Chapter 323

1981 REPLACEMENT PART

Cigarette Tax

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GENERAL PROVISIONS

323.005 Short title; construction. (1) This chapter may be cited as the Cigarette Tax Act

(2) Except where the context otherwise requires, the definitions given in this chapter govern its construction. [1965 c 525 §§1, 2]

323.010 Definitions generally. (1) "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and 1,000 such rolls weigh over three pounds.

(2) "Department" means the Department of Revenue.

(3) "Dealer" includes every person, other than a manufacturer or a person holding a distributor's license, who engages in this state in the sale of cigarettes.

(4) "In this state" means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(5) "Manufacturer" means any person who makes, manufactures or fabricates cigarettes for sale to distributors.

(6) "Package" means the individual package, box or other container in which retail sales or gifts of cigarettes are normally made or intended to be made.

(7) "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate, this state, any county, municipality, district or other political subdivision of the state, or any other group or combination acting as a unit.

(8) "Sale" includes any transfer of title or possession for a consideration, exchange or barter, in any manner or by any means whatsoever, but does not include the sale of cigarettes by a manufacturer to a distributor.

(9) "Transporter" means any person importing or transporting into this state, or transporting in this state, cigarettes obtained from a source located outside this state, or from any person not licensed as a distributor under this chapter. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Interstate Commerce Commission to carry commodities in interstate commerce, or to a carrier of federal tax-free cigarettes in bond, or any person transporting no more than 200 cigarettes at any one time.

(10) "Untaxed cigarette" means any cigarette which has not yet been distributed in such manner as to result in a tax liability under this chapter.

(11) "Use or consumption" includes the exercise of any right or power over cigarettes incident to the ownership thereof, other than the sale of the cigarettes or the keeping or retention thereof for the purpose of sale.

(12) "Wholesaler" means any dealer who engages in the sale of cigarettes to any other dealer for purposes other than use or consumption. [1965 c.525 §§3, 4, 5, 9, 10, 12, 13, 14, 15, 16, 17, subsection (12) enacted as 1967 c 193 §2]

323.015 "Distribution," "distributor" and "distributor engaged in business in this state" defined. (1) "Distribution" includes:

(a) The sale in this state of untaxed cigarettes.

(b) The use or consumption in this state of untaxed cigarettes.

(c) The receipt or retention in this state of untaxed cigarettes at a place of business where cigarettes are customarily sold or offered for sale to consumers.

(d) The placing of cigarettes in vending machines in this state.

(e) The use or consumption by the first person in possession in this state of untaxed cigarettes transported to the state in quantities of more than 200 in a single shipment.

(f) Donations of sample cigarettes or gift cartons by the manufacturers thereof, except sample packages containing not more than five cigarettes and labeled as "sample," "not for sale" or with similar wording.

(2) "Distributor" includes:

(a) Every person who after July 1, 1966, and within the meaning of the term "distribution" as defined in this section, distributes cigarettes.

(b) Every person who sells or accepts orders for cigarettes which are to be transported from a point outside this state to a consumer within this state.

(c) Notwithstanding the provisions of ORS 323.010 (3), any dealer who serves as his own

distributor or who buys directly from a manufacturer for resale in this state shall be deemed to be both a distributor and a dealer under this chapter.

(3) "Distributor engaged in business in this state" includes any of the following:

(a) Any distributor maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or any other place of business.

(b) A distributor having a representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes. [1965 c 525 §§6, 7, 8]

IMPOSITION OF TAX

323.030 Tax imposed; rate; exclusiveness; only one distribution taxed. (1) Every distributor shall pay a tax upon his distributions of cigarettes at the rate of four and one-half mills for the distribution of each cigarette in this state

(2) The taxes imposed by this chapter are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes.

(3) Any cigarette with respect to which a tax has once been imposed under this chapter shall not be subject upon a subsequent distribution to the taxes imposed by this chapter. [1965 c 525 §§18, 30, 1971 c 535 §1]

Note: Section 2 and 9 chapter 797, Oregon Laws 1981, provide

Sec. 2. (1) In addition to and not in lieu of the tax upon distributions of cigarettes imposed by ORS 323 030, every distributor shall pay a tax upon distributions of cigarettes that occur on or after the first day of the month following the effective date of this 1981 Act [November 1, 1981], and prior to July 1, 1983, at the rate of three and one-half mills for the distribution of each cigarette in this state.

(2) All moneys received by the department from the tax imposed by subsection (1) of this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293 445 After the payment of refunds, the moneys shall be credited to the General Fund

Sec. 9. If this Act is referred to the people under section 1, Article IV, Oregon Constitution, and is approved by a majority of the voters voting on the measure, then section 2 of this Act is amended to read

Sec. 2. (1) In addition to and not in lieu of the tax upon distributions of cigarettes imposed by ORS 323 030, every distributor shall pay a tax upon distributions of cigarettes that occur on or after the first day of the month following the effective date of this 1981 Act at the rate of three and one-half mills for the distribution of each cigarette in this state

(2) All moneys received by the department from the tax imposed by subsection (1) of this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293 445 After the payment of refunds, the moneys shall be credited to the General Fund

323.035 Distributions by manufacturers to licensed distributors exempted. The taxes imposed by this chapter shall not apply to distributions of cigarettes by the manufacturer to a licensed distributor. [1965 c 525 §19]

323.040 Sales to common carriers in interstate or foreign passenger service exempted; tax on carriers. The taxes imposed by this chapter shall not apply to the sale of cigarettes by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes on the facilities of such carrier. Whenever cigarettes are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes on those facilities, the tax imposed by this section shall not be levied with respect to sales of the cigarettes by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes on the facilities of the carriers, as the case may be, for the privilege of making such sales in Oregon at the rate of two mills for each cigarette sold. Such common carriers and authorized persons shall pay the tax imposed by this section and file reports with the department as provided in ORS 323.355. [1965 c 525 §20]

323.045 Gifts of sample packets exempted. The taxes imposed by this chapter shall not apply to donations of cigarettes as samples in packets of five or less cigarettes. [1965 c 525 §23]

323.050 Storage in bonded warehouses exempted. The taxes imposed by this chapter shall not apply to cigarettes stored in a bonded warehouse and which are nontax paid under the provisions of chapter 52 of the Internal Revenue Act of 1954, as amended. [1965 c 525 §22]

323.055 Sales to federal installations and veterans' institutions exempted. The taxes imposed by this chapter shall not apply to:

(1) The sale of cigarettes to United States Army, Air Force, Navy, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores, the United States Veterans Administration, ships' stores maintained under federal bond, or to any person which by virtue of the constitution or statutes of the United States cannot be made the subject of taxation by this state

(2) The sale or gift of federally tax-free cigarettes when the cigarettes are delivered directly from the manufacturer under Internal Revenue bond to a veterans' home or a hospital or domiciliary facility of the United States Veterans Administration for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax shall not be imposed with respect to the use or consumption of such cigarettes by the institution or by the veteran patients or domiciliaries. [1965 c 525 §21, 24]

323.060 Consumer exemption; payment of tax in certain cases. The taxes imposed by this chapter shall not apply to the use or consumption of untaxed cigarettes transported to this state in a single lot or shipment of not more than 200 cigarettes, or of not more than 200 untaxed cigarettes obtained at one time from any of the instrumentalities listed in ORS 323.055 (1). The taxes resulting from a distribution of cigarettes within the meaning of ORS 323.015 (1)(b) shall be paid by the user or consumer. [1965 c 525 §25]

323.065 Claim for exemption. Any claim for exemption from tax under this chapter shall be made to the department in such manner as it shall prescribe. [1965 c 525 §29]

323.070 [1965 c 525 §26, repealed by 1971 c 416 §3]

323.075 Distributor to collect tax on certain sales. Every distributor engaged in business in this state and selling or accepting orders for cigarettes with respect to the sale of which the taxes imposed by this chapter are inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the taxes with respect to the distribution of the cigarettes, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the department [1965 c 525 §27, 1981 c 797 §8]

323.080 Manufacturers' agreements for prepayment. Manufacturers may enter into agreements with the department for the prepayment of the tax on nonexempt cigarettes given away for advertising and any other purpose. [1965 c 525 §32]

323.085 Presumptions regarding distribution and precollection of tax. (1) Unless the contrary is established, it shall be presumed that all cigarettes acquired by a distributor are untaxed cigarettes, and that all cigarettes manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed

(2) All taxes paid pursuant to the provisions of this chapter shall be presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarette and recovered from the ultimate consumer or user Except for a person selling cigarettes through a vending machine or machines, any person selling cigarettes at retail shall state or separately display in the retail premises a notice of the amount of the tax included in the selling price and charged or payable pursuant to this chapter. The provisions of this subsection shall in no way affect the method of collection of such tax as provided by this chapter. [1965 c 525 §§28, 31]

LICENSE AND BOND

323.105 Distributor's license. Every person desiring to engage in the sale of cigarettes as a distributor, except a person who desires merely to sell or accept orders for cigarettes which are to be transported from a point outside this state to a consumer within this state, shall file with the department an application, in such form as the department may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he engages in the business of distributing cigarettes. No fee shall be charged for such license. For the purposes of this section, a vending machine in and of itself, shall not be deemed a place of business. [1965 c 525 §34]

323.107 Wholesaler's license. (1) Every person desiring to engage in the sale of cigarettes as a wholesaler shall file with the department an application, in such form as the department may prescribe, for a wholesaler's license. No person shall engage in business as a wholesaler without a license. A wholesaler's license may be revoked or reinstated by the department as in the case of a distributor's license pursuant to ORS 323.140.

(2) A wholesaler is subject to all the requirements of this 1967 Act imposed upon distributors relating to making, preserving and supplying records necessary to effective administration by the department [1967 c 193 §3]

Note: The Legislative Counsel has not, pursuant to 173 160, substituted ORS references for the words "This 1967 Act" in 323 107 1967 c 193 also enacted subsection (12) of 323 010

323.110 Security required for licensing; conditions of bond. The department, to insure compliance with this chapter, shall require a licensee or an applicant for a license as distributor to deposit with it such security as the department may determine. The amount of the security shall be fixed by the department but shall not be greater than two times the estimated average monthly liability shown in the monthly reports, determined in such manner as the department deems proper The amount of the security may be increased or decreased by the department subject to the limitations herein provided. Except as provided in ORS 323.120, the security shall be in the form of a bond or bonds executed by the distributor as principal and by a corporation, authorized to engage in business as a surety company in Oregon under ORS chapter 747, as surety, payable to the State of Oregon through its Department of Revenue, conditioned upon the payment of all taxes, penalties and other obligations of the distributor arising under this chapter. [1965 c 525 §35]

323.115 Provision for withdrawal of surety. Every bond shall contain a provision substantially to the effect that when the surety exercises its right to withdraw as surety, the withdrawal shall be effective on the first day of the calendar month after receipt of the notice by the department if the notice is received on or before the 15th day of the month, otherwise the withdrawal shall be effective on the first day of the second calendar month after receipt of the notice by the department. [1965 c 525 §36]

323.120 Deposit of money or securities in lieu of bond. In lieu of a bond or bonds a distributor, under such conditions as the department may prescribe, may deposit with the State Treasurer an amount of lawful money equivalent to the amount of the bond or bonds otherwise required, or he may deposit readily saleable bonds or other obligations of the United States, the State of Oregon, or any county of this state of an actual market value of not less than the amount of the bond or bonds otherwise required by this chapter The State Treasurer shall immediately notify the department as to the time of receipt and the amount of money or value of bonds received by him. [1965 c 525 §37]

323.125 Liquidation of security to pay delinquency. Upon receipt of a certificate of the department setting forth the amount of a distributor's delinquencies, the State Treasurer shall pay to the department the amount so certified from the money deposited with him by the distributor or from the amounts received from the sale of bonds or other obligations deposited with the State Treasurer by the distributor. Securities deposited with the State Treasurer which have a prevailing market price may be sold by him for the purposes of this section at private sale at a price not lower than the prevailing market price thereof [1965 c 525 §38]

323.130 Issuance and display of license. Upon receipt of a completed application and such bonds or other security as may be required by the department under this chapter, the department shall issue to the applicant a license as a distributor. A separate license shall be issued for each place of business of the distributor within the state. A license is valid only for engaging in business as a distributor at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The license is not transferable and is valid until canceled, suspended or revoked. [1965 c 525 §39]

323.135 Suspension of license; reinstatement; hearing. The license of any distributor shall be automatically suspended upon the cancellation of his bond, or if the bond becomes void or unenforceable for any reason, or if the distributor fails to pay any taxes or penalties due under this chapter. The license shall be automatically reinstated if the distributor files a valid bond, or pays his delinquent taxes, as the case may be. Upon the petition of any distributor whose license has

been suspended under this section, a hearing shall be afforded him before the department, pursuant to ORS 183.310 to 183.550, after five days' notice of the time and place of hearing [1965 c 525 §40, 1971 c 734 §36]

323.140 Revocation of license; notice; hearing; reinstatement. (1) Whenever any distributor fails to comply with any provision of this chapter or any rule or regulation of the department prescribed and adopted under this chapter, the department may revoke or suspend the license held by him. The department shall not issue a new license to a distributor whose license has been revoked unless it is satisfied that he will comply with the provisions of this chapter and the rules and regulations of the department.

(2) Where the department proposes to refuse to issue or renew a license, or proposes to revoke a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550.

(3) Judicial review of orders under subsection (1) of this section or under ORS 323.135 shall be as provided in ORS 183.310 to 183.550. [1965 c 525 §41, 1971 c 734 §37]

STAMPS AND METER MACHINES

323.155 Tax payment by use of stamps or meter impressions. Except for the use or consumption of cigarettes by other than a licensed distributor, and as may be authorized under the provisions of ORS 323.170, the tax imposed by this chapter with respect to distributions of cigarettes shall be paid by distributors through the use of stamps or meter impressions. The department shall furnish stamps for sale and provide for the sale of meter register settings for metering machines approved by the department. [1965 c 525 §42]

323.160 Design; manner of affixing and canceling. (1) Stamps and meter impressions shall be of such designs, specifications and denominations as may be prescribed by the department. The department shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.

(2) An appropriate stamp shall be affixed to, or an appropriate meter impression shall be made on, each package of cigarettes prior to the distribution of the cigarettes. [1965 c 525 §§43, 44]

323.165 Use of metering machines; sale of stamps and meter settings. (1) A metering machine may be used and a meter may be stored, transferred, transported, repaired, opened, set or used only in accordance with rules and regulations prescribed by the department. Meters, meter register settings, or unaffixed stamps shall not be sold, exchanged or in any manner transferred by a distributor to another person without prior written approval of the department.

(2) With the approval of the Executive Department, the Department of Revenue may enter into contracts with financial institutions, conveniently located with reference to distributors, constituting such financial institutions the department's agents for the sale of stamps and setting of meters, and matters appertaining thereto. [1965 c 525 §45]

323.170 Payment for stamps and meter settings; discount; study by department. (1) Stamps and meter register settings shall be sold to a licensed distributor at their denominated values less a sum allowed as compensation to a distributor for his services in affixing stamps or meter impressions to packages as required by this chapter. Payment for stamps or meter register settings shall be made at the time of purchase, provided that a licensed distributor, subject to the conditions and provisions of this chapter, may be permitted to defer payments therefor.

(2) The compensation to distributors shall be at the rate of $.00167 per package of 20 cigarettes for each package to which the distributor affixes an Oregon stamp or meter impression.

(3) The department shall make a study to determine the reasonable costs of distributors in affixing stamps and meter impressions required by this chapter, setting up classes of distributors by volume of cigarettes distributed if this appears useful, and shall make a written report of its findings and recommendations to the Fifty-fifth Legislative Assembly. [1965 c 525 §47]

323.175 Application for credit purchases of stamps and meter settings. A licensed distributor may apply to the department to fix the maximum amount of deferred-payment purchases of stamps and meter register settings which the distributor may make

in any calendar month Upon receipt of the application and the security deposit required pursuant to ORS 323 110, the department shall fix such amount. The department at any time may designate the sales locations where the distributor may make deferred-payment purchases of stamps and meter register settings and fix the amount of such purchases which the distributor may make within each monthly period at the designated sales location. [1965 c 525 §48]

323.180 Authorization of agent; revocation. A distributor shall authorize in writing those persons who may order purchases of stamps or meter register settings for the account of the distributor at a location where stamps or meter register settings are sold. The authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in such manner as may be prescribed by the department. [1965 c 525 §50]

323.185 Date when payment for credit purchases due; extension. (1) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis for a calendar month shall be due and payable on or before the 20th day of the next calendar month Payments shall be made by a remittance payable to the department.

(2) The department for good cause may extend for not to exceed five days the time for paying any amount owing for stamps or meter register settings purchased on the deferred-payment basis provided a request for the extension is filed with the department within or prior to the period for which the extension may be granted [1965 c 525 §§49, 53]

323.190 Suspension of credit. The department may suspend without prior notice a distributor's privilege to purchase stamps or meter register settings on the deferred-payment basis or may reduce the amount of permissible monthly purchases fixed for the distributor, if the distributor fails to pay promptly for stamps or meter register settings when payment is due, if the bond or bonds of the distributor are canceled, become void, impaired, or unenforceable for any reason, or if in the opinion of the department, collection of any amounts unpaid or due from the distributor under this chapter are jeopardized. [1965 c 525 §51]

323.195 Penalty for nonpayment of credit purchase; interest. Any distributor who fails to pay any amount owing to the purchase of stamps or meter register settings within the time required, shall pay a penalty of 10 percent of the amount due in addition to the amount plus interest at the rate of one-half of one percent per month, or fraction thereof, from the date on which the amount became due and payable until the date of payment [1965 c 525 §52]

ADMINISTRATION

323.205 Manufacturers' reports. Every manufacturer selling and shipping cigarettes into this state to other than a distributor licensed by this state shall deliver with each sale or consignment of cigarettes a written statement containing the name or trade name of both the seller and the purchaser, the date of delivery, the quantity of cigarettes, and the trade name or brand thereof, and within 10 days shall deliver a duplicate of each such statement to the department Each cancellation or modification of the written statement and any other information necessary to the reconciliation of accounts shall be filed with the department by the manufacturer at the earliest possible date. [1965 c 525 §54]

323.210 [1965 c 525 §55, repealed by 1971 c 260 §1 (323 211 enacted in lieu of 323 210)]

323.211 Posting of certain information on vending machines required; seizure for failure to comply. Every distributor and dealer or other person engaging in the sale of cigarettes through the use of one or more vending machines, must affix in a conspicuous place on each machine, a card or decal bearing the name, telephone number, address, and place of business of the operator or owner who regularly places cigarettes in the vending machine. If a person fails to comply with this section the department may seize the vending machine and its contents. [1971 c 260 §2 (enacted in lieu of 323 210)]

323.215 Records of vending machine operators. Every distributor and dealer or other person engaging in the sale of cigarettes through the use of one or more vending machines shall keep a detailed record of each vending machine operated for the sale of cigarettes, showing the location of the machine and the date of placing the machine on location. [1965 c 525 §56]

323.220 Records of distributors; preservation. Every distributor and every person dealing in, transporting or storing cigarettes in this state shall keep on the premises such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the department may require, and each such paper shall be preserved for four years from the time to which it relates During the four-year period and at any time prior to destruction of records, the department may give written notice to a distributor not to destroy records described in the notice without written permission from the department. Notwithstanding other provisions of law, reports and returns filed with the department shall be preserved by it for four years and thereafter until the department orders them destroyed. [1965 c 525 §57]

323.225 Transporters' permits and records. (1) Any transporter desiring to possess or acquire cigarettes for transportation or transport upon the highways, roads or streets of this state shall obtain a permit from the department authorizing such transporter to possess or acquire for transportation or transport the cigarettes, and he shall have the permit in the transporting vehicle during the period of transportation of the cigarettes The application for the permit shall be in such form and shall contain such information as may be prescribed by the department The department may issue a permit for a single load or shipment or for a number of loads or shipments to be transported under specified conditions.

(2) Each transporter who shall transport or possess or acquire for the purpose of transporting cigarettes upon the highways, roads or streets of this state is required to have within the transporting vehicle invoices or bills of lading covering the shipment of cigarettes being transported which shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity and brands of cigarettes transported [1965 c 525 §58]

323.230 Examination of records by department; supplemental reports. The department or its authorized representative, upon oral or written demand, may make such examinations of the books, papers, records and equipment of persons dealing in, transporting, or storing cigarettes and such other investigations as it may deem necessary in carrying out the provisions of this chapter. In addition to any other reports required under this chapter, the department may, by rule or otherwise, require additional, other, or supplemental reports from distributors, dealers, transporters, common and private carriers, warehousemen, bailees and other persons and prescribe the form, including verification, of the information to be given and the times for filing of such additional, other or supplemental reports. [1965 c 525 §59]

323.235 Subpenas; enforcement. (1) The department shall have authority, by order or subpena to be served with the same force and effect and in the same manner that a subpena is served in a civil action in the circuit court, or the Oregon Tax Court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of this chapter, and may require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such person

(2) If any person fails to comply with any subpena or order of the department or produce or permit the examination or inspection of any books, papers, records and equipment pertinent to any investigation or inquiry under this chapter, or to testify to any matter regarding which he may be lawfully interrogated, the department may apply to the Oregon Tax Court or to the circuit court of the county in which the person resides or where he may be found for an order to the person to attend and testify, or otherwise to comply with the demand or request of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the request on demand of the department within 10 days after the service of the order, or such further time as the court may grant, or to justify the failure within that time The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [1965 c 525 §60]

323.240 Search warrants; seizure of cigarettes unlawfully held. Whenever the department has good reason to believe that any cigarettes are being kept, sold, offered for sale or given away in violation of the provisions of this chapter or regulations issued under its authority, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any constable, police officer, or duly authorized agent of the department, commanding him to enter and diligently search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such cigarettes together with any vending machine or receptacle containing them and any vehicle carrying them, and to arrest the person in possession or control thereof. If, upon the return of such warrant, it shall appear that tax payable upon the cigarettes seized has not been paid, the cigarettes, containers and vehicle, if any, shall be forfeited to the state and sold pursuant to ORS 323.245. [1965 c 525 §61]

323.245 Forfeiture and sale of seized cigarettes and other objects; redemption. (1) Whenever the department discovers any cigarettes subject to tax under this chapter and with respect to which the tax has not been paid, it is hereby authorized and empowered forthwith to seize and take possession of such cigarettes together with any vending machine or receptacle in which they are held for sale and any vehicle in which they are being transported Such seized cigarettes, vending machine or receptacle, and vehicle, not including money contained in such vending machine or receptacle, shall be forfeited to the state. The department may, within a reasonable time thereafter, by public notice at least 20 days before the date of sale, sell such forfeited cigarettes, vending machines or receptacles, and vehicle, at public sale.

(2) Notwithstanding the provisions of subsection (1) of this section, the person from whom cigarettes were seized may redeem the cigarettes and any vending machine or receptacle and vehicle seized therewith, within 20 days from the date of seizure, by the payment of the tax due together with a penalty of 100 percent thereof and the costs incurred in such proceeding, which total payment shall not be less than $100; however, such seizure, sale or redemption shall not relieve any such person from fine or imprisonment as provided for violation of any provision of this chapter.

(3) Notwithstanding the provisions of subsection (1) of this section, the owner of such seized cigarettes, vending machine, receptacle or vehicle shall have the right of redemption provided in subsection (2) of this section for a period of 60 days from the date of such seizure if he claims such right prior to the redemption provided for in subsection (2) of this section.

(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, the owner of a vending machine which is seized for failure to comply with ORS 323.211 may redeem the seized vending machine and its contents within a period of 60 days from the date of such seizure by the payment of $25 plus costs of $15 or the actual costs incurred in such seizure proceedings, whichever is greater. [1965 c 525 §62, 1971 c 260 §3]

323.250 Exchanges of information with other governmental units. To promote administrative efficiency, the department may transmit information obtained under this chapter to the proper officers of governmental units outside Oregon which tax tobacco products and which reciprocate in the exchange of relevant information. [1965 c 525 §63]

323.255 Rewards for information. The department may pay rewards to persons, other than officers or employes of the department, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of this chapter. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of reports or from other information available to the department. [1965 c.525 §64]

COLLECTIONS AND REFUNDS

323.305 Determination of amounts unpaid. If a distributor fails to make payment for stamps or meter register settings when payment is due, the department may compute and determine from any available records and information the amount required to be paid, including interest and penalties. One or more determinations may be made of the amount due for one or for more than one purchase. In making a determination the department may offset overpayments with

respect to purchases of stamps or meter register settings against underpayments for purchases and interest and penalties on the underpayments. The department shall give the distributor written notice of its determination in the manner provided by ORS 323.380 (6). Except in the case of fraud, every notice of a determination made under this chapter shall be given within three years of the due date for payment of the purchase of stamps or a meter register setting. [1965 c.525 §65]

323.310 Petition for redetermination; deposit of security. The distributor against whom a determination is made under ORS 323.305 may petition for the redetermination thereof pursuant to ORS 323.416. He shall, however, file the petition for redetermination within the time prescribed by ORS 323.315 and shall at the time of filing the petition deposit with the department such security as it may deem necessary to insure compliance with this chapter The security may be sold in the same manner as prescribed by ORS 323.385 (3). [1965 c 525 §67]

323.315 Finality of determination; interest on amount due. If the amount specified in the determination made under this chapter is not paid within 10 days after service of the notice upon the distributor, the determination becomes final unless a petition for redetermination is filed with the department within the 10-day period. The determination is due and payable when it becomes final and the amounts determined, exclusive of interest and penalties, shall bear interest at the rate prescribed by ORS 323.195. [1965 c 525 §66]

323.320 Refunds for unused stamps or meter settings and for unsaleable or destroyed cigarettes. The department shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase, of:

(1) Any unused or damaged stamps or meter register settings.

(2) Stamps or meter impressions affixed to packages of cigarettes which have prior to distribution become unfit for use, unsaleable or have been destroyed, or which after distribution have become unfit for use or unsaleable and have been returned for credit or have been replaced, and the department has proof of the cigarettes not being used for smoking in the State of Oregon. [1965 c 525 §§68, 69]

323.325 Limitation period on claim for refund. No refund or credit for amounts overpaid for the purchase of stamps or meter register settings shall be allowed or approved after three years from the due date for payment of the purchase for which the overpayment was made, or with respect to a determination made pursuant to this chapter, after six months from the date the determination becomes final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the department within such period. [1965 c 525 §70]

323.330 Interest on certain refunds. Interest shall be computed, allowed and paid upon any overpayment for the purchase of stamps or meter register settings at the rate of one-half of one percent per month from the due date for payment of the purchase for which the overpayment was made, until paid, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited. [1965 c 525 §71]

323.335 Date when payment of tax is due. When the tax imposed under this chapter is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 20th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to ORS 323.040, the tax shall be due and payable monthly on or before the 20th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs. [1965 c 525 §72]

323.340 Report by distributors of distributions. (1) On or before the 20th day of each month, every distributor shall file on forms prescribed by the department a report containing such information as the department may require to carry out the purposes of this chapter.

(2) When any distributor regularly maintains and closes his books and records pursuant to a method utilizing periods ending each four calendar weeks, the department by regulation may require different reporting and payment date for such distributor, conforming as nearly as practicable with the reporting and payment dates of other distributors.

(3) A distributor holding more than one distributor's license and having centralized accounting may file one composite report combining the information required of each license location under subsection (1) of this section [1965 c 525 §73, 1971 c 416 §1]

323.345 [1965 c 525 §74, repealed by 1971 c 416 §3]

323.350 Quarterly remittance of tax due. The distributor shall submit quarterly a remittance payable to the department for the amount of tax due and unpaid. [1965 c 525 §75, 1971 c 416 §2]

323.355 Report of sales on common carriers in interstate or foreign passenger service. On or before the 20th day of each month the common carriers and authorized persons specified in ORS 323.040 shall file with the department a report of the sales of cigarettes made by them on the facilities of the carriers in Oregon in the preceding calendar month in such detail and form as the department may prescribe, submitting with the report the amount of the tax due under ORS 323.040. [1965 c 525 §77]

323.360 Report by consumers. Every consumer or user subject to the tax resulting from a distribution of cigarettes within the meaning of ORS 323 015 (1)(b) from whom the tax has not been collected under ORS 323.075 shall on or before the 20th day of the month following receipt of cigarettes file with the department a report of the amount of cigarettes received by him in the preceding calendar month in such detail and form as the department may prescribe, submitting with the report the amount of tax due. [1965 c 525 §78]

323.365 Extension of time for reports and payment of tax; interest. (1) The department for good cause may extend for not to exceed 30 days the time for making any report or paying any amount of tax required under this chapter. The extension may be granted at any time provided a request therefor is filed with the department within or prior to the period for which the extension may be granted.

(2) Any person to whom an extension is granted shall pay, in addition to the amount of tax, interest at the rate of one-half of one percent per month, or fraction thereof, from the date on which the amount of tax would have been due without the extension to the date of payment. [1965 c 525 §76]

323.380 Deficiency determinations. (1) If the department is dissatisfied with the report filed by any person, or if any person fails to file a report, it may compute and determine the amount to be paid upon the basis of any information available to it. One or more deficiency determinations may be made of the amount of tax due for one or for more than one month.

(2) The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of one percent per month, or fraction thereof, from the 20th day after the close of the month for which the amount of the tax, or any portion thereof, should have been reported until the date of payment

(3) In making a determination the department may offset overpayments for a month or months against underpayments for another month or months and against the interest and penalties on the underpayments

(4) If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard for this chapter or the rules and regulations adopted under this chapter, a penalty of 10 percent of the amount of the determination shall be added thereto.

(5) If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this chapter or the rules and regulations adopted under this chapter, a penalty of 25 percent of the amount of the determination shall be added thereto.

(6) The department shall give the person written notice of its determination. The notice may be served personally or by certified mail; if by mail, service shall be addressed to the person at his address as it appears in the records of the department, but the service shall be deemed complete at the time of deposit of the notice in the mail without extension of time on account of the distance between the place of deposit and the place of address.

(7) Except in the case of fraud, intent to evade the tax, or failure to make a report, every notice of a deficiency determination shall be given within three years after the date when the amount should have been reported. [1965 c 525 §79]

323.385 Jeopardy determinations. (1) If the department believes that the collection of any amount of tax required to be paid by any person under this chapter will be jeopard-

ized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable, with interest and penalty as provided in ORS 323 380.

(2) If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 20 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 20 days.

(3) The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to ORS 323.416. He shall, however, file the petition for redetermination with the department within 20 days after the service upon him of notice of the determination. The person shall at the time of filing the petition for redetermination deposit with the department such security as it may deem necessary to insure compliance with this chapter The security may be sold by the department at public sale if it becomes necessary in order to recover any amount due. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by ORS 323.380 (6). Upon any such sale, the surplus, if any, above the amount due under this chapter shall be returned to the person who deposited the security. [1965 c 525 §80]

323.390 Collection of unsecured, unpaid tax after deficiency or jeopardy determination; collection charge; warrants. (1) If any tax imposed by this chapter or any portion of such tax is not paid within 30 days after notice of a deficiency determination is given under ORS 323 380 (6) or of a tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department shall:

(a) Assess a collection charge of $5 if the sum of the tax, penalty and interest then due exceeds $10

(b) Issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax. [1971 c 417 §2]

323.401 Director authorized to make refund agreement with governing body of Indian reservation; contents; financing; ratification of previous agreements and refunds. (1) The Director of the Department of Revenue is authorized to enter into a cigarette tax refund agreement with the governing body of any Indian reservation in Oregon. The agreement may provide for a mutually agreed upon amount as a refund to the gov-

erning body of any cigarette tax precollected on sales of cigarettes to Indians upon the reservation and paid into the State Treasury after April 27, 1976. This provision is in addition to other laws allowing tax refunds.

(2) There is annually appropriated to the Director of the Department of Revenue from the suspense account established under ORS 293.445 and 323 455, the amounts necessary to make the refunds provided by subsection (1) of this section.

(3) Any cigarette tax refund agreement and refunds heretofore made by the Department of Revenue consistent with this section are hereby ratified and confirmed. [1979 c 581 §§1, 2, 3]

Note: 323 401 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 323 or any series therein by legislative action See the preface to Oregon Revised Statutes for further explanation

APPEALS

323.405 [1965 c 525 §81, repealed by 1977 c 870 §55 (323 416 enacted in lieu of 323 405)]

323.410 [1965 c 525 §82, repealed by 1977 c 870 §55 (323 416 enacted in lieu of 323 410)]

323.415 [1965 c 525 §§83, 84, repealed by 1977 c 870 §55 (323 416 enacted in lieu of 323 415)]

323.416 Appeals governed by ORS chapter 305. (1) Any person aggrieved by an act or determination of the department or its authorized agent under this chapter may appeal to the director of the department and from the department's order to the Oregon Tax Court in the manner provided in ORS chapter 305 The appeals rights provided herein shall be the exclusive remedy available to determine the liability of such person for the taxes imposed by this chapter.

(2) An appeal to the department or to the Oregon Tax Court under this chapter shall not stay proceedings to collect any unpaid tax if the department believes the collection of the tax will be jeopardized by delay, unless it be otherwise ordered by the court. [1977 c 870 §56 (enacted in lieu of 323 405, 323 410 and 323 415)]

323.420 Venue; departmental certificate as evidence. (1) The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in part at the office of the department in Salem, Oregon.

(2) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, or that such return has not been filed or that such information has not been supplied. [1965 c 525 §85]

ENFORCEMENT

323.435 Actions by Attorney General; limitation on actions. In addition to all other remedies specified in this chapter, action may be brought by the Attorney General, at the instance of the department, in the name of the state, to recover the amount of any taxes, penalties and interest due under this chapter, if the action for recovery is commenced within three years from the time the tax is due to be paid. [1965 c.525 §86]

323.440 Department to enforce chapter; rules; personnel. (1) The department shall enforce the provisions of this chapter and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this chapter.

(2) The department may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this chapter and may designate representatives to conduct hearings, or perform any other duties imposed by this chapter upon the department. [1965 c 525 §§87, 88]

DISTRIBUTION OF CERTAIN REVENUES

323.455 Distribution of certain cigarette tax revenues. (1) All moneys received by the department from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, seven-ninths shall be credited to the General Fund. One-ninth is appropriated to the cities of this state and one-ninth is appropriated to the counties of this state.

(2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined

under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state. [1965 c 525 §93, 1969 c 299 §1, 1971 c 535 §7, 1975 c 527 §1, 1981 c 797 §7]

323.460 [1965 c 525 §106, repealed by 1969 c 229 §3]

PENALTIES

323.990 Penalties for certain violations of chapter. (1) Any person required to obtain a license as a distributor under this chapter who engages in business as a distributor without a license or after a license has been canceled, suspended, or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $1,000, or shall be imprisoned for not more than one year, or both, for each offense.

(2) Any person who fails or refuses to file any report required to be made by this chapter, or who fails or refuses to furnish a supplemental report or other data required by the department under this chapter, or who renders a false report is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 for each offense.

(3) Any person required to make, render, sign or verify any report under this chapter, who makes any false report with intent to defeat or evade the determination required by law to be made is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the circuit court.

(4) Any transporter who violates the provisions of ORS 323.225 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the circuit court.

(5) Any person who violates any provisions of this chapter, except as otherwise provided, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 for each offense [1965 c 525 §90]

323.992 [1965 c 525 §91, repealed by 1971 c 743 §432]