous calendar month; and

(E) Copies of all invoices, bills of lading or instruments of consignment of said tobacco products transported and delivered into this State in the previous calendar month, attached to said report.

(3) Every bonded warehouseman or bailee having possession, custody, control, use or in any manner dealing with tobacco products within this State subject to the tax, shall report monthly to the Oklahoma Tax Commission as is required of common carriers.

(b) All required monthly reports shall be due on or before the fifteenth (15th) day of the calendar month immediately following the calendar month in which the tobacco products subject to the tax are possessed, controlled, transported, used or in any manner dealt with in this State, in accordance with 710:70-5-5.

(c) Copies of invoices, bills of lading or other instruments of consignment submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions and to permit inspection and examination thereof by the Commission. [See: 68 .S. 201; 68 O.S. §§401 et seq.]

710:70-5-9. Reports and payment of taxes on drop shipments of tobacco products

It shall be the duty of every licensed wholesaler, jobber, or distributor to report and pay the tobacco products excise tax, levied upon all drop shipments of tobacco products subject to such tax, purchased by any wholesaler, jobber, distributor, retailer or consumer receiving and paying for such drop shipment through the licensed wholesaler, jobber or distributor. The tax on such drop shipments shall be reported and paid in the same manner as if the drop shipment had first been received or delivered to the licensed wholesaler, jobber or distributor through whom the drop shipment was purchased.

710:70-5-10. Prohibition against the possession, sale, use, distribution, exchange, barter, giving away or in any manner dealing with tobacco products upon which the tobacco products tax has not been paid

No person, dealer, distributing agent or wholesaler shall possess, sell, use, exchange, barter, give away or in any manner deal with any tobacco products within this State upon which the tax is levied and unpaid, unless the person, dealer, retailer, distributing agent or wholesaler holds a valid Tobacco License issued pursuant to statute. [See: 68 O.S. §§401, 415]

(1) Any person who obtains possession, custody or control of such tobacco products in this State from another other than a holder of a Tobacco License issued by the Oklahoma Tax Commission shall be subject to seizure proceedings. [See: 68 O.S. §417]

(2) Any person required to report or report and pay tobacco products tax, and who is delinquent in said reporting or payment shall be subject to seizure proceedings. [See: 68 O.S. §417; 710:70-5-11]

710:70-5-11. Seizure of tobacco products

(a) Any authorized agent of the Oklahoma Tax Commission or any sheriff, deputy sheriff or police law enforcement officer may seize all tobacco products subject to the Tobacco Products Excise Tax, found in the possession, custody or control of any person required to file monthly reports or to pay said taxes, if:

(1) The person has failed to timely file a required monthly report; or

(2) The person has failed to timely pay said taxes when due; or

(3) The Commission has determined that the person is attempting to evade or avoid payment of the tobacco excise tax; or

(4) The Commission has determined the person has violated any of the provisions of the Tobacco Products Tax Act or the Rules of the Oklahoma Tax Commission.

(b) Intent to evade or avoid payment of Tobacco Products taxes may be presumed upon:

(1) Failure to timely file reports or to timely pay taxes; or

(2) Receipt of possession, control or custody, within this State, of any tobacco products, upon which the tobacco products tax has not been paid, from any person not holding a valid Oklahoma Tobacco License. The burden of proof shall be on the person, taxpayer or reporter to prove otherwise. [See: 68 O.S. §417]

710:70-5-12. Oklahoma tobacco products tax rates

(a) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories acquired on or after January 1, 2005.

(b) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rates are:

(1) For little (Class A) cigars: \$0.036 each.

(2) For Class B cigars: \$0.11 each.

(3) For all other (Class C) cigars: \$0.12 each.

(4) For smoking tobacco: Eighty percent (80%) of the Factory List Price.

(5) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

[Source: Added at 22 Ok Reg 2246, eff 6-25-05]

710:70-5-13. Requirements placed on distributors and retailers to maintain copies of invoices with certain information that must be shown on each invoice

(a) Distributors of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the distributor's tobacco license number and the

quantity by brand style of the tobacco products involved in the transaction. [68 O.S. Section 420.1(A)]

(b) Retailers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, and the retail cigarette license number or sales tax license number. [68 O.S. § 420.1(B)]

(c) The invoices or equivalent documentation must be kept 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, and retailers with multiple places of business may retain centralized records, but must 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. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

[Source: Added at 23 Ok Reg 2869, eff 6-25-06]

SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY RECOGNIZED INDIAN TRIBES AND NATIONS

710:70-7-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of the levies enacted by the Oklahoma Legislature with respect to tobacco and tobacco products.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"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.* [68 O.S. § 348(3)]

[Source: Reserved at 10 Ok Reg 683, eff 12-23-92 (emergency); Reserved at 10 Ok Reg 3867, eff 7-12-93; Added at 22 Ok Reg 2247, eff 6-25-05]

710:70-7-3. Affixing of cigarette stamp; Usage limited

- (a) Cigarette stamps must be affixed to the bottom of the package containing the cigarettes.
- (b) Cigarette stamps cannot be used more than once.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-4. Stamps required

All cigarettes sold or held for sale in the State of Oklahoma shall bear one of the following stamps:

- (1) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has entered into a Compact with the State of Oklahoma and is paying the payments specified thereunder; or
- (2) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has not entered into a Compact with the State of Oklahoma but has provided the prescribed documentation to qualify for a rate of seventy-five percent (75%) of the cigarette excise tax imposed by 68 O.S. §301 et seq.; or
- (3) A stamp indicating that the retailer selling or holding for sale such cigarettes does not meet the requirements of one of the above-referenced categories and is paying the tax levied pursuant to 68 O.S. §301 et seq.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-5. Documentation that purchaser is tribally owned or licensed retail store must be obtained and retained

- (a) In order for a wholesaler, distributor, jobber or warehouseman to sell to a tribally owned or licensed retail store at a rate of seventy-five percent (75%) of the cigarette tax imposed by 68 O.S. §301 et seq., the wholesaler, distributor, jobber or warehouseman must receive from said retailer a certificate, affidavit, license or other documentation showing that the purchaser is a tribally owned or licensed store within the meaning of 68 O.S. (Supp. 1992) §348.
- (b) Such certificate, affidavit, license, or other documentation must be retained by the wholesaler, distributor, jobber or warehouseman during the course of business with the tribally owned or licensed retailer and for a period of three (3) years thereafter.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-6. List of compacting tribes and retail outlets to be provided

The Oklahoma Tax Commission shall provide to cigarette wholesalers, distributors, jobbers and warehousemen a listing of those tribes who have entered into a compact with the State of Oklahoma. This list shall include a listing of each retail outlet which is owned or licensed by the compacting

tribes.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-7. Documentation required for refund on sales of cigarettes or tobacco products sold by tribally-owned or licensed stores to tribal members

(a) A federally-recognized Indian tribe or nation may receive a refund of in lieu payments pursuant to 68 O.S. 1992 Supp. §349 and §426 in the amount paid which is attributable to sales of cigarettes or tobacco products made to tribal members which is in excess of twenty-five percent (25%) of the tribe's or nation's total sales of cigarettes or tobacco products.

(b) All tribally-owned or licensed stores shall keep the following documentation to claim a refund of in lieu payments on sales to tribal members. These records shall be submitted at any time to the Tax Commission in order to substantiate the refund claim for sales made within one year of the filing of the claim. A sales journal shall be maintained recording:

- (1) Place of sale.
- (2) Date of sale.
- (3) Name of tribal member purchaser.
- (4) Tribal affiliation of purchaser.
- (5) Enrolled number of the tribal member purchaser.
- (6) Quantity sold.
- (7) Product sold.

(c) All documentation received will be reviewed by the Business Tax Division and a refund will be remitted based on verifiable sales to tribal members. An inventory record shall be maintained for the refund period recording:

- (1) Beginning inventory.
- (2) Purchase statements.
- (3) Ending inventory.

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93]

710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are One Hundred Twenty-five percent (125%) greater than the rates for the twenty-unit packages.

(b) **Rates effective January 1, 2005, applicable to sales on Indian country by federally-recognized Indian tribes or nations, or their licensees.** Rates applicable to sales of cigarettes made on Indian country by federally-recognized Indian tribes or nations, or their licensees are:

- (1) **Non-compact rate.** The non-compact rate is 77.25 cents per pack. This rate is applicable to sales made by tribes or their licensees who have **not** entered into a compact with the State of Oklahoma.
- (2) **Original compact rate.** The original compact rate is 25.75 cents per pack. This rate applies to sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales.
- (3) **New compact rate.** The new compact rate is 85.75 cents per pack. The terms "**new compact**" and "**new compact rate**" apply to compacts signed after January 1, 2003, which

contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (b)(6) apply by specific compact provision.

(4) **Arkansas border rate.** The Arkansas border rate is 30.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Arkansas border, as designated by the terms of their "new" compacts.

(5) **Kansas border rate.** The Kansas border rate is 60.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Kansas border, as designated by the terms of their "new" compacts.

(6) **Exception rate.** The "exception" rate is 5.75 cents per pack. This rate applies to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (b)(1) through (b)(5) of this Section.

[Source: Added at 22 Ok Reg 2247, eff 6-25-05]

710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations

(a) **Non-compact rate.** Non-compact rates apply to sales made by tribes or their licensees who have **not** entered into a compact with the State of Oklahoma:

- (1) For little (Class A) cigars: \$0.027 each.
- (2) For all other (Class C) cigars: \$0.09 each.
- (3) For smoking tobacco: Sixty percent (60%) of the Factory List Price.
- (4) For chewing tobacco: Forty-five percent (45%) of the Factory List Price.

(b) **Original compact rate.** The original compact rate applies to sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales.

- (1) For little (Class A) cigars: \$0.009 each.
- (2) For all other (Class C) cigars: \$0.03 each.
- (3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.
- (4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.

(c) **New compact rate.** The terms "**new compact**" and "**new compact rate**" apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (f) apply by specific compact provision:

- (1) For little (Class A) cigars \$0.02925 each.
- (2) For all other (Class C) cigars: \$0.0975 each.
- (3) For smoking tobacco: Fifty percent (50%) of the Factory List Price.
- (4) For chewing tobacco: Thirty-seven and one-half percent (37.5%) of the Factory List Price.

(d) **Arkansas border rate.** The Arkansas border rates apply to tribes' or licensees' locations that are close to the Arkansas border, as designated by the terms of their "new" compacts":

- (1) For little (Class A) cigars \$0.01225 each.
- (2) For all other (Class C) cigars: \$0.0375 each.
- (3) For smoking tobacco: Seventeen percent (17%) of the Factory List Price.
- (4) For chewing tobacco: Fourteen and one-half percent (14.5%) of the Factory List Price.

(e) **Kansas border rate.** The Kansas border rates apply to tribes' or licensees' locations that are close to the Kansas border, as designated by the terms of their "new" compacts:

- (1) For little (Class A) cigars: \$0.00225 each.
 - (2) For all other (Class C) cigars: \$0.0075 each.
 - (3) For smoking tobacco: Ten percent (10%) of the Factory List Price.
 - (4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.
- (f) **Exception rate.** The "exception" rates apply to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (a) through (e) of this Section.
- (1) For little (Class A) cigars: \$0.00225 each.
 - (2) For all other (Class C) cigars: \$0.0075 each.
 - (3) For smoking tobacco: Ten percent (10%) of the Factory List Price.
 - (4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

[Source: Added at 22 Ok Reg 2247, eff 6-25-05]

SUBCHAPTER 9. REPORTING REQUIRED BY THE PREVENTION OF YOUTH ACCESS TO TOBACCO ACT AND THE MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

710:70-9-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the determination, compilation, and reporting of certain information required by Sections 600.21 through 600.23 of the Prevention of Youth Access to Tobacco Act (37 O.S.Supp.1999, §600.1 et seq.) Further, the provisions are intended to implement, administer, and interpret "The Master Settlement Agreement Complementary Act (68 O.S.Supp.2004, §§ 360.1 through 360.8).

[Source: Added at 17 Ok Reg 3284, eff 7-7-00 (emergency); Added at 18 Ok Reg 2848, eff 6-25-01; Amended at 22 Ok Reg 2248, eff 6-25-05]

710:70-9-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Cigarette":

(A) *means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:*

- (i) *any roll of tobacco wrapped in paper or in any substance not containing tobacco,*
- (ii) *tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or*
- (iii) *any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in [(i) of this subparagraph].*

(B) *includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as*

tobacco for making cigarettes). For purposes of this definition of "cigarette", nine one-hundredths (0.09) of an ounce of "roll-your-own" tobacco shall constitute one individual "cigarette". [See: 37 O.S. § 600.22(4)]

"Commission" means the Oklahoma Tax Commission.

"Non-participating manufacturer" means any tobacco product manufacturer, as the term is defined by 37 O.S. § 600.22(9), selling products to consumers within Oklahoma, whether directly or through a distributor, retailer or similar intermediary or intermediaries, who does **not** elect to become a participating manufacturer, pursuant to 37 O.S. § 600.23(A)(1), and thus incurs the duty to place funds into a qualified escrow fund, as required by the provisions of 37 O.S. § 600.23(A)(2).

"Tobacco taxpayer" means every wholesaler, distributor, retailer, manufacturer or any other person, firm, corporation, club, or association; selling, receiving, distributing, storing, or using cigarettes or roll-your-own tobacco products, or both, in the State of Oklahoma, whether qualified to do business in this state or not, and without regard to whether the person is licensed or permitted, as required by any tax law.

"Units sold" means the number of individual cigarettes (including the quantity of calculated unit-equivalents of roll-your-own tobacco) manufactured by a non-participating manufacturer and sold in the state each month, either directly, or through a distributor, retailer, or similar intermediary or intermediaries.

[Source: Added at 17 Ok Reg 3284, eff 7-7-00 (emergency); Added at 18 Ok Reg 2848, eff 6-25-01]

710:70-9-3. Procedures pertaining to the Tobacco Master Settlement Agreement concerning non-participating manufacturers

In addition to any information currently reported, and in addition to any return presently required to be filed, each Tobacco Taxpayer shall report, for each non-participating manufacturer, all purchases and all units sold in Oklahoma of cigarettes (including all roll-your-own tobacco unit-equivalents), as those terms are defined in 37 O.S.Supp.1999 § 600.22. The Tobacco Taxpayer shall report the required information to the Oklahoma Tax Commission, on forms prescribed by the Commission, no later than the twentieth day of each calendar month for the preceding calendar month's activity. The following information must be reported monthly, regardless of whether any applicable sales have been made, for each non-participating manufacturer:

- (1) The month of activity;
- (2) The name and address of the non-participating manufacturer from whom the cigarettes or roll-your-own tobacco originated;
- (3) The brand name of the cigarettes or roll-your-own tobacco sold; and
- (4) The number of **units sold**, as defined by 710:70-9-2, of cigarettes and roll-your-own tobacco unit-equivalents.

[Source: Added at 17 Ok Reg 3284, eff 7-7-00 (emergency); Added at 18 Ok Reg 2848, eff 6-25-01; Amended at 19 Ok Reg 2444, eff 6-27-02]

710:70-9-4. Quarterly escrow installments required from certain nonparticipating manufacturers pursuant to the Master Settlement Agreement Complementary Act

(a) **Quarterly escrow payments for certain nonparticipating manufacturers required.** The Oklahoma Tax Commission shall require a tobacco product manufacturer subject to the escrow

requirements of 37 O.S. § 600.23, to make quarterly installments during the year in which the sales covered by the deposits are made when the Attorney General notifies the Tax Commission that:

- (1) A nonparticipating manufacturer has not previously established and funded a qualified escrow fund in Oklahoma; or,
- (2) A nonparticipating manufacturer has not made any escrow deposits for more than one year; or,
- (3) A nonparticipating manufacturer has failed to pay any judgment awarded to the state, including any civil penalty; or,
- (4) A nonparticipating manufacturer sells more than 2,000,000 sticks or 180,000 ounces of roll-your-own product during a quarter.

(b) Quarterly escrow payments for all nonparticipating manufacturers may be required.

All nonparticipating manufacturers shall be required to make quarterly payments if, thirty (30) days prior to the beginning of any quarter, the Attorney General serves a written request upon the Tax Commission, requesting that quarterly payments be required. Such quarterly payments under this subsection shall be required for every quarter after such notice until such time as the Attorney General notifies the Tax Commission that quarterly payments, in his judgment, are no longer necessary to provide compliance with the escrow requirements of a nonparticipating manufacturer.

(c) Deadlines. Nonparticipating manufacturers required to make quarterly payments must do so as follows:

- (1) Payments for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. The Attorney General's office must receive official notification of the payments no later than May 15 of the same year.
- (2) Payments for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. The Attorney General's office must receive official notification of the payments no later than August 15 of the same year.
- (3) Payments for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. The Attorney General's office must receive official notification of the payments no later than November 15 of the same year.
- (4) Payments for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the next year. The Attorney General's office must receive official notification of the payments no later than February 15 of the next year.

(d) Penalties. The nonparticipating manufacturer and its brands may be removed from the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General if:

- (1) Required quarterly escrow payments are not timely made in full; or,
- (2) An outstanding final judgment, and interest thereon, for a violation of 37 O.S. §§600.21 through 600.23 has not been fully satisfied; or,
- (3) The Attorney General is not timely notified that the quarterly escrow payments have been made in full; or,
- (4) The Attorney General determines that the nonparticipating manufacturer has otherwise failed to comply with any requirement of the Master Settlement Agreement Complementary Act.

[Source: Added at 22 Ok Reg 2248, eff 6-25-05]