

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

PART 1. GENERAL PROVISIONS

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, 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. Effective January 1, 2010, a wholesaler must purchase cigarettes from a manufacturer holding an Oklahoma Cigarette Manufacturer License.

[Source: Added at 21 Ok Reg 1145; eff 5-13-04; Amended at 27 Ok Reg 2350, eff 7-11-10]

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 has been convicted of or has entered a plea of guilty or nolo contendere to any felony;*
- (4) *Applicant is a manufacturer, and is not a participating manufacturer as defined in 37 O.S. § 600.22;*
- (5) *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).*
- (6) *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,*
- (7) *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; Amended at 27 Ok Reg 2350, eff 7-11-10]

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 administrative fines and 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 [REVOKED]

[Source: Added at 22 Ok Reg 2245, eff 6-25-05; Amended at 27 Ok Reg 2350, eff 7-11-10; Revoked at 36 Ok Reg 1241, eff 8-11-19]

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 Two Hundred Fifty Dollar (\$250.00) 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; Amended at 27 Ok Reg 2350, eff 7-11-10]

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;
- (3) To a purchaser who has an unpaid assessment or is delinquent in one or more required reports; or,
- (4) 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; Amended at 28 Ok Reg 966, eff 6-1-11]

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

(a) Wholesalers shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the wholesaler 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 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. [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, wholesalers, 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 Compliance 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; Amended at 27 Ok Reg 2350, eff 7-11-10]

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

[Source: Added at 23 Ok Reg 2868, eff 6-25-06; Revoked at 26 Ok Reg 2373, eff 6-25-09]

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 [REVOKED]

[Source: Added at 23 Ok Reg 2866, eff 6-25-06; Revoked at 26 Ok Reg 2373, eff 6-25-09]

710:70-2-14. Retail to retail sales of cigarettes prohibited

Effective January 1, 2010, a licensed cigarette retailer is prohibited from selling cigarettes to another licensed cigarette retailer unless the purpose of the sale is to move inventory between stores which are owned by the same legal entity.

[Source: Added at 27 Ok Reg 2350, eff 7-11-10]

710:70-2-15. Minimum requirements of monthly cigarette tax reports of licensed manufacturers and wholesalers

(a) Every licensed manufacturer and every wholesaler licensed by the Oklahoma Tax Commission, to possess, use or in any manner deal with cigarettes 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 cigarettes and merchandise subject to such excise tax monthly, on the monthly cigarette tax report form prescribed by the Commission. Each monthly report shall include the following information:

- (1) Name, business address and cigarette license number of the tax reporter;
- (2) All purchases or deliveries, stated separately according to the dates of delivery in this

State, of all cigarettes received, possessed, used or in any manner dealt with in the previous calendar month;

(3) Invoice numbers of all purchases or deliveries of such cigarettes 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 cigarettes 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. §301 et seq.]

(b) Monthly reports due after October 31, 2011, must be filed electronically in the format prescribed by the Commission.

(c) Copies of each invoice for sales of cigarettes made during the previous calendar month shall be attached to the monthly report form. If the number of invoices is voluminous, reporter may request and obtain authorization to submit a schedule of sales in lieu of copies of invoices.

[Source: Added at 29 Ok Reg 564, eff 5-11-12]

PART 3. DELIVERY SALES

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

[Source: Amended and renumbered from 710:70-2-5 at 22 Ok Reg 2245, eff 6-25-05; Amended at 28 Ok Reg 966, eff 6-1-11; Amended at 30 Ok Reg 1473, eff 7-1-13; Revoked at 32 Ok Reg 1400, eff 8-27-15]

710:70-2-50.1 Definitions

The following words and terms, when used in Part 3 of this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Cigarette" means:

(A) 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 subparagraph (i) of this subparagraph.

(B) And 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". [37 O.S. § 600.22(4)]

"Distributor" or **"Wholesaler"** means and includes a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve, and that:

- (A) purchases cigarettes directly from the manufacturer;
- (B) at least seventy-five percent (75%) of whose gross sales are made at wholesale;
- (C) handles goods in wholesale quantities and sells through salespersons, advertising and/or sales promotion devices;
- (D) carries at all times at its principal place of business a representative stock of cigarettes for sale, and
- (E) comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.
- (F) In addition to the foregoing, and irrespective of the percentage or type of sales, the term **"wholesaler"** or **"distributor"** shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses. [68 O.S. § 301(3)]

"Retailer" means:

- (A) A person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail, or
- (B) A person, not coming within the classification of wholesaler, distributor and/or jobber as herein defined, having possession of more than one thousand cigarettes. [68 O.S. § 301(4)]

[Source: Added at 32 Ok Reg 1400, eff 8-27-15]

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

(a) No person or entity engaged in the business of selling or distributing cigarettes, that is not a manufacturer, wholesaler, or distributor of cigarettes or other tobacco products licensed by the Oklahoma Tax Commission shall mail, ship or otherwise deliver cigarettes to any person in this state that is not:

- (1) A distributor or wholesaler of cigarettes licensed by the Oklahoma Tax Commission under Section 304 of Title 68 of the Oklahoma Statutes;
- (2) An export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code or the operator of a customs bonded warehouse pursuant to 19 U.S.C., Section 1311 or 1555; or
- (3) A person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state when the person is acting in accordance with the official duties of the person.

(b) It shall be illegal for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by the carrier to be a person other than described in paragraph 1, 2 or 3 of subsection a of this section. For purposes of this subsection, cigarettes may be transported to a home or residence in this state by persons other than common and contract carriers in quantities that do not exceed one thousand cigarettes at any one time.

(c) Any cigarettes that are shipped or transported into this state in violation of this section shall be forfeited to the state and destroyed.

[Source: Amended and renumbered from 710:70-2-6 at 22 Ok Reg 2245, eff 6-25-05; Amended at 32 Ok Reg 1400, eff 8-27-15]

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

[Source: Amended and renumbered from 710:70-2-5 at 22 Ok Reg 2246, eff 6-25-05; Revoked at 32 Ok Reg 1400, eff 8-27-15]

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 or retailer first possessing, selling, using, distributing, exchanging, bartering, or in any manner dealing with such tobacco products in this State. No other person 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.

[Source: Amended at 27 Ok Reg 2350, eff 7-11-10; Amended at 30 Ok Reg 1473, eff 7-1-13]

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

(a) Every licensed manufacturer and every wholesaler 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, and every retailer who receives tobacco products upon which excise 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.]

(b) Monthly reports must be filed electronically in the format prescribed by the Commission and the tax remitted to the Tax Commission by electronic funds transfer.

(c) Copies of each invoice for sales of tobacco products made during the previous calendar month shall be attached to the monthly report form. If the number of invoices is voluminous, reporter may request and obtain authorization to submit a schedule of sales in lieu of copies of invoices.

[Source: Amended at 28 Ok Reg 2363, eff 7-6-11 (emergency); Amended at 29 Ok Reg 564, eff 5-11-12; Amended at 30 Ok Reg 1473, eff 7-1-13; Amended at 32 Ok Reg 1400, eff 8-27-15]

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

Any Monthly Tobacco Products Tax Report form filed with the Compliance 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 twentieth (20th) 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, holiday recognized by the executive department of this State, or a date when the Federal Reserve Banks are closed then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday, holiday or Federal Reserve Bank closure date.
- (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.

[Source: Amended at 30 Ok Reg 1472, eff 7-1-13]

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

- (a) Every licensed manufacturer and every wholesaler 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 ¼ %) 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, carriers 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, retailers or consumers.

(2) Every 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 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 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 carriers.

(b) All required monthly reports shall be due on or before the twentieth (20th) 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 O.S. § 201; 68 O.S. §§ 401 et seq.]

[Source: Amended at 30 Ok Reg 1472, eff 7-1-13]

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

It shall be the duty of every licensed wholesaler 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, retailer or consumer receiving and paying for such drop shipment through the licensed wholesaler. 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 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 [REVOKED]

[Source: Revoked at 30 Ok Reg 1472, eff 7-1-13]

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 [REVOKED]

[Source: Added at 22 Ok Reg 2246, eff 6-25-05; Amended at 26 Ok Reg 2373, eff 6-25-09; Revoked at 36 Ok Reg 1241, eff 8-11-19]

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

- (a) Wholesalers 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 wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the wholesaler'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 wholesaler 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 tobacco 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, wholesalers, 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 Compliance 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]

710:70-5-14. Wholesale, retail, and distributing agent licenses required

- (a) Effective January 1, 2010, every dealer or wholesaler of tobacco products must annually obtain a license from the Tax Commission.
- (b) The license fee shall not be paid if the applicant has paid the fee for a cigarette wholesaler

license to the Tax Commission.

(c) A retailer of tobacco products must obtain a retail tobacco license prior to purchasing or selling tobacco products after January 1, 2010.

(d) Effective January 1, 2010, retailers of tobacco products shall purchase tobacco products only from a supplier who holds a current tobacco wholesaler license.

(e) Effective January 1, 2010, wholesalers of tobacco products are prohibited from purchasing tobacco products from a person required to obtain an Oklahoma license. A wholesaler shall sell only to a retailer holding an Oklahoma tobacco retailer license.

(f) A licensed retailer is prohibited from selling tobacco products to another licensed tobacco products retailer unless the purpose of the sale is to move inventory between stores which are owned by the same legal entity.

[Source: Added at 27 Ok Reg 2350, eff 7-11-10; Amended at 29 Ok Reg 564, eff 5-11-12]

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 and the cigarettes bearing such stamps are being held for sale to members of that Indian tribe or nation; 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; Amended at 27 Ok Reg 2350, eff 7-11-10; Amended at 28 Ok Reg 966, eff 6-1-11]

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

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93; Revoked at 28 Ok Reg 966, eff 6-1-11]

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 [REVOKED]

[Source: Added at 10 Ok Reg 683, eff 12-23-92 (emergency); Added at 10 Ok Reg 3867, eff 7-12-93; Revoked at 27 Ok Reg 2350, eff 7-11-10]

710:70-7-8. Cigarette stamp tax rate for sales by federally-recognized Indian tribes and nations [REVOKED]

[Source: Added at 22 Ok Reg 2247, eff 6-25-05; Amended at 27 Ok Reg 2350, eff 7-11-10; Amended at 28 Ok Reg 966, eff 6-1-11; Amended at 32 Ok Reg 1400, eff 8-27-15; Revoked at 36 Ok Reg 1241, eff 8-11-19]

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

[Source: Added at 22 Ok Reg 2247, eff 6-25-05; Amended at 27 Ok Reg 2350, eff 7-11-10; Amended at 28 Ok Reg 933, eff 6-1-11; Amended at 32 Ok Reg 1400, eff 8-27-15; Revoked at 36 Ok Reg 1241, eff 8-11-19]

710:70-7-10. Calculation of probable demand for noncompacting federally recognized Indian tribes or nations

(a) **Purpose of rule:** The purpose of this rule is to provide the procedure necessary for the implementation of calculation of probable demand for Native American tax free stamps for each noncompacting tribe or nation resident in Oklahoma for cigarettes and other tobacco products, pursuant to 68 O.S. § 349.1., effective January 1, 2010.

(b) **Calculation of probable demand:** Probable demand shall be calculated in conformity with the requirements of 68 O.S. § 349.1.

(c) **Service of preliminary calculation of probable demand upon affected noncompacting tribes and nations:** Not less than seventy-five (75) calendar days prior to the first calendar day of each calendar year, the preliminary calculation of probable demand for cigarette and other tobacco products shall be served upon the governing authorities or other designated agent of each and every noncompacting tribe and nation, together with a copy of this Section. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(d) **Service of objections/dispute of preliminary calculation of probable demand by affected noncompacting tribes and nations:** Within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand, affected noncompacting tribes and nations may serve upon the Office of the General Counsel, Oklahoma Tax Commission, any objections/dispute of the preliminary calculation of probable demand, together with any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence. Service shall be deemed complete upon placing of objections/dispute of the preliminary calculation of probable demand, together with supporting verifiable evidence in the first class mail, postage prepaid, addressed to the Office of the General Counsel, Oklahoma Tax Commission.

(e) **Failure to file objection/dispute of preliminary calculation of probable demand.** If, within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand upon an affected tribe or nation, that tribe or nation has failed to file its objection/dispute to the preliminary calculation served upon it, that preliminary calculation shall become the final calculation, final and nonappealable.

(f) **Final calculation of probable demand.** If an affected tribe or nation timely files its objection/dispute to the preliminary calculation of probable demand for that affected tribe or nation and furnishes supporting verifiable information pursuant to (d) of this Section, said objection/dispute, together with supporting verifiable evidence shall be considered, and a final calculation of probable demand issued and served within fifteen (15) calendar days from the date of service of said objection/dispute. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(g) **Timely filing of objections/dispute of final calculation of probable demand.** If, within fifteen (15) calendar days from the date of service of the final calculation of probable demand

upon an affected tribe or nation, that tribe or nation has timely filed its objection/dispute to the final calculation served upon it, the matter of the final calculation of probable demand shall proceed as a protested matter, pursuant to the provisions of the *OAC 710:1-5-21* through *OAC 710:1-5-49*.

(h) Final calculation of probable demand to be used while any timely protest and appeal of the final calculation of probable demand is pending. If an affected tribe or nation files a timely objection/dispute to the final calculation served on it, cigarettes and other tobacco products may be obtained, on a monthly basis, with entitlement based upon 1/12th of the final calculated probable demand for cigarettes and other tobacco products. Provided, however, at the option of the affected tribe or nation, it may obtain cigarettes and other tobacco products each month, based upon 1/12th of the final calculated probable demand, plus not more than an additional twenty five percent (25%) of 1/12th of the final calculated probable demand for cigarettes and other tobacco products. In the event an affected tribe or nation elects to obtain such an additional amount of untaxed cigarettes and other tobacco products, entitlement to request those additional amounts shall cease when the total of cigarettes and other tobacco products obtained in a calendar year equals the final calculation of probable demand for that calendar year.

(i) Final determinations of the final calculated probable demand appealable pursuant to 68 O.S. § 225. Final orders of the Oklahoma Tax Commission pursuant to 68 O.S. § 349.1 and this Section shall be appealable to the Oklahoma Supreme Court, as a matter of right, pursuant to 68 O.S. § 225.

[Source: Added at 27 Ok Reg 2350, eff 7-11-10; Amended at 36 Ok Reg 1241, eff 8-11-19]

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) **Grounds for removal of nonparticipating manufacturer from Oklahoma Directory of Certified Tobacco Manufacturers and Brands.** 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

(e) **Additional grounds for removal or exclusion from the Directory.** In addition to the grounds contained in subsection (d) of this Section, a nonparticipating manufacturer and its brands may be removed or not included in the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General if the manufacturer:

(1) Does not certify it is subject to, without immunity, the Master Settlement Agreement Complementary Act and the Prevention of Youth Access to Tobacco Act; or

(2) Fails to disclose that a state or federal government has brought an action in compliance with any state or federal law, regulating the sale and or distribution of tobacco products, including the escrow statute of another state; or

(3) Fails to sell only through an Oklahoma-licensed wholesaler any tobacco product sold into the state or fails to provide monthly PACT Act reports to the Oklahoma Tax Commission and the Oklahoma Attorney General for sales into the state.

[Source: Added at 22 Ok Reg 2248, eff 6-25-05; Amended at 32 Ok Reg 1400, eff 8-27-15]

710:70-9-5. Electronic tobacco sales report

(a) Each wholesaler or distributor shall report information relating to sales of cigarettes and roll-your- own tobacco to each retailer and wholesaler. The required information shall be reported to the Attorney General and the Oklahoma Tax Commission, electronically, no later than the twentieth day of each calendar month for the preceding calendar month's activity. The report is to contain the following information:

(1) The name and address of the outlet location of each retailer and wholesaler to which the wholesaler or distributor delivered cigarettes, including the city and zip code;

(2) Monthly sales, including the number of individual cigarettes, by brand name, made to:

(A) Wholesalers and retailers in packages bearing the excise tax stamp of the State of Oklahoma;

(B) Tribal retailers of compacting Tribes, in packages bearing the joint "unity rate" tax stamp purchased from the Oklahoma Tax Commission;

(C) Wholesalers, retailers or consumers located outside the State of Oklahoma in packages not bearing the excise tax stamp of the State of Oklahoma;

(D) Noncompacting Tribes located in the State of Oklahoma that bear the black tax-free stamp for sales to tribal members of a noncompacting Tribe;

(3) Monthly sales of individual containers of roll-your-own tobacco products, by brand name and by weight, upon which the state excise or "unity" tax has been paid; and

(4) Monthly sales of individual containers of roll-your-own tobacco products, by brand name and by weight, made to:

(A) Wholesalers, retailers or consumers located outside the State of Oklahoma on which the state excise tax has not been paid;

(B) Noncompacting Tribes located within the State of Oklahoma.

(b) All monthly net sales reports provided for in subsection (a) of this Section shall include the invoice number and invoice date of cigarettes sold, distributed or shipped into Oklahoma. The reports shall also include the beginning and ending inventory for each type of stamp held during the reporting period.

(c) The report required by this Section if timely filed shall be considered as meeting the reporting requirements of Section 360.6 of Title 68 of the Oklahoma Statutes.

[Source: Added at 32 Ok Reg 1400, eff 8-27-15]